03-0034

COMPETITIVE BIDDING FOR UTILITIES

SUBMITTED TO THE
MINNESOTA LEGISLATURE

BY

THE MINNESOTA DEPARTMENT OF COMMERCE

JANUARY 15, 2003

REPORT TO THE MINNESOTA LEGISLATURE
COMPETITIVE BIDDING FOR UTILITIES
January 15, 2003

I. LEGISLATIVE DIRECTION TO THE COMMISSIONER OF COMMERCE

Minnesota Session Law 2002, Chapter 380, Article 7 directed the Commissioner of Commerce to conduct an evaluation of competitive bidding and submit a report to the Minnesota House and Senate:

Senate File 3431

ARTICLE 7
COMPETITIVE BIDDING FOR UTILITIES

Section 1. [IDENTIFICATION AND EVALUATION; COMPETITIVE BIDDING CRITERIA.]
The commissioner of commerce shall identify and evaluate various criteria that could be used by a utility in evaluating and selecting bids submitted in a competitive bidding process established under Minnesota Statutes, section 216B.2422, subdivision 5.

To assist in the evaluation, the commissioner shall convene a series of forums at which input from citizens and stakeholders can be solicited. The commissioner shall present this evaluation in a report to the house and senate policy and finance committees with jurisdiction over energy regulatory issues and agencies by January 15, 2003.

II. PROCESS

Each meeting began with a brief overview from the Department of Commerce regarding the history of the bidding process and the type of criteria currently used by the Public Utilities Commission. Samples of criteria proposed, but not adopted, in the 2002 legislative session were also presented. The Department overview is contained in Appendix A.

Annotated oral comments were recorded at the meetings and are contained in Appendix B.

Written comments were received from several parties and are included in Appendix C.

III. FINDINGS

A. Finding #1 - No Changes Recommended

The Commissioner of Commerce does not recommend any changes to the various criteria that could be used by a utility in evaluating and selecting bids submitted in a competitive bidding process established under Minnesota Statutes, section 216B.2422, subdivision 5.

Public testimony and written comments did not reveal any evidence that the current competitive bidding process would be improved upon, or produce better results, by adding criteria that would reduce the flexibility provided in existing law.

B. Finding #2 - Competitive Bidding vs. Certificate of Need

Various parties indicated a belief that the environmental and socioeconomic cost criteria for the competitive bidding process are different from the criteria for the certificate of need process.

Subdivision 5 of Minnesota Statutes, section 216B.2422 addresses the **competitive bidding** process and directs a utility to apply the same environmental cost estimates determined under subdivision 3 of the same statute.

Subdivision 3 requires utilities to use the environmental cost estimates, including socioeconomic costs, when evaluating and selecting resource options in all proceedings before the Commission, including **certificate of need** proceedings.

Thus, the environmental and socioeconomic cost criteria for the certificate of need process and the competitive bidding processes are the same.

C. Finding #3 - Minnesota Standards

Various parties indicated a belief that less stringent environmental and socioeconomic standards are applied to electricity generated outside Minnesota, specifically Manitoba, as opposed to electricity generated in Minnesota.

The Department of Commerce has found no differences in statute based on the geographic location of the generating facility.

The Public Utilities Commission, in the Order establishing environmental cost values, Docket No. E-999/CI-93-583, January 3, 1997, set different emissions standards for electric generation sources over 200 miles outside of Minnesota borders. However, the Manitoba issue raised pertains primarily to the socioeconomic costs associated with Manitoba's hydro power. Regarding socioeconomic costs, in Docket No. E999/CI-00-1636, May 3, 2001, the Commission found that:

> ...attempting to establish generic socioeconomic costs or even a list of socioeconomic categories as a framework for future examination of socioeconomic issues is not a practical or reasonably productive use of regulatory resources. Socioeconomic impacts are varied and case-specific. Socioeconomic benefits would have to be offset against costs, immeasurably complicating any attempt to quantify impacts. In these circumstances, the current practice of considering socioeconomic impacts qualitatively in individual proceedings remains appropriate.

Consistent with this case-by-case approach, the Commission thoroughly considered the issue of socioeconomic issues in the Manitoba Hydro case and made its decision based on the facts in that case.

Therefore, the Commission reviews socioeconomic standards on a case-by-case basis and geography is not a differentiating factor.

D. Finding #4 - Mandatory Competitive Bidding Process

It has been suggested that the competitive bidding process be the required process for all utilities and the certificate of need process be eliminated.

The competitive bidding process is a voluntary process available to all utilities seeking new generation resources as an alternative to the certificate of need process. To date, only Xcel Energy has utilized this option. It was used in the Xcel Energy *1999 and 2001* All-Source Request*s* for Proposals and in the Xcel Energy Prairie Island Contingent Request for Proposals.

Public testimony and written comments did not provide sufficient evidence to justify a recommendation to the legislature. The legislature may wish to conduct hearings to gather input from interested parties and consider legislation to replace the certificate of need option with a mandatory competitive bidding process.

E. Finding #5 - Open Competitive Bidding Process

There was some concern expressed that the competitive bidding process is not an open process and that bidders and the public are not fully aware of the criteria used by the requestor in selecting a bidder or multiple bidders.

The competitive bidding process currently being used today was developed through a long public, regulatory process that invited input from all interested parties, including any potential bidders. The criteria used for evaluation of the bids in today's competitive bidding process is set forth at the beginning of the process and made available to all potential bidders. The process has also been reviewed and refined by the Public Utilities Commission, as needed, to make it a more efficient process.

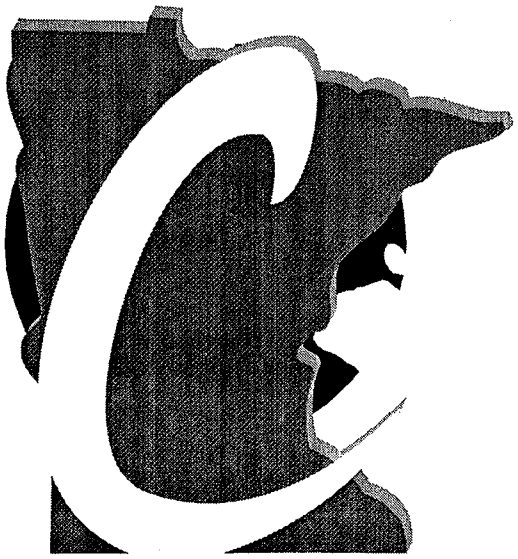
Insufficient public testimony and comments were received to support the indicated concern in order to justify a recommendation to the legislature. The legislature may wish to conduct hearings to gather input from interested parties to determine if the competitive bidding process is open to sufficient public scrutiny while protecting trade secrets.

APPENDIX A

REPORT TO THE MINNESOTA LEGISLATURE
COMPETITIVE BIDDING FOR UTILITIES

Minnesota Department of Commerce

New Competitive Bidding Law



Presentation to
Citizen & Stakeholder Forums
October/November 2002

MINNESOTA
DEPARTMENT OF
COMMERCE

Legislative Directive

MN Session Law 2002, Chapter 380

Article 7

The commissioner of commerce shall identify and evaluate various criteria that could be used by a utility in evaluating selected bids submitted in a competitive bidding process established under Minnesota Statutes, section 216B.2422 subd. 5.

MINNESOTA
DEPARTMENT OF
COMMERCE

PUC Order - Jan. 3, 1997

Established environmental cost values:

- Sulfur Dioxides
- Nitrogen Oxides
- Carbon Monoxide
- Particulate Matter
- Lead
- Carbon Dioxide

Docket No: E-999/CI-93-583

MINNESOTA
DEPARTMENT OF
COMMERCE

PUC Order - May 3, 2001

- Updated previous environmental cost values

- Decided not to pursue socioeconomic cost values

Docket No: E-999/ CI-00-1636

MINNESOTA
DEPARTMENT OF
COMMERCE

PUC Order - October 5, 2001

Decided not to pursue cost values for mercury or particulate matter less than 2.5 microns in size.

Docket No: E-999/ CI-00-1636

MINNESOTA
DEPARTMENT OF
COMMERCE

House Mesaba Bill

Continued...

- Jurisdiction of policymakers over emissions & environmental impacts

- Fuel flexibility / Reduced reliance on natural gas for non peaking power generation

- Ability to attract industry, investment, jobs -- especially in depressed areas

MINNESOTA
DEPARTMENT OF
COMMERCE

Senate Mesaba Bill

Use existing criteria *plus*:

- Maintain low cost, reliable electric service.
- Minimize need for new transmission lines
- Protect natural & environmental resources.
- Use of alternative generation technologies.
- Promote economic development in the state.

MINNESOTA
DEPARTMENT OF
COMMERCE

House Mesaba Bill

Existing criteria used by PUC plus:

- Competitiveness & price stability
- Reduced emissions through technology & renewables
- Reduced environmental impacts, including reuse/cleanup/reclamation of industrial sites.

H3648A6

MINNESOTA
DEPARTMENT OF
COMMERCE

House Amendments

- High efficiency cogeneration
- Distributed generation
- Fuels derived from Agricultural products & byproducts
- Biomass fuels

MINNESOTA
DEPARTMENT OF
COMMERCE

House Amendments

Continued …

- Economic benefits at least equal to using resources native to Minnesota
- Impact of mercury emissions on lakes, rivers
- Secured financing
- Priority given to projects that do not produce air emissions

MINNESOTA
DEPARTMENT OF
COMMERCE

Written Comments

Send mail or e-mail to:

Ken Wolf

Reliability Administrator

Minnesota Department of Commerce

85 7th Place East, Suite 500

St. Paul, MN 55101-2198

ken.wolf@state.mn.us

APPENDIX B

REPORT TO THE MINNESOTA LEGISLATURE
COMPETITIVE BIDDING FOR UTILITIES
Oral Comments

I. INTRODUCTION

Four public meetings were conducted by the Department to receive comments on the criteria for competitive bidding. Each meeting was held at 7:00 PM, 2002, convened by Ken Wolf, in the following locations:

October 22	Iron Range Restoration & Rehabilitation Agency, Eveleth
October 29	Best Western Inn, Marshall
November 12	Olmstead County Government Center, Rochester
November 19	University of St. Thomas, St. Paul

II. COMMENTS

A. Eveleth

Attendance 38
Annotated notes by Bob Cupit:

Welcome by John Swift, Commissioner of IRRRA
Comments by Senator David Tomassoni
Comments by Tom Michelleti and Tom Weaver, Excelsior
Background by Ken Wolf

Unidentified member of audience
concern about air emissions of coal
Marlene Pospeck, Mayor of Hoyt Lakes
written comments in support of Mesaba Project;
Caroline Sawyer
asked for more background on required transmission lines for project.
Bill Grant, Izaak Walton League
mindful of focus on criteria and not project; concerned about trade secret status of some info in current bid process; noted that it is possible to build transmission lines.
Unidentified member of audience
asked about jobs created by project
Jim Roberts, Minnesota Power
noted that, in addition to criteria information gathered in the bidding process, other required permitting processes for any project would gather additional information, so the bid criteria does not have to be exhaustive on all issues.

Jim Bernstein, Commissioner, Department of Commerce
key question on new state energy resources is where in the state is in the best public interest.
Jim Roberts, Minnesota Power
notes importance of reliability and the interests of customers.
Bill Blazer, Minnesota Chamber of Commerce
suggested considering the existing criteria in the Certificate of Need process, and encouraged application of criteria for all entities rather than just one or two.
Carl Lehman, Xcel Energy
existing bid criteria seem to work.
Norm Vorrhees, Ironworkers Local 563
issue for them is jobs.

B. Marshall

Attendance 6
Annotated notes by Bob Cupit:

Background presentation by Ken Wolf

Patrick McFarland
spoke about his general interest in wind power development.

C. Rochester

Attendance: 10
Annotated notes by Brad Kelly:

Background presentation by Ken Wolf

Ruth Freeman from Minnesota Utility Investors
She gave the Department written testimony.
Ron Barber, represented himself
He asked Tom, from Excelsior, if the 2,000 MW plant that they envisioned plans to separate out the by-products and sell them to the market, similar to a plant he saw in South Dakota?
Tom Michellti, Excelsior Energy
mentioned some of the by-products that were produced from a similar plant in Tennessee. He added that additional industries could sprout up as a result of this project. He said for every 2 MW of IGCC (integrated gasification combined cycle) we could add 1 MW of renewables – thereby helping Xcel get cleaner.
Ron Barber
asked if the project had looked into funding from the U.S. Department of Energy (DOE).

Tom Michellti, Excelsior Energy

yes, that he has talked with the Secretary of Energy a few months ago. Tom said that the Secretary was interested because the project under consideration would be the first time such a big project would be located in one place. Tom said that DOE is excited about helping them out and that DOE and EPRI have been pushing this technology.

D. St. Paul

Attendance: 35
Annotated notes by Bob Cupit:

Background presentation by Ken Wolf

John Reinhardt

criteria should include transmission costs of proposed resource; wind resource proposals should include description of back-up generation and its transmission access; should emphasize conservation; should include description of geographic area where need exists; pollution is a major factor.

Diane Peterson, Minnesota Witness for Environmental Justice

highest preference in bidding should be to firms that can implement conservation/efficiency; hydropower is not renewable; should not consider large hydro resources, only small units under three megawatts in size; preference should go to Minnesota based firms; preference should go to renewables on tribal lands; public interest criterion should include human and worker rights issues.

Mike Holly, Sorgo Fuels

bidding process should apply to all utilities; Xcel rigs process by excluding small entitites; legislature creates bias with tax breaks for some bidders; process should be more open and based on reliability, cost and environmental externalities; an independent state organization should determine resource need. See written comments.

Tim Rudnicki, Pimicikamak Cree Nation

harmonization is key objective; see written comments for detailed background; recommendations are 1) all criteria should be applied equally to imported and in-state resources, 2) impacts of hydro generation options must be considered, and 3) preference for renewables should only apply to hydro 60 MW or less.

Darcy Linklater, Nisichawayasihk Cree Nation

detailed background on culture and relationship with hydro development in Manitoba; want to participate in economic opportunities with hydro and recognize export to Minnesota markets.

David Spence, Nisichawayasihk Cree Nation

supported interest expressed by Darcy L.; noted that past environmental damage can't be restored and must move on with better agreements and plans.

John Jaffrey, Prairie Gen

bidding process too closed, should apply to all utilities; there should be full disclosure, process should promote transmission grid capacity; process should favor Minnesota companies and have lower financial thresholds so smaller companies can participate.

APPENDIX C

REPORT TO THE MINNESOTA LEGISLATURE
COMPETITIVE BIDDING FOR UTILITIES
Written Comments

Enclosed are written comments submitted by the following parties:

Marlene Pospeck, Mayor of Hoyt Lakes, Minnesota
Ruth Freeman
Excelsior Energy
Tracy Bridge, CenterPoint Energy
Paule Maccabee, Sierra Club
Annette Henkel, Mn Utility Investors officer
Mike Holly, Sorgo Fuels
Tim Rudnicki, Pimicikamak Cree Nation
Diane Peterson, MN Witness for Environmental Justice
Laura and John Reinhardt
John Jaffray, Prairie Gen Power
Carol Orban
M*rg* Simon, Missouri River Energy Services
Tim Silverthorn
Winona LaDuke
Erin Stojan
Lois Norrgard
Patricia Mack
Nisichawayasihk Cree Nation

Marlene Pospeck
October 22, 2002

As mayor of Hoyt Lakes, I am here to urge the Department of Commerce to implement the proposed criteria changes in the competitive bid process for new energy development in the State of Minnesota. These new criteria include consideration for job creation in depressed regions of the state, and strong local support. Since the permanent closure of the LTV Mining Company in Hoyt Lakes, these are certainly important considerations for our region.

If we are to keep our Iron Range communities intact, we MUST replace the 1400 jobs lost when the plant closed. Unemployment benefits are running out and people are being forced to leave homes, schools and friends behind as they search for work outside of the region, so we vigorously support Excelsior Energy's efforts to establish a new power plant and approximately 1,000 new jobs on the Iron Range.

In regards to power plants, the attitude of many communities would be "Not in My Backyard," but there are sound economic and environmental reasons for locating the new plant at the former LTV site. This site already has much of the necessary infrastructure, including rail lines, port access, on-site water resources and roads. Rather than proposing a greenfield site for new energy development, it just makes good sense to reuse an industrial site like LTV.

The proposed criteria changes also allow for consideration of technology that will not only reduce emissions, but will encourage further industrial development and greater price stability by reducing reliance on natural gas.

The proposed Excelsior plant will operate on new coal gasification technology. The resulting reduction in air and greenhouse gas emissions will make Excelsior's impact on the environment significantly less than that of traditional coal burning energy plants. This project also has the advantage of better price stability, avoiding peaks and valleys caused by fluctuations in natural gas prices.

In summary, I applaud the Department of Commerce for including considerations for job creation, local support, the reduction of gas emissions, and the realization of greater price stability in its bid criteria for new energy development in Minnesota. These important changes will afford such companies as Excelsior due consideration in meeting the State's future energy needs.

It would be nothing less than tragic if the State of Minnesota were to lose this project to another state, when the jobs, tax revenue and investment dollars it represents are so desperately needed by the workers and communities of the Iron Range.

Ken Wolf
Reliability Administrator
Minnesota Department of Commerce

November 12, 2002
Rochester, MN

My name is Ruth Freeman and I am a member of the Minnesota Utility Investors (MUI). MUI is a grassroots organization of utility shareholders of almost 27,000 members. We have two distinct roles in Minnesota's energy market: one role as investors in utilities; a second role as consumers of electricity and natural gas.

Reliable and cost-effective energy is critical to our daily lives, and we thank you for giving us the opportunity to provide input in determining criteria that could be used by a utility in evaluating and selecting bids for electricity.

Minnesota has enjoyed being a relatively low-cost and reliable energy state and we want to ensure that these benefits continue. MUI members are small energy consumers - in many cases retired and using the income from their investments for living expenses. Criteria that places an emphasis on the certainty of price and confidence in transmission capacity should be a priority.

We strongly believe there should be a fair and open process that allows for competitive bidding, but precedence should be given to low-cost bids that will ensure the ability to deliver electricity. The energy purchasing process should not be modified in such a way that it provides a competitive advantage to any project or technology that potentially raises costs to consumers or shifts the future risks to investors.

Thank you for the opportunity to comment.

EXCELSIOR ENERGY
COMMENTS ON
COMPETITIVE BIDDING

In accordance with Chapter 380, Article 7 of Minnesota Session Laws 2002, Excelsior Energy submits the following comments on the competitive bidding process currently being used by Xcel Energy.

Background. Excelsior Energy has proposed to develop the Mesaba Energy Project, the primary components of which are (1) an energy park located on a mining site in northeastern Minnesota, capable of accommodating up to 2000MW of integrated gasification combined cycle (IGCC) electricity generation technology and (2) renewable energy generation at a ratio of 1:2 to the IGCC generation.

Minnesota's electric sector is highly regulated and there is no opportunity for a new supplier to enter the market without a firm commitment in place from a customer to take the plant's output. Electric customers cannot choose their electric supplier because the State has granted utilities a monopoly to provide them service. The only real opportunity for a new entrant in the Minnesota market to supply power is pursuant to Xcel's competitive bidding process. Excelsior Energy attempted to participate in Xcel Energy's competitive bidding process last year, but found that there was no meaningful opportunity for an innovative project sponsored by a new entrant to participate in that process.

The bidding process discourages innovation and does not attract a sufficient mix of proposals for consideration in what is a critical, long-term decision being made on behalf of Minnesota consumers. The process falls short, for a number of reasons.

First, the entire bid evaluation and selection process is not transparent. The selection criteria need to be made explicit. The criteria applied by the utility in selecting the successful bidder are not known to participants. This reduces the bidders' ability to creatively respond to the needs of Minnesota consumers. To encourage thoughtful, highly developed bids, participants need to know that the playing field is level and the investment of their resources in formulating a bid is worthwhile.

> *The detailed bid evaluation criteria must be clearly identified, disclosed in the Request for Proposals and applied equally to all bidders in an open, transparent process.*

The Department of Commerce and the Public Utilities Commission have acknowledged that the criteria used to evaluate bids are not identified. At the first public meeting conducted by Representative Wolf, he described his efforts to obtain the current bidding criteria from the Department of Commerce, the Public Utilities Commission, and House Research. According to Rep. Wolf's presentation, the only identifiable criteria were environmental cost values for six pollutants. The PUC later adjusted the environmental

cost values, and decided *not* to pursue socioeconomic cost values. In another order, the PUC decided not to pursue cost values for mercury or particulate matter less than 2.5 microns in size. Moreover, the environmental costs are not applied at all to plants located more than 200 miles from the Minnesota boarder.

Furthermore, the PUC has indicated that the criteria that are used to evaluate a given round of bids are identified by the utility late in the process, long after bids have been lodged. In response to inquiries from Rep. Wolf, the PUC staff wrote a letter dated October 21, 2002, that describes the bidding process. This excerpt from that letter reveals an extremely serious flaw in the process: ". . . each of the criterion is not fully known or understood until a bid has been short-listed, made a final selection and negotiated a contract." The letter goes on to describe the three categories that "encompass the criteria" used to evaluate and select bids. Those categories are price, financial & operation reliability, and transmission issues.

Second, the current Request for Proposals effectively disqualifies all projects other than gas projects or incremental additions to existing facilities. The current Xcel Request for Proposal requests capacity in increments ranging from 160 megawatts to 235 megawatts, to come online starting in early 2005. Under Xcel's proposed schedule, the power purchase agreement would be signed in the first quarter of 2003, leaving only two years for engineering, permitting and construction of the plant. This approach narrows the possible new generation capacity options to gas-fired plants and power supplied from existing plants, eliminating entire categories of projects that might better serve Minnesota consumers.

> *Requests for Proposals should be issued with sufficient lead-time and request sufficiently large capacity increments to encourage proposals using all types of technologies and fuels – consistent with the spirit of "All-Source" processes.*

Third, Xcel's selection process does not take into account criteria that are important to Minnesota's electric consumers. Electric rates are low in Xcel's service territory thanks to decisions, decades ago, to invest in capital-intensive plants with low fuel costs. Securing power costs for the long-run does not appear to be valued in the Xcel Request for Proposals, as bidders are required to include ten-year pricing in their bids. This does not allow a sufficiently long enough contract period to amortize the more capital-intensive, low fuel cost technologies.

> *The benefit of locked-in, long-term prices should be ascribed a value.*

In addition, if gas-fired plants are selected, Minnesotans will be exposed to volatile gas prices flowing directly through to their electric bills, in addition to causing spikes in their home heating bills. Xcel explicitly expresses a preference to supply gas to the winning bidder, eliminating any chance that the bidders will find creative ways to hedge the cost of power. Under Xcel's fuel adjustment clause, the cost of buying natural gas to fuel the plants is passed through, dollar for dollar, directly to consumers.

The benefit of proposals that hedge the cost of fuel and lock in a stable electric price should be ascribed a value.

Fourth, Xcel's analysis does not consider critical costs and benefits to Minnesota citizens of the generation resource selected. The Legislature has an interest in securing Minnesota's energy future and in furthering related public policy goals. Public utilities enjoy State-granted and protected utility franchises and have a higher duty to act in the State's best interests than companies in other industries who do not enjoy a State-protected monopoly. These important costs and benefits should be given express value in the bid evaluation process:

- No consideration is given in the bidding process to a proposed power plant's direct economic benefits to Minnesota.

  The economic benefit of a proposed power plant both in terms of capital investment in the State and creating jobs in economically depressed regions of the State should be ascribed a value.

- No consideration is given in the bidding process to a proposed power plant's indirect economic benefits to Minnesota. For example, it is projected that hydrogen production will be needed on a large scale to power fuel cells and hydrogen automobiles. An energy park deploying technology that can be configured to produce hydrogen will attract related industries to the site. In addition, the flexibility to produces other gases and by-products used in many industrial applications will attract further industry, investment, and jobs to the State.

  The economic benefit of a proposed power plant in terms of attracting further industry to the State should be ascribed a value.

- Only very limited environmental externalities are currently considered in the bidding process, and those considerations are not applied to all plants equally. This encourages short-term thinking, in terms of protecting our environment and the dollars-and-cents associated with costly retrofits of plants to meet new emission limits. Air emission limits will become increasingly more stringent over time, as evidenced by the Bush Administration's new, tighter proposed standards. Not being proactive in taking these tighter standards into account will cost Minnesota consumers more in the long-run.

  The benefits of a proposal that reduces air emissions, particularly mercury, sulfur dioxide, nitrogen oxides, particulate matter and greenhouse gas emissions through the use of innovative technology and significant renewable capacity installations, and re-uses and cleans up or reclaims existing industrial sites, should be ascribed a value.

- The State's jurisdiction over the emissions and other environmental impacts of a power plant proposal is an important factor that is not considered in the bidding criteria. Air pollution is a regional problem and plants in other states create problems in Minnesota. Ninety percent of the mercury in Minnesota's lakes comes from sources outside the State.

  The benefits of a proposal that gives Minnesota policy makers control over the impact on the natural environment of Minnesotans should be ascribed a value.

The power generation resource decisions made by Xcel will have a material, visible impact on Minnesota consumers for decades to come. The Minnesota Legislature should ensure that the criteria it adopts to be applied by the Public Utilities Commission in Xcel's bidding process serve the long-term interests of the State of Minnesota. A summary of the recommended criteria is attached.

Recommended Process and Criteria. The Legislature should adopt criteria that ensure that the Request for Proposal Process used to procure power best serves the State's policy goals. Both the process and the selection criteria should be designed with the State's policy goals in mind.

The process by which proposals are requested should encourage a broad range of proposals, using various fuels and innovative technologies. In order to further this goal:

> *Requests for Proposals should be issued with sufficient lead-time and request capacity in sufficiently large increments to encourage proposals using all types of technologies and fuels – consistent with the spirit of "All-Source" processes.*
>
> *The detailed bid evaluation criteria must be clearly identified, disclosed in the Request for Proposals and applied equally to all bidders in an open, transparent process.*

In addition, the criteria used throughout the process in selecting short-listed and final bids should be made public and should include the following:

1. The project's potential for job creation and other economic benefits in economically depressed regions within the state and local support for the generation facilities of the project.

2. The project's utilization of technology that can be configured to produce hydrogen for fuel cells and other gases and products having the potential to attract further industry, investment, and jobs to the state.

3. The competitiveness and long-term stability of the proposed price of the capacity and energy for the proposed project.

4. Reduction of air emissions, particularly mercury, sulfur dioxide, nitrogen oxides, particulate matter, and greenhouse gas emissions, through the use of innovative technology and significant renewable capacity installations, and reduction of other environmental impacts, including re-use of and cleanup or reclamation of existing industrial sites.

5. The jurisdiction of state policymakers over emissions and other environmental impacts of the project.

CenterPoint Energy
Minnegasco

Tracy Bridge
Director
Government
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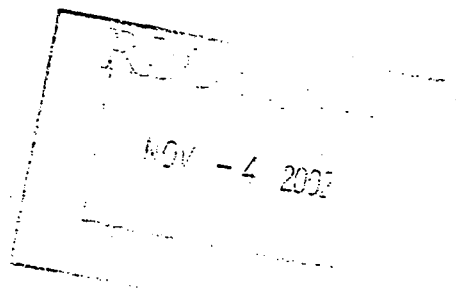


November 4, 2002

Ken Wolf
Reliability Administrator
Energy Division
Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101-2198

Dear Mr. Wolf:

CenterPoint Energy Minnegasco ("CenterPoint Energy") appreciates the opportunity to provide input into the current competitive bidding process for new electric generation, and the evaluation being conducted by the Department of Commerce (DOC).

Based upon our review, we support the current competitive bidding process established under Minnesota Statutes, section 216B.2422, subdivision 5. We have seen no evidence that the system is flawed and indeed, it seems to be working as intended. In 1998, the Minnesota Public Utilities Commission ("MPUC") established, by Order, an approved bidding process consisting of five steps. This regulatory arrangement seems to offer the proper structure to ensure the success of the process and give bidders confidence in its fairness. Xcel Energy is the only utility that has chosen to use the voluntary competitive bidding process to date, and our understanding is that Xcel has done so quite openly and in accordance with statutory intent.

The MPUC's Order already provides the regulatory structure to assure what should be the highest priorities for customers: lowest price (as contemplated in the statute) and reliability. We support keeping the current regulatory framework that protects all ratepayers and is fair and open to all bidders.

The legislative process and discussion last year served to better educate all stakeholders regarding the competitive bidding process for selection of resources required to meet projected energy demands of Xcel Energy. If the DOC chooses to recommend any changes, CenterPoint Energy believes such changes should be in the form of guiding principles:

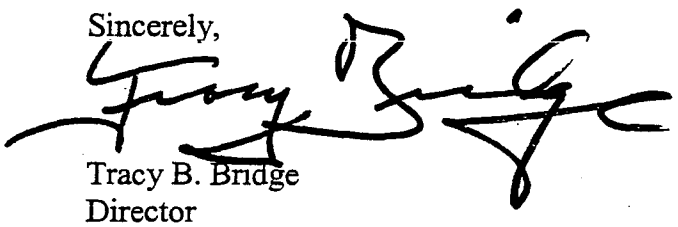
- Encourage competition for the lowest comparable price among suppliers
- Assure that the energy supply is reliable
- Assure that any new or additional siting associated with the bid is both feasible and timely

- Retain a process that remains fair and open
- Provide due diligence to ensure the bid is legitimate and can be delivered.
- Access to transmission to assure deliverability

We appreciate the opportunity to provide input and look forward to the recommendations from the DOC.

If you have any questions, please don't hesitate to contact me at 612-321-4723.

Sincerely,



Tracy B. Bridge
Director
Government and Public Relations
CenterPoint Energy Minnegasco

SIERRA CLUB AIR TOXICS CAMPAIGN

Paula Goodman Maccabee, Program Coordinator

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November 15, 2002

SENT BY ELECTRONIC MAIL
Ken Wolf, Reliability Administrator
Minnesota Department of Commerce
85-7th Place East
St. Paul, Minnesota 55101

RE: DOCKET NO E-999/CI-00-1636
New Competitive Bidding Criteria

Dear Mr. Wolf:

The Sierra Club appreciates your offer to permit us to comment in writing regarding various criteria that could be used by a utility in evaluating selected bids submitted under the competitive bidding process established under Minnesota Statutes §216B.2422. The Sierra Club is a national environmental organization with over 700,000 members and approximately 19,000 members who reside in Minnesota. Since June 2000, the Sierra Club has coordinated an Air Toxics Campaign in Minnesota to reduce air pollutants, including emissions from fossil fuel power plants that affect human health and the natural environment.

The Sierra Club participated in the process that led to adoption of Energy Security Reliability Act of 2001, in the comment process pertaining to the 2001 State Energy Report and in recent rulemaking processes pertaining to siting, routing and environmental review of power plants and power lines in Minnesota.

First, the Sierra Club would like to suggest that the most significant issue in the bidding process is not related to inclusion of additional bidding criteria. The Sierra Club believes that the change in resource planning most consistent with State policy would be to divide resource planning into two tiers of bidding. The first tier would only include clean, renewable energy resources. This process would provide the benefits of competition in attaining the least cost renewable resources while recognizing that critical environmental and long-term economic interests of the State require that clean and sustainable energy resources be preferred over fuel resources that can be depleted and cause environmental harms.

The Sierra Club would suggest that the Department of Commerce recommend and the Public Utilities Commission specify how many megawatts of the proposed need asserted by the utility must be filled from this tier one bidding process. Within this tier, the utility would select the most cost-effective clean, renewable energy resource.

For the remainder of the energy needs asserted, the Sierra Club would support a process similar to the current process where non-renewable fuels and clean, renewable energy resources compete in a single evaluation. This second tier would be similar to the current bidding process.

The Sierra Club has some reservations about changing current bidding criteria. The legislative context within which this issue has arisen is one where one particular form of central station non-renewable energy with the potential to emit large quantities of mercury and carbon dioxide has asked for criteria that would reduce utilities' flexibility to reject their proposal on the basis of cost. This is an inauspicious way to begin a process to select additional bidding criteria.

However, if the Department of Commerce believes that the bidding criteria should be expanded, the Sierra Club would suggest additional bidding criteria to permit utilities to include a greater proportion of the true costs and benefits of resource selection in their analysis.

1. The Sierra Club would recommend that externality values be modified to include the costs of mercury neurotoxicity and the morbidity and mortality costs of fine particulate matter (2.5 microns or less in diameter). A mechanism must also be established so that these costs can be updated consistent with scientific research. The Sierra Club would also support a general bid policy favoring resources which do not produce air emissions, discharge on land or water or radiation releases.

2. The Sierra Club would recommend that the benefits of distributed generation and the costs of transmission be included in the bidding process as well. Location of generation near customers provides reliability benefits and reduces both the direct and environmental costs of transmission, which could be quantified in resource selection.

3. The Sierra Club would recommend that the economic development benefits of local ownership of generation resources be factored into evaluation of resource alternatives. There is evidence that local ownership has a greater multiplier effect in the Minnesota economy and plays a positive role in stabilizing the rural economy. This benefit should be quantified and included in the resource bidding process.

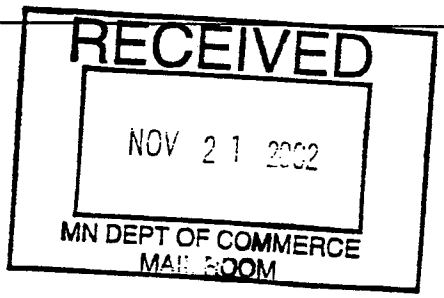
4. The Sierra Club would recommend that the economic benefits to Minnesota's energy self-sufficiency be included in the bidding process. The Sierra Club would suggest that this criterion not specify whether the fuels are derived from agricultural products, biomass, wind or sun. This bidding criterion would only reference that a resource is clean, renewable energy produced within the State of Minnesota.

Please feel free to contact me (651-646-8890) if you have any questions or would like to discuss these matters further.

Respectfully submitted,

Paula Goodman Maccabee
Program Coordinator, Sierra Club Minnesota Air Toxics Campaign

MUI
Minnesota Utility Investors



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November 20, 2002

Ken Wolf
Reliability Administrator
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101-2198

Dear Mr. Wolf,

Minnesota Utility Investors (MUI) is a grassroots organization of utility shareholders. Our members have two distinct roles in Minnesota's energy market: one role as investors in utilities; a second role as consumers of electricity and natural gas.

Since reliable and cost-effective energy is critical to our daily lives, we are taking advantage of the opportunity to respond to your request for input in determining various criteria that could be used by a utility in evaluating and selecting bids submitted in a competitive bidding process.

Minnesota has enjoyed being a relatively low cost and reliable energy state and we want to ensure that these benefits continue. MUI members are small energy consumers, in many cases retired and using the income from their investments for living expenses. Criteria placing an emphasis on the certainty of price and confidence in transmission capacity should be a priority.

We strongly believe there should be a fair and open process that allows for competitive bidding. However, the energy purchasing process should not provide a competitive advantage to any project or technology that potentially raises costs to consumers or shift the future risks to investors.

Thank you for the opportunity to comment. If you have any questions, please give me a call.

Sincerely,

Annette

Annette P. Henkel
President

DATE: November 19, 2002
TO: Minnesota Department of Commerce
FROM: Mike Holly, Chairman
Sorgo Fuels & Chemicals, Inc.
10710 Cavell Road
Bloomington, Minnesota
RE: Competitive Bidding Forum

INTRODUCTION TO SORGO FUELS

Between 1985 and 1995, Sorgo Fuels modified Brazilian sugar cane technology for the production of renewable fuels from sweet sorghum. Sweet sorghum (also known as "Chinese sugar cane") is a farm crop that can produce huge biomass yields of sugar and fiber in the U.S. farm belt and many other regions throughout the world. Brazil has already used the technology to process its high-yielding sugar cane crop for the production of ethanol vehicle fuel at less than 60 cents per gallon from the crop's sugar while using the fiber as fuel for co-generating process heat and electricity at about 3 cents per kilowatt-hour.

Before raising investment capital for a commercial pilot plant, our company has since 1995 sought to expand our limited potential electricity markets in Minnesota and the farm belt through reform of the region's wholesale and retail (i.e., Illinois) markets. Since most of the region's utilities, and their affiliates and friends, continue to demand their right to compete with us for generation within and outside their service territories, it has been a conflict of interest for farm belt states to have allowed our utility competitors to control the markets. Because our utility competitors have been given the power to block, and then even steal, our technology if they want, we have had little incentive to commercialize.

A FAILURE TO IMPLEMENT WHOLESALE COMPETITION

Regulators and utilities in regulated states have made little attempt to even try to introduce wholesale competition. The Minnesota PUC's October 18, 1996 Wholesale Competition Report explains that: "To assist in the development of a competitive wholesale electricity market, distribution utilities will need to follow a competitive process to acquire additional capacity." Competitive acquisition at the wholesale level has been introduced through two different methods throughout the world (according to a Dr. Kozloff): competitive bidding and spot markets. Under competitive bidding, independent power producers and conservation suppliers bid for long-term contracts with utilities. Wholesale spot markets allow merchant plants to bid to sell short-term power dispatched by an independent system operator to utilities (and perhaps eventually to retail consumers who could then also buy long-term contracts). Yet, most utilities in regulated states still lack either kind of competitive acquisition process and usually elect for the benefits that accompany self-ownership or they sign contracts with their affiliates or friends. A Minnesota municipal utility sent our company to their consultant who demanded a cut of our action before he would recommend our project to the utility.

Although many regulators, utilities and environmentalists in "regulated" states continue to laud the potential benefits of competitive bidding, these states have generally allowed their utility

monopolies to control, manipulate and rig bidding to favor suppliers owned by the utilities, utility affiliates and the friends of utilities and policymakers. Policymakers in "regulated" states have failed to even try to form separate transmission and distribution organizations that are truly independent (i.e., with minimal generation and political interests) before introducing competitive bidding for generation supplies (i.e., although they have tried to form independent utilities for conservation bidding).

THE PROBLEMS WITH XCEL'S COMPETITIVE BIDDING PROCESS

Xcel Energy (i.e., formerly known as NSP) is the only utility that has even attempted to introduce a competitive wholesale acquisition process in Minnesota. Minnesota Department of Commerce Energy Commissioner Linda Taylor understated Xcel's bidding problems when she recently admitted that the utility's bidding program was "off to a rocky start." This investor-owned utility's so-called "competitive" bidding process, administered by the utility with input from state regulators and environmentalists, has been fraught with anti-competitive behavior favoring "privileged" suppliers from its inception in 1994 to the present.

1. DISCRIMINATION USING SUBJECTIVE BIDDING CRITERIA. Xcel's bidding process uses subjective bidding criteria that allows this utility generation competitor to discriminate in favor of their own company, affiliates and friends. For example, Xcel's biomass bidding awarded extra points for demonstrating to the utility that a biomass project protected bird sanctuaries and had personnel with thermal combustion experience. The state of Minnesota shouldn't give utilities the discretion to award extra bid points to their "friends" with higher cost bids for such subjective price externalities. Because the bidding is so subjective and clandestine, it is very difficult to evaluate the fairness of the bids and it would be nearly impossible to challenge the scoring in regulatory proceedings after obtaining a court order to examine the bids. It is also not helpful that the utility hired a consultant to help evaluate the bids because consultants serve those that pay their fees (e.g. like Enron hired Arthur Anderson). Neither is our company impressed with Xcel's boasts that they have rejected their own bids, since we don't even know if their management really wanted those projects. Competitive bidding should be totally objective and quantitative given that cost, reliability and environmental factors are the only important, significant and meaningful criteria, and that environmental externalities have already been cost-quantified by the Minnesota PUC. The state could more properly protect birds and certify power plant operators by enacting laws that can be enforced by a state agency. Moreover, Minnesota should form an independent agency to score the subjective bids for renewable energy research (like "deregulated" states do), instead of allowing Xcel to score bids to the state's only renewable development fund with input from two "environmentalists" of the utility's choice. In addition, the state should not allow its other utilities to administer green pricing without any competitive acquisition process whatsoever because it motivates them to offer their customers higher cost renewable sources.

2. MANIPULATION OF THE BIDDING THROUGH DISQUALIFICATION AND REBIDDING. Minnesota's competitive bidding program at Xcel allows the utility to rebid or disqualify a bidder if the utility doesn't like the bid winner

(i.e., whether subjective scoring was used or not). The Minnesota PUC allowed Xcel to unjustly deny a conservation project to St. Paul Neighborhood Energy Consortium in 1994 even after the Minnesota Department of Public Service ruled that an Xcel employee had threatened to reject their bid if they opposed the utility's nuclear waste storage bill. The PUC also ignored a complaint against Xcel by Minnesota Windpower, another opponent of Xcel's nuclear storage bill, after the wind power company initially won the utility's first bid and then lost the project in a re-bid. The California wind developer that won the second bid had problems adapting windmills to Minnesota's cold weather and went bankrupt. Moreover, the PUC ignored a losing biomass bidder's 1995 complaint that Xcel had rejected their much lower-cost bid on a technicality and awarded its largest biomass bid to a $260 million project that used the utility's own alfalfa technology. The alfalfa project had to be killed by consumer protests.

3. BIDDING CONSPIRACIES THAT GRANT POLITICAL FAVORS. Minnesota's lone competitive bidding program at Xcel has allowed the utility, regulators and politicians to conspire to offer political favoritism to "privileged" bidders. In 1994, the Minnesota PUC ignored a complaint from one of ten losing bidders for Xcel's only cogeneration bid claiming that the utility allowed the winning bidder to sign the final contract after state politicians favored that natural gas project exclusively with a $6 million per year property tax exemption. In 1995, Xcel's alfalfa project received special tax breaks from the state legislature and even tried to hold state taxpayers responsible for the project that used unproven technology (i.e., because they said they couldn't find private investors to assume the risk at their bid price). In 2002, the Minnesota Senate Energy Committee favored a coal gasification project proposed by Excelsior by recommending new bidding criteria that fit their project including consideration for using innovative technology that can produce hydrogen and reclaiming industrial sites in depressed areas. Excelsior, which was formed by three former Xcel employees, has political connections to the depressed iron range. The legislation was sent to the ~~Senate Environmental committee~~ House, where it was passed along after they tacked on more criteria that favored a cogeneration project utilizing agricultural waste. After the Minnesota House forced the bidding criteria to enter a public comment process, utility interests appear to have joined the political game-playing by calling for the use of the same criteria the utilities use to select their projects. Some proponents of coal, wind and agricultural fuels rationalize the need for bidding advantages as a way to diversify away from natural gas, even though the depletion of gas supplies is already contained in escalating gas prices. Since the economics they often cite for their projects appear cost-competitive with gas generation at current gas future prices, they may be actually seeking to use bidding advantages to lower their bid price or increase their profits at the expense of other bidders or consumers. The fairest approach for all bidders and consumers would be to forbid the regulated gas utilities from providing consumer-subsidized interruptible rates to gas-fueled generators.

4. BIDDING DISCRIMINATION THROUGH ARBITRARY FUEL TYPE REQUIREMENTS. Minnesota's competitive bidding program at Xcel discriminates against projects based on fuel type. Unlike most federal and state programs, renewable projects are not allowed to bid against any other renewable technology. The competitive bidding has, in most circumstances,

accepted bids only from projects that use wind, and, in a few cases, only biomass. Even though many state politicians, regulators and environmentalists claim wind is the lowest-cost option, the wind bidding may have failed to economically serve the state's reliability needs. Much of the wind projects may have accomplished little, at a cost to the ratepayers of hundreds of millions of dollars, since wind cannot provide reliable power at a reasonable cost for either base-, intermediate- or peak- loads without complementing it with gas. The bids that discriminated in favor of "renewable" biomass were even more expensive and this bidding also appeared to have been politically and arbitrarily determined without considering the state's need for the base-load power (i.e., that biomass can provide). The biomass bidding also discriminated among the different biomass resources (e.g. trees, alfalfa, etc.) through the use of select externality bidding criteria (e.g. the protection of bird sanctuaries). The selection of these bidding criteria was political and arbitrary since the state never analyzed the very complicated life-cycle environmental and socioeconomic externalities of each biomass fuel type and technology. The Minnesota Chamber more appropriately advocates further developing renewables with additional equal and transparent subsidies that have an expiration date of ten years.

5. DENYING BIDDING OPPORTUNITY AND MARKET ACCESS BY CLAIMING A LACK OF NEED. Minnesota and other regulated states allow their utilities to determine the need for additional power supplies within their territories. Typically, when farm belt utilities are short they purchase power from other utilities in the form of long-term contracts (e.g., Manitoba hydropower) and on the spot market. Recently, Xcel has tried to circumvent giving opportunities to independent power producers by adding 300 to 400 megawatts of capacity to their recent repowering proposal. When there is enough need to justify the construction of a large power plant, they have overbuilt the plant and dumped their surplus power on the wholesale market; thus driving down prices for potential merchant plants while charging their customers for the capital costs. Because these states allow their utilities to meet all demand with long-term contracts, there is no remaining demand for merchant plants (i.e., unlike states with retail competition). Regulated states have allowed the utilities to set low avoided costs for cogenerators and renewable energy companies under federal PURPA law by allowing the utilities to claim that they never need additional power because they are either buying power from their friends or have a surplus themselves. Regulated states even allow their utilities to undercut prices offered by independents to large consumers for on-site generation and then charge their captive customers for the difference (i.e., flexible pricing). Under IRP and competitive bidding, regulated states continue to allow their utilities to play the same games and thus the utilities can determine when they want to block access to the generation market from independents. For example, when natural gas prices escalated in 2000, Xcel claimed they needed 3000 megawatts of base-load capacity by 2010 from large coal or nuclear plants. The Department of Commerce responded by writing legislation that would have allowed them to order the utility to build the plants without a certificate of need. After the legislation failed and gas prices receded, the utility claimed in 2001 that it needed only 300 megawatts of base-load power by 2009. They are now pursuing their own interests while jeopardizing the state's electricity reliability by blocking the competitive bidding of new power supplies. An independent agency

should determine the need for electricity supplies in regulated states with input from all interested stakeholders.

THE SOLUTIONS TO MINNESOTA'S FAILED COMPETITIVE BIDDING PROCESS

1. The state should require that an independent organization estimate the need for additional generation with advice from all interested stakeholders (i.e., like is beginning to occur at the Midwest Independent System Operator). FERC has already provided support for the concept in their Standard Market Design order, which requires ISOs to estimate the long-term planning needs of the region while considering fuel diversity (including wind and distributed generation). Utilities that project low future long-term base-load power needs are the only real obstacle to the addition of new power plants in many regulated states including Minnesota. Currently, only the individual utilities determine the need for their respective territories, which is a conflict of interest given their corporate, generation and political interests.

2. The state should require that the independent organization bid for generators for all utility territories in Minnesota. The effective implementation of competitive bidding requires an independent "referee" because it is doubtful that policymakers in Minnesota and other "regulated" states have the courage to fight the politically-powerful utilities by requiring objective bidding criteria, controlling utility favoritism and allowing all parties input on determining demand. Even more significantly, confidential control of the bidding by the utilities is likely allowing regulators to ignore even more serious favoritism that the public doesn't even know about yet.

Thank you for your consideration.

TIMOTHY J. RUDNICKI
Attorney at Law
4224 Lynn Avenue • Edina, MN 55416-5023 USA • 952-915-1505

November 19, 2002

Ken Wolf
Reliability Administrator, Energy Div.
Dept. of Commerce
85 7th Place East, Suite 500
St. Paul, MN 66101-2198

RE: Comments on Bidding Criteria for Utilities

Dear Mr. Wolf:

The enclosed written comments from Pimicikamak Cree Nation are in response to the Minnesota Department of Commerce's solicitation of input from stakeholders with an interest in the bidding process and criteria utilities use when selecting resources to meet energy demands.

Pimicikamak comments and input include sections that address: (1) issues with current criteria and framework, (2) procedural history, (3) legal framework, (3) bidding criteria recommendations and (5) conclusion.

If you have any questions, feel free to contact me. Thank you.

Very truly yours,

Timothy J. Rudnicki

Enclosure

1. ISSUES - CURRENT CRITERIA AND FRAMEWORK

Minnesota's energy future is determined, in part, by the bidding criteria utilities must use when selecting electricity suppliers to meet current and future electricity demand. This selection process must be harmonized with Minnesota's overall energy objectives and policies that direct the state to move toward a more sustainable energy future based on using truly renewable energy sources. The nature of those energy sources must be carefully understood by regulatory agencies to ensure full compliance with the letter and spirit of Minnesota statutes and regulations. Pimicikamak submits that criteria used now by the Minnesota Public Utilities Commission (PUC) to evaluate bids to supply electricity (in response to requests for proposals from utilities) are inadequate in addressing the reality of a wide range of energy sources that do and can supply Minnesota.

Pimicikamak has three major concerns with current criteria and how they are applied:

a. Most criteria currently in use apply to the more common thermal energy sources. For instance, the PUC order that established a 200-mile zone outside the Minnesota border in which environmental costs from energy sources within this zone should be considered, may well be appropriate for many air emissions. Air emissions are one major environmental cost of coal generation. However, air emissions are but one type of environmental cost of many. Air emissions have never been established by any authoritative source as always or necessarily "worse", as a type of cost, than other environmental impacts such as water pollution, soil erosion, deforestation, damage to habitat and species, and so on. The latter harms or costs are some of the types of impacts caused by most large hydro facilities. Assessing air emissions as a primary measure of environmental impacts would not, therefore, capture the impacts from large hydro.

b. The criteria now in place, to which the new law refers, creates a preference for "renewable energy" sources. However, the definition of renewable energy in Minn. Stat. 216B.2422 Subd. 1, is too broad in regard to hydro. Hydro can vary from small-scale "run of the river" (in which less water has to be stored in reservoirs, and thus, usually, less flooding is required) to mega-projects that flood thousands of square miles or divert major river systems, and rely on the captured waters in large reservoirs as the primary energy source. In other words, creating a label such as "hydro" is

akin to creating a label of "company". It does not give one any indication about size, scale, method of production, or type and level of impact on the environment and human community.

c. Some of the statutory provisions are applied to in-state generation facilities and not to out-of-state facilities from which power is imported into Minnesota. This creates an unlevel playing field, especially where the jurisdiction from which the power is coming has fewer and less stringent requirements for environmental protection and cleanup.

While Pimicikamak has a direct interest in the outcome of how such criteria are decided and applied to Manitoba Hydro, Minnesotans also have direct and relevant interests in the development and application of the criteria. Minnesotans do not live where Pimicikamak lives, and do not face the social and environmental harms Pimicikamak faces on a daily basis. However, Minnesotans do care on ethical, practical and economic levels about the same sorts of issues.

Minnesotans have demonstrated over and over again that they are concerned that when they turn a light switch on, it may be adding to the suffering of indigenous people who are at the center of the harm that is now part and parcel of the hydroelectric product from Manitoba Hydro. Minnesotans do want practical results that benefit the state, out of any resource decision. They want to see jobs and research and development where such might be possible. Minnesotans do care about the bottom line and their economy.

In Senate Testimony (February 2002) about the proposed Iron Range power plant, we heard concern about how reliance on out of state power will deter the development of in-state power sources. While many people want the lowest possible monthly electricity bills, it seems that Minnesotans recognize that an investment in securing more in-state electricity is a better energy option.

Electricity is bundled with generation and transmission, and the impacts associated with each of those factors. The definition of the impacts "caused" by a contract or bid must reflect reality. Those definitions must include all impacts that are likely to continue under the contract, even if they originally resulted from construction of a hydroelectric system many years ago. Causation cannot be pinned to one moment in time. Where a hydro project continues to operate, and environmental impacts are growing unabated, causation is an ongoing and present phenomenon.

Electricity generated by a massive hydroelectric system cannot be unbundled in fact or in law, and the integrated resource planning process recognizes this.

Pimicikamak proposes its criteria with all of the above factors in mind. Pimicikamak

seeks to work with, and not against, Minnesota, for a better electricity future.

2. PROCEDURAL HISTORY

The procedural history of the Competitive Bidding Criteria for Utilities law (Minnesota Session Law - 2002, Chapter 380) is the outcome of input from various interests and concerns that can be instructive for the Department of Commerce. These concerns which went beyond matters involving just the proposed Iron Range power plant, while different, reveal that there was some consensus that criteria used by the PUC now to evaluate bids to supply electricity (in response to requests for proposals from utilities) are not adequate.

A more complete examination of the legislative history surrounding bidding criteria, as well as the larger policy debate, reveal that criteria were not complete enough (useful criteria for assessing certain resources were absent), and as such might inadvertently favor those resources/bids for which good and useful criteria do not exist (that is, certain bids can slip through analytical and regulatory gaps). Thus, attempts were made by several interested parties to strengthen these criteria so as to "create a more level playing field" by ensuring adequate regulatory criteria are established.

It may be accurate to suggest that some were attempting to tilt the field in their favor, but if one were to carefully analyze existing criteria against the various types of resources that supply electricity to Minnesota, one would readily see that the field is already tilted and that despite intentions in the debate, new criteria more reflective of the diversity of resources are called for.

Senate File 3431, a Jobs & Economic Development bill, included language aimed at adding to the competitive bidding criteria found in the resource planning and renewable energy statute. Article 9 of S3431-2, titled "Energy Acquisition Criteria," referred to the competitive bidding process and defined it as "the process by which a request for proposals is administered and evaluated."

Among the four sections in S3431-2 was one that would have required the PUC to "investigate and determine, by order, the appropriate criteria to be used in selecting proposals responding to a request for proposals."

Section 3 of the bill included a provision that expanded the criteria for appropriateness by stating it "must include, without limitation, existing criteria used by the commission" (referring to Minn. Stat. 216B.2422) along with nine other criteria. The additional criteria included reduction of certain air emissions, use of alternative fuels and promotion of distributed generation.

The criteria in Minn. Stat. 216B. 2422 govern various aspects of a utility's resource plan filing and approval process and are limited to those utilities that are "larger" (they meet baseline criteria for generating capability and number of customers).

Provisions in S3431-2 could have been interpreted so as to make electricity from a project proposed by Excelsior Energy, Inc a preferred source for a utility. The Excelsior proposal called for building a 2,000 megawatt coal gasification plant in northeastern Minnesota which is in an area that is somewhat economically depressed. Hence one of several possible reasons for finding the utility and electricity issues in the "jobs" bill.

The Conference Committee, in the final days of the 2002 Minnesota Legislative Session, was faced with a difficult task. Conferees had to advance a jobs bill and deal with a set of complex energy issues contained in the bill. Instead of trying to reconcile the bill's inherent contradiction in directing the PUC to determine appropriate criteria while at the same time defining those criteria, the Conferees agreed to the language that became law and now directs the Commissioner of the Minnesota Department of Commerce to solicit input about bidding criteria from citizens and stakeholders. The bill was signed into law by the Governor in May 2002.

Language offered to amend the unwieldy Senate bill, including some of which was contained in the final bill form, reflect the concerns about significant gaps in the bidding criteria when applied to specific types of energy resources including resources such as hydroelectricity.

3. LEGAL FRAMEWORK

The new law references current law (Minn. Stat. 216B.2422), and thus they must be read together. A recital of only those statutory provisions most relevant to the new law follows. In addition to the statutes, there are regulations that stipulate what is required in a resource plan and how the PUC is to assess various criteria. See, for example, Minn. R. 7843.0400 (referring to resource options and requiring supporting information about factors that include socioeconomic and environmental effects). These, as well as relevant PUC orders, must all be taken together to determine the legal framework, and any gaps or weaknesses that must be addressed.

a. *The New Law -- Competitive Bidding for Utilities*

Section 1. [Identification and Evaluation; Competitive Bidding Criteria.] The commissioner of commerce shall identify and evaluate various criteria that could be used by a utility in evaluating and selecting bids submitted in a competitive bidding process established under Minnesota Statutes, section 216B.2422, subdivision 5. To assist in the evaluation, the commissioner shall convene a series of forums at which input from

citizens and stakeholders can be solicited. The commissioner shall present this evaluation in a report to the house and senate policy and finance committees with jurisdiction over energy regulatory issues and agencies by January 15, 2003. 2002 Minnesota Laws 380. (S.F. No. 3431, Article 7).

b. ***The Existing Law*** (Minn. Stat. 216B.2422) – ***Resource planning; renewable energy***

Subd. 1. Definitions.

(b) "Utility" means an entity with the capability of generating 100,000 kilowatts or more of electric power and serving, either directly or indirectly, the needs of 10,000 retail customers in Minnesota. Utility does not include federal power agencies.

(c) "Renewable energy" means electricity generated through use of any of the following resources:
(1) wind;
(2) solar;
(3) geothermal;
(4) hydro;
(5) trees or other vegetation; or
(6) landfill gas.

(d) "Resource plan" means a set of resource options that a utility could use to meet the service needs of its customers over a forecast period, including an explanation of the supply and demand circumstances under which, and the extent to which, each resource option would be used to meet those service needs. These resource options include using, refurbishing, and constructing utility plant and equipment, buying power generated by other entities, controlling customer loads, and implementing customer energy conservation.

Subd. 2. Resource plan filing and approval.

A utility shall file a resource plan with the commission periodically in accordance with rules adopted by the commission. The commission shall approve, reject, or modify the plan of a public utility, as defined in section 216B.02, subdivision 4, consistent with the public interest. In the resource plan proceedings of all other utilities, the commission's order shall be advisory and the order's findings and conclusions shall constitute prima facie evidence which may be rebutted by substantial evidence in all other

proceedings. With respect to utilities other than those defined in section 216B.02, subdivision 4, the commission shall consider the filing requirements and decisions in any comparable proceedings in another jurisdiction. As a part of its resource plan filing, a utility shall include the least cost plan for meeting 50 and 75 percent of all new and refurbished capacity needs through a combination of conservation and renewable energy resources.

Subd. 3. Environmental costs.

(a) The commission shall, to the extent practicable, quantify and establish a range of environmental costs associated with each method of electricity generation. A utility shall use the values established by the commission in conjunction with other external factors, including socioeconomic costs, when evaluating and selecting resource options in all proceedings before the commission, including resource plan and certificate of need proceedings.

Note: The PUC quantified and established a range of environmental costs associated with electricity generated by coal in its Order Issued January 3, 1997, Docket No. E-999/CI-93-583. This Order related to air emissions generated within 200 miles of the Minnesota border, and does not quantify environmental costs associated with hydroelectric generation. While the PUC may have found such an exercise is not "practicable" with respect to hydroelectric systems, or that it did not have a statutory mandate to do so, this does not mean that environmental and socioeconomic impacts from hydro should not be considered. To the contrary, these factors must be considered to create a more complete and accurate assessment of bids. Pimicikamak submits that to date such impacts have not been identified, quantified and applied in the analysis of bids to supply electricity. Hence the need for new criteria.

Subd. 4. Preference for renewable energy facility.

The commission shall not approve a new or refurbished nonrenewable energy facility in an integrated resource plan or a certificate of need, pursuant to section 216B.243, nor shall the commission allow rate recovery pursuant to section 216B.16 for such a nonrenewable energy facility, unless the utility has demonstrated that a renewable energy facility is not in the public interest.

Note: the definition for "renewable energy" here is the same as in Subdivision 1 above. Thus, hydro of any size and type is defined as renewable, which Pimicikamak submits the facts would determine is incorrect. But the renewable energy objectives for 2005

and beyond, limits eligible energy technology including certain hydroelectricity. In the case of hydroelectricity, only systems with a capacity less than 60 megawatts, Minn. Stat. 216B.1691, subd. 1(1), are eligible. Thus, certain hydroelectricity now being sold in Minnesota would not be eligible on the basis of the renewable energy objectives. Failure of the PUC to consider the facts surrounding large hydroelectric systems, and in light of Minnesota's renewable energy objectives that clearly distinguish between renewable and nonrenewable energy sources, gives an unfair and ungrounded advantage to large harmful hydroelectric systems.

Further, even if large hydro were defined as nonrenewable, this provision gives preference to renewable energy over nonrenewable energy facilities to be constructed or refurbished **in state**. It does not give such preference over nonrenewable energy facilities to be constructed or refurbished **out of state**, but from which electricity is purchased by and used in Minnesota.

The legislative intent for in state energy is expressed in the charge given to the Minnesota Legislative Electric Energy Task Force (LEETF). See Minn. Stat. 216C.051, subd. 5(c) (directing the LEETF to, in its 1996 report to the legislature about electric energy policy, provide specific recommendations for legislative action based on using to the maximum extent possible energy resources available or producible within Minnesota).

Gaps in the current bid criteria create an unfair advantage for some out of state facilities. Criteria that adequately assessed impacts from large hydro, and that were applied equally to in-state and out of state hydro facilities, would rectify this.

> *Subd. 5. Bidding; exemption from certificate of need proceeding.*
>
> A utility may select resources to meet its projected energy demand through a bidding process approved or established by the commission. A utility shall use the environmental cost estimates determined under subdivision 3 in evaluating bids submitted in a process established under this subdivision.

Note: The requirement for a utility to use the environmental cost estimates as established under Subdivision 3, is not exhaustive. In other words, this is not all a utility should use when evaluating bids. Other statutory provisions and regulations (see, for example, Minn. Stat. 216B.2422, subd. 3(a) (referring to environmental costs and other external factors including socioeconomic costs); Minn. Stat. 216C.051, subd. 7(c) (charging the LEETF to undertake its responsibilities and ranking energy sources based on minimizing long-term negative environmental, social, and economic burdens imposed by an energy source); Minn. R. 7855.0430 (specifying environmental

information required for applications for certificates of need for fuel conversion and other facilities and requiring data about natural and cultural resources that would be affected); and Minn. R. 7843.0400, Subp. 3.A. (specifying elements of resource plan filing requirements and supporting information that must include socioeconomic and environmental effects)) stipulate or give guidance suggesting that environmental, socioeconomic and other criteria must be used. However, as stated above, criteria to evaluate hydroelectric bids are inadequate and must be established.

c. ***The Existing Law: Minn. Stat. 216B.1691***

Subd. 1. Definitions.

(a) "Eligible energy technology" means an energy technology that:

(1) generates electricity from the following renewable energy sources: solar, wind, hydroelectric with a capacity of less than 60 megawatts, or biomass; and

(2) was not mandated by state law or commission order enacted or issued prior to August 1, 2001.

(b) "Electric utility" means a public utility providing electric service, a generation and transmission cooperative electric association, or a municipal power agency.

Subd. 2. Eligible energy objectives.

(a) Each electric utility shall make a good faith effort to generate or procure sufficient electricity generated by an eligible energy technology to provide its retail consumers, or the retail members of a distribution utility to which the electric utility provides wholesale electric service, so that:

(1) commencing in 2005, at least one percent of the electric energy provided to those retail customers is generated by eligible energy technologies;

(2) the amount provided under clause (1) is increased by one percent each year until 2015;

(3) ten percent of the electric energy provided to retail customers in Minnesota is generated by eligible energy technologies; and

(4) of the eligible energy technology generation required under clauses (1) and (2), at least 0.5 percent of the energy must be generated by biomass energy technologies by 2010 and one percent by 2015.

Note: In this statute, the definition of "renewable hydro" is smaller scale and does not encompass all hydro, as could the definition in Minn. Stat. 216B.2422.

d. The Existing Regulations: 7843.400, 7843.0500

Resource Plan Supporting information. A utility shall include in its resource plan filing information supporting selection of the proposed resource plan.

A. When a utility's existing resources are inadequate to meet the projected level of service needs, the supporting information must contain a complete list of resource options considered for addition to the existing resources. At a minimum, the list must include new generating facilities of various types and sizes and with various fuel types, cogeneration, new transmission facilities of various types and sizes, upgrading of existing generation and transmission equipment, life extensions of existing generation and transmission equipment, load-control equipment, utility-sponsored conservation programs, purchases from nonutilities, and purchases from other utilities. The utility may seek additional input from the commission regarding the resource options to be included in the list. For a resource option that could meet a significant part of the need identified by the forecast, the supporting information must include a general evaluation of the option, including its availability, reliability, cost, socioeconomic effects, and environmental effects. Minn. R. 7843.0400, Subp. 3.A.

Commission Review of Resource Plans

3. **Factors to consider.** In issuing its findings of fact and conclusions, the commission shall consider the characteristics of the available resource options and of the proposed plan as a whole. Resource options and resource plans must be evaluated on their ability to: A. maintain or improve the adequacy and reliability of utility service; B. keep the customers' bills and the utility's rates as low as practicable, given regulatory and other constraints; C. minimize adverse socioeconomic effects and adverse effects upon the environment; D. enhance the utility's ability to respond to changes in the financial, social, and technological factors affecting its operations; and E. limit the risk of adverse effects on the utility and its customers from financial, social, and technological factors that the utility cannot control. Minn. R. 7843.0500, Subp. 3.

4. BIDDING CRITERIA - RECOMMENDATIONS

All criteria should be mandatory (that is, the PUC cannot pick and choose among them). Pimicikamak proposes the following criteria to "fill the gaps" in regard to large hydroelectricity and all electricity generated out of state and imported into Minnesota:

a. All criteria are to be applied equally to imported and in-state generated electricity. Impacts associated with imported electricity are to be subjected to the same "tests" under Minnesota law, especially as this is the only way to ensure a level and fair assessment and result given that other jurisdictions may have more lax standards and regulatory regimes than Minnesota (especially in regard to environmental and socioeconomic impacts).

b. Criteria that measure or take account of hydroelectric impacts must be the criteria that the PUC considers in bids and resource plans that propose supply from such a resource.

i. These criteria are, in regard to existing hydro development to supply a Minnesota contract: provision by the supplier/bidder of a detailed accounting as to how environmental and socioeconomic impacts associated with the hydro project from which the electricity is likely to be supplied, have been or will in fact be mitigated, remedied or otherwise addressed in a timely manner. Such an accounting must address all impacts (beyond those that are minimal), including but not limited to: shoreline erosion, debris accumulation, water pollution, harm to forests, other habitats, and species, harm to indigenous peoples' ways of life, and extent and nature of compliance with applicable laws and treaties.

ii. These criteria are, in regard to proposed new hydro development that is likely to supply a Minnesota contract: factual evidence from the supplier/bidder that all possible environmental and socioeconomic impacts (beyond those that are minimal) likely to be associated with the new development and any cumulative effects of the new development in combination with those of the existing project, will in fact be prevented or mitigated to the maximum possible extent, and that all indigenous Nations or Peoples

who have legal rights to bona fide and meaningful consultation in regard to the proposed new development, have had such rights fully honored.

c. Preference shall continue to be given to generation and use of renewable sources, but these should be defined throughout the legal framework to include only "small-scale hydro" (60 MW or less, as defined in Minn. Stat. 216B.1691).

If all is well and fine with imported large hydroelectricity, then the proposed criteria will not put anyone at a disadvantage; however, if all is not well and fine, then without such criteria suppliers of large hydro, especially from out of state, receive a distinct and unfair advantage over many other electricity suppliers. As long as large hydroelectricity is defined as renewable and not properly assessed for all the impacts it causes, and as long as it continues to be subsidized and sold at "cheap" prices (perhaps in part because it has not been held to account for and address all the harms it causes), it will put more relatively expensive renewable energy resources at a disadvantage. This gap in logic and application must be filled with adequate, fair criteria.

Pimicikamak Chief Miswagon recently stated, "This [Manitoba Hydro] Project is breaking our hearts." Where is the harm in implementing criteria that may help mend some of what is broken, and may help renewable energy suppliers in the process?

5. Conclusion

The recommended criteria, outlined above, help to fill gaps in the regulatory process and can enable the Minnesota Department of Commerce and the Minnesota Public Utilities Commission to better serve Minnesotans. Within the Dept. of Commerce, the Energy Division is charged with ensuring reliable, affordable and environmentally sound energy supplies for Minnesota's consumers. It is the responsibility of the Minnesota Public Utilities Commission to ensure that vendors of electricity, for instance, provide safe, adequate and reliable service at fair, reasonable rates.

Current and future generations of Minnesotans will be deprived of truly reliable, safe, affordable and environmentally sound energy supplies unless the Department of Commerce and the Public Utilities Commission use the bidding criteria as outlined and recommended in the comments above. These criteria fill the regulatory gaps that have thus far allowed, for example, large hydroelectric systems that subsidize electricity to gain an unfair advantage over other Minnesota energy alternatives. The notion that large hydroelectric systems are environmentally benign because they rely on water from the hydrological cycle, or that they are renewable and clean is, at best, ill informed. Nevertheless, failure to account for the social and environmental costs

associated with electricity from large hydroelectric systems puts other locally or regionally produced and sustainable energy resources at a disadvantage. The recommended criteria can help to fill regulatory and factual gaps so agencies can better ensure a truly sound energy supply for Minnesotans.

Current regulatory gaps fail to address a range of issues associated with large scale hydroelectric systems that cause tangible harm to people and ecosystems and that can threaten Minnesota's energy future. Reliance on a vast hydroelectric system for Minnesota's electricity needs, a system that is subject to the vagaries of climate change, political disputes and economic miscalculations, is dangerous and regressive. Minnesota can attain a more sustainable electricity energy future if its supplies can pass muster with the established and recommended bidding criteria.

The fair application of these criteria can improve the hydroelectric system that now supplies Minnesotans with electricity and it can pave the way for a more sustainable future. A future expressed, in part, by Minnesota's renewable energy objectives and the people's longstanding commitment to social and environmental justice. The application of the recommended criteria can assist the Department of Commerce and the Public Utilities Commission in better serving Minnesotans.

Comments for public forum of Minnesota Department of Commerce
November 19, 2002

by Diane J. Peterson
White Bear Lake, Minnesota
birch7@attbi.com
I am a member of Minnesota Witness for Environmental Justice.

Subject: The criteria and process our state government should use in making decisions on electricity providers such as Manitoba Hydro.

The highest preference for new sources for Minnesota's electric needs should be bids by firms which can most safely and quickly implement electric conservation/efficiency measures. I recommend that the Minnesota Department of Commerce's Linda Taylor be appropriated time, money, and personnel to produce a plan to swiftly implement a process whereby Minnesota firms may put electric efficiency programs into operation on our current electricity providers and on the state's biggest electricity consumers. I recommend Ms. Taylor because she has submitted a report to the state that identifies electric efficiency as the source which is Minnesota's lowest cost and most immediately implementable source. It is foolish to plan for bidders to wade through the long time required in obtaining siting permits when a swifter and less polluting source is at hand to us this very day.

In current statute, hydro power is listed as a "renewable" source of electricity. It is NOT renewable--large-scale projects, such as Manitoba Hydro, DESTROY the environment. We need to eliminate large-scale hydro as an acceptable bidding criteria so that such a supplier has no chance of qualifying. We especially want to avoid hydro power which manipulates river flow. Small hydro, 60 megawatts or less, which takes power only from "run of the river" (emphasis on "only") should ever be allowed to qualify. Manitoba Hydro is NOT "run of the river" and absolutely does not qualify.

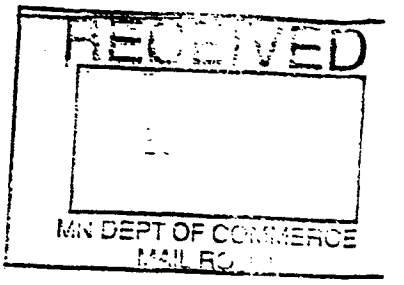
is the only type of hydro power which

We need strong Minnesota controls on electric suppliers, and the way to get that is giving highest preferences to electricity companies that are owned by Minnesotans, which generate electricity in our borders, and employ Minnesotans. This is also good for our state's economy. We shouldn't export our electricity dollars by buying from Canada or other states when we could keep the money circulating here under our own watchful eyes.

I propose that the highest preference be given to renewable electric providers which are situated on Minnesota Indian reservations, with added preference given to those sources on reservations which are owned and operated by Minnesota Indian residents. The Prairie Island Indian reservation is presently suffering from the imposition of a hazardous electric power provider, and deserves the highest priority for the siting of a renewable electric power provider, done so that the attendant economic development benefits go first to their community.

The public interest criterion should be defined, as currently it is not. Public interest needs to be defined so it advocates for the lowest-polluting, least environmentally damaging electricity sources. We should factor in human rights compliance, and workplace conditions for workers. We should not look only at short-term dollar cost in choosing which is the best supplier. Manitoba Hydro sells electricity the most cheaply to us, but the REAL cost is infinitely higher than what we are currently paying in Minnesota for that so-called "cheap" electricity.

Laura and John Reinhardt
3552 26th Avenue South
Minneapolis, MN 55406
612.724.0740



December 4, 2002

BY EMAIL & U.S. MAIL

Ken Wolf, Reliability Administrator
Minnesota Department of Commerce
85 Seventh Place East, Suite 500
St. Paul, MN 55101

Recommended Criteria for Competitive Bidding Process

- The first criteria must be selection of resources that are designed to meet Minnesota's energy needs. This concept is specifically mandated in Minnesota's new energy legislation: § 216B.243, subd. 3(3).
  - State energy regulators must separate proposed energy facilities designed to serve state need from those designed to provide bulk power sales into the wholesale marketplace.
    - Many recent proposals (Southwest Minnesota transmission, Chisago County transmission, Arrowhead transmission, Northeast Minnesota coal gasification power plant) were not proposed to serve specific energy load/demand in our state, but rather to serve competitive wholesale power markets.
    - In her Findings of Fact in the Southwest Minnesota transmission proceeding (11/8/02), ALJ Heydinger correctly notes that "Because of the low cost of energy generated in the Midwest, the region increasingly exports electricity to other regions." (Finding 117)
  - Energy facilities that are proposed for export sales cannot be paid for by Minnesota's ratepayers and cannot obtain the public service benefit of eminent domain authority to obtain necessary land resources. Market projects must provide market solutions to resource needs.
    - It is imperative that state need is not commingled with market need in bidding procedures or in certificate of need proceedings.
    - In the written materials provided for the DOC's recent Energy Forum #3: Energy Infrastructure (10/28/02), the Department acknowledges that

"Minnesota is a likely candidate to be a passthrough state" to transport new energy resources out of the Dakotas and Manitoba. This issue is central and timely, yet the DOC failed to address it at the infrastructure forum.

- If Minnesota is a passthrough state, what incentives are offered for the use of our land resources and how will the pollution implications be assessed/compensated?

– Minnesota needs to understand our state's true energy picture, including energy import/export numbers, before any reasonable decisions regarding need can possibly be made.

– The exact location for electric load must be determined, rather than focusing on a utility's entire electrical "system."

- Specific information regarding load growth locations will enable energy planners to consider appropriate alternatives such as distributed generation.

- Distributed generation located near load cannot be considered as an alternative until the actual load center is known.

- This is also true for demand-side management. Regulators must know the location and amount of load to accurately assess methods of reducing power needs at peak times at the proper locations.

• The second criteria is cost. Minnesota's certificate of need criteria requires an analysis of "the cost of the proposed facility and the cost of energy to be supplied by the proposed facility" as compared to the cost of reasonable alternatives. (Minn. R. 7849.0120(B)(2)).

– For example, coal generated electricity from the lignite fields in North Dakota may seem to offer the lowest cost until transmission requirements and environmental impacts are factored into the analysis.

– Similarly, wind generation located in the windiest areas may seem more cost competitive than wind generation located near the end user, because the end-use location may result in a lower efficiency factor for turning wind into energy. However, our state's windiest resources are located far from load centers, so that when the cost of transmission is factored in (including electrical line losses associated with long-distance transmission), the less efficient sites may ultimately become more cost effective.

- DOC expert witness Steve Rakow underscored this point in his testimony in Xcel's Southwest Minnesota transmission docket: "I was there, I listened, but it was more important for me to clarify that just because you

have a lot of wind in a particular area, that's not what's important. What is important is the cost of getting that wind out relative to the cost of moving wind someplace else. ... Show me a cost map, not a wind speed map." (Unfortunately, the cost of getting the wind out of Buffalo Ridge never was quantified in the record and is still unknown.)

- Further, wind energy's intermittency problems (30% average availability) must be considered as an important cost factor. If wind is not available, then something else must take up the slack. That could ultimately require building significantly more energy facilities than are actually needed.

– One of the most important factors to consider is the cost savings available by means of energy efficiency equipment and demand-side management tools. The National Association of Regulatory Utility Commissioners issued a report entitled "Efficient Reliability: The Critical Role of Demand-Side Resources in Power Systems and Markets" (June 2001). This report contains significant findings:

- **40-50% of expected load growth over the next 20 years can be met through end-use efficiency and load management, cost-effectively and reliably. (!!)**

- Demand-side resources can lighten the load at the end of the supply/delivery chain, and thus simultaneously enhance the reliability of each link in the entire chain.

- Enhancing reliability through demand-side measures can lower the state's (and nation's) electric bills.

- Many efficiency measures are simply less expensive than the costs of generation, delivery and resources that they displace.

- Demand-side measures also lower the environmental footprint of the electric industry, <u>one of the most significant sources of pollution in modern society</u>.

- In a competitive generation market, generators have no financial incentive to promote either efficiency or load management, and they profit handsomely from high peak prices.

    - State regulators must undertake their regulatory responsibilities and stop leaving all decisions in the hands of for-profit utility companies.

- Wholesale markets should permit (and encourage) demand-side resources to bid their services.

- State regulators must independently examine unsubstantiated cost statements made by energy companies, which may be self-serving, when the company is seeking regulatory approval for a particular proposal.

  - For example, applicants for a 240-mile 345 kV transmission line (known as the "Arrowhead Line") represented to regulators that the cost would be $165 million. However, only one year later the cost has ballooned to $396 million – a 240% increase!

  - Another example is Xcel's Southwest Minnesota transmission plan, where company-reported costs do not include land acquisition, environmental mitigation measures, or any other non-equipment items.

- There is no possible way to compare competitive bids without full and accurate cost data, which will not be produced by project proposers seeking favor for their own plans.

- The DOC's presentation indicates that socioeconomic costs and benefits are not now measured in the competitive bidding process. This must be remedied.

  - Socioeconomic considerations are already a requirement in Minnesota's certificate of need rules (7849.0120(B)(3)) and must be taken into account in the bidding process.

  - Socioeconomic considerations are also required in the rules which govern environmental review of proposed projects.

- The third criteria is environmental degradation.

  - The DOC's presentation on competitive bidding discusses environmental cost values.

    - This concept must be expanded to include costs relating to health hazards associated with burning fossil fuels, as well as the potential cost impacts on Minnesota's sport fishing and tourism industries which suffer from the serious impacts of mercury released by fossil fuel combustion.

    - An arbitrary 200 mile cut-off for considering pollution impacts is unsupportable by science. It is an established fact that mercury and other airborne pollutants travel long distances and cause great harm. Under a 200 mile pollution cut-off, impacts from North Dakota's coal combustion would have zero environmental or cost consideration in our state. This must be corrected in order to establish a level bidding field.

    - Another example is nuclear waste. This incredibly serious problem was ignored when nuclear power was approved by our state. Competitive bids must take into account all phases of power production, including waste storage or disposal, to determine the true cost and environmental impacts.

- Minnesota must do its part to foster emerging renewable technologies that may not be immediately cost-competitive, but may significantly reduce the impacts of energy consumption over the long-term (e.g., hydrogen technologies).

Thank you for this opportunity to comment on competitive bidding procedures that are under consideration in our state. Minnesota must carefully guard its human and natural resources when it considers how to plan for our state's future energy needs. Minnesota must be particularly careful and vigilant that large energy facilities do not proliferate in our state that are not needed. Right now, this is the larger challenge.

Sincerely,

Laura A. Reinhardt

John C. Reinhardt

Ken Wolf

From: John Jaffray [jjaffray@prairiegen.com]
Sent: Wednesday, November 20, 2002 8:03 AM
To: Larry Shedin; Ken.Wolf@state.mn.us
Subject: Minn. Dept. of Commerce Stakeholder Forums

Ken:

Here are Prairie Gen's written comments.

We generally do not think that the RFP practice drives value to consumers.

To the extent there has to be RFP's, we would prefer that all utilities in the state be held to the same standard, e.g all load serving entities with over 10,000 customers, etc.

We believe RFP's should be COMPLETELY open, and ALL bids should be disclosed as should the purchases, period. The RFP assumes a certain level of fairness through the competition. Although it (a partiular RFP) may actually BE fair, the RFP needs to be transparent. Fairness, in this case, is what the PROCESS seeks to provide to the BIDDERS. Without transparency, we (the BIDDERS) have no way to know, objectively, that the process is fair.

For example, a RFP should require purchases -- otherwise the "Requestor" (the utility doing the RFP), can be seen to be abusing the market by obtaining all the market information, ultimately saying WITHIN THEIR OWN ORGANIZATION, that the offers we not good enough, for any number of reasons, and then keeping all the market information for their own purposes.

The current process does not favor Minnesota companies. Most of the winning bidders are typically from oher regions and states, and this does nothing to serve Minnesota's intellectual capital. Financing, project management, profits, all accrue to these non-Minnesota corporations. We think a minimum percentage should come from Minnesota companies, or that Minnesota companies should get some explicit advantages, and not just a "nod" to the benefits of Minnesota companies.

Using Minnesota companies, and perhaps having smaller plants also have incentives, would naturally use our local grid more efficiently, which is where we think there is the most excess grid capacity today, without building additional lines.

Thank you.

John S. Jaffray

Prairie Gen Power
80 So. 8th St.
Suite 4040
Minneapolis, MN 55402
612-334-9643
612-339-8240 (fax)

jjaffray@prairiegen.com

Ken Wolf

From: Carol Orban [c.orban@thor.vr.cc.mn.us]
Sent: Tuesday, November 19, 2002 9:43 AM
To: Ken.Wolf@state.mn.us
Subject: re: Public Forum on utlities regulation

Dear Mr. Wolf,
Since I live in Ely, I can't be at the meeting at St. Thomas tonight. However, I want to let you know that as a buyer of electricity in Minnesota, I think any supplier of electricity to Minnesota, whether from another state or from Canada, should be held to environmental regulations comparable to those Minn. utilities are held to. I also think that all suppliers of electricity should be required to provide our state with detailed analyses of their impacts on social and environmental systems.

Specifically, I know that we buy a large amount of electricity from Manitoba Hydro which has devastated large portions of northern Manitoba and wants to multiply its impacts by building several new dam projects. Manitoba Hydro has not been held to its promises in the past. How can we look the other way when Canada's regulations allow this kind of activity in the name of profit?

I want to see much more support for renewable energy sources. My understanding is that SMALL hydroelectric systems, under 60 megawatts, do not have nearly the impact of these mammoth projects. Can't we have more of those instead?

Sincerely,
Carol Orban

MISSOURI RIVER ENERGY SERVICES℠

3005 West Russell
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Sioux Falls, SD 57118-4610
Telephone: 605.338.4042
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December 6, 2002

VIA E-MAIL AND US MAIL

Mr. Ken Wolf
Reliability Administrator
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101-2198

RE: Competitive bidding law

Dear Ken:

Missouri River Energy Services® (MRES®) would like to take this opportunity to share its written comments with the Department of Commerce (the Department) on the recent citizen and stakeholder forum meetings regarding the new competitive bidding law and its role in encouraging resource choices that minimize the environmental impacts of generating electricity. We have had representatives present at some of the meetings and would like to take this occasion to express our perspective on the competitive bidding requirements.

The measure adopted in the 2002 legislative session requires that the integrated resource planning process take into consideration additional criteria that evaluate both environmental and practical impacts for future power supply resources. To the extent that the changes represent a balanced approach to resource planning decisions, allowing consideration of both environmental and economic criteria, we believe the measure is an improvement.

As you know, MRES participates in the resource planning process before the Public Utilities Commission as a non-jurisdictional utility. See Minn. Stat. Ann. 216B.2422 and 216B.02, subd. 4. MRES recognizes the importance of maintaining environmental integrity. MRES and its members have a long history of providing non-profit public power while fostering environmental stewardship, through the use of hydropower, by scrubbing our coal-fired plant, Laramie River Station, and other measures.

Our commitment to cost-effective, environmentally responsible electricity is an integral part of our resource mix and our future resource planning. While we welcome the institutionalization of more balance in evaluating resource plans, we also remind the Department that the resource planning process is an advisory one as it relates to MRES, a municipal power agency. As such, the use of such criteria and its applicability to our resource plans is voluntary.

I thank you for the opportunity to comment, and look forward to working with you further in the future.

Sincerely,

Mrg Simon
Manager, State Governmental Relations

Ken Wolf

From: Silverthorn, Tim A. [TASILVERTHOR@stthomas.edu]

Sent: Friday, December 06, 2002 5:18 PM

To: 'ken.wolf@state.mn.us'

Subject: comments submitted on Chapter 380 - S.F. No. 3431

I would like to urge the Minnesota Public Utilities Commission to adopt competitive bidding process rules which do not define large hydroelectric projects as "green" energy. In fact, large hydro projects such as those operated in northern Manitoba should be disadvantaged on the basis of several factors:

1. The operators of Manitoba's mega-hydro dams have also demonstrated duplicity in their business dealings. Manitoba Hydro likes to point out that four out of Manitoba's five First Nations have settled with Manitoba Hydro. I've heard leaders from two of these First Nations speak locally. Sadly, they are in the awkward position of lobbying for Manitoba Hydro because their settlements grant them a stake in future, not current, hydro projects. They've been told that a contract to sell electricity to Minnesota is critical to any future hydro projects. This is a cynical ploy to divide and conquer the First Nations. Manitoba Hydro tells us out of the other side of their mouths that if Minnesota doesn't buy this energy, somebody else will.* So, who are they lying to - us or the Cree?

2. Mega-hydro projects in Northern Manitoba have adversely affected native Cree indians living in the dams' resource areas. Winter flooding makes overland travel difficult and travel over ice treacherous. The Cree indians have borne the brunt of the environmental damage caused to their lands by the mega-dams but have not shared fairly in the profits from the dams.

3. Mega-hydro projects have profound negative impacts on natural ecosystems. The projects in Northern Manitoba poison lakes and rivers with large quantities of silt and mercury, as well as flooding an area of forest nearly the size of Lake Erie in total. The reversal of seasonal river flows starves the ecosystem of water during the warm months, when it is needed, and tears apart shorelines during the winter, when shorelines are at their weakest. The enormous resevoirs needed to power Manitoba's mega-hydro projects also produce a large quantity of CO2 and Methane from rotting submerged vegetation. Methane in particular is a potent greenhouse gas.

4. Heavily subsidized mega-hydro projects disadvantage local energy producers. It isn't fair to make wind, biomass and other producers compete with artifically low-priced energy, subsidized by ruined watersheds and Canadian First Nations which do not share fairly in the revenue from these projects.

The state should abandon it's past position that it is none of our business how our power is generated. That's like saying we lack jurisdiction to judge goods produced abroad with child labor. We must take responsibility for the manner in which our power is generated, regardless of the location where it is produced.

footnote:

*"If Xcel wasn't purchasing it, there are other buyers in the region." Glenn Schneider, Manitoba Hydro division manager of public affairs. Pioneer Press 12-2-2002

Warm Regards,

Tim Silverthorn
1214 Victoria St. N.
St. Paul, MN 55117
(651) 962-4336

Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 5101-2147

Minnesota Public Utilities Commission: December 6, 2002

Xcel Energy has recently filed a 500 megawatt contract with Manitoba Hydro with the Minnesota Public Utilities Commission. Minnesota should not accept Manitoba Hydro's electricity until the Minnesota PUC has irrefutable proof that Manitoba's hydro-electric operations have been greatly reduced from their present levels.

Manitoba Hydro has a history of incredible injustice. The company thrust a massive, industrial type hydroelectric system up on Pimicikamak that has caused irreparable harm to people and ecosystems in the boreal forest. In November of 2001, an Interchurch Inquiry into Northern Hydro Development concluded:

"The untallied cost of electricity production in northern Manitoba has been two decades of extensive environmental destruction, violation of human rights, and even the loss of life. For Manitoba Hydro, the governments, and consumers the Project is a success, but in northern Manitoba it constitutes an ongoing ecological, social, and moral catastrophe. These imbalances must be redressed... The ultimate responsibility for ensuring fairness lies with all of us..." – Let Justice Flow, November 2001

I urge the PUC to consider the facts. Minnesota should not accept Manitoba Hydro's electricity until the treaty compensations and obligations to benefit the Pimicikamak Cree Nation, spelled out in Canada's Northern Flood Agreement of 1977, are being carried out to the satisfaction of Pimicikamak Cree Nation. Otherwise, Xcel along with Manitoba Hyrdro, is vulnerable to the liabilities of a violation of human rights.

As a concerned citizen, I also urge the PUC to apply the Minnesota environmental law equally to all imported and in-state generated electricity and to require the supplier of electricity to provide a detailed accounting of environmental and social impacts from any current or proposed hydroelectric project. We should ultimately give high preference to generation of electricity from renewable energy sources, which might include small hydroelectric systems under 60 megawatts.

Thank you,

Winona LaDuke

Ken Wolf

From: erin stojan [estojan01@yahoo.com]
Sent: Friday, December 06, 2002 4:14 PM
To: Ken.Wolf@state.mn.us
Subject: Electric Utility Purchase Decisions Criteria

Dear Mr. Wolf:

I understand that the Department of Commerce has been directed by the State Legislature to gather comments regarding criteria that utilities should use in making power purchase decisions. Please consider my comments as a concerned citizen among those you gather for the Legislature.

All Minnesota's power purchase decisions need to include a criteria that requires consideration of the socioeconomic and environmental impact of electricity generation. These costs are often externalized, and become the burden of the public. Thus, Minnesota taxpayers pay for the upper respiratory illness and damage to lakes from mercury resulting from coal plants; taxpayers around the country, including Minnesotans, pay to subsidize insurance for nuclear power plants like Prairie Island; and Minnesotans are asked to subsidize so-called "clean" energy from Manitoba Hydro that blatently disregards human rights and the environment. Artificially cheap energy displaces the natural development of genuinely sustainable, economically-viable technologies such as wind, solar, and biomass in Minnesota, that are important not only for the advantages that they offer environmentally and for human rights, but also in the opportunities they offer farmers facing sluggish economies in Southwest Minnesota.

The state needs criteria that will enable it to leave inefficient technologies of the past, like coal, large-scale hydro, and nulear, to make way for the new energy solutions of the future-wind, solar, biomass, hydrogen, and small (less than 60 MW) hydro, and it needs criteria that is applied to all suppliers . If we don't adapt criteria that take a detailed account of environmental and socioeconomic impacts of current and proposed projects of electricity suppliers, Minnesota taxpayers not only face picking up the check but also getting farther and farther behind in rapidly developing renewable energy technologies and the economy that's growing around them. It's in the public's best interest to develop criteria ensuring externalized costs of electricity generation--costs taxpayers will have to eventually pay--are not left out of the decision of where we buy our power from.

Thank you for taking my comments into consideration.

Sincerely,

Erin Stojan

2300 Aldrich Ave. S. Apt. 17
Minneapolis, MN 55405

Ken Wolf

To: Norrgard

Subject: RE: Criteria Utilities Should Use in Purchasing Decisions

I will include your comments in the record.

Are you representing any organization, or yourself as an individual?

Either one is ok and I will include your input.

-----Original Message-----
From: Norrgard [mailto:lnorrgard@americanlands.org]
Sent: Friday, December 06, 2002 11:51 AM
To: Ken.Wolf@state.mn.us
Subject: Criteria Utilities Should Use in Purchasing Decisions

Ken Wolf
Reliability Administrator
Energy Division
85 7th Place East
St Paul MN 55101

Dear Mr. Wolf,

I am writing in regard to the open comment period on criteria utilities should use in making purchase decisions. I apologize if there is an official citation that I should be referring to.
Please consider these comments part of the official record.

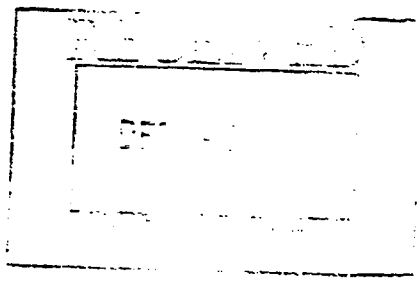
In general it is far past time that our energy needs as a society consider environmental impacts on an equal basis with costs and efficiencies. I believe that the value we place on our environment for its functioning ecological services such as clean air and clean water as well as it's value for indigenous cultures and wildlife has been ignored in many present energy developments. (Example the electrical dams developed by Manitoba Hydro and the energy subsequently purchased by Excel).

Minnesota MUST require that any electrical energy purchased or supplied for our use be done in an environmentally and socially responsible manner! We have come a long way in the environmental laws and regulations of our state and any energy imported or generated in-state must equally apply these laws. Suppliers must supply a detailed accounting of environmental and social impacts involved in the development and generation of the energy coming to Minnesotans and our communities.

We must also give high priority to energy generated from renewable sources. This list may include environmentally benign biomass, solar, wind, small hydroelectrical generating facilities, and photovoltaic along with others still to be developed.

Thank you for the opportunity to comment.
Sincerely,
Lois Norrgard
10368 Columbus Circle, Bloomington MN
ph/fx: 952-881-7282

Patricia Chaffin Mack
2109 27th Avenue South
Minneapolis, Minnesota 55406
casaysalud@hotmail.com



Mr. Ken Wolf, Reliability Admistrator
Energy Division
Minnesota Department of Commerce
Suite 500
85 Seventh Place East
St. Paul, MN 55101

Dear Mr. Wolf:

Regarding: Xcel Energy and Manitoba Hydro

This letter is to express my concern about purchases of energy by Xcel Energy from Manitoba Hydro. There is no way that Manitoba Hydro electricity should be considered renewable considering the damage done to the Cree communities flooded by their dams. This damage was not "one time" but is on-going.

I believe that energy imported into Minnesota should meet U.S. EPA standards for production. To accept less hurts US/MN energy suppliers because the law-breakers get an unfair advantage. We should be promoting the least destructive, most renewable energy sources possible. Local energy meeting those standards would be even better.

Thank you for considering these points in your analysis.

Sincerely,
Patricia C Mack
Patricia C. Mack

"A small deed is better than the greatest intention"

Anon.

Nisichawayasihk Cree Nation
NELSON HOUSE, MANITOBA, R0B 1A0
Telephone (204) 484-2332 Fax (204) 484-2392

December 9, 2002

Energy Division
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101-2198

Attention: Mr. Ken Wolf, Reliability Administer

Dear Mr. Wolf:

RE: Comments on bidding criteria on utilities

As Chief of the Nisichawayasihk Cree Nation (NCN), I am writing in response to the written submissions of the Pimicikamak Cree Nation (PCN), dated November 19, 2002.

The Department is already familiar with NCN. Several of our representatives appeared at the Department's November 19th meeting in the Twin Cities. As you may recall, NCN is one of the five northern Manitoba Cree Nations affected by the Churchill River Diversion (CRD) and Lake Winnipeg Regulation (LWR) projects constructed during the 1970s.

I will not respond in detail to PCN's comments. Suffice to say that NCN and PCN disagree on certain points. The Department must be aware that PCN does not speak for all Manitoba Cree Nations. In particular, it does not speak for NCN.

PCN suggests that only hydro projects that generate 60 MW of power or less should be deemed to be "renewable energy". PCN is concerned about large hydro generating stations that might have a large impact on the environment. I will just point out that some hydro projects are more environmentally benign that others. For example, the proposed Wuskwatim generating station, if constructed, would generate about 200 MW. However, Wuskwatim would cause less than one half square kilometre of new flooding, all in the area immediately behind the main dam. If approved and constructed, Wuskwatim could go in-service as early as 2009.

The Department may recall that NCN and Manitoba Hydro are discussing a potential partnership in the Wuskwatim project. Meanwhile, NCN has been fully involved in every stage of planning for Wuskwatim. The input of NCN members, including the Traditional Knowledge of elders, has been crucial in the planning process.

Wuskwatim is subject to a stringent environmental assessment process under new federal and provincial environmental laws. There must be public hearings before any approval can be granted.

The proposed Notigi generating station would generate about 100 MW, but would cause no new flooding at all. Though Notigi is now on the back burner, it may be actively considered after 2014.

The point is that even projects that generate more that 60 MW of power may cause little if any flooding.

If PCN wishes to continue its public relations campaign against Manitoba Hydro, it is free to do so. However, there is no reason for the Department to be dragged into this ongoing dispute.

Thank you for your attention to these comments.

Yours truly,

Chief Jerry Primrose
NISICHAWAYASIHK CREE NATION

c.c. Norman Linklater
Marcel Moody