

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: **October 25, 2012**..... Agenda Item **##*3**

Company: Northern States Power Company, d/b/a Xcel Energy

Docket No. E-002/CN-11-184

In the Matter of the Certificate of Need Application for the Black Dog Repowering
Project in Burnsville, Minnesota

Issue(s): What action should the Commission take in regard to the request for Certificate of
Need withdrawal?

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Relevant Documents

Xcel Energy – Black Dog Petition.....March 15, 2011
OAH – Letter – Correspondence of the ALJ October 28, 2011
Xcel Energy – Motion to Withdraw Application.....December 7, 2011
DOC – Letter ResponseDecember 15, 2011
Calpine Corporation – Letter to ALJ Luis in Response to Xcel MotionDecember 21, 2011
Xcel Energy – Reply Comments.....January 6, 2012
Xcel Energy – Resource Plan Update/Corrections February 8, 2012
DOC Division of Energy Resources (DER) – Letter to Judge LuisMarch 1, 2012
Xcel Energy – Reply Comments.....March 23, 2012
Calpine Corporation – Reply CommentsMarch 23, 2012
OAH – Letter – Correspondence of ALJApril 20, 2012
Xcel Energy – Other – Response to ALJMay 1, 2012
DOC Comments - Letter to ALJ LuisMay 1, 2012
Calpine Corporation – Comments.....May 1, 2012
OAH – Order Granting Motion to Withdraw and Order to Certify May 30, 2012
DOC DER – Reply Comments..... August 13, 2012
Calpine Corporation – Comments August 20, 2012
Xcel Energy – Comments August 20, 2012
DOC DER – Reply Comments.....September 5, 2012
Calpine Corporation – Reply Comments.....September 6, 2012
Xcel Energy – Reply CommentsSeptember 6, 2012

Bold indicates a key relevant document.

The attached materials are work papers of the Commission Staff. The papers are intended for use by the Public Utilities Commission and are based upon information already in the record unless otherwise noted. **This document can be made available in alternative formats (i.e., large print or audio) by calling 651.296.0406 (voice). Persons with hearing or speech disabilities may call us through Minnesota Relay at 1.800.627.3529 or by dialing 711.**

Issue(s)

What action should the Commission take in regard to the request for Certificate of Need withdrawal?

Project Summary

In early 2011, Xcel Energy petitioned the Commission for a Certificate of Need for the Black Dog Repowering Project. The proposed Project consists of replacing the remaining *coal*-fired generating Units 3 and 4 at the Plant (approximately 250 megawatts (MW) with about 700 MW of natural gas-fired, combined cycle generation located in what is now the coal storage yard, for an approximately 450 MW net increase in capacity. As part of the proposed Project, Units 3 and 4 would operate solely on natural gas starting in 2013 and during the construction of the new proposed facility. In 2016, Units 3 and 4 would be shut down after the new combined cycle facility is placed in service. Other generation units onsite (which are not part of this project) include a natural gas-fired combustion turbine-generator (Unit 5) and an associated heat recovery steam generator (Unit 2). Units 5 and 2 have a combined summer rating of 283 MW.

In December 2011, Xcel filed a Motion to Withdraw the Black Dog Certificate of Need (CN) Application based on updated demand forecasts and filed a Resource Plan Update on December 1, 2011 in Docket No. E-002/RP-10-825.

In Xcel's Resource Plan Update, Xcel indicated that their updated Resource Plan builds on elements from the initial Resource Plan and would include, among other items, withdrawing the request for a CN for the Black Dog Repowering Project, reassessing the timing and need for additional combined cycle generation as part of its next resource planning cycle and the retirement Black Dog Units 3 and 4 by 2016.

Docket History

On March 15, 2011, Northern States Power Company d/b/a Xcel Energy (Xcel) filed an application for a certificate of need for approximately 450 megawatts (MW) of incremental capacity through the repowering of the existing coal fired units to a larger natural gas fired combined cycle facility. The filing initiated the Alternative Competitive Resource Acquisition Process established in Docket No. E002/PR-04-1752. The Order set a deadline for proposals from alternative providers, which was subsequently extended until August 1, 2011.

On July 22, 2011, Calpine Corporation (Calpine) filed an alternative proposal with the Commission. The alternative proposal was for a 350 MW expansion of Calpine's existing Mankato Energy Generation Station (Mankato Station).

On August 19, 2011 the Commission issued *Notice and Order for Hearing* which accepted Calpine's alternative proposal as substantially complete and referred the matter to the Office of Administrative Hearings for a contested case proceeding.

On October 5, 2011 Administrative Law Judge Luis issued the first prehearing order in this matter which outlined deadlines for intervention and a case schedule among other procedures.

On October 10, 2011 Xcel Energy filed a letter with Judge Luis requesting that due to preliminary results of Xcel's fall forecast update all action in this proceeding be placed on hold, including discovery, until after Xcel Energy's December 1, 2011 filing of an update in the Resource Plan docket.¹ Xcel indicated that as a part of the comprehensive update, Xcel would be reevaluating the timing and need for the Black Dog Repowering Project.

On October 28, 2011 Judge Luis filed a letter which ordered that the procedural schedule in this matter was suspended.

On December 17, 2011 Xcel Energy filed a request to withdraw their application for the Black Dog Repowering Project. Pursuant to Minn. R. 1400.6600, parties wishing to contest the motion had ten days to file a written response. Both Calpine and the Department of Commerce (Department) filed written objections to the request for withdrawal.

On January 25, 2011 Judge Luis issued *Scheduling Order on Motion to Withdraw Application and Request for Certification*. This ordered Xcel Energy and Calpine to file simultaneous briefs in response to the Department's (forthcoming) analysis of the data Xcel Energy provided to support its Motion to Withdraw.

On March 1, 2012 the Department of Commerce filed comments which updated Judge Luis on their yet-to-be completed analysis and recommended that the CN proceeding be continued. The Department indicated that based on the information it had to date, it did not believe the results of their analysis would lead to a different recommendation. On March 23, 2012 both Calpine and Xcel filed response briefs.

On April 20, 2012 Judge Luis issued a letter informing parties that he was taking Official Notice of the Xcel Energy April 2, 2012 *Notice of Changed Circumstances and Petition* in both Xcel's Integrated Resource Plan Docket and Prairie Island Extended Power Uprate Docket. Judge Luis requested further record development on the impacts of the April 2 filing would have on the proceeding before the OAH. All parties filed comments by the May 1, 2012 deadline.

On May 30, 2012 Judge Luis filed *Order Granting Motion to Withdraw and Order to Certify* which granted Xcel Energy's Motion to Withdraw its Application for a Certificate of Need for the Black Dog Repowering Project and Certified the matter back to the Commission.

On July 6, 2012 the Commission issued a notice of public comment period on the ALJ's May 30 *Order Granting Xcel's Motion to Withdraw and Order to Certify*.²

Only the Department, Calpine and Xcel Energy filed initial and reply comments (by August 20 and September 6, 2012).

¹ Docket E002/RP-10-825

² Staff delayed the solicitation of comments in the matter to coincide with the comments solicited in the Resource Plan Docket.

Docket History

On May 30, 2012 Administrative Law Judge Richard Luis issued his Order Granting Motion to Withdraw and Order to Certify (ALJ Order). The ALJ Order:

- granted Xcel's motion to withdraw its Certificate of Need (CN) Petition;
- granted Xcel's request to certify its motion to the Commission; and
- certified to the Commission the Company's Withdrawal Motion.

Xcel argued, and the ALJ agreed, that referring the Motion to Withdraw to the Commission would allow the Commission to provide input and guidance on the best way to move forward. The Commission could then better address all factors that may impact generation resource decisions, including changing load forecasts, Xcel's proposed generation projects currently under review, the costs of other generation options in the marketplace, and alternative competing projects.

The ALJ concluded that Xcel's reasoning was sound. According to the ALJ, "The need for future energy capacity that would have been supplied by the Black Dog Project, the uprates at Prairie Island and Monticello, and any circumstances surrounding Sherco 3, are all appropriately under consideration in the Integrated Resource Planning Docket for 2011-2025."

DOC recommended that the ALJ obtain updated information from Xcel regarding uncertainties bearing on Xcel's forecasted demand and assumed supply-side portfolio, related to the uprates at Prairie Island and Monticello, and the status of Sherco 3.

Calpine Corporation recommended denying Xcel's Motion to Withdraw because it is appropriate to decide within the context of this contested case whether Xcel's updated forecast information shows that there is no longer a need for the additional Black Dog generation.

The ALJ did not agree with Calpine's argument that the CN proceeding is mandated by law and necessary to address the need initially identified by Xcel. According to the ALJ:

"Calpine argues that granting NSP's Motion to Withdraw, because NSP now cannot support the need for the Black Dog project, is inappropriate. The Administrative Law Judge does not agree. Indeed, if updated forecasts led the Company to make a decision that it will not have a need for the additional capacity to be provided by the Black Dog Project in 2016, there is no legal reason to bar the Company from withdrawing its Application."

The ALJ noted his belief that

"Xcel's reasoning in support of the its Motion to Withdraw is sound and the need for future energy capacity that would have been supplied by the Black Dog Project, the uprates at Prairie Island and Monticello, and any circumstances surrounding Sherco 3, are all appropriately under consideration in the Integrated Resource Planning Docket for 2011-2025, currently before the Commission."

Comments to the Commission on the OAH Certification

On July 6, 2012 the Commission issued a notice of a public comment period on the May 30 ALJ *Order Granting Xcel's Motion to Withdraw and Order to Certify*. Initial and reply comments were received by Xcel Energy, Calpine and the Department by August 20 and September 6, respectively.

Department Initial Comments

The Department provided joint comments on August 13, 2012, here, in the initial comment period on the Black Dog Repowering Project CN Docket, and in the Integrated Resource Planning (IRP) Docket. The Department's comments on the Black Dog matter provided their (consistent) recommendation that the Commission approve Xcel Energy's 2011-2025 IRP with modifications, requiring Xcel to:

1. Continue to pursue the uprate at Prairie Island;
2. Continue to pursue the uprate at Monticello;
3. Pursue 100 MW to 200 MW of wind in 2015-2016 if the price is \$50 per MWh or less;
4. *Procure 400 MW to 600 MW of natural gas capacity in 2017-2018, at least half of the natural gas capacity should be combined cycle* [italics added];
5. Procure a 1.3 percent level of DSM;
6. Use short term purchases to fill any capacity needs in 2015 - 2016; and
7. Require Xcel to continue working with the Department to fully address the forecasting issues prior to Xcel submitting any certificate of need or rate case filing

In addition, the Department recommends approval of Xcel's base energy forecast and the Department's peak demand forecast for planning purposes only.

As previously noted, the Department evaluated their recommendation in light of differing CO2 cost values and uncertain resource options; and the results continually supported their recommendation remains the most appropriate option at this time. The Department explains:

The Department's no-CO2 cost scenario analysis changed when the first CC unit was added in the base case. In the least cost plan the first 400 MW CC unit was deferred until 2024 when CO2 costs were removed. However, in the next five best plans (plans number two through six) a 400 MW CC unit is added between 2018 and 2019. Therefore, considering the risks inherent in the Company's "lack of enthusiasm" for pursuing the nuclear uprates at Prairie Island, willingness to study replacing Sherco 1 and 2, and the directive of Minnesota Statutes to consider the Commission's CO2 internal cost, the Department recommends that the Commission reject the Company's motion to withdraw the Black Dog CN petition.

Instead, the Black Dog proceeding should go forward with a targeted in-service date of 2017-2018, perhaps with a short delay to provide an opportunity for the bidders (Calpine and Xcel) to update their project information, if desired.

The Department further recommended:

[t]he Commission may also wish to consider reopening the bidding to more bidders. However, the timeline for adding the 400 to 600 MW of combined cycle capacity is getting short, given the delays caused by Xcel's request to withdraw its CN. Thus, any such reopening to more

bidders should allow for a short time period, such as 30 days, both for Xcel and Calpine to refresh their bids and for any other bidders to provide a proposal.

Xcel Energy Initial Comments

Xcel Energy's Initial Comments to the Commission on the Black Dog matter referenced their comments filed in the Resource Plan Docket on August 13, 2012. Xcel believes that the Black Dog Docket should be resumed within the resource acquisition process with the appropriate adjustments in scope.

Xcel's comments noted agreement with the Department's analysis and recommendation that 400 to 600 MW of new natural gas generation capacity in the 2017-2018 timeframe represented a reasonable target for resource additions. However, Xcel provides a slightly revised recommendation; Xcel believes that the Commission (in the Resource Plan Order) should determine a natural gas resource need of approximately 400 to 600 MW in the 2017-2019 timeframe is reasonable to allow for the possibility of 2019 in-service dates. Xcel's further analysis found that a potential capacity deficit of 120-450 MW exists in the 2017-2018 timeframe and grows to up to 550 MW in the 2019 timeframe.³

Additionally, Xcel did not agree with the Department that at least half of the natural gas capacity should be combined cycle. Xcel indicates that the type of capacity, combined cycle or combustion turbine would be better decided in the competitive acquisition process. Xcel believes that the resource acquisition process would examine actual proposals to meet the identified resource need. And following, more informed decisions can then be made based on actual proposals as opposed to assumptions.

Xcel Energy notes that it believes the competitive resource acquisition process need not wait for the next cycle of planning, it should proceed expeditiously to preserve the ability to achieve a potential 2017 in-service date. Xcel Energy requests that the Commission coordinate the Black Dog CN Docket with the Resource Plan Docket to better address all factors that may impact generation.

Therefore Xcel requests the Commission:

- 1) Identify in Resource Plan Docket a need for approximately 400 to 600 MW of natural gas-fired intermediate and/or peaking generation in the 2017-2019 timeframe.
- 2) Direct the resource acquisition process in the Black Dog Docket be resumed with the appropriate adjustments in scope to reflect the identified need. Revised proposals by the parties should be allowed and submitted simultaneously on a set date.
- 3) Request the ALJ establish a procedural schedule in the contested case proceeding that schedules a date by which the revised proposals shall be submitted.
- 4) Include an ordering point that requires the hearing officer provide a protection order that defines disclosure terms. Xcel provides the following language as a possible option:

The Company shall not be required to disclose to Calpine Corporation any information designated Confidential, Highly-Confidential or Trade Secret by the Company; likewise, Calpine Corporation shall not be required to disclose to the

³ Xcel notes that after exploring some uncertainty factors, their analysis suggested a potential for a capacity deficit that could grow to over 550 MW in 2019.

Company, except to the Company's resource planning employees, any information designated Confidential, Highly-Confidential or Trade Secret by Calpine Corporation. Both the Company and Calpine Corporation shall be required to disclose any information related to their respective proposals, including Confidential, Highly Confidential and Trade Secret information, to the Department of Commerce, Division of Energy Resources.

Calpine Initial Comments

Calpine initially supported the continuation of the contested case proceeding during the OAH process, however in their August 20 comments to the Commission, Calpine recommends the Commission accept Xcel's Motion to Withdraw and to close the Black Dog Docket.

Calpine explains in their comments that the Commission should accept the Department's analysis in the Resource Plan Docket as conclusive demonstration of need for new natural gas generating capacity and that the question now is how to ensure that the identified need is met in a timely and cost-effective manner.

Calpine recommends that the Commission ensure that any further proceedings occur in a timely manner to preserve the ability to meet necessary in-service dates. Calpine believes that any further proceedings in this docket would simply provide additional opportunities for "gunmanship and delay"; Calpine believes the Black Dog record, as-is, remains the most accurate projection available, and that further analysis would not result in a more accurate result, as well as proves that the Mankato Expansion is the most reasonable alternative.

Calpine requests that the Commission:

- A. Accept Xcel's Motion to Withdraw its Certificate of Need for its Black Dog proposal and close the Black Dog Docket.
- B. Include the following points in its Order approving Xcel's IRP:
 1. Xcel will need 400-600 MW of new natural gas fired capacity, in the 2017-18 timeframe, at least half of which should be combined-cycle capacity;
 2. Xcel shall promptly enter into negotiations for a PPA with Calpine for the Mankato Expansion for commercial operation beginning on or before June 1, 2017;
 3. Xcel must present the proposed PPA for the Mankato Expansion to the Commission for approval on or before 90 days from the date of Commission approval in the IRP docket, or March 1, 2013, whichever is sooner; and
 4. Within 90 days of the IRP Order, Xcel shall propose an RFP process to solicit competitive interest in meeting the remainder of the identified need for new gas-fired capacity, for commercial operation as soon as 2018. Any such RFP will rely on the use of an independent, third party evaluator experienced in such matters.

If the Commission pursues the Black Dog CN Docket, Calpine recommends the following in the Black Dog Docket:

- A. Based on the record in Xcel's IRP Docket, it is demonstrated that Xcel will need 400-600 MW of new natural gas fired capacity in the 2017-2018 timeframe, at least half of which should be combined cycle generation. The scope of the proceeding is limited to determining the best way to meet the identified need.

- B. The proposals to be compared in the proceeding shall be Xcel's new natural gas combined cycle plan as initially proposed at its Black Dog site and Calpine's Mankato Expansion that was presented as an alternative to Xcel's original Black Dog proposal. Parties shall have a 30-day window of opportunity to update cost or other project-specific information to reflect current market conditions but shall not substantially revise their proposals in any other material respect.
- C. All confidential and proprietary information shall be presented only to the Department, the Commission, and any independent advisors, and neither Xcel nor Calpine shall be required to share such information with the other party.
- D. The Department will act as the neutral third party to evaluate all information and make a recommendation to the ALJ in the form of direct testimony, and the parties may file testimony in response to the Department's testimony.
- E. The ALJ should, to the extent possible, develop a procedural schedule such that a Recommended Decision is presented to the Commission on or before March 1, 2013, and shall report any expected delays in a timely manner.
- F. Xcel shall be held to the cost information presented in this proceeding, and shall be barred from seeking future rate recovery for any amounts in excess of the amounts presented in this proceeding.

Supporting information for each of these items is available in Calpine's August 20 comments.

Reply Comments of Xcel Energy, Calpine and the Department and Commission Staff Analysis

Xcel's Motion to Withdraw the Black Dog Project / Resource Acquisition Process

The Department and Xcel both agree that continuing with the Black Dog Docket, with revisions to the scope and Commission clarifications provided to the ALJ, is an appropriate course of action. The Department explained that closing the existing Black Dog Docket would simply slow the process without any benefit and therefore recommends that the docket remain open.

Calpine comments that:

...continuing the Black Dog Docket is no longer appropriate as the Black Dog contested case proceeding was established to determine (a) whether there is a need for new capacity and, if so, (b) which of two specifically proposed projects should be approved to meet that need. The Black Dog Docket was *not* intended as a generic evaluation of different types and sizes of projects. Subsequent to the Commission's initial Black Dog Hearing Order of August 19, 2011, the issue of whether there is a need for new capacity has been clearly demonstrated by the Department of Commerce ("Department") in the context of the pending IRP proceeding. Additionally, for all intents and purposes the Black Dog project no longer exists. Therefore, continuation of the Black Dog contested case proceeding is neither an appropriate, necessary, nor efficient means of acquiring new gas fired electric generating capacity.

Calpine furthers that it believes Xcel's comments indicate their intent to use the Black Dog CN Docket to submit a substantially revised or alternative project. Calpine commented that expansion of the Mankato Energy Center is the only formally proposed project on the table and absent any further procedural delay can demonstrably attain a 2017 commercial operation date.

Calpine also recommends that the Resource Plan Docket should include a requirement to solicit proposals for additional gas-fired capacity beyond what can be provided by a Xcel-Calpine PPA.

Calpine reiterates its request that the Commission close the Black Dog Docket and order the procurement of additional capacity resources in the context of Xcel's pending Resource Plan Docket.

Staff believes there are two options for the Commission at this point. Either the Black Dog CN Docket can continue in a modified form or the Commission can terminate the proceeding (with the expectation that Xcel would refile a new certificate of need petition with a new project proposal). *Staff believes that both paths would have similar outcomes* and the main differences would be the time required for each option (more time would be required to restart the process) and the initial requirement for solicitation of competing bids. However staff believes the solicitation of bids could also be completed in the context of a modified Black Dog proceeding. The Commission could elect whether to accept outside bids (as noted by the Department in their initial comments) other than Calpine's and Xcel's during the timeframe it permits for Xcel and Calpine to revise their proposals within a modified proceeding.

Require Xcel Energy to enter into a Power Purchase Agreement with Calpine

The Department comments:

Based on the revised resource needs of 400 MW to 600 MW of natural gas capacity, there exists no proposal that was selected in a competitive process to fill these revised needs. A PPA between Calpine and Xcel as contemplated by b.ii and b.iii would only be required if and when Calpine's revised proposal (yet to be submitted) is found to be the least cost proposal. Clearly no such finding exists at this point. Thus, these recommendations are premature if Calpine is selected and not necessary if Xcel is selected to build the additional resources. The Commission can revisit future procedural steps if and when it is necessary to do so.

The Department believes that Calpine's recommendation to order Xcel to obtain a PPA for the Mankato Energy Center is also inconsistent with the Commission's May 31, 2006 Order establishing the two-track resource selection process in Commission Docket E002/RP-04-1752. Xcel agrees.

Calpine reiterates their recommendation:

...that the Commission terminate the Black Dog proceeding and order Xcel in the IRP proceeding to enter into Power Purchase Agreement negotiations for the Mankato Expansion for commercial operation in 2017.

Calpine further explains that after the Commission requires Xcel to enter into a PPA with Calpine, Xcel should be required to use the competitive bidding process to meet the remainder of the identified need for new gas-fired capacity.

Staff doesn't believe the Resource Plan Docket is the proper place to require a PPA with Calpine, if that is the path the Commission would like to pursue, staff believes it should be required in the Black Dog CN Docket. Staff agrees with the Department. Staff believes that (either) record has not been sufficiently developed to determine that the Mankato Energy Center is the appropriate resource to fill

the (yet to be approved) need and therefore the Commission, at this time, cannot do as Calpine requests.

Prohibiting Revised Proposals

Calpine initially recommended that:

[t]he proposals to be compared in the proceeding shall be Xcel's new natural gas combined cycle plan as initially proposed at its Black Dog site and Calpine's Mankato Expansion that was presented as an alternative to Xcel's original Black Dog proposal. Parties shall have a 30-day window of opportunity to update cost or other project-specific information to reflect current market conditions but shall not substantially revise their proposals in any other material respect.

Xcel believes that parties should be allowed to revise and update proposals to reflect the Commission's upcoming determination of need and current circumstances, which are fully described in the resource plan proceeding. Xcel adds that their analysis suggests that circumstances have changed enough that a combustion turbine-based proposal may be the least cost option.

The Department concludes that Calpine's recommendation b, to only allow proposals previously submitted in the CN proceeding with a 30-day timeframe for non-substantial revisions, is not reasonable. The Department comments that the new proposals to be submitted and evaluated must reflect Xcel's revised need, yet-to-be determined in the Resource Plan Docket. The Department believes that the existing proposals in the Black Dog docket are simply no longer relevant.

Calpine argues that:

Xcel's August 20 comments refer to the need for "appropriate adjustments in scope" if the contested case is to proceed. While lacking in detail, this certainly suggests Xcel wishes to use the existing contested case docket to submit a substantially revised or alternative project. ..."

Calpine does not provide additional comments on this issue, other than to note that Xcel is using this opportunity to significantly revise the project scope, thereby making the existing (or previous) CN proceeding moot.

Staff believes that using outdated proposals, when circumstances have obviously changed, would not be an efficient use of the CN process. The Commission, at the time of the previously submitted proposals, had not determined a need for a specific type of energy source or the specific size or timing. If the Commission does find that the additional natural gas capacity is needed in the Resource Plan Docket, the new proposals should reflect that new information.

Additional Competitive Bids

The Department mentioned in their initial comments the option for the Commission to solicit bids from outside parties during the time allotted for Xcel and Calpine to revise their bids.

Staff does not have a position on this, other than to note that if outside bids are allowed, the other bidders be required to submit information within the time period deemed reasonable for

Xcel and Calpine to provide revised bids (thereby not extending the schedule in any manner to permit additional bidders) to avoid any procedural delays.

Resource Size, Type and Timing

Timing

Calpine recommends that the Commission should find in the Resource Plan Docket that Xcel should procure 400 MW to 600 MW of natural gas capacity in the 2017-18 timeframe, at least half of which should be combined-cycle capacity.

Xcel recommends that the Commission should find in the Resource Plan Docket that Xcel should procure 400 MW to 600 MW of natural gas capacity in 2017-2019. As noted above in Xcel's initial comments, Xcel's further analysis shows that an extended in-service date, to 2019, may be appropriate.

The Department indicates support of Calpine's recommendation but ultimately recommends that the Commission use the in-service timeframe of 2017-2019:

Xcel should acquire natural gas capacity in the range of 400 MW to 600 MW over the period 2017-2019. Of this capacity, at least one half must be a CC unit.

Resource Type

The Department notes that its recommendation that at least half of the natural gas capacity be combined cycle is based on its analysis that such a requirement would minimize Xcel's Net Present Value of Revenue Requirements.

The Department notes that the specific proportion of each type of natural gas resource necessary (for example, 500 MW total, 300 MW CC and 200 MW CT with commercial dates no later than 2017 and 2018, respectively) should be clarified by Xcel prior to proposals being submitted to avoid giving Xcel an unfair advantage over Calpine. The Department provides specific process recommendations to clarify the specific type of generation:

Require Xcel to file within a 30-day period (starting with the date of the Commission Order in Xcel's IRP Docket), the specific amounts of CC and CT it intends to acquire and the proposed Commercial Operation dates for these resources.

Calpine does not provide additional comments on this issue.

The size, type, and timing may be decided in the Resource Plan Docket; and therefore will not be discussed here. Staff agrees with the Department's recommendation requiring Xcel to submit a filing within 30-days of the Resource Plan Docket Order.

Timing of Revised Proposals

Xcel recommends that the Commission allow a 90-day period from the date of the Commission's Resource Plan Order for the parties to submit simultaneous proposals. Xcel does not believe this timing would impact the ability to meet a 2017 in-service date.

The Department disagrees with Xcel's recommendation that the revised proposals should be submitted simultaneously, for reasons discussed in *Resource Size and Timing*. The Department recommends that the Commission:

Require Xcel and Calpine to submit their proposals to meet Xcel's resource needs, 30 days from the date at which Xcel specified its exact resource needs.

Staff believes a 30-60 day time period would be appropriate.

Procedural Schedule Recommendation to the ALJ

The Department:

...does not object to Xcel's recommendation that the Commission direct the ALJ to establish a procedural schedule...

The Department does not object to Calpine's recommendation e:

The ALJ should, to the extent possible, develop a procedural schedule such that a Recommended Decision is presented to the Commission on or before March 1, 2013, and shall report any expected delays in a timely manner.

Staff agrees with the Department, and takes no objection to Calpine's proposal.

Protective Order/Trade Secret Information

Both Xcel Energy and Calpine expressed concerns regarding the disclosure and treatment of trade secret information and the difficulty in negotiating agreements regarding the dissemination of trade secret information.

The Department:

...does not object to Xcel's recommendation that the Commission direct the ALJ to ... issue a protective order regarding confidential information. However, the Department disagrees with Xcel's example that would allow Xcel's resource planning employees access to information deemed confidential by Calpine.

Instead, the Department recommends that neither party should be able to review data that is determined to be trade-secret. Further, both parties will need to justify why the data they submit should be treated as trade secret.

The Department supports Calpine's recommendation c:

All confidential and proprietary information shall be presented only to the Department, the Commission, and any independent advisors, and neither Xcel nor Calpine shall be required to share such information with the other party.

Xcel acknowledges that Calpine had concerns with Xcel original recommendation and proposed language and therefore, provides the following three principles the Commission could use to guide the ALJ if the matter is remanded to him:

1. *Inappropriate discovery requests need not be answered.* It is the burden on each questioning party to establish that the information it seeks is necessary to support its claim or other relevant proposition.
2. *Special provisions in a protective order should address highly sensitive information.* ALJ Luis noted that due to the unique issues in this docket that a protective order "... must also provide for certain information to be viewed only by select individuals for analysis and verification" (ALJ Order, p. 5). Confidential protection of highly sensitive information established in other contexts, such as Commission orders in telecommunication dockets (e.g., Docket No. P-999/M-12-356, Order of May 24, 2012) and FERC dockets can be used for guidance in developing an appropriate protective order for the ALJ to enter in the current matter, though the specifics of this matter should be considered when crafting the applicable protective order.
3. *The Commission, Department, and Office of the Attorney General should not be restricted by these principles, and should continue to have their standard, robust access to information.*

Xcel continues:

If the Commission allows the parties a period of time to develop new or modified resource proposals, the parties can also use this time to attempt to negotiate terms for an appropriate protective order. In the event the parties do not agree on all terms, the ALJ can resolve any remaining disputes concerning the wording of a protective order consistent with the principles outlined above. Calpine also suggests the Department could be an independent evaluator of the proposals, and that this could allow this matter to proceed without discovery of confidential information between the parties. However, we believe that it is important for us to complete our due diligence and evaluate all proposals. This would be necessary for us to complete PPA negotiations and fully assist in the complete evaluation of the proposals.

Staff believes that the record is telling in regard to the difficulties Calpine and Xcel have had regarding the disclosure of trade-secret information. It has been Commission staff's experience that an independent evaluator would provide a valuable service and recommends that to avoid further delay and further problems regarding the disclosure of confidential information (or the lack thereof) the Commission could utilize an independent evaluator.

Staff agrees with the Department's recommendation that neither party should be able to review data that is determined to be trade-secret and both parties will need to justify why the data it submits should be treated as trade secret. Staff agrees with the Department and supports Calpine's recommendation c:

All confidential and proprietary information shall be presented only to the Department, the Commission, and any independent advisors, and neither Xcel nor Calpine shall be required to share such information with the other party.

Independent Evaluator

The Department does not object to Calpine's recommendation d:

The Department will act as the neutral third party to evaluate all information and make a recommendation to the ALJ in the form of direct testimony, and the parties may file testimony in response to the Department's testimony.

Further the Department comments:

...the Department does not object to the use of an Independent Evaluator to select the best proposal. However, if the Commission determines to have an Independent Evaluator (the Department notes that it usually functions as such), then it should allow the Department 30 days to evaluate the Independent Evaluator's selection and submit our evaluation to the Commission. Such a process has been successfully used for Xcel's former competitive bidding process.

The Department ultimately recommends that the Commission:

1. Determine whether to appoint an Independent Evaluator to determine the best proposal.
2. Allow 30 days for the Department to file comments on the Independent Evaluator's report, if the Commission determines that an outside Independent Evaluator should be used to evaluate the proposals.

Staff believes that if the Commission decides an independent evaluator would be beneficial in this instance, the Commission could request 1) an independent evaluator be appointed or 2) the Department act as the neutral third party to evaluate information as outlined in Calpine's recommendation.

Staff recommends the Commission request the Department facilitation of an independent evaluation would be the best option. Contracting with a third party evaluator, other than the Department, could be costly and time-consuming. The Department is capable of providing this service and should be utilized here.

Cost Recovery

The Department does not object to Calpine's recommendation f:

Xcel shall be held to the cost information presented in this proceeding, and shall be barred from seeking future rate recovery for any amounts in excess of the amounts presented in this proceeding.

Xcel disagrees with Calpine's recommendation f. Xcel does not believe that a CN proceeding is an appropriate venue to debate or prejudice cost recovery of resource investments and further:

Doing so here would deviate from the established regulatory approach that weighs the risks between utility-driven proposals and PPA's, recognizing that utility proposals are based on cost estimates and that independent power producer proposals typically use limited liability corporations and otherwise seek to limit their liability from project failures and non-performance. Additionally, utility costs are already subject to prudence review, making

prejudgment on the prudence of incurred costs unnecessary and inconsistent with standard procedures.

Staff does not object to this request. Staff suggest if the Commission proceeds with Calpine's recommendation to hold Xcel to cost information presented in the proceeding, Calpine should be held to the cost numbers it provides in the proceeding as well.

Commission Decision Alternatives

- 1. What action should the Commission take regarding the Black Dog Certificate of Need Docket?**
 - a. Revise the scope of the proceeding to include the generic natural gas capacity need determined in the Resource Plan Docket.
 - b. Close the Black Dog Docket.
 - c. Take some other action.

- 2. Should the Commission require Xcel to enter into a Power Purchase Agreement with Calpine for the Mankato Energy Center Expansion in the Black Dog Certificate of Need Docket?**
 - a. Require Xcel enter into a PPA with Calpine for the Mankato Energy Center.
 - b. Take no action.

- 3. If the Commission determines a need for 400-600MW of natural gas capacity between 2017 and 2019, should the Commission allow for revised bids in the Black Dog CN Docket?**
 - a. Allow revised proposals.
 - b. Require that Xcel and Calpine submit their original proposals, only allowing updates to cost or other project-specific information to reflect current market conditions but not allow substantial revisions.
 - c. Take some other action.

- 4. Should the Commission allow additional competitive bids?**
 - a. Allow outside competitive bids in the Black Dog Resource Acquisition Process.
 - b. Allow outside competitive bids in the Black Dog Resource Acquisition Process and require bids be submitted within the same time periods allotted to Xcel and Calpine.
 - c. Do not allow competitive bids in the Black Dog Resource Acquisition Process.
 - d. Take some other action.

- 5. How should the Commission manage the specific Resource Type Allocation?**
 - a. Require Xcel to file a filing within 30-days of the Resource Plan Order the specific amounts of CC and CT it intends to acquire and the proposed Commercial Operation date for these resources.
 - b. Take no action in this docket and require parties to submit proposals based upon the decision made in the Resource Plan Docket (and subsequent Xcel filing) that will determine the optimal mix of CT and CC resources and the proposed Commercial Operation dates for those resources.

6. Should the Commission impose timing requirements for the submission of revised proposals?

- a. Allow 90 days from the date of the Resource Plan Order to submit revised proposals in the Black Dog Docket.
- b. Require proposals to be submitted to meet Xcel's resource needs, 30 days from the date at which Xcel specified its exact resource needs.
- c. Require proposals to be submitted to meet Xcel's resource needs, 30 days from the date at which the Commission issues an order regarding Xcel's exact resource needs.
- d. Take some other action.

7. Should the Commission refer this matter back to the OAH?

- a. Refer the matter to the OAH to continue with the competitive resource acquisition process. Include any conditions or questions deemed appropriate based on the Commission decisions made today.
- b. Do not refer the matter to the OAH at this time.

8. Should the Commission provide a procedural recommendation to the OAH?

- a. Request that, to the extent possible, the ALJ develop a procedural schedule such that a Recommended Decision is presented to the Commission on or before March 1, 2013, and shall report any expected delays in a timely manner.
- b. Take no action.
- c. Take some other action.

9. Should the Commission appoint an independent evaluator?

- a. Request that the Department act as a neutral third party to evaluate all information and make a recommendation to the ALJ in the form of direct testimony, and the parties may file testimony in response to the Department's testimony.
- b. Require the use of an independent evaluator (IE) other than the Department and allow the Department 30 days to evaluate the IE selection and submit comments to the Commission.
- c. Do not request a independent evaluator be appointed and continue with the standard resource acquisition process.
- d. Take some other action.

10. Should the Commission request the ALJ issue a protective order regarding trade secret information?

- a. Request the ALJ require that 'All confidential information and proprietary information shall be presented only to the Department, the Commission, and any independent advisors, and neither Xcel nor Calpine shall be required to share such information with the other party.'
- b. Provide the ALJ with the following three principles to guide the ALJ in the proceeding:
 - i. Inappropriate discovery requests need not be answered.
 - ii. Special provisions in a protective order should address highly sensitive information.
 - iii. The Commission, Department, and the Office of the Attorney General should not be restricted by these principles, and should continue to have their

standard, robust access to information.

- c. Include an ordering point that requires the hearing officer provide a protection order that defines disclosure terms. Xcel's suggested language:

The Company shall not be required to disclose to Calpine Corporation any information designated Confidential, Highly-Confidential or Trade Secret by the Company; likewise, Calpine Corporation shall not be required to disclose to the Company, except to the Company's resource planning employees, any information designated Confidential, Highly-Confidential or Trade Secret by Calpine Corporation. Both the Company and Calpine Corporation shall be required to disclose any information related to their respective proposals, including Confidential, Highly Confidential and Trade Secret information, to the Department of Commerce, Division of Energy Resources.

- d. Take some other action.
- e. Take no action.

11. Should the Commission require parties to be held to the cost information provided in the resource acquisition process?

- a. Require that Xcel is held to the cost information presented in this proceeding and shall be barred from seeking future rate recovery for any amounts in the excess of the amounts presented in this proceeding.
- b. Require all parties to be held to the cost information provided in this proceeding.
- c. Take some other action.
- d. Take no action.

Staff Recommendation

Staff recommends 1a, 2a, 3a, 4 – no recommendation, 5 – no recommendation, 6b or 6c, 7a, 8a, 9a, 10a, 11 – no recommendation.