

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
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In the Matter of the Petition of Northern States
Power Company d/b/a Xcel Energy for
Approval of a Renewable Energy Purchase
Agreement with Velva Windfarm, LLC

ISSUE DATE: December 29, 2004

DOCKET NO. E-002/M-04-864

ORDER APPROVING CONTRACT AS
MODIFIED, SETTING REPORTING
REQUIREMENTS, AND REQUESTING
REPORT ON DETERMINING THE
CAPACITY OF WIND GENERATION
FACILITIES

PROCEDURAL HISTORY

On June 7, 2004, Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) filed a petition for approval of a 20-year, 12-megawatt purchased power agreement with Velva Windfarm, LLC, a North Dakota wind generation developer. The petition also sought permission to recover the agreement's costs through the automatic rate adjustment authorized under Minn. Stat. § 216B.1645, stating that the generation purchased under the agreement would help meet the Company's obligations under the Renewable Energy Objectives statute, Minn. Stat. § 216B.1691. On October 8, 2004, the Minnesota Department of Commerce (the Department) filed comments. The Department advocated modifying specific contract terms, recommended reporting requirements over the life of the contract, opposed counting contract generation toward the Company's Renewable Energy Objectives obligation, opposed rate recovery of contract costs under Minn. Stat. § 216B.1645, and recommended revising an Xcel tariff provision that permits the Company to treat all wind generation costs as energy costs eligible for automatic recovery through the Fuel Clause Adjustment.

On October 29, 2004, the Company filed reply comments. The Company accepted the contract modifications and reporting requirements recommended by the Department, dropped its claim to cost recovery under Minn. Stat. § 216B.1645, recommended deferring consideration of the contract's status under the Renewable Energy Objectives (REO) statute to an REO proceeding, and opposed changing the Fuel Clause treatment of wind resources in this or any other proceeding without broad notice to stakeholders.

On October 29, 2004, Velva Windfarm, LLC (Velva or the windfarm) filed reply comments. The windfarm concurred in the Department's proposed modifications to the contract, except the proposal to require re-approval of contract pricing should federal production tax credits become

unavailable. The windfarm also contended that it would be procedurally inappropriate, in this docket, to amend or re-evaluate Xcel's tariff provisions on the treatment of wind energy under the Fuel Adjustment Clause.

Finally, the windfarm asked the Commission to expressly state in its Order that contract approval carries with it the right of rate recovery and that changes in the manner of rate recovery neither affect that right nor justify contract termination on grounds that rate recovery is unavailable.

On December 16, 2004, the petition came before the Commission. At that point the only disputed issue was the Department's recommendation that Xcel be required to seek pre-approval of any new contract price negotiated in the event that the federal Production Tax Credit is renewed at a rate materially below the existing rate or for a term materially shorter than ten years. All parties concurred or acquiesced in Department or Commission staff recommendations on the other issues.

FINDINGS AND CONCLUSIONS

I. Contract Approval

With minor modifications, this purchased power contract is reasonable, is in the public interest, and will be approved. Adding wind generation to the Xcel system is clearly consistent with fundamental, longstanding state policies favoring expanded reliance on renewable generation, and the terms and conditions of this contract are consistent with those in wind contracts previously approved by the Commission.

While resource additions over 12 megawatts are normally acquired through a competitive bidding process established by Commission Order,¹ there is good cause to permit this acquisition outside that process. First, the Velva project originated as a series of eight separate wind projects, none of which would have been subject to the bidding process, which were consolidated to capture construction and operating efficiencies. This consolidation resulted in lower total costs and correspondingly lower rates to ratepayers. It would be anomalous to penalize this project for realizing these efficiencies.

Further, it now appears likely that the project will not reach the 12-megawatt threshold, because the types of turbines deliverable within project time frames are slightly smaller than those originally envisioned.²

Finally, the Commission concurs with the Department that the contract requires two minor modifications to adequately protect ratepayers. First, the language under Section 3, Exhibit A-1 must be modified to require Commission approval of any revised price negotiated should the federal Production Tax Credit be renewed at a rate materially below the existing rate or for a term materially shorter than ten years; any petition for approval of revised pricing should include an analysis showing that the revised price is competitive with all available alternative resources. Any additional burden this modification may impose on Velva's efforts to secure financing would be more than outweighed by the ratepayer protection it affords.

¹ See August 18, 1994 Order in dockets E-002/CI-03-6 and E-002/RP-93-630.

² Velva's counsel provided this information at the December 16 hearing.

Second, the language in Section 7.3 (C) on payments for lost production must be modified to ensure that those payments do not exceed the Company's purchase commitment of 13 megawatts per hour.

II. Rate Recovery

In its original petition, Xcel requested rate recovery of contract costs under the pass-through provisions of Minn. Stat. § 216B.1645, stating that the Velva generation would be used to help meet its obligations under the Renewable Energy Objectives statute, Minn. Stat. § 216B.1691.

This touched off a series of objections from the Department, which

- (1) challenged the generation's countability toward the Objectives;
- (2) pointed out that, even if the generation counted toward the Objectives, it would not qualify for pass-through under § 216B.1645, which does not cover Renewable Energy Objectives generation; and
- (3) asked the Commission to change Xcel's Fuel Clause Adjustment tariff to end the practice of passing through 100% of wind generation purchase costs as energy costs, with no allocation for capacity costs.

The Department is clearly correct that, even if the Velva generation counts toward Xcel's renewable energy objective, its costs are not recoverable under § 216B.1645, which does not apply to Renewable Energy Objectives generation. The Department is also correct that Xcel's Fuel Clause Adjustment tariff provides essentially the same rate recovery treatment for wind generation as § 216B.1645, treating all wind generation costs as energy costs, subject to immediate recovery, and none as capacity costs, subject to recovery through the rate case process. What is not clear at this point is whether the Department is correct that this should be changed.

In 1995, after a full comment period and careful review, the Commission permitted Xcel to modify its Fuel Clause Adjustment tariff to provide for 100% pass-through of purchased wind power costs. The Commission concluded that there was no factual basis for dividing wind generation into energy and capacity components and that the most reasonable approach, subject to rethinking in light of future developments, was to treat wind power as pure energy.³

Since 1995, utilities, regulators, and accrediting agencies have gained substantial experience with wind resources. While there is still no clear consensus on the capacity characteristics of wind generation, nor on how to measure any capacity component that might exist, it is reasonable to reexamine wind capacity issues in light of post-1995 developments.

³ *In the Matter of the Petition of Northern States Power Company to Amend the Terms of its Electric Fuel Adjustment Clause*, Docket No. E-002/M-95-244, Order Granting Variances and Approving FAC Tariff as Modified, (September 5, 1995). See also, *In the Matter of a Petition by Northern States Power Company for Approval of New Electric and Gas Rate Books and Associated Miscellaneous Tariff*, Docket No. E,G-002/M-97-985, Order Approving New Gas and Electric Rate Books (February 3, 1998), incorporating that decision into permanent tariffs.

The Commission will therefore ask the Department to examine and report on these issues on the basis of its institutional experience, comments from Xcel and other interested persons, and information from other organizations with expertise in generation issues, such as the Mid-Continent Area Power Pool and the Midwest Independent System Operator.

Meanwhile, the Commission will authorize 100% recovery of the costs of this generation through the Fuel Clause Adjustment through June 30, 2006, to give the Department ample time to complete its review and the Commission ample time to consider the Department's report.

III. The Velva Generation and the Renewable Energy Objectives

The Department challenged Xcel's stated intention to count the generation from this project toward the Company's renewable energy objectives (REO) obligation; Xcel countered that that issue should be resolved in an REO-specific docket.

The REO statute requires utilities to make biennial filings demonstrating compliance with the statute; resource plan filings may be substituted for REO-only filings at the discretion of the Commission.⁴ In its initial Order implementing the REO statute, the Commission set detailed criteria for evaluating these biennial filings, as well as standards for determining utilities' compliance with their REO obligations.⁵

Only in an REO docket can the Commission make the careful, fact-specific findings necessary to determine whether a utility is in compliance with its obligations under the REO statute. The Commission concurs with the Company that any examination of Velva's countability toward the Company's REO obligation should be conducted in an REO docket, not as part of a docket focusing primarily on other issues.

IV. Reporting Requirements

Finally, the Department recommended that the Commission require Xcel to provide detailed reporting in its monthly Fuel Clause Adjustment filings regarding any amounts paid to Velva while production is curtailed. The agency also recommended clarifying that any amounts received from the Midwest Independent System Operator or any other transmission authority for calling an interruption of energy from the Velva project should be credited back to ratepayers through the Fuel Clause Adjustment.

Xcel concurred in these recommendations, which are reasonable on their face, and the Commission will accept them.

⁴ Minn. Stat. § 216B.1694, subd. 3.

⁵ *In the Matter of Detailing Criteria and Standards for Measuring an Electric Utility's Good Faith Efforts in Meeting the Renewable Energy Objectives Under Minn. Stat. § 216B.1691*, Initial Order Detailing Criteria and Standards for Determining Compliance with Minn. Stat.

§ 216B.1691 and Requiring Customer Notification by Certain Cooperative, Municipal, and Investor-Owned Distribution Utilities, Docket No. E-999/CI-03-869 (June 1, 2004).

As in other dockets involving potential curtailment payments, the Commission will ask the Department to monitor and analyze the reasonableness and prudence of these payments and to include its analysis of these issues in its next electric utility annual automatic adjustment report, expected in February 2005. Xcel will also be required to credit against curtailment payments recovered from ratepayers any compensation received from transmission authorities for interrupting Velva generation.

The Commission will so order.

ORDER

1. The Xcel/Velva purchase agreement is hereby approved with the modifications set forth below.
2. Xcel is hereby authorized to use its Fuel Clause Adjustment to recover the full costs of the Xcel/Velva purchase agreement through at least June 30, 2006.
3. The Commission asks the Department of Commerce to examine and report on the capacity characteristics of wind generation, potential methods for measuring any capacity component that might exist, and appropriate rate recovery of wind capacity costs. The Commission asks the Department to conduct this review on the basis of its institutional experience, comments from Xcel and other interested persons, and information from other organizations with expertise in generation issues, such as the Mid-Continent Area Power Pool and the Midwest Independent System Operator. The Commission asks the Department to submit this report within a time frame that permits Commission action by July 1, 2006.
4. Xcel shall seek Commission approval of any revised price negotiated under Section 3 (Exhibit A-1) of the Xcel/Velva purchase agreement and shall demonstrate in any filing seeking such approval that the revised price is competitive with all available alternative resources at the time Xcel seeks approval.
5. Xcel shall modify the language in Section 7.3 (C) to place an upper bound of 13 megawatts per hour on the calculation of estimated lost production.
6. To enable the Commission to determine the reasonableness and prudence of any curtailment payments made under the Xcel/Velva purchase agreement, Xcel shall include the information set forth below in future Fuel Clause Adjustment filings:
 - (a) the amount of any curtailment payments made under the three curtailment categories in this purchased power agreement;
 - (b) for any payments made under the third category, the reasons that Xcel had not maintained a reservation for NITS for 13 megawatts per hour associated with this REPA;
 - (c) why Xcel believes it would be prudent for ratepayers to pay curtailment costs under any category.

7. Xcel shall credit to ratepayers through the Fuel Adjustment Clause any compensation it receives from the Midwest Independent System Operator or any other transmission authority for calling an interruption of the energy generated from the Velva project during the period that Xcel is recovering curtailment provision costs from ratepayers.
8. The Commission asks the Department to continue to monitor curtailment payments made by Xcel under the Velva purchased power agreement, and other purchased power agreements that contain similar curtailment payment provisions, through Xcel's monthly and annual automatic adjustment reports, to determine if the use of the curtailment payments is reasonable and prudent. The Commission requests that the Department report back to the Commission on its findings annually, beginning in its review of the Electric Utility AAA report, expected February 2005.
9. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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