



February 17, 2004

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PI-40  
Office of Policy and International Affairs  
U.S. Department of Energy  
Room 1E190  
1000 Independence Ave., SW  
Washington, DC 20585

**Re: Initial Comments of Xcel Energy on 10 CFR Part 300 General Guidelines for Voluntary Greenhouse Gas Reporting; Proposed Rule, 68 *Fed. Reg.* 68204 (December 5, 2003).**

Xcel Energy respectfully submits the following initial comments on the Department of Energy (DOE) Proposal to Revise General Guidelines for Section 1605(b) Voluntary Reporting under the Energy Policy Act. Formed by the merger of Denver-based New Century Energies and Minneapolis-based Northern States Power Co., Xcel Energy is the fourth-largest combination electricity and natural gas energy company in the United States. We offer a comprehensive portfolio of energy-related products and services to 3.2 million electricity customers and 1.7 million natural gas customers. We have regulated operations in 11 Western and Midwestern states and revenue of \$9.5 billion annually; own over 240,000 conductor miles of electricity transmission and distribution lines, more than 32,700 miles of natural gas pipelines; and operate regulated power plants that generate about 15,246 megawatts of electric power.

Xcel Energy appreciates the opportunity to present its initial views on the proposed revised General Guidelines at the January 12, 2004 public workshop and in its written comments today. Xcel Energy believes that:

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- All significant policy decisions should be open for further revision, modification or abandonment until after the conclusion of the final comment period on the technical guidelines and the re-proposed general guidelines.
- The DOE proposal is inconsistent with the President's policy directives as well as the Four-Agency letter recommendations for transferable credit, credit for past action and baseline protection.
- All otherwise conforming projects that result in the reduction of greenhouse gas emissions to the atmosphere should be allowed to be registered—regardless of reason or motivation.
- The rules governing entity-wide emissions inventories are excessively burdensome and onerous.
- The base year and baselines need additional flexibility.
- The treatment of direct emissions and direct emissions reductions, purchased power indirect emissions, and avoided emissions needs further revision.

Xcel Energy has been a major voluntary reporter of greenhouse gas emission reductions to the Energy Information Administration (EIA) 1605(b) database under the initial October 19, 1994 guidelines.<sup>1</sup> We continue to support the President's program for addressing the climate change issue, including the goal to reduce the emissions intensity of the United States by 18 percent by 2012, the Climate VISON program, and the efforts to improve the Energy Policy Act 1605(b) greenhouse gas database and reporting guidelines.

**All Significant Policy Decisions Should Be Open For Further Revision, Modification or Abandonment Until After the Conclusion of the Final Comment Period on the Technical Guidelines and the Re-proposed General Guidelines.**

Xcel Energy appreciates the decision by DOE to extend the deadline for comments on these proposed revised General Guidelines from February 3 to February 17, 2004. Considering the complex issues raised by the proposed revised General Guidelines and the impending proposed revised Technical Guidelines, we wish to strongly emphasize the importance of an additional opportunity to comment on the **entire** set of revised documents, including the re-proposed revised General Guidelines, proposed revised Technical Guidelines, and the proposed EIA forms and instructions. As many participants communicated in the January 12, 2004 public workshop, it is extremely difficult to effectively comment on certain aspects

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<sup>1</sup> 59 Fed. Reg. 52769.

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of the proposed revised General Guidelines without information on the detailed procedures that will be included in the proposed revised Technical Guidelines. As a result, our comments today will be incomplete. We appreciate DOE's stated intention to "make available for public comment a further revision of the General Guidelines simultaneously with the issuance of proposed Technical Guidelines, now scheduled for release by late spring or early summer".<sup>2</sup> We strongly recommend that such additional comment period be for at least 75 days.

**The DOE Proposal Is Inconsistent With The President's Policy Directives As Well As The Four-Agency Letter Recommendations for Transferable Credit, Credit for Past Action and Baseline Protection.**

Until the publication of proposed revised General Guidelines, the Bush Administration has consistently supported the inclusion of provisions for recognition of transferable credits, credit for past action and baseline protection as part of the EIA 1605(b) database.

The February 14, 2002 White House Global Climate Change Policy Book stated:

The President directed the Secretary of Energy to recommend reforms to ensure **that businesses and individuals that register reductions are not penalized under a future climate policy, and to give transferable credits to companies that can show real emissions reductions.** These protections will encourage businesses and individuals to pursue innovative strategies to reduce or sequester greenhouse gas emissions, without the risk that future climate policy will disadvantage them.<sup>3</sup>

The May 6, 2002, NOI took particular note that "the President directed the Secretary of Energy to recommend reforms '**ensure that businesses and individuals that register reductions are not penalized under a future climate policy, and to give transferable credits to companies that can show real emissions reductions.**'"<sup>4</sup>

In the July 8, 2002 the Secretaries of Energy, Commerce and Agriculture and Administrator of the EPA, provided the President with a letter describing the actions taken to carry out his

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<sup>2</sup> 69 Fed. Reg. 4255 (Jan. 29, 2004).

<sup>3</sup> White House Global Climate Change Policy Book (February 14, 2002), page 9. (emphasis added).

<sup>4</sup> 68 Fed. Reg. 30371 (emphasis added).

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greenhouse gas policy directives and provided recommended improvements to the current guidelines. The list included provisions to:

- “[d]evelop fair, objective, and practical methods for . . . awarding transferable credits for actions that lead to real reductions”;
- “evaluating the extent to which past reductions may qualify for credits” ; and
- “credits for actions to remove carbon dioxide from the atmosphere as well as for actions to reduce emissions.”<sup>5</sup>

White House Council on Environmental Quality Chairman James Connaughton, in his opening remarks at the November 18-19, 2002 DOE workshop, again emphasized these presidential directives:

We want to protect and provide transferable credits related to those real emission reductions. As you know, **the President directed the Secretary of Energy to recommend reforms that would enable this kind of participation by businesses and individuals, by removing the risk that the action they take today, or their inaction will not be rewarded in the future by future climate policies.**<sup>6</sup>

In its revision of 1605(b), DOE has quietly disregarded the President’s clear directives to DOE to include: transferable credits, credit for past action and baseline protection. It appears DOE has instead:

- left the creation of “transferable credits” to some unknown future invention of the private market;
- arbitrarily abandoned the concept of “credit for past action” as all efforts by reporting entities prior to 2002 will not be “registered” or “receive credit”;<sup>7</sup>
- discarded of the concept of baseline protection into a regulatory abyss.

When an inquiry was made during the January 12, 2004, DOE workshop about DOE’s decision to disregard its Presidential directives, the response was merely that the DOE

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<sup>5</sup> Four Agency Letter, pages 4-5 (emphasis added).

<sup>6</sup> November 18-19 2002 DOE 1605(b) Workshop, Transcript Day 1, pages 3-4. (emphasis added)

<sup>7</sup> Entities are permitted to register only those emission reductions calculated using a base year no earlier than 2002 (or base period of up to four sequential years ending no earlier than 2002). The proposed revised General Guidelines would enable and encourage entities to report (but not register) emission reductions achieved prior to 2003. 68 Fed. Reg. 68210, 68206. Past actions that can meet the new reporting standards should not arbitrarily be denied registration status.

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Office of General Counsel, in consultation with other federal agencies, had “determined” that DOE did not have “explicit authority.”<sup>8</sup>

This decision is curious as the Presidential directives in the White House Global Climate Change Policy Book must be presumed to be legally supportable or else the President and the White House would not have explicitly expressed them on February 14, 2002. If DOE, its Office of General Council and other involved agencies disagree with the President’s directives, it is critically important that DOE respond to all comments submitted on these issues and publicly provide the policy reasons and the legal basis, if any, for disregarding them in its revised Guidelines.

**The Requirement To Offset Any Annual Increase In Emissions To Add Cumulative Registered Reductions Will Exclude Meaningful Projects From Participation.**

Xcel Energy’s understanding of the DOE proposal is that it will not be able to report or “register” **any** project CO<sub>2</sub> emissions reductions in any given year unless its emissions rate for that year is lower than its base year emission rate (pounds CO<sub>2</sub> per MWh).<sup>9</sup> The rationale for this requirement is puzzling as it has no scientific basis--a ton of greenhouse gas reduced is a ton greenhouse gas reduced, though not necessary a net reduction for any individual entity. Even more puzzling is the fact that the authorizing statute does not require a net reductions or a net contribution approach, only “achieved reductions of greenhouse gases.”<sup>10</sup> The practical effect DOE’s proposed approach will make offset project valuation and marketability difficult--if not impossible--as the long-term value of any registered emission reduction could theoretically be revoked or negated at some point in the future by an increase in an entity’s net emissions.

A variety of circumstances can affect the path of overall emission intensity over time, including general economic conditions, the financial and business circumstance of the entity, fuel prices, fluctuations in weather as well as fleet availability and capacity. If DOE continues to insist on going forward with its offsets reduction in its proposed revised

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<sup>8</sup> January 12, 2004 DOE 1605(b) Workshop Transcript, page 76.

<sup>9</sup> 68 Fed. Reg. 68211.

<sup>10</sup> Energy Policy Act of 1992. §1605(b)(4).

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General Guidelines, it must allow for banking and borrowing. If an entity experiences a net increase in output-adjusted emissions it should be allowed to draw on its banked registered reductions from previous years or borrow from future years to efficiently and effectively manage that increase. The focus of the proposed revised General Guidelines should be to encourage as many emission reduction projects as possible.

**All Otherwise Conforming Projects That Result In The Reduction Of Greenhouse Gas Emissions To The Atmosphere Should Be Allowed To Be Registered—Regardless Of Reason Or Motivation.**

In addition to the offset reduction requirement, the proposed guidelines will subjectively discriminate against certain types of emissions reduction projects by excluding them from consideration in the determination of reductions in absolute emissions. For example, §§ 300.8(b)(2) and (d)(1) would preclude Xcel Energy from registering plant closures or other reductions in output in determining reductions in absolute emissions even though these actions may legitimately be part of an overall GHG mitigation strategy.<sup>11</sup> In addition, § 300.8(b)(1) would prohibit Xcel Energy from considering “acquisitions, divestitures or changes in products” by requiring it to demonstrate that such actions “have not contributed significantly to changes in emissions intensity,” even though such actions may also be legitimately part of an overall GHG mitigation strategy.<sup>12</sup> As we have stated above, a reduction is a reduction. Xcel Energy should be allowed to register all **otherwise conforming** projects that result in the reduction of greenhouse gas emissions to the atmosphere --regardless of the reason or motivation.

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<sup>11</sup> The proposed 10 CFR §300(b)(2) states that “A reporting entity may use changes in the absolute (actual) emissions (direct or indirect) as a basis for determining net emission reductions, as long as the entity demonstrates in its report that any reductions derived from such changes were not achieved as a result of reductions in U.S. output, or major shifts in the types of products or services produced. The proposed 10 CFR §300(d)(1) states that “If emission reductions were associated, in whole or part, with plant closings, the report should include an explanation of how such emission reductions did not result from a decline in the U.S. output of the reporting entity.”

<sup>12</sup> The proposed 10 CFR §300(b)(1) states “A reporting entity may use reduction in the rate of emissions per unit of output (emissions intensity) as a basis for determining emission reductions as long as the reporting entity demonstrates in its report that the measure(s) of output used in the emission intensity metric is a reasonable indicator of the physical output or economic value produced by the activity associated with these emissions, and that acquisitions, divestitures or changes in products have not contributed significantly to changes in intensity.”

### **The Rules Governing Entity-Wide Emissions Inventories Are Excessively Burdensome and Onerous**

The proposed guidelines set a *de minimis* limit for reporting emissions at 3% of an entity's total emissions inventory or 10,000 tons CO<sub>2</sub>e, whichever is smaller. For Xcel Energy, the 10,000 tons *de minimis* threshold is less than one-tenth of 1 percent of our entity-wide emissions. This proposed *de minimis* exclusion provides no real environmental benefit, and is another disincentive to voluntary participation. An alternative method of defining the *de minimis* exclusion would be to make the limit the greater of 3-5% of total emissions or 10,000 tons CO<sub>2</sub>e.

The challenge of conducting an annual inventory of 99.99% of corporate-wide emissions is made even more daunting by the requirement to include mobile sources and carbon storage (or sinks).<sup>13</sup> Unless participants are managing their land holdings with the explicit aim of storing GHG emissions, we do not understand how tracking yearly fluctuations in carbon storage as a result of land sales, purchases or development activities will contribute to the accuracy of an entity-wide inventory nor will it provide the voluntary program with significant reductions. The scope of the mobile source requirement is vague, but could cover company-owned fleets (vehicular, barge and airline) and employee-related (non-commuter) business travel. Therefore, the proposed *de minimis* exclusion provides no real environmental benefit, and is another disincentive to voluntary participation. An alternative method of defining the *de minimis* exclusion would be to make the limit the greater of 3-5% of total emissions or 10,000 tons CO<sub>2</sub>e.

### **The Base Year and Baselines Need Additional Flexibility**

Under the proposed guidelines, Xcel Energy must provide listed information on its "baseline entity statement" when it first reports.<sup>14</sup> This information includes "[i]dentification of the first year for which the entity will report emissions and the base year or base period from which emission reductions will be calculated."<sup>15</sup> The preamble states that:

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<sup>13</sup> Proposed 10 CFR §300.5(a)(5); §300.6(b)(1); 68 Fed. Reg. 68217.

<sup>14</sup> Figure 1, 68 Fed. Reg. 68207; Proposed 10 CFR § 300.5(a); 68 Fed. Reg. 68217.

<sup>15</sup> Proposed 10 CFR §300.5(a)(7); 68 Fed. Reg. 68217.

[E]ntities would be permitted to register only those emission reductions calculated using a base year no earlier than 2002 (or base period of up to four sequential years ending no earlier than 2002). However, entities may still report emission inventories and reductions for previous years, as long as any prior year emission reductions are calculated using a base year no earlier than 1990 (or a base period no earlier than 1987-1990).<sup>16</sup>

The proposed general guidelines also provides for changes in the “baseline entity statement”, modeling changes in the base year or base period. The section also states:

The dynamic nature of economic activity may pose a challenge for the objective of a comprehensive and accurate documentation of greenhouse gas emissions and sequestrations from year to year. In general, DOE encourages changes in the scope of reporting that expand the coverage of an entity’s report and discourages changes that reduce the coverage of such reports unless they are caused by divestitures or plant closures. Any such changes should be reported in amendments to the Entity Statement and major changes in the reporting entity’s base year or base period. The Technical Guidelines under this part provide more specific guidance on how such changes should be reflected in entity reports and emission reduction calculations.

The procedures for “adjusting baselines” should be addressed in the proposed revised General, not the Technical, Guidelines. In addition, Xcel Energy should be allowed to register and bank all **otherwise conforming** projects that result in the reduction of greenhouse gas emissions to the atmosphere since 1991.

**The Treatment Of Direct Emissions And Direct Emissions Reductions, Purchased Power Indirect Emissions, And Avoided Emissions Needs Further Revision.**

The preamble states that large emitters must account for indirect emissions associated with purchased power in order for the entity to register its emissions reductions.<sup>17</sup> The terms “direct emissions” and “indirect emissions” are defined in the proposed General Guidelines.<sup>18</sup> However, they appear to have different meanings as used in §300.6.

Under the §300.2 definition of “direct emissions,” the greenhouse gas emission is from either a stationary or mobile source that is owned or controlled by an entity. Direct emissions result directly from fuel combustion or other processes that release greenhouse

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<sup>16</sup> 68 Fed. Reg. 68210.; Proposed 10 CFR § 300.9, 68 Fed. Reg. 68219; Proposed 10 CFR §300.5(b), 68 Fed. Reg. 68217.

<sup>17</sup> Figure 1, 68 Fed. Reg. 68207.

<sup>18</sup> Proposed 10 CFR §300.2, 68 Fed. Reg. 68216.

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gases on site. According to §300.2, the definition of an indirect emission is an emission that is a consequence of an entity, but emitted by other entities. Indirect emissions are produced when stationary or mobile sources cause emissions to be generated elsewhere. §300.6(c) addresses indirect emissions inventories associated with the purchase of electricity.

Reporting entities have the option under §300.6(c)(2) to choose to report other forms of indirect emissions, but these emissions can only be reported—not registered. The reports of such “other forms” of indirect emissions “must be clearly distinguished from reports of indirect emissions associated with purchased energy.” The focus of the revised guidelines should be to encourage as many emission reduction projects as possible. We see no reason to exclude “other forms” of **otherwise conforming** indirect emissions from registration. Again, reduction is a reduction.

Whenever the subject of indirect emissions arises, it is critical to discuss them in the context of purchase power agreements. Xcel Energy is a major wholesale buyer and seller of fossil, nuclear and renewable power. The two approaches to reporting greenhouse gas emissions associated with these transactions are to place the reporting obligation with either the seller (i.e. the generator) or the buyer (i.e. the distributor). In assigning the appropriate responsibility for these greenhouse gas emissions, Xcel Energy believes it is appropriate for the seller and buyer to negotiate greenhouse gas emission or offset ownership within the applicable purchase power agreement. **The proposed revised General Guidelines should not pervert the value of such contractual efforts within a corporate greenhouse gas reduction strategy.**

The imminent proposed revised Technical Guidelines must completely address this issue in order to eliminate instances of double counting of actual “registered” or recognized reductions. Xcel Energy is supportive of the concept of regional variation in establishing emissions factors for these purchased power indirect emissions, but believes participants should have the option of using a more specific value if one is available.

Avoided emissions are an important component of the President’s greenhouse gas intensity reduction goal of 18% by 2012. Through nuclear energy, renewable energy, and energy efficiency and demand-side management (DSM) projects, the inclusion of avoided emissions

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in Xcel Energy's report for registration will be beneficial to any cumulative reductions in emissions or emissions intensity. Projects that realize avoided emissions should also be able to be registered. The preamble states that avoided emissions must "reflect the indirect emission reductions achieved as a result of a measured increase in the net sales of energy generated by low- or no-emission technologies."<sup>19</sup> However, §300.2 defines avoided emissions as "the emissions displaced by increases in the generation and sale of electricity, steam, hot water or chilled water produced from energy sources that emit fewer greenhouse gases per unit than other competing sources of these forms of distributed energy". Additional guidance for calculating avoided emissions is necessary and must be included with the imminent proposed revised Technical Guidelines.

The preamble language and the proposed definition stated above conflict, and this conflict should be resolved in favor of the simpler and more straightforward definition. DOE should clarify that avoided emissions are simply a form of direct emissions reductions (as opposed to indirect emissions reductions). The emissions reductions of avoidance are from a projected baseline rather than a historical baseline. Such clarification would be consistent with the treatment of avoided emissions under the current guidelines.<sup>20</sup>

Xcel Energy appreciates the opportunity to submit these comments, and looks forward to further discussion and work with DOE and EIA.

Sincerely,



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cc:

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<sup>19</sup> 68 Fed. Reg. 68210.

<sup>20</sup> See App.A, GG-2, 68 Fed. Reg. 68221.

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