

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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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 24th 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 1 Projects.
7. Pursuant to N.D.C.C. § 49-05-16(4), the Commission's Order determining the prudence of the CapX Group 1 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 ____ day of May, 2010.

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

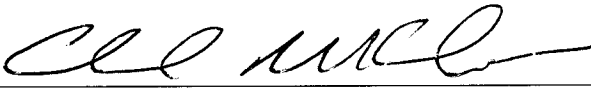
Northern States Power Company, a Minnesota Corporation

By: _____

Dated this ____ day of May, 2010.

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

Otter Tail Power Company

By: 

Dated this 21st day of May, 2010.

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

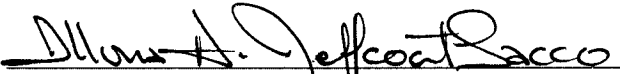
Northern States Power Company, a Minnesota Corporation

By: Laura McCarter

Dated this 21 day of May, 2010.

**[SIGNATURE PAGE TO SETTLEMENT AGREEMENT
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North Dakota Public Service Commission Advocacy Staff

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

Dated this 04th day of May, 2010.

**[SIGNATURE PAGE TO SETTLEMENT AGREEMENT
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