

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Northern States Power Company
Advance Determination of Prudence - Geronimo Wind
Application**

Case No. PU-12-59

**POST HEARING BRIEF OF
ADVOCACY STAFF**

On January 31, 2012 Northern States Power Company, a Minnesota corporation (NSP or the Company), tendered an application for Advance Determination of Prudence for a Power Purchase Agreement (PPA) with Geronimo Wind Energy, LLC. Their request was filed pursuant to N.D.C.C. § 49-05-16, relevant parts which are reproduced below:

The commission may issue an order approving the prudence of a resource addition if:

- a. The public utility files with its application a projection of costs to the date of the anticipated commercial operation of the resource addition;
- b. The public utility files with its application a fee in the amount of one hundred twenty-five thousand dollars;
- c. The commission provides notice and holds a hearing, if appropriate, in accordance with section 49-02-02; and
- d. The commission determines that the resource addition is prudent.

Both NSP and the North Dakota Public Service Commission Advocacy Staff (Advocacy Staff) filed testimony prior to the October 22, 2012 Formal Hearing. Advocacy Staff has agreed to NSP's management of Renewable Energy Credits (RECs), on condition that NSP file with its annual report monthly

REC market prices and REC sale records by the Company. All other issues remain for determination.

Select Undisputed Facts

Although NSP is forecasted to have excess generating capacity until 2017, on September 16, 2010 NSP issued a request for proposal (RFP) for up to 250 MW of **wind** specific generation. On June 7, 2011 NSP selected Prairie Rose Wind (PRW) after evaluating such factors as price, curtailment risk, interconnection and transmission network requirements, and the ability to complete the proposed project by the end of 2012 (the Federal Production Tax Credit (PTC) is scheduled to expire December 31, 2012). North Dakota's load ratio share of NSP's total operating system is 5.8%.

Legal Standard

"Burden of proof" is a term of art comprised of two, fundamental components: the burden of going forward (aka production) and the burden of persuasion. *Please see Helbling v. Helbling*, 541 N.W.2d 443, 445-46 (N.D. 1995). If NSP has provided a *prima facie* case, and if their position is contradicted, the Commission must find, by a preponderance of evidence, that the Company's purchase was prudent. *Id.* See also N.D.C.C. § 28-32-46.

"Prudent" is neither defined in statute nor code. However, Black's Law Dictionary provides that a prudent action as one that is "[c]ircumspect or judicious in one's dealings; cautious". *Black's Law Dictionary* 1241 (Bryan A. Garner ed., 7th ed., West 1999).

The Prairie Rose Wind project is not prudent

- 1. There is no need for this project.**

The company does not dispute that their own Strategist modeling predicts excess capacity until 2017. There is little projected load growth; the record is devoid of any information which would indicate that NSP's current generation fleet is anything but well-functioning and adequate to meet the reliability and economic needs of North Dakota ratepayers. Nevertheless, because wind generating resources essentially have zero marginal cost based on the fact that its fuel source, wind, is free, it will be near the first in the sequence of dispatching in NSP's generation fleet. As a result, PRW is a must take generation resource, contributing to NSP's energy requirements predicated upon unpredictable wind conditions rather than the market. As stated by Mr. Marohl, if you already own a vehicle, it would be illogical to lease an additional one, especially if it can only be run when the wind blows.

In addition to a lack of need for this project, PRW has no capability to receive capacity accreditation.

2. The Prairie Rose Wind PPA is an opportunity purchase. The Company's purchase of this PPA is solely motivated in meeting the Minnesota Renewable Energy Standard, not to seek least cost energy.

The company indicates that this PPA is a reasonable purchase to take advantage of the production tax credit, which is due to expire at the end of 2012. The company's own testimony characterizes the PRW PPA as an opportunity purchase. Although Advocacy Staff does not contradict that wind will be more expensive if the production tax credit is not extended, its affect is more applicable to wind rather than the energy market as a whole. It is clear that this purchase has been made purely in anticipation of the expiration of the Production Tax Credit at the end of 2012 in order to pursue Minnesota's higher renewable energy standard.

3. The Company's natural gas prices are out of date, which increases the PVRR loss by \$40.8 million over the \$5.4 million impact reported in the application.

The Company performed their Strategist analysis using a natural gas forecast from January 2011. By the time of the application filing, natural gas prices had fallen by 25%. When first running Strategist, NSP utilized a sensitivity analysis whereby natural gas prices were reduced by 20%. If such gas prices are relied upon, it would result in a total PVRR impact of \$46.2 million. Much testimony was given regarding the accurate forecasting of gas prices.

Mr. Hahn provided testimony that the 20% lower natural gas price scenario should have been utilized as the base case, as it was clear by the time the Company tendered their application that natural gas prices had fallen and were continuing to fall. Advocacy Staff agrees.

Additionally, N.D.C.C. § 49-05-16(5), states: “[f]ollowing an initial commission order, the commission may, upon notice and hearing, if appropriate ... determine that continuation of a resource addition is no longer prudent or that its prior order should be modified”, the North Dakota Public Service Commission (NDPSC) should be able to use the latest assumptions and information available at the time it makes its determination, as it acts as a rational free market consumer on behalf of captured ratepayers. A regulator is not supposed to accept an imprudent decision made by a company with or without hindsight, but is supposed to act, in a fair manner, as a substitute for the market forces that a company would be subject to through competition.

Advocacy Staff's position that the natural gas prices or any other assumptions available at the time of the application or the Commission's deliberations be used is a

reasonable accommodation. Such a concept would help ensure that the best possible decisions are made on behalf of North Dakota ratepayers, support consistency in the process, and encourage timely applications.

4. Capacity benefits should not be included in the analysis, as a traditional interconnection cannot be reasonably assumed.

As indicated above MISO normally allows wind resources to receive a certain amount of accredited capacity. However, this is only for traditional interconnections, not net zero interconnections (NZI), which will be utilized with this PPA. The Company originally indicated, through data responses, that they had no intention of pursuing a traditional interconnection. Nevertheless, the project was credited with \$17.7 million to reflect such accredited capacity. After Mr. Hahn questioned this approach, the project was revised to \$13.5 million in order to reflect an anticipated traditional interconnection in 2018. Considering the narrow PVRR delta associated with this PPA, it could be construed that the proposed 2018 traditional interconnection has been offered to this Commission to bolster the tenuous economics of this proposal.

5. Renewable Energy Credits should not be included in the analysis because they are too uncertain.

The company includes \$9.2 to \$14.1 million in renewable energy credit (REC) revenues into the PVRR of this project. Yet the lack of a mature and centralized market makes forecasting highly difficult. Due to this uncertainty, this level of REC revenues should be removed from the economic evaluation. As indicated above, Advocacy Staff does accept NSP's continued active REC portfolio management, subject to future review.

6. This PPA was contingent on Minnesota Approval but not the NDPSC.

Common industry practice dictates that PPAs are typically not effective until regulatory approvals are secured. NSP executed this PPA with Geronimo Wind Energy, LLC in early June 2011. It subsequently filed for Minnesota Public Utility Commission (MNPUC) approval in late June 2011. One month after gaining approval of the PPA from the MNPUC in December 2011, the Company filed for approval from the NDPSC. If the PPA had not been approved by the MNPUC, then NSP would be able to back out of the contract with no financial obligation (per typical industry practice). However, the NDPSC was not afforded this same opportunity. By not filing concurrent applications, and not allowing the PPA to be contingent on NDPSC approval, the NDPSC has been treated as a second class regulator, attenuating the rights of the NDPSC and its constituents.

7. Ultimately, this PPA is not economic to the tune of \$63.9 million.

The economic analysis of this PPA originally indicated a cost to ratepayers of \$5.4 million. It is Advocacy Staff's position that the capacity credit cannot be reasonably assumed. Additionally, more up-to-date natural gas prices should be relied upon for the economic analysis. We therefore believe the actual costs to ratepayers, as a result of this PPA, is \$63.9 million.

Conclusion

Advocacy Staff maintains that the Company's ADP application should be denied, as it was an imprudent opportunity purchase in an environment of excess capacity, driven by Minnesota's renewable energy mandate rather than sensible, economic forecasting. Opportunity is not dispositive towards need or prudence, especially if

predicated upon a non-economic premise. Advocacy Staff recognizes that NSP operates in a multi-jurisdictional environment, subject to regulation within its various constituencies. Nevertheless, the record indicates that this purchase is not needed for capacity, lowering energy costs, or compliance with renewable energy standards or obligations for at least five years, notwithstanding resolution of the pending production tax credit question.

Most importantly Advocacy Staff forecasts the energy provided by this PPA to be more expensive than could otherwise be provided by existing NSP resources and the market. The Company believes that it is unfair to punish them for utilizing the January 2011 natural gas price forecast rather than the 20% lower scenario (that was proven to be more correct).

True and fair competition ultimately benefits consumers. Regulators serve as a substitute for this competition. If economics served as the true inspiration for this PPA, then the PPA would standup stronger against a 20% drop in natural gas prices; and be cheaper, rather than more expensive, with even the January 2011 prices.

Notwithstanding the misallocated benefits of capacity credit, utilization of lower gas prices equates to more expensive, rather than cheaper, energy.

Competition punishes imprudent decisions and so should you, the regulator.

Dated: December 3, 2012

Respectfully submitted:

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