MAR 12 2003

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Ellen Gavin	Commissioner
Marshall Johnson	Commissioner
Phyllis A. Reha	Commissioner
Gregory Scott	Commissioner

In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Certificates of Need for Four Large High Voltage Transmission Line Projects in Southwestern Minnesota

ISSUE DATE: March 11, 2003

DOCKET NO. E-002/CN-01-1958

ORDER GRANTING CERTIFICATES OF NEED SUBJECT TO CONDITIONS

PROCEDURAL HISTORY

I. Initial Proceedings

On December 28, 2001, Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) filed an application under Minn. Stat. § 216B.243 and Minnesota Rules, Chapter 7849 for certificates of need to construct four high voltage transmission lines in southwestern Minnesota to provide outlet capacity for wind generation expected to develop there.

On February 11, 2002, the Commission issued an Order finding the application substantially complete and referring the case to the Office of Administrative Hearings for contested case proceedings. The case was assigned to Administrative Law Judge Beverly Jones Heydinger.

II. The Parties and their Representatives

The following persons and organizations were parties to this proceeding and were represented as set forth below.

Northern States Power Company d/b/a Xcel Energy, represented by Michael C. Krikava and Lisa Agrimonti, Briggs and Morgan, P.A., 2400 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402.

Minnesota Department of Commerce, represented by Julia E. Anderson, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota 55103.

The staff of the Minnesota Environmental Quality Board, represented by Dwight S. Wagenius, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota 55101-7345.

Laura and John Reinhardt, 3552 26th Avenue South, Minneapolis, Minnesota 55406, appeared on their own behalf.

The North American Water Office, represented by George Crocker, P. O. Box 174, Lake Elmo, Minnesota 55042.

Public Intervenors Network, represented by Carol Overland, Attorney at Law, Box 559, Red Wing, Minnesota 55066.

Sierra Club of Minnesota Air Toxics Campaign, represented by Paula Goodman Maccabee, Attorney at Law, 1916 Selby Avenue, St. Paul, Minnesota 55104.

Izaak Walton League of America, represented by Peter T. Grills and Carl T. Williams, O'Neill, Grills & O'Neill, W1750 First National Bank Building, 352 Minnesota Street, St. Paul, Minnesota 55101, and by Beth Soholt, Senior Energy Associate, Izaak Walton League of America, Midwest Office, 1619 Dayton Avenue, St. Paul, Minnesota 55104.

American Wind Energy Association, represented by John R. Dunlop, Regional Manager, 448 Morgan Avenue South, Suite 300, Minneapolis, Minnesota 55405.

Rural Minnesota Energy Task Force, represented by Kevin Walli, Fryberger, Buchanan, Smith & Frederick, 386 North Wabasha Street, Suite 1190, St. Paul, Minnesota 55102, and by David Benson, Task Force Chair, Nobles County Commissioner, and Jack Keers, Pipestone County Commissioner.

Minnesotans for an Energy-Efficient Economy, represented by Michael Noble, Executive Director, Minnesota Building, Suite 600, 46 East Fourth Street, St. Paul, Minnesota 55101.

Minnesota Power, represented by Deborah A. Amberg, Attorney at Law, 30 West Superior Street, Duluth, Minnesota 55802.

III. Proceedings Before the Administrative Law Judge

The Administrative Law Judge held evidentiary hearings in the case on May 6-9, May 13-17, 2002, May 20-25, 2002, May 29, 2002, June 25-28, 2002, and July 3, 2002. The parties filed initial briefs and reply briefs after the close of hearings.

The Administrative Law Judge held public hearings on six dates: May 7 and 7 in Worthington, May 8 in Pipestone, May 9 in Redwood Falls, and May 13 and 14 in St. Paul.

On November 8, 2002, the Administrative Law Judge filed her Findings of Fact, Conclusions of Law, and Recommendation (the ALJ's Report). In brief, that report recommended

(a) granting an immediate certificate of need for one line;

(b) granting certificates of need for the other three lines subject to further environmental review and subject to conditions designed to ensure that they would be used for their stated purpose of transmitting wind energy;

(c) requiring Xcel to continue discussions with local elected officials and wind developers to identify and address barriers to small wind development, especially as they relate to the construction and financing of substations; and

(d) requiring Xcel to file periodic compliance reports.

IV. Proceedings Before the Commission

On or before November 25, 2002, the parties filed exceptions to the report of the Administrative Law Judge. The Commission heard oral argument from all parties on January 23, 2003 and held deliberations on January 30, 2003. Having reviewed the entire record herein, and having heard the arguments of all parties, the Commission makes the following Findings, Conclusions, and Order.

FINDINGS AND CONCLUSIONS

I. Introduction

This is a unique certificate of need application because the Company does not claim that the transmission lines it proposes are needed as need is usually defined in certificate of need proceedings – it does not claim that they are needed to meet increased demand for electricity. Instead, the Company claims that the lines are needed to meet a transmission deficit that is preventing the development of wind energy in Minnesota, thereby frustrating state policies requiring Minnesota utilities in general, and Xcel in particular, to rely more heavily on wind generation.

The Company proposes to remedy the transmission deficit by building four transmission lines across some 168 miles in southwestern Minnesota. These lines would carry electricity from the Buffalo Ridge region, the site of the state's richest wind resources, to areas of the state with the greatest demand for electricity.

Many of the generation facilities the lines would be built to serve have not yet been built, because it is pointless to build generation without assurance that adequate transmission will be available. Since it is also pointless to build transmission without assurance that adequate generation will be available, Buffalo Ridge's rich wind resources remain underdeveloped. The proposed lines are intended to end this stalemate, permitting further wind development on Buffalo Ridge and implementing the state's policy of reducing dependence on fossil fuels through increased use of renewable energy.

This application is also unique because it carries the risk that the proposed transmission lines will not be used for the purpose for which they are intended and for which any certificates of need would be granted. Transmission is an interstate activity regulated by the Federal Energy Regulatory Commission. Under federal law, Xcel cannot reserve the proposed lines for wind generation; in fact, it cannot even reserve them for its own use, except under carefully defined circumstances.

Access to the Company's transmission lines is determined by the terms of its federal open access transmission tariff, which must and does permit access on a non-discriminatory, first-come, first-served basis. The Company's transmission lines, and access to them, are controlled by the Midwest Independent System Operator (MISO), a neutral third party recognized as an appropriate administrator under federal law.

While the rules governing a utility's access to its own transmission lines are still in flux, at the time of evidentiary hearings and oral argument Xcel believed that it could reserve transmission capacity for new generation that it designated as a "network resource" and that it could reserve transmission capacity necessary to serve future load growth.[1]

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[1] ALJ's Report, ¶ 79.

This uncertainty about the proposed transmission lines' ultimate availability to carry wind generation led the Administrative Law Judge and most of the parties to recommend placing conditions on any certificates of need ultimately granted to maximize the likelihood that transmission lines built under these certificates would be used for their stated purpose.

II. The Legal Standard

The certificate of need statute directs the Commission to "adopt assessment of need criteria to be used in the determination of need for large energy facilities pursuant to this section."[2] The statute also directs the Commission to evaluate the following factors in assessing need:[3]

(a) the accuracy of the long-range energy demand forecasts on which the necessity for the facility is based;

(b) the effect of existing or possible energy conservation programs under Minn. Stat. § 216C.05 through 216C.30 or other federal or state legislation on long-term energy demand;

(c) the relationship of the proposed facility to overall state energy needs, as described in the most recent state energy policy and conservation report prepared under Minn. Stat. § 216C.18;

(d) promotional activities that may have given rise to the demand for this facility;

(e) benefits of this facility, including its uses to protect or enhance environmental quality, and to increase reliability of energy supply in Minnesota and the region;

(f) possible alternatives for satisfying the energy demand or transmission needs including but not limited to potential for increased efficiency and upgrading of existing energy generation and transmission facilities, load-management programs, and distributed generation;

(g) the policies, rules, and regulations of other state and federal agencies and local governments; and

(h) any feasible combination of energy conservation improvements, required under Minn. Stat. § 216B.241, that can (i) replace part or all of the energy to be provided by the proposed facility; and (ii) compete with it economically.

To comply with its statutory obligation to establish criteria for assessing need, the Commission has adopted the certificate of need rules, Minnesota Rules Chapter 7849. Those rules are detailed, but in brief, they require the Commission to issue a certificate of need when the applicant demonstrates four things:

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[2] Minn. Stat. § 216B.243, subd. 1.

[3] Minn. Stat. § 216B.243, subd. 3.

(a) the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states;

(b) a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record;

(c) by a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health; and

(d) the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

Minn. Rules 7849.0120.

The rules also set forth factors to consider in evaluating whether the applicant has met the requirements of criteria A, B, and C.

III. The Company's Filing

The Company requested authority to build transmission facilities capable of moving 825 megawatts of electricity from the Buffalo Ridge area to its northern control area. Its initial filing presented detailed information about four alternatives, with the Company's initially preferred option, Option 1, comprising the following parts:

- a 24-mile, 161-kilovolt line from Lakefield to Fox Lake
- a 94-mile, 345-kilovolt line from Split Rock, South Dakota to Lakefield
- a 24-mile, 115-kilovolt line running through Chanarambie Township Fenton Township, and Nobles County
- a 14-mile, 115-kilovolt line running through Fenton Township and Nobles County

In the course of the hearings the Company developed another option, Option 1H, in response to other parties' testimony, which improved transmission access along the northern portion of the Buffalo Ridge area. Option 1H, which the Company subsequently adopted as its preferred option and which the Administrative Law Judge found to be the most reasonable and prudent alternative based on the record, comprises the following parts:

- a 24-mile, 161-kilovolt line from Lakefield to Fox Lake
- a 94-mile, 345-kilovolt line from Split Rock, South Dakota to Lakefield
- a 24-mile, 115-kilovolt line running through Chanarambie Township, Fenton Township, and Nobles County

- a 26-mile, 115-kilovolt line running from Buffalo Ridge to the Company's Yankee Substation to White, South Dakota

Option 3, which the Administrative Law Judge considered a close second to Option 1H, comprises the following parts:

- a 24-mile, 161-kilovolt line from Lakefield to Fox Lake
- a 52-mile, 161-kilovolt line connecting the Company's Chanarambie and Heron Lake substations
- a 26-mile, 115-kilovolt line running from Buffalo Ridge through the Company's Yankee Substation to White, South Dakota
- a 44-mile 115-kilovolt line connecting the Company's Lyon substation with its Franklin substation

IV. The Administrative Law Judge's Report and Recommendations

The Administrative Law Judge found that Xcel had demonstrated need under the certificate of need statute and rules for transmission facilities with the capacity to carry 825 megawatts of wind energy from the Buffalo Ridge area. She found that record evidence established that the most reasonable and prudent alternative was Option 1H.

The Administrative Law Judge found that Xcel had demonstrated current need for the 161-kilovolt line connecting Lakefield and Fox Lake and recommended granting an immediate certificate of need for that line, contingent upon the Company receiving MISO approval to use the line to carry wind generation that it already had under contract.

The Administrative Law Judge recommended that the Commission issue certificates of need for the other three lines subject to two conditions:

(1) that the Environmental Quality Board examine both Options 1H and 3 during the siting proceeding and determine that the three remaining lines in Option 1H will not have a significantly greater negative impact on the environment than the three remaining lines in Option 3; and

(2) that Xcel demonstrate before placing the other three lines in service that MISO has approved transmission requests for a total of 825 megawatts of wind generation that will connect with the system through the two substations associated with the new lines.

The Administrative Law Judge made two additional recommendations:

(1) requiring Xcel to work with elected officials and wind developers to establish criteria for siting new substations in response to wind development and to clarify which costs would be borne by the generator and which by Xcel; and

(2) requiring Xcel to file annual reports on (a) the number of wind transmission requests pending with MISO from generators on Buffalo Ridge; (b) the number of wind transmission requests granted by MISO to generators on Buffalo Ridge; and (c) Xcel's efforts to facilitate small wind development (10 MW) or less on Buffalo Ridge.

V. Positions of the Parties

A. Xcel

The Company opposed deferring a final decision on which option to certify until the siting proceeding, claiming that the record demonstrated that Option 1H was the superior option. The Company also claimed that referring both options to the Environmental Quality Board for environmental review would be inconsistent with both the certificate of need and the siting statutes and that it would make the siting proceeding unnecessarily costly, burdensome, and confusing.

The Company opposed conditioning operation of three of the four lines on MISO approval of 825 megawatts of Buffalo Ridge wind generation. The Company claimed that this condition would violate federal law, impede wind development, and jeopardize the Company's ability to proceed with construction in light of the uncertainty it would create regarding rate recovery of the cost of a potentially unusable investment.

The Company urged Commission adoption of Option 1H without conditions and the adoption of the remainder of the ALJ's recommendations. The Company claimed that it is so clear that wind development will accompany the building of the proposed transmission lines that conditions to ensure their use for wind transmission are unnecessary.

B. The Department of Commerce

The Department of Commerce (the Department) opposed stand-alone certification of the first line in Option 1H on grounds that the record did not support it. All record evidence, the Department argued, went to the issue of the need to, and the most reasonable and prudent means to, move 825 megawatts of wind energy from Buffalo Ridge. The need to, and the most reasonable and prudent means to, move smaller amounts of wind energy were not examined in the record, and in the absence of record evidence there is no way to make a competent judgement on those issues.

The Department opposed referring both Options 1H and 3 to the Environmental Quality Board for environmental review for much the same reasons as the Company.

The Department opposed the ALJ's recommendation to condition operation of the lines on MISO approval of 825 megawatts of wind transmission on grounds that that condition had not been explored on the record, making its impact unclear. The Department recommended conditioning approval of the lines' construction on Xcel itself contracting to buy a total of 825 megawatts of wind energy from the Buffalo Ridge area and taking the steps necessary to secure MISO approval for its transmission.

C. The Staff of the Environmental Quality Board

The staff of the Environmental Quality Board (the EQB staff) filed no exceptions to the ALJ's Report, identified three alternative courses of action open to the Commission, and took no position on which course of action the Commission should take.

The three courses of action identified by the EQB staff were (1) reject the Administrative Law Judge's recommendation to refer two options to the EQB for environmental development and limit certification to one or none; (2) remand the case to the Administrative Law Judge for further development of the environmental record; or (3) refer both options to the EQB for further environmental development.

D. Laura and John Reinhardt

Laura and John Reinhardt opposed granting any certificate of need in this proceeding, arguing that the application failed to demonstrate need as that term is used in the certificate of need statute and rules. They argued that the record was inadequately developed as to the environmental impacts and costs of the proposed lines. And they argued that the Commission violated the due process rights of potentially affected landowners by failing to require direct mailed notice apprising them that their land could be taken by eminent domain to build the proposed transmission lines.

E. Public Intervenors Network

The Public Intervenors Network supported certifying the four lines in Option 3 and opposed Option 1H, mainly because it considered the 345-kilovolt line in Option 1H unnecessary to carry wind energy and likely to be used instead for bulk power transfers of energy generated with fossil fuels. The Network emphasized that any certificates of need issued should be conditioned upon proof of power purchase agreements for 825 megawatts of wind generation from the Buffalo Ridge area.

F. Izaak Walton League, Minnesotans for an Energy-Efficient Economy, and American Wind Energy Association

These three parties opposed referring both Options 1H and 3 to the Environmental Quality Board for environmental review for much the same reasons as the Company.

These parties also opposed the ALJ's recommendation to condition operation of the lines on MISO approval of 825 megawatts of wind transmission on grounds that that condition could delay the development of wind generation on Buffalo Ridge or worse, could result in the lines never being built and the wind generation they are intended to promote never developing. The three parties recommended conditioning approval of the lines' construction on Xcel itself contracting to buy a total of 825 megawatts of wind energy from the Buffalo Ridge area and taking the steps necessary to secure MISO approval for its transmission.

During Commission deliberations these three parties, in conjunction with the Sierra Club Air Toxics Campaign, the North American Water Office, and the Rural Minnesota Energy Task Force, submitted a joint recommendation that, in brief, would

- certify Option 1H,
- require Xcel to buy a minimum of 60 megawatts of small, locally-owned wind generation on Buffalo Ridge for purposes of triggering installation of substations before the lines are completed,
- require Xcel to contract for 825 megawatts of wind energy from Buffalo Ridge by December 31, 2003, to seek Commission approval of those contracts within a time frame permitting approval by June 30, 2004, and to seek MISO approval of transmission access within ten days of executing letters of intent,
- require Xcel to seek MISO authorization for 825 megawatts of wind transmission from Buffalo Ridge within 15 days of receiving certificates of need,

- require Xcel to install the additional 400 megawatts of wind energy mandated by Commission Order[4] by 2006 instead of the 2012 deadline set in the Order in the Company's 1998 resource plan[5],
- require Xcel to build the Fenton and Yankee substations planned for Buffalo Ridge as soon as 30-40 megawatts of small, locally-owned wind generation per substation has been aggregated,
- require Xcel to work with elected officials, wind developers, and other stakeholders to ensure transmission access for small, locally owned wind projects; to clarify the criteria for siting substations; and to facilitate the development of locally-owned wind generation in southwestern Minnesota

G. Sierra Club Air Toxics Campaign

The Sierra Club originally supported Option 3 but did not take exception to the Administrative Law Judge's finding that Option 1H was the most reasonable and prudent option unless evidence developed in the siting proceeding before the Environmental Quality Board demonstrated that Option 1H carried significantly higher environmental costs than Option 3.

As noted above, the Sierra Club ultimately joined with the Izaak Walton League, Minnesotans for an Energy-Efficient Economy, the American Wind Energy Association, the North American Water Office, and the Rural Minnesota Energy Task Force in a joint recommendation designed to ensure that the proposed transmission lines would in fact carry wind generation from Buffalo Ridge and that small, locally-owned wind generation projects could interconnect with the transmission system.

H. Rural Minnesota Energy Task Force

The Rural Minnesota Energy Task Force is made up of County Commissioners from the southwestern Minnesota counties in which the proposed transmission lines and the new wind generation facilities they are intended to serve will be located – Cottonwood, Jackson, Lincoln, Lyon, Mower, Murray, Nobles, Pipestone, Redwood, Renville, and Rock. The Task Force intervened in this proceeding to try to establish cost-sharing mechanisms under which Xcel and small, local wind developers would share the costs of developing the transmission access infrastructure necessary for small, locally-owned wind generation to flourish. The Task Force took exception to the Administrative Law Judge's Report only in that they questioned whether her recommendation to direct Xcel to continue these discussions was specific enough to achieve those objectives.

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[4] *In the Matter of the Application of Northern States Power Company for Approval of its 1998 Resource Plan*, Docket No. E-002/RP-98-32, ORDER MODIFYING RESOURCE PLAN, REQUIRING ADDITIONAL WIND GENERATION, REQUIRING FURTHER FILINGS, AND SETTING STANDARDS FOR NEXT RESOURCE PLAN FILING (February 17, 1999).

[5] Id.

As noted above, later the Task Force joined with the Sierra Club Air Toxics Campaign, the Izaak Walton League, Minnesotans for an Energy-Efficient Economy, the American Wind Energy Association, and the North American Water Office in a joint recommendation designed to ensure that the proposed transmission lines would in fact carry wind generation from Buffalo Ridge and that small, locally-owned wind generation projects could interconnect with the transmission system.

I. North American Water Office

The North American Water Office concurred with the Administrative Law Judge that the Company had demonstrated need for the new transmission lines to carry out state energy policies requiring less dependence on fossil fuels and more dependence on renewable energy. Beyond that, the Water Office, like the Rural Minnesota Energy Task Force, focused mainly on crafting conditions that would ensure that small, locally-owned wind generation could have a significant role in meeting this mandate.

As noted above, ultimately the North American Water Office joined with the Rural Minnesota Energy Task Force, the Sierra Club Air Toxics Campaign, the Izaak Walton League, Minnesotans for an Energy-Efficient Economy, and the American Wind Energy Association in a joint recommendation designed to ensure that the proposed transmission lines would in fact carry wind generation from Buffalo Ridge and that small, locally-owned wind generation projects could interconnect with the transmission system.

VI. Summary of Commission Action

The Administrative Law Judge held 20 days of evidentiary hearings and six days of public hearings. She reviewed the testimony of 20 witnesses, 3,000 pages of transcript, and dozens of exhibits. She considered the parties' initial briefs, reply briefs, and comments on the draft environmental report.

Her report is thoughtful, comprehensive, and thorough. She made 245 findings of fact, 24 conclusions of law, and two recommendations, set forth above. Having examined the record itself and having carefully considered the report of the Administrative Law Judge, the Commission concurs in – and will accept, adopt, and incorporate herein – nearly all of her findings of fact and conclusions of law.

At a few points, however, the Commission reaches different conclusions as to the exact form the requested certificates of need should take, based on its institutional expertise and statutory responsibilities.

First, the Commission considers itself bound to examine the application as a whole and will not grant stand-alone certification to the 161-kilovolt line between Lakefield and Fox Lake, as recommended by the Administrative Law Judge. The Commission will instead certify the Lakefield-Fox Lake line as part of the proposed package of transmission facilities.

The Commission concurs with the ALJ that the Company has demonstrated a need for 825 megawatts of new transmission capacity to move wind generation from Buffalo Ridge to its northern control area. The Commission also concurs with the ALJ that the Company has.

demonstrated on the record that Option 1H is the most reasonable and prudent alternative for meeting that need. The Commission does not, however, concur with the ALJ that Option 3's relatively close ranking to Option 1H on the merits justifies asking the Environmental Quality Board to develop the environmental record on both options at the upcoming siting proceeding. The Commission will instead certify Option 1H and refer that option for siting.

The Commission concurs with the ALJ that it is critical for the certificates of need granted in this case to carry conditions that ensure, to the greatest extent possible, that the lines will be used for their intended purpose of carrying wind generation from Buffalo Ridge. The Commission concludes, however, that the condition recommended by the ALJ – prohibiting operation of the lines until MISO has authorized 825 megawatts of wind transmission from Buffalo Ridge – is less likely to accomplish this goal than requiring Xcel to acquire a total of 825 megawatts of wind generation from Buffalo Ridge as a condition of building the lines.

The Commission concurs with the ALJ that state energy policy supports requiring that Xcel continue in dialog with local officials, wind developers, and other stakeholders to identify and address barriers to small wind development, especially as they relate to the construction and financing of substations. Based on its regulatory experience, however, the Commission concludes that a stronger and clearer directive is required than that recommended by the ALJ.

Finally, the Commission concurs with the ALJ on the need for periodic reports on Xcel's progress in meeting the conditions placed on its certificates of need. Instead of specifying an annual time frame, however, as recommended by the ALJ, the Commission believes that it can monitor performance more effectively by delegating timing details to its staff and the Department of Commerce. It may well be that annual reports will suffice at some points, while more frequent reports will be necessary at others.

With the exceptions noted above, the Commission accepts, adopts, and incorporates the Administrative Law Judge's Report in its entirety. Each exception will be addressed in turn.

VII. The Commission Will Not Grant Stand-Alone Certification for the Lakefield-Fox Lake Line.

The Administrative Law Judge found that Xcel had demonstrated current need for the 161-kilovolt line connecting Lakefield and Fox Lake and recommended granting an immediate certificate of need for that line, contingent upon the Company receiving MISO approval to use the line to carry the 425 megawatts of wind generation that it already had under contract.

The Commission concurs with the Department that, while Xcel has demonstrated a need for a package of transmission facilities to move 825 megawatts of wind generation from Buffalo Ridge, it has not demonstrated stand-alone need for individual components of that package. All record evidence went to the issue of the need to, and the most reasonable and prudent means to, increase transmission capacity by 825 megawatts.

Increasing transmission capacity by 425 megawatts is a very different proposition. The alternatives for moving the smaller amount of power are different, and the need for the Lakefield-Fox Lake line cannot be adequately evaluated without evidentiary development of those alternatives.

The Commission will therefore not grant stand-alone certification to the Lakefield-Fox Lake line.

VIII. Option 3's Relatively Close Ranking to Option 1H on the Merits Does Not Justify Referring Both Options to the Environmental Quality Board for Environmental Development.

A. The ALJ's Recommendation

The Administrative Law Judge found that Xcel had demonstrated on the record that Option 1H was the most reasonable and prudent alternative for accomplishing the objective of moving 825 megawatts of wind generation from the Buffalo Ridge area to Xcel's northern control area:

> . . . [T]he two best options are Option 1H and Option 3. Based on the record presented, Option 1H, the option preferred by Xcel, is the more reasonable option. . . . ALJ's Report, p. 53.
>
> Xcel has demonstrated that Option 1H meets the criteria for certificates of need and that no other option offers a better alternative. ALJ's Report, p. 54.
>
> Based on the evidence presented, Option 1H is the more reasonable and prudent alternative, but Option 3 closely approximates the same benefits. ALJ's Report, Conclusion of Law 16, p. 46.

Because Option 3 was a close second to option 1H, however, and because the record did not include the final routing data and detailed environmental studies of final routes required for a definitive comparison of the environmental costs of the two options, the ALJ recommended requiring the Company to ask the Environmental Quality Board to examine both options during the siting proceeding. If the environmental costs of Option 1H turned out to significantly greater than those for Option 3, the Commission was to instead grant certificates of need for Option 3.

B. Summary of Commission Action

The Commission respectfully declines to take this recommendation, believing it to be inconsistent with the statutes demarcating the decision-making responsibilities of the two agencies, with the legal standard for granting certificates of need, and with principles of administrative efficiency.

Further, the Commission agrees with the ALJ that the record supports a finding that Option 1H is the most reasonable and prudent alternative for meeting the need that has been established on the record. The Commission will therefore certify Option 1H without conditioning that certification on an environmental review of Option 3 in the siting proceeding.

C. Jurisdictional Boundaries Set by Statute

Both the Public Utilities Act and the Power Plant Siting Act emphasize that the Commission and the Environmental Quality Board have separate, distinct, and non-overlapping responsibilities in regard to applications for authority to construct high-voltage transmission lines.

The Public Utilities Act makes it clear that other agencies' input on need issues is to take place during the certificate of need proceeding before the Commission, not afterward in another proceeding:

> Other state agencies authorized to issue permits for siting, construction or operation of large energy facilities, and those state agencies authorized to participate in matters before the commission involving utility rates and adequacy of utility services, shall present their position regarding need and participate in the public hearing process prior to the issuance or denial of a certificate of need. Issuance or denial of certificates of need shall be the sole and exclusive prerogative of the commission and these determinations and certificates shall be binding upon other state departments and agencies, regional, county, and local governments and special purpose government districts except as provided in sections 116C.01 to 116C.08 and 116D.04, subdivision 9.
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> Minn. Stat. § 216B.243, subd. 7, emphasis added.

Similarly, the Power Plant Siting Act emphasizes that the Environmental Quality Board is bound by the Commission's need determination and is prohibited from examining the size, type, and timing of certified projects as part of its environmental review. In fact, the law specifically prohibits the Board from examining "alternative system configurations," the exact issue that would be raised by asking the Board to compare the environmental costs of Options 1H and 3:

> The board is hereby given the authority to provide for site and route selection for large electric power facilities. The board shall issue permits for large electric power facilities in a timely fashion. When the public utilities commission has determined the need for the project under section 216B.243 or 216B.2425, questions of need, including size, type, and timing; alternative system configurations; and voltage are not within the board's siting and routing authority and must not be included in the scope of environmental review conducted under sections 116C.51 to 116C.69.
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> Minn. Stat. § 116C,53, emphasis added.

The Commission concludes that referring both Option 1H and Option 3 to the EQB for environmental development during the siting proceeding would violate jurisdictional boundaries set by statute.

D. Administrative Efficiency

Not only would referring both options for environmental review violate statutory jurisdictional boundaries, but it would also result in an unnecessarily confusing, expensive, and lengthy proceeding before the EQB. As the Company points out, filing the information required for the preparation of the Environmental Impact Statements for the four lines in Option 1H alone will be costly, labor-intensive, and time-consuming. Filing exhaustive environmental information on Option 3 as well would increase the cost, complexity, and length of the proceeding immensely.

Further, performing a two-track environmental review would almost certainly require the Commission to reopen the certificate of need proceeding when the siting proceeding was completed. Examining environmental effects is not a science; the Environmental Quality Board would not be able to quantify with any precision the difference between the environmental costs of

Option 1H and Option 3. As the staff of the Environmental Quality Board noted in their initial brief, "It is difficult to select among feasible and prudent alternatives. It is usually not possible to rank alternatives in terms of environmental damage."[6]

The Commission would then have to decide whether the expanded environmental record merited a change in its original finding that the record does not demonstrate the existence of a more reasonable and prudent alternative to Option 1H. There would likely be parties on both sides of that issue, and deciding it would essentially require solving the certificate of need equation all over again, since environmental factors interact with every other factor in that analytical process, including cost and reliability considerations.

These duplicative proceedings would severely undermine the administrative efficiency the statutes were attempting to achieve in setting clear jurisdictional boundaries.

E. Legal Standard for Certification Met

The legal standard for granting certificates of need, discussed in section II, requires careful weighing of a lengthy, complex factual record against a long list of public interest factors set forth in the certificate of need statute and rules. The ALJ's report examines the record in light of these factors and concludes that Option 1H meets the certificate of need criteria, including the rules' requirement that the record demonstrate that there is not a more reasonable or prudent alternative.[7]

Because Option 3 "is very close in virtually every respect,"[8] to Option 1H, however, she concludes that " . . . it is appropriate to develop the environmental record more fully before determining that there is no prudent or feasible alternative to Option 1H."[9] This "no prudent or feasible alternative" requirement is set forth in the Minnesota Environmental Policy Act at Minn. Stat. § 116D.04, subd. 6:

> No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.

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[6] Brief of the Environmental Quality Board Staff, p. 9.

[7] ALJ's Report, Conclusion of Law 16, p. 46; p. 53, ¶ 6; p. 54, ¶ 4.

[8] ALJ's Report, p. 53, ¶ 6.

[9] ALJ's Report, p. 57, ¶ 2.

The Commission finds that the "feasible and prudent alternative" standard has been met. Both the ALJ and the Commission have carefully weighed the five alternative transmission options extensively developed in the record. Both the ALJ and the Commission have reached a considered judgment that Option 1H is the most reasonable and prudent alternative under the factors set forth in the certificate of need statute and rules.

Further, the fact that Option 1H has a close second is not surprising – there are always different transmission system configurations that achieve the same results – and it does not necessitate or justify singling out one factor for further development. There is no need to second-guess the Legislature's decision to defer exhaustive environmental review to the siting stage of transmission proceedings.

Option 1H is superior to Option 3 in nearly every category examined – cost, reliability, robustness, flexibility, speed of construction, ease of future upgrades.[10] Option 3 is superior in no category. The two options are indistinguishable in the gravity of their environmental effects. Option 1H is amply supported in the record as the most reasonable and prudent alternative to meet the need established in the record. The Commission will therefore grant the certificates of need required under that option, conditioned as set forth below.

IX. Conditioning the Certificates of Need on MISO Approval of 825 Megawatts of Buffalo Ridge Wind Generation Carries Unacceptable Risks; the Commission Will Instead Require Xcel to Obtain the Generation.

A. Introduction

As discussed earlier, this certificate of need application is unique in at least two respects. First, the need it seeks to meet is not a need for more electricity, but a need to remedy an infrastructure deficit blocking the implementation of state policies on renewable energy. Second, granting the application cannot in and of itself ensure that the need will be met, since Xcel cannot reserve the proposed lines for wind generation and since most of the wind generation for which the lines would be built is not yet present.

Most of the parties therefore recommended conditioning any certificates of need on requiring the Company to buy enough Buffalo Ridge wind energy to bring its total Buffalo Ridge wind portfolio to the lines' capacity and to time those purchases to coincide with the in-service date of the new lines. The Company contended that this was unnecessary because of the certainty that wind energy projects would materialize in response to the new lines.

The Company also contended that requiring it to make those purchases on a predetermined and tight time line would skew negotiations with wind vendors, result in higher purchase prices, and be inconsistent with the Commission's Order in its 1998 resource plan. That Order required additional wind purchases but required that they be made as part of an all-source bidding process.[11]

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[10] ALJ's Report, Findings of Fact 143, 146, 194, 211; ALJ's Memorandum, p. 54, ¶ 3.

[11] *In the Matter of the Application of Northern States Power Company for Approval of its 1998 Resource Plan*, Docket No. E-002/RP-98-32, ORDER MODIFYING RESOURCE PLAN, REQUIRING ADDITIONAL WIND GENERATION, REQUIRING FURTHER FILINGS, AND SETTING STANDARDS FOR NEXT RESOURCE PLAN FILING (February 17, 1999).

B. Summary of Commission Action

The Commission concurs with the ALJ that it is critical for the certificates of need granted in this case to carry conditions to ensure that the certified lines will be used for their intended purpose.

The Commission concludes, however, that the condition recommended by the ALJ – prohibiting operation of the lines until MISO has authorized 825 megawatts of wind transmission from Buffalo Ridge – both carries unacceptable risks and is less likely to accomplish this goal than requiring Xcel to acquire 825 megawatts of wind generation from Buffalo Ridge as a condition of building the lines. The Commission will therefore require Xcel to purchase the wind generation.

These actions are explained below.

C. Conditions are Critical to Protect the Public Interest.

The Commission concurs with the Administrative Law Judge that it is critical to place conditions on these certificates of need to maximize the likelihood that the certified lines will be used for their intended purpose.

Under federal law, these lines will be available to all eligible generators on a first-come, first-served basis. Xcel will have first claim on the lines' capacity, but only to the extent that it can document that it has "network resources" waiting to use the capacity or that it needs the capacity to meet future load growth. If neither of these conditions is present – and under Xcel's plan they would not be – and if wind generation did not develop on Buffalo Ridge within the expected and critical time frame, these lines would likely be used to transmit electricity that was both unneeded by Xcel's customers and derived from fossil fuel.

Further, the proposed transmission lines represent an estimated $163 million investment that would normally be borne by ratepayers. Building the proposed lines will probably require the taking of private land for public benefit under the power of eminent domain. Building and operating the proposed lines will inevitably cause some damage to the natural environment. These costs are significant, and they obligate the Commission to take steps to ensure that the purpose for which they are incurred is ultimately served by them.

As the ALJ found, "Xcel has demonstrated that granting the certificates of need has a high probability of promoting increased renewable energy generation."[12] Given the high costs associated with these lines, however, and given that there is no demonstrated need for these lines other than wind transmission, the Commission agrees with the ALJ that the certificates of need should carry conditions designed to maximize the likelihood that the lines will be used for their intended purpose.

D. The Conditions Recommended by the ALJ Carry Unacceptable Risks.

The ALJ recommended that the certificates of need granted in this case prohibit Xcel from operating the newly certified lines until MISO (the Midwest Independent System Operator, the neutral third party operating Xcel's transmission lines and its transmission tariff under federal law) has authorized the transmission of 825 megawatts of wind energy from the Buffalo Ridge area.

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[12] ALJ's Report, Conclusion of Law 12.

The Commission will instead require Xcel to acquire a total of 825 megawatts of Buffalo Ridge wind power by the time the lines become operational and to take prompt action to secure MISO transmission authority as each increment of that wind energy becomes available. While it is possible that these conditions and those recommended by the ALJ would have the same effect, the Commission believes that its own conditions pose fewer risks for ratepayers.

First, the Commission shares the Department's concern that the ALJ's "no operation" scenario has not been explored on the record, making its impact unclear. It is not clear, for example, how much authority the Commission would have over the decision to energize the lines. It is possible that once the lines were in place, their energizing, like most other facets of their operation, would be subject to federal jurisdiction. The lines could then be energized to carry fossil-fuel-derived electricity before adequate wind energy had developed on Buffalo Ridge.

Neither is it clear how the "no operation" condition would interact with wind development efforts. If these efforts in fact depend upon transmission being actually available, the condition could seriously delay that development. Meanwhile, ratepayers, Xcel, or some combination of the two would be paying for costly and idle transmission infrastructure improvements, or for costly transmission infrastructure improvements being used to transmit unnecessary fossil-fuel-derived generation.

Similarly, it is not clear whether Xcel would build the lines subject to a "no operation" condition, given the cost recovery uncertainties associated with the risk that the lines would be idle or used for non-renewable generation. And finally, if the lines were placed into service to comply with federal law before wind development had occurred, Minnesota would still face the need to upgrade its transmission infrastructure to accommodate the renewable generation required under state law and policy.

For all these reasons, the Commission concludes that it must condition the certificates of need on Xcel purchasing the wind generation the lines are intended to accommodate.

E. Xcel Must Acquire the Wind Generation.

The most straightforward way to ensure that the proposed lines will be used to carry wind generation and the way most likely to succeed is to require Xcel to purchase the 825 megawatts of wind the lines are intended to carry and to secure transmission authority from MISO before the lines are ready to go into service. Since these requirements are consistent with both the purpose of Xcel's certificate of need application and with its existing legal obligations to add significant amounts of renewable generation to its supply portfolio, it is the best solution to the stalemate resulting from the interdependence of wind development and transmission availability.

The Company is obligated by statute to have 425 megawatts of wind energy under contract by December 31, 2002.[13] It is obligated by statute and Commission Order to add another 400

[13] Minn. Stat. § 216B.2423, subd. 1.

megawatts by 2012.[14] It is obligated by statute to make a good faith effort to convert 10% of its supply portfolio to renewables by 2015, an obligation Xcel states could result in its purchase of over 1,000 additional renewable megawatts over the next 13 years.[15] And it is obligated by statute to give a preference to renewable energy in all future resource acquisitions.[16]

Given Xcel's plethora of renewable energy obligations, its request to build transmission lines for the explicit purpose of carrying renewable energy, and the significant risk that these lines might not be used for that purpose, it makes little sense not to require Xcel to acquire the 825 megawatts of wind generation that it expects those lines to carry.

F. Xcel's 1998 Resource Plan Is Not a Barrier.

Xcel opposed the purchase requirement in part because the Commission Order issued in its 1998 resource plan proceeding, which required the Company to buy the additional 400 megawatts of wind energy left to Commission discretion by statute, required that that additional 400 megawatts be secured through all-source bidding.[17] The Commission was concerned that at that stage in the development of the wind industry, a wind-only bidding process could result in inflated prices and could also inadvertently impede the development of a competitive wind generation sector.

The purchase requirement imposed as a condition in this case does not literally conflict with that Order, however, since the megawatts at issue here are not necessarily the 400 megawatts dealt with in that Order. Energy policy has continued to evolve, and the Company's renewable obligation now far exceeds the 400 megawatts in that Order.

More fundamentally, however, it is important to remember that resource planning is an iterative process. The 1998 resource plan is about to be replaced by the 2002 resource plan, which is now out for comment from stakeholders. If the Company wishes to re-evaluate the all-source bidding requirement in the earlier Order, the current proceeding would be an appropriate vehicle. It would also be an appropriate vehicle for seeking clarification that intervening circumstances make it appropriate to secure some or all of the 400 wind megawatts required in that Order as part of 825 wind megawatts upon which these certificates of need are conditioned.

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[14] *In the Matter of the Application of Northern States Power Company for Approval of its 1998 Resource Plan*, Docket No. E-002/RP-98-32, ORDER MODIFYING RESOURCE PLAN, REQUIRING ADDITIONAL WIND GENERATION, REQUIRING FURTHER FILINGS, AND SETTING STANDARDS FOR NEXT RESOURCE PLAN FILING (February 17, 1999); Minn. Stat. § 216B.2423, subd. 2.

[15] Xcel's Post-Hearing Brief, p. 19, citing to transcript, S. Jones, Vol. 133, lines 18-20; Minn. Stat. § 216B.1691.

[16] Minn. Stat. § 216B.2422, subd. 4.

[17] *In the Matter of the Application of Northern States Power Company for Approval of its 1998 Resource Plan*, Docket No. E-002/RP-98-32, ORDER MODIFYING RESOURCE PLAN, REQUIRING ADDITIONAL WIND GENERATION, REQUIRING FURTHER FILINGS, AND SETTING STANDARDS FOR NEXT RESOURCE PLAN FILING (February 17, 1999), at 5.

The wind industry has matured substantially since the 1998 resource plan Order, and the concerns expressed there about the risk of stifling a young industry's competitiveness through subsidized success may no longer be as acute. The Administrative Law Judge's Report is certainly full of references to advances in wind technology in the past several years. The Commission still respects the Company's concern, however, that requiring major capacity purchases under publicly announced deadlines can affect negotiating positions and distort prices.

There is no alternative to the deadlines established here if the Commission is to maximize the possibility that these new transmission lines will serve their intended purpose. To reduce any negotiating disadvantage these deadlines may create for the Company, however, the Commission will require only 675 megawatts, the approximate break-even point at which Option 1H becomes the most economical,[18] by the end of this calendar year. The remainder of the 825 megawatts must be secured and authorized for transmission by the lines' in-service date.

The Commission will also require Xcel to promptly seek regulatory approval of negotiated wind contracts and to secure transmission authority from MISO for these 825 megawatts of wind generation under time frames set forth below. To ensure adequate regulatory oversight, the Commission will require prompt reports on any regulatory developments that may affect the conditions placed on these certificates of need.

The Commission will accept the Company's proposed in-service dates for the proposed lines, knowing that construction schedules could be affected by other regulatory proceedings, weather, and other factors, and that the Company will complete construction as soon as practicable.

X. The Commission Will Impose Conditions Designed to Ensure Transmission Access by Small, Locally-Owned Wind Generation.

A. Introduction

The Rural Minnesota Energy Task Force, made up of County Commissioners from the eleven counties that would host the proposed transmission lines, intervened in this case with two goals: (1) to clarify Xcel's policies on when it would build substations and other infrastructure to support small, local wind development; and (2) to establish mechanisms whereby local developers and Xcel would share the expense of building infrastructure, which is essential for small, locally-owed wind generation to flourish.

The Task Force emphasized that locally-owned wind generation provides significantly higher benefits to local economies than non-locally-owned wind generation and argued that it was both equitable and sound public policy for communities bearing the burdens of transmission lines to reap some of their benefits as well. They also argued that conditioning these certificates of need on ensuring opportunities for local, small wind development would reduce local opposition to constructing these lines.

Xcel, the Task Force, and other stakeholders held discussions on these issues throughout the proceeding, but no concrete agreements were reached. Neither were Xcel's policies on substation construction clarified.

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[18] Xcel Energy Exhibits 55, 56.

As noted above, during Commission deliberations the Task Force, the North American Water Office, the Izaak Walton League of America, Minnesotans for an Energy-Efficient Economy, the American Wind Energy Association, and the Sierra Club of Minnesota Air Toxics Campaign jointly submitted a list of concrete conditions they recommended attaching to the certificates of need to ensure access to the new transmission lines by small, local wind generators.

B. The Benefits of Small, Locally-Owned Wind Development; the ALJ's Decision

The record clearly establishes the significant benefits that accrue to local economies from small, locally-owned wind development and clearly establishes that these benefits significantly exceed the benefits of larger, non-locally-owned projects –

> There is strong evidence that local ownership of new wind generation will provide substantially greater benefit to southwestern Minnesota than outside ownership. . . . ALJ's Report, Finding of Fact 220.
>
> The proposed transmission lines will do little to induce future development in Southwestern Minnesota unless wind generation or other small renewable energy projects are able to access the lines. . . . ALJ's Report, Finding of Fact 223.
>
> There is no doubt that the economic benefit for southwestern Minnesota will be greater if locally-owned, dispersed wind development takes place. . . . The 1996 study, *Economic Impact Analysis of Windpower Development in Southwest Minnesota*, concluded that the economic development from wind may be ten times greater if the new generation is locally owned and financed. . . . ALJ's Report, p. 60, footnote omitted.

The record also establishes that Xcel's failure to set and disclose clear policies and procedures for siting substations and other facilities that give small wind generators access to transmission has hampered and continues to hamper the development of small, locally-owned wind generation in southwestern Minnesota –

> At this time, Xcel does not have a written policy that clarifies when and under what conditions it will construct substations or 35 kV lines to "collect" the electricity that is generated by wind turbines dispersed throughout Buffalo Ridge. . . . ALJ's Report, Finding of Fact 107.
>
> Financing for a collector system is necessary to spur local ownership. . . . ALJ's Report, Finding of Fact 193.
>
> The lack of criteria and information hampers the efforts of local wind developers to construct a proposal and obtain financing. If, for example, Xcel agreed that it would build substation facilities whenever 20 or more megawatts of small, locally-owned wind generation were constructed, it would provide a level of certainty that is currently lacking. . . . ALJ's Report, p. 62.

Despite these findings, the Administrative Law Judge declined to recommend specific conditions to permit transmission access by small, locally-owned wind generators, finding that state policy contained no preference for local ownership, that the parties supporting access by small, locally-

owned generators had not made a clear statement of what they wanted the Commission to order, and that the Notice and Order for Hearing in this case did not specifically identify generation ownership issues as among those to be addressed.[19]

She therefore recommended only conditioning the certificates of need on requiring Xcel to continue its dialog on these issues with the stakeholders.

C. Summary of Commission Action

The Commission will condition these certificates of need on (a) Xcel purchasing at tariff rates all available megawatts of small, locally-owned wind generation in the Buffalo Ridge area, up to a total of 60 megawatts; (b) Xcel building substations in the Buffalo Ridge area when the aggregated output of small, locally-owned generators reaches 30-40 megawatts; and (c) Xcel cooperating with elected representatives, wind developers, other owners of transmission infrastructure, and other interested stakeholders to identify and remove barriers to small wind development, especially as they relate to the construction and financing of substations.

These conditions are necessary to give proper weight to the socioeconomic effects of the proposed transmission lines, as required by rule, and to further state policies promoting the development of small wind generation projects. The Commission concludes that the notice concerns expressed by the Administrative Law Judge are neither fatal nor so grave as to outweigh the need to effectuate these state policies, especially since the notice did specify the Commission's intention to examine the economic and employment effect of the proposed lines.

D. The Certificate of Need Rules

The certificate of need rules make the socioeconomic effects of proposed projects, including their effects on economic development, important factors in the need equation. The rules set four criteria for judging applications for certificates of need; the third criterion is whether the Commission has determined that

> (1) by a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health, considering:
>
> (2) the effects of the proposed facility, or a suitable modification thereof, upon the natural and socioeconomic environments compared to the effects of not building the facility;
>
> (3) the effects of the proposed facility, or a suitable modification thereof, in inducing future development . . .
>
> Minn. Rules 7840.0120 C.

The rules' second criterion, too, requires consideration of the facility's effects on the "natural and socioeconomic environments." Minn. Rules 7849.0120, B (3).

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[19] ALJ's Report, pages 60-62.

Taking socioeconomic effects into account in this case compels the conclusion that these certificates of need should carry conditions designed to ensure that small, locally-owned wind projects have access to these transmission lines.

It is clear that the socioeconomic and economic development effects of the proposed transmission lines will vary dramatically depending upon whether those lines are accessible to locally-owned small wind generators. If they are accessible, they will benefit the local economy substantially; if they are not accessible, their effect on the local economy will be much less significant. Furthermore, it is clear that the proposed lines will impose significant environmental, social, and aesthetic burdens on the host communities.

While it is impossible to offset the burdens the lines will impose with precision, the economic benefits that would flow from more locally-owned small wind generation would significantly move the burden/benefit ratio toward the benefit side of the ledger, making the socioeconomic and economic development impact of the lines much more positive. These facts justify and require conditioning the certificates of need on ensuring access to the proposed facilities by locally-owned small wind developers.

E. Other State Policies

Furthermore, not only do these conditions meet the requirements in the certificate of need rules to weigh the socioeconomic and economic development consequences of proposed projects, but they further other important state policies promoting the development of small and locally-owned wind projects. For example,

(a) 216C.41, subd. 1 (c), which makes local ownership a condition of certain wind production incentives;

(b) 216B.1611, subd. 2, requiring utilities to develop procedures to encourage the interconnection of small distributed generation projects using renewable or other clean fuels;

(c) 216B.2423, subd. 3, requiring streamlined procedures for negotiating contracts with wind generators under two megawatts; and

(d) Xcel's stipulation with the Department of Commerce in its merger docket, in which it agreed to help facilitate the development of small, distributed wind generation by developing a tariff for purchases from wind generators below two megawatts.[20]

In short, requiring Xcel to take steps to ensure that residents of the communities affected by these transmission lines share in some of their economic benefit is reasonable, equitable, consistent with the certificate of need rules, and consistent with overarching state policies favoring the development of small wind projects. For all these reasons, the Commission will condition these certificates of need on measures to facilitate transmission access by small, locally-owned small wind projects.

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[20] *In the Matter of the Application of Northern States Power Company for Approval to Merge with New Century Energies, Inc.*, Docket No. E,G-002/PA-99-1031; *In the Matter of Northern States Power Company's Petition for Approval of a Small Wind Energy Tariff*, Docket No. E-002/M-00-1747.

XI. The Commission Will Delegate the Timing of Compliance Reports to its Staff and the Department of Commerce.

Finally, it is clear that the Commission's regulatory responsibilities require that it receive periodic updates on Xcel's progress in complying with the conditions set forth in this Order. The ALJ recommended annual reporting.

While annual reports may certainly suffice at some points, more frequent reports may be necessary at others. To preserve flexibility and ensure adequate monitoring, the Commission will delegate the timing details to its staff and the Department of Commerce, who will be monitoring Xcel's performance and will therefore be in the best position to judge how often reporting would be helpful.

XII. Conclusion

For all these reasons, the Commission grants the Company's certificate of need of application, certifying Option 1H with the conditions set forth in this Order, which are designed to ensure that the certified transmission lines serve their stated, intended, and needed purpose.

The Commission accepts the recommendations of the Administrative Law Judge as modified in this Order. The Commission accepts, adopts, and incorporates herein the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendation, as modified above, with the exception of Finding of Fact 56 and Conclusion of Law 16.

ORDER

1. The Commission accepts, adopts, and incorporates herein the Findings of Fact, Conclusions of Law, and Recommendation of the Administrative Law Judge, except as set forth above.

2. The Commission hereby grants Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) four certificates of need as set forth in the record as option 1H, which includes the following lines:

   - a new 161-kV line in Jackson and Martin counties connecting the Lakefield Junction Substation and the Fox Lake Substation;
   - a new 345-kV line connecting the Lakefield Junction Substation and the Split Rock Substation in South Dakota, the Minnesota portion of which would be in Jackson, Nobles, and Rock counties;
   - a new 115-kV line in Nobles and Murray counties connecting a new Nobles County Substation, located on the new 345-kV line, with a new Fenton Substation and the existing Chanarambie Substation on Buffalo Ridge; and
   - a new 115-kV line from the Buffalo Ridge Substation to the White Substation in South Dakota, the Minnesota portion of which would be in Lincoln County.

3. The Commission hereby adopts the in-service dates proposed by Xcel for the project, with the understanding that construction should be completed as soon as practicable after those dates if the regulatory processes or construction takes longer than originally expected.

4. The Commission hereby imposes the following conditions on the certificates of need granted herein, not as pre-construction requirements, but as requirements to be met during the period required for completion of the regulatory processes and construction:

   a. Xcel must sign power purchase agreements with wind developers no later than the end of 2003 for a minimum of 675 MW of wind-generated electricity on the Buffalo Ridge and must seek Commission approval of those contracts within a time frame permitting approval by June 30, 2004;

   b. Xcel must install a total of 825 MW of wind generation at Buffalo Ridge by the time the four transmission lines become operational;

   c. Xcel must, within 15 days of obtaining the certificates of need, make transmission service requests for network (firm) service to the Midwest Independent System Operator for at least 825 MW of wind-generated power and must cooperate in all aspects of the generators' requests for transmission service;

   d. Xcel must designate the new wind generation resources as network resources pursuant to MISO's Open-Access Transmission Tariff within ten days of executing letters of intent for wind generation or as soon as allowed by MISO;

   e. Xcel must report to the Commission on any regulatory developments at the regional or federal level that could affect the conditions placed on the certificates of need.

5. Xcel must purchase at tariff rates all available small, locally-owned wind generation on Buffalo Ridge up to a total of 60 megawatts for purposes of triggering the timing of substation facilities prior to completion of the certified lines.

6. Xcel must build the Fenton and Yankee Substations on Buffalo Ridge as soon as 30–40 megawatts or more of viable, small, locally-owned wind generators are aggregated per substation, using the Rural Minnesota Energy Task Force's definition of "small locally owned projects."

7. Xcel shall work with elected representatives, wind developers in southwestern Minnesota, other owners of transmission infrastructure in southwestern Minnesota, and other interested stakeholders, to ensure that access to transmission for small, locally owned wind projects is provided; to clarify the criteria for siting new substations in response to wind development; and to facilitate the development of locally-owned wind in southwestern Minnesota.

8. Xcel shall report periodically on its efforts to implement the requirements set forth above, in a manner and at intervals determined by the Department of Commerce and Commission Staff.

9. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(SEAL)

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