



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

October 30, 2008

**HAND DELIVERY**

Darrell Nitschke  
Executive Secretary  
Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480

RECEIVED

OCT 30 2008

PUBLIC SERVICE COMMISSION

Re: Northern States Power Company Electric Rate Increase Application;  
Case No. PU-07-776

Dear Mr. Nitschke:

As requested by the Commission, Advocacy Staff are filing proposed findings. Enclosed for the Commission's consideration are the original and ten copies of two separate proposed findings, one that dismisses NSP's electric rate increase application, and another that adopts Advocacy Staff's recommended adjustments. Also enclosed is an Affidavit of Service by Mail.

Thank you.

Sincerely,

Douglas A. Bahr  
Solicitor General

jjt

cc: Megan Hertzler (w/encs.)

e:\dixie\cl\bahr\admin cases\insp\brief\cover letter.doc

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Northern States Power Company  
Electric Rate Increase  
Application**

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

**ADVOCACY STAFF'S PROPOSED  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
DISMISSING APPLICATION**

**Appearances**

Commissioners Susan E. Wefald, Kevin Cramer, and Tony Clark.

Megan J. Hertzler, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall, Fifth Floor, Minneapolis, Minnesota 55402, and Michael J. Bradley, Attorney at Law, Moss & Barnett, 4800 Wells Fargo Center, 90 South Seventh Street, Minneapolis, Minnesota 55402, for Xcel Energy.

Douglas A. Bahr, Solicitor General, Office of the Attorney General, 500 North Ninth Street, Bismarck, North Dakota 58501, for the Advocacy Staff.

Al Wahl, Administrative Law Judge, Office of Administrative Hearings, 1701 North Ninth Street, Bismarck, North Dakota 58501-1882.

**PRELIMINARY STATEMENT**

On December 7, 2007, Northern States Power Company (NSP) filed its application and Direct Testimony seeking a general revenue increase of \$17,950,000 or 12.15 percent of total revenues (Application) with the North Dakota Public Service Commission (Commission).

On December 21, 2007, the Commission suspended NSP's general rate increase application.

On January 16, 2008, the Commission issued a Notice of Public Input Session and Intervention Deadline.

On January 30, 2008, the Commission issued its Order on Interim Rates authorizing the Company to collect interim rates.

On March 23, 2008, the Commission issued its Notice of Hearing setting the dates for hearing and outlining the issues to be considered, including:

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 public 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.

The Notice of Public Input Session and Intervention Deadline provided that any person wishing to intervene as a party in this proceeding must file a petition for intervention by March 28, 2008. No one petitioned to intervene as a party in the proceeding.

On May 14, 2008, a public input session was held via interactive television to locations in Fargo, Grand Forks, Minot, and Bismarck, North Dakota.

On May 21, 2008, the Commission Advocacy Staff (Staff) witnesses filed Direct Testimony.

On June 13, 2008, NSP Filed Rebuttal Testimony.

On June 23 through June 25, 2008, the hearing was held in the Commission Hearing Room at the State Capitol in Bismarck, North Dakota.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following:

## FINDINGS OF FACT

1. NSP is a Minnesota corporation authorized to do business in North Dakota as a foreign corporation. NSP is doing business in North Dakota as a public utility company.

2. NSP provides electric retail service in North Dakota and Minnesota. Only approximately six percent of NSP's electric retail service is in North Dakota. NSP serves approximately 86,000 customers in 27 communities and townships located in and near the cities of Fargo, Grand Forks, and Minot. Eighty-six percent of its customers are residential and fourteen percent are commercial and industrial. Thirty-six percent of NSP's retail sales are to residential customers and sixty-four percent of its retail sales are to commercial and industrial customers.

3. NSP did not meet its burden to establish that a rate increase is just and reasonable.

4. NSP did not answer the first question included in the Commission's Notice of Hearing: "What is the value of NSP's property, used and useful, for the service and convenience of the public in North Dakota?"

5. Without credible evidence supporting the cost and value of property used to provide service to North Dakota, it is impossible to determine the sufficiency or deficiency in current rates.

6. NSP's rate increase application did not exclude Minnesota costs from its allocation of costs to North Dakota for differences in environmental requirements between the two states. NSP's rate increase application also did not exclude the costs of its Minnesota metro emissions reduction projects that were not used and useful for the service and convenience of the North Dakota public. Finally, NSP did not do a North Dakota specific depreciation study. Accordingly, North Dakota's share of NSP's total rate base is distorted and not useful.

7. There are significant differences between the environmental goals, desires, and mandates of Minnesota and North Dakota. Accordingly, the additional costs associated with Minnesota's mandates should not be passed on to North Dakota customers. Rather than segregate the state specific costs, NSP simply allocates a share of the total cost to North Dakota.

8. NSP attempts to justify its rate increase based on an allocation of total costs, rather than by showing that expenditures result in a tangible and quantifiable benefit to North Dakota ratepayers.

*Minnesota's renewable mandates*

9. 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. North Dakota has a renewable and recyclable energy objective that 10% of electricity sold at retail be obtained from renewable and recycled energy sources by 2015.

10. Minnesota law required NSP's resource mix include up to 825 MW of nameplate wind generation and 110 MW of biomass generation, and that all of it had to be derived from Minnesota facilities. This law prohibited NSP from (1) considering the lowest cost energy source and (2) considering potentially lower-cost North Dakota projects to provide the Minnesota mandated renewable energy.

11. To comply with Minnesota law, NSP spent \$300 million to construct a transmission line to Buffalo Ridge in the far southwest corner of Minnesota, the only place in Minnesota where good wind conditions exist.

12. After NSP constructed a transmission line to Buffalo Ridge, 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. As a result, all subsequent additions of wind energy have been in Minnesota.

13. Because Minnesota initially required wind generation be in Minnesota, there was inadequate transmission for NSP to later consider a possibly more cost-efficient North Dakota wind generation project.

14. Wind resources in Minnesota as a whole are inferior to wind resources in North Dakota.

15. Due to Minnesota law, NSP did not model whether a North Dakota wind farm would have been cheaper than wind farms in Minnesota. 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.

16. NSP justified not using North Dakota's better wind resources by stating there is inadequate transmission from North Dakota. That is only true, however, because of the \$300 million transmission line built to Minnesota's Buffalo Ridge facility in response to Minnesota's mandate that wind generation be located in Minnesota.

17. To date, NSP does not own any wind resources in the state of North Dakota.

18. The Commission has regulatory authority over the siting of energy conversion facilities. The Commission takes judicial notice of the explosive expansion of wind projects in the state of North Dakota.

19. It is not just and reasonable to require North Dakota ratepayers to pay the direct and subsequent costs incurred due to Minnesota legislation mandating wind farms be located in Minnesota.

20. In its application NSP made no attempt to remove the costs of complying with Minnesota's renewable mandates or to directly assign them to Minnesota. Instead, North Dakota is assigned a portion of the costs because NSP operates an integrated regional system.

21. Staff supported excluding the cost of 25% of the transmission line and the Minnesota Grand Meadows wind farm to reflect lower capacity factors and higher costs per kWh that result from confining the contracts to the state of Minnesota. The ad hoc adjustments were an attempt to lessen the economic losses to North Dakota. But the fact of the matter is that the Commission has no way of accurately determining the value of property used and useful for serving North Dakota customers based on the evidence produced in the rate proceeding.

22. The state of Minnesota forced NSP into accepting what may well be a suboptimal situation and NSP in return expects its North Dakota ratepayers to accept and pay for those costs in its rate application.

23. NSP failed to meet its burden to prove that Minnesota wind resources are the lowest cost alternative.

#### *The Minnesota Renewable Development Fund*

24. In 1999, the Minnesota legislature established the Minnesota Renewable Development Fund (RDF). 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. 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.

25. NSP included a portion of the payments to the RDF in this rate case.

26. The North Dakota revenue requirement in this case includes \$170,461 in RDF costs.

27. NSP's RDF costs are not used and useful for the service and convenience of the North Dakota public. They are extraordinary environmental costs added by the Minnesota legislature primarily for the benefit of its Minnesota constituents.

#### *MERP Costs*

28. NSP's proposed rate is not just and reasonable because it includes costs imposed by the Minnesota Metropolitan Emissions Reduction Program (MERP) for plant refurbishments, converting coal plants to natural gas plants and adding environmental refinements to its Minneapolis/St. Paul metro area coal plants.

29. The rehabilitation of the Allen S. King plant and the conversion of the High Bridge plant are the two largest components of this rate case.

30. The MERP projects were undertaken, not because they were useful for the service and convenience of the North Dakota public, but because of Minnesota policy decisions.

31. NSP documents, including NSP's Integrated Resource Plan (IRP), demonstrate the King plant rehabilitation was accelerated in response to MERP, not because the plant was obsolete or rehabilitation was required by federal standards.

32. The 2000 IRP does not mention the King plant, indicating rehabilitation of the King plant was not even being considered prior to MERP.

33. Because the 2000 IRP takes into account NSP's capacity needs, the fact the 2000 IRP did not include rehabilitating the King plant for additional capacity demonstrates that additional capacity was not the motivating factor for the rehabilitation.

34. The King plant did not need to be rehabilitated to meet federal standards because it was "grandfathered" in and did not require a "new source review."

35. The 2003 plan submitted to the Minnesota Pollution Control Agency (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. The rehabilitation alternative was about half the cost. The less expensive plan would have met the EPA and Minnesota air quality standards.

36. The High Bridge plant was totally dismantled and a new combined cycle combustion turbine was installed in its place.

37. NSP did not demonstrate that demolition of and the replacement of the High Bridge plant with a combined cycle gas plant was needed in 2008 to meet NSP's capacity requirements.

38. NSP's cost allocation methodology did not demonstrate a North Dakota state-specific benefit for these particular resources.

#### *Depreciation Study*

39. NSP did not do a North Dakota specific depreciation study. Rather, it relies on depreciation reports provided to and approved by the Minnesota Public Utilities Commission (MPUC).

40. Staff secured, through Document Requests, the depreciation reports provided to MPUC that underlie the current depreciation rates.

41. NSP would not provide Staff the data and analyses underlying the depreciation reports provided to MPUC.

42. Because NSP refused to provide Staff the data and analyses underlying the depreciation reports provided to MPUC, both Staff and the Commission are unable to perform any independent verification of the parameters that underlie NSP's depreciation rates.

43. NSP did not meet its burden of demonstrating its depreciation rates are fair and reasonable because it did not provide the necessary data and analyses for the Commission to determine the appropriateness of the depreciation rates.

From the foregoing Findings of Fact, the Commission makes the following:

#### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this proceeding.
2. NSP has the burden to establish that an increased rate or proposed change of rate is just and reasonable and not in violation of any of the provisions of N.D.C.C. title 49.
3. To establish the just and reasonable rates 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 North Dakota public.
4. "Used and useful" requires North Dakota ratepayers receive a tangible and quantifiable benefit.
5. The cost allocation methodology used for an integrated system must demonstrate a state-specific benefit for particular resources before the costs of the resources can be recovered in a particular state's rates.

6. The Commission cannot delegate its statutory responsibilities for determining a fair and reasonable rate, and protecting the interests of North Dakota ratepayers, to another state or to a cost allocation formula that does not comport with the requirements of its governing statutes.

7. An administrative agency may announce new principles through adjudicative proceedings.

8. It is just and reasonable to require Minnesota ratepayers to pay costs imposed due to Minnesota policy when those costs do not provide a quantifiable benefit to North Dakota ratepayers.

9. It is unjust and unreasonable to require North Dakota ratepayers to pay for costs not incurred for their benefit.

From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

### ORDER

The Commission orders:

1. That NSP's electric rate increase application is dismissed.
2. That Interim rate increase revenues be returned to ratepayers.

### PUBLIC SERVICE COMMISSION

---

**Tony Clark**  
Commissioner

---

**Susan E. Wefald**  
President

---

**Kevin Cramer**  
Commissioner