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**Scott Hempling**  
**Direct Testimony**  
**Xcel Energy Application For Certificate Of Need**  
**For Four High Voltage Transmission Lines**  
**In Southwestern Minnesota**

11

**Introduction**

12 **Q. Please state your name and business address.**

13 A. Scott Hempling, 417 St. Lawrence Drive, Silver Spring, Maryland 20901.

14 **Q. On whose behalf are you testifying in this proceeding?**

15 A. The Izaak Walton League of America, Inc. (League), and Minnesotans for an Energy  
16 Efficient Economy (ME3).

17 **Q. Please summarize your qualifications and experience.**

18 A. I am the founder and principal of a law practice that provides legal and policy advice  
19 related to regulated industries. I have advised the state commissions of Arkansas,  
20 Arizona, Connecticut, District of Columbia, Indiana, Kansas, Massachusetts, Michigan,  
21 Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island and Virginia; the  
22 consumer counsels of Connecticut, Indiana, Nevada, New Jersey, Pennsylvania and  
23 Texas; the legislatures of South Carolina and Vermont; municipal systems in Connecticut  
24 and Iowa; associations of competitive generators, consumer representatives and public  
25 power entities; and public interest organizations. I have authored articles that have  
26 appeared in *The Electricity Journal* and *Public Utilities Fortnightly*. I have presented  
27 testimony to committees of the U.S. House of Representatives and the U.S. Senate on  
28 many occasions; to committees of the state legislatures of California, Maryland,

1 Minnesota, Nevada, North Carolina, South Carolina and Vermont; to the state  
2 commissions of Illinois, Indiana, North Carolina, Rhode Island, Texas, Vermont and  
3 Wisconsin; and to a U.S. District Court. I lecture frequently at professional conferences  
4 and training sessions, including sessions sponsored by the U.S. Department of Energy  
5 and the National Association of Regulatory Utility Commissioners. My qualifications are  
6 set forth in more detail in my resume, attached as Exhibit \_\_\_\_\_.

7 **Q. What is the purpose of your testimony?**

8 A. In this proceeding, Xcel Energy (Xcel) seeks a Certificate of Need (CON) for four high  
9 voltage transmission lines in Southwestern Minnesota. Specifically, Xcel is asking the  
10 Commission to find that: (1) the proposed facilities satisfy the criteria in Minn. Rule  
11 7849.0120; and (2) the costs for the proposed facilities are eligible for cost recovery  
12 pursuant to Minn. Stat. 216B.1645. I propose conditions necessary to ensure that the  
13 granting of this CON “complies with relevant policies, rules, and regulations of other  
14 state and federal agencies and governments” as required by Minn. Rule 7849.0120(D).

15 I am informed by counsel that Minnesota "policies, rules and regulations"  
16 establish (1) a mandate that Xcel produce or procure for its retail customers 825 MW of  
17 wind-generated power by 2012; and (2) a requirement that Xcel make a “good faith  
18 effort” to produce or procure additional wind-generated power such that by 2015, ten  
19 percent of the electric energy provided to Xcel’s retail customers in Minnesota is  
20 generated by renewable resources.<sup>1</sup> To assure that the requested CON complies with  
21 these policies, I propose five conditions that the Minnesota Public Utilities Commission  
22 (Commission) should attach to the requested CON.

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<sup>1</sup> See Minn. Stat. 216B.1691, Renewable Energy Objectives and specifically Subd. 2, Eligible energy objectives.

1 **Proposed Conditions**

2 **Q. Please discuss your first proposed condition.**

3 A. The Commission should condition the CON on Xcel Energy's (a) signing power purchase  
4 agreements (PPAs) with wind developers, by no later than December 31, 2003, for a total  
5 of 825 MW of wind-generated power; and (b) immediately thereafter, seeking  
6 Commission approval of those contracts so that the Commission can grant approval no  
7 later than June 30, 2004.

8 As explained in the next few paragraphs, this approach ensures that the in-service  
9 date for the new wind generators will coincide with the in-service date of the proposed  
10 transmission facilities (early 2006). The reason for linking the timing of these two events  
11 relates to the process by which the Midwest Independent System Operator (MISO) grants  
12 generators access to the transmission grid.

13 As explained in Xcel's March 25, 2002 Supplemental filing, Appendix 5, Xcel is  
14 a member of MISO. As a MISO member, Xcel has transferred functional control of its  
15 transmission facilities to that organization. As a consequence of this transfer, access to  
16 Xcel's transmission facilities, including the new facilities proposed by Xcel in this  
17 proceeding, are subject to MISO rules. Under MISO rules, a utility with native retail  
18 load, like Xcel, obtains sufficient transmission capacity to serve that load by (a)  
19 designating, pursuant to MISO procedures, specific generation resources as "network  
20 resources"; and then (b) requesting from MISO sufficient transmission capacity, in the  
21 form of "network transmission service," to serve those designated network resources.

22 Under the MISO process, there is no guarantee that merely because Xcel builds  
23 and owns particular transmission facilities, it will have use of those facilities to transmit

1 power for its own load. Nor does the MISO process guarantee that merely because Xcel  
2 contracts to purchase power from wind generators, Xcel will be able to obtain  
3 transmission service in an amount necessary to transport that power to its retail load --  
4 even if, as in the instant situation, Xcel designs and builds transmission facilities  
5 specifically for the purpose of connecting with the wind generators. Rather, once Xcel  
6 builds transmission facilities, those facilities become part of the multiutility, multistate  
7 transmission network managed by MISO and subject to MISO's open access rules, which  
8 are, in turn, subject to the jurisdiction of the Federal Energy Regulatory Commission  
9 (FERC). To emphasize: under the MISO process, Xcel obtains no specific right to use the  
10 proposed transmission facilities merely because Xcel builds them; and Xcel obtains no  
11 specific right to transmit wind generators' output merely because Xcel has contracted  
12 with the wind generators. These principles are made clear in Xcel's March 25, 2002  
13 Supplemental filing, Appendix 5, pages 39-42.

14 Under these circumstances, how then does Xcel assure that it will have  
15 transmission capacity available to access the wind-generated power that it is required to  
16 obtain? As explained in Xcel's March 25, 2002 Supplemental filing, Appendix 5, page  
17 28, Xcel can obtain transmission capacity for its native load by reserving it pursuant to  
18 the MISO process.<sup>2</sup> In order to reserve transmission capacity, Xcel must (a) designate  
19 specific "network resources" (i.e., those generation resources, either owned or contracted-  
20 for, whose output Xcel will use to serve its native load); and (b) procure from MISO that  
21 amount of network transmission service sufficient to support the generation resources so  
22 designated. But in order to designate specific generation facilities as network resources,

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<sup>2</sup> Id. at page 28 ("Section 29.2 of the Midwest ISO OATT specifies the information required in an application for Network Service.").

1 where Xcel does not own those resources outright, Xcel must enter into a commitment to  
2 purchase their output.

3 This brings me to the matter of timing. It is possible that the demand for  
4 transmission capacity in the region operated by MISO can exceed the amount of available  
5 transmission capacity under MISO's control. It is important, therefore, to obtain a  
6 transmission commitment from MISO timely. For that reason, the Commission should  
7 impose on Xcel a specific obligation to enter into commitments with the wind generators  
8 by a date certain. Assuming that the Commission, at the culmination of the instant  
9 proceeding, issues a conditional CON by September 2002, David Olsen, a witness co-  
10 sponsored by the League and AWEA, estimates that the PPAs between Xcel and wind  
11 generators could be negotiated and approved by the Commission by mid-2004. This  
12 schedule then would give the wind developers eighteen months to finance and construct  
13 the selected projects by the end of 2005 or early 2006. Mr. Olsen also has testified that  
14 18 months is a reasonable time period for this effort. This approach would thus allow the  
15 in-service date of the new wind generators, and the in-service date of the proposed  
16 facilities, to converge in early 2006.

17 The remaining four conditions fill in the activities that are necessary components  
18 of the timing strategy described in my discussion of the first condition.

19 **Q. Please discuss your second proposed condition.**

20 A. The Commission should condition the CON on Xcel's installing the required additional  
21 400 MW of wind generated power by 2006, rather than 2012 as stated in the

1 Commission's Order in Northern States Power Company's (now Xcel Energy)  
2 Application for Approval of its 1998 Resource Plan.<sup>3</sup>

3 In that Order, the Commission stated: "NSP shall construct and operate, purchase,  
4 or contract to purchase an additional 400 megawatts of electric energy installed capacity  
5 generated by wind energy conversion within the time frame of this resource plan."<sup>4</sup> Since  
6 advancing the 400 MW purchase from 2012 to 2006 is consistent with the Resource Plan  
7 time frame, a decision to advance the purchase will be consistent with the public interest.  
8 The benefit of advancing the date is made clear by my discussion of the first proposed  
9 condition. Given the uncertainty over accessing transmission capacity pursuant to the  
10 MISO procedures, advancing the in-service date for the purchased wind generation  
11 increases the likelihood that Xcel will be able to obtain the transmission service  
12 necessary to effectuate the wind purchases that Xcel is obligated to make.

13 I wish to underscore this point. The present Resource Plan, and the obligations  
14 imposed on Xcel to purchase wind power, were placed in effect during an era that  
15 preceded Xcel's entry into MISO. In that earlier era, Xcel was, to a greater extent than  
16 today, the master of its own transmission fate. As a vertically integrated company,  
17 owning and operating its own transmission facilities, Xcel could plan its own generation  
18 and transmission needs in an integrated fashion. Provided that its decisions were  
19 consistent with regional reliability criteria and with its open access tariff on file pursuant  
20 to FERC Order No. 888, Xcel could build transmission facilities for the purpose of  
21 accessing specific wind facilities to serve its reasonably forecast native load, enter into  
22 contracts with those wind facilities; and, on the basis of those two actions, be reasonably

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<sup>3</sup> MPUC Docket No. E-002/RP-98-32, *Order Modifying Resource Plan, Requiring Additional Wind Generation, Requiring Further Filings, and Setting Standards for Next Resource Plan Filing* (February 17, 1999).

1 assured that the transmission capacity would be available to accommodate the contracted-  
2 for wind power. Thus state law or commission decisions could impose on Xcel an  
3 obligation to procure a certain amount of wind power, and be reasonably assured that  
4 Xcel on its own would have the necessary transmission capacity. The MISO era is  
5 different because it interposes an independent decision maker, MISO, between the state's  
6 wind power goals and the ultimate availability of the necessary transmission capacity.  
7 By becoming a member of MISO and transferring control of its transmission capacity to  
8 that organization, Xcel can no longer make relatively unilateral decisions as to the timing  
9 of its power purchases, transmission construction and transmission service. Instead,  
10 Xcel's transmission facilities are now part of a common grid subject to MISO rules.  
11 There is no way for Xcel, or this Commission, unilaterally and with certainty, to assure  
12 the availability of transmission sufficient to allow wind generation sought by the  
13 Commission to serve the state's native load. What Xcel and this Commission can do --  
14 all they can do -- is to increase the probability that the necessary transmission will be  
15 available. They can do so by taking two actions expeditiously: designating the wind  
16 generators as network resources, and seeking early commitments from MISO for  
17 transmission capacity to accommodate those network resources. Under these  
18 circumstances, it is prudent for Xcel to obtain commitments from MISO for transmission  
19 capacity now, rather than wait and face the risk of failing in its obligation to obtain wind  
20 power because the transmission capacity necessary to accommodate that wind power has  
21 been promised by MISO to some other transaction.

22 **Q. Please describe your third proposed condition.**

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<sup>4</sup> Id. at page 23 (emphasis added).

1 A. The Commission should condition the CON on Xcel's committing to make to MISO,  
2 within 15 days of obtaining the conditional CON from this Commission, transmission  
3 service requests for network (firm) transmission service on the MISO Open Access Same  
4 Time Information Service (OASIS) for at least 825 MW of wind generated power in the  
5 Buffalo Ridge area, at the power injection points reflected in Xcel's Application, as  
6 described in Larry Schedin's testimony. The condition further should require Xcel to  
7 cooperate with the generators in all aspects of the generators' request for interconnection  
8 service under Attachment R ("Generator Interconnection Procedures and Agreement") of  
9 the MISO Open Access Transmission Tariff (OATT). Xcel must provide MISO with the  
10 appropriate documentation to complete the transmission requests within the time frame  
11 required by the MISO OATT and MISO Business Practices.

12 This condition requires Xcel to reserve network transmission service specifically,  
13 because the new wind generated power will serve Xcel's native load. Counsel has  
14 informed me that based on a conversation with Ron Arness, MISO staff on April 8, 2002,  
15 the documentation required by MISO may include, but not be limited to, the conditional  
16 CON, evidence of the state statutory requirement for 825 MW of wind-generated power  
17 as contained in Minn. Stat. 216B.2423, subd. 2, and *The Transmission Outlet Analysis for*  
18 *Southwest Minnesota (Buffalo Ridge Area) Generation Additions Study*.

19 This condition assures that Xcel expeditiously takes the actions that initiate the  
20 process by which MISO will make available to Xcel the necessary transmission capacity.  
21 The need for expedition is explained in my discussion of the first proposed condition.

22 **Q. Please discuss your fourth proposed condition.**



1 A. The Commission should condition the CON on Xcel's committing to designate the new  
2 wind generators as Network Resources pursuant to the MISO OATT.<sup>5</sup> Xcel should effect  
3 this designation as early as the MISO allows it to occur, but no later than 10 days after  
4 the Commission approves the PPAs associated with the wind generators.

5 The need for this condition is discussed in my comments above.

6 **Q. Please discuss your fifth proposed condition.**

7 A. The Commission should condition the CON on Xcel's committing to report to the  
8 Commission any proposed changes at the regional or federal level that could affect the  
9 conditions the Commission places on the CON. Regional or federal changes include, but  
10 are not limited to, FERC rules regarding generator interconnection, standardized  
11 transmission service and wholesale electric market design, and MISO changes to the  
12 OATT and Business Practices.

13 This condition is necessary because of the present uncertainty concerning federal  
14 regional transmission policy. As the Commission knows from its participation in federal  
15 discussions on regional transmission organizations, FERC's regional transmission policy  
16 is a work in progress. There are many discussions on many matters, including generation  
17 interconnection policy, the possibility of FERC-mandated boundaries for RTOs, and  
18 inter-boundary "seams" procedures to assure coordination among RTOs. Since Xcel's  
19 joining of MISO moves many aspects of the oversight of transmission planning, pricing  
20 and access decisions from this Commission to the MISO and FERC contexts, and since  
21 the Commission's ability to assure compliance with the state's wind generation mandate  
22 depends on MISO decisions that will be made subject to FERC's jurisdiction, it is

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<sup>5</sup> See Xcel Energy's March 25, 2002 Supplemental filing, page 37 for a discussion of generator interconnection and MISO OATT.

1 necessary for the Commission to be up to date on any policy developments that might  
2 affect the enforceability or effectiveness of these proposed conditions.

### 4 **Conclusion**

5 **Q. How do your proposed conditions relate to the legal standards applicable to this**  
6 **case?**

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8 A. Xcel must show, among other things, that the proposed facilities “comply with relevant  
9 policies, rules, and regulations of other state and federal agencies and local  
10 governments.”<sup>6</sup> Moreover, Minn. Stat. 216B.2422, Subd. 4 establishes, with respect to  
11 utility resource planning and CON, a preference for renewable energy in general, and the  
12 Minnesota legislature and Commission have mandated 825 MW of wind-generated  
13 power in particular. My proposed conditions are based on the assumption that  
14 transmission capacity in the Midwest, including the capacity from the new transmission  
15 facilities proposed by Xcel, is available to nonrenewable resources on the same terms it is  
16 available to renewable resources, an assumption confirmed by Xcel’s March 25, 2002  
17 Supplemental filing, Appendix 5. This assumption makes clear that, absent conditions  
18 requiring Xcel to take all actions, expeditiously, that are necessary to assure that the new  
19 transmission capacity is in fact available to wind generators having PPAs with Xcel, the  
20 new transmission capacity could be used by nonrenewable sources, a result inconsistent  
21 with preferences established by the Minnesota legislature and the Commission.

22 In its Application, Xcel states that the need for the proposed facilities arise from  
23 the development of wind power on the Buffalo Ridge and that “the four [CON] requests  
24 are part of an extensive plan of transmission improvements necessary to support the

1 development of wind-powered electrical generation in Southwestern Minnesota.”<sup>7</sup> As my  
2 testimony shows, without my proposed conditions, there is risk that notwithstanding  
3 Xcel's construction of the facilities, the resulting capacity will not be available to carry  
4 the wind power that Xcel offers as the reason for the proposed construction. Absent the  
5 proposed conditions, Xcel thus would be at risk of failing to satisfy the criterion set forth  
6 in Minn. Rule 7849.0120(D), and the Commission would have to reject Xcel's  
7 application.

8 In its Application, Xcel also seeks a Commission “finding that implementing the  
9 345 kV Plan, ... constitutes reasonable investment and expenditures made to transmit  
10 electricity generated from qualifying renewable energy sources and that the level of  
11 investment necessary to implement the selected plan is recoverable under Minn. Stat.  
12 216B.1645.”<sup>8</sup> Counsel has informed me that under the statute, Xcel must show that the  
13 investments and expenditures made were to transmit electricity generated from sources  
14 developed under the wind mandate and used to provide service to Xcel’s retail customers.  
15 Conditions proposed by the League and ME3 to the CON are required in order for Xcel  
16 to show that it has taken all feasible actions to ensure that the investments and  
17 expenditures for the proposed facilities satisfy the eligibility requirement for cost  
18 recovery.

19 **Q. Please summarize your recommendations to the Commission.**

20 A. The Commission should condition the CON on Xcel's taking a series of actions that  
21 minimize the risk that notwithstanding Xcel's construction of new transmission facilities,

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<sup>6</sup> Id.

<sup>7</sup> Xcel Energy Application to the Minnesota Public Utilities Commission for Certificates of Need for Four High Voltage Transmission Line Project in Southwestern Minnesota, page 4.

<sup>8</sup> Id. at page 3.

1 that new capacity will be unavailable to the wind generation which Xcel is obligated to  
2 purchase, such wind capacity being Xcel's stated reason for building the transmission  
3 facilities. Those necessary Xcel actions include:

- 4 i. signing PPAs with wind developers for a total of 825 MW of wind-generated  
5 power by no later than December 31, 2003 and obtaining Commission approval  
6 of those contracts by no later than June 30, 2004;
- 7 ii. acquiring the additional 400 MW of wind-generated power by early 2006;
- 8 iii. within 15 days of obtaining the conditional CON, making transmission service  
9 requests (for network service) with the MISO for at least 825 MW of wind-  
10 generated power in the Buffalo Ridge area, at the power injection points  
11 reflected in Xcel's Application; and, at all times cooperating with the generators  
12 in their requests to MISO for generation interconnection;
- 13 iv. designating the new wind generators as Network Resources pursuant to the  
14 MISO OATT; and
- 15 v. reporting to the Commission any proposed changes at the regional or federal  
16 level that could negate the effectiveness of the conditions the Commission  
17 places on the CON.

18 **Q. Does this conclude your direct testimony?**

19 **A. Yes.**

**Scott Hempling  
Surrebuttal Testimony**

**Xcel Energy Application For Certificate Of Need  
For Four High Voltage Transmission Lines  
In Southwestern Minnesota**

**May 21, 2002**

**Q. Are you the same Scott Hempling that filed Direct Testimony in this case?**

A. Yes.

**Q. What subjects does your surrebuttal testimony cover?**

A. I address four subjects. **First**, I explain that Xcel's concerns about possible delay caused by my conditions are based on a misunderstanding of the conditions. **Second**, I respond to Xcel witnesses' concerns that my conditions could cause Xcel to use a less efficient means of increasing transmission capacity. These concerns assume that the conditions are inflexible. The language and intent of the conditions, as well as applicable Commission procedures, are sufficiently flexible to avoid the inefficient result described by the Xcel witnesses. I then propose an additional condition that makes this flexibility explicit and thus eliminates the concern. **Third**, I propose a clarification of my third condition to account for the possibility that MISO practices might not authorize a reservation of transmission service as early as 15 days following issuance of the CON. **Fourth**, I respond to Xcel's concerns about my fifth condition, relating to reporting changes in federal policy.

**The Concern About Delay**

**Q. At hearing, Xcel witnesses have expressed concern that your conditions would delay transmission construction by 12-18 months, because the Commission could not**

**grant the CON until your conditions are satisfied. Do you have any comment?**

A. Yes. The purpose of my conditions was to ensure that Xcel move as quickly as is feasible to reserve capacity with the MISO and provide service to the new wind generators. As explained at page 5 of my Direct Testimony, the goal was to have the contracts in place, generators built and MISO transmission service available all in time for the CON facilities' in-service date of early 2006. To delay construction for 12-18 months would be inconsistent with this purpose. Consistent with the overall purpose, I intended for the CON to issue with the conditions attached, so that transmission construction could occur even before Xcel had entered into the PPAs. I did not intend to delay issuance of the CON, and, as a consequence, delay transmission construction, until the conditions were satisfied.

The Xcel witnesses' concerns thus are based on a misunderstanding of my proposed conditions, although I can see how one might read the wording of my conditions both ways. To clarify: I am recommending that the Commission issue the CON at this time, so that construction can proceed now. In return for receiving the CON, Xcel would have to commit to comply with the conditions, but Xcel would not have to comply with the conditions before receiving the CON. As discussed further below, if for reasons outside Xcel's control it cannot satisfy the conditions, thus necessitating a modification of the conditions, the Commission's normal practices and procedures would apply.

### **Xcel's Assertion of Inefficient Results from the Conditions**

**Q. Do you have any comments on the rebuttal testimony submitted by Xcel witnesses?**

A. Yes. Messrs. Johnson, Gonzalez and Alders argue that my proposed conditions could cause Xcel to use a less efficient means to increase transmission capacity. I explain below that

their concern assumes a level of inflexibility in my conditions, and in the Commission's CON authority, that does not exist. To make the necessary flexibility explicit, I propose an additional condition.

**Q. Please describe the context for your original conditions.**

A. My conditions responded to an important uncertainty: whether new wind generation, which Xcel cites as a justification for its proposed facilities, will actually gain the right to use the new capacity created by those facilities. That uncertainty flows from the present treatment of Xcel's transmission facilities under federal law. Specifically, the regime for transmission access priorities under FERC Order No. 888 and the FERC-jurisdictional MISO Agreement makes no guarantee that the entity constructing transmission facilities has any special right to access them. Rather, access queuing is established independently of ownership or construction responsibility, based on the timing of notification to MISO. My conditions would obligate Xcel to take those actions available to minimize the uncertainty; specifically, expeditiously entering into PPAs with the generators and applying to MISO for transmission access sufficient to support the PPAs.

**Q. Please describe your understanding of the Xcel witnesses' concerns.**

- A. As I understand it, their reasoning is as follows:
1. Generators with pending requests for interconnection and transmission service, upon completing the MISO procedures, will become entitled to transmission service as a matter of federal law.
  2. Such entitlement may create a federal law obligation in Xcel or MISO to build the transmission facilities necessary to accommodate the requests. (Mr. Johnson does not indicate whether the obligation to construct would fall on Xcel or on MISO, but acknowledges that either result is possible.)
  3. If at that time Xcel has not satisfied the League-proposed conditions, Xcel will lose its CON. Since its federal law obligation will remain, Xcel will have to

resort to a different transmission expansion option, Option 5 (the "reconductor and rebuild" option), which does not require a CON but which is more costly than its preferred plan.

See Johnson Rebuttal at p.12-13; Gonzalez Rebuttal at 8-10; Alders Rebuttal at 14-15.

**Q. What is your response?**

A. The Xcel witnesses' reasoning assumes an inflexibility in my conditions and the Commission's procedures, which inflexibility does not exist. To assume this inflexibility, and based on that assumption to grant the CON without conditions, would leave the Commission lacking influence over the key public interest question: whether the facilities for which it is granting CON approval will be used for their intended purpose, namely, the transmission of wind-generated power.

The proposed conditions have a simple purpose: to obligate Xcel to take all necessary and feasible actions to maximize the chance that the wind generators receive sufficient capacity on the MISO transmission system. Xcel's concern appears to be that if, through no fault of its own, it has not satisfied the conditions at the time the generators' federal legal rights require the transmission capacity, Xcel will have to choose a capacity expansion method that does not require a CON but which costs more.

This concern assumes, incorrectly, that once the Commission attaches conditions, those conditions are fixed for all time, even if the public interest warrants modification. The reality is different. Counsel has informed me that the Commission retains authority to modify conditions as necessary to protect the public. Although this legal fact is implicit in my conditions, I suggest an additional condition to make it explicit.

**Q. Please present your additional condition.**

A. I propose to add the following condition:



## Modification of Conditions

1. If after factual examination the Commission finds that Xcel has made full, competent and good-faith effort to satisfy the conditions, but that for reasons outside of Xcel's control or influence such satisfaction is not feasible, the Commission shall modify the conditions to the extent necessary to minimize cost to Xcel's customers, consistent with achieving transmission service for the 825 MW of wind generation. Such modification may include adjustment to the deadlines set forth in the original conditions but shall not result in reduction in Xcel's obligation to take all feasible actions available, at reasonable cost, to maximize the probability that 825 MW of new wind generation will have access to the Xcel transmission system.
2. If the Commission finds that Xcel has not made full, competent and good-faith effort to satisfy the conditions, and as a result of such noncompliance a modification in the deadlines set forth therein is necessary to avoid extra costs, the Commission will either (a) modify the deadlines if doing so does not reduce the probability that the 825 MW of new wind generation will have access to the Xcel transmission system; or (b) if such modification would reduce such probability, require Xcel to take other actions, such as Option 5 in Xcel's CON application, but require Xcel to absorb any cost increase associated with Option 5, relative to Option 1.

With this approach, the Commission would assure consistency of the CON with its other statutory obligations and decisions related to wind power and with Xcel's stated reasons for seeking the CON. As an additional condition, the Commission could require Xcel to work with relevant parties to develop specific interim milestones and deadlines. With these milestones, the Commission will learn early, rather than late, if the schedule is slipping. Based on such information, the Commission can give early notice as to whether it views Xcel as behaving consistently or inconsistently with its CON obligations and the associated conditions.

### **Q. Please summarize your approach and contrast it with Xcel's.**

- A. Xcel's witnesses and I appear to share a recognition of the inherent uncertainty associated with planning and fulfilling Xcel's transmission needs, and the state's wind power mandates,

within a transmission access environment governed by MISO's tariff and FERC's rules. Where we differ is in how to address this uncertainty. My conditions recognize that to achieve Minnesota's wind objectives, the state is dependent on Xcel taking certain actions, which actions only Xcel can take. I therefore designed conditions which explicitly obligate Xcel to take these actions and which hold Xcel accountable if it does not. As such, my conditions do no more than what regulation typically does: define a standard of reasonable behavior and hold the utility to that standard.

Xcel, in contrast, prefers no conditions, a result which leaves Xcel with discretion but unclear obligation, and leaves the Commission without clear ability -- in the form of standards, expectations and consequences -- to hold Xcel accountable. Where the state depends on a regulated monopoly to achieve a public interest objective, it best to align the monopoly's self-interest with that public interest. My conditions aim to do so; an unconditioned CON does not.

### **Clarification of the Third Condition**

**Q. Do you have any clarification of your third condition?**

A. Yes. My third condition requires Xcel to make transmission service requests to MISO "within 15 days of obtaining the conditional CON...." However, depending on the MISO rules in existence at the time, it is possible that the PUC's issuance of the CON, alone, will not constitute sufficient certainty under MISO rules to allow Xcel to reserve capacity; the MISO may require more certainty or specificity, such as actual PPAs. To provide for this possibility, I suggest making Condition 3 more flexible by inserting a sentence after the first sentence. The entire condition, as set forth on p.8 of my Direct Testimony, would then read as follows (new language italicized):

The Commission should condition the CON on Xcel's committing

to make to MISO, within 15 days of obtaining the conditional CON from this Commission, transmission service requests for network (firm) transmission service on the MISO Open Access Same Time Information Service (OASIS) for at least 825 MW of wind generated power in the Buffalo Ridge area, at the power injection points reflected in Xcel's Application, as described in Larry Schedin's testimony. *If the aforementioned date of 15 days after obtaining the conditional CON is too early, under MISO procedures, to reserve MISO transmission service, Xcel shall on that date inform the Commission, with documentation, as to what is the earliest permissible date, and shall make the transmission requests to MISO on that earliest permissible date.* The condition further should require Xcel to cooperate with the generators in all aspects of the generators' request for interconnection service under Attachment R ("Generator Interconnection Procedures and Agreement") of the MISO Open Access Transmission Tariff (OATT). Xcel must provide MISO with the appropriate documentation to complete the transmission requests within the time frame required by the MISO OATT and MISO Business Practices.

A similar adjustment would be made to the Item (iii) in the summary of conditions set forth at pp.11-12 of my Direct Testimony.

### **Reporting Condition**

- Q. Xcel objects to your Fifth Condition, relating to reporting requirements, on the grounds that they are redundant of requirements agreed to by Xcel in its MISO transfer proceeding, Docket No. E002/M-00-257. See Johnson Rebuttal at pp.14-15. What is your response?**

A. As explained in my Direct Testimony, the condition is necessary to assure that the CON is consistent with the public interest. The availability of transmission service for the wind generators is largely a function of the operation of FERC policy and MISO rules; therefore the Commission needs up-to-date information on these subjects. Since the condition is necessary to assure that the CON is consistent with state law, as a legal and policy matter the condition must be attached to this CON.

That a similar condition is also necessary in some other proceeding does not make it legally unnecessary in this proceeding. The argument is illogical. Moreover, should the transmission transfer be revoked in the future (if, for example, the state's comfort with MISO diminished or FERC altered its transmission policies in some way), the reporting requirement could become uncertain.

In sum, the redundancy is appropriately addressed not by deleting a legally necessary condition, but by allowing the company to file the same document in both proceedings.

**Q. Does this complete your surrebuttal testimony?**

A. Yes.