

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

October 6, 2010

Appearances

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

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.

Annette Bendish, Legal Counsel, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, attorney for the Public Service Commission.

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

Mark Bring, Associate General Counsel, Otter Tail Corporation, 215 S. Cascade Street, Fergus Falls, Minnesota 56537.

Michael C. Krikava and Zeviel Simpser, Attorneys 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 and Otter Tail Power Company.

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).

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

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

On April 15, 2010, Midwest Independent Transmission System Operator, Inc. (MISO) filed a Petition to Intervene and on April 28, 2010, the Commission granted MISO's intervention.

On May 21, 2010, Applicants filed an unexecuted Settlement Agreement between Applicants and Advocacy Staff, subject to Commission approval.

On May 24, 2010, Applicants and Advocacy Staff executed the Settlement Agreement and it was subsequently entered into the record.

On May 24, 2010, a hearing was held in the Commission Hearing Room at the State Capitol in Bismarck, North Dakota.

On August 26, 2010, Applicants requested an informal hearing to further explain the Settlement Agreement and answer Commission questions. An informal hearing was held on September 23, 2010.

On September 23, 2010, Applicants and Advocacy Staff filed a revised Settlement Agreement.

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 Otter Tail's construction of and investment in the Fargo, Bemidji and Brookings Projects is reasonable and prudent;

The Commission also finds 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 Xcel Energy's construction of and investment in the Fargo, Bemidji, Brookings, and La Crosse Projects is reasonable and prudent;

The Commission further finds that the Settlement Agreement filed on September 23, 2010, is reasonable and should be approved. Therefore, the Commission issues the following:

Order

The Commission orders:

1. The Settlement Agreement filed September 23, 2010, 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 September 23, 2010 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 September 23, 2010 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 September 23, 2010 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.

5. Consistent with the terms and conditions of this Order and the September 23, 2010 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.

6. The 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.

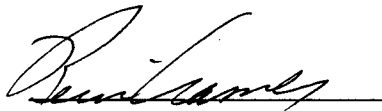
7. The Applicants shall confirm in writing to the Commission the actual physical start of construction for each project or portion of a project, within five working days of occurrence.

8. The 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.

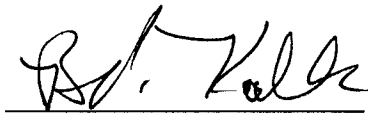
PUBLIC SERVICE COMMISSION



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 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.

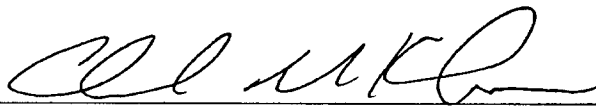
E. Modification. Applicants and Advocacy Staff reserve the right to withdraw from the Settlement if the Commission rejects or modifies any element of the Settlement.

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]**

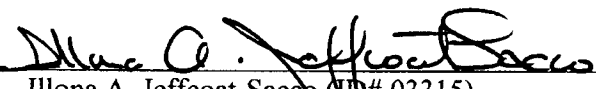
Northern States Power Company, a Minnesota Corporation

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 33rd day of September, 2010.

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

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>