

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair  
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In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for a Certificate of Need for the CapX 345-kV Transmission Project

ISSUE DATE: June 4, 2007

DOCKET NO. ET-2, E-002, *et al.*/CN-06-1115

ORDER DESIGNATING APPLICANTS AND SETTING FILING REQUIREMENTS

**PROCEDURAL HISTORY**

On November 2, 2005, Great River Energy (GRE), Northern States Power Company d/b/a Xcel Energy (Xcel), and others proposed a plan for acquiring the capacity to transmit the electricity forecasted to be needed in the region in 2020. They called this capacity expansion plan "CapX 2020" (CapX).<sup>1</sup>

In 2006 GRE and Xcel started the process of obtaining permits to build the first phase of the CapX project, called the Group 1 Projects. GRE proposed to build a 345-kV transmission line from Brookings, South Dakota, to the southeastern quadrant of the Twin Cities metropolitan area, and a 345-kV line from Marshall, Minnesota, to the Granite Falls area.<sup>2</sup> Xcel proposed to build a 345-kV line between the southeast quadrant of the Twin Cities through Rochester to La Crosse, Wisconsin.<sup>3</sup> And Xcel proposed to build a 345-kV line from Fargo, North Dakota to Alexandria, St. Cloud and Monticello.<sup>4</sup> Xcel estimates the Group 1 Projects will cost roughly \$1.3 billion to build.

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<sup>1</sup> See *In the Matter of the 2005 Minnesota Biennial Transmission Filing*, Docket No. E-999/TL-05-1739, 2005 Minnesota Biennial Transmission Projects Report, Issue 2005-CX-1 "CapX 2020 Vision Plan."

<sup>2</sup> *In the Matter of the Application of Great River Energy and Others for a Certificate of Need for the CapX Brookings, S.D. -- Southeast Twin Cities 345-kV Transmission Project*, Docket No. ET-2/CN-06-857.

<sup>3</sup> *In the Matter of the Application of Northern States Power Company (d/b/a Xcel Energy) and Others for a Certificate of Need for the CapX Twin Cities-Rochester-La Crosse 345-kV Transmission Project*, Docket No. E-002/CN-06-979.

<sup>4</sup> *In the Matter of the Application of Northern States Power Company (d/b/a Xcel Energy) and Others for a Certificate of Need for the CapX Fargo-Alexandria-St. Cloud-Monticello 345-kV Transmission Project*, Docket No. E-002/CN-06-1115.

On November 3, 2006, the Commission directed the applicants to address all related CapX Group1 projects within a single application for a Certificate of Need to be filed in the current docket.<sup>5</sup>

On February 5, 2007, Xcel asked to be exempted from certain filing requirements that it argues are not relevant to its proposal. On March 7, the Commission extended the period for considering this request.<sup>6</sup>

On March 19, 2007, the Commission received comments on Xcel's request from the Minnesota Department of Commerce (the Department), the North American Water Office (NAWO), Carol A. Overland, the Prairie Island Indian Community and Windustry.

On April 9, 2007, the Commission received reply comments from the Department, NAWO, Wind on the Wires (WoW), Windustry and Xcel.

The Commission met on April 26, 2007, to consider this matter, and received additional comment from the Department, NAWO, Windustry, WoW, and Kristen Eide-Tollefson.

## **FINDINGS AND CONCLUSIONS**

### **I. LEGAL BACKGROUND**

Before building a large energy facility in Minnesota, a person must apply for a "Certificate of Need" demonstrating that the facility is needed. Minn. Stat. § 216B.243, subd. 2. The term "large energy facility" includes any transmission line of at least 100 kV with at least ten miles in Minnesota. Minn. Stat. § 216B.2421, subd. 2(3). Because each project filed by the applicants as part of CapX Group 1 would surpass these thresholds, they each qualify as a large energy facility.

Minnesota Rules chapter 7849 sets forth the requirements for making an application for a Certificate of Need, as well as the ultimate criteria for demonstrating need. In its filing, Xcel – acting on behalf of various participants – seeks exemptions from some of the Certificate of Need application requirements. The Commission grants exemptions when "the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document." Minn. Rules, part 7849.0200, subp. 6.

### **II. PROCEDURAL MATTERS**

#### **A. Docket Consolidation**

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

In its November 3, 2006 Order, the Commission directed participants to prepare a consolidated Certificate of Need application in the current docket. NAWO questions whether it is appropriate to continue to address all aspects of the Group 1 Projects in this fashion. Noting that some aspects

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<sup>5</sup> ORDER APPROVING NOTICE PLANS AND REQUIRING COMPLIANCE FILINGS.

<sup>6</sup> ORDER VARYING RULE AND EXTENDING TIME LINE.

of the proposals appear to have greater urgency than others, NAWO suggests that the Commission may want to address these aspects more quickly while leaving more time to address the less urgent portions. Before making such a determination, however, NAWO suggests that the Commission consider the extent to which the participants have integrated the plans for implementing the separate components of the Group 1 Projects.

No other party addressed this matter.

## **2. Commission Action**

The Commission finds merit in NAWO's suggestion. The question of whether the Group 1 Projects will be evaluated jointly or individually will determine the procedure of the rest of the docket. To begin developing the record on this matter, the Commission will direct project participants to address the extent to which they anticipate coordinating the implementation of the Group 1 Projects. Specifically, the Commission will direct participants to provide detailed construction timetables and in-service dates for the three proposed transmission projects.

### **B. Identifying "Applicants"**

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

##### **a. Xcel**

Minnesota Statutes § 216B.243, subdivision 4, requires "[a]ny person proposing to construct a large energy facility [to] apply for a certificate of need...." The fact that a number of participants have entered into Project Development Agreements with GRE and Xcel<sup>7</sup> leads Xcel to express confidence that a Certificate of Need application will be forthcoming. But until the precise business relationship among the parties is resolved, some ambiguity remains about which participants bear the duty to make the application.

Xcel argues that the Certificate of Need application will focus on the need for the proposed lines, rather than the identities of the parties that will develop, build, use or own them. Rather than delay the application pending the resolution of a largely tangential issue, Xcel asks the Commission to receive a Certificate of Need application from GRE and Xcel on behalf of all Group 1 participants, whoever that may prove to be. In support of this request, Xcel pledges that –

- GRE and Xcel will accept responsibility for implementing the Commission's orders in this matter.
- The Certificate of Need application will include a description of the evolving financial arrangements among the participants, how the Group 1 ownership structure will take shape, and the implications of that structure for cost recovery.

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<sup>7</sup> Xcel reports that Central Minnesota Municipal Power Agency, Dairyland Power Cooperative, GRE, Minnesota Power, Minnkota Power Cooperative, Missouri River Energy Services, Otter Tail Power Company, Rochester Public Utilities, Southern Minnesota Municipal Power Agency, Wisconsin Public Power, Inc., and Xcel (both its Minnesota and Wisconsin operations) have all entered into Project Development Agreements.

- Participants will keep the Commission informed of emerging developments regarding the ownership structure and will make themselves available throughout these proceedings to address questions.

#### **b. The Department**

The Department offers no opinion about whether Xcel's proposal would meet all statutory requirements. But as a practical matter, the Department has no objection to the Commission receiving the CapX Certificate of Need application from GRE and Xcel. The Department notes that the applicants will bear the burden to demonstrate that the proposed projects are needed regardless of the applicants' identities.

The Department announced its intention, however, to treat the eventual applicants as the sole owners of the plant for which the application is filed. The Department cautions applicants not to expect any other party to bear the burden of proving the need for the proposed project. If and when these applicants determine that the proposed plant should have additional or substitute owners, the Department would expect the applicants to file for Commission approval as contemplated by law. See Minn. Stat. § 216B.50; Minn. Rules, pt. 7849.0400, subp. H.

#### **c. NAWO**

According to NAWO, the Commission cannot determine whether a proposed facility is needed until the Commission considers the alternatives to building the new facility. The more expensive a proposal is for any given utility, NAWO argues, the larger the range of potential cost-effective alternatives becomes. But without knowing the financial relationships among the parties building the new facility, the Commission will be unable to determine how much the Group 1 Projects will cost any given utility. Consequently NAWO recommends that any Certificate of Need application for a new facility set forth the financial relationships among the parties regarding the new facility.

Xcel disputes NAWO's arguments. According to Xcel, the usage of the proposed transmission lines will be largely controlled by the Midwest Independent Transmission System Operator, Inc. (MISO). Since April, 2005, MISO has coordinated the usage of, and arranged the compensation for the usage of, transmission lines in much of the Midwest. In its "Day-Ahead Market," MISO invites parties to bid for the right to transmit power the following day, and allocates rights and costs accordingly. Then in its "Real-Time Market," MISO tracks how parties actually used the transmission grid, billing them when they exceed the amount reserved the previous day and crediting them when they underuse their reserved capacity. While the details of MISO's cost allocation formulas remain in flux, Xcel denies that the allocation of ownership will influence cost allocation.

### **2. Commission Action**

Xcel correctly observes that statutes and rule focus more attention on the importance of demonstrating need than on the identity of the demonstrator. If by the end of this proceeding the record fails to show that the CapX proposals are needed, then the Commission will deny the application. This dynamic protects the public interest by providing the incentive for the CapX proponents – whether or not designated as "applicants" – to demonstrate the need for the proposals.

Parties agree that the Commission may consider how a proposed facility will affect rates when evaluating whether a proposal is needed. Parties disagree about the relevance of the ownership arrangement to evaluating that effect. But the issue currently before the Commission is not whether this information is relevant to demonstrating need, but whether the applicants must include this information in the Certificate of Need application.

Because the information in question does not yet exist, the Commission is faced with a choice: It could authorize the filing of an application and begin the process of evaluating the need for the Group 1 Projects before information about the participants' business relationships is available. Alternatively, the Commission could decline to accept any application until the participants had revolved their commercial arrangements. Or as a middle path, the Commission could direct the applicants to include in their filing estimates of the anticipated ownership structure of the Group 1 Projects.

Under the circumstances, the Commission will select the middle path. Given the attenuated relationship between ownership and need, and the magnitude of other issues that will warrant examination, the Commission finds little benefit in postponing the start of the Certificate of Need process pending resolution of negotiations. To help parties estimate the pending financial consequences to ratepayers of any given utility, however, the Commission will direct the applicants to include the list of likely participants, and the minimum and maximum ownership interest each participant will take in each segment of the Group 1 Projects. These estimates will not be binding on any party.

With this condition, the Commission will authorize GRE and Xcel to file a Certificate of Need application on behalf of all participants in CapX 2020 Group 1 Projects.

### **III. EXEMPTIONS FROM CERTIFICATE OF NEED FILING REQUIREMENTS**

#### **A. In General**

##### **1. Party Comments**

In general, Xcel argues that some of the application information requested by Commission rules, as applied to the Group 1 Projects, would be burdensome to produce, unhelpful to read, or both, whereas substitute information would be less burdensome and more relevant.

According to Xcel, the Certificate of Need filing requirements at Minnesota Rules chapter 7849 were designed to demonstrate the need for a more traditional transmission project – one arising when a new generator creates a new supply of electricity, for example, or a new development creates a new demand. In contrast, participants have developed the Group 1 Projects to fulfill three different purposes:

- Participants estimate that by 2020 demand for electricity in Minnesota and neighboring states will grow by 6300 megawatts (MW). But the participants do not know precisely where the new demand will arise or where the new electricity will come from. The Group 1 Projects were selected for their ability to permit the transmission of electricity throughout the region under a wide variety of assumptions about the location of new electric supply and demand.
- More urgently, the growth in demand for electricity in areas such as Rochester and St. Cloud is approaching the limits of the utilities' capacity to provide service reliably.

Each of the Group 1 Projects would add capacity to reinforce reliability at over-stressed distribution substations. (A distribution substation receives electricity from high-voltage transmission lines, converts it to lower voltage, and releases the electricity onto a local distribution grid to serve retail customers.)

- Finally, the Group 1 Projects were designed to enable electric utilities to gain access to electricity from renewable sources – especially from wind turbines in southwestern Minnesota and southeastern South Dakota. The need for this transmission has grown since the recent revision of Minnesota’s Renewable Energy Objectives statute<sup>8</sup> that mandates the use of energy from renewable sources.

Xcel states that its exemption requests are designed to tailor the application requirements to illustrate these needs.

The Department and WoW support the conceptual framework underlying Xcel’s requests, although they each find fault with certain specific requests, discussed below.

While not objecting to any specific exemption request, Ms. Eide-Tollefson and the Prairie Island Indian Community ask that the Commission resolve this matter in whichever way will make these proceedings more comprehensible to ratepayers and members of the public generally. Ms. Eide-Tollefson discussed the challenges she faced attempting to find useful information about this matter, and the Certificate of Need process generally, on the World Wide Web. She urges the Commission to err on the side of denying exemption requests and providing more disclosure.

Xcel emphasized its efforts to facilitate public participation. It intends to issue notices to hundreds of thousands of citizens along potential transmission line routes, and to post document related to this proceeding – including the Certificate of Need application – on the CapX 2020 site on the World Wide Web, <http://www.CapX2020.com>.

Ms. Overland and Windustry oppose granting any exemptions. The information that Xcel seeks to withhold is necessary for the determination of need, they argue, and if any proposal warrants thorough scrutiny, a \$1.3 billion proposal does.

Ms. Overland questions the extent to which the Group 1 Projects are necessary for accessing renewable sources of energy. She expresses concern that granting the Certificate of Need will merely have the effect of burdening Minnesota ratepayers with the cost of transmission lines designed to promote the export of electricity to serve customers in other states.

Similarly, Windustry notes that the Commission may not issue a Certificate of Need for a large energy facility that will transmit electric power from a nonrenewable source until the Commission evaluates that source. Minn. Stat. § 216B.243, subd. 3a. Windustry argues that the Commission should not exempt utilities from filing any information until they can identify the source of the power that will flow on the proposed lines. Windustry also alleges that the proposals will violate the Minnesota Environmental Policy Act and the Minnesota Environmental Right Act, and frustrate enforcement of the newly-revised Renewable Energy Objectives.

NAWO argues that utilities have a legal duty to address anticipated large energy projects in their resource plans. Xcel disputes this legal conclusion, noting that the Legislature has granted the Commission a variety of procedural vehicles for analyzing large energy projects and granting Certificates of Need.

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<sup>8</sup> See Laws of Minnesota 2007, chapter 3, revising Minn. Stat. § 216B.1691.

NAWO notes that the Legislature has recently established new regulatory requirements and initiated new studies that could influence the optimal arrangement and operation of electric systems. NAWO recommends that this proceeding be suspended pending further developments in these other areas. Xcel opposes this recommendation. Xcel notes that the Group 1 Projects have already be subject to study and analysis. The Commission cannot suspend progress every time there is a new study or regulatory development, Xcel argues, because there will *always* be a new study or development on the horizon.

Moreover, Xcel claims that the task of providing additional capacity in some areas, such as Rochester and St. Cloud, cannot wait until its next resource plan is approved. In response, NAWO proposes the possibility of addressing aspects of the Group 1 Projects separately.

## **2. Commission Action**

The Commission's rules set forth a list of information to include in a Certificate of Need application. But, recognizing that no one could anticipate every circumstance under which a party might seek a Certificate of Need, the rules provide for parties to request exemptions. In short, the rules were adopted in the expectation that not every requirement would be appropriate for every application, and that applicants would seek to tailor the requirements to the circumstances of each proposal.

Whether the Commission grants an exemption depends upon whether "the data requirement is unnecessary to determine the need for the proposed facility...." Minn. Rules, part 7849.0200, subp. 6. In other words, the Commission may grant an exemption request based on the totality of circumstances unless the applicant is seeking to be exempt from providing information that is essential for determining whether a proposed facility is needed.

The Commission has not previously encountered a large energy facility proposal being justified on the basis of anticipated multi-state growth over the span of 10-15 years. For this reason, among others, the Commission is prepared to believe that its rules may not provide a good fit for the kinds of analysis that could demonstrate the need for the Group 1 Projects. Consequently the Commission will decline requests to issue a blanket rejection of Xcel's exemption requests. The Commission will grant or deny each exemption request on its own merits, considering the totality of circumstances.

Parties raise a number of issues in their comments, including both factual and legal arguments. Aside from the procedural matters addressed above, this Order will focus only on the requests for exemptions. Nothing herein should be construed as reflecting a substantive determination of any matters, or as prejudging them in any way. Such findings will require careful examination of the merits of the application, and that examination has not yet occurred.<sup>9</sup>

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<sup>9</sup> *In the Matter of the Application by Koch Refining Company for Certification of the Pine Bend Cogeneration Project*, Docket No. IP-2/CN-95-1406, ORDER GRANTING EXEMPTIONS FROM FILING REQUIREMENTS (February 16, 1996); *In the Matter of the Application of Rapids Power LLC for a Certificate of Need for its Grand Rapids Cogeneration Project*, Docket No. IP-4/CN-01-1306, ORDER GRANTING EXEMPTIONS FROM FILING REQUIREMENTS, PERMITTING EXPEDITED FILING, AND EXTENDING PERIOD TO DETERMINE ADEQUACY OF FILING (October 9, 2001) at 3-4; *In the Matter of the Application of Great River Energy for a Certificate of Need for a High Voltage Transmission*

**B. Minnesota Rules, part 7849.0260, subparts A(3) and C(6)**

**1. Party Comments**

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

The Department supports Xcel’s exemption request. Only by looking at the consequences throughout the entire system can one evaluate the impact of a new facility on transmission efficiency.

In contrast, Windustry opposes the request. According to Windustry, implementing the rules as written would cause the applicants to disclose assumptions about the location and size of new supplies of, and new demands for, electricity. More generally, the rules are designed to discover the transmission efficiency of each individual project in a proposal. This information can be useful for evaluating the cost-effectiveness of each component of the Group 1 Projects separately.

**2. Commission Action**

Where a transmission line functions as part of a larger grid, the Commission has acknowledged the merit of analyzing line losses on the basis of a system rather than a single line.<sup>10</sup> The Commission finds Xcel’s exemption request reasonable and will grant it.

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*Line, Docket No. ET-2/CN-02-536, ORDER GRANTING AND DENYING EXEMPTION REQUESTS AND CLARIFYING FILING REQUIREMENTS (July 2, 2002) at 7; In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy and Dairyland Power Cooperative for a Certificate of Need for a High Voltage Transmission Line, Docket No. ET-3, E-002/CN-02-2052, ORDER GRANTING EXEMPTION IN PART AND REQUIRING SUPPLEMENTARY FILING AND NOTICE (April 8, 2003) at 8; In the Matter of the Application for Certificates of Need for Three 115 kV Transmission Lines in Southwestern Minnesota, Docket No. E-002/CN-06-154, ORDER GRANTING EXEMPTIONS (July 24, 2006) at 7.*

<sup>10</sup> *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Certificates of Need for Four Large High Voltage Transmission Line Projects in Southwestern Minnesota, Docket No. E-002/CN-01-1958; In the Matter of the Certificate of Need Application by Northern States Power Company d/b/a Xcel Energy and Dairyland Power Cooperative for a 115/161 kV Transmission Line Between the Chisago County Substation and the Minnesota Border at Taylors Falls, Docket No E-002/CN-04-1176; In the Matter of the Application for Certificates of Need for Three 115 kV Transmission Lines in Southwestern Minnesota, Docket No. E-002/CN-06-154.*



## **C. Minnesota Rules, part 7849.0260, subpart D**

### **1. Party Comments**

Minnesota Rules, part 7849.0260, subpart D, directs the applicant to file maps of the system or load center to be served by the proposed line. Because the Group 1 Projects extend across the state, a literal reading of this requirement might require system maps for every utility in the state. Xcel argues that this would be burdensome to provide and unhelpful to read. Where a proposed line addresses system reliability needs within a specific region such as Rochester or St. Cloud, Xcel intends to provide descriptions and maps of the relevant load centers. But otherwise, Xcel proposes to provide more general maps showing the service areas of the state's utilities, along with a discussion of the types of utilities serving customers and the geography of their service territories.

The Department supports Xcel's exemption request.

NAWO does not oppose the exemption request, but argues that the substitute maps being offered will not adequately define the "system to be served," as the rule intends. In addition to the information the applicants propose to provide, therefore, NAWO asks the Commission to direct applicants to provide maps showing all transmission facilities over 100 kilovolts (kV), the location of existing and proposed electric supply (generators) and demand (load centers), the location of the load centers for which the applicants forecast a reliability problem during the next 15 years if no improvements are made to the transmission system, the overlay of utility service areas, and the identify of each line's owners.

Xcel argues that NAWO's proposals are unnecessary. Xcel notes that maps providing much of this information are already publicly available.<sup>11</sup> And Xcel questions the relevance of line ownership information to the task of demonstrating need for additional transmission lines.

### **2. Commission Action**

Xcel has again identified a topic where literal application of the rules would be counterproductive. Where capacity constraints in a specific area trigger the need for a new transmission line, the Commission has found it reasonable to require detailed data regarding the constrained area and to exempt the applicant from the duty to provide detailed data in other areas.<sup>12</sup> Tailoring these rules to focus attention on the relevant features makes more sense for all concerned.

The Commission will direct applicants to provide detailed system maps for areas such as St. Cloud and Rochester, where system reliability concerns have arisen; these maps should include

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<sup>11</sup> See <http://www.mnplan.state.mn.us/maps/ElecTran03.pdf> (Minnesota transmission lines exceeding 60 kV) and [http://www.mapp.org/assets/pdf/MAPP\\_MAP\\_032805.pdf](http://www.mapp.org/assets/pdf/MAPP_MAP_032805.pdf) (existing and proposed transmission lines in Minnesota and surrounding states).

<sup>12</sup> See Minn. Rules, part 7849.0220, subpart 2; *In the Matter of the Application of Great River Energy for a Certificate of Need for a High Voltage Transmission Line*, Docket No. ET-2/CN-02-536, ORDER GRANTING AND DENYING EXEMPTION REQUESTS AND CLARIFYING FILING REQUIREMENTS (July 2, 2002) (Plymouth/Maple Grove Exemption Order) at 4-5.

the location of existing transmission and generating facilities. But the Commission will grant Xcel's exemption with regard to the rest of the state.

The Commission is not persuaded that identifying the owners of existing transmission lines is sufficiently related to the task of identifying need to be a mandatory part of the Certificate of Need application. And given the current availability of system maps, the Commission finds no need to require applicants to provide copies.

**D. Minnesota Rules, part 7849.0270, subparts 2(A) and 2(B)**

**1. Party Comments**

Minnesota Rules, part 7849.0270 directs an applicant to predict the amount of energy consumed and demand for each of nine classes of customers (residential, commercial, industrial, farming, etc.), and at various times. Xcel argues that these requirements should not apply to the CapX proposal. As noted above, Xcel alleges that these application requirements were crafted in contemplation of utilities proposing a transmission line to connect a specific new source of electricity to a specific new source of demand. This is not the basis upon which the CapX proposal was developed, according to Xcel, and Xcel asks to be exempt from the requirement to provide this data.

Part 7849.0270, subpart 2(A), directs an applicant to forecast how much electricity people in the applicant's Minnesota service area will use in each of the next 15 years. And subpart 2(B) directs an applicant to estimate consumption in each of nine specific customer classes, and the number of people in each class, in each of the next 15 years. Xcel argues that providing this information for the entire state would be burdensome; even where utilities have gathered data into the nine customer classes, utilities have not defined the categories uniformly. In addition, Xcel argues that the information would provide relatively little benefit to assessing the need for the Group 1 Projects. According to Xcel, participants must build facilities to serve the whole system's aggregate demand regardless of how much electricity any given customer class consumes.

As a substitute, Xcel proposes that applicants address how the Group 1 Projects will help applicants acquire energy from renewable sources in fulfillment of the Renewable Energy Objectives.

No party opposes Xcel's proposal to address the relationship between the Group 1 Projects and fulfilling the revised Renewable Energy Objectives. But the Department, NAWO and WoW oppose exempting applicants from the duty to provide data and forecasts of energy consumption. The Department argues that this information would be useful for, among other things, evaluating the participants' compliance with the Renewable Energy Objectives. Beyond simply requiring applicants to provide the prescribed energy data, the Department recommends that the Commission direct applicants to provide the following data as well:

- The daily record of the cost of a megawatt-hour (MWh) of electricity established in MISO's Day-Ahead Market and MISO's Real Time Market, weighted by MWh sold at the Minnesota Hub, from April 2005 to March 2007.
- A list of existing generation capacity with capacity factors of supply units that qualify under the revised Renewable Energy Objectives for all utilities signing a Project Development Agreement.

- A list of forecasted capacity and energy requirements to meet the new Renewable Energy Objectives based on assumed capacity factors of 30 percent, 35 percent and 40 percent, for all participants until 2020.
- A list of forecasted capacity associated with 1.0 percent and 1.5 percent conservation of gross annual retail energy sales for all participants until 2020.

NAWO proposes yet a further requirement, asking the Commission to direct applicants to estimate the consequences of increasing conservation to 2.0 percent, 2.5 percent, and 3.0 percent of gross annual retail energy sales. Xcel opposes this analysis as needlessly cumulative.

While the Department opposes granting a complete exemption to the duty to provide consumption forecasts, the Department supports exempting applicants from the duty to provide energy forecasts disaggregated into separate customer classes, reasoning that the cost of disaggregation is not worth the benefit. NAWO, in contrast, defends the value of generating forecasts by customer class. Because customers in the farm class, the industrial class, the commercial class and the residential class tend to use electricity in different parts of the state, NAWO argues that relative changes in the consumption patterns of each class may require different facilities. Having data disaggregated by customer class helps to illuminate these differing needs.

## **2. Commission Action**

Given the growing emphasis on conservation, the Commission will decline to exempt applicants from the duty to provide data regarding energy consumption, at least aggregated at the system level. Consistent with Minnesota Rules part 7849.0270, subpart 2(A) and 2(B)(10), the Commission will continue to require applicants to provide annual Minnesota and system-side energy data for each utility that has signed a Project Development Agreement. In addition, the Commission will direct applicants to provide the data sought by the Department, above, to ensure compliance with the revised Renewable Energy Objectives. This includes an analysis of the amount of capacity a utility can save by getting customers to increase conservation to 1.0 and 1.5 percent of sales, respectively.

The Commission is not persuaded, however, of the merit of extending this further to require an analysis of the affects of conserving 2.0, 2.5 or 3.0 percent of sales. Similarly, the Commission will decline to require applicants to file energy data disaggregated into customer classes. The Commission concludes that the marginal benefit from extending this analysis would not be worth the additional effort.

### **E. Minnesota Rules, parts 7849.0120, subpart A(1) and 7849.0270, subparts 2©, 2(D) and 2(F).**

#### **1. Party Comments**

Minnesota Rules, part 7849.0120, subpart A(1) directs the Commission to consider, when evaluating a Certificate of Need application, the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility. Part 7849.0270, subpart 2© calls for an estimate of how much demand each customer class imposes on the system at the time of each year's peak demand, for each of the next 15 years. Subpart 2(D) calls for a forecast of the applicants' system peak demand for each month over the next 15 years. Subpart 2(F) directs an applicant to estimate how much of the applicant's capacity is consumed, on average, for each weekday in that month for the next 15 years.

Xcel argues that engineers design transmission systems to be able to serve the period of peak demand on the electric system. The peak demand of any given customer class, or the system's peak demand for a given month or on a given weekday, does not alter this analysis. Consequently Xcel asks to be exempted from the duty to forecast demand levels disaggregated into sub-categories.

In lieu of providing the prescribed information, Xcel proposes to provide the information the participants relied on in identifying the need for the Group 1 Projects. To demonstrate how demand forecasts support the Group 1 Projects, Xcel proposes the following:

- Applicants will provide a summary of the system power demand forecasts contained in recent resource plan proceedings.
- Applicants will describe the examination of demand forecasting that has been done and the issues that surfaced in those proceedings.
- Applicants will provide an updated analysis of the region's overall resource needs to confirm whether regional load growth is sufficient to justify the Group 1 Projects.
- Applicants will provide load and capability reports that are part of the planning process conducted through MISO and the Mid-Continent Area Power Pool.
- In addition, while Xcel asks the Commission to exempt the applicants from the requirement to providing energy consumption forecasts, Xcel proposes that applicants describe how some utilities use such forecasts to predict levels of peak power demand.

To demonstrate the reliability concerns that support the Group 1 Proposals, Xcel proposes that applicants provide data regarding specific distribution substations, including the following:

- The record of peak demand levels at the stations.
- Forecasts of future peak demand for the stations.
- A description of how the forecasts were prepared.

According to Xcel, these trends and forecasts will identify specifically where demand for electricity is anticipated to outstrip the system's current capabilities, and when.

The Department and WoW largely support exempting applicants from the duty to provide data disaggregated into separate customer classes, or different months or weekdays.<sup>13</sup>

But NAWO defends the value of generating these more specialized forecasts. As noted above, because different customer classes are located in different areas, understanding their unique consumption patterns can be useful to designing the electric system. Similarly, understanding patterns in how load growth changes from month to month, or day to day, can be used to identify opportunities for conservation or load-shifting.

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<sup>13</sup> While the rules provide for granting exemptions to filing requirements, the Department notes that part 7849.0120 sets forth Commission decision criteria, not filing requirements.

Windustry argues that the Commission cannot exempt the applicants from the duty to provide demand forecasts because this duty is imposed by statute. Minn. Stat. § 216B.243, subd. 3. Moreover, Windustry alleges that information will show that the demand forecasts justifying the Group 1 Projects are overstated.

## **2. Commission Action**

Windustry correctly observes that the Commission cannot exempt utilities from statutory obligations to provide demand forecasts. Applicants, however, merely ask to be exempt from the duty to provide the specific types of demand forecasts specified in the rules, and to be exempt from this obligation for purposes of making a Certificate of Need application. Therefore Windustry's objections are inapplicable or, alternatively, premature.

Where growth in the system peak demand for electricity creates the need for a facility, the Commission has been willing to exempt an applicant from the duty to provide forecasts of demand by sub-category.<sup>14</sup> With the benefit of appropriate substitute data, and consistent with the recommendation of the Department and WoW, the Commission is willing to receive an application for Certificate of Need without all the level of detail forth in the rules. Xcel's exemption will be granted.

## **F. Minnesota Rules, part 7849.0270, subpart 2(E)**

### **1. Party Comments**

Part 7849.0270, subpart 2(E), directs the applicant to estimate the "annual revenue requirement per kilowatt hour for the system...." Xcel argues that these requirements, as written, should not apply to the CapX proposal, and requests an exemption.

Xcel argues that it cannot determine how to apply this requirement to a system that consists of electric utilities throughout Minnesota and neighboring states. This already-complex analysis is further complicated by the fact that the participants have not resolved their business relationships regarding the Group 1 Projects. Instead of applying this requirement as written, Xcel proposes to provide –

- a description of how MISO distributes wholesale costs of electricity among the users of the transmission grid, and
- general estimates of how the cost of the Group 1 Projects would affect retail customers.

The Department supports Xcel's request. According to the Department, this information is not necessary for evaluating a Certificate of Need application because estimates of a proposal's annual revenue requirement per kilowatt hour can be derived through analyzing least-cost alternatives. However, the Department anticipates that there will be public interest in estimates about the effect of the Group 1 Projects on electric rates; consequently the Department recommends that the Commission also direct each applicant to provide its own annual revenue requirement for a year of operations.

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<sup>14</sup> See the Wilson Lake Exemption Order, *supra*.

NAWO notes that applicants will not receive permission to build any Group 1 Project unless they can demonstrate that the demand for electricity could not be met more cost-effectively through conservation and load management. Minn. Stat. § 216B.243, subd. 3. Because NAWO doubts whether the substitute information offered by the applicants would fulfill this obligation, NAWO opposes the exemption request.

## **2. Commission Action**

No party disputes that cost information will be relevant to assessing the need for the Group 1 Projects. The issue before the Commission is whether the specific information called for by the rules is necessary for purposes of making a Certificate of Need application. While NAWO doubts that the type of information being offered by applicants will be sufficient, the Commission will withhold judgment.

Under the best of circumstances, it is challenging to predict how the cost of a new expenditure will affect utility rates. The emergence of the MISO Day Ahead and Real-Time Markets has complicated matters further. In a context of unresolved business relationships among the parties who are building a new facility, efforts to calculate a specific rate impact may be little better than guesswork. Under these circumstances, however, the Commission is concerned that even utility-generated estimates of rate impacts could convey a false sense of precision, building public expectations that may not be met.

While the Commission fully expects the parties to generate estimates of rate impacts at some point in the analysis, for purposes of the Certificate of Need application the Commission will grant Xcel's exemption request and accept its offer to provide substitute information, including more generalized estimates of financial impacts.

## **G. Minnesota Rules, part 7849.0280, subparts B through I**

### **1. Party Comments**

Minnesota Rules, part 7849.0280, directs an applicant to estimate, in various levels of detail, its capacity to meet customer demand both before and after a proposed facility would be built. Xcel argues that subparts B through I of this rule pertain to a utility's capacity to generate or buy electricity rather than its capacity to transmit electricity. In lieu of the information requested by these subparts, Xcel proposes to provide a detailed discussion of the following:

- How growth in the forecasted peak demand for power, both system-wide and in specific areas, will affect system reliability.
- How transmission system planners considered a broad range of potential future generators in assessing the need for the proposed new transmission lines.

The Department supports Xcel's request. But NAWO opposes the request, arguing that the rule is designed to show how long a utility could continue operating without the proposed new facility, and how much benefit the new facility would provide.

## **2. Commission Action**

Where an applicant seeks to build a transmission line, the Commission has been willing to grant exemptions to filing requirements that pertain only to electric generators.<sup>15</sup> Because much of part 7849.0280 has no direct application to evaluating the need for the Group 1 Projects, the Commission finds the substitute information offered by Xcel to be more useful. The Commission will accept Xcel's proposal and exempt applicants from having to include the information set forth at part 7849.0280, subparts B through I in their application.

### **H. Minnesota Rules, part 7849.0120, subpart A(2), and part 7849.0290**

#### **1. Party Comments**

Minnesota Rules, part 7849.0120, subpart A(2), specifies that the Commission will consider how existing and anticipated energy conservation programs would affect the need for a proposed facility. Part 7849.0290 directs an applicant to discuss its current and future conservation programs, and how those programs affect the applicant's forecasts of future demand.

Xcel argues that the nature of these multi-utility transmission lines will make it difficult to provide meaningful responses to these regulatory directions. According to Xcel, the participants relied on utility resource plans as the basis for identifying local and regional needs for the CapX Group 1 Projects. Because conservation programs are already reflected in each of these resource plans, Xcel reasons that these programs are also incorporated into the forecasts supporting the Group 1 Projects. Xcel provides citations to its own resource planning<sup>16</sup> and conservation improvement program<sup>17</sup> filings, and proposes to provide citations and a summary of the most recent resource planning filings and Commission orders for each participating utility.

NAWO faults Xcel's analysis, and therefore opposes Xcel's exemption request. The amount of conservation a utility incorporates into its resource plan is driven by the amount of cost that the utility could avoid through conservation. Compared to a \$1.3 billion investment, an increasing number of conservation programs will be deemed cost-effective. But because the participants are relying on resource plans that were adopted without consideration of these Group 1 Projects, NAWO argues that the plans will reflect an artificially low amount of conservation.

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<sup>15</sup> See, for example, Plymouth/Maple Grove Exemption Order; *In the Matter of the Request by Great River Energy for a Certificate of Need for a High-Voltage Transmission Line from the Mud Lake Substation to the Wilson Lake Substation*, Docket No. ET-2/CN-06-367, ORDER GRANTING AND DENYING EXEMPTIONS, APPROVING A NOTICE PLAN AS MODIFIED, AND CONSOLIDATING DOCKETS (May 15, 2006) (Wilson Lake Exemption Order).

<sup>16</sup> *In the Matter of Northern States Power Company d/b/a Xcel Energy's Application for Approval of its 2015-2019 Resource Plan*, Docket No. E-002/RP-04-1752, ORDER APPROVING RESOURCE PLAN AS MODIFIED, FINDING COMPLIANCE WITH RENEWABLE ENERGY OBJECTIVES STATUTE, AND SETTING FILING REQUIREMENTS (July 28, 2006).

<sup>17</sup> *In the Matter of the Implementation of Northern States Power Company d/b/a Xcel Energy's 2007/2008/2009 Triennial Natural Gas and Electric Conservation Improvement Program*, Docket No. E, G-002/CIP-06-80.

The Department finds Xcel's variance request to be technically sufficient.<sup>18</sup> However, in the interest of facilitating public participation the Department recommends that the applicants prepare to provide to any member of the public, upon request, a compact disk of the most recent resource planning filing of each utility that makes such filings in Minnesota, as well as the most recent Commission Orders in those proceedings.

## **2. Commission Action**

In granting this exemption request, the Commission will permit applicants to present to all parties the analysis of demand and conservation upon which the Group 1 Projects were based. Whether or not aggregating resource plan data will provide an sufficient basis for demonstrating that the projects are needed, the Commission finds that this analysis provides a sufficient basis for making a Certificate of Need application and initiating public scrutiny.

The Commission also favors the Department's proposal for providing easy access to resource planning materials from throughout the state. By providing the information consolidated and organized onto a single disk, applicants will aid members of the public in gaining access to the types of information and analysis that may well influence these the Certificate of Need discussions in the coming months. This proposal will be adopted as well.

### **I. Minnesota Rules, parts 7849.0300 and 7849.0340**

#### **1. Party Comments**

Minnesota Rules, part 7849.0300, directs an applicant to discuss anticipated consequences to its own system and neighboring systems should the proposed facility be delayed one, two, and three years or postponed indefinitely, assuming each of three different levels of demand. Minnesota Rules, part 7849.0340, directs the applicant to discuss anticipated consequences arising under the three levels of demand if the proposed facilities are not built.

Given the scope of the Group 1 Projects, Xcel argues that generating these analyses for three levels of demand is simply impractical. As an alternative, Xcel proposes to analyze two levels of demand: one scenario with the expected 6,300 MW level of growth, and a second scenario with 30 percent less growth. In addition, for each load center facing challenges to its service reliability, Xcel proposes to identify the level of demand that would threaten reliability there and the effect of incremental changes in demand growth.

The Department supports Xcel's request. Utility resource plans compare how a utility would cope with three different scenarios: an anticipated level of growth, a lower level, and a higher level. Combining the anticipated growth forecasts of multiple utilities may provide a reasonable basis for forecasting regional growth. But combining the high growth estimates or low growth estimates may not produce meaningful results because utilities do not use a uniform formula for producing upper and lower confidence levels for forecasts. Given the challenges of generating alternative forecasts throughout the service areas of multiple utilities, the Department is willing to accept Xcel's proposal to provide a single alternative forecast.

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<sup>18</sup> While the rules provide for granting exemptions to filing requirements, the Department again notes that part 7849.0120 states Commission decision criteria, not filing requirements.



NAWO opposes exempting applicants from addressing the consequences of various possibilities in the face of a range of demand growth. By reducing the range of scenarios that the applicants must address, NAWO argues, the Commission reduces the confidence that parties can have in the resulting analysis.

## **2. Commission Action**

The Commission finds the analysis of Xcel and the Department to be persuasive. The Commission generally favors broader disclosure, but given the scope of the proposed facilities the Commission is not persuaded that the benefit of generating a third demand scenario would be worth the cost. Moreover, Xcel merely proposes to omit an analysis of how the participants would cope with a growth in demand higher than expected. Because no party has expressed concern that the proposed expansion plans are too small, the Commission is willing to accept a Certificate of Need application that forgoes consideration of that scenario. The exemption request will be granted.

## **J. Conclusion**

Lastly, the Commission will note what its exemption decisions do *not* resolve:

The Certificate of Need application will signify the beginning, not the end, of the process of evaluating the need for the proposed Group 1 Projects. Exemption decisions govern only the content of the Certificate of Need application. They have no cost-recovery or ratemaking consequence. They do not preclude any person from recommending, or the Commission from requiring, the submission of additional information before the Commission rules on whether the Certificate of Need application is substantially complete. Moreover, a finding that an application is substantially complete does not preclude the Commission or any party from seeking to develop additional information through discovery.

Ultimately the applicants bear the burden of providing evidence and analysis to demonstrate that the proposed facilities are needed. No amount of exemptions will relieve the applicants of the burden to provide this information and analysis.

## **ORDER**

1. Great River Energy and Northern States Power Company d/b/a Xcel Energy are authorized to file a Certificate of Need application for the proposed CapX 2020 Group 1 Projects on behalf of all potential participants. GRE and Xcel shall be responsible for implementing the Commission's orders in this matter.
2. Applicants shall include in the Certificate of Need application a description of the evolving financial arrangements among the participants, how the Group 1 ownership structure will take shape, and the implications of that structure for cost recovery. Participants will keep the Commission informed of emerging developments regarding the ownership structure.
3. Applicants shall indicate projected minimum and maximum percentages of total line length ownership, with the understanding that those ranges will not be binding.
4. Applicants shall provide a detailed construction timetables and in-service dates for the three proposed transmission projects.

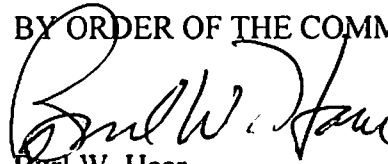
5. Applicants are exempt from the obligation arising under Minnesota Rules, part 7849.0260, subparts A(3) and C(6), to state in the Certificate of Need application “the expected losses ... in the length of the transmission line and at the terminals or substations.” Applicants shall estimate line losses throughout the system instead.
6. Applicants are exempt from the obligation arising under Minnesota Rules, part 7849.0260, subpart D, to file with the Certificate of Need application copies of maps of all the systems and load centers to be served by the Group 1 Projects. Instead, where a proposed line addresses system reliability needs within a specific region such as Rochester or St. Cloud, applicants shall provide descriptions and maps of the relevant load centers. For all other areas, applicants shall provide more general maps showing the service areas of the state’s utilities, along with a discussion of the types of utilities serving customers and the geography of their service areas.
7. Applicants are exempt from the obligation arising under Minnesota Rules, part 7849.0270, subpart 2(B), to file with the Certificate of Need application annual forecasts of the amount of electricity to be consumed by each customer class. Instead, applicants shall file the following:
  - A. Data for each utility that has signed a Project Management Agreement regarding annual Minnesota and system-wide energy consumption and number of customers as indicated by Minnesota Rules part 7849.0270, subparts 2(A) and 2(B)(10).
  - B. An explanation of how the Group 1 Projects will help applicants acquire energy from renewable sources in fulfillment of the Renewable Energy Objectives.
  - C. The daily record of the cost of a MWh of electricity established in MISO’s Day-Ahead Market and MISO’s Real Time Market, weighted by MWh sold at the Minnesota Hub, from April 2005 to March 2007.
  - D. A list of existing generation capacity with capacity factors of supply units that qualify under the revised Renewable Energy Objectives for all utilities that have signed a Project Management Agreement.
  - E. A list of forecasted capacity and energy requirements to meet the new Renewable Energy Objectives based on assumed capacity factors of 30 percent, 35 percent and 40 percent, for all participants until 2020.
  - F. A list of forecasted capacity associated with 1.0 percent and 1.5 percent conservation of gross annual retail energy sales for all participants until 2020.
8. Applicants are exempt from the obligation arising under Minnesota Rules, part 7849.0270, subpart 2( C) to file with the Certificate of Need application various specialized estimates of demand over time. Instead, applicants shall file the following:
  - A. A summary of the system power demand forecasts contained in recent resource plan proceedings.
  - B. A description of the examination of demand forecasting that has been done and the issues that surfaced in those proceedings.

- C. An updated analysis of the region's overall resource needs demonstrating whether regional load growth is sufficient to justify the Group 1 Projects.
  - D. Load and capability reports that are part of the planning process conducted through MISO and the Mid-Continent Area Power Pool.
  - E. A description of how some utilities use forecasts of energy consumption to predict levels of peak power demand.
  - F. Data regarding substations in which reliability concerns have arisen, including –
    - the record of peak demand levels at the stations.
    - forecasts of future peak demand for the stations, and
    - a description of how the forecasts were prepared.
9. Applicants are exempt from the obligation arising under Minnesota Rules, part 789.0270, subpart 2(E), to file with the Certificate of Need application estimates of how their rates will change over time. Instead, applicants shall file the following:
- A. A description of how MISO distributes wholesale costs of electricity among the users of the transmission grid.
  - B. General estimates of how the cost of the Group 1 Projects would affect retail customers.
10. Applicants are exempt from the obligation arising under Minnesota Rules, part 7849.0280, subparts B through I, to file with the Certificate of Need application an estimate of the capacity surpluses or deficits available both before and after a proposed facility would be built. Instead, applicants shall file a detailed discussion of the following:
- A. How growth in the forecasted peak demand for power, both system-wide and in specific areas, will affect system reliability.
  - B. How transmission system planners considered a broad range of potential future generators in assessing the need for the proposed new transmission lines.
11. Applicants are exempt from the obligation arising under Minnesota Rules, part 7849.0290, to discuss their current and future conservation programs, and how those programs effect the applicants' forecasts of future demand. Instead –
- A.. Applicants shall file citations and a summary of the most recent resource planning filings and Commission orders for each participating utility.
  - B. Applicants shall provide to any member of the public, upon request, a compact disk of the most recent resource planning filing of each utility that makes such filings in Minnesota, as well as the most recent Commission Orders in those proceedings.
12. Applicants are exempt from the obligation arising under Minnesota Rules, parts 7849.0300 and 7849.0340, to file with the Certificate of Need application a discussion of anticipated

consequences arising under three levels of demand – the expected demand, the upper confidence level and the lower confidence level. Instead –

- A. Applicants shall file a discussion of the anticipated consequence of the expected demand level and a demand level 30 percent lower.
  - B. For each load center facing challenges to its service reliability, applicants shall identify the level of demand that would threaten reliability there and the effect of incremental changes in demand growth.
13. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar  
Executive Secretary

(S E A L)

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STATE OF MINNESOTA)  
COUNTY OF RAMSEY )SS

AFFIDAVIT OF SERVICE

I, Margie DeLaHunt, being first duly sworn, deposes and says:

That on the 4th day of June, 2007 she served the attached

ORDER DESIGNATING APPLICANTS AND SETTING FILING REQUIREMENTS.

MNPUC Docket Number: ET-2,E-002, et al./CN-06-1115

XX

By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

XX

By personal service

XX

By inter-office mail

to all persons at the addresses indicated below or on the attached list:

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Eric Witte  
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AG  
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Mary Swoboda  
Jessie Schmoker  
Sharon Ferguson - DOC  
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Margie DeLaHunt

Subscribed and sworn to before me,

a notary public, this 4 day of

June, 2007  
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Notary Public

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