

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Ellen Anderson	Chair
David C. Boyd	Commissioner
J. Dennis O'Brien	Commissioner
Phyllis A. Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Application of Northern States Power Company for a Certificate of Need for Approximately 450 MW of Incremental Capacity for the Black Dog Generating Plant Repowering Project – Alternative Proposal

ISSUE DATE: August 19, 2011

DOCKET NO. E-002/CN-11-184

NOTICE AND ORDER FOR HEARING

**PROCEDURAL HISTORY**

On March 15, 2011, Northern States Power Company d/b/a Xcel Energy (Xcel) filed an application for a certificate of need for approximately 450 megawatts (MW) of incremental capacity, to increase to a total of 700 MW the Black Dog Generating Plant.

According to Xcel, the repowering project is the most cost effective way to address growing demand and aging infrastructure. The plant site is located in the City of Burnsville, in Dakota County. As proposed, the project will replace two coal-fired generating units (Units 3 and 4) with approximately 700 MW of natural gas-fueled combined cycle generation, located in what is currently the coal storage yard.

On May 25, 2011, the Commission issued its Order Finding Application Complete When Supplemented, Setting Deadline for Alternative Proposals, and Initiating Informal Process in this docket. The Order accepted Xcel's application as complete upon the submission of a supplemental filing discussing the change in demand demonstrated in its most recent forecast analysis.

The Order also set a deadline for proposals from alternative providers, which was subsequently extended until August 1, 2011. Finally, the Commission initiated review of the merits of the Black Dog proposed project under the Commission's informal review process.

On June 14, 2011, Xcel filed the supplemental information to make its application complete.

On July 22, 2011, Calpine Corporation (Calpine) filed a petition to intervene and an alternative proposal with the Commission. The alternative proposal is for a 350 MW expansion of Calpine's existing Mankato Energy Generation Station (Mankato Station), a 375 MW natural gas-fired combined cycle generating facility in the City of Mankato, and a directive to Xcel to negotiate a power purchase agreement for that project.

On August 11, 2011, the Commission met to consider the matter.

## **FINDINGS AND CONCLUSIONS**

### **I. Calpine's Alternative Proposal Accepted as Substantially Complete**

In a May 31, 2006 order,<sup>1</sup> the Commission approved a bidding process under Minn. Stat. § 216B.2422, subd. 5, which established a two-track competitive resource acquisition process -- using the framework of the certificate of need process when Xcel submits a self-build proposal, and using a formal competitive bidding process when Xcel does not submit its own proposal. The operational details of both processes, as approved by the Commission, are set forth in the Department of Commerce's January 30, 2006 comments in Docket 04-1752.

Minnesota Rules Chapter 7849 sets forth the requirements for making an application for a certificate of need, as well as the ultimate criteria for demonstrating need. In this matter, Xcel offered a Guidance Document as part of its initial application,<sup>2</sup> for applicants preparing alternative proposals.

The Commission has examined the record and reviewed Calpine's proposal for compliance with the requirements of the May 31, 2006 order, including the filing requirements incorporated from the Department's earlier comments, and finds that Calpine's alternative proposal for the expansion of the Mankato Energy Center is substantially complete.

### **II. Jurisdiction and Referral for Contested Case Procedures**

The Commission has jurisdiction over Xcel's request for a Certificate of Need under Minn. Stat. § 216B.243 and Minn. Rules, Chapter 7849 and 7829.

The Commission finds that it cannot satisfactorily resolve all questions regarding the prudence of the proposed repowering proposals on the basis of the current filings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

### **III. Issues to be Addressed**

The ultimate issues in this case are whether Xcel has demonstrated a need for increased capacity; if so, how much additional capacity; whether either Xcel's proposal or Calpine's proposal is reasonable, prudent, and in compliance with all applicable statutory requirements in Minn. Stat. § 216B.243, and Minn. Rules, Chapters 7849 and 7829; which proposal is the most reasonable and prudent, considering the applicable statutory requirements; and, whether a more reasonable and

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<sup>1</sup> See generally *In the Matter of Northern States Power Company d/b/a/ Xcel Energy's Application for Approval of its 2004 Resource Plan, Order Establishing Resource Acquisition Process, Establishing Bidding Process Under Minn. Stat. § 216B.2422, subd. 5, and Requiring Compliance Filing*, Docket No. E-002/RP-04-1752 (May 31, 2006).

<sup>2</sup> Xcel Application, this docket (March 15, 2011) at Chapter 4.

prudent alternative to the proposals has not been demonstrated by a preponderance of the evidence on the record.

The parties may also raise and address other issues relevant to that determination.

#### **IV. Procedural Outline**

##### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Richard C. Luis. His address and telephone number are as follows: Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101; (651) 361-7843. The mailing address of the Office of Administrative Hearings is P.O. Box 64620, St. Paul, Minnesota 55164-0620.

##### **B. Hearing Procedure**

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at [www.revisor.mn.gov/pubs](http://www.revisor.mn.gov/pubs).

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Bret Eknes, Energy Facilities Planner, Minnesota Public Utilities Commission, 121 7<sup>th</sup> Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2236, by fax at (651) 297-7073, and by email at [bret.eknes@state.mn.us](mailto:bret.eknes@state.mn.us); or Anna Jenks, Assistant Attorney General, 1100 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 282-5735.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

### **C. Parties and Intervention**

The current parties to this case are Xcel Energy, the Minnesota Department of Commerce, and Calpine. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

#### **D. Prehearing Conference**

A prehearing conference will be held on September 12, 2011, at 9:30 a.m., in the Small Hearing Room at the offices of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.

Parties and persons intending to intervene in the matter should participate in the conference prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, settlement prospects and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

#### **V. Application of Ethics in Government Act**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., apply to rate setting cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

#### **VI. Ex Parte Communications**

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

#### **VII. Environmental Report Requested**

The Department of Commerce's Energy Facilities Permitting Unit has initiated its environmental review and the development of an Environmental Report on Xcel's Black Dog project, with a public meeting on the scope of the report later this month.

The Commission requests the Department's Energy Facilities Permitting Unit to timely complete an appropriate environmental review on the Calpine proposal, and to develop a separate report or an appendix to the Black Dog Environmental Report on the project. Calpine has agreed to provide the Department with any relevant information necessary to conduct the review.

### **ORDER**

1. The Commission accepts Calpine's alternative proposal for the expansion of the Mankato Energy Center as substantially complete.
2. The Commission hereby refers this matter to the Office of Administrative Hearings for contested case proceedings, as set forth above.

3. The Commission requests the Department of Commerce's Energy Facilities Permitting Unit to perform a timely environmental review of the proposed expansion of the Mankato Energy Center.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary



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St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East Suite 350  
St. Paul, Minnesota 55101-2147

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OAH Docket No.

**NOTICE OF APPEARANCE**

Name, Address and Telephone Number of Administrative Law Judge:

Richard C. Luis, Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101;  
Mailing Address: Box 64620, St. Paul, Minnesota 55164-0620; Telephone Number: (651) 361-7843.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: \_\_\_\_\_