

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Otter Tail Power Company
Advance Determination of Prudence -
CapX2020 Group 1
Application**

Case No. PU-09-676

**Northern States Power Company
Advance Determination of Prudence -
CapX2020 Group 1
Application**

Case No. PU-09-678

ORDER ADOPTING SETTLEMENT

November 10, 2011

Appearances

Commissioners Kevin Cramer, Tony Clark, and Brian P. Kalk.

Michael C. Krikava and Zeviel Simpser, Attorneys at Law, Briggs and Morgan, P.A., 80 South Eighth Street, Minneapolis Minnesota 55402 attorneys for Northern States Power Company and Otter Tail Power Company (Applicants).

Matthew Dorsett, Midwest Independent Transmission System Operator, Inc., Post Office Box 4202, Carmel, Indiana 46082, attorney for Midwest Independent Transmission System Operator, Inc. (MISO).

Mitchell D. Armstrong, Special Assistant Attorney General, 122 E. Broadway Ave, Bismarck, North Dakota 58501, attorney for the Public Service Commission.

Illona A. Jeffcoat-Sacco, General Counsel, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, attorney for the Public Service Commission Advocacy Staff.

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

Preliminary Statement

On October 5, 2009, Northern States Power Company (Xcel Energy) and Otter Tail Power Company (Otter Tail) each filed an application for advance determination of prudence for each applicant's respective participation and ownership in the following three high voltage transmission line projects:

- A 250-mile long, 345 kV transmission line between Fargo, North Dakota and the northwest quadrant of the Twin Cities in Minnesota (the Fargo Project).
- A 200-mile long, 345 kV transmission line between eastern South Dakota and the southeast Quadrant of the Twin Cities in Minnesota (the Brookings Project).
- A 68-mile long, 230 kV transmission line between Bemidji, Minnesota and Grand Rapids, Minnesota (the Bemidji Project).

Xcel Energy's October 5, 2009, application also requested an advance determination of prudence for a 150-mile long, 345 kV transmission line between La Crosse, Wisconsin and the southeast Twin Cities area in Minnesota and two associated 161 kV lines in the Rochester, Minnesota area (the La Crosse Project).

The Commission's October 6, 2011 Order Adopting Settlement required Applicants to make a filing providing additional information on the resolution of cost allocation issues relevant to the Brookings Project, including the impact on North Dakota. The Commission also ordered that Applicants make a filing evidencing the continued prudence of the Brookings Project and seeking Commission confirmation of continued prudence of the Project prior to Applicants executing a legally binding investment commitment for the major procurement and construction of the Brookings Project.

On April 29, 2011, Applicants made a compliance filing providing additional information relevant to the Brookings Project cost allocation issues, including the impact on North Dakota and evidencing the continued prudence of the Brookings Project. Applicants compliance filing requested Commission confirmation of continued prudence of the Brookings Project.

On May 18, 2011, the Commission issued a Notice of Hearing for both cases specifying the following issue to be considered: Whether the Brookings Project continues to be prudent.

On July 25, 2011, a hearing was held in the Commission Hearing Room at the State Capitol in Bismarck, North Dakota.

On August 23, Applicants filed with the Commission an executed Settlement on Continued Prudence between Applicants and Advocacy Staff for Case No. PU-09-676 and Case No. PU-09-678.

On September 21, 2011, the Commission issued a Notice of Hearing for both cases specifying the follow issue to be considered: Whether the Settlement on Continued Prudence should be approved and adopted by the Commission for the confirmation of continued prudence of Applicants' Brookings Project.

On October 26, 2011, a hearing was held in the Commission Hearing Room at the State Capitol in Bismarck, North Dakota.

Having considered this matter, the Commission finds that Applicants' construction of and investment in the Brookings Project continues to be prudent.

The Commission further finds that the Settlement Agreement filed August 23, 2011 is reasonable and should be approved. Therefore, the Commission issues the following:

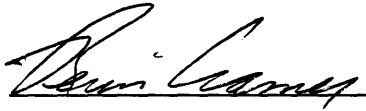
Order

The Commission orders:

1. The Settlement on Continued Prudence filed August 23, 2011 and executed by Advocacy Staff and Applicants, and entered into the record as Exhibit 20, a copy of which is attached to this Order and made a part of this Order, is APPROVED.
2. Subject to the terms and conditions of this Order and the August 23, 2011 Settlement on Continued Prudence, Otter Tail's investment in and construction of the Brookings Project continues to be prudent.
3. Subject to the terms and conditions of this Order and the August 23, 2011 Settlement on Continued Prudence, Xcel Energy's investment in and construction of the Brookings Project continues to be prudent.
4. Subject to the terms and conditions of this Order and the Settlement on Continued Prudence, Applicants may enter into a legally binding investment commitment for the major procurement and construction of the Brookings Project with no further action by the Commission.
5. Consistent with the terms and conditions of this Order and the Settlement on Continued Prudence, Applicants will provide updates to the Commission on the status of any proceedings related to the cost allocation methodology applicable to the Brookings Project which may arise before the Federal Energy Regulatory Commission or any court of competent jurisdiction
6. Applicants shall confirm in writing to the Commission when an Ownership Agreement is executed for each project or portion of a project, within five working days of execution of such Agreement.
7. Applicants shall confirm in writing to the Commission the actual physical start of construction for each project or portion of a project, within five working days of occurrence.
8. Applicants shall, within five working days, confirm in writing to the Commission the knowledge of abandonment of a project or portion of a project or the

termination of an Ownership Agreement for a project or portion of a project. To the extent any applicable laws, rules, or regulations prohibit Applicants from making such written confirmation within five working days of occurrence, Applicants shall make such disclosure within five working days as allowed by such laws, rules, or regulations.

PUBLIC SERVICE COMMISSION



**Kevin Cramer
Commissioner**



**Tony Clark
Chairman**



**Brian P. Kalk
Commissioner**

**Settlement on Continued Prudence
Case Nos. PU-09-676; PU-09-678**

1. This is an amendment (Amendment) to the Settlement Agreement, dated as of September 23, 2010, as adopted by the North Dakota Public Service Commission (Commission) in its October 6, 2010 Order Adopting Settlement in Case Nos. PU-09-676 and PU-09-678 (ADP Settlement). Capitalized terms not otherwise defined in this Amendment have the meaning given them in the ADP Settlement. The parties hereto constitute the Commission Advocacy Staff and Applicants, and their respective successors and assigns, as applicable (the Parties).
2. The terms and conditions of the ADP Settlement remain in effect except as modified by this Amendment.
3. The Parties agree that Applicants have satisfied all requirements of Section 4(a) and 4(b) of the ADP Settlement. Specifically, Applicants have (a) provided a sufficient level of information regarding cost allocation applicable to the Brookings Project; and (b) established that the Brookings Project continues to be prudent. Applicants have obtained all Critical Permits for the Brookings Project.
4. The cost allocation methodology under the MISO Tariff applicable to the Brookings Project has been resolved to the satisfaction of the Parties. Specifically:
 - a) The Federal Energy Regulatory Commission (FERC) has approved MISO Tariff provisions implementing the Multi-Value Project (MVP) category of transmission projects and cost allocation methodology under which the costs of MVPs are broadly allocated to load throughout the MISO footprint (MVP Allocation). The MVP Allocation is in effect as of the date of this Amendment and applicability of the MVP Allocation has not been limited or stayed by FERC or any courts; and
 - b) MISO's Board of Directors has found that the Brookings Project satisfies all of the criteria to constitute an MVP and qualifies as an MVP under the MISO Tariff. MISO's Board of Directors has conditionally approved the designation of the Brookings Project as an MVP and application of the MVP Allocation to it, subject to approval of the larger portfolio of MVP projects of which the Brookings Project is a part.
5. When (or if) the Commission approves this Amendment, Applicants require no further Commission findings or determination to have ADP approval, subject to the terms of this Amendment, to enter into an Ownership Agreement for the Brookings Project. Specifically, upon approval of the Commission of this Amendment, the limitation in Section 4(b) of the ADP Settlement is met and Applicants are free to execute an Ownership Agreement for the Brookings Project, or portion thereof, at a time of their choosing. Applicants' Waiver of the ADP cost recovery mechanism for the Brookings Project, or portion thereof, as provided in Section 2 of the ADP Settlement remains in effect until such time as Applicants execute the Ownership Agreement for the Brookings Project, or portion thereof.

6. Upon Applicants execution of an Ownership Agreement for the Brookings Project, or portion thereof, all provisions of N.D.C.C. § 49-05-16 will be in effect for the Brookings Project, or relevant portion thereof, for all past and ongoing costs, without further Commission action, subject to the following conditions:

a) Under the existing MVP Allocation, the costs of MVPs, including the Brookings Project, are allocated broadly across the MISO footprint. This broad allocation methodology across the MISO footprint is an important element of the MVP Allocation to both Parties. The Parties believe that the likelihood of a modification to the MVP Allocation that would substantially narrow or eliminate the broad allocation of MVP costs across the MISO footprint is low. Applicants and Advocacy Staff agree that, were there both a change to the MVP Allocation which substantially narrows or eliminates broad cost allocation across the MISO footprint and that such a change is made applicable to the Brookings Project, then such event constitutes a material modification for purposes of this Amendment. Specifically, a material modification would be any of the following outcomes of any FERC order on rehearing or order of a court:

- (i) Modification to the MVP criteria such that the Brookings Project would no longer be deemed an MVP;
- (ii) All costs of an MVP being directly assigned to the owner(s) of that MVP resulting in the costs of the Brookings Project being directly assigned to the owners of the Brookings Project, including Applicants, on an ownership percentage basis;
- (iii) Only a subset of MISO load (*e.g.* only a particular MISO sub-region) would be allocated the costs of any particular MVP resulting in the costs of the Brookings Project being only allocated to a certain subset of MISO load, including Applicants' respective load, and therefore not all load within MISO would be allocated a portion of the costs of the Brookings Project; and/or
- (iv) Some other change to the MVP Allocation not currently contemplated by the Parties that both fundamentally alters the broad based allocation of MVP costs across the MISO footprint and is made applicable to the Brookings Project, which in the judgment of the Commission would constitute a material modification as contemplated by this Amendment.

The Parties acknowledge that the specific inputs into the MVP Allocation formula or the specific categories of entities to whom costs will ultimately be allocated (*i.e.* allocated only to all load in MISO, to all users of the MISO system such as load located in PJM, some portion to generators and other stakeholders, or some combination) could be changed by FERC or the courts and that such changes may be applicable to the Brookings Project. Such changes would not constitute a material modification so long as

the fundamental principal of cost allocation broadly across the MISO footprint does not change.

- b) In the event FERC or a court of competent jurisdiction (i) orders a material modification of the MVP Allocation as described and defined in 6(a); and (ii) the material modification of the MVP Allocation is applicable to the Brookings Project, then the cost recovery provisions of N.D.C.C. § 49-05-16 will apply only to those costs for which Applicants would have been responsible under the MVP Allocation applicable to the Brookings Project immediately prior to the effective date of the material modification, calculated as if such material modification to the MVP Allocation had not occurred (ADP Cap). By way of example only: pursuant to the currently effective MVP Allocation, Applicant Xcel Energy is responsible for approximately 9% of the costs of the Brookings Project; should there be a material modification to the MVP Allocation, the terms of N.D.C.C. § 49-05-16 would apply to only 9% of the costs of the Brookings Project for Applicant Xcel Energy.
- c) Until MISO unconditionally designates the Brookings Project as an MVP, the ADP Cap will be \$0. Once MISO unconditionally designates the Brookings Project as an MVP, the MVP Cap will be determined pursuant to the terms of paragraph 6(b), above.
- d) Applicants will provide updates to the Commission on the status of any proceedings related to the MVP Allocation which may arise before FERC and the courts. Based upon the updates, if the Commission believes a material modification to the MVP Allocation, as described in paragraph 6(a), above, has occurred, Applicants and Advocacy Staff will provide the Commission with sufficient information, upon notice and hearing, to determine on the record whether a material modification to the MVP Allocation has occurred and the extent of Applicants recovery of any costs exceeding the ADP Cap. Notwithstanding the forgoing, Applicants and Advocacy Staff may request that, upon notice and hearing, the Commission make a determination as to whether a material modification to the MVP Allocation has occurred.
- e) Should either Applicant file a rate case, rate rider, or other cost recovery mechanism after the Brookings Project, or portion thereof, is in-service but before any appeals or FERC determination on the MVP Allocation are completed, the terms of this Amendment will apply to the costs prudently incurred for the Brookings Project by the Applicant making the filing and included for recovery as part of the rate case, rate rider, or other recovery mechanism. Upon the final disposition of the rate case, rate rider, or other cost recovery mechanism proceeding, the terms of this Amendment will cease to be applicable to the Applicant making the filing and any future outcome of any appeal or final FERC determination on the MVP Allocation on a going forward basis will be addressed in a subsequent rate case, rate rider, or other cost recovery proceeding.

7. Applicants and Advocacy Staff jointly recommend the terms of this Amendment be accepted as a package.

8. Applicants retain their right to recover any and all costs of the Brookings Project, or portion thereof, including the costs of the Brookings Project, or portion thereof, over and above the ADP Cap, in a rate case, rate rider, or other cost recovery proceeding if the Applicant filing the rate case, rate rider, or other cost recovery proceeding (Filing Applicant) establishes that the costs incurred in the construction and development of the Brookings Project were appropriately incurred pursuant to the applicable legal standard in the rate case, rate rider, or other cost recovery proceeding. Filing Applicant may rely on the terms of this Amendment in any rate case, rate rider, or other cost recovery proceeding as may be applicable.
9. Applicants do not forgo or waive any other rights they may have under state or federal law.
10. Applicants and Advocacy Staff reserve the right to withdraw from this Amendment if the Commission rejects or modifies any element of this Amendment.
11. Applicants and Advocacy Staff agree that nothing in this Amendment addresses, takes a position on, decides, or asks the Commission to decide the extent or application of federal jurisdiction to the investments Applicants make or have made in the Brookings Project.
12. Pursuant to N.D.C.C. § 49-05-16(4), the Commission's Order determining the prudence of the Brookings Project is binding for such ratemaking purposes as are within the Commission's jurisdiction.

[Signature Pages Follow]

Otter Tail Power Company

By: 
Charles S. MacFarlane, CEO & President

Dated this 23 day of August, 2011

[SIGNATURE PAGE TO SETTLEMENT ON CONTINUED PRUDENCE
CASE NOS. PU-09-676; PU-09-678]

Northern States Power Company, a Minnesota Corporation

By: Laura McCarter, Regional V.P.

Dated this 19th day of August, 2011

**[SIGNATURE PAGE TO SETTLEMENT ON CONTINUED PRUDENCE
CASE NOS. PU-09-676; PU-09-678]**

North Dakota Public Service Commission Advocacy Staff

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(701) 328-2407

Dated this 23rd day of August, 2011

**[SIGNATURE PAGE TO SETTLEMENT ON CONTINUED PRUDENCE
CASE NOS. PU-09-676; PU-09-678]**