



2200 IDS Center  
80 South 8th Street  
Minneapolis MN 55402-2157  
tel 612.977.8400  
fax 612.977.8650

RECEIVED

June 7, 2010

JUN 7 2010

**Zeviel Simpser**  
(612) 977-8865  
zsimpser@briggs.com

**PUBLIC SERVICE COMMISSION**

**VIA FEDERAL EXPRESS**

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

**Re: 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**

Dear Mr. Nitschke:

Enclosed for filing, please find an original and seven copies of Northern States Power Company, a Minnesota corporation ("Xcel Energy"), and Otter Tail Power Company's ("Otter Tail" and collectively "Applicants") "Proposed Order Adopting Settlement" in the above referenced cases. An electronic copy has been e-mailed to the Commission.

Sincerely,

BRIGGS AND MORGAN, P.A.

*/s/ Zeviel Simpser*

Zeviel Simpser

ZS/rh  
Enclosures

**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**

**PROPOSED ORDER ADOPTING SETTLEMENT**  
**May 28, 2010**

**Appearances**

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

Priti R. Patel, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall, Fifth Floor, Minneapolis, Minnesota 55402 (withdrawn), Michael C. Krikava, Attorney at Law, Briggs and Morgan, P.A., 80 South Eighth Street, Minneapolis, Minnesota 55402, Zeviel Simpser, Attorney at Law, Briggs and Morgan, P.A., 80 South Eighth Street, Minneapolis Minnesota 55402, and Lawrence Bender, Attorney at Law, Fredrickson & Byron, PA, 200 North Third Street, Suite 150, Bismarck, North Dakota 58501, attorneys for Northern States Power Company, a Minnesota corporation (Xcel Energy).

Mark Bring, Associate General Counsel, Otter Tail Corporation, 215 S. Cascade Street, Fergus Falls, Minnesota 56537; Michael C. Krikava, Attorney at Law, Briggs and Morgan, P.A., 80 South Eighth Street, Minneapolis, Minnesota 55402; and Zeviel Simpser, Attorney at Law, Briggs and Morgan, P.A., 80 South Eighth Street, Minneapolis Minnesota 55402, attorneys for Otter Tail Power Company (Otter Tail and together with Xcel Energy “Applicants”).

Keith R. Beall, Senior Attorney – State Regulatory, Midwest Independent Transmission System Operator, Inc., Post Office Box 4202, Carmel, Indiana 46082, attorney for Midwest Independent Transmission System Operator, Inc. (MISO).

Illona A. Jeffcoat-Sacco, Special Assistant Attorney General, 600 E. Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505, attorney for Advocacy Staff.

Annette Bendish, Legal Counsel, Public Service Commission, 600 E. Boulevard Avenue, Department 408, Bismarck, North Dakota 59505, attorney for Public Service Commission (the Commission).

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

### **Preliminary Statement**

On October 5, 2009, Otter Tail filed an application for advance determination of prudence of Otter Tail's participation and ownership in three high voltage transmission line projects, Case No. PU-09-676:

- 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).

On October 5, 2009, Xcel Energy filed an application for advance determination of prudence of Xcel Energy's participation and ownership in the same three high-voltage transmission line projects and, in addition, 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 and all four Projects together the "CapX2020 Group 1 Projects"), Case No. PU-09-678.

On March 24, 2010, the Commission issued its Notice of Hearing setting an intervention deadline, and specifying the following issues to be considered:

1. Whether the resource addition is reasonable and prudent.
2. Whether Applicants have need for additional transmission resources.
3. What alternatives exist for meeting additional transmission needs.

On April 15, 2010, Citizens for Community Vision filed a Petition to Intervene.

On April 15, 2010, MISO filed a Petition to Intervene.

On April 28, 2010, the Commission granted MISO's intervention.

On April 30, 2010, Citizens for Community Vision withdrew its Petition to Intervene.

On May 12, 2010, the Commission approved Citizens for Community Vision's withdrawal of its Petition to Intervene.

On May 21, 2010, Applicants filed an unexecuted Settlement Agreement, the terms of which were agreed to by Applicants and Advocacy Staff, subject to Commission approval.

On May 24, 2010, Applicants and Advocacy Staff executed the Settlement Agreement and it was submitted into the record. A copy of the Settlement Agreement is attached to this Order.

On May 24, 2010, a hearing was held in the Commission Hearing Room at the State Capitol in Bismarck, North Dakota. Case No. PU-09-676 and Case No. PU-09-678 were consolidated for hearing.

At the hearing, Ms. Priti R. Patel moved to withdraw as counsel for Xcel Energy. Ms. Patel's motion was granted by Judge Wahl.

At the hearing, Applicants and Advocacy Staff presented the Settlement Agreement for consideration by the Commission.

Having considered this matter, the Commission finds that Otter Tail has demonstrated a need for the CapX2020 Group 1 Projects in which it proposes to participate, that these CapX2020 Group 1 Projects are reasonable resource additions in light of the alternatives, and therefore its construction of and investment in the Fargo, Bemidji and Brookings Projects is reasonable and prudent; that Xcel Energy has demonstrated a need for the CapX2020 Group 1 Projects, that the CapX2020 Group 1 Projects are reasonable resource additions in light of the alternatives, and therefore its construction of and investment in the CapX2020 Group 1 Projects is reasonable and prudent; and that the Settlement Agreement is reasonable and should be approved. Therefore, the Commission issues the following:

### **Order**

1. The Settlement Agreement filed May 21, 2010 and executed by Advocacy Staff and Applicants on May 24, 2010, and entered into the record as Exhibit 2, 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 Settlement Agreement, an advance determination of prudence for Otter Tail's investment in and construction of the Fargo, Brookings and Bemidji Projects is GRANTED.
3. Subject to the terms and conditions of this Order and the Settlement Agreement, an advance determination of prudence for Xcel Energy's investment in and construction of the Fargo, Brookings, Bemidji, and La Crosse Projects is GRANTED.
4. Consistent with the terms and conditions of this Order and the Settlement Agreement, Applicants shall file with the Commission a list of all critical permits that were received prior to each Applicant executing a legally binding investment commitment for the major procurement and construction of each of the CapX2020 Group 1 Projects.
5. Consistent with the terms and conditions of this Order and the Settlement Agreement, Applicants shall make a filing providing additional information on the resolution of cost allocation issues relevant to the Brookings Project, including the impact on North Dakota. This filing will include a level of detail on the application of the Brookings Project cost allocation comparable to what has been provided with regard to the other CapX2020 Group 1 Projects.

6. Consistent with the terms and conditions of this Order and the Settlement Agreement, Applicants shall 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. Failure to make such a filing shall result in the revocation of the advance determination of prudence for the Brookings Project granted in this Order.

**PUBLIC SERVICE COMMISSION**

---

**Tony Clark**  
**Commissioner**

---

**Kevin Cramer**  
**Chairman**

---

**Brian P. Kalk**  
**Commissioner**



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

**CapX2020 Group 1 Projects Advance Determination of Prudence (ADP) Request  
Settlement Agreement**

This Settlement Agreement is entered into this 24<sup>th</sup> Day of May, 2010, by and between the North Dakota Public Service Commission Advocacy Staff (Advocacy Staff), Otter Tail Power Company (OTP) and Northern States Power Company, a Minnesota corporation (Xcel Energy) (OTP and Xcel Energy together “Applicants”).

**BACKGROUND**

These proceedings involve two separate but related matters – Case No. PU-09-676 is OTP’s request for an ADP pertaining to its investments in and construction of the CapX Group 1 Transmission Projects, filed with the North Dakota Public Service Commission (Commission). Case No. PU-09-678 is Xcel Energy’s request for an ADP pertaining to its investments in and construction of the CapX Group 1 Transmission Projects. The CapX Group 1 Transmission Projects (as described more fully in the Application) are a (i) 345 kV line and associated equipment between Fargo, ND and the Twin Cities (Fargo Project); (ii) 345 kV line and associated equipment between Brookings, SD and the Twin Cities (Brookings Project); (iii) 345 kV line and associated equipment between La Crosse, WI and the Twin Cities (La Crosse Project); and (iv) 230 kV line and associated equipment between Bemidji and Grand Rapids, MN (Bemidji Project).

Applicants filed a Joint Application and supporting testimony in support of obtaining an ADP for their investments in the CapX Group 1 Transmission Projects. Advocacy Staff reviewed the Application and conducted discovery on the Application. Applicants and Advocacy Staff have been actively negotiating toward settling disputed issues between them, subject to Commission approval. The results of that negotiation follow.

#### TERMS OF SETTLEMENT

Applicants and Advocacy Staff agree to the provisions described below, supported by this Settlement Agreement and the evidentiary record in this proceeding.

1. Each Applicant agrees to waive its entitlement to recovery under N.D.C.C. § 49-05-16(5) (Waiver), for any specific CapX Group 1 Project to the extent such project is abandoned prior to execution by that Applicant of legally binding contractual investment commitments (the Project Participation Agreement or PPA) for the major procurement and construction of the abandoned project (the Investment Commitment). Execution of a PPA will be contingent upon receipt of all critical permits designated by the Applicants as necessary to make the Investment Commitment. Upon completion of each such PPA, Applicants will provide a copy of the list of critical permits that were received prior to making the Investment Commitment.
  - a) Applicants do not forgo their right to seek recovery of prudently incurred costs, even for abandoned projects, through a rate case, or other available mechanisms.
  - b) Applicants do not forgo the right to rely upon the record in this proceeding and the existence of the ADP to support a claim that the costs incurred for an abandoned project were prudent.
  - c) Except as provided in Section 3 below, upon the Investment Commitment for a specific project, the Waiver ceases and all provisions of N.D.C.C. § 49-05-16 will be in effect for all past and ongoing costs, without further Commission action.

- d) Applicants do not forego or waive any other rights they may have under state or federal law.
2. Applicants and Advocacy Staff agree to actively support the Commission granting an ADP for each of the four Group 1 Projects, subject to conditions for the Brookings Project specified in Section 3.
    - a) Applicants and Advocacy Staff will jointly develop an evidentiary record on the prudence of all four Group 1 Projects.
    - b) Applicants and Advocacy Staff will jointly recommend that settlement terms be accepted as a package.
    - c) Applicants and Advocacy Staff reserve the right to withdraw from the settlement if the Commission rejects or modifies any element of the Settlement.
  3. Applicants will request and accept that the ADP for the Brookings Project will include all reporting and other regulatory requirements contemplated by N.D.C.C. § 49-05-16 and normally required by the Commission for an ADP. Applicants and Staff will support inclusion of the following additional special conditions for the ADP for the Brookings Project:
    - a) A sufficient level of information regarding cost allocation for the Brookings Project is not currently available in light of potential revisions to the MISO Tariff applicable to the Brookings Project. Applicants will make a filing providing additional information on the resolution of cost allocation issues relevant to the Brookings Project, including the impact on North Dakota. This filing will include a level of detail on the application of the Brookings Project cost allocation comparable to what has been provided with regard to the other CapX Group 1 Projects.
    - b) Applicants will make a filing evidencing continued prudence of the project and seeking Commission confirmation of continued prudence of the project prior to the Investment Commitment for the Brookings Project. Should Applicants

proceed to the Investment Commitment on the Brookings Project without prior Commission ADP confirmation, the Brookings Project will not have an ADP and no provisions of N.D.C.C. § 49-05-16 will apply.

- c) Upon the Investment Commitment for the Brookings Project, the ADP for that project will be in effect and all provisions of N.D.C.C. § 49-05-16 will be in effect for all past and ongoing costs, without further Commission action.
4. The Settlement will have no precedential effect on any existing or future ADP determinations.
5. Applicants reserve any rights under state and federal law or equity not specifically waived in the Settlement.
6. Applicants and Advocacy Staff agree that nothing in this Settlement addresses or decides the extent or application of federal jurisdiction to the investments made in the CapX Group I Projects.
7. Pursuant to N.D.C.C. § 49-05-16(4), the Commission's Order determining the prudence of the CapX Group I Projects is binding for such ratemaking purposes as are within the Commission's jurisdiction.

In consideration of this Settlement, Applicants agree not to offer the following portions of the Rebuttal Testimony of Tim Rogelstad: p. 7, line 9 through p. 8, line 14; and p. 9, line 5 through p. 11, line 12 into the evidentiary record, provided, however, that if the Settlement is not accepted by the Commission, or an Applicant or Advocacy Staff withdraws pursuant to Section 2(c) hereof, then Applicants will offer such testimony into the record.

#### MISCELLANEOUS PROVISIONS

**A. Basis of Settlement Agreement.** It is agreed this Settlement Agreement is a negotiated Settlement agreement subject to approval by the Commission.

**B. Effect of the Settlement Negotiations.** It is understood and agreed that all offers of settlement and discussions related to this Settlement Agreement are privileged and may not be used in any manner in connection with proceedings in this case or otherwise, except as provided by law. In the event the Commission does not approve this Settlement Agreement, the Settlement Agreement will not be admissible as evidence in this or any other proceeding and no part thereof may be used for any purpose in this case or in any other.

**C. Applicability and Scope.** This Settlement Agreement is binding on the Applicants and Advocacy Staff, and their successors, assigns, agents, and representatives. This Settlement Agreement does not set policy or overturn precedent. This Settlement Agreement does not in any respect constitute an agreement, admission or determination by Applicants or Advocacy Staff as to the merits of any specific allegation or contention made by the Applicants and Advocacy Staff in this proceeding.

**D. Effective Date.** This Settlement Agreement is effective on the date of the Commission Order approving the Settlement Agreement.


**E. Modification.** Applicants and Advocacy Staff reserve the right to withdraw from the Settlement if the Commission rejects or modifies any element of the Settlement.

#### **CONCLUSION**

Applicants and Advocacy Staff have agreed to the forgoing terms to resolve the contested issues in the captioned proceedings. For these reasons, Applicants and Advocacy Staff respectfully urge the Commission to approve the Settlement Agreement.

**[Signature Pages Follow]**

Otter Tail Power Company

By: 

Dated this 21<sup>st</sup> day of May, 2010.

[SIGNATURE PAGE TO SETTLEMENT AGREEMENT  
CASE NOS. PU-09-676; PU-09-678]

**Northern States Power Company, a Minnesota Corporation**

By: *Laura McLartin*

Dated this 21 day of May, 2010.

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

**North Dakota Public Service Commission Advocacy Staff**

By: *Ilona A. Jeffcoat-Sacco*  
Ilona A. Jeffcoat-Sacco (ID# 03315)  
Special Assistant Attorney General  
600 E. Boulevard Avenue, Dept. 408  
Bismarck, ND 58505  
(701) 328-2407

Dated this 04<sup>th</sup> day of May, 2010.

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