

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Betsy Wergin

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Xcel Energy's Petition for  
Approval of a Solar Portfolio to Meet Initial  
Solar Energy Standard

ISSUE DATE: March 24, 2015

DOCKET NO. E-002/M-14-162

ORDER APPROVING SOLAR  
PORTFOLIO

**PROCEDURAL HISTORY**

On October 24, 2014, Xcel Energy (Xcel or the Company) filed a petition for approval of a 187-MW solar portfolio to meet its obligation under the Solar Energy Standard<sup>1</sup> to obtain 1.5% of its retail electricity sales from solar energy by 2020.

Between November 25 and December 9, 2014, the following parties submitted initial comments on the portfolio:

- NextEra Energy Resources, LLC,
- Minnesota Department of Commerce (the Department),
- Clean Energy Organizations,<sup>2</sup>
- Community Energy Renewables, LLC, and
- Minnesota Solar Energy Industry Association.

These parties recommended that the Commission approve the portfolio as a cost-effective approach to meeting the Solar Energy Standard.

Between December 17 and 23, 2014, Xcel and the Department filed reply comments. Xcel recommended that the Commission only approve 87 MW of the portfolio in light of the Commission's approval of a 100-MW solar project in an unrelated docket. The Department continued to recommend approval of the full portfolio.

On February 12, 2015, the matter came before the Commission.

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<sup>1</sup> Minn. Stat. § 216B.1691, subd. 2f.

<sup>2</sup> Fresh Energy, the Minnesota Center for Environmental Advocacy, the Sierra Club, and the Izaak Walton League of America – Midwest Office, filing jointly as "Clean Energy Organizations."

## FINDINGS AND CONCLUSIONS

### **I. Summary**

In this order the Commission reviews Xcel's petition, and the parties' comments on it. The Commission concludes that the projects in Xcel's solar portfolio represent a cost-effective, reasonable, and prudent approach to complying with the Solar Energy Standard and therefore approves the project PPAs (power-purchase agreements).

In addition, the Commission takes the following actions to resolve issues raised by the parties:

- finds that the projects are exempt, under Minn. Stat. § 216B.243, subd. 9, from the requirement to obtain a certificate of need;
- requires that a transfer of any of the PPAs to a third party that causes a material change to the terms and conditions of the existing agreement, or a purchase of any of the three projects by Xcel, must first be approved by the Commission; and
- directs Xcel to clarify language in the PPAs requiring that both Minnesota and North Dakota approve recovery of the cost of the PPAs.

These decisions will be explained in turn below.

### **II. Background**

#### **A. The Solar Energy Standard**

Minnesota's Solar Energy Standard (SES) requires public utilities to generate or procure sufficient electricity from solar sources so that by the end of 2020, at least 1.5% of a utility's retail electricity sales in Minnesota are generated by solar energy.<sup>3</sup> The SES also sets a goal that, by 2030, 10% of all retail electricity sales in Minnesota will be generated by solar energy.<sup>4</sup>

#### **B. Xcel's Solar Procurement**

Xcel estimates that it will need an additional 300 MW of solar generating capacity to obtain 1.5% of its retail electricity sales from solar energy by the end of 2020. The Company expects that, in the same period, its customers will contribute approximately 100 MW of solar capacity through small-scale distributed-solar projects. Xcel intends to procure approximately 200 MW of utility-scale solar generation to meet the remainder of its 1.5% obligation.

On April 22, 2014, Xcel issued a request for proposals (RFP) for solar-generation projects up to 100 MW in size. The Company received 111 proposals from 36 developers, representing a total of 2,100 MW of solar generation.

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<sup>3</sup> Minn. Stat. § 216B.1691, subd. 2f(a).

<sup>4</sup> *Id.*, subd. 2f(c).

### C. Xcel's Proposed Solar Portfolio

On October 24, 2014, Xcel filed a petition for approval of a 187-MW solar portfolio containing the winning bids from its RFP process:

- **Marshall Solar** – a 62.25-MW project located near Marshall, Minnesota to be developed by NextEra Energy Resources, LLC;
- **MN Solar I** – a 24.75-MW project located near Tracy, Minnesota to be developed by juwi solar, Inc.; and
- **North Star Solar** – a 100-MW project located near North Branch, Minnesota to be developed by Community Energy Renewables, LLC.

The power-purchase agreements (PPAs) for all three projects have a term of 25 years with pricing on a pay-for-production basis. Xcel intends to recover the costs of the PPAs through the Fuel Clause Rider once the projects begin producing energy in late 2016.

To evaluate the portfolio's cost-effectiveness, Xcel modeled the operation of its system with and without the solar projects. The Company estimated that the three projects combined would displace approximately 370,000 MWh of fossil-fuel generation annually. This displacing of carbon-intensive generation by solar generation resulted in a net savings of \$47 million over the projects' 25-year lives when Xcel factored in the expected cost of carbon dioxide (CO<sub>2</sub>) emissions regulations.

The Company also conducted a levelized-cost analysis that compared the costs and benefits of a single MWh generated by the solar portfolio. Under the levelized-cost analysis, the portfolio was cost-effective even without considering avoided CO<sub>2</sub> emissions costs:

<b>Levelized Cost of Energy (\$/MWh)</b>	
PPA Price	\$73.20
Avoided Fossil Fuel	(\$59.39)
Capacity Credit	(\$14.86)
<b>Net Cost (Benefit)</b>	<b>(\$1.05)</b>

### D. The Aurora Project

On February 5, 2015, in an unrelated docket, the Commission ordered Xcel to execute a PPA with Geronimo Wind Energy, LLC for its 100-MW "Aurora" distributed-solar project.<sup>5</sup>

The Aurora project is the culmination of a competitive resource-acquisition process that began in November 2012, when the Commission ordered Xcel to solicit proposals to address a projected capacity need of 150 MW in 2017, increasing to 500 MW by 2019.

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<sup>5</sup> *In the Matter of the Petition of Northern States Power Company to Initiate a Competitive Resource Acquisition Process*, Docket No. E-002/CN-12-1240.

Xcel received four proposals—two for the construction of natural-gas generators, one by another utility to sell Xcel capacity credits, and Geronimo’s proposal.<sup>6</sup> The Commission concluded that Geronimo’s proposal, in addition to cost-effectively supporting the reliability and adequacy of Xcel’s power supply, was the proposal that best advanced state environmental-policy goals.

In light of the Commission’s order to execute a PPA with Geronimo, Xcel recommends that the Commission approve only the Marshall and MN Solar I projects in this docket, maintaining a total solar portfolio of 187 MW between the two dockets. Xcel believes that 187 MW will provide enough solar energy to meet the Company’s “1.5% by 2020” SES obligation and anticipates that technological advances will allow it to secure additional solar generation at a lower price in the future. However, Xcel acknowledges that whether to approve two projects or the full portfolio is a policy issue and a close call.

### III. Approval of Solar Portfolio

#### A. The Positions of the Parties

##### 1. The Department

The Department recommended that the Commission approve all three PPAs in the current docket and allow their energy to be counted toward Xcel’s SES requirements. The Department acknowledged that Marshall Solar and MN Solar I, in combination with the previously approved Aurora project, would supply enough energy for Xcel to meet its “1.5% by 2020” SES obligation. However, the Department disagreed with Xcel’s recommendation to exclude the North Star project.

Based on its own modeling of Xcel’s system, the Department found that a portfolio that included all four projects was more cost-effective than one that included only Marshall Solar, MN Solar I, and Aurora. Specifically, the Department analyzed three solar portfolios:

Portfolio 1	Portfolio 2	Portfolio 3
Marshall Solar, MN Solar I, Aurora	Marshall Solar, MN Solar I, North Star Solar	Marshall Solar, MN Solar I, North Star Solar, Aurora

Portfolio 1 is Xcel’s recommended combination of projects, containing Geronimo’s Aurora project but not North Star Solar. In Portfolio 2, North Star Solar replaces Aurora. Portfolio 3 contains all four projects.

The Department estimated the cost of these portfolios under three future scenarios: one in which the costs of natural gas, wind, coal, CO<sub>2</sub> emissions, and capital were assumed to be high; a second in which these costs were moderate, and a third in which they were low:

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<sup>6</sup> Xcel also advanced a self-build proposal to install a combustion turbine at its existing Black Dog Plant.

	Present Value of Societal Cost (\$ ,000)		
	All Variables at High	All Variables at Mid	All Variables at Low
<b>No Solar</b>	\$0	\$0	\$0
<b>Portfolio 1</b>	(\$59,132)	\$21,804	\$71,208
<b>Portfolio 2</b>	(\$113,688)	(\$41,796)	\$8,232
<b>Portfolio 3</b>	(\$118,584)	\$3,384	\$76,652

The Department’s analysis suggests that a portfolio with all four projects (Portfolio 3) would cost less than Xcel’s recommended portfolio (Portfolio 1) in both the mid- and high-range cost scenarios.

## 2. Community Energy Renewables

Community Energy Renewables (CER), the developer of the North Star Solar project, urged the Commission to approve all three projects in the current docket. CER disagrees with Xcel’s recommendation to delay further investment in solar generation in the hope that advances in technology will drive down costs. Instead, CER argues that federal tax policy and current market conditions have created a short window of opportunity within which the procurement of solar energy is fundamentally less expensive than the alternatives.

The primary risk of a “wait and see” approach to solar development, according to CER, would be the inability to take advantage of the 30% federal Investment Tax Credit (ITC). The ITC currently allows owners of solar generating systems to subtract 30% of their investment from the taxes they would otherwise owe the federal government. However, the credit is set to decrease to 10% at the end of 2016 unless Congress acts to extend it. As a result, CER believes the cost of solar is likely to increase substantially as the credit expires.

CER acknowledged that the price of solar energy has declined rapidly over the past five years, as a result of both technology improvements and economies of scale. However, even if technology improvements lead to average cost declines of 2–4% annually over the coming years, it would take five to ten years to offset the reduction in the ITC. Moreover, CER argued that additional economies of scale will become harder and harder to achieve as more and more large projects move forward. Finally, CER believes that growing demand and rising interest rates are likely to exert upward pressure on the future cost of solar.

## 3. Clean Energy Organizations

The Clean Energy Organizations also supported approving all three projects. They argued that the policy issue before the Commission is whether Xcel should invest now in more solar resources than it believes will be required to satisfy the short-term mandate of the Solar Energy Standard. Because the solar portfolio is cost-effective, and because of Minnesota’s statutory preference for renewable energy, the Clean Energy Organizations recommended that the Commission answer this question affirmatively.

The Clean Energy Organizations maintained that the benefits of approving the full 187-MW portfolio outweigh any risks. By approving the full portfolio, they argued, the Commission would

maximize the benefit of the ITC. Moreover, by exceeding what is necessary to meet Xcel's 1.5% by 2020 obligation, the Commission will further the SES goal of generating 10% of Minnesota's retail electric sales from solar by 2030. Finally, the additional solar generation will provide a hedge against volatile natural gas and wholesale market prices and will displace nearly 7 million tons of CO<sub>2</sub> emissions, reducing Xcel's exposure to future environmental regulations and lowering the cost of compliance.

According to the Clean Energy Organizations, the risk of investing in solar generation is that CO<sub>2</sub> emissions remain unregulated for the next 25 years and the price of fossil fuels falls. However, the Clean Energy Organizations believe this scenario is unlikely. They argue that CO<sub>2</sub> emissions are likely to be regulated in the future, pointing to the EPA's proposed "Clean Power Plan" rules limiting CO<sub>2</sub> emissions from existing power plants. These rules will be finalized in 2015, with compliance requirements beginning in 2020.

#### **4. Minnesota Solar Energy Industry Association (MnSEIA)**

MnSEIA also urged the Commission to approve all three projects, which, by Xcel's own calculations, would reduce system costs by \$47 million. While MnSEIA agrees with Xcel that the solar industry will continue to reduce costs, it believes that these cost savings may not come soon enough to offset the ITC reduction and allow Xcel to meet its SES obligations as cost-effectively as the current projects.

#### **B. Commission Action**

Upon the petition of a public utility, the Commission must approve or disapprove power-purchase agreements entered into by the utility to satisfy the renewable energy objectives and standards set forth in Minn. Stat. § 216B.1691, including the Solar Energy Standard.<sup>7</sup> The expenses incurred by the utility over the duration of an approved PPA are recoverable through a rider.<sup>8</sup>

For the reasons that follow, the Commission will approve the Marshall Solar, MN Solar 1, and North Star Solar PPAs, allow Xcel to count the energy purchased under the approved PPAs toward its SES requirements, and authorize the Company to recover the costs of the PPAs through the Fuel Clause Rider.

The Commission finds that the three projects brought forward by Xcel represent a cost-effective, reasonable, and prudent approach for the Company to meet its obligations under the Solar Energy Standard. Xcel selected the projects as the most attractive proposals in a competitive-bidding process that drew 111 proposals for 2,100 MW of total capacity. Xcel's modeling indicated that a portfolio containing all three projects would result in system-wide savings of \$47 million, when factoring in the expected cost of carbon regulations. Using a levelized-cost analysis, the portfolio was cost-effective even without including the avoided CO<sub>2</sub> emissions costs.

Xcel recommends that the Commission approve a total portfolio of 187 MW, including Aurora and two of the projects from this docket, Marshall Solar and MN Solar I, arguing that 187 MW of solar capacity will be sufficient for it to meet its 2020 SES obligations.

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<sup>7</sup> Minn. Stat. § 216B.1645, subd. 1.

<sup>8</sup> *Id.*, subd. 2.

However, because the solar portfolio is cost-effective, approving more than 187 MW of capacity is preferable as it provides a hedge against both rising fuel costs and potential unforeseen issues that might impede or delay other solar projects currently expected to help meet the SES obligation. And although Xcel suggests delaying additional solar investments until prices fall further, taking advantage of the 30% ITC now results in an attractive price for ratepayers, while the future costs of solar generation are uncertain. Finally, approving the full portfolio will advance state renewable-energy goals, most notably that of obtaining 10% of retail electric sales from solar generation by 2030.

For the foregoing reasons, the Commission will approve the PPAs for Marshall Solar, MN Solar 1, and North Star Solar. The Commission will require Xcel to file the executed contracts within 30 days of this order.

### **C. Certificate-of-Need Exemption**

Generally, no “large energy facility,” including an electric generating plant with a capacity greater than 50 MW, may be constructed in Minnesota without the issuance of a certificate of need by the Commission.<sup>9</sup>

Because the MN Solar I project has a capacity of less than 50 MW, it is not a “large energy facility” and is not subject to the certificate-of-need requirement. However, the Marshall Solar and North Star Solar projects qualify as large energy facilities and will require certificates of need from the Commission unless an exemption applies.

#### **1. The Positions of the Parties**

Xcel argued that these projects are exempt from the certificate-of-need requirement under Minn. Stat. § 216B.2422, subd. 5. The statute provides that if an electric power generating plant is selected in a bidding process approved or established by the Commission, a certificate of need is not required.<sup>10</sup> Xcel maintains that it issued its RFP in accordance with the “Track 1” formal bidding process established in Docket No. E-002/RP-04-1752.

The Department argued that the projects in this docket do not qualify for the “bidding process” exemption in section 216B.2422, subd. 5. The Department noted that the Track 1 bidding process starts with a Commission order directing the Company to begin a competitive resource-acquisition process and setting the parameters of the RFP.<sup>11</sup> In this case, however, Xcel issued an RFP on its own initiative. The Department thus concluded that the Marshall Solar and North Star Solar projects were not “selected in a bidding process approved or established by the [C]ommission.”<sup>12</sup>

However, the Department concluded that the Marshall and North Star projects are exempt from the certificate-of-need requirement under a different statutory provision, Minn. Stat. § 216B.243,

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<sup>9</sup> Minn. Stat. §§ 216B.243, subd. 2, and .2421, subd. 2(1).

<sup>10</sup> Minn. Stat. § 216B.2422, subd. 5(b).

<sup>11</sup> See Docket No. E-002/RP-04-1752, Compliance Filing at 3 (Aug. 28, 2006) (outlining Track 1 process).

<sup>12</sup> *Id.*

subd. 9. This statute exempts from the certificate-of-need requirement a wind or solar generation facility intended to be used to meet a utility's SES obligations if the Commission finds that the facility is a reasonable and prudent approach to meeting those obligations, considering

- the size of the facility relative to a utility's total need for renewable resources,
- alternative approaches for supplying the renewable energy to be supplied by the proposed facility,
- the facility's ability to promote economic development,
- the facility's ability to maintain electric system reliability,
- impacts on ratepayers, and
- other criteria that the Commission finds relevant.<sup>13</sup>

NextEra and Community Energy Renewables both argued that their projects are reasonable and prudent in light of the factors listed in section 216B.243, subdivision 9. CER argued that the competitive resource-acquisition process accounts for each of these factors. NextEra offered a similar but slightly more detailed analysis of the reasonableness factors.

## **2. Commission Action**

The Commission concurs with the Department, NextEra, and Community Energy Renewables that the Marshall Solar and North Star Solar projects are exempt, under Minn. Stat. § 216B.243, subd. 9, from the requirement to obtain a certificate of need. The Commission affirms its earlier finding that the projects represent a cost-effective, reasonable, and prudent approach for the Company to meet its obligations under the Solar Energy Standard.

Specifically, with regard to the factors listed in Minn. Stat. § 216B.243, subd. 9, the Commission finds as follows:

- Xcel has a need for approximately 300 MW of solar capacity by 2020. With a combined capacity of, 162.25 MW, the Marshall Solar and North Star Solar projects will help Xcel meet its "1.5% by 2020" SES obligation.
- The RFP process in this docket thoroughly considered alternative approaches for supplying solar energy, with 111 proposals received for a total of 2,100 MW of solar generation. The projects selected were the most attractive proposals.
- The projects will have a positive impact on their local economies during both construction and operation.
- The Midcontinent Independent System Operator's interconnection process will ensure that the projects are connected to the grid in a safe and reliable manner.
- Xcel expects a minimal rate impact from the solar portfolio: approximately 0.02¢ per kWh initially, decreasing to 0.007¢ per kWh by 2025.

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<sup>13</sup> Minn. Stat. § 216B.243, subd. 9.



Finally, the Commission clarifies that neither its approval of the PPAs nor the finding that the projects are exempted from the certificate-of-need requirement relieves the project developers of their obligation to obtain the necessary permits, approvals, or other required authorizations from the Commission or other governmental units. A large electric generating plant with a capacity greater than 50 MW must obtain a site permit from the Commission under Minnesota Statutes chapter 216E.

#### **D. Transfer of the PPAs or Facility Property**

The PPAs specify the circumstances under which a party may assign the PPA, as well as the process by which Xcel may purchase or acquire an interest in the facility. The language in the three contracts is substantially similar and can be summarized as follows:

Either party may assign the PPA to a third party with the prior written consent of the other party to the contract. Any assignee must expressly assume the assignor's obligations under the PPA unless otherwise agreed by the other party to the contract. And an assignment does not relieve the assignor of its obligations under the PPA unless the other party waives them in writing.

Xcel has the option to purchase the facility property under certain conditions, as well as a "right of first offer" that requires the developer, if it offers to convey the facility to a third party, to grant Xcel the opportunity to purchase the facility on substantially the same terms.

##### **1. The Positions of the Parties**

###### **a. Third-Party Assignment**

The Department expressed concern that the transfer of a PPA from a developer to a third party could entail changes to the PPA that might expose ratepayers to additional risks. The Department therefore proposed that the Commission require Xcel and the developer to obtain Commission approval of any such transfer.

At hearing, Xcel stated that complex financing arrangements often necessitate multiple assignments of a solar PPA. In order to avoid the administrative burden of bringing each such transfer to the Commission for approval, the Company recommended that the Commission require approval of only transfers that involve a material change to the PPA. And Xcel committed to keeping the Commission informed of all PPA transfers, material or not.

###### **b. Purchase by Xcel**

The Department stated that, if Xcel were to exercise its right of first offer and purchase a facility, the PPA would terminate. The Department requested that Xcel explain in reply comments how it intends to recover the cost of purchasing a facility.

Xcel confirmed that if it purchased any of the projects, it would first seek Commission approval under Minn. Stat. § 216B.50. Depending on the circumstances of the purchase, the Company would propose to recover the cost through base rates in its next rate case or through the Renewable Energy Standard rider.

The Department concluded that this approach would be reasonable. The agency recommended that, upon exercising its right to purchase any of the facilities, Xcel be required to file with the Commission its plan for recovery the costs of the purchase.

## **2. Commission Action**

The Commission concludes that it should have an opportunity to review and approve material changes to a PPA incidental to a third-party assignment, to ensure that the changes are in the public interest. The Commission also agrees that Xcel's purchase of a facility must be approved by the Commission, as required under Minn. Stat. § 216B.50.

Accordingly, the Commission will require that a transfer of any of the PPAs to a third party that causes a material change to the terms and conditions of the existing agreement, or a purchase of any of the three facilities by Xcel, must first be approved by the Commission. The Commission will require Xcel, upon exercising its right of first offer in any of the three PPAs, to file with the Commission its plan for recovering the costs of purchasing the facility.

### **E. Modification of PPA “Condition Precedent”**

The PPAs contain a condition precedent providing that either party may terminate the agreement if the Minnesota and North Dakota commissions fail to approve, singly or together, recovery of “all” costs incurred under the PPA. In its reply comments, Xcel recommended that the condition be modified to clarify that it applies only to those costs that would ordinarily be allocated to the Company's Minnesota and North Dakota ratepayers, and not to costs allocated to its South Dakota, Wisconsin, or Michigan jurisdictions.

The Commission agrees with Xcel's proposed clarification of the condition precedent. The Company proposed the same change to the Aurora PPA in Docket No. E-002/CN-12-1240, outlining the change in a December 12, 2014 letter to the Commission. The Commission will order Xcel to modify the PPAs consistent with its attachment to that letter.

## **ORDER**

1. The Commission hereby approves the Marshall Solar, MN Solar 1, and North Star Solar PPAs, allows Xcel to count the energy purchased under the approved PPAs toward its SES requirements, and authorizes the Company to recover the costs of the PPAs through the Fuel Clause Rider consistent with past practice regarding jurisdictional allocation of costs.
2. Xcel shall modify the PPAs as outlined in Attachment A to clarify that the condition precedent regarding agency approval of the PPAs is not intended to apply to costs allocated to South Dakota, Wisconsin, and Michigan.
3. The Company shall file the executed contracts within 30 days of this order.
4. No party may transfer a PPA without the consent of the Commission if that transfer would cause any material change to the terms and conditions of the existing agreement. Xcel may not purchase of any of the three facilities addressed in this order without the consent of the Commission.

5. Upon exercising its right of first offer in any of the three PPAs, Xcel shall file with the Commission its plan to recover the costs of purchasing the facility.
6. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf  
Executive Secretary



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## 6.1 Company CPs.

(A) ~~On No later than~~ September 23, 2014, Company ~~intends to file~~ an unexecuted draft of this PPA with the Minnesota Public Utilities Commission pursuant to the requirements of the Order. No later than ten (10) Days after receipt of an ~~outcome of the o~~Order from the Minnesota Public Utilities Commission approving requiring Company to execute this PPA ~~as consistent with the Order~~, Company shall file this PPA with the North Dakota Public Service Commission ~~pursuant to relevant regulatory requirements~~. Seller shall cooperate with Company's effort to seek State Regulatory Approval.

(B) Either Party shall have the right to terminate this PPA, without any further financial or other obligation to the other as a result of such termination, by Notice to the other Party not more than ten (10) Days after the earlier of: (i) fourteen (14) Days after receipt of written determinations by both State Regulatory Agencies that together do not constitute State Regulatory Approval, or (ii) six (6) months following the written request for State Regulatory Approval without receipt of State Regulatory Approval. If a Party fails to terminate this PPA in the time allowed by this paragraph, such Party shall be deemed to have waived its right to terminate this PPA under this Section 6.1 and this PPA shall remain in full force and effect thereafter.

"State Regulatory Agency(s)" means the Minnesota Public Utilities Commission or any successor agencies in the State of Minnesota and the North Dakota Public Service Commission or any successor agencies in the State of North Dakota.

"State Regulatory Approval" means a final, written order of one State Regulatory Agency, or if needed, both State Regulatory Agencies, that does not impose conditions unsatisfactory to the Company and is not subject to application for rehearing, re-argument and reconsideration, and that makes the affirmative determination that Company's execution of this PPA is ~~reasonable prudent~~ and/or in the public interest, and that ~~100% of those~~ costs incurred by Company under this PPA as currently allocated by ratemaking mechanisms to Company's Minnesota and North Dakota jurisdictions are recoverable, in the aggregate, from the Company's Minnesota and/or North Dakota retail customers ~~of both States or if only one State then from the retail customers of that State (without application of jurisdictional allocators or other reductions to reflect multi-state operations) pursuant to Applicable Law. The preceding is,~~ subject only to the requirement that the State Regulatory Agency retains ongoing prudency review of Company's performance and administration of this PPA.