BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Application of Northern States Power Company (d/b/a Xcel Energy) for a Certificate of Need for a Large Electric Generating Facility

ISSUE DATE: June 25, 2004

DOCKET NO. E-002/CN-04-76

ORDER GRANTING CERTIFICATE OF NEED AND REQUIRING DISCUSSION WITH THE DEPARTMENT

PROCEDURAL HISTORY

On January 16, 2004, Xcel Energy (Xcel, the Company or the Applicant) submitted its certificate of need application.

On February 6, 2004, the Minnesota Department of Commerce (the Department) filed comments regarding the completeness of Xcel's filing. The Department recommended that the Commission declare the application complete pending submission of additional data and clarifications.

On February 19, 2004, Xcel Energy submitted a supplement to address the deficiencies indicated by the Department.

On March 17, 2004, the Commission issued its ORDER FINDING APPLICATION SUBSTANTIALLY COMPLETE AND REFERRING MATTER TO THE OFFICE OF ADMINISTRATIVE HEARINGS and also its NOTICE AND ORDER FOR HEARING.

On May 17, 2004, public hearings were held in Shakopee, Minnesota.

On May 20, 2004, Xcel Energy submitted proposed Findings, Conclusions and Recommendation for consideration by Administrative Law Judge Raymond R. Krause. The Company indicated that the document was prepared in consultation with the Department.

On May 27, 2004, Xcel Energy submitted affidavits and tear sheets from the Minneapolis Star Tribune, the St. Paul Pioneer Press, and the Shakopee Valley News indicating that they published the staff-approved notice of application and public hearings.

On May 28, 2004, Administrative Law Judge (ALJ) Raymond R. Krause issued his Findings of Fact, Conclusions of Law, and Recommendation (the ALJ's Report).

On June 1, 2004, the Commission issued its Notice of Comment Period for Exceptions. No exceptions were filed.

The Commission met on June 10, 2004 to consider this matter.

FINDINGS AND CONCLUSIONS

I. XCEL

A. Procedural Issue

On May 27, 2004, after the record had closed in this proceeding. Xcel Energy submitted affidavits and tear sheets from the Minneapolis Star Tribune, the St. Paul Pioneer Press, and the Shakopee Valley News indicating that they published the staff-approved notice of application and public hearings.

B. Substantive Request

Xcel requested a certificate of need for the following project:

- installation of two simple-cycle, natural gas-fired combustion turbine generators adjacent to the existing oil-fired units at the Xcel Energy Blue Lake Generating Plant;
- construction of a transmission interconnection approximately 4000 feet long between the Blue Lake Substation and an existing 230-kilovolt line in the area; and
- a natural gas pipeline between the plant site and a regional gas pipeline approximately 10 to 12 miles to the south.

On May 20, 2004, following the public hearings before the ALJ, Xcel submitted proposed Findings, Conclusions and Recommendation for consideration by the ALJ. The Company stated that the document was prepared in consultation with the Department.

II. The ALJ's Findings and Recommendation

The ALJ substantially adopted the draft Findings, Conclusions and Recommendation prepared by Xcel in consultation with the Department. The ALJ found that the Commission has jurisdiction over this matter, that all notice requirements have been met, and that all relevant procedural requirements of law and rules have been fulfilled.

Regarding the substance of the Company's request, the ALJ found that Xcel has satisfied all the requirements for a Certificate of Need set forth in Minn. Stat. § 216B.243 and Minn. Rules, Chapter 7849. Specifically, the ALJ found that the proposed two new combustion turbine generators and a new 230 kV/115 kV double circuit transmission line are needed to meet the Company's power supply obligations because

1) Xcel's current and planned facilities not requiring Certificates of Need are inadequate to meet the Company's projected needs,

2) increasing planned conservation efforts is not a feasible alternative to the Project, and

3) considering the size, type, timing, costs, natural and socioeconomic environmental effects, and reliability, the record did not indicate the existence of a more reasonable and prudent alternative.

In addition the ALJ found 1) that Xcel has not promoted electricity in manner that would affect the need for the proposed generators, 2) that the record did not indicate that the design, construction, or operation of the proposed generators and transmission line would fail to comply with the relevant local, state, and federal policies, rules, and regulations, 3) that the identified needs cannot be met by use of generating power fueled by renewable resources, 4) that the proposed generators and transmission lines will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health, and 5) that denial of the Certificate of Need would likely have an adverse effect upon the future adequacy, reliability, and efficiency of energy supply to Xcel Energy customers in the Twin Cities service area.

Based on these findings, the ALJ recommended that the Commission issue the Company a Certificate of Need to construct the proposed generators and transmission lines. In recognition of a concern raised by the Department, however, the ALJ recommended that the Commission condition the Certificate of Need on Xcel agreeing to meet with the Department to discuss forecasting issues before the Company files its next resource plan.

III. The Department's Comments

In testimony filed with the ALJ, the Department recommended that the Commission waive the requirements of its Bidding Process Orders and approve the Company's petition. The Department also recommended that the Commission require Xcel and the Department to meet to discuss forecasting issues prior to the Company's next resource plan filing.

Regarding applicability of the Commission's bidding process requirements[1], the Department stated that because the Company's proposal surpasses the size (12 MW) and duration (five years) thresholds, the Company's proposal is the type of capacity decision that should normally be handled through the competitive bidding process. At the same time, the Department stated, it would be unreasonable to retroactively consider Xcel's petition to be a bid and treat the Company's proposal as if NSP-Generation were the winning bidder. Instead, the Department stated, the Commission could

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[1] See the Commission's ORDER ACCEPTING COMPANY'S PROPOSAL WITH MODIFICATIONS AND REQUIRING FURTHER FILINGS issued August 18, 1994 and ORDER DENYING RECONSIDERATION AND PROVIDING CLARIFICATION OF THE COMMISSION'S AUGUST 18, 1994 ORDER in Docket Nos. E-002/CI-93-6 and E-002RP-93-630.

adequately deal with the matter by addressing the Company's Certificate of Need Petition. The Department stated that the critical thing was to ensure that Xcel's customers' needs are met reliably and at a reasonable cost. The Department stated that these objectives were met through the Certificate of Need process and therefore recommended that the Commission waive the bidding process Order requirements in this case.

As to the substance of the Company's petition, the Department agreed, as the ALJ found, that Xcel has satisfied all the requirements for a Certificate of Need set forth in Minn. Stat. 216B.243 and Minn. Rules, Chapter 7849. The Department agreed that Xcel will begin to experience capacity deficits in 2005 and that these deficits cannot be met by conservation measures or other means. The Department therefore concluded that the Commission should approve Xcel's application.

Finally, while not altering its ultimate conclusion that Xcel's petition should be approved, the Department expressed concerns about the validity of some of Xcel's inputs and method of forecasting demand. Based on its own forecasts, the Department predicted lower capacity deficits than Xcel predicted. For example, the Department's forecast identified a capacity deficit of 204 MW in 2005 as opposed to the Company's forecast of 501 MW.

The Department indicated that the Company had adequately responded to its concerns about forecasting by agreeing 1) that it is appropriate to focus on more conservative ways to calculate capacity, particularly in light of the increasing difficulties recently encountered in importing energy, 2) to work with the Department to study the methods for calculating capacity and the implications of transmission constraints, 3) to discuss forecasting issues with the Department prior to the next resource plan filing, and 4) to accept as a condition of its Certificate of Need that it meet to discuss the Department's concerns about the Company's demand forecast.

IV. The Commission's Analysis and Action

A. Decision Regarding Procedural Matter

The Commission finds that it will not be necessary to reopen the record for the limited purpose of admitting the affidavits and tear sheets submitted by the Company on May 27, 2004 (which indicate that the newspapers published the staff-approved notice of the application and public hearings). The affidavits and tear sheets appear on the log sheets maintained by the Commission for this docket.

B. Decision Regarding ALJ's Report

Since the pipeline interconnection proposed by Xcel in connection with this Project is less than 50 miles long, it is exempt from the certificate of need process[2] but the generation addition and the associated transmission interconnection falls under the definition of "large energy facility" in Minn. Stat. § 216B.2421, subd. 2 (1). In accordance with Minn. Stat. § 216B.243, subd. 2, therefore, the generation portion of the project and the associated transmission interconnection cannot be sited or constructed in Minnesota unless the Commission issues the Company a Certificate of Need.

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[2] See Minn. Stat. § 216B.2421, subd. 2 (4).

The Commission has reviewed the record fully in light of the applicable law and finds that the ALJ's findings, conclusions of law, and recommendations are substantially appropriate. The Commission will adopt those findings, conclusions of law, and recommendations with the following minor corrections or clarifications.

- On the first page of his report, the ALJ makes reference to the 15-day period for exceptions, as provided by Minn. Rules, part 7829.2700, subp. 1. In its Notice issued June 1, 2004, the Commission reduced that period to 10 days, the minimum period provided by statute.[3]

- In Finding 34 on page 10, "McLeod" contains a typographical error.

- Conclusion 3 on page 23 dealing with notice requirements refers to Minn. Rules, part 7849.0230, subp. 1. However, there appears to be no notice requirement in that subpart. Moreover, the intent of part 7849.0230 was to cover only transmission applications, not generation applications which are the principal facilities at issue in this proceeding. Accordingly, part 7849.0230 is not applicable to this application and reference to it in the decision documents for this process is inappropriate.

In addition, as noted by the ALJ, Xcel has stipulated that it will confer with the Department regarding forecasting issues prior to the Company filing its next resource plan and has accepted this agreement as a condition of its Certificate of Need.[4] On this issue, the ALJ's Recommendation adopted by the Commission is that issuance of the Certificate of Need be conditioned upon Xcel Energy agreeing to meet with the Department to discuss forecasting issues before filing its next resource plan.[5] To implement that recommendation, the Commission will require Xcel to meet with the Department to discuss forecasting issues prior to Xcel's next resource plan filing.

Finally, the Commission agrees with the Department that the bidding process requirements adopted by the Commission in Docket Nos. E-002/CI-93-6 and E-002RP-93-630 should be waived in this case. As the Department's analysis has demonstrated, the ratepayers' interests in reliability and cost have been adequately protected by the Certificate of Need process followed in this matter. It is with this waiver specifically in mind that the Commission has adopted the ALJ's conclusion that the Company has fulfilled all relevant substantive and procedural requirements.[6]

ORDER

1. The Commission affirms the substantive findings, conclusions, and recommendation of the ALJ except as follows.

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[3] Minn. Stat. § 14.61.

[4] See Finding of Fact 24 at page 13 of the ALJ's Report.

[5] See ALJ's Recommendation at page 25 of the ALJ's Report.

[6] See ALJ's Conclusion 4 at page 23 of the ALJ's Report.

- On the first page of his report, the ALJ references a 15-day period for filing exceptions. In its Notice issued June 1, 2004, the Commission reduced that period to 10 days, the minimum period provided by statute.

- In Finding 34 on page 10, "McLeod" contains a typographical error.

- Conclusion 3 on page 23 includes a reference to Minn. Rules, Part 7849.0230 which does not apply to the Company's application.

2. The Commission hereby issues to Xcel a certificate of need for the construction of the large electric generating facility as proposed by the Company, as well as for the associated transmission interconnection.

3. Xcel Energy shall meet with the Department to discuss forecasting issues prior to the Company's next resource plan filing.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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