



Wayne Stenehjem  
ATTORNEY GENERAL

STATE OF NORTH DAKOTA  
**OFFICE OF ATTORNEY GENERAL**

STATE CAPITOL  
600 E BOULEVARD AVE DEPT 125  
BISMARCK, ND 58505-0040  
(701) 328-2210 FAX (701) 328-2226  
www.ag.nd.gov

**CIVIL LITIGATION**  
500 NORTH 9<sup>TH</sup> STREET  
BISMARCK, ND 58501-4509  
(701) 328-3640 FAX (701) 328-4300

August 22, 2008

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**PUBLIC SERVICE COMMISSION**

**HAND DELIVERY**

Gloria Geiger  
Interim Director of Administration  
Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480

Re: Northern States Power Company Electric Rate Increase Application

Dear Ms. Geiger:

Enclosed please find the original and ten copies of the Advocacy Staff Post-Hearing Brief and Affidavit of Service by Mail.

Thank you.

Sincerely,

Douglas A. Bahr  
Solicitor General

jjt

cc: Megan Hertzler (w/encs.)  
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STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Northern States Power Company )  
Electric Rate Increase )  
Application, )  
)  
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**ADVOCACY STAFF  
POST-HEARING BRIEF**

**Case No. PU-07-776**

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**STATEMENT OF THE CASE**

On December 7, 2007, Northern States Power Company (NSP) filed its Application of Northern States Power Company, a Minnesota Corporation, for Authority to Increase Rates for Electric Service in North Dakota. In its application, NSP proposes a \$20,535,000 or 13.95% increase in its annual North Dakota electric revenues. The proposed rates would affect NSP's service to all of its approximately 85,000 retail electric customers in the state of North Dakota.

On January 7, 2008, NSP and advocacy staff entered into a Partial Stipulation agreeing that an 8.8 percent overall rate of return is appropriate for determining revenue requirements in this proceeding. The Partial Stipulation further agreed to, and recommended that, the Public Service Commission (Commission) approve in its final order a return on equity of 10.75 percent and an earnings sharing mechanism that will result in customer refunds if NSP's net income from electric service in North Dakota exceeds a 10.75 percent return on equity.

The Commission issued a Notice of Hearing on March 26, 2008, scheduling a hearing to begin on June 23, 2008. The Notice specified the following issues:

1. What is the value of NSP's property, used and useful, for the service and convenience of the public in North Dakota?
2. What is NSP's rate of return on its property, used and useful, for the service and convenience of the people in North Dakota?
3. What is a just and reasonable rate of return on NSP's property, used and useful, for the service and convenience of the public in North Dakota?

4. What rates and charges are necessary to provide a just and reasonable rate of return on NSP's property, used and useful, for the service and convenience of the public in North Dakota?
5. Are NSP's proposed rate schedules designed in such a manner that they result in a basis of charge to its customers that is just and reasonable without discrimination?
6. Other relevant information or proposals concerning the proceeding.

In accordance with the Notice of Hearing, a hearing was held on June 23, 24, and 25.

This brief contains three sections. The "Argument" section of the brief addresses the basis for advocacy staff's recommendations. The "Revenue Requirement Adjustments" section briefly outlines the advocacy staff's recommended adjustments. Finally, the "Recommended Policy Changes" section makes recommendations for future rate cases.

## ARGUMENT

### I. **NSP has the burden to establish that its proposed change of rate is just, reasonable, and in compliance with N.D.C.C. title 49.**

Under N.D.C.C. § 49-02-03, the Commission has the power, after notice and hearing, to establish, modify, or adjust the rate of a public utility. At the hearing, the public utility has the burden to establish that an increased rate or proposed change of rate is just and reasonable.<sup>1</sup> If, after the hearing, the Commission finds a proposed rate "unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of [title 49]," the Commission by order shall fix a reasonable future rate.<sup>2</sup>

An investor-owned utility is entitled to earnings sufficient to pay its expenses and provide a fair and reasonable return to its investors.<sup>3</sup> "In general, the governing principle for determining rates to be charged by a utility is the right of the public on the

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<sup>1</sup> See N.D.C.C. § 49-05-06; Mont.-Dakota Utils. Co. v. Pub. Serv. Comm'n, 413 N.W.2d 308, 315 (N.D. 1987).

<sup>2</sup> N.D.C.C. § 49-02-03.

<sup>3</sup> Mont.-Dakota Utils. Co., 413 N.W.2d at 310.

one hand to be served at a reasonable charge, and the right of the Utility on the other to a fair return on the value of its property used in the service.”<sup>4</sup>

To establish the just and reasonable rate of a public utility, the Commission is required to determine the value of the property of a public utility “used and useful for the service and convenience of the public.”<sup>5</sup> “The value of the property of a public utility, as determined by the commission for ratemaking purposes, is the money honestly and prudently invested therein by the utility . . . .”<sup>6</sup>

Furthermore, as previously discussed, N.D.C.C. § 49-02-03 requires the rate be just, reasonable, nondiscriminatory, and in compliance with title 49. Title 49 requires a public utility provide service in a way that is “just, and reasonable, and without any unjust discrimination or preference.”<sup>7</sup> Thus, to comply with title 49, a rate or charge must be “just and reasonable. Every unjust and unreasonable rate or charge made, demanded, or received for such product, commodity, or service is prohibited and unlawful.”<sup>8</sup> Title 49 also prohibits a public utility from making or giving “any undue or unreasonable preference or advantage to any particular . . . locality . . . in any respect.”<sup>9</sup> Finally, title 49 specifically prohibits the use of environmental externality values in setting the rate for providing electric service.<sup>10</sup> Under North Dakota law,

[e]nvironmental externality values are numerical costs or quantified values that are assigned to represent either:

1. Environmental costs that are not internalized in the cost of production or the market price of electricity from a particular electric resource; or
2. The alleged costs of complying with future environmental laws or regulations that have not yet been enacted.<sup>11</sup>

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<sup>4</sup> Pub. Serv. Comm’n v. Mont. -Dakota Utils. Co., 100 N.W.2d 140, 144 (N.D. 1959).

<sup>5</sup> N.D.C.C. § 49-06-01.

<sup>6</sup> N.D.C.C. § 49-06-02.

<sup>7</sup> N.D.C.C. § 49-04-01.

<sup>8</sup> N.D.C.C. § 49-04-02.

<sup>9</sup> N.D.C.C. § 49-04-07.

<sup>10</sup> See N.D.C.C. §§ 49-02-23; 49-06-24.

<sup>11</sup> N.D.C.C. § 49-02-23.

In the present case, NSP did not meet its burden to establish its proposed rate increase is just and reasonable. NSP did not develop a North Dakota specific depreciation study. It also failed to demonstrate the depreciation rates approved by the Minnesota Public Utilities Commission (MPUC) are just and reasonable. Furthermore, NSP failed to demonstrate that its revenue requirements stemming from Minnesota mandates are used and useful for the service and convenience of the public in North Dakota.

**II. NSP has not demonstrated its depreciation rates are fair and reasonable.**

A. A North Dakota specific depreciation study should be required.

NSP did not prove its depreciation rates are fair and reasonable because NSP did not develop a North Dakota specific depreciation study.<sup>12</sup> The Commission should dismiss the case with instructions that NSP develop a North Dakota specific depreciation study and file a new application for authority to increase its rates.

Dismissing the case with instructions that NSP develop a North Dakota specific depreciation study is particularly appropriate in this case because, not only did NSP not do a North Dakota depreciation study, it did not meet its burden of demonstrating the depreciation rates approved by MPUC are appropriate. Advocacy staff secured, through Document Requests, the depreciation reports provided to MPUC that underlie the current depreciation rates. NSP, however, would not provide advocacy staff (and hence this Commission) the underlying analyses and data.<sup>13</sup> Because NSP refused to provide this information,<sup>14</sup> both advocacy staff and the Commission are unable to perform any independent verification of the parameters that underlie NSP's depreciation rates. Contrary to NSP's apparent understanding, MPUC does not have carte blanche authority to determine depreciation rates for North Dakota. Instead, this Commission

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<sup>12</sup> Ex. 24, pp. 7, ll. 7-8; 12, ll. 9-10; Tr. 706, ll. 22-25; Tr. 707, ll. 1-25; Tr. 708, ll. 1-4; Tr. 728, ll. 2-13, 18-25.

<sup>13</sup> Ex. 23, p. 21, ll. 3-15; Ex. 24, pp. 7, ll. 1-3; 14, ll. 16-17; Tr. 593, 20-22.

<sup>14</sup> The Document Request responses did not make any claim of confidentiality.

independently determines if depreciation rates are appropriate. Because NSP refused to provide documentation justifying its depreciation rates, other than relying on MPUC approval, NSP did not meet its burden to demonstrate its depreciation rates are fair and reasonable. Accordingly, NSP should be required to file a North Dakota specific depreciation study, with supporting documentation, to verify its depreciation rates.

The fact the Commission has not required a North Dakota specific depreciation study in the past does not prevent the Commission from doing so in this case. It is well-established that “an administrative agency may announce new principles through adjudicative proceedings . . . .”<sup>15</sup> “[C]ourts have recognized an administrative agency may reexamine a prior decision, and the agency may depart from a prior decision if it distinguishes, or rationally explains its departure.”<sup>16</sup>

As explained by the Supreme Court:

“Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general rule or by individual order. To insist upon one form of action to the exclusion of the other is to exalt form over necessity.

“In other words, problems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations, the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective. There is thus a very definite place for the case-by-case evolution of statutory standards. And the choice made between proceeding by general rule or by individual, *ad hoc* litigation is one that lies primarily in the informed discretion of the administrative agency.”<sup>17</sup>

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<sup>15</sup> Turnbow v. Job Service North Dakota, 479 N.W.2d 827, 831 (N.D. 1992).

<sup>16</sup> New Town Pub. Sch. Dist. No. 1 v. State Bd. of Pub. Sch. Educ., 2002 ND 127, ¶ 10, 650 N.W.2d 813.

<sup>17</sup> Amerada Hess Corp. v. Conrad, 410 N.W.2d 124, 133-34 (N.D. 1987) (quoting SEC v. Chenery Corp., 332 U.S. 194, 202-03 (1947)).

The facts in this case warrant the Commission reexamining its past practice of not requiring a North Dakota specific depreciation study. The facts also dictate that the Commission require a North Dakota specific depreciation study in this and future cases.

B. The MPUC approved depreciation rates are too high.

If, due to past practices and despite NSP's refusal to provide the underlying analyses and data, the Commission decides not to require a North Dakota specific depreciation study, it should (1) order a North Dakota specific depreciation study be done in all future cases and (2) adopt the adjustments recommended in this brief.

The depreciation rates reflected in the revenue requirement are the depreciation rates that NSP submitted to MPUC and that were approved by that commission.<sup>18</sup> Those rates are too high and should be rejected by this Commission. As discussed below, NSP's depreciation rates are too high for multiple reasons.<sup>19</sup>

Removal costs. A fundamental problem with the Minnesota depreciation filing is the net salvage costs that are recovered in the mass property transmission and distribution rates are expressed in dollars of future years, not in dollars of the current year (present-value approach).<sup>20</sup> NSP's approach is "patently wrong" and results in a significant overstatement of depreciation rates.<sup>21</sup> That is because NSP's approach frontloads future inflation into current depreciation rates. As explained and graphically demonstrated by Michael J. Majoros,<sup>22</sup> that procedure results in intergenerational inequity because it overcharges current ratepayers and undercharges future ratepayers.<sup>23</sup> Mr. Majoros demonstrated the present-value approach is the only fair approach because it matches inflation to the periods incurred rather than frontloading

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<sup>18</sup> Depreciation is NSP's largest non-fuel expense. Ex. 24, p. 6, ll. 12-13, 19.

<sup>19</sup> Ex. 23, pp. 14, ll. 9-21; 15, ll. 1-6; Tr. 616, ll. 18-21.

<sup>20</sup> Tr. 618, ll. 22-25; Tr. 619, ll. 1-4.

<sup>21</sup> Tr. 619, ll. 4-5.

<sup>22</sup> Mr. Majoros is Vice President of Snavely King Majoros O'Connor & Lee, Inc.

<sup>23</sup> See Exs. 34 and 35.

inflation into today's depreciation rates.<sup>24</sup> The present-value approach achieves "matching" as contemplated in both regulatory and generally accepted accounting principles. The present-value approach does not deny NSP any future costs of removal.<sup>25</sup> Mr. Majoros is not "proposing any underaccrual," he is simply "proposing to discontinue NSP's overaccrual" by properly matching costs to the periods in which they are incurred.<sup>26</sup>

NSP's past use of overstated removal costs has resulted in an excessive removal cost reserve of \$342 million.<sup>27</sup> NSP's "average accrual rate for transmission plant has been twice the actual net removal cost experience. The average accrual rate for distribution plant has been 25 times the actual average net removal cost."<sup>28</sup> This is money extracted from ratepayers that will never be spent on its intended purpose. The North Dakota portion of the excess removal cost reserve should be amortized through a reduction in depreciation expense over a ten-year period.<sup>29</sup> The Commission should also recognize NSP's non-legal asset retirement obligations as a regulatory liability, as both the Securities and Exchange Commission (SEC) and the accounting profession have done.<sup>30</sup> "This recognition is necessary to protect ratepayers from the risk of losing these advances they have made to [NSP]."<sup>31</sup> Recognizing the non-legal asset retirement obligations as a regulatory liability would not deny NSP any future removal costs.<sup>32</sup>

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<sup>24</sup> Tr. 523, ll. 4-25; Tr. 524, ll. 1-8; Tr. 564-74; Tr. 589, ll. 6-25; Tr. 590, ll. 1-9; Tr. 734, ll. 1-25; Tr. 735, ll. 1-15; Tr. 750, ll. 16-25; Tr. 751, ll. 1-14. [Still needed?]

<sup>25</sup> Tr. 524, ll. 14-15; Tr. 542, ll. 22-24; Tr. 564, ll. 11-16; Tr. 588, ll. 19-22.

<sup>26</sup> Tr. 734, ll. 21-23.

<sup>27</sup> Ex. 24, p. 10, ll. 14-19; Tr. 532, ll. 23-25; 533, l. 1; Tr. 545, ll. 23-25; Tr. 546, ll. 1-4.

<sup>28</sup> Ex. 23, p. 30, ll. 5-7.

<sup>29</sup> Tr. 520, ll. 16-17.

<sup>30</sup> Ex. 24, pp. 9, ll. 6-20; p. 10, ll. 1-12; 11, ll. 14-18; Tr. 520, ll. 4-7; 531, ll. 4-6; Tr. 523, ll. 1-3.

<sup>31</sup> Tr. 520, ll. 7-10; see also Ex. 24, pp. 13, ll. 4-22; 14, ll. 1-13; Tr. 520, ll. 9-15; 533, l. 25; 534, ll. 1-8; 537, ll. 6-11.

<sup>32</sup> Tr. 537, ll. 10-11.

Another issue of removal costs is NSP's pole and cable replacement programs. NSP charges the cost of its pole and cable replacement programs to expense.<sup>33</sup> Instead, the costs of the programs should be charged to NSP's cost of removal reserve.<sup>34</sup> Ratepayers would still pay the costs. They would simply do so out of NSP's exorbitant cost of removal reserve.<sup>35</sup> "The same holds true for the capitalized components of these costs. They should be charged to the cost of removal reserve rather than to plant in service and then depreciated."<sup>36</sup> "The cost of removal reserve is embedded in NSP's accumulated depreciation account."<sup>37</sup>

Service lives. A basic and significant parameter in determining depreciation rates is the service life of the plant.<sup>38</sup> By understating service life, a public utility can over-accrue depreciation. NSP's Minnesota depreciation filing contains this error in multiple areas.

NSP's Minnesota depreciation filing understates the service lives for some of NSP's steam production plants.<sup>39</sup> NSP initially assumed service lives of only 44 and 45 years for the Sherco units.<sup>40</sup> In rebuttal testimony NSP extended the retirement date of the Sherco units from 2019 to 2022, giving two units a useful life of 47 years and one unit a useful life of 34 years.<sup>41</sup> But the average service life of all steam plants since about 1900 is 59 years.<sup>42</sup> NSP did not provide a factual basis to support its assumption that the Sherco units would have a shorter than average service life.<sup>43</sup> Year 2022 to

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<sup>33</sup> Ex. 24, p. 23, l. 17.

<sup>34</sup> Ex. 24, p. 23, l. 18; Tr. 520, ll. 17-20; 522, ll. 8-12; 535, ll. 9-11.

<sup>35</sup> Tr. 522, ll. 9-12.

<sup>36</sup> Ex. 24, pp. 23, ll. 19-20; 24, l. 1.

<sup>37</sup> Ex. 24, p. 24, ll. 1-2.

<sup>38</sup> Ex. 23, p. 17, ll. 16-18.

<sup>39</sup> Ex. 23, p. 22, ll. 8-10.

<sup>40</sup> Ex. 23, p. 22, ll. 8-10.

<sup>41</sup> Tr. 685, ll. 20-24. Tr. 685, ll. 11-16.

<sup>42</sup> Ex. 23, p. 22, ll. 15-17.

<sup>43</sup> Tr. 634, ll. 20-25; Tr. 635, ll. 1-8.

retire Sherco is a “[p]atently absurd date.”<sup>44</sup> That date is “ridiculous. They’re not going to retire those plants – that plant in 2022.”<sup>45</sup>

Underestimating the service lives of the plants significantly distorts the depreciation rates, making them artificially high. As explained by Charles W. King:<sup>46</sup>

[T]he Sherco plant is one of the company’s three big base load plants. The proposition that they’re going to close that plant in 14 years is patently ridiculous and failing to recognize that [] the plant will unquestionably live longer than 14 more years, leads to an excessive depreciation rate for that plant and it’s a very expensive plant.<sup>47</sup>

The service life of the Prairie Island nuclear plant is also problematic because NSP’s identified service life does not reflect the imminent relicensing of that plant.<sup>48</sup> Relicensing of the plant is a virtual certainty.<sup>49</sup> NSP filed for relicensing on April 15, 2008.<sup>50</sup> “Although the NRC often attaches conditions to its relicensing, it has yet to deny the relicensing of any nuclear plant.”<sup>51</sup> Thus, the service life for the Prairie Island plant should be 60 years.<sup>52</sup> Again, by underestimating Prairie Island’s service life, NSP artificially raises the depreciation rate, “grossly over-depreciating \$1.2 billion in plant.”<sup>53</sup> “[T]o continue depreciating [Prairie Island] as though it’s going to be closed at the end of 40 years is flatly wrong. It should reflect the virtual certainty it’s going to last 60 years instead.”<sup>54</sup>

The service lives that NSP forecasts for five of its fossil fuel combustion turbine plants are shorter than the experienced life spans of these plants nationally.<sup>55</sup> NSP,

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<sup>44</sup> Tr. 685, ll. 11-16.

<sup>45</sup> Tr. 685, ll. 20-25; Tr. 686, l. 1; see also Tr. 690, ll. 15-20.

<sup>46</sup> Mr. King is President of the economic consulting firm of Snavely King Majoros O’Connor & Lee, Inc.

<sup>47</sup> Tr. 617, ll. 3-10.

<sup>48</sup> Ex. 23, p. 23, ll. 11-15.

<sup>49</sup> Ex. 23, p. 23, ll. 16-19; Tr. 617, ll. 11-16; Tr. 636, ll. 13-14.

<sup>50</sup> Ex. 23, p. 23, ll. 17-18.

<sup>51</sup> Ex. 23, p. 23, ll. 18-19; Tr. 424, ll. 15-18.

<sup>52</sup> Ex. 23, p. 23, ll. 20-21.

<sup>53</sup> Tr. 617, ll. 16-17.

<sup>54</sup> Tr. 636, ll. 14-18.

<sup>55</sup> Ex. 23, p. 25, ll. 1-19.

which has the burden of proof, did not introduce evidence demonstrating the service life of these plants would be less than the industry average.<sup>56</sup>

The combustion turbine generators operated by NSP and the service life assumed by NSP are listed in Schedule 4 of Exhibit 23 (CWK-7) (with the exception of the Grand Meadows Wind Farm, they are all combustion turbines).<sup>57</sup> The assumed service lives range from 30 to 57 years.<sup>58</sup> The assumed service lives of the Angus C. Anson, Granite City, High Bridge, Inver Hills, and Key City plants are too short.<sup>59</sup> Those plants should realize service lives of at least 45 years.<sup>60</sup> “[I]t’s absurd to assume these [plants] will be retired prematurely.”<sup>61</sup> Due to NSP underestimating these newer plants life spans, they are “being depreciated at an accelerating rate and incurring initially extremely high depreciation charges.”<sup>62</sup>

Achieving the longer service lives for steam, nuclear, and other production will require additional investment. That investment, however, will be depreciated when it is expended.<sup>63</sup> The fact that additional investment may be incurred does not justify over-depreciating the existing plant. To do so is “flat-out wrong from a depreciation theory standpoint.”<sup>64</sup>

Distribution plant. The service life of distribution plant account 365, Distribution Overhead Conductors and Devices, is also problematic because it does not reflect NSP’s more aggressive vegetation control program or North Dakota experience.

NSP proposes a 35 year average service life with an R1 survivor curve.<sup>65</sup> This is

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<sup>56</sup> Tr. 634 ll. 20-25; Tr. 635, ll. 1-8.

<sup>57</sup> Ex. 23, p. 24, ll. 16-18.

<sup>58</sup> Ex. 23, p. 24, ll. 20-21.

<sup>59</sup> Ex. 23, pp. 24, l. 22; 25, ll. 1-7.

<sup>60</sup> Ex. 23, p. 26, ll. 1-2; Ex. 23 (CWK-10).

<sup>61</sup> Tr. 691, ll. 7-8.

<sup>62</sup> Tr. 617, ll. 20-22.

<sup>63</sup> Tr. 635, ll. 9-22; Tr. 636, ll. 19-23; Tr. 689, l. 25; Tr. 690, ll. 1-14; Tr. 700, ll. 12-21.

<sup>64</sup> Tr. 690, ll. 13-14.

<sup>65</sup> Ex. 23, p. 26, ll. 9-10.

based on a retrospective analysis, not future developments.<sup>66</sup> Yet NSP proposes a considerable increase in its tree trimming expenditures.<sup>67</sup> The result of an enhanced tree trimming program will likely be less retirements from the Overhead Conductors account, leading to a longer average service life.<sup>68</sup>

More important, however, is “that the depreciation rate for overhead conductors does not reflect North Dakota experience.”<sup>69</sup> The Minnesota depreciation filing fails to calculate specific depreciation rates for North Dakota distribution plant. NSP used system-wide data to develop its life and survivor curves for the distribution plant lives.<sup>70</sup> Ninety percent of the system is in Minnesota.<sup>71</sup> NSP failed to provide any evidence to support its implicit assumption that Minnesota depreciation rates are appropriate for North Dakota. A number of factors may create a longer service life of distribution plant in North Dakota than in Minnesota – there are fewer trees in North Dakota than Minnesota, there is less rain and thunderstorms in North Dakota than Minnesota, and there is probably less ice in the wintertime in North Dakota than in Minnesota.<sup>72</sup> For this reason, the Minnesota service life should not be assumed for North Dakota.<sup>73</sup>

NSP has the burden to demonstrate the service life of the North Dakota distribution plant. It does not meet its burden by simply assuming the service life in Minnesota applies to North Dakota.<sup>74</sup> Relying on a “gut feel” that there are not material differences between the service life of the Minnesota and North Dakota plants does not meet NSP’s burden.<sup>75</sup> “[I]t’s unreasonable to assume that North Dakota experience is

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<sup>66</sup> Ex. 23, p. 26, ll. 13-14.

<sup>67</sup> Ex. 23, p. 26, ll. 14-15.

<sup>68</sup> Ex. 23, p. 26, ll. 15-17; Tr. 637, ll. 2-9.

<sup>69</sup> Tr. 637, ll. 11-13.

<sup>70</sup> Tr. 425, ll. 17-24; Tr. 426, ll. 12-15.

<sup>71</sup> Tr. 426, ll. 3-5.

<sup>72</sup> Tr. 637, ll. 13-19.

<sup>73</sup> Tr. 637, ll. 20-25.

<sup>74</sup> NSP admits its assumption the service life in Minnesota applies to North Dakota is speculation. Tr. 435, ll. 3-10.

<sup>75</sup> Tr. 426, ll. 19-25; Tr. 427, ll. 1-3; Tr. 435, ll. 3-10.

the same as Minnesota experience with regard to overhead conductors.”<sup>76</sup> “[T]o simply assume that Minnesota is appropriate for North Dakota is flat-out wrong.”<sup>77</sup> Significantly, Mr. King requested information so he could study the life expectancy of North Dakota distribution plant, but NSP would not provide it.<sup>78</sup>

NSP does not meet its burden by refusing to give supporting information to advocacy staff and the Commission. Due to the lack of a North Dakota specific study, as well as NSP’s more aggressive vegetation control program, advocacy staff recommend a modest 5-year increase in the average service life of plant in this account, resulting in an average service life of 40 years.<sup>79</sup>

In lieu of this modest proposal, the Commission could require NSP submit a North Dakota specific depreciation study, as recommended by Mr. Majoros. Mr. King pointed out that many multi-state utilities have state-specific depreciation rates.<sup>80</sup>

**III. Costs incurred due to MERP should not be included in NSP’s revenue requirement.**

NSP’s proposed rate is not just and reasonable because it includes costs imposed by the Minnesota Metropolitan Emission Reduction Program (MERP), which are not used and useful for the service and convenience of the North Dakota public. Specifically, NSP’s proposed rate increase includes the costs of rehabilitating the Allen S. King plant and reconstructing the High Bridge plant, which were not accomplished for the use and convenience of the North Dakota public. In fact, the rehabilitation of the King plant and the reconstruction of the High Bridge plant are the two largest components of this rate case. Yet they were undertaken, not because they were useful for the service and convenience of the North Dakota public, but because of policy

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<sup>76</sup> Tr. 703, ll. 7-9.

<sup>77</sup> Tr. 703, ll. 21-22.

<sup>78</sup> Tr. 701, ll. 8-14; Tr. 703, ll. 14-22.

<sup>79</sup> Ex. 23, p. 26, ll. 19-21; Tr. 702, ll. 12-18.

<sup>80</sup> Tr. 638, ll. 4-23. Furthermore, the Bell telephone companies used to have not only state-specific depreciation rates, but also different rates for interstate and intrastate plant within the same state. Tr. 638, ll. 24-25; 639 ll. 1-9.

decisions made by the Minnesota legislature. Furthermore, the costs of the mercury control program were not used and useful for the service and convenience of the North Dakota public. Nor is the program currently required by the federal Environmental Protection Agency. The program has not yet been implemented, but when it is, it will be for the benefit of Minnesota, not North Dakota.

A. MERP was for the benefit of the Minnesota public.

“MERP is a program initiated by the Minnesota legislature that is designed to reduce the emissions from NSP’s coal plants located in the Minnesota Twin Cities metropolitan area.”<sup>81</sup> In 2001, the Minnesota legislature enacted Minn. Stat. § 216B.1692, entitled Emissions-Reduction Rider, “that provided a mechanism for utilities to recover the costs of reducing emissions at three aging but strategic coal-fired plants located in or near the twin-cities metropolitan area.”<sup>82</sup> In 2006, the Minnesota legislature enacted Minn. Stat. §216B.68 through §216B.685, entitled The Minnesota Mercury Emissions Reduction Act (“MMRA”), “for the purpose of reducing mercury emissions from coal-fired electric generation resources.”<sup>83</sup> “The MMRA allows for the recovery of costs outside of a Minnesota general rate case in order to encourage utilities to reduce mercury emissions. If other emissions are reduced as part of the effort to reduce mercury emissions, those cost[s] can be include in the proposed recovery mechanism as well.”<sup>84</sup>

In response to MERP, NSP submitted a plan, dated May 3, 2002, to MPUC that “called for the rehabilitation of the King plant and the replacement of the High Bridge and Riverside plants<sup>85</sup> with gas-fired combined cycle combustion turbine/heat recovery

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<sup>81</sup> Ex. 23, p. 4, ll. 16-18.

<sup>82</sup> Ex. 23, p. 4, ll. 21-25.

<sup>83</sup> Ex. 23, p. 5, ll. 1-4.

<sup>84</sup> Ex. 23, p. 5, ll. 4-8.

<sup>85</sup> The Riverside plant is not included in this rate proceeding.

units.”<sup>86</sup> The combined capital cost of this plan, measured in 2001 dollars, was over \$1.0 billion.<sup>87</sup>

NSP’s MERP plan was first presented to the Minnesota Pollution Control Agency (MPCA), which is concerned with air quality, not with costs.<sup>88</sup> After negotiations with the MPCA, the plan was presented to the MPUC. On December 11, 2003, a settlement between NSP and the MPCA and the MPUC staff was filed with the MPUC. The settlement adopted the \$1 billion rehabilitation and replacement program proposed in the May 3, 2002 plan.<sup>89</sup>

On December 21, 2007, NSP submitted a proposal to MPUC “for significant emissions reductions and power uprates for Units 1 and 2 of its Sherburne County Generating Facility. In addition, two filings were submitted for mercury emissions reductions at the Allen S. King Plant and Sherburne County Unit 3. These projects comply with the MMRA and other Minnesota mandates, but they go beyond the mercury reduction requirements of the Federal Clean Air Mercury Rule (which has now been vacated).”<sup>90</sup>

In this case, “MERP is responsible for \$5,574,461 in added revenue requirement from NSP’s North Dakota ratepayers.”<sup>91</sup> Absent MERP, NSP does not know if it would have done what it did.<sup>92</sup> To the extent NSP has not demonstrated those costs would have been incurred absent MERP, the costs should be excluded from this rate case. NSP has not demonstrated the King rehabilitation would have occurred when it did absent MERP. NSP has also failed to demonstrate the High Bridge plant would not

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<sup>86</sup> Ex. 23, p. 5, ll. 17-21.

<sup>87</sup> Ex. 23, p. 5, l. 21; Ex. 23, p. 6, ll. 1-2.

<sup>88</sup> Tr. 228, ll. 24-25; Tr. 229, ll. 1-2; Tr. 643, ll. 4-25; Tr. 644, ll. 1-4. Minn. Stat. §§ 116.01, 116.02.

<sup>89</sup> Ex. 23, p. 6, ll. 3-6. NSP points out MPUC undertook a costs review. Tr. 229, ll. 8-16. That review, however, was undertaken under the lens of the Minnesota legislation, which is the concern in this case.

<sup>90</sup> Ex. 23, p. 6, ll. 7-14.

<sup>91</sup> Ex. 23, p. 7, ll. 5-6.

<sup>92</sup> Tr. 245, ll. 12-14.

have been rehabilitated as a coal-fire unit, for approximately half the cost, absent MERP. And, finally, NSP has not demonstrated the mercury control plan would have been adopted absent MERP.

- B. NSP has not demonstrated the King plant rehabilitation was for the use of the North Dakota public.

The King plant rehabilitation was accelerated in response to MERP, not because the plant was obsolete or rehabilitation was required by federal standards.<sup>93</sup> Mr. King testified that Elizabeth M. Engelking<sup>94</sup> stated in a May 6, 2008 conference call that the King rehabilitation would not have occurred as soon as it did without the MERP legislation.<sup>95</sup> At the hearing Ms. Engelking testified the King rehabilitation was not accelerated due to MERP.<sup>96</sup> That testimony, however, is inconsistent with NSP's own documents.

The best way to determine whether the King rehabilitation was accelerated due to MERP is to look at NSP's last pre-MERP Integrated Resource Plan (IRP).<sup>97</sup> NSP develops IRP's to project its energy needs and the plans to meet those future needs. If the pre-MERP plan does not include the King rehabilitation, it is objective evidence that the King rehabilitation would not have been undertaken absent MERP.<sup>98</sup>

As testified by Mr. King, and as a review of NSP's 2000 IRP shows, the 2000 IRP does not mention the King plant, indicating rehabilitation of the King plant was not even being considered prior to MERP.<sup>99</sup> The 2000 IRP, of course, took into account NSP's capacity needs. Thus, the fact the 2000 IRP did not include rehabilitating the King plant for additional capacity, demonstrates that additional capacity was not the motivating

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<sup>93</sup> Ex. 23, p. 8, ll. 7-8; Tr. 630, ll. 5-7.

<sup>94</sup> Ms. Engelking is NSP's Manager of Resource Planning and Bidding.

<sup>95</sup> Tr. 612, ll. 21-25; Ex. 23, p. 7, ll. 13-14; Tr. 645, ll. 18-24.

<sup>96</sup> Tr. 191, ll. 16-25; Tr. 192, ll. 1-3.

<sup>97</sup> Tr. 613, ll. 1-5; Tr. 626, ll. 23-25; Tr. 626, ll. 1-2; 640, ll. 2-10; 644, ll. 9-13.

<sup>98</sup> Tr. 613, ll. 5-12.

<sup>99</sup> Tr. 756, ll. 3-11.

factor for the rehabilitation.<sup>100</sup> Furthermore, the King plant did not need to be rehabilitated to meet federal standards because it was “grandfathered” and, therefore, did not require a “new source review.”<sup>101</sup> Thus, it was MERP, not system needs, that dictated the rehabilitation of the King Plant.

NSP’s 2000 IRP shows the King plant was not scheduled to be rehabilitated. NSP’s inconsistent, post-rehabilitation testimony provided in an effort to obtain higher rates is less credible evidence than its 2000 IRP. Accordingly, NSP has not met its burden of demonstrating the costs expended rehabilitating the King plant were just and reasonable. In fact, the objective documentary evidence shows otherwise. The King plant rehabilitation was accelerated due to MERP, not because it was useful for the service and convenience of the public in North Dakota.

The cost of the King rehabilitation should be deducted from NSP’s revenue requirement.

C. NSP has not demonstrated the High Bridge replacement was for the use of the North Dakota public.

A much lower cost alternative to the High Bridge plant replacement would have met EPA air quality requirements and been used and useful for the service and convenience of the North Dakota public.<sup>102</sup> Minnesota, however, chose a higher cost plan that involved demolishing the coal plant and replacing it with a combined cycle plant. The higher cost plan was chosen, not to serve North Dakota’s needs or meet North Dakota or federal standards, but to further Minnesota environmental policies.

The 2003 plan submitted to the MPCA under MERP offered two alternatives for the High Bridge plant, one involving rehabilitation as a coal plant, the other involving the demolition of the coal plant and replacement with a combined cycle gas plant.<sup>103</sup> The

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<sup>100</sup> Tr. 648, ll. 1-5.

<sup>101</sup> Ex. 23, p. 6, ll. 20-21; Tr. 284, ll. 12-25; Tr. 285, ll. 1-16.

<sup>102</sup> Ex. 23, p. 7, ll. 14-20; Ex. 23, p. 8, l. 1.

<sup>103</sup> Tr. 613, ll. 13-25; Tr. 614, ll. 1-3; Ex. 23, p. 7, ll. 14-18.

rehabilitation alternative was about half the cost.<sup>104</sup> The MPCA chose the more expensive plan even though the rehabilitation plan would have met the EPA and Minnesota air quality standards.

In a twelfth hour attempt to justify the more expensive project, NSP now asserts that the selected plan is justified because it adds capacity.<sup>105</sup> However, NSP, who has the burden of proof, has not demonstrated the added capacity was required to serve the needs of NSP's customers. Mr. King acknowledged that if NSP was able to demonstrate that the added capacity was required to meet system load requirements, then the High Bridge project should be accepted in the revenue requirement.<sup>106</sup> He also correctly noted, however, that NSP made no such showing.<sup>107</sup> The very fact NSP submitted an alternative plan that did not significantly increase capacity of the High Bridge plant demonstrates added capacity was not the issue.<sup>108</sup> NSP also did not demonstrate that a second plant would have been needed in 2008 to meet NSP's capacity requirements.<sup>109</sup>

The High Bridge plant was totally dismantled and a new combined cycle combustion turbine was installed in its place. Since this plant is apparently needed, its costs should be allowed, but at the level suggested in the alternative plan and for no more than the four months during the test year.<sup>110</sup>

D. NSP has not demonstrated its mercury control plan was for the use of the North Dakota public.

NSP's mercury emissions control plan has not been implemented.<sup>111</sup> Significant expenditures for the mercury control program will not begin until 2010, yet NSP included

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<sup>104</sup> Ex. 23, p. 7, ll. 16-17.

<sup>105</sup> Tr. 193, ll. 12-14; Tr. 271, ll. 23-25.

<sup>106</sup> Tr. 652, ll. 6-9; 653, Tr. ll. 12-18.

<sup>107</sup> Tr. 653, ll. 21-25; Tr. 654, ll. 1-8.

<sup>108</sup> Tr. 653, ll. 21-25; Tr. 654, ll. 1-8.

<sup>109</sup> TR. 654, ll. 24-25; Tr. 655, ll. 1-6; Tr. 656, ll. 8-11.

<sup>110</sup> Ex. 23, p. 8, ll. 17-20.

<sup>111</sup> Ex. 23, p. 3, ll. 6-7; Ex. 23, p. 9, ll. 3-4.

\$438,427 in costs associated with this project. Furthermore, NSP has not demonstrated the project is for the use of the North Dakota public. The reductions go beyond the mercury reduction requirements of the Federal Clean Air Mercury Rule.<sup>112</sup> The project was not undertaken to meet federal or North Dakota requirements; the project was undertaken to comply with the MMRA and other Minnesota mandates.<sup>113</sup> To the extent the program is anticipating future federal requirements, North Dakota law prohibits NSP's recovery of those costs from North Dakota ratepayers.<sup>114</sup> Thus, the cost of the projects should be deducted from NSP's revenue requirement.

E. NSP has not demonstrated the costs imposed by MERP were for the use of the North Dakota public.

NSP did not meet its burden of demonstrating the King plant would have been rehabilitated under the same schedule absent MERP. In fact, NSP's 2000 IRP demonstrates otherwise. NSP also did not meet its burden of demonstrating the system requires the added High Bridge capacity in 2008. Finally, NSP did not meet its burden of demonstrating its mercury control plan was established to meet any current federal or North Dakota standard. Accordingly, the Commission should find that these projects were not undertaken to provide service for the North Dakota public. They were not undertaken to meet North Dakota system loads or federal or North Dakota environmental regulations. Rather, they were undertaken to meet a Minnesota program.<sup>115</sup> It is not just and reasonable to impose on North Dakota ratepayers costs incurred, not for the use and benefit of North Dakota customers, but at the behest of

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<sup>112</sup> Ex. 23, p. 9, ll. 5-6.

<sup>113</sup> Ex. 23 p. 8, ll. 3-4.

<sup>114</sup> N.D.C.C. § 49-02-23(2); Tr. 666, ll. 4-15, 20-24; Tr. 667, ll. 5-6.

<sup>115</sup> NSP asserts that, if you take "everything into account, the MERP plan was the least-cost project that was available to us." Tr. 57, ll. 2-4. But advocacy staff does not assert the MERP projects were imprudent when you take everything into account, including Minnesota's MERP legislation. Advocacy staff argues Minnesota ratepayers, not North Dakota ratepayers, should pay the costs of Minnesota policy. Tr. 639, ll. 15-25; Tr. 640, ll. 1-5.

Minnesota.<sup>116</sup> This does not mean that NSP should not be able to recover those costs; because those costs were incurred based on Minnesota policy and for Minnesota's benefit, NSP should collect those costs from Minnesota, not North Dakota.<sup>117</sup> For NSP to do so would be just and reasonable. It is unjust and unreasonable, however, to require North Dakota ratepayers to pay for costs not incurred for their benefit.<sup>118</sup>

**IV. It is unjust and unreasonable to require North Dakota ratepayers pay costs incurred due to Minnesota Renewable Energy Standards.**

A. Costs incurred due to the Minnesota Renewable Development Fund were not incurred for the use of the North Dakota public.

Incredulously, NSP included in this rate case payments under the Minnesota Renewable Development Fund (RDF). Those payments are not used and useful for the service and convenience of the North Dakota public, and they should be deducted from NSP's revenue requirement.

In 1999, the Minnesota legislature established the RDF.<sup>119</sup> Initially, the statute required NSP to contribute \$500,000 to the fund for each dry cask storage container remaining at the Prairie Island nuclear plant.<sup>120</sup> In 2003 the statute was amended to require a contribution of \$16 million annually to the fund with \$10.9 million of that amount to be spent on renewable small wind and on-farm biogas energy production incentives.<sup>121</sup> The North Dakota revenue requirement in this case includes \$170,461 in RDF costs.<sup>122</sup>

NSP's RDF costs are not recoverable in this rate case. They are not used and useful for the service and convenience of the North Dakota public. Rather, they are

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<sup>116</sup> NSP incurred these costs at the behest of the State of Minnesota with no input, let alone approval, from the North Dakota legislature or this Commission. Ex. 23, p. 9, ll. 11-13. In fact, NSP could have sought an advanced determination of prudence from the Commission, see N.D.C.C. § 49-05-16, but it did not.

<sup>117</sup> Tr. 625, ll. 1-9; Ex. 23, p.9, ll. 8-15

<sup>118</sup> Tr. 625, ll. 13-21.

<sup>119</sup> Ex. 23, p. 10, ll. 15-16.

<sup>120</sup> Ex. 23, p. 5, ll. 9-12; Ex. 23, p. 10, ll. 16-21.

<sup>121</sup> Minn. Stat. § 116C.779(1); Ex. 23, p. 5, ll. 12-13; Ex. 23, p. 10, ll. 18-21.

<sup>122</sup> Ex. 23, p. 5, ll. 13-14.

environmental costs added by and for the benefit of Minnesota.<sup>123</sup> North Dakota policy establishes that these types of costs may not be considered in setting the rate for providing electric service.<sup>124</sup> Accordingly, NSP's RDF costs should be deducted from NSP's revenue requirement.

B. Costs incurred due to Minnesota's renewable mandates were not incurred for the use of the North Dakota public.

Minnesota requires NSP to serve 30 percent of its Minnesota total retail electric sales through renewable energy sources by 2020, with at least 25 percent of that generation from wind energy and the remaining five percent from other eligible energy technologies.<sup>125</sup> There are interim milestones of 15 percent by 2010, 18 percent by 2012, and 25 percent by 2016.<sup>126</sup> North Dakota only requires 10% of electricity sold at retail be obtained from renewable and recycled energy sources by 2015.<sup>127</sup>

Prior to Minn. Stat. § 216B.1691, Minnesota required NSP's resource mix to include up to 825 MW of nameplate wind generation and 110 MW of biomass generation, and all of it had to be derived from Minnesota facilities.<sup>128</sup> To meet that requirement, NSP spent \$300 million to construct a transmission line to Buffalo Ridge in the far southwest corner of the state, the only place in Minnesota where good wind conditions exist.<sup>129</sup> It was after NSP constructed a transmission line to Buffalo Ridge that the Minnesota legislature imposed the current, much higher wind energy requirements. Although the current legislation has no requirement that the wind energy be in Minnesota, the only place where adequate transmission facilities were in place was Buffalo Ridge in Minnesota.<sup>130</sup> As a result, all subsequent additions of wind energy

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<sup>123</sup> Tr. 521, ll. 21-23.

<sup>124</sup> See N.D.C.C. §§ 49-02-23; 49-06-24.

<sup>125</sup> Minn. Stat. § 216B.1691; Ex. 23, 9:18-22; Ex. 23, p. 10, ll. 1-8. NSP plans to have 4,000 megawatts of wind in line by 2020. Tr. 53, ll. 3-7; Tr. 207, ll. 13-22.

<sup>126</sup> Minn. Stat. § 216B.1691; Ex. 23, p. 10, ll. -10.

<sup>127</sup> N.D.C.C. § 49-02-28; Ex. 23, p. 11, ll. 6-10.

<sup>128</sup> Ex. 23, p. 10, ll. 11-14; Tr. 233, ll. 15-22; Tr. 234, ll. 1-4; Tr. 614, ll. 22-24.

<sup>129</sup> Tr. 614, l. 25; Tr. 615, ll. 1-7.

<sup>130</sup> Tr. 615, ll. 8-19.

have been in Minnesota.<sup>131</sup> Yet North Dakota has significantly better wind resources than Minnesota.<sup>132</sup>

NSP justified not using North Dakota's better wind resources by stating there is inadequate transmission from North Dakota. But the alleged inadequacy of North Dakota transmission is the direct result of NSP's construction of the transmission line to Buffalo Ridge, which was in response to Minnesota legislation mandating that the wind generation be located in Minnesota. Thus, the Minnesota legislature precluded NSP from building the most cost efficient wind generating facilities.<sup>133</sup>

Minnesota forced NSP into accepting what may well be a suboptimal situation. Due to Minnesota laws, NSP did not have the opportunity to model whether a North Dakota wind farm would have been cheaper than wind farms in North Dakota.<sup>134</sup> Had NSP tested for the best location and chosen North Dakota, the subsequent advantages that accrued to the Minnesota operation (i.e., connection to the Midwest Independent Transmission System Operator, federal tax benefits) would have accrued as well to the North Dakota operation.<sup>135</sup>

NSP failed to meet its burden to prove that Minnesota wind resources are the lowest cost alternative to meeting North Dakota's limited wind resource requirements.<sup>136</sup> Since there is no evidence comparing North Dakota and Minnesota wind resources, 25% of the Grand Meadows wind farm and 25% of the cost for the transmission facilities to Buffalo Ridge should be disallowed to reflect the lower capacity factors and higher costs per kWh that result from confining all of the major contracts to Minnesota

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<sup>131</sup> Tr. 71, ll. 10-22; Tr. 72, ll. 3-7; Tr. 101, ll. 1-19; Tr. 128, ll. 5-11; Tr. 615, ll. 16-21.

<sup>132</sup> Tr. 616, ll. 2-3; Tr. 659, ll. 19-23; Tr. 660, ll. 13-21; Ex. 23, pp. 12, ll. 20-21; 13, ll. 1-8; Ex. 23 (CWK – 6); see also Tr. 216, ll. 2-3.

<sup>133</sup> Tr. 615, ll. 22-25; Tr. 616, ll. 1-6; see also Tr. 327, ll. 7-19.

<sup>134</sup> Tr. 659, ll. 8-23; Tr. 660, ll. 4-9; Tr. 663, ll. 4-11; Tr. 722, ll. 6-25; Tr. 723, ll. 15-24.

<sup>135</sup> Tr. 663, ll. 12-25; Tr. 664, ll. 1-4.

<sup>136</sup> Tr. 662, ll. 2-8; Tr. 663, ll. 23-25; Tr. 664, ll. 9-21.

locations.<sup>137</sup> The costs were not incurred for the use and convenience of the North Dakota public, but to meet Minnesota's self-serving, protectionist legislative policies.

C. Costs must be prudent and just and reasonable.

NSP asserts the costs resulting from MERP and other Minnesota legislation were incurred for the benefit of North Dakota ratepayers because NSP must comply with the law of the jurisdictions where it operates. Advocacy staff does not argue NSP should operate in violation of Minnesota law. Advocacy staff also does not argue NSP's decisions to incur certain costs were not reasonable in light of the restrictions placed on NSP by Minnesota laws. Advocacy staff's position is simple – it is just and reasonable to require Minnesota ratepayers to pay costs imposed due to Minnesota's self-serving, protectionist legislative policies. On the other hand, it is unjust and unreasonable to require North Dakota ratepayers to pay costs imposed at the behest of and solely for the benefit of Minnesota ratepayers.

Although North Dakota ratepayers admittedly get the benefit of the continued operation of the Prairie Island nuclear plant, they do not necessarily get the benefit of the \$16 million in annual payments to the Minnesota's Renewable Development Fund. The Minnesota legislature decided to extort that money from NSP to keep the Prairie Island plant open, so Minnesota ratepayers, who use and get the benefit of the annual \$16 million RDF payment, should pay for the payment.

Similarly, although North Dakota ratepayers arguably get the benefit of electricity produced at the Grand Meadow wind farm, they do not get a benefit from NSP being forced by Minnesota to build wind generating plants in a suboptimal situation. Because the Minnesota legislature passed protectionist legislation that prevented NSP from generating the electricity at the lowest cost alternative, Minnesota ratepayers should pay the increased costs for the electric generation. Principles of fundamental fairness dictate that North Dakota ratepayers should not be forced to pay costs incurred due to

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<sup>137</sup> Ex. 23, pp. 3, ll. 9-14; p. 13, ll. 8-12; Tr. 616, ll. 7-11.

this legislation -- legislation not only designed to serve Minnesota's interests, but that was directly contrary to the interests of North Dakota and its ratepayers.

It is not just or reasonable to require North Dakota ratepayers pay costs incurred due to MERP and other self-serving Minnesota legislation.

## **REVENUE REQUIREMENT ADJUSTMENTS**

Advocacy staff propose, and the Commission should adopt, the following revenue adjustment requirements. Calculations of the requested adjustments are at Exhibit 21A (corrected Schedule 8 to Exhibit 21).

### **I. Operating Income adjustments.**

#### A. Rate of return.

NSP and advocacy staff entered a Partial Stipulation agreeing that an 8.8 percent overall rate of return is appropriate for determining revenue requirements in the proceeding. OI Adjustment No. 1 implements the 8.8 percent rate of return.

#### B. Depreciation rates.

The reasons to reject depreciation rates were discussed in Section II. OI Adjustment No. 13 implements Mr. King's recommended depreciation rates.

#### C. Cost of removal regulatory liability.

The reasons to adopt a 10 year amortization of NSP's North Dakota cost of removal regulatory liability were discussed in Section II(B). OI Adjustment No. 14 makes that adjustment.

#### D. RDF amortization.

The reasons to reverse NSP's Renewable Development Fund ("RDF") amortization adjustment were discussed in Section IV(A). OI Adjustment No. 8 reverses NSP's RDF amortization adjustment.

E. Pole and cable replacement programs.

The reasons to charge NSP's pole and cable replacement programs to NSP's cost of removal reserve was discussed in Section II(B). OI Adjustment No. 11 reverses the expenses relating to NSP's pole and cable replacement programs.

F. MISO Schedule 16 and 17 costs.

"[T]he Commission has approved, on an interim basis, the recovery of Midwest Independent Transmission System Operator ("MISO") Schedule 16 and 17 costs through the existing FCA."<sup>138</sup> In its filing, however, NSP included these types of costs in base rates.<sup>139</sup> NSP's policy change "will cost ratepayers \$532 thousand per year in base rate charges."<sup>140</sup> NSP's proposed policy change "merely serves to increase revenue requirements in this case and is not necessary."<sup>141</sup> OI Adjustment No. 6 reverses NSP's proposed policy change relating to MISO Schedules 16 and 17.

G. Charitable income.

"Charitable contributions have not previously been included in the development of electric base rates in North Dakota."<sup>142</sup> NSP, however, "included fifty percent of charitable contributions attributable to the State of North Dakota in the test year."<sup>143</sup> NSP justifies this change of policy because the Commission allowed recovery of similar costs in two gas cases.<sup>144</sup> The fact these types of costs slipped through in two previous gas cases does not justify NSP's proposed policy change.<sup>145</sup> OI Adjustment No. 7 reverses NSP's charitable income adjustment.

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<sup>138</sup> Ex. 24, p. 5, ll. 4-6.

<sup>139</sup> Ex. 24, p. 5, ll. 8-9.

<sup>140</sup> Ex. 24, p. 5, ll. 9-10; see also Tr. 486, ll. 13-21.

<sup>141</sup> Ex. 24, p. 22, ll. 18-19.

<sup>142</sup> Ex. 20, p. 47, ll. 19-20.

<sup>143</sup> Ex. 20, p. 47, ll. 11-12; see also Tr. 99, ll. 6-10; Tr. 488, ll. 1-8.

<sup>144</sup> Ex. 20, p. 47, ll. 21-23.

<sup>145</sup> Ex. 24, p. 23, ll. 1-2.

H. Nuclear fueling outage expenses.

The Commission “approved NSP’s plan for amortizing nuclear fuel outage costs and the actual 2008 costs are \$811,935.”<sup>146</sup> NSP picked the test year, and reality is some future costs may be more or less than the test year.<sup>147</sup> Despite NSP picking the test year and the actual 2008 costs only being \$811,935, NSP “included \$2,492,000 in refueling outage expenses for the 2008 test year.”<sup>148</sup> OI Adjustment No. 10 reduces NSP’s nuclear fueling outage expenses to actual 2008 levels.

I. PFS amortization.

NSP’s private fuel storage (“PFS”) project “relates to money spent in an attempt to store spent nuclear fuel within the Goshute Indian tribal land in Utah.”<sup>149</sup> The project is stalled and the North Dakota Public Service Commission has not approved the project.<sup>150</sup> OI Adjustment No. 9 deducts NSP’s PFS costs from NSP’s revenue requirement.

J. Incentive compensation. OI Adjustment No. 12 reduces NSP’s incentive compensation adjustment to reflect a 15 percent of base pay limit instead of a 25 percent of base pay limit.<sup>151</sup>

K. Wholesale margin sharing.

“Instead of including wholesale margins as an offset to base rates, [NSP] proposes to keep 15 percent and flow the remaining 85 percent through its proposed fuel cost rider.”<sup>152</sup> Although other companies also do non-asset based sales, they do not break it down between asset-based and non-asset based sales like NSP does.<sup>153</sup>

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<sup>146</sup> Ex. 24, p. 23, ll. 12-13.

<sup>147</sup> Tr. 31, ll. 2-5; Tr. 559, ll. 6-7; 578, ll. 22-25; 579, ll. 1-7, 21-23; Tr. 591, ll. 10-25; Tr. 592, ll. 1-10.

<sup>148</sup> Ex. 24, p. 23, l. 14.

<sup>149</sup> Ex. 24, p. 23, ll. 7-8.

<sup>150</sup> Ex. 24, p. 23, ll. 8-10; Tr. 521, l. 25; Tr. 522, ll. 1-3; Tr. 578, ll. 6-9.

<sup>151</sup> Ex. 24, p. 24, ll. 3-4; Tr. 522, ll. 13-19.

<sup>152</sup> Ex. 24, p. 4, ll. 16-18.

<sup>153</sup> Tr. 165, ll. 2-4.

These adjustments are not necessary. The ratepayers should get the benefit of non-asset based sales, which are made by the same employees who do the regulated activities (i.e., employees and systems paid for by the ratepayers).<sup>154</sup> Accordingly, 100 percent of wholesale margins, both asset-based and non-asset-based, should pass through the fuel adjustment clause to offset the ever-increasing cost of fuel and purchased power.<sup>155</sup> OI Adjustment Nos. 2, 3, 4, and 5 reverse NSP's policy change proposals relating to wholesale margins.<sup>156</sup>

## II. **Rate Base adjustments.**

### A. Allen S. King plant.

The reason to exclude accelerated rehabilitation costs at the Allen S. King plant was discussed in Section III(B). RB Adjustment No. 5 reflects that adjustment.

### B. High Bridge plant.

The reason to restate the High Bridge plant costs to reflect the lower cost alternative of rehabilitation as a coal plant was discussed in Section III(C). RB Adjustment No. 6 reflects that adjustment.

### C. Great Meadows wind farm.

The reason to eliminate the Great Meadows wind farm was discussed in Section IV(B). RB Adjustment No. 7 reflects that adjustment.

### D. Pole and cable replacement programs.

The reasons to reverse NSP's pole and cable replacement programs additions was discussed in Section II(B). RB Adjustment Nos. 1, 2 and 3 reverse NSP's Pole and Cable Replacement Program Plant additions, including the related depreciation

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<sup>154</sup> Tr. 159, I. 25; Tr. 160, II. 1-7.

<sup>155</sup> Ex. 24, p. 22, II. 14-15; Tr. 521, II. 4-6; Tr. 548, II. 17-23; 575, II. 19-25; Tr. 526, II. 1-

6.  
<sup>156</sup> NSP points out that it assumes the risk of a loss. Tr. 163, II. 13-15. It admits, however, that the risk of loss is fairly small. Tr. 163, II. 4-13.

expense, and then charges the additions to accumulated depreciation as described in OI Adjustment No. 12.

E. Cash working capital.

RB Adjustment No. 4 adjusts cash working capital to reflect the operating income adjustment.

**III. Requirement Adjustments.**

A. Mercury control program.

The reasons to eliminate NSP's expenditures for the mercury control program are discussed in Section III(D). RR Adjustment No. 1 reflects this adjustment.

B. Wind power transmission facilities.

The reasons to reduce by 25 percent the costs of transmission facilities that connect Minnesota wind power generators to the network were discussed in Section IV(B). RR Adjustment No. 2 reflects this adjustment.

**RECOMMENDED POLICY CHANGES**

**I. North Dakota specific depreciation study.**

If the Commission does not dismiss the case with instructions that NSP develop a North Dakota specific depreciation study and file a new application for authority to increase its rates, the Commission should order that a North Dakota specific depreciation study be done in all future cases

**II. Integrated Resource Plan.**

NSP prepares one IRP for the NSP system and files that same plan with Minnesota, North Dakota, and the other three jurisdictions.<sup>157</sup> Mr. King recommended that NSP be required to submit an Integrated Resource Plan that is specific to North Dakota. It should contain only those resources that are required to meet system load and North Dakota's – not Minnesota's – environmental and renewable mandates.

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<sup>157</sup> Tr. 55, ll. 21-25; Tr. 56, ll. 1-18.

NSP misrepresented Mr. King's recommendation. NSP argued that King was proposing a stand-alone North Dakota resource plan, one that would ignore the benefits of a larger, integrated system. Mr. King made it clear he was not proposing a stand-alone North Dakota system.<sup>158</sup> Rather, he recommended an Integrated Resource Plan that reflected only North Dakota mandates.<sup>159</sup>

The Commission should order NSP submit an Integrated Resource Plan that is specific to North Dakota.

### **III. Consolidated Taxes.**

"NSP is a member of a group of companies that file a consolidated tax return in order to reduce the effective tax rate of the group."<sup>160</sup> "The result is NSP charges more to its ratepayers for income taxes than it actually pays to the government in income taxes."<sup>161</sup> The result is NSP "collects money from ratepayers and transfers that money through the parent to loss entities."<sup>162</sup> Thus, ratepayers end up subsidizing losses of unregulated affiliates.<sup>163</sup>

Advocacy staff attempted to examine this concern through data requests, but NSP refused to respond.<sup>164</sup> Advocacy staff recommends the Commission no longer use the stand-alone approach but, instead, in the future look at consolidated taxes.<sup>165</sup> This will require entities demonstrate they actually pay the taxes incorporated into their revenue requirement, thereby preventing ratepayers from subsidizing loss affiliates.<sup>166</sup>

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<sup>158</sup> Tr. 619, ll. 17-18.

<sup>159</sup> Tr. 619, ll. 19-25; Tr. 620, ll. 1-9.

<sup>160</sup> Tr. 519, ll. 10-12.

<sup>161</sup> Tr. 519, ll. 13-15.

<sup>162</sup> Tr. 519, ll. 16-17.

<sup>163</sup> Ex. 24, p. 7, ll. 14-16.

<sup>164</sup> Ex. 24, p. 7, ll. 21-22.

<sup>165</sup> Ex. 24, p. 8, ll. 21-27; Tr. 519, ll. 20-22; 525, ll. 4-8.

<sup>166</sup> Tr. 525, ll. 6-8.

## CONCLUSION

For the reasons outlined in this brief, the Commission should dismiss the case with instructions that NSP develop a North Dakota specific depreciation study and file a new application for authority to increase its rates. In the alternative, the Commission should adopt the adjustments proposed by Advocacy Staff.

Dated this 22<sup>nd</sup> day of August, 2008.

State of North Dakota  
Wayne Stenehjem  
Attorney General

By:



Douglas A. Bahr  
Solicitor General  
State Bar ID No. 04940  
Office of Attorney General  
500 North 9<sup>th</sup> Street  
Bismarck, ND 58501-4509  
Telephone (701) 328-3640  
Facsimile (701) 328-4300

Attorneys for Advocacy Staff.

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Northern States Power Company  
Electric Rate Increase  
Application,

)  
) **AFFIDAVIT OF SERVICE BY MAIL**  
)  
) **Case No. PU-07-776**  
)

STATE OF NORTH DAKOTA )  
COUNTY OF BURLEIGH ) ss.  
)

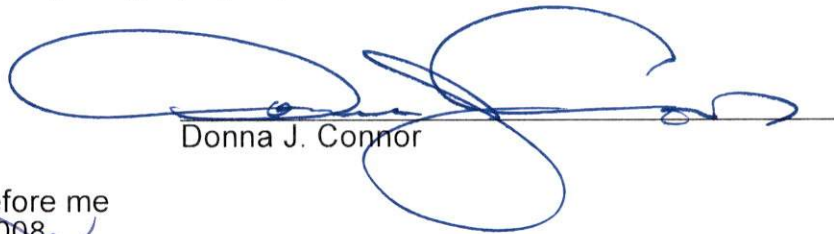
Donna J. Connor states under oath as follows:

1. I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct.

2. I am of legal age and on the 22<sup>nd</sup> day of August, 2008, I served the following, **ADVOCACY STAFF POST-HEARING BRIEF**, upon Megan Hertzler, by placing true and correct copies thereof in envelopes addressed as follows:

Megan Hertzler  
Xcel Energy Inc  
414 Nicollet Mall, 5<sup>th</sup> Floor  
Minneapolis, MN 55401

and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota.



Donna J. Connor

Subscribed and sworn to before me  
this 20<sup>th</sup> day of August, 2008.

  
Notary Public

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