

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
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Thomas Pugh
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Request of Northern States
Power Company d/b/a Xcel Energy for
Approval of Selected Projects for the Second
Funding Cycle of the Renewable Development
Fund

ISSUE DATE: May 16, 2005

DOCKET NO. E-002/M-03-1883

ORDER DENYING RECONSIDERATION

PROCEDURAL HISTORY

On August 31, 2004, Xcel filed a petition under Minn. Stat. § 116C.779, subd. 1 (b) for Commission approval of some \$22,700,000 in proposed expenditures from the renewable development fund established under that statute. The proposed expenditures were in the form of grants to 25 renewable energy projects:¹ seven power production projects and 18 research and development projects.

The petition attached and incorporated the report of the Renewable Development Fund Board, established by Commission Order in 2001,² which had directed the grant competition and selected the projects proposed for funding. The report explained the Board's decision-making process, requested approval to fund the projects the Board had selected, and requested guidance on the Board's future treatment of a rejected project that the Legislature had specifically made eligible for a five-year, \$10,000,000 grant as an "innovative energy project" under Minn. Stat. § 216B.1694, subd. 2 (a) (8).

On February 23, 2005, the Commission issued an Order that approved the request to fund the projects selected by the Board/Xcel, provided the guidance requested by the Board on the treatment of the innovative energy project, and required the Board/Xcel to put the guidance into effect during this funding cycle by funding the innovative energy project under the terms and conditions established in the innovative energy project statute.

¹ The pool of projects recommended for funding was later expanded by three, to provide funding for projects that would have been funded initially but for scoring errors. Total proposed expenditures then totaled some \$26,500,000.

² *In the Matter of the Request of Northern States Power Company d/b/a Xcel Energy for Approval of a Development Fund Oversight Process*, Docket No. E-002/M-00-1583, Order Adopting Proposal for Oversight and Operation of Renewable Development Fund (April 20, 2001).

On March 15, 2005, Minnesotans for an Energy-Efficient Economy filed a petition for reconsideration of the Order's requirement that Xcel fund the innovative energy project. The petition claimed that (1) the Commission's authority over Renewable Development Fund expenditures was limited to approving or disallowing expenditures proposed by Xcel; and (2) even if the Commission had affirmative authority over Fund expenditures, it misread the innovative energy statute in deciding to require Xcel to fund the innovative energy project.

On March 25, 2005, Excelsior Energy, Inc. (Excelsior), the developer of the innovative energy project, filed an answer urging the Commission to deny the petition for reconsideration.

On March 25, 2005, Xcel Energy filed a petition for Commission approval of an executed grant contract with Excelsior, which incorporated the terms and conditions set forth in the innovative energy statute and the Commission's February 23 Order. The petition also requested a determination on rate recovery of contract costs.

On May 5, 2005, the petition for reconsideration came before the Commission.

FINDINGS AND CONCLUSIONS

I. Issues and Positions of the Parties

The petition for reconsideration raises only one issue not dealt with at length in the February 23 Order – whether the Commission, whose approval is required by statute for all expenditures from the Renewable Development Fund,³ has the authority to remedy the improper rejection of an application for a grant from that Fund. Minnesotans for an Energy-Efficient Economy (ME3) argues that the statutory language limits the Commission to approving or denying petitions to fund projects proposed by Xcel and does not permit the Commission to require the funding of any project improperly rejected.

This claim is grounded mainly in the language of the innovative energy project statute, which states that the innovative energy project

. . . shall be eligible for a grant from the renewable development account, *subject to the approval of the entity administering that account*, of \$2,000,000 a year for five years for development and engineering costs, including those costs related to mercury-removal technology; thermal efficiency optimization and emission minimization; environmental impact statement preparation and licensing; development of hydrogen production capabilities; and fuel cell development and utilization.

Minn. Stat. § 216B.1694, subd. 2 (a) (8), emphasis added.

³ Minn. Stat. § 116C.779, subd. 1 (b).

The claim is grounded secondarily in the language of the renewable development statute, which articulates the Commission’s review function as follows:

Expenditures from the account may only be made after approval by order of the Public Utilities Commission upon a petition by the public utility.

Minn. Stat. § 116C.779, subd. 1 (b).

ME3 reads the language in the first statute, “subject to the approval of the entity administering that account,” to mean that Xcel – and Xcel alone – has the authority to determine whether or not the innovative energy project receives the \$10,000,000 grant for which the statute makes it eligible. And it reads the language in the second statute, stating that expenditures may be made only with Commission approval upon petition by Xcel, to mean that the Commission’s oversight authority is limited to approving or rejecting projects Xcel proposes for funding.

Excelsior argues that this interpretation is illogical, is inconsistent with the Commission’s broad statutory authority over Xcel, and would leave Xcel accountable to no one in its administration of the Renewable Development Fund.

The other claim raised by ME3 – that the Commission misread the innovative energy statute in deciding to require Xcel to fund the innovative energy project – is treated at length in the February 23 Order and will not be re-addressed here.

II. Commission Action

The Commission rejects ME3's interpretation of its statutory oversight responsibilities as unreasonable. The Commission clearly has final authority over RDF expenditures, and that authority must logically include the ability to remedy the improper rejection of projects as well as their improper selection.

As Excelsior points out, ME3's narrow reading of the statutory language would leave Xcel essentially accountable to no one for its administration of the Renewable Development Fund. In theory, the Company could practice discrimination, act in bad faith, or otherwise mismanage the Fund, and the Commission would be powerless to act, except to veto individual projects proposed for funding. It is inconceivable that the Legislature chose to limit the Commission to passive, indirect, and ineffectual oversight of this large pool of money collected directly from Xcel ratepayers through a surcharge on every electric bill.⁴

A much more reasonable reading of both statutes is that they divide responsibilities between Xcel and the Commission, giving Xcel primary responsibility for administering the grant selection process and the Commission final responsibility for ensuring that that process complies with the law and the public interest.

⁴ Minn. Stat. § 216B.1645, subd. 2.

This is how the Company and the Commission have defined their roles since the Fund began, and this is how their roles are institutionalized in a series of Orders from 2001 to the present, establishing, modifying, and fine-tuning the grant selection process and related Fund operations.⁵ This is how the Commission continues to interpret its role under the renewable development fund statute and the innovative energy project statute.

Finally, and ironically, the innovative energy project may now qualify for a grant from the Fund under ME3's approach, since Xcel, whom it views as the entity administering the account, has chosen to comply with the February 23 Order and file a petition for Commission approval of its grant contract with Excelsior instead of filing a petition for reconsideration.

For all these reasons, as well as for the reasons stated in the February 23 Order, the Commission will deny the petition for reconsideration.

ORDER

1. The Commission hereby denies the petition for reconsideration filed by Minnesotans for an Energy-Efficient Economy.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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⁵ See Orders of April 20, 2001, April 3, 2002, July 29, 2003, and August 17, 2004 in *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*, Docket No. #-002/M-00-1583.