



414 Nicollet Mall
Minneapolis, Minnesota 55401

April 8, 2011

Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

Re: Northern States Power Company Advance Determination of Prudence and Certificate of Public Convenience and Necessity for Merricourt. Case Nos. PU-08-908 and PU-08-910.

Northern States Power Company 2011 and 2012 Electric Rate Increase Application. Case Nos. PU-10-657 and PU-11-55.

Northern States Power Company Integrated Resource Plan. Case No. PU-10-580.

Dear Mr. Nitschke:

As the North Dakota Public Service Commission (“Commission”) is aware, on April 1, 2011 Northern States Power Company, a Minnesota corporation (“NSP”), notified enXco Development Corporation (“enXco”) that we terminated our two contracts for the development of the Merricourt Wind Project (“Merricourt Project” or “Project”). We appreciate the Commission’s keen interest in this project and your actions to date in reviewing and granting certain approvals for the project.

Our decision to terminate the Project was not made lightly. We recognize the importance of this Project to North Dakota and to our commitment to renewable energy. As detailed below, however, we have concluded that the risks this Project posed to our customers were too great to justify proceeding and were greater than what we negotiated under the terms of the agreements. As a result, we terminated the project as permitted by the terms of its governing agreements. With this letter, we want to provide the Commission with greater clarity regarding our decision and our planned next steps.

2 PU-10-580 Filed 04/08/2011 Pages: 6
Letter clarifying decision to terminate Merricourt Project contract with EnXco
Northern States Power Company
Judy Pofert

BACKGROUND

The Merricourt Project is structured and governed by agreements between NSP and enXco. These agreements require enXco to develop and construct the Merricourt project, including securing leases, consents and permits to construct and operate the wind farm. After the parties close, ownership and future risk of the project is placed with NSP. The project was to be constructed and operational by December 2011.

KEY CONTRACT PROVISIONS

We highlight for the Commission several key contract provisions that relate to our decision to terminate. First, the agreements provide termination rights in the event the parties did not proceed to closing by March 31, 2011 – referred to in the agreements as the “Long Stop Date.” This provision served as an important check on the successful development of the project, and allowed either party to elect to discontinue the project if certain conditions were not met by that date. Key conditions to have been met by that date include resolving the avian problems identified by the United States Fish and Wildlife Service (“the Service”) that affect operation of the wind farm and obtaining the Certificate of Site Compatibility. Second, the agreements provide for the remedies afforded each party in terms of cost responsibility at various stages of the project development, including the event of termination. Consistent with the overall division of risk noted above, these remedies place development risks with enXco up to the Long Stop Date. Thereafter, once ownership transfers, development and operational risks transfer to NSP.

TERMINATION DECISION

Our letter to enXco terminating the Agreements (“Termination Notice”) provided three main grounds:

- Failure to meet the conditions precedent for closing the transaction by the Long Stop Date.
- Failure to resolve prior to the Long Stop Date the concerns first raised in 2009 by the Service about potential adverse consequences the Merricourt Project could have on two endangered species – the whooping crane and the piping plover.
- Failure to obtain the Certificate of Site Compatibility by the Long Stop Date.

In addition to informing enXco of the basis for our decision to terminate, the Termination Notice also advised enXco that it owed NSP a refund totaling \$101,261,333.00. We have already received a portion of this refund (\$5M) and the remainder will be due shortly. This action is consistent with the overall risks and remedies provided for by the contract, which we structured to serve the ratepayers well and insulate them from key development risks.

As already noted, our decision to terminate was reached after careful consideration, and only after extensive communication with enXco since the Service first raised the avian issue. enXco’s inability to resolve the issues with the Service created significant uncertainty about project timing, the allowed operations of the wind farm, and costs. This uncertainty in turn warranted us taking careful examination of the prudence of proceeding with the project once we reached the Long Stop Date with these issues still unresolved.

We ultimately concluded that the lack of appropriate permits from the Service exposes our customers and the Company to significant risk (including potential criminal prosecution, civil lawsuits, and injunctions) if the Merricourt Project moved forward and operational responsibilities were transferred to NSP.

Likewise, once the Long Stop Date was triggered, we believe it was incumbent on us to consider prudence from a broad perspective, including the overall ratepayer impact of the project. Taken together, we concluded that it was in the best interests of our customers to terminate the Agreements. The following sections explain in more detail how we arrived at this conclusion.

A. Prudence in Light of Avian Issues

Project costs and timing are important factors when granting regulatory approvals, such as the Advanced Determination of Prudence (“ADP”) or a Certificate of Public Convenience and Necessity (“CPCN”). If the project could not proceed as originally envisioned, the overall economics of the project would change and the prudence of proceeding with development would warrant consideration. Both project timing and cost are impacted by the avian concerns raised by the Service, and thus became a major concern for us.

Since July 2009, the Service has expressed concerns to enXco about the adverse impact the Merricourt Project could have on two endangered species and warned that even the inadvertent killing of those birds or disruption of their habitats could result in civil penalties or criminal charges. To address this issue, we understand that the Service encouraged enXco to submit a Habitat Conservation Plan (“HCP”) and obtain an Incidental Take Permit (“ITP”) to minimize project impact on the endangered species and reduce legal exposure to the operator of the Merricourt Project. The Service also indicated that submission of an HCP and subsequent granting of an ITP could take several months or possibly even years. Throughout this process, we expressed our concern to enXco that these issues posed a risk to meeting certain preconditions to close on the project, and we encouraged resolution in an expedient manner.

It appears from recent public statements made by the Service that enXco is still in the process of submitting an HCP and obtaining an ITP. Such proposals have yet to be submitted to the Service, even though we are beyond the closing date established in the Agreements. As already noted, the Service’s process for approval of the plans and permits can take months or even years with no assurance that an HCP would ever be approved or an ITP be granted. Further, there was a strong indication that the Service would require significant curtailment of the turbines for unspecified periods of time as mitigation measures. In fact, recent correspondence between enXco and the Service suggests that curtailment could be as high as 20% or more of expected project output over the next two years.

Clearly, such a change would significantly affect the costs and risks of the project and would impact the underlying considerations given by both the Company when entering into the Agreements and the Commission when granting the Advanced Determination of Prudence. These considerations were a major factor in our decision to terminate the Agreements.

B. Overall Prudence Considerations

As the Commission knows, an ADP appropriately does not remove our ongoing duty to act prudently and manage project costs, risks and options. While we believe that an ADP provides for certainty around the prudence of the initial decision for a project based on the facts known at the time, it does not shield the Company from our on-going obligation to manage the project prudently throughout its development or to adjust course as new information becomes known. As discussed above, there were clear risks that could, at a minimum, significantly reduce the project's cost-effectiveness from that expected by both NSP and the Commission when it approved the ADP for this project.

Further, once we reached the Long Stop Date and had the contractual right to terminate, we needed to consider the overall prudence of proceeding with the project in light of the best interests of our customers. Our assessment under this expanded view supported the conclusion that it was not appropriate to continue with the project. We thus availed ourselves of all our rights under the Agreements, as appropriate for the protection of both the Company and our customers.

Finally, we note that there could have been a situation where it would have been reasonable to consider some accommodation via the Agreements to allow the project to move forward or to gather more information before deciding to terminate. In our view, that situation was clearly not posed in this case. Thus, given the long-standing and clear concerns of the Service, the lack of progress in addressing them, the uncertain scope of possible remediation requirements, and the overall prudence of this project under current conditions, it was clear that any short-term accommodation was not appropriate.

NEXT STEPS

As the Commission is aware, enXco disputes our termination of the agreements. We believe this matter is primarily an issue between the two contracting parties and we intend to work to keep the focus there. The contracts were extensively negotiated and carefully crafted to provide each party rights and obligations, and we have acted in accordance with them. As we work toward resolution of these issues, we appreciate your understanding of the care the two parties are taking in communications regarding the issue. We are also sensitive to the fact that this matter was the subject of open proceedings before the Commission prior to termination. As we proceed to resolve the issues, we will make appropriate filings with the Commission and work to provide any additional information the Commission requires.

enXco has suggested that the parties explore potential resolution. enXco is a valued partner and we are open to exploring options; however, since the original Agreements have been terminated, any new proposal would be considered a new project that we would view in light of the best interests of our customers, based on our current needs and current market conditions. We will explore with enXco options that are consistent with our obligations to customers and regulators to make prudent resource choices. At the same time, we will continue to pursue a full refund of our payments previously made to enXco.

We appreciate your interest in these developments. To that end, we propose to provide an update by May 20, 2011 regarding current status and next steps, whether it be through resolution of issues or through other actions to address resource needs. At that time, we also expect to submit the filings to request the appropriate actions in the dockets associated with this project, including the Advanced Determination of Prudence, and we will update

our pending electric rate case to address the costs associated with the project currently reflected in our request.

Thank you for your consideration of this information; I hope it helps clarify our actions regarding this project. Please feel free to contact me at (612) 330-5723 with any questions you may have.

Sincerely,

A handwritten signature in blue ink that reads "Judy Poberl C.M.".

JUDY POFERL
PRESIDENT & CEO, NSP - MINNESOTA

C. Service List

Combined Service Lists
for Case Nos:
PU-08-908, PU-08-910, PU-10-657, PU-11-
55, & PU-10-580

Sandi Tabor, Director
Transmission Authority
1016 E Owens Ave
PO Box 2277 Suite 200
Bismarck, ND 58502

Janet Gonzales
Minnesota PUC
121 East 7th Place, Suite 350
St. Paul, MN 55101-1457

Karen Collins
Montana-Dakota Utilities Company
400 North 4th Street
Bismarck, ND 58502-1457

Commissioner Tony Clark
North Dakota Public Service Commission
State Capitol Building, Dept. 408
600 East Boulevard
Bismarck, ND 58505-0480

Darrell Nitschke
Executive Director
North Dakota Public Service Commission
State Capitol Building, Dept. 408
600 East Boulevard
Bismarck, ND 58505-0480

Marcy Dickerson, Director
Property and Utility Taxes
Office of State Tax commissioner 600 East
Boulevard Avenue, Dept. 127
Bismarck, ND 58505-0599

Shane Goettle – Director
Department of Commerce
PO Box 2057
Bismarck, ND 58202-2057

Harlan Fugelsten
ND Assn. Rural Electric Cooperatives
PO Box 727
Mandan, ND 58554-0727

Commissioner Kevin Cramer
North Dakota Public Service Commission
State Capitol Building, Dept. 408
600 East Boulevard
Bismarck, ND 58505-0480

Douglas A. Bahr
Office of Attorney General
Civil Litigation Department
500 North 9th Street
Bismarck, ND 58501-4509

Don Ball
Montana-Dakota Utilities Company
400 North 4th Street
Bismarck, ND 58501-1457

Ron Rauschenberger
Chief of Staff
Office of the Governor
600 East Boulevard Ave
Bismarck, ND 58505

Commissioner Brian Kalk
North Dakota Public Service Commission
State Capitol Building, Dept. 408
600 East Boulevard
Bismarck, ND 58505-0480