

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

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

Case No. PU-12-59

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DECEMBER 21, 2012

Appearances

Commissioners Brian P. Kalk, Kevin Cramer, and Bonny M. Fetch.

Zeviel T. Simpser and Elizabeth M. Brama, Briggs and Morgan, P.A., 2200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402-2157, appearing on behalf of Northern States Power Company.

Mark Gruman, Public Service Commission, State Capitol, 600 E. Boulevard Av., Bismarck, North Dakota 58505, on behalf of the Public Service Commission Advocacy Staff.

Illona Jeffcoat-Sacco, General Counsel, Public Service Commission, State Capitol, 600 E. Boulevard Av., Bismarck, North Dakota 58505, on behalf of the Public Service Commission Advisory staff.

Patrick J. Ward, Administrative Law Judge, Zuger Kirmis & Smith, 316 North Fifth Street, Provident Building, P.O. Box 1695, Bismarck, ND 58502-1695.

Preliminary Statement

On January 31, 2012, Northern States Power Company (NSP) filed an application with the North Dakota Public Service Commission (Commission) seeking an advance determination of prudence (ADP) under North Dakota Century Code Section 49-05-16 for a Power Purchase Agreement (PPA) with Geronimo Wind Energy, LLC (Geronimo) from its 200 megawatt (MW) Prairie Rose wind generation project (Project).

On February 15, 2012, the Commission issued a Notice of Filing and Notice of Intervention deadline of April 27, 2012. No parties intervened in these proceedings.

On August 1, 2012, the Commission issued a Notice of Hearing, scheduling a hearing for October 22, 2012 in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. The Notice specified the issue to be considered was whether the proposed PPA resource addition is prudent.

On October 22, 2012, a public hearing was held as scheduled. Having allowed all interested persons an opportunity to be heard and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. NSP is an investor-owned electric utility headquartered in Minneapolis, Minnesota authorized to provide public utility service in North Dakota subject to the regulatory jurisdiction of this Commission.
2. On September 16, 2010, NSP issued a request for proposal (RFP) for up to 250 MW of wind specific generation.
3. On June 7, 2011, NSP entered into a 20-year power purchase agreement with Prairie Rose Wind, LLC, its successors and assigns, to purchase 200 MW of wind energy from the Prairie Rose Project located in Rock and Pipestone Counties, Minnesota. The agreement included termination provisions allowing NSP to terminate the agreement if the agreement was not approved by the Minnesota Public Utilities Commission. The agreement did not include a provision making the effectiveness of the transaction subject to approval by the North Dakota Commission.
4. The Minnesota Public Utilities Commission approved the agreement on December 28, 2011.
5. The agreement was already in effect and NSP was fully committed to the transaction before filing its application for an advance determination of prudence with the North Dakota Commission on January 31, 2012.
6. N.D.C.C. Section 49-05-16 provides, in part:

49-05-16. Advance determination of prudence.

In this section, unless the context otherwise requires, resource addition means construction, modification, purchase, or lease of an energy conversion facility, renewable energy facility, demand response system, transmission facility, or a contract to acquire energy, capacity, or demand response for the purpose of providing electric service. A public utility that *intends* to make a resource addition may file an application with the commission for an *advance* determination of prudence regarding the resource addition. (*emphasis added.*)

7. NSP's application for an advanced determination of prudence was made after NSP was committed to the project and is therefore untimely filed.

8. In NSP's electric rate increase proceeding, Case No. PU-07-776, the Commission accepted a settlement that included commitments made by NSP, and made the settlement part of the Commission's Order. Part B of the Settlement Agreement provided:

B. Advanced Determination of Prudence

In accordance with N.D.C.C. § 49-05-16 the Company agrees to file for an ADP finding from the Commission for all proposed new construction, rehabilitation, or acquisition of an energy conversion facility, renewable energy facility, transmission facility or proposed energy purchase in which:

1. The Company proposes to allocate all or part of the related costs to the North Dakota jurisdiction for recovery in electric rates; and
2. The capacity of the generation facility or purchase is at least 50 MW; and/or the length of the transmission facility is at least 50 miles long and larger lines that are at least 1500 feet long; and all 100 kV or larger lines that are at least 10 miles long.

9. In the instant case, NSP did not fulfill the commitment NSP made when settling Case No. PU-07-776 by applying for an ADP finding from the Commission when the energy purchase was proposed, but rather NSP waited to apply until after the transaction was fully effective and committed.

10. In addition, the record developed at the hearing and in the briefs raises substantial questions about whether the costs of the PPA should be paid by North Dakota ratepayers, and if so, how much. Consequently, the Commission will require that a thorough record be developed before any costs of the PPA are recovered from North Dakota ratepayers.

From the foregoing Findings of Fact, the Commission makes the following:

Conclusions of Law

1. The Commission has jurisdiction in this matter.
2. NSP's application for an advance determination of prudence is untimely filed because it was filed after committing to the resource addition.
3. NSP's application for an advance determination of prudence for a Power Purchase Agreement with Geronimo Wind Energy, LLC from its 200 MW Prairie Rose wind generation project is moot.

From the foregoing Findings of Fact and Conclusions of Law the Commission issues the following:

Order

The Commission orders:

1. NSP's application for an advanced determination of prudence for its purchase power agreement with Geronimo Wind Energy, LLC DISMISSED, WITH PREJUDICE.
2. Further proceedings to establish a record regarding the appropriate ratemaking treatment for the costs of the purchase power agreement with Geronimo Wind Energy, LLC.

PUBLIC SERVICE COMMISSION



Kevin Cramer
Commissioner



Brian P. Kalk
Chairman



Bonny M. Fetch
Commissioner