



February 17, 2021

Senator David H. Senjem
Chair, Energy and Utilities Finance and Policy Committee
Room 3401 Minnesota Senate Building
95 University Ave. W.
St. Paul, MN 55155

Representative Jamie Long
Chair, Climate and Energy Finance and Policy Committee
517 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Chairs Senjem and Long:

RE: Renewable Development Account under Minn. Stat. § 116C.779

Laws of Minnesota 2017, Chapter 94, Article 10, Section 3, amended Minn. Stat. § 116C.779, subdivision 1, [renewable development account]. Among other changes, the Renewable Development Account (RDA) was established as a State Special Revenue fund administered by the Commissioner of Management and Budget, with expenditures from the RDA made by legislative appropriation. Previously, the Renewable Development Fund (RDF) was managed by Xcel Energy, in consultation with an advisory group, and the overall functioning of, and most expenditures from, the RDF were required to be approved by the Minnesota Public Utilities Commission (Commission).

Under the 2017 amended provisions, the RDA advisory group is to design requests for proposals, evaluate projects, and submit recommendations to Xcel Energy, which has sole authority to determine which expenditures are submitted to the Legislature. The Commission is to approve, disapprove, or, if agreed to by Xcel Energy, modify proposed expenditures. The Commission is to annually present its recommendations to the Senate and House committees with jurisdiction over energy policy and finance.

The Commission has received no funding recommendations from the advisory group or from Xcel Energy since the effective date of the amended statute. Therefore, the Commission has no recommended expenditures to present to the Legislature at this time.

On January 4, 2021, Xcel Energy filed a letter with the Commission in Dockets 20-766 and 12-1278 stating that given the lack of detail in the statute, there are a number of selection processes that need to be developed before a recommendation of projects can be prepared, and that development of the selection process in the statute was not clarified in the 2020 legislative session. Therefore, Xcel Energy stated it is not able to provide a recommendations to the Commission or legislature of projects for funding at this time.

We note that in 2020, the legislature directly appropriated money from the RDA (Minnesota Laws 2020, Chapter 118) to help fund the Prairie Island Net Zero Project, community energy transition grants, upgrades to a hydroelectric facility in Granite Falls, and extended the fund for the Xcel Solar*Rewards program.

In the attachment to this letter, the Commission provides background information on recent Commission activities with regards to the legacy appropriations from the RDF and its impact on the RDA to give you an effective frame of reference to work from in your important role of managing this initiative going forward. We also note some ambiguities and uncertainties we have encountered in implementing the 2017 statutory amendments.

We would be happy to follow up on the issues raised in the attachment with you and/or your staff.

Sincerely,



Will Seuffert
Executive Secretary

Attachment

c: Legislative Reference Library

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Background on the Renewable Development Account¹

• Overview of Renewable Development Legislation

Funding for renewable development was mandated as part of the 1994 “Prairie Island legislation” codified in Minn. Stat. § 116C.779, that allowed the storage of spent nuclear fuel in dry casks at Northern States Power Company’s (hereinafter referred to as Xcel Energy) Prairie Island nuclear plant. The 1994 law required the company to transfer \$500,000 a year after 1999 to a Renewable Development Fund (RDF) for each dry cask at the Prairie Island plant containing fuel. The 1994 legislation did not provide for oversight of the RDF or specify a role for the Minnesota Public Utilities Commission (Commission) or any other entity.

In 1999, the statute was amended to provide that expenditures from the RDF could be made only after approval by the Commission. In 2003, the statute was further amended, including changing the amount Xcel Energy was to transfer to the RDF to a flat \$16 million annually, and creating a Renewable Energy Production Incentive (REPI) to be funded from the RDF and overseen by the Department of Commerce. In 2007, that statute was again amended to require \$350,000 annually per cask at Xcel Energy’s Monticello nuclear plant also be transferred to the RDF. Changes were made in 2012 that further specified operational and administrative aspects of the RDF and the Commission’s authority.

In 2017, Minn. Stat. §116C.779 was substantially amended [Laws of Minnesota 2017, Chapter 94, Article 10, Section 3], replacing the RDF with a Renewable Development Account (RDA) that is a Special Revenue fund in the state treasury, administered by Minnesota Management and Budget (MMB). The RDA legislation includes a process for an advisory group to issue Requests for Proposals (RFPs) and make recommendations to Xcel Energy for the projects that should be funded; Xcel Energy determines which projects are brought forward to the Commission. The Commission is to make its funding recommendations to the Legislature by February 15 of each year. Expenditures from the RDA must be appropriated by law by the Legislature.

¹ For more detailed information, the Legislature may wish to refer to the following:

- Commission Orders in Dockets 00-1583, 03-1883, 07-675, and 12-1278
- Annual Commission dockets reviewing RDF financial reports and establishing rate rider recovery factors. The most recent Commission decisions are in Dockets 17-712, 18-628, 19-609, and 20-766.
- Xcel Energy files annual RDF reports to the legislature. The February 16, 2020 report can be found on the Legislative Reference Library website and in e-dockets under the docket numbers in the first bullet point.

- **Overview of Commission Implementation of RDF Legislation**

The Commission has overseen four cycles of RDF grant processes, in Dockets 00-1583, 03-1883, 07-675, and 12-1278. The Commission issued its first RDF Order on April 20, 2001 in Docket 00-1583, which established the RDF administrative structure, governance process, operations guidelines, regulatory oversight procedures, fund accounting, and cost recovery. Subsequently, the Commission issued a number of Orders on these issues, to reflect changes in legislation, changes in technologies, and lessons learned.

Over the course of these four RDF grant cycles, 81 RDF projects were approved and moved forward. Two energy production projects grants are still active as of December 31, 2020 and are scheduled to be completed in 2021. Five research projects are on-going. In addition, Renewable Energy Production Incentive (REPI) programs are funded through the RDF and administered by the Department of Commerce, and various other legislatively mandated programs are being funded.

Uncertainties on Implementation of Transition from RDF to RDA

The Commission's experience to-date with the transition from the RDF to the RDA have identified some uncertainties about the general administration of the legacy RDF and new RDA that the Commission would like to bring to the Legislature's attention.

- **Commission Responsibility for Legacy RDF Matters**

The 2017 amendments deleted language requiring Commission approval of expenditures from the account.

(e) Expenditures authorized by this subdivision from the account may be made only after approval by order of the Public Utilities Commission upon a petition by the public utility. The commission may approve proposed expenditures, may disapprove proposed expenditures that it finds to be not in compliance with this subdivision or otherwise not in the public interest, and may, if agreed to by the public utility, modify proposed expenditures. The commission may approve reasonable and necessary expenditures for administering the account in an amount not to exceed five percent of expenditures. Commission approval is not required for expenditures required under subdivisions 2 and 3, section 116C.7791, or other law.

The Commission has continued to make decisions related to legacy RDF grant projects that were approved by the Commission prior to the 2017 amendments. For example, the Commission in an October 15, 2018 Order in Docket 17-712, directed Xcel Energy to exercise its termination rights under the Crown Hydro grant contract. In an October 11, 2018 Order in Docket 12-1278, the Commission approved amendments to the grant contract with the Minnesota Renewable Energy Society.

The Commission assumes it has authority to continue to enforce and refine its past Orders and make related decisions with respect to these projects that received grants under the legacy RDF. The Commission would welcome additional clarity or direction from the Legislature if this is not the intended result.

- **Process for Project Recommendations under the RDA**

The 2017 amendments set out a framework for recommending to the Legislature projects to be funded through the RDA. It includes having an advisory group issue RFPs, evaluate projects, and recommend to Xcel Energy which projects should be funded. The utility has the sole authority to decide which projects shall be submitted by the advisory group to the Legislature.² The Commission is to only approve, disapprove, or modify with Xcel Energy's permission, proposed expenditures. The statute then provides that the Commission is to (also) submit its recommended appropriations from the Account to the Legislature by February 15 of each year.

The statute does not specify how these processes get implemented, including who determines the make-up of the advisory group, how is the group funded, who and how is it determined when an RFP should be issued, what types of projects should be eligible, and how much money should be set aside for projects to be bid into the RFP. The latter is particularly problematic, given the number of bills proposed in the legislature which would directly appropriate monies to specific projects outside of any RFP process.

The statute also does not specify whether any entity other than the advisory group and Xcel Energy have any oversight role. The Commission assumes that its role is limited to overseeing the remainder of the RDF processes and does not see a role in RDA implementation or oversight.

Xcel Energy and the advisory group did not issue RFPs in 2017, 2018, 2019, or 2020 and consequently no further processes took place.

² The Commission assumes the intent is that Xcel Energy submit the projects to the Commission instead of, (or perhaps in addition to), the Legislature, since the statute goes on to require the Commission to recommend proposed expenditures to the Legislature.

- **Recovery of RDA Amounts**

Minn. Stat. §216B.1645, provides in part that:

216B.1645 POWER PURCHASE CONTRACT OR INVESTMENT

Subdivision 1. Commission authority. Upon the petition of a public utility, the Public Utilities Commission shall approve or disapprove power purchase contracts, investments, or expenditures entered into or made by the utility to satisfy the wind and biomass mandates contained in sections [216B.169](#), [216B.2423](#), and [216B.2424](#), and to satisfy the renewable energy objectives and standards set forth in section [216B.1691](#), including reasonable investments and expenditures made to:

....

3 develop renewable energy sources from the account required in section [116C.779](#).

Subdivision 2. Cost recovery. The expenses incurred by the utility over the duration of the approved contract or useful life of the investment and expenditures made pursuant to section [116C.779](#) shall be recoverable from the ratepayers of the utility, to the extent they are not offset by utility revenues attributable to the contracts, investments, or expenditures. Upon petition by a public utility, the commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover the expenses or costs approved by the commission under subdivision 1, . . .

The Commission approved a rate schedule allowing Xcel Energy to recover expenditures from the inception of the RDF. Xcel Energy files a fund accounting and proposed recovery factor annually which is reviewed by the Commission and results in a recovery factor that is included on customer bills. Minn. Stat. § 216B.1645 was not amended in conjunction with the 2017 RDA statutory amendments. Some ambiguity may exist with respect to how Xcel Energy's annual transfers into the RDA are covered under this rate rider language.

Under the Commission's prior and continuing practice for cost recovery for projects under the RDF, Xcel was allowed to recover only RDF costs related to actual or known and measurable expenditures, and that continues to today. However, the payments into the RDA are not associated with specific projects. However, because the payments into the RDA are a statutory obligation for Xcel, the Commission has allowed the transfers into the RDA to be included in the annual rider recovery amounts, even though these funds are not tied to specific project and program obligations. Xcel Energy transferred \$8,817,885 for 2018, \$12,566,510 for 2019, and \$14,852,115 for 2020 to MMB for the RDA.

- **Recovery of RDF and RDA Administrative Costs**

The 2017 amendments deleted language allowing the Commission to approve recovery by Xcel Energy of expenditures for administering the RDF. In its review of the RDF/RDA annual recovery factor to be in effect for 2018, the Commission determined that the change in the statute did not provide for recovery of administrative expenses related to the legacy RDF or to the RDA. Xcel did not ask for recovery of administrative expenses through the annual rider recovery factor for 2019 or 2020, based on the Commission's earlier decision. This has been raised in annual reports since the 2017 change. Given that no further legislation has been passed, we conclude that our determination to deny administrative charges was the correct course of action.

- **Treatment of Changes in Legacy RDF Grant Amounts**

The 2017 amendments directed Xcel Energy to withhold from the transfer to the RDA amounts awarded in previous RDF grant cycles not yet expended. However, some legacy RDF grants subsequently were cancelled, such as Crown Hydro, or amounts changes, such as the Minnesota Renewable Energy Society projects. The statute does not specify how the related amounts that were withheld from transfer from the RDA should be treated. The Commission would welcome additional clarity or direction from the Legislature on this issue.

- **Xcel's RDF/RDA Transfer Obligation**

Under the 2017 amendments, Xcel was required to transfer on July 1, 2017, "all funds in the renewable development account previously established under the subdivision . . ." Xcel did not transfer any funds at that time, stating that there were no funds in the account collected from ratepayers. However, Xcel Energy did have unexpended and uncommitted per cask obligations of approximately \$25 million.

If the 2017 amendments had not been made, those monies would have been rolled forward and used for a future RFP or other mandate. The Commission designed the legacy RDF appropriation mechanism in such a fashion to protect ratepayers from being charged for the collection of money that would have remained unexpended in an account waiting for some possible future grant.

Therefore, at the July 1, 2017 date when the new legislation mandated a transfer of unobligated RDF funds to the RDA, there were no monies sitting in a dedicated fund at Xcel Energy; rather this approximately \$25 million amount represented potential future resources that might be expended for a new RFP funding cycle or other mandates. A future RDF cycle never occurred due to the 2017 amendments and, thus, no new RDF projects and grants were approved, and no monies were taken from ratepayers to be placed as "funds" into the legacy RDF.

The Commission determined that instituting a substantial one-time rate increase would be contrary both to the objective for implementation of the statute and the ratepayers' interest. This has been raised in annual reports since the 2017 change. Given that no further legislation has been passed, we conclude that our determination to protect ratepayers was the correct course of action.