

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of Northern States Power
Company d/b/a Xcel Energy's Petition for
Approval of NGPP Minnesota Biomass, LLC
Second Amended and Restated Biomass PPA

ISSUE DATE: August 10, 2005

DOCKET NO. E-002/M-04-91

ORDER APPROVING SECOND AMENDED
AND RESTATED BIOMASS POWER
PURCHASE AGREEMENT

PROCEDURAL HISTORY

The power purchase agreement (PPA) at issue in this docket between Xcel Energy (XCEL) and NGPP Minnesota Biomass, LLC (NGPP) is the successor to two previous but ultimately uncompleted projects proposed by Xcel to meet statutory biomass electricity production requirements.

On January 11, 2000, the Commission approved the first proposal, a PPA between Xcel and EPS/Beck for a whole tree burning project near St. Peter and later approved an expansion of that project to 50 megawatts on September 11, 2000.¹ That project did not come to fruition.

On February 27, 2003, Xcel asked the Commission to approve a successor to the EPS/Beck project. Specifically, Xcel proposed a First Amended PPA, i.e., an assignment of the EPS/Beck project to NGPP Minnesota Biomass, LLC (NGPP), modification of the fuel type to wood chips, and a change in location from near St. Peter to Waseca.

On March 28, 2003, the Minnesota Department of Commerce (the Department) filed comments recommending that the Commission reject Xcel's First Amended PPA due to least cost concerns.

¹ See *In the Matter of Northern States Power Company's Petition for a Variance From Competitive Bidding for Biomass Phase II Resources*, Docket No. E-002/M-96-1405 ORDER APPROVING POWER PURCHASE AGREEMENT WITH EPS/BECK POWER, LLC (January 11, 2000) and ORDER APPROVING AMENDMENT TO BIOMASS POWER PURCHASE AGREEMENT (September 11, 2000).

On May 30, 2003, a new subdivision to Minn. Stat. § 216B.2424 (the Biomass Power Mandate Statute) became effective. The new subdivision effectively required the Public Utilities Commission to approve the NGPP Project if it met certain specified criteria, i.e. “. . . if the developer of the Project agrees to reduce the size of the Project from 50 megawatts to 35 megawatts, while maintaining a price for energy at or below the current contract price.”

On January 16, 2004, Xcel filed a petition requesting Commission approval of a PPA with NGPP that the Company said incorporated the statutory changes.

On October 10, 2004, the Department and the Cities of Hibbing and Virginia filed comments opposing Xcel's request.

On March 22, 2005, Xcel filed for approval of the Second Amended and Restated Biomass Power Purchase Agreement with NGPP Minnesota Biomass LLC.

On April 21, 2005, the Department filed comments on the PPA and recommended Commission approval, along with certain reporting requirements which the Company accepted in comments filed May 2, 2005.

On May 25, 2005, the Minnesota Legislature adopted an additional amendment to Minn. Stat. § 216B.2424 (the Biomass Power Mandate Statute), further specifying under what circumstances the Commission would be required to approve the PPA at issue in this docket.

On June 3, 2005, the Commission's Executive Secretary issued a Notice of Comment Period requesting parties to address whether the terms and conditions of Xcel's currently proposed PPA are in accordance with the requirements of recently passed legislation, and whether any additional information needed to be entered into the record before the Commission acted.

On June 14, 2005, the Department, NGPP, and Xcel filed comments in response to the June 3, 2005 notice and Xcel filed reply comments on June 29, 2005.

The Commission met to consider this matter on July 21, 2005.

FINDINGS AND CONCLUSIONS

I. Xcel's March 22, 2005 Request for Approval of the Second Amended PPA

The Second Amended PPA amends the original PPA and supersedes the First Amended PPA. In its petition for approval of the Second Amended PPA, Xcel reported various transfers of interest involving the PPA in question. Xcel began by stating that it had agreed to allow EPS/Beck to assign the original PPA to NGP Power Corporation (NGP Power), which in turn had assigned the contract to its wholly owned subsidiary, NGPP Minnesota Biomass, LLC (NGPP). Subsequently, Xcel reported, NGP Power transferred its interest in NGPP to Laurentian, a joint venture owned by the municipal utilities of Hibbing and Virginia (collectively the "City Utilities.")

Xcel further reported that NGPP now wished to relocate the wood burning biomass operation from Waseca, MN to facilities owned by the City Utilities. The Company stated that NGPP would meet the production obligations of the Second Amended PPA by leasing and operating existing facilities owned by the municipal utilities of Hibbing and Virginia (the City Utilities) and by installing new equipment.

In support of the Second Amended PPA, the Company also stated that the size (35MW) and technology used in the current project (wood chips) are consistent with the Biomass Statute. The new production milestones are aggressive, the Company noted, yet realistic. In addition, the new locations promote economic development in northern Minnesota and are near a supply of qualifying fuel. Moreover, the Company argued, the Second PPA complies with the conditions expressed in the newly amended Biomass Statute: Minn. Stat § 216B.2424, 5a (b)

II. The Department's April 21, 2005 Comments

The Department recommended the Commission approve the Second Amended PPA . The Department also recommended the Commission find that curtailment payments meeting the contract criteria are eligible for recovery. Regarding curtailment payments, the Department recommended Xcel be required to provide certain specific information. In a filing dated May 2, 2005, Xcel agreed to provide the information recommended by the Department.

III. Further Amendment to the Biomass Power Mandate Statute - Effective May 25, 2005

As of May 2, 2005, Minn. Stat. § 216B.2424, subd. 5a(b) was further amended to read as follows:

The Public Utilities Commission shall approve a request pending before the Commission as of May 15, 2003, for amendments to and assignment of a power purchase agreement with the owner of a facility that uses short-rotation, woody crops as its primary fuel previously approved to satisfy a portion of the biomass

mandate if the owner of the project agrees to reduce the size of its project from 50 megawatts to 35 megawatts, while maintaining an average price for energy in nominal dollars measured over the term of the power purchase agreement at or below \$104 per megawatt-hour, exclusive of any price adjustments that may take effect subsequent to commission approval of the power purchase agreement or ownership of the project to an entity owned or controlled, directly or indirectly, by two municipal utilities located north of Constitutional Route No. 8, as described in section 161.114, which currently own electric and steam generation facilities using coal as a fuel and which propose to retrofit their existing municipal electrical generating facilities to utilize biomass fuels in order to perform the power purchase agreement.

In addition, Subdivision 5a (c) of the amended statute requires the Commission to approve any amendments to the PPA made necessary by or to reflect the change in location and ownership of the project if certain specified conditions are met. Subdivision 5a (c) also requires the Commission to make certain findings and clarifies that if the PPA meets the requirements of Subdivision 5, it is reasonable and in the public interest.

Finally, Subdivision 5a (d) gives two additional directives to the Commission —

First, it requires that the Commission approve recovery by the public utility of any and all Minnesota jurisdictional costs incurred by the public utility to improve construct, install, or upgrade transmission, distribution, or other electrical facilities owned by the public utility or other persons in order to permit interconnection of the retrofitted biomass-fueled energy provided by the facilities to the public utility pursuant to section §216B.1645.

Second, it directs the Commission to disapprove any provision in the power purchase agreement that requires the developer or owner of the project to pay the jurisdictional costs or that permit the public utility to terminate the power purchase agreement as a result of the existence of those costs or the public utility's obligation to pay any or all of those costs.

IV. Parties' Comments Regarding the PPA's Accord With the New Legislation

The Department provided a detailed statutory analysis and indicated its belief that PPA was in accordance with the statute. However, the Department recommended that the Commission seek clarification from the Cities regarding their location north of Constitutional Route 8, and from both parties with respect to any clauses in the PPA that require the Cities to pay for transmission costs.

The Department continued to recommend approval of the Second Amended PPA, including a finding that the portion of actual transmission costs that are directly allocable to the need to transmit power from NGPP's biomass facilities are eligible for recovery under Xcel's Renewable Cost Recovery (RCR) Rider.

NGPP and Xcel stated that the PPA, as presented, was in accordance with the statute.

V. Commission Analysis and Action

The Commission finds that the Second Amended PPA complies with the requirements of Minn Stat. §216B.2424, Subdivision 5a (b): 1) the PPA is for 35 MW of biomass capacity; 2) the average price per MWh over the term of the PPA is \$ 102.85, below \$104 per MWh; and 3) the assignment to the Cities of Hibbing and Virginia is appropriate because they both currently own electric and steam coal-fired generation facilities that both cities are proposing to retrofit their facilities to use biomass fuels to perform under the PPA and are located north of Constitutional Route 8.

Regarding the provisions of Minn. Stat. § 216B.2424, Subdivision 5a (c), the Commission finds that the parties to the Second Amended PPA are entitled to approval and the additional findings mandated under this part because the proposed amendments are necessary to reflect the change in project location and ownership, the PPA has been assigned to an entity as described in paragraph (b), and the PPA meets the price requirements of paragraph (b).

Fulfilling the requirement established in the first provision of Minn. Stat. §216B.2424, Subdivision 5a (d), the Commission will approve recovery by Xcel of the actual transmission costs that are directly allocable to the need to interconnect and transmit power from the Cities' facilities pursuant to the RCR Rider. See Order Paragraph 2.

The second provision of Minn. Stat. § 216B.2424, Subdivision 5a (d) directs the Commission to disapprove any terms and condition of the Second Amended PPA that require the developer or owner of the project to pay the jurisdictional costs or that permit the public utility to terminate the power purchase agreement as a result of the existence of those costs or the public utility's obligation to pay any or all of those costs. However, due to the Commission's finding in the preceding paragraph that Xcel can recover the actual transmission costs directly allocable to the need to interconnect and transmit power from the Cities' facilities, the Company's termination rights initially provided by the PPA no longer exist. Hence, no disapproval of the termination rights provision of the PPA is warranted under the second provision of Minn. Stat. § 216B.2424, Subdivision 5a (d) because the termination rights section in question is no longer operative.²

In sum, the Commission finds that the Second Amended and Restated PPA meets all of the requirements of Minn. Stat. § 216B.2424, Subdivision 5a, and is therefore, reasonable and in the public interest as defined in the statute.

ORDER

² Approval of the recovery of transmission costs under a rider to the PPA eliminates the Company's termination rights under Section 3 of the PPA.

1. The Commission finds that the Second Amended and Restated Power Purchase Agreement (PPA) complies with the provisions of Minn. Stat. § 216B.2424 for 35 MW of biomass capacity.
2. The Commission finds that all costs incurred and paid under the PPA are fully recoverable pursuant to Minn. Stat. § 216B.1645, including transmission and curtailment costs.
3. The Commission finds that cost recovery is subject only to a prudence review in the annual automatic adjustment reports.
4. The Commission finds that the PPA is reasonable and in the public interest.
5. The assignment of the PPA to the Cities of Hibbing and Virginia via their ownership of NGPP Minnesota Biomass, LLC is also approved.
6. The Second Amended and Restated Power Purchase Agreement (PPA) is hereby approved.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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