

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer  
Marshall Johnson  
Ken Nickolai  
Phyllis A. Reha  
Gregory Scott

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Northern States Power  
Company d/b/a Xcel Energy 2001 All-Source  
Request for Proposals

ISSUE DATE: November 19, 2003

DOCKET NO. E-002/M-01-1618

ORDER DENYING REQUESTS FOR  
INVESTIGATION AND REQUIRING  
DISCUSSIONS AND REPORT

**PROCEDURAL HISTORY**

On December 6, 2001, Xcel issued its 2001 All-Source Request for Proposals to fill its resource needs between May 1, 2005 and May 1, 2009. By the March 15, 2002 due date, 27 firms had submitted 47 proposals. Of the 47 proposals, 8 were mutually exclusive, leaving 39 base bids, many of which offered several options. Taking into consideration all options offered to each of the base bids, the total number of discrete proposals to examine became 113.

On November 1, 2002, Xcel filed its Short-List Selection Report, identifying the projects that Xcel was still considering for adoption. Among the projects on Xcel's short-list were two gas fueled projects proposed by Rainy River (Rainy River-Kendall County, Illinois and Rainy River - Superior, Wisconsin) and a wind project proposed by Zilkha (Zilkha- Mower County).

On June 19, 2003, Xcel filed a report on its final selections for the 2001 All-Source Bid. Xcel stated its intention to enter contract negotiations with the selected vendors. Xcel stated that it would be purchasing a total of 808 MW: 655 MW of natural gas, 115 MW system sale from MP (probably coal generated) and 35 MW<sup>1</sup> from three wind power vendors. The Rainy River and Zilkha proposals were not selected.

On July 21, 2003, the Rainy River Corporation filed an objection to Xcel's selection process, particularly the selection of the Calpine project in Sherry, Wisconsin.

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<sup>1</sup> The 35MW figure results from applying Mid-Continent Area Power Pool's (MAPP's) ten percent summer capacity factor to Xcel's selection of 350 MW of wind energy

On July 23, 2003 Zilkha Renewable Energy (Zilkha) filed a petition to intervene<sup>2</sup> and comments regarding Xcel's evaluation of proposals and final selection of electric suppliers. Zilkha also requested that the Commission open an investigation into the issues raised in its comments.

On August 1, 2003, the Department filed comments recommending the Commission take no action on the companies' filings.

On October 13, 2003, Rainy River filed a letter withdrawing its comments of July 21, 2003.

On October 14, 2003, Zilkha filed a letter requesting an opportunity to address the Commission at its October 16, 2003 meeting regarding Zilkha's request that the Commission investigate the method used by Xcel Energy in assigning capacity accreditation and the assumptions it used for natural gas prices.

The Commission met on October 16, 2003 to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **I. RAINY RIVER ENERGY**

On July 21, 2003, Rainy River filed comments in Xcel's 2001 All Source bidding process requesting additional investigation into the evaluation methods and assumptions used by Xcel that resulted in the exclusion of the Rainy River proposal from the final selections that Xcel filed June 19, 2003.

The Department filed comments questioning Rainy River's standing to raise objection to final selection at this point. The Department stated its understanding that once Xcel files its final selection of vendors, only the Department and the RUD-OAG may request an investigation of the final selection. The Department also stated that the final selection was appropriate and fair. The Department recommended that the competitive bidding process continue with no additional Commission action.

On October 13, 2003, Rainy River withdrew its July 21, 2003 comments. Rainy River stated that based on informal discussions and public information regarding transmission capacity to West Kendall County, it better understood Xcel's selection process and the exclusion of its bid. Rainy River stated that at this time it had no questions about Xcel's selection process or project selection.

Due to Rainy River's withdrawal of its comments, including its request for an investigation into Xcel's evaluation methods and final selections in this bidding process, the Commission need not examine the merits of Rainy River's initial concerns or Department's responses to them.

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<sup>2</sup> Because no party objected to Zilkha's petition to intervene and the petition was not denied or suspended within 15 days of its filing, Zilkha's petition to intervene is deemed approved, pursuant to Minn. Rules, Part 7829.0800.

## II. ZILKHA RENEWABLE ENERGY

### A. Zilkha's Intervention and Requests

Zilkha requested that the Commission initiate an investigation into how Xcel calculated the capacity value of wind-based proposals and the assumptions Xcel used regarding the price of natural gas. Second, Zilkha requested that the Commission direct Xcel to re-evaluate Zilkha's bid in the context of a more appropriate economic analysis of capacity, i.e. calculate the capacity of Zilkha's proposal using the wind data Zilkha provided Xcel. Third, Zilkha requested that the Commission direct Xcel to re-evaluate all wind bids with the appropriate capacity accreditation calculations and re-evaluate all bids in the context of more appropriate gas price assumptions. Finally, Zilkha requested additional time and opportunity to comment regarding these issues.

#### 1. Asserted Capacity Value Error

Zilkha stated that Xcel ignored the actual capacity data submitted by Zilkha and made a blanket assumption that all wind projects would receive a ten percent capacity credit, based on its estimate of what wind would receive in a MAPP accreditation process. Zilkha argued that it was inappropriate for Xcel to do that for two reasons.

First, Zilkha asserted that MAPP's ten percent capacity calculation was designed for consideration of *reliability* issues, whereas the appropriate analysis at this point should have been *economic*. Specifically, according to Zilkha, Xcel should have used the capacity credit calculations that Xcel originally requested in its Request for Proposals (RFP) since these calculations are based on the actual energy Xcel would receive from the wind farm. Zilkha argued that this error greatly prejudiced it by dramatically reducing the capacity credit for Zilkha (and all the wind proposals) since the typical actual average capacity of a wind farm is between 20 and 30 percent.

Second, Zilkha argued that it was fundamentally unfair for Xcel to use the MAPP ten percent capacity figure rather than the capacity data that it had requested in the RFP because one of the ground rules established by Xcel in its RFP was that the Company would use capacity data supplied by proposers of wind projects in analyzing those projects. Zilkha argued that Xcel should be required to strictly adhere to the ground rules contained in the RFP, especially since Zilkha had relied on that particular ground rule and invested considerable resources in developing and designing its proposals.

#### 2. Asserted Gas Prices Error

Zilkha argued that Xcel used inappropriately low gas prices in the models it used to evaluate bid proposals. Zilkha stated that this error hurt wind proposals because higher gas price assumptions favor resources that use less or no natural gas to produce electricity.

Zilkha stated that based on its analysis of Xcel's Final Report (June 19, 2003) it concluded that Xcel decided not to do more wind based on the results obtained using only their base case, giving the high gas price/market sensitivity little weight. Zilkha argued that this was not a prudent approach since the purpose of running sensitivities to a base case is to create a risk-adjusted case.

Moreover, Zilkha stated, in the months since the base case and sensitivity scenarios were developed, a natural gas shortage and future expected volatility and price spikes have gained state and national attention. Zilkha stated that based on the NYMEX natural gas curve, one can conclude that the high gas price sensitivity is here to stay. Zilkha requested that the Commission re-examine the validity of the base case gas price assumption and Xcel's failure to incorporate the high gas price scenario in its final selection.

### **3. Action Requested by Zilkha**

Zilkha requested that the Commission initiate an investigation into how Xcel Energy calculated the capacity value of wind-based proposals and the assumptions Xcel used regarding the price of natural gas. In addition, Zilkha made two specific requests: 1) that the Commission require Xcel to re-evaluate Zilkha's bid and all the other wind bids in the context of a more appropriate economic analysis, which Zilkha suggested would be to use the capacity data provided in response to the RFP and 2) that the Commission require Xcel to re-evaluate all bids using more appropriate gas price assumptions.

#### **B. The Department's Response to Zilkha's Requests**

The Department recommended that the competitive bidding process continue with no additional Commission action.

The Department questioned whether, based on the Commission approved bidding process, any party other than the Department and the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) was authorized to request an investigation of Xcel's final selections.

The Department also stated that it had thoroughly reviewed the final selection report filed by Xcel on June 19, 2003 and concluded that the final selection was appropriate and fair. The Department specified that in reaching that conclusion it had reviewed the selection and elimination of wind resources and the natural gas price assumptions used by Xcel.

#### **C. Commission Analysis and Action**

##### **1. Summary**

The Commission will deny Zilkha's request for an investigation of Xcel's final selection. The Commission finds no evidence that the bidding process was unfair or otherwise contrary to law.

##### **2. Gas Capacity Issue**

Regarding the gas capacity issue, Zilkha acknowledged that Xcel treated all wind applicants equally in that the Company applied MAPP's ten percent capacity figure to all wind proposals. Zilkha argued, however, that fundamental fairness requires that Xcel be required to abide by the promise it made in Section 1.1.2 of its RFP to evaluate the wind proposals using the actual capacity figures supplied for each wind proposal. The Commission finds, however, that Xcel's RFP did not make the promise that Zilkha has asserted. Contrary to Zilkha's assertion, the RFP does not bind Xcel to use the wind proposers' capacity figures (and only those figures) in evaluating the wind proposals. See Xcel's December 6, 2001 RFP, Section 1.1.2.

Moreover, Section 1.1 of the RFP specifically placed all applicants on notice of the relevance and pivotal role that Xcel attached to MAPP accreditation:

Proposed capacity should be accreditable by the Mid-Continent Area Power Pool (MAPP) or its successor. NSP intends to seek capacity accreditation with Mid-Continent Area Power Pool (MAPP) or its successor for any proposals selected through this RFP. NSP will only pay for capacity that the Mid-Continent Area Power Pool (MAPP) will accredit toward meeting the Company's capability requirements.

Finally, Zilkha stated that it had relied on the asserted capacity factor "ground rule" but did not show that it had made any expenditure in reliance on that asserted ground rule that it would not have made if the RFP had simply announced that Xcel would apply the MAPP ten percent capacity figure to all wind proposals.

In these circumstances, the Commission finds no fundamental unfairness in the bidding process with respect to Xcel's application of the MAPP ten percent capacity accreditation to all wind proposals.

### **3. Price of Natural Gas Issue**

Regarding the price of natural gas issue, the Commission finds that it is beyond the scope of a bidding process docket to second-guess Xcel's good faith estimates of the price of natural gas over the coming years, the likely period of time that the projects selected through this bidding process will be in operation.

Aside from agreeing that natural gas prices will be volatile during the coming several years, there appears to be little agreement at this point about long term natural gas prices and hence no easily agreed-to modification to the way Xcel took natural gas prices into account in making its final selections. The time involved in such an inquiry would take more time than is appropriate in this docket.

In addition, there has been no allegation or showing that the natural gas prices used by Xcel in evaluating these proposals were calculated based on obvious error or in bad faith. In that regard, Xcel is aware that in future rate cases its resource selections and payments for natural gas can be evaluated for prudence and, as circumstances warrant, disallowed. The prospect of a prudence review helps motivate the Company to use reasonable care in estimating natural gas prices in making its resource selection decisions.

Finally, the Department, which has clear authority and responsibility to challenge final bid selections on behalf of the public interest, found no reason to challenge Xcel's bidding process or selections. The Department stated that it reviewed Xcel's wind resources selection and the Company's natural gas assumptions and concluded that the final selection was appropriate and fair. The Department recommended that the competitive bidding process continue to Step 5 (finalization of the Purchased Power Agreements between Xcel and the selected bidders) with no additional Commission action.

In these circumstances, the Commission finds no fundamental unfairness in how Xcel treated natural gas prices in its final selection and will not intervene in the bidding process at this point to require Xcel to re-evaluate all the short-list proposals in light of some unspecified modifications to the natural gas price estimates it used.

#### **4. Standing to Challenge Xcel's Final Selections**

The Department questioned whether, under the currently approved bidding process Zilkha is entitled to request an investigation of Xcel's final selection. The Department stated its understanding that at this point, only the Department and the RUD-OAG are entitled to request investigation of the Company's final selections. Zilkha has responded that the Commission Orders adopting the current five-step bidding process do not express such a limitation. Rather than ruling on that particular procedural issue, the Commission has addressed the merits of Zilkha's concerns.

#### **5. Future Bidding Process**

In its March 6, 2003 Order in this matter, the Commission stated:

Regarding the request to review the bidding process for use in future bidding cycles, however, IWLA's petition will largely be granted. Where time permits and bidders have not yet acted in reliance on the current bidding process, the Commission is willing to allow an investigation of IWLA's concerns. The Commission will direct all parties to work together in addressing these matters. Whether this effort produces a further evolution in the bidding process, or merely greater transparency in the current process, the analysis will provide participants with greater confidence in the process's fairness.<sup>3</sup>

In its Order, the Commission directed parties to work together outside of the current all-source bidding process to improve Xcel's future Requests for Proposals and short-list evaluations.<sup>4</sup>

In light of the discussion and concerns generated in the context of the current Order, the Commission will re-emphasize the importance of the work directed by the Commission in its March 6, 2003 Order. In addition, to underline the importance the Commission attaches to this work, the Commission will clarify that the goal of this work will be to ensure to the fullest extent possible a fair, consistent, and transparent process. Issues to be addressed in the parties' discussion and recommendations regarding the future bidding process will include 1) who will be eligible to challenge future bid selections and 2) when those challenges will be timely. The Commission will direct Xcel to report on the parties' discussion and on any changes the parties recommend be implemented at least 90 days before filing its next RFP.

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<sup>3</sup> *In the Matter of Northern States Power Company d/b/a Xcel Energy 2001 All-Source Request for Proposals*, Docket No. E-002/M-01-1618, ORDER ALLOWING THE BIDDING PROCESS TO PROCEED AND REQUIRING DISCUSSIONS TO ANALYZE FUTURE PROCESSES (March 6, 2003) at pages 5-6.

<sup>4</sup> *Id.* at page 6.

**ORDER**

1. The requests of Rainy River and Zilkha Renewable Energy for an investigation into Xcel's bid evaluation methodology are hereby denied. The bidding process may proceed.
2. The parties to this proceeding shall work together outside the current all-source bidding process to improve Xcel's future Requests for Proposals (RFPs) and short-list evaluations with a goal to ensure to the fullest extent possible a fair, consistent, and transparent process.
3. At least 90 days before the filing of its next RFP with the Commission, Xcel shall report on the discussion that the parties shall have pursuant to Order Paragraph 2 and state what changes the parties recommend be implemented.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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