

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 23rd Day of September, 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 each an Applicant and 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 all or any portion of 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. A Project Participation Agreement (Ownership Agreement) is a legally binding contract that establishes the ownership and investment structure of a CapX Group 1 Transmission Project and the owners' obligations to pay for construction and ownership of such project, including holding the parties liable for breach of contract for any failure to perform these obligations, absent extraordinary circumstances.
 - a) Execution of an Ownership Agreement by an Applicant for a project, or portion thereof, is contingent upon obtaining all critical permits necessary to construct that project, or portion thereof. Applicants agree that no Ownership Agreement will be executed prior to obtaining all critical permits applicable to the project or portion of a project to which the Ownership Agreement applies.
 - b) The permits listed in Schedule 1 to this Settlement Agreement are the critical permits applicable as of the date of this Settlement Agreement. Upon execution of each Ownership Agreement, Applicants will provide a written statement to the Commission confirming that all applicable critical permits on Schedule 1 have been obtained.
2. 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, or portion thereof, to the extent such

project, or portion thereof, is abandoned prior to the earlier of the actual physical start of construction of, or thirty days following the execution of an Ownership Agreement for, that CapX Group 1 Project, or portion thereof.

- 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 above and in Section 4 below, upon execution of an Ownership Agreement for a specific project, or portion thereof, Applicants' Waiver ceases for the that project, or portion thereof, and all provisions of N.D.C.C. § 49-05-16 will be in effect for that project, or portion thereof, 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.
3. Applicants and Advocacy Staff will continue to support the Commission granting an ADP for each of the four Group 1 Projects, subject to the provisions of this settlement, including certain conditions precedent for the Brookings Project specified in Section 4.
- a) Applicants and Advocacy Staff will continue to jointly develop an evidentiary record on the prudence of all four Group 1 Projects, as necessary.
 - 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.
4. Applicants will request and accept that the ADP for the Brookings Project, or portion thereof, 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 precedent for the ADP for the Brookings Project, or portion thereof:

- 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 execution of an Ownership Agreement for the Brookings Project, or portion thereof. Should Applicants execute an Ownership Agreement on the Brookings Project, or portion thereof, without prior Commission ADP confirmation, the Brookings Project, or portion thereof, will not have an ADP and no provisions of N.D.C.C. § 49-05-16 will apply.
 - c) Upon Commission confirmation of continuing prudence and the execution of an Ownership Agreement for the Brookings Project, or portion thereof, the ADP for that project, or portion thereof, 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.
5. The Settlement will have no precedential effect on any existing or future ADP determinations.
 6. Applicants reserve any rights under state and federal law or equity not specifically waived in the Settlement.

7. 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.
8. 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 have agreed 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 3(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. This Settlement Agreement supersedes all prior Settlement Agreements executed by Applicants and Advocacy Staff in these cases.

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

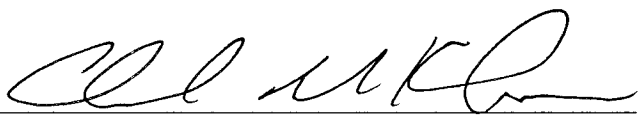
E. Modification. Applicants and Advocacy Staff reserve the right to withdraw from the Settlement if the Commission rejects or modifies any element of the Settlement.

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 September, 2010.

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

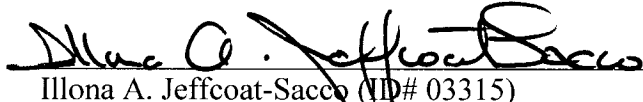
Northern States Power Company, a Minnesota Corporation

By: Laura Mc Carten

Dated this 22 day of September, 2010.

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

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 23rd day of September, 2010.

**[SIGNATURE PAGE TO SETTLEMENT AGREEMENT
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SCHEDULE 1

Project	Critical Permit by Jurisdiction
Bemidji – Grand Rapids 230 kV Project	<i>MN (Certificate of Need)</i>
	<i>MN (Route Permit)</i>
	<i>Federal Rural Utilities Service Environmental Impact Statement</i>
Fargo – Monticello 345 kV Project	<i>MN (Certificate of Need)</i>
(St. Cloud – Monticello segment)	<i>MN (Route Permit)</i>
(St. Cloud – Fargo segment)	<i>MN (Route Permit)</i>
	<i>ND (Certificate of Public Convenience and Necessity)</i>
	<i>ND (Certificate of Corridor Compatibility)</i>
	<i>ND (Route Permit)</i>
Brookings – Twin Cities 345 kV Project	<i>MN (Certificate of Need)</i>
	<i>MN (Route Permit)</i>
	<i>SD (Route Permit)</i>
La Crosse – Twin Cities 345 kV Project	<i>MN (Certificate of Need)</i>
	<i>MN (Route Permit)</i>
	<i>WI (CPCN) – combined need and routing)</i>
	<i>Federal Rural Utilities Service Environmental Impact Statement</i>