

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Edward A. Garvey  
Marshall Johnson  
LeRoy Koppendrayner  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Request of Northern States  
Power Company d/b/a/ Xcel Energy for  
Approval of a Renewable Development Fund  
Oversight Process

ISSUE DATE: May 6, 2002

DOCKET NO. E-002/M-00-1583

ORDER APPROVING THE FIRST SEVEN  
GRANT CONTRACTS AS REVISED

**PROCEDURAL HISTORY**

On April 20, 2001, the Commission issued an Order adopting an oversight process for Xcel's renewable development fund. Under this process, Xcel is required to bring individual Renewable Energy Fund (RDF) grant contracts between Xcel and the selected bidders to the Commission for approval before funds can be awarded.

On April 3, 2002, the Commission issued an Order approving the 19 projects selected and proposed by Xcel and the Renewable Development Board. The Commission also directed the Board to file, before the start of the second funding cycle for the RDF fund, a description of the lessons learned in the first round funding and proposed changes to the process for the second round of funding.

On March 6 and 7, Xcel filed seven of the 19 selected grant contracts for approval by the Commission.

On March 11, the Commission issued a notice seeking comments on these grant contracts.

On March 27, the Department filed initial comments recommending the Commission approve six of the seven filed contracts. The Department recommended the Commission reject the grant contract between Xcel and the Science Museum of Minnesota (Bid No. AS06).

On April 8, both Xcel and the Science Museum filed reply comments.

On April 16, the Department filed revised comments recommending approval of the Science Museum contract.

The Commission met on April 25, 2002 to consider this matter.

## FINDINGS AND CONCLUSIONS

### **I. THE DEPARTMENT'S REVIEW AND CONCERNS**

#### **A. Science Museum Contract**

In its initial comments, the Department noted some minor concerns with the grant contracts but also argued that the grant contract with the Science Museum of Minnesota (a Category A project) contained problems that warranted rejection of the contract. Specifically, the Department argued that the Science Museum project has a low benefit to cost ratio and was not commercially viable, a requirement of all Category A projects.

In reply comments, Xcel agreed to make the minor contract adjustments recommended by the Department if these were determined necessary by the Commission, but disagreed with the Department's assessment of the Science Museum of Minnesota project, noting that the Department viewed commercial viability solely by cost. The Company noted that the Request for Proposals (RFP) for Category A projects identified four additional points on which commercial viability would be judged. The Company argued that the Science Museum of Minnesota project fits within Category A because it is new construction and uses an established technology type. Even though this project scored lower in terms of cost effectiveness compared to all other Category A projects, it did not score low for a solar project of this type and the \$100,000 of funding requested is small compared to the amounts sought by other applicants.

The Science Museum argued that the Department's recommendation was based on a misunderstanding of the Museum's project. The Science Museum argued that the costs of its project were lower than the Department had assumed and that the project is likely to produce a higher amount of kWh than the Department had calculated. In order to compare its project with the solar electricity indices used by the Department, the Museum argued that the anticipated total energy production of the museum's system over 20 years is 235,540 kWh, and Total Program Costs over 20 years are about \$78,000.

Given this level of Total Program Cost and energy production, the Museum stated, the Total Resource Cost/kWh should not be \$3.94/kWh, as indicated by the Department, but rather \$0.33/kWh, a figure comparing favorably with the U.S. Price Index for solar electricity of \$0.41/kWh for residential, and \$0.30 for commercial systems.

In subsequent supplemental comments, the Department agreed with the Museum that the relevant costs should be those from the energy portion of the project rather than the costs for the total project and were, hence, lower than initially calculated.

While the cost/benefit ratio and per kWh cost resulting from this revised cost calculation still concerned the Department, it found the cost reasonable for a solar project. Accordingly, the Department revised its recommendation and recommended that the Commission approve the grant contract with the Science Museum.

The Commission finds Xcel's explanation helpful, the Museum's clarification plausible, and the Department's revised recommendation appropriate. The Commission will, therefore, approve the Science Museum project grant contract.

## **B. Clause 4G of All Grant Contracts**

The Department noted that the grant contract language used contains a clause identified as 4G that states that no grant payments will be made until a power purchase agreement has been executed and approved by the Commission.

Xcel explained this clause applies only to projects that require a power purchase agreement with Xcel. Those projects that do not will be provided funds associated with completion of the agreed-to milestones. Xcel noted each contract contains a provision under the "General Terms & Conditions" section that states in part:

"If any provision of the Contract is held invalid, that invalidity shall not affect other provisions of the Contract."

Xcel suggested this provision could be viewed to already adequately handle a situation where a power purchase contract would not be needed. Nevertheless, Xcel agreed to adjust the language.

The Commission believes it would be clearer if the clause was simply removed from all the contracts for which a power purchase agreement is not needed. This will allow these projects to receive payments from Xcel when the appropriate milestones are achieved.

## **C. Energy Performance Systems Contract**

Exhibit B&C in the grant contract with Energy Performance Systems initially filed by Xcel listed the payments by project activity and by month. The exhibit did not show the month of July, which includes a payment of \$27,166.

Xcel supplied a corrected exhibit. The Department asked that the vendor agree to the revised exhibit and the vendor has done so. The Commission will adopt the revised exhibit.

## **II. PRAIRIE ISLAND INDIAN COMMUNITY CONCERNS**

At the hearing on this matter, representatives of the Prairie Island Indian Community (the Community) raised three concerns about the selection process of renewable energy finalists:

- whether the preference due proposals from the Prairie Island Indian Community was adequately understood and implemented in the selection process;
- whether an appropriate and even-handed conflict of interest policy has been developed and is applied in the process; and
- whether selection of a majority of out-of-state projects meets the spirit and letter of the statute.

The Community noted that it sponsored a renewable energy proposal in conjunction with Rahr Malting in this round of proposals. The Community stated that it was concerned to learn recently from Xcel that no preference was given the Community's proposal during the numerical ranking of

the projects and that Xcel understood the preference to apply only in the event of a numerical tie between the Community's proposal and that of another applicant. The Community stated that such an application/interpretation gives the preference<sup>1</sup> no meaning.

The Community stated that early in the process it was told that a representative of the Community could not serve on the Review Board if the Community were also going to submit a proposal (conflict of interest), but later learned that a County Commissioner from Pipestone County served on the Review Board though there was a proposal from Pipestone County selected for funding. The Community questioned the adequacy and evenhandedness of the conflict of interest policy applied in this process.

Finally, the Community noted that approximately 60% of the projects selected by the Board and Xcel were based out of state and questioned whether adequately reflected what it viewed a clear statutory preference for in-state projects.<sup>2</sup>

The Community clarified that it did not seek to contest the selections made in this round, but stated that these issues must be properly addressed before the next round begins.

Xcel responded that it views these as important issues that would be addressed in the upcoming filing about "lessons learned" in the first round funding and proposed changes to the process for the second round of funding.

The Commission agrees that these are important issues that deserve attention and will specifically require the previously ordered "lessons learned" filing to include discussion and recommendations regarding the three issues raised by the Community.

### **III. COMMISSION ANALYSIS AND ACTION**

The Commission has reviewed the seven grant contracts proposed for approval by Xcel at this time and, with the minor revisions discussed in this Order, finds them reasonable and will approve them.

#### **ORDER**

1. Xcel shall amend the grant contracts to remove Clause 4G from all grant contracts in which a power purchase agreement (PPA) is not needed.

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<sup>1</sup> One of Xcel's proposed project selection criteria, which the Commission approved and adopted in its April 20, 2001 Order in this matter states: "Projects sponsored by the Prairie Island Indian Community (also known as the Prairie Island Mdewakanton Dakota Community) should be given preference." This preference was also stated as part of the Request for Proposals (RFP) approved by the Commission in this matter.

<sup>2</sup> Minn. Stat. § 116C.779 state in part: "Preference must be given to development of renewable energy source projects located within the state."

2. The revised Exhibit B&C in the grant contract with Energy Performance Systems attached to the Department's comments filed March 27, 2002 is adopted.
3. The Commission hereby approves the seven grant contracts listed below, with the revisions in Ordering Paragraphs 1 and 2 above:
  - Crown Hydro (Bid No. AH01)
  - Project Resource Corporation (Bid No. AW03)
  - Sebesta Blomberg & Associate, Inc. (Bid No. BB03)
  - Energy Performance Systems, Inc. (Bid No. BB06)
  - D.H. Blattner and Sons, Inc. (Bid No. BW06)
  - Global Energy Concepts (Bid No. CW02)
  - Science Museum of Minnesota (Bid No. AS06).
4. The filing describing the lessons learned in the first round funding and proposed changes to the process for the second round of funding (required by the Commission's April 3, 2002 Order in this matter) shall include discussion and recommendations regarding the three issues raised by the Community:
  - the preference due proposals from the Prairie Island Indian Community;
  - a conflict of interest policy for the process; and
  - the statutory preference to be given to in-state projects.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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