

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Application for Certificates  
of Need for Three 115 kV Transmission Lines  
in Southwestern Minnesota

ISSUE DATE: July 24, 2006

DOCKET NO. E-002/CN-06-154

ORDER GRANTING EXEMPTIONS

**PROCEDURAL HISTORY**

In 2005 Northern States Power Company d/b/a Xcel Energy (Xcel) informed the Commission of its proposal to build three 115 kilovolt (kV) transmission lines in southwestern Minnesota. One line would extend from the Lake Yankton substation near Balaton, Minnesota, to a new substation near Marshall, Minnesota. A second line would extend from the Nobles County substation northwest of Worthington, Minnesota, to the Fenton substation near Chandler, Minnesota. The third line would extend from the Yankee substation south of Hendricks, Minnesota, to the Brookings County substation near Brookings, South Dakota.

According to Xcel, these lines are needed to help gain access to the electricity generated from the strong winds that blow in the Buffalo Ridge region of Southwest Minnesota.<sup>1</sup> In addition, Xcel states that the Lake Yankton/Marshall line would help meet a forecasted growth in demand for electricity in the City of Marshall and enhance the transmission system's ability to supply all the electricity demanded under a variety of circumstances.

On May 23, 2006, Xcel filed a request for exemption from certain Certificate of Need filing requirements. Xcel states that the primary purpose of the lines is not driven by growth in the demand for electricity, but by the desire to add more electric generators powered by renewable sources. Consequently, Xcel argues, filing requirements designed to demonstrate demand growth are not relevant to much of the current proposal.

On May 25, 2006, the Commission issued a notice requesting comment on Xcel's exemption request.

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<sup>1</sup> See *In the Matter of the 2005 Minnesota Biennial Transmission Filing*, Docket No. E-999/TL-05-1739, Xcel's filing (Issue No. 2005 SW-N2, the Buffalo Ridge Incremental Generator Outlet additions).

By June 13, 2006, the Commission had received comments from the Minnesota Department of Commerce (the Department), ratepayers Laura and John Reinhardt, and Wind on the Wires (WOW).

On June 19, 2006, the Commission issued its ORDER VARYING RULE AND EXTENDING TIME LINE FOR COMMISSION ACTION, providing time for the Commission to give adequate consideration to the filed comments.

On June 26, 2006, Xcel replied to the parties' comments.

The matter came before the Commission on July 6, 2006. At the hearing the Commission heard from all parties and received additional written comments from John Reinhardt.

## **FINDINGS AND CONCLUSIONS**

### **I. CERTIFICATES OF NEED FOR LARGE ENERGY FACILITIES**

To build a large energy facility in Minnesota, a person must first obtain a Certificate of Need by fulfilling requirements designed to demonstrate that the facility is needed. Minn. Stat. § 216B.243, subd. 2. Once the application is complete, the Commission has twelve months in which to rule on it. Minn. Stat. § 216B.243, subd. 5.

The term "large energy facility" includes any transmission line with at least ten miles in Minnesota, and with a capacity of at least 100 kV. Minn. Stat. § 216B.2421, subd. 2(3). Because Xcel's proposed transmission lines would each have more than 100 kV of capacity and each line is more than ten miles in length, they qualify as large energy facilities.

At the Legislature's direction, the Commission promulgated rules establishing the requirements for making an application for a Certificate of Need, as well as the ultimate criteria for demonstrating need. Minn. Stat. § 216B.243, subd. 1; Minn Rules, parts 7849.0010 *et seq.*

Xcel now seeks an exemption from some of the application requirements. Because the Certificate of Need rules apply to a broad range of projects, those rules provide for applicants to request exemptions from filing requirements that are inappropriate in individual cases. The Commission grants exemptions when "the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document." Minn. Rules, part 7849.0200, subp. 6.

### **II. XCEL'S REQUEST FOR EXEMPTIONS**

Xcel argues that some of the content requirements of the Certificate of Need rules are inapplicable to the circumstances of the current transmission proposal. Xcel identifies the state's

interest in increasing renewable-based generation<sup>2</sup> as the basis for the new facilities. Moreover, because Xcel cannot identify the specific generators and customers that benefit from the lines, Xcel argues that it has no practical way to gather much of the data demanded by the Certificate of Need rules. Consequently Xcel asks the Commission to grant certain exemptions under Minnesota Rules, part 7849.0200, subpart 6, as follows:

**Minnesota Rules, part 7849.0260, items A(3) and C(6)** direct the applicant to state “the expected losses under projected maximum loading and under projected average loading in the length of the transmission line and at the terminals or substations....” Xcel argues that the amount of electricity lost through transmission must be calculated on the basis of the entire local transmission grid, not merely based on a single line. In lieu of complying with the rule’s literal terms, Xcel proposes to provide a calculation of the relevant system line losses, consistent with past practice.<sup>3</sup>

**Minnesota Rules, part 7849.0270**, directs an applicant to forecast future demand for electricity; **part 7849.0280** directs the applicant to state its capacity to meet forecasted demand with existing facilities. Because the Nobles/Fenton line and the Yankee/Brookings County line are proposed to secure a new supply, not to meet new demand, Xcel seeks exemptions from part 7849.0270, subparts 2 and 3(E), and from part 7849.0280, with respect to these lines.

Because the Lake Yankton/Marshall line is being proposed in part to serve the growing demand for electricity in Marshall, Xcel does not seek an exemption from part 7849.0270 with respect to that line. But Xcel maintains that the requirements of part 7849.0280 do not apply to any of the lines, and requests an exemption from this part on that basis.

**Minnesota Rules, part 7849.0290**, directs an applicant to demonstrate that it has considered conservation programs as a substitute for new facilities as a means for meeting the growth in demand. Because demand growth plays no role in justifying the Nobles/Fenton line and the Yankee/Brookings County line, Xcel asks to be exempt from applying this rule to these two lines.

**Minnesota Rules, part 7849.0300**, directs an applicant to discuss the consequences of delaying construction on new facilities, assuming a range of demand forecasts. Because demand growth plays no role in justifying the Nobles/Fenton line and the Yankee/Brookings County line, Xcel asks to be exempt from applying this rule to these lines. As a substitute, Xcel proposes to show how delay would affect the state’s policy encouraging utilities to obtain electricity from renewable sources. Also, given Xcel’s contractual obligations to pay for electricity from wind

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<sup>2</sup> See, for example, Minn. Stat. §§ 216B.16, subd. 7b; 216B.1691; 216B.2425, subd. 7; 216B.243, subd. 3(9) and (10).

<sup>3</sup> *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Certificates of Need for Four Large High Voltage Transmission Line Projects in Southwestern Minnesota*, Docket No. E-002/CN-01-1958 .

turbines whether or not Xcel has completed the facilities needed to transmit the electricity to customers ("curtailment payments"), Xcel proposes to address how delay would affect customer costs.

Because the Lake Yankton/Marshall line is being proposed in part to serve the growing demand for electricity in Marshall, Xcel proposes to fulfill part 7849.0300's obligations by discussing how delaying that line would affect the customers of the Marshall Municipal Utility (MMU). **Minnesota Rules, part 7849.0340**, directs an applicant to discuss the consequences of building no new facilities, assuming a range of growth in demand and energy consumption. Because growth in demand and energy consumption plays no role in justifying the Nobles/Fenton line and the Yankee/Brookings County line, Xcel asks to be exempt from applying this rule to these lines. As a substitute, Xcel proposes to show how rejecting Xcel's proposal would affect the state's policy encouraging utilities to obtain electricity from renewable sources.

### **III. PARTY COMMENTS AND REPLIES**

#### **A. Department of Commerce**

The Department generally supports Xcel's analysis and consequently recommends approving Xcel's requests for permission to omit items from its Certificate of Need application. But the Department suggests some provisos regarding the request for exemptions from parts 7849.0270 and 7849.0280.

In addition to the information Xcel proposes to provide in lieu of fulfilling the regulatory requirements, the Department argues that Xcel should provide data regarding Xcel's capacity (both with Xcel's proposed additions, and with any other feasible alternatives) to deliver electricity to the Marshall area. Xcel agrees to provide this data.

The Department further recommends that Xcel discuss the capacity of its proposed grid to transmit electricity from Buffalo Ridge to the rest of Xcel's system. In support of this discussion, the Department recommends that Xcel estimate the minimum demand in the Buffalo Ridge region. The Department also recommends that Xcel estimate the amount of generating capacity that will be installed in the region. Related to this calculation, the Department recommends that Xcel provide data regarding --

- curtailment payments (in megawatts),
- the list of generator projects "in queue" awaiting assessment from the Midwest Independent Transmission System Operator (MISO) to determine the cost of mitigating the generator's effects on the rest of the transmission grid,
- all relevant resource expansion plans,
- statewide renewable energy objective requirements, and

- if possible, data on the benefits of fuel diversity provided by increasing Minnesota's reliance on local wind resources.

Xcel argues that calculating a region's net generating capacity requires a more complicated analysis than the Department suggests. Nevertheless, Xcel agrees to include in its application a discussion of Xcel's estimate of the total net generating capacity of Buffalo Ridge and to include information regarding each of the subjects requested by the Department.

No party objects to Xcel providing this additional information.

## **B. Wind on the Wires**

WOW also supports Xcel's exemption requests, but recommends that Xcel include in its application the following types of information:

- A discussion of Minnesota's development of electricity generated from renewable sources, including requirements and goals for Minnesota utilities to purchase wind power, legislative and political drivers for wind power development, and other factors demonstrating interest in developing renewable energy in Minnesota.
- The total amount of power that could be generated by the wind power projects waiting in the MISO and Western Area Power Administration (WAPA) queues.
- A discussion of the transmission studies being done by MISO regarding groups of similar generators, especially wind generators, rather than individual generators.
- A discussion of power purchase agreement negotiations for wind power involving Xcel and, if possible, by other utilities.

Xcel agreed to discuss each of these items as part of its eventual Certificate of Need application. Xcel could not confirm that it would be able to determine which projects in the MISO and WAPA queues were wind power projects, but agreed to provide whatever information it could discern from publicly available data. While the Reinhardtts question the relevance of some of this information, no party objected to Xcel providing it.

## **C. John and Laura Reinhardt**

To ensure that Xcel's application for Certificate of Need and Reasonableness will actually demonstrate that the proposed lines are needed, the Reinhardtts ask the Commission to deny Xcel's exemption requests. The Reinhardtts argue that an applicant for a Certificate of Need to build a large energy facility – and potentially to condemn private property in the process – must demonstrate that denying the application would have an adverse effect upon the future adequacy, reliability, or efficiency of its energy supply. They argue that Xcel's exemption request, in acknowledging that these lines are not being proposed primarily to address demand growth, concedes that its proposed facilities will not fulfill the legal requirements for a Certificate of Need.

Moreover, the Reinhardts object to the notice Xcel issued to people along the routes where Xcel anticipates building the transmission lines. The notice stated that Xcel's application would be subject to Minnesota Rules chapter 7849, but did not disclose Xcel's plan to seek exemptions from the requirements of that chapter. The Reinhardts note that other utilities have filed their notice plans and their request for exemptions simultaneously, and the Commission has directed these utilities to acknowledge the exemptions as part of the notice. In failing to follow this practice, the Reinhardts argue, Xcel has demonstrated bad faith and defeated the purpose of Chapter 7849's notice requirements.

Xcel denies that it has acted in bad faith. Far from attempting to conceal the reasons for the proposed transmission lines, Xcel argues that it has openly declared them. Xcel claims that it has given notice of its proposal to nearly 2000 landowners, residents and local officials. According to Xcel, the notices provided people with means for keeping abreast of developments in the docket, including a site on the World Wide Web where the exemption request was posted.

The Department notes that some utilities delay their notices to coincide with their exemption requests whereas others do not; the Department found no evidence that Xcel issued its notice in bad faith.

More generally, Xcel argues that the Reinhardts' substantive objections are premature. Xcel notes that the Certificate of Need process lasts more than a year, and that there will be other opportunities for public participation, including public hearings and evidentiary hearings before an administrative law judge. Xcel pledged to do its best to comply with reasonable requests for information.

## **VI. COMMISSION ACTION**

In ruling on exemption requests, the Commission must consider the types of information an applicant should provide to permit the Commission to determine whether an application is substantially complete for purposes of initiating relevant statutory time lines. In Chapter 7849, the Commission lists many types of information that might prove relevant to evaluating the need for new facilities, including information relevant to demonstrating customer demand. But the rules also provide for applicants to seek exemptions where appropriate.

Among other things, Xcel seeks exemptions from certain filing requirements with respect to two lines that are not motivated by a change in customer demand. The Department and WOW find Xcel's exemption requests, with some modifications, to be reasonable, and these parties have come to agreement about the type of information necessary to demonstrate the need for the lines in question.

The Reinhardts have not. At base, the Reinhardts argue that Xcel's goal of gaining access to electricity generated from wind turbines on Buffalo Ridge does not meet the legal requirements for demonstrating need for building new transmission facilities.

Whatever the merits of the Reinhardts' argument, it is fundamentally an argument of law and policy. It is unclear how the Commission's analysis of this question would be aided by, for example, Xcel providing forecasts of demand growth in the region. In short, while customer demand may provide a sufficient basis to demonstrate need, the Commission has not ruled that it is the only basis.<sup>4</sup> And Xcel's exemption request does not provide an appropriate occasion for resolving that question.

It should be understood that no decision the Commission makes regarding Xcel's exemption request will preclude any person from recommending, or the Commission from requiring, the submission of additional information before finding the Certificate of Need application substantially complete. Moreover, no finding that an application is substantially complete, with or without additional information, would preclude the development of additional information through discovery. Ultimately the burden of proving need for the proposed facility lies with the applicant. The exemptions granted here relate to filing requirements only; they are not findings that the information at issue may not prove essential to finding need. Such substantive findings would require careful examination of the merits of the application.<sup>5</sup>

Given Xcel's rationale for its proposed new transmission facilities, the Commission is willing to accept that its application for Certificate of Need could be deemed substantially complete even if it omits the information for which Xcel has sought an exemption. Xcel's exemption request, modified to reflect the proposals of the Department and WOW, will be granted.

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<sup>4</sup> See *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Certificates of Need for Four Large High Voltage Transmission Line Projects in Southwestern Minnesota*, Docket No. E-002/CN-01-1958, ORDER GRANTING CERTIFICATES OF NEED SUBJECT TO CONDITIONS (March 11, 2003) (granting Certificate of Need for transmission lines in Buffalo Ridge area).

<sup>5</sup>*In the Matter of the Application by Koch Refining Company for Certification of the Pine Bend Cogeneration Project*, Docket No. IP-2/CN-95-1406 ORDER GRANTING EXEMPTIONS FROM FILING REQUIREMENTS (February 16, 1996); *In the Matter of the Application of Rapids Power LLC for a Certificate of Need for its Grand Rapids Cogeneration Project*, Docket No. IP-4/CN-01-1306 ORDER GRANTING EXEMPTIONS FROM FILING REQUIREMENTS, PERMITTING EXPEDITED FILING, AND EXTENDING PERIOD TO DETERMINE ADEQUACY OF FILING (October 9, 2001) at 3-4; *In the Matter of the Application of Great River Energy for a Certificate of Need for a High Voltage Transmission Line*, Docket No. ET-2/CN-02-536 ORDER GRANTING AND DENYING EXEMPTION REQUESTS AND CLARIFYING FILING REQUIREMENTS (July 2, 2002) at 7; *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy and Dairyland Power Cooperative for a Certificate of Need for a High Voltage Transmission Line*, Docket No. ET-3, E-002/CN-02-2052, ORDER GRANTING EXEMPTION IN PART AND REQUIRING SUPPLEMENTARY FILING AND NOTICE (April 8, 2003) at 8.

**ORDER**

1. Xcel's exemption requests are approved.
2. In its application for a Certificate of Need, Xcel shall include the information requested by the Department and WOW to the extent that information is available, as discussed above.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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