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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.)

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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

RECEIVED

Northern States Power Company
Electric Rate Increase
Application

Case No. PU-07-776

OCT 30 2008

PUBLIC SERVICE COMMISSION

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

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 hearings were 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. Northern States Power Company 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. 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 14 percent are commercial and industrial. Thirty-six percent of the NSP's retail sales are to residential customers and 64 percent of its retail sales are to commercial and industrial customers.

3. The parties do not dispute the following issues:

- The cost of capital, including ROE;
- The test year sales forecast;
- Recovery of MISO charges;
- The Company's proposed rate design; and
- The Company's proposed miscellaneous tariff changes.

4. The parties dispute the following issues:

- Whether NSP demonstrated its depreciation rates are fair and reasonable;
- Whether investments made by NSP to rehabilitate the Allen S. King plant and to reconfigure the High Bridge plant were used and useful for the service and convenience of the public in North Dakota;
- Whether expenditures made for environmental controls, particularly mercury emission control, were used and useful for the service and convenience of the public in North Dakota;
- Whether costs incurred due to Minnesota's renewable mandates were used and useful for the service and convenience of the public in North Dakota;
- Whether NSP's payments to the Minnesota Renewable Development Fund were used and useful for the service and convenience of the public in North Dakota;
- Whether the results of the Minnesota Integrated Resource Plan process is relevant and useful for developing rates in North Dakota;
- Whether MISO Schedule 16 and 17 costs should be recovered through the existing Fuel Clause Adjustment; and
- Whether other costs, including charitable contributions, private nuclear fuel storage, nuclear refueling and incentive compensation, were used

and useful for the service and convenience of the public in North Dakota.

- Whether NSP should be allowed to keep part of its wholesale margins.

Depreciation Rates

Depreciation Study

5. 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).

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

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

8. 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.

9. 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.

Removal Costs

10. In NSP's Minnesota depreciation filing, NSP uses whole-life depreciation for mass property accounts.

11. The whole-life depreciation approach is an accepted procedure provided there is an alternative calculation which amortizes any disparities or imbalances in the depreciation reserves. The whole-life approach is inappropriate absent some mechanism to adjust for reserve imbalances.

12. The whole-life depreciation approach used by NSP does not adjust for reserve imbalances.

13. Under NSP's whole-life depreciation approach, the net salvage costs recovered in the mass property transmission and distribution rates are expressed in dollars of future years, not in dollars of the current year.

14. NSP's whole-life depreciation approach frontloads future inflation into current depreciation rates by charging present ratepayers with all inflation that will occur between now and when the assets are retired, resulting in a significant overstatement of depreciation rates.

15. NSP's whole-life depreciation approach results in intergenerational inequity because it overcharges current ratepayers and undercharges future ratepayers.

16. The present-value approach proposed by Staff is the most fair to ratepayers because it charges the cost of each year's inflation to the ratepayers in that year.

17. The present-value approach provides intergenerational equity among current and future ratepayers.

18. The present-value approach achieves the proper "matching" of costs as contemplated in both regulatory and generally accepted accounting principles.

19. The present-value approach is prescribed for legally required removal costs in SFAS 143.

20. The present-value approach does not deny NSP any future costs of removal.

21. NSP's past practice of ignoring the present-value of funds projected to be spent sometime in the future has resulted in an excessive removal cost reserve of \$342 million. Because NSP uses whole life depreciation for mass property accounts, this over-collection will never be returned to the ratepayers absent some explicit mechanism for doing so.

22. The North Dakota portion of the excess removal cost reserve shall be amortized through a reduction in depreciation expense over a ten-year period.

23. The Securities and Exchange Commission (SEC) and the accounting profession recognize non-legal asset retirement obligations as a regulatory liability (future expected asset retirement costs that have already been recovered from ratepayers).

24. Recognizing NSP's non-legal asset retirement obligations as a regulatory liability will protect ratepayers from the risk of losing the amounts they have already paid towards removal costs. Recognizing the non-legal asset retirement obligations as a regulatory liability would not deny NSP any future removal costs.

25. NSP shall recognize the non-legal asset retirement funds as a regulatory liability to ensure ratepayers are the beneficiaries of such funds in the future.

26. NSP charges the cost of its pole and cable replacement programs to expense. The cost of NSP's pole and cable replacement programs should be charged to NSP's cost of removal reserve since the reserve is exorbitant.

27. Paying for the replacements out of the reserve instead of expensing them will lower current expense and help correct the excessive reserve imbalance over time.

28. NSP shall pay for the cost of its pole and cable replacement programs from its cost of removal reserve.

Service Lives: Generation Facilities

29. A basic and significant parameter in determining depreciation rates is the service life of the plant. By understating service life, a public utility can over-accrue depreciation.

30. NSP initially assumed service lives of only 44 and 45 years for the Sherco units. 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.

31. The average service life of all steam plants since about 1900 is 59 years.

32. NSP did not demonstrate that the Sherco units would have a shorter than average service life.

33. Absent appropriate evidence from NSP demonstrating the service life of the Sherco units, the average service life of all steam plants is the best evidence of the service life of the Sherco units.

34. NSP shall use service lives of 59 years for its Sherco units..

35. By underestimating the service life of the Sherco units, NSP artificially raised the depreciation rate and over-depreciated the plant.

36. NSP's Minnesota depreciation filing understates the service lives for some of its other steam production plants.

37. NSP's identified service life of the Prairie Island nuclear plant is improper because it does not reflect the imminent relicensing of that plant.

38. NSP filed with the Nuclear Regulatory Commission for relicensing of its Prairie Island nuclear plant on April 15, 2008.

39. Relicensure of the Prairie Island nuclear plant is a virtual certainty since the Nuclear Regulatory Commission has yet to deny the relicensing of any nuclear plant.

40. NSP underestimated the service life of the Prairie Island nuclear plant, ignoring its own plans for relicensing.

41. The service life of the Prairie Island nuclear plant shall be 60 years instead of the 40 years assumed by NSP.

42. By underestimating Prairie Island's service life, NSP artificially raises the depreciation rate and over-depreciates the plant.

43. NSP forecasts service lives of Angus C. Anson, Granite City, High Bridge, Inver Hills, and Key City fossil fuel combustion turbine plants that are shorter than the experienced life spans of these plants nationally.

44. NSP did not demonstrate that the service lives of Angus C. Anson, Granite City, High Bridge, Inver Hills, and Key City would be less than the industry average.

45. Absent appropriate evidence from NSP demonstrating the service lives of the Angus C. Anson, Granite City, High Bridge, Inver Hills, and Key City plants, the average life spans of these plants nationally is the best evidence of the service lives of the plants.

46. The service lives of Angus C. Anson, Granite City, High Bridge, Inver Hills, and Key City shall be at least 45 years.

47. By underestimating the service lives of the Angus C. Anson, Granite City, High Bridge, Inver Hills, and Key City plants, NSP artificially raises the depreciation rate and over-depreciates the plants.

Service Life: Distribution Overhead Conductors and Devices

48. NSP proposes a 35 year average service life of distribution plant account 365, Distribution Overhead Conductors and Devices, with an R1 survivor curve.

49. NSP used system-wide data to develop its life and survivor curves for the distribution plant lives. NSP did not do a study or submit any analysis to determine the life and survivor curves for the North Dakota distribution plant lives.

50. NSP's proposed service life of distribution plant account 365 does not reflect North Dakota experience. NSP did not provide evidence to support its implicit assumption that Minnesota depreciation rates are appropriate for North Dakota.

51. NSP proposes a considerable increase in its tree trimming expenditures. NSP's proposed service life of distribution plant account 365 does not reflect NSP's more aggressive vegetation control program.

52. Staff requested information from NSP so Staff could study the life expectancy of North Dakota distribution plant. NSP refused to provide Staff the information necessary for it to study the life expectancy of North Dakota distribution plant.

53. Because NSP refused to provide Staff the information necessary for it to study the life expectancy of North Dakota distribution plant, both Staff and the Commission are unable to determine the life expectancy of North Dakota distribution plant.

54. NSP did not demonstrate a 35 year average service life should be used for North Dakota distribution plant.

55. Due to the lack of a North Dakota specific study and failure to consider the impact of a more aggressive vegetation control program, a modest 5-year increase in average service life is reasonable.

56. A 40 year average service life shall be used for North Dakota Distribution Overhead Conductors and Devices.

57. NSP did not meet its burden to demonstrate its depreciation rates are fair and reasonable.

MERP Costs

58. NSP's proposed rate includes costs imposed by the Minnesota Metropolitan Emissions Reduction Program (MERP) which have not been demonstrated to be used and useful for the service and convenience of the North Dakota ratepayers.

59. In 2001, the Minnesota legislature enacted Minn. Stat. § 216B.1692, entitled Emissions-Reduction Rider, that provided a mechanism for NSP to recover the costs of reducing emissions at three aging but strategic coal-fired plants located in or near the twin-cities metropolitan area.

60. 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. 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 costs can be include in the proposed recovery mechanism as well.

61. 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 with gas-fired combined cycle combustion turbine/heat recovery units.

62. NSP's MERP plan was first presented to the Minnesota Pollution Control Agency (MPCA), which is concerned with air quality, not with costs. 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.

63. The MERP projects account for \$5,574,461 in added revenue requirement from NSP's North Dakota ratepayers in this rate proceeding.

64. 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).

65. NSP has not demonstrated that all costs imposed by MERP are used and useful for the service and convenience of the North Dakota ratepayers.

66. The impetus of NSP's MERP projects was not to comply with federal requirements or to provide North Dakota ratepayers low-cost electricity, but to further Minnesota policy and benefit Minnesota.

The Allen S. King Plant

67. 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 required by federal standards.

68. Integrated Resource Plans are developed to project out future energy needs and the plans to meet those future needs with various resource options.

69. Proof that the King Plant rehabilitation was accelerated is contained in NSP's 2000 IRP. The 2000 IRP does not mention the King plant. If the King Plant rehabilitation was planned pre-MERP, then it would have been mentioned in NSP's 2000 IRP. It was not.

70. Because the 2000 IRP considers 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.

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

72. The cost of the King rehabilitation was accelerated because of MERP and therefore deducted from NSP's revenue requirement for purposes of establishing North Dakota rates.

The High Bridge Plant

73. NSP's 2003 plan submitted to the Minnesota Pollution Control Agency (MPCA) under MERP offered two alternatives for the High Bridge plant. One alternative included rehabilitating High Bridge as a coal plant. The other alternative included demolishing the coal plant and replacing it 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.

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

75. The 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 ratepayers.

76. 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.

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

78. Because the High Bridge plant is apparently needed, its costs are allowed at the level suggested in the alternative plan and for no more than the four months it was operational during the test year ended 2008.

Minnesota's Renewable Mandates

79. North Dakota has significantly better wind resources than Minnesota.

80. 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. There are interim milestones of 15 percent by 2010, 18 percent by 2012, and 25 percent by 2016.

81. 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.

82. Minnesota law initially 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.

83. To comply with Minnesota law, NSP spent \$300 million to construct a transmission line to Buffalo Ridge in the far southwest corner of Minnesota.

84. 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.

85. 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.

86. 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.

87. Through its legislation and policies, the Minnesota legislature precluded NSP from building the most cost efficient wind generating facilities.

88. NSP failed to demonstrate that Minnesota wind resources were the lowest cost alternative to meeting North Dakota's limited wind resource requirements.

89. Because of that failed showing, 25% of the Grand Meadows wind farm and 25% of the cost for the transmission facilities to Buffalo Ridge is disallowed to

reflect lower capacity factors and higher costs per kWh that result from confining all of the major contracts to Minnesota locations.

The Minnesota Renewable Development Fund

90. 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.

91. In its rate increase application, NSP includes \$170,461 for costs associated with the RDF.

92. NSP argues that it was required to incur the RDF costs to continue operating the Prairie Island nuclear facility.

93. NSP argues that the operation of both nuclear facilities would be impossible and it would lose 1,670 MW of generation capacity if it refused to provide the RDF funding.

94. NSP argues that RDF payments support research to improve the efficiency of renewables which benefits all customers and that a substantial portion of the funds have been awarded to North Dakota organizations.

95. NSP should act in accordance with the laws and rules of each state in which it conducts business.

96. It is acceptable and a matter of business practicality that North Dakota ratepayers pay for their share of Minnesota costs that are used and useful to North Dakota ratepayers.

97. It is not acceptable or reasonable for North Dakota ratepayers to help finance a Minnesota super-fund (or a similar extraordinary cost) for renewable development activities that a Minnesota board administers.

98. Extraordinary costs incurred to satisfy Minnesota environmental initiatives should be assigned to the people of Minnesota, not North Dakota ratepayers.

99. It is not fair and reasonable that North Dakota ratepayers pay a portion of the RDF costs even if in the past some of the research dollars were spent in North Dakota. We assume the RDF board determines the most economical and advantageous way to spend the funds. That some of the funds were paid to North Dakota entities does not change the fact that the costs are extraordinary costs incurred

for the environmental initiatives of the state of Minnesota, not for the use and benefit of North Dakota ratepayers.

100. NSP's RDF costs are environmental costs added by the government of Minnesota primarily for the benefit of Minnesota. We reject NSP's request for North Dakota ratepayers to pay any costs associated with RDF.

Mercury Emission's Control Plan

101. The reductions in NSP's mercury emissions control plan go beyond the mercury reduction requirements of the Federal Clean Air Mercury Rule.

102. NSP's mercury emissions control plan was not undertaken to meet federal or North Dakota requirements; the project was undertaken to comply with the Minnesota Mercury Emissions Reduction Act (MMRA) and other Minnesota mandates.

103. NSP has not demonstrated the mercury emissions control project is for the use of the North Dakota ratepayers and is therefore rejected.

IRP and Cost Allocation Process

104. The cost allocation methodology used by NSP does not demonstrate a state-specific benefit for particular resources.

105. NSP uses one integrated resource plan for its entire system when choosing its next generation facility resource to employ. The IRP is filed and approved by the MPUC.

106. NSP has not developed nor does it intend to develop an IRP using North Dakota's environmental laws and policies.

107. NSP has not developed nor does it intend to develop a North Dakota only IRP.

108. NSP's integrated resource plans and related decisions from the MPUC support Staff's position that some of NSP's requested costs are not used and useful for the service and convenience of North Dakota ratepayers.

109. Staff's reply brief quotes extensively from the 1999 Resource Plan Order stating that the MPUC concluded that "NSP opposed adding another 400 megawatts of wind generation, at least in the near term. Under any set of assumptions NSP thought reasonable, its cost models showed the cost of wind exceeding the cost of natural gas by 32 to 81 million dollars over the life of the contract. NSP also argued that this would be a particularly inopportune time to add more wind—in its view the technology is still

developing and over-priced, and the Company has not yet had enough experience with its first 425-megawatt wind purchase to profit from it."

110. According to the 1999 Resource Plan Order and Minnesota legislation, MPUC has been forced to move away from "least cost planning" in choosing various electric generation resource options to what is now termed "in the public interest."

111. According to Minnesota Statute § 216B.2422, subd. 4, the MPUC must give preference for renewable energy facilities. The law reads: "The commission shall not approve a new or refurbished nonrenewable energy facility in an integrated resource plan or a certificate of need, pursuant to section 216B.243, nor shall the commission allow rate recovery pursuant to section 216B.16 for such a nonrenewable energy facility, unless the utility has demonstrated that a renewable energy facility is not in the public interest."

112. The MPUC 1999 Resource Plan Order also gives insight into this preference and the meaning behind "in the public interest" by declaring that it must consider environmental and socioeconomic costs in selecting new resources and that utilities include in their resource plans least cost plans for meeting 50% and 75% of new or refurbished capacity needs with conservation and renewable energy resources.

113. The MPUC concludes in its 1999 Resource Plan Order that it must begin with the presumption that the additional 400 megawatts of wind energy is in the public interest and examine the record to determine if the presumption has been disproved. The MPUC concludes that it has not and that the only reason given by any party for finding the additional wind generation is not in the public interest is that it costs more than natural gas generation.

114. The MPUC 1999 Resource Plan Order explains that Minnesota law requires it to factor in non-internalized environmental costs into all resource selection decisions. Said another way, Minnesota law requires it to factor in external (non-internal) values for environmental costs.

115. The Minnesota environmental mandates and preferences appear to violate N.D.C.C. § 49-02-23, which prohibits the Commission from allowing electric utilities from using "environmental externality values in the planning, selection, or acquisition of electric resources or the setting of rates for providing electric service."

116. The Commission finds that it must choose one of three options. The Commission could determine that NSP's rate case and its underlying data is so infected with Minnesota environmental policies, laws, rules, and costs that the rate increase application cannot be salvaged and should be dismissed. Or the Commission could simply accept the resource deployment decisions reached by NSP in its dealings with the State of Minnesota and allocate an equal share to North Dakota based on its demand allocator. Rather than dismiss the case or, on the other hand, ignore the cost

implications to North Dakota ratepayers for Minnesota's environmental mandates, the Commission accepts the ad hoc adjustments proposed by staff quantifying the additional and excess costs associated with mercury removal, refuse derived energy, Grand Meadow windfarm, and the Buffalo Ridge Transmission line for a total revenue requirement reduction of \$770,000.

Other Costs

MISO Schedule 16 and 17 Costs

117. The Commission approved, on an interim basis, the recovery of Midwest Independent Transmission System Operator (MISO) Schedule 16 and 17 costs through the existing Fuel Clause Adjustment (FCA).

118. NSP's rate increase application moves the recovery of these MISO costs from the FCA to base rates.

119. Since cost recovery has already been approved by the Commission and is already occurring in the FCA, the Commission finds no reason to change the process to include recovering these costs through base rates.

Charitable Contributions

120. Charitable contributions have not previously been included in the development of electric base rates in North Dakota.

121. NSP has requested that 50% of its charitable contributions be paid for by ratepayers.

122. NSP argues that the commission allowed recovery of similar costs in two gas cases.

123. We find that charitable contributions cease to be charitable when billed to captive ratepayers. We therefore agree with Staff and accept its adjustment to exclude \$86,000 in charitable contributions from revenue requirements.

Private Nuclear Fuel Storage

124. NSP attempted to secure a private nuclear fuel storage site on Goshute Indian tribal land in Utah.

125. The project is stalled and therefore not used or useful for providing service to North Dakota and therefore cost recovery is denied.

Nuclear Refueling Costs

126. The Commission has already approved NSP's plan for amortizing nuclear fuel outage costs totaling \$811,935 for the year ending 2008, Case No. PU-07-774.

127. NSP chose 2008 as its test year.

128. We find Staff's adjustment properly reflects test year expense levels.

Incentive Compensation

129. Staff reduced NSP's incentive compensation package to reflect a limit of 15% of base pay instead of the limit of 25% used by NSP in its application.

130. The Commission adopts Staff's reduction.

Wholesale Margin Sharing

131. In its application, NSP advocates retaining 15% of its wholesale margins related to asset based facilities with the remainder to be flowed through to customers via the FCA. NSP also includes in its application the proposal that it retains 85% of all non-asset based margins and that customers only participate in net aggregate gains, not losses.

132. Staff argued that economic times are difficult and 100% of all wholesale margins should be used to offset the high price of fuel.

133. The Commission agrees with Staff and adopts its adjustment.

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. N.D.C.C. § 49-04-07 prohibits a public utility from making or giving any undue or unreasonable preference or advantage to any particular locality in any respect.
4. An investor-owned utility is entitled to earnings sufficient to pay its expenses and provide a fair and reasonable return to its investors.

5. 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 North Dakota public.

6. "Used and useful" requires North Dakota ratepayers have received a tangible and quantifiable benefit.

7. 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.

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

9. 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.

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

ORDER

The Commission orders:

1. Xcel Energy may implement a rate increase for service rendered on and after _____, 2008, sufficient to produce a total annual revenue increase of \$4,683,000.

2. Xcel Energy shall file revised tariff sheets for the Commission approval consistent with the foregoing findings of fact and conclusions of law.

PUBLIC SERVICE COMMISSION

Tony Clark
Commissioner

Susan E. Wefald
President

Kevin Cramer
Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Northern States Power Company
Electric Rate Increase
Application

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) **AFFIDAVIT OF SERVICE BY MAIL**
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) **Case No. PU-07-776**
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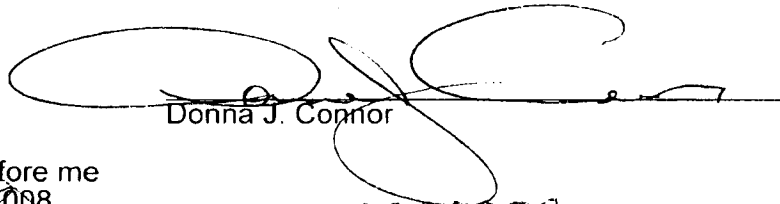
STATE OF NORTH DAKOTA)
COUNTY OF BURLEIGH) ss.
)

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 30th day of October, 2008, I served the following, **ADVOCACY STAFF'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DISMISSING ORDER** and **ADVOCACY STAFF'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**, upon Megan Hertzler, by placing true and correct copies thereof in envelopes addressed as follows:

Megan Hertzler
Xcel Energy Inc.
414 Nicollet Mall, 5th 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 30 day of October, 2008.


Notary Public

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