



2302 Great N. Drive
Fargo, North Dakota 58402

January 7, 2013

Via Electronic and Fed Ex

Darrell Nitschke, Executive Secretary
North Dakota Public Service Commission, Dept. 0408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

**RE: REQUEST FOR RECONSIDERATION AND PROPOSAL
CASE NO. PU-12-59**

Dear Mr. Nitschke:

Northern States Power Company, doing business as Xcel Energy, respectfully submits the enclosed Request for Reconsideration and Proposal to the North Dakota Public Service Commission. Specifically, we request reconsideration of Finding of Fact 10 of the December 21, 2012 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER in this Case, pursuant to North Dakota Century Code § 28-32-40 and North Dakota Administrative Code § 69-02-06-02.

We additionally propose and commit to actions to initiate the further ratemaking proceedings contemplated by the Order, and propose a resolution for interim costs to ensure the Company and customers are not harmed pending the outcome of that further proceeding.

In accordance with North Dakota Administrative Code § 69-02-06-02(3), we have included an Affidavit of Service with this filing, and provide the original and seven copies to the Commission.

In closing, I'd like to say that we very much appreciated Commission Staff's willingness to take time last week to discuss and share their insights with us regarding the issue of reconsideration and our proposed resolution. Please contact

me at (701) 241-8632 or dave.sederquist@xcelenergy.com if you have any questions regarding this submission.

Sincerely,



DAVID H. SEDERQUIST
SR. REGULATORY CONSULTANT

Enclosures

Cc: Illona Jeffcoat-Sacco (via email)
Mike Diller (via email)
Patrick Fahn (via email)
Jerry Lein (via email)
Mark Gruman (via email)

NORTHERN STATES POWER COMPANY MINNESOTA

**NORTHERN STATES POWER COMPANY
ADVANCE DETERMINATION OF PRUDENCE-
GERONIMO WIND
APPLICATION**

CASE NO. PU-12-59

AFFIDAVIT OF SERVICE BY FEDERAL EXPRESS

STATE OF MINNESOTA
COUNTY OF HENNEPIN

SaGonna Thompson deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 7th day of **January, 2013**, she deposited with Federal Express, at Minneapolis, Minnesota, one (1) envelope, fully prepaid, securely sealed and a copy of the following document submitted in the above referenced proceeding:

REQUEST FOR RECONSIDERATION AND PROPOSAL

The envelope was addressed as follows:

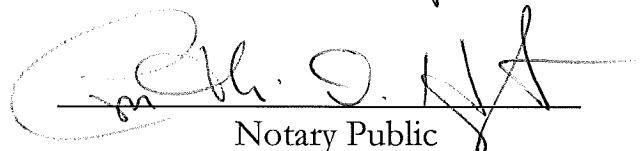
**MARK GRUMAN
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ADVOCACY STAFF
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600 EAST BOULEVARD AVENUE
BISMARCK, ND 58505-0480**

FEDERAL EXPRESS TRACKING NUMBER: 794458761136

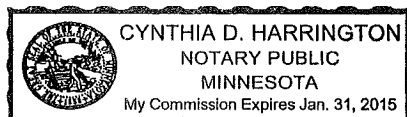
The address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this 7th day of January, 2013.




Notary Public

SEAL



STATE OF NORTH DAKOTA
BEFORE THE
NORTH DAKOTA PUBLIC SERVICE COMMISSION

NORTHERN STATES POWER COMPANY,
ADVANCE DETERMINATION OF
PRUDENCE – GERONIMO WIND
APPLICATION

CASE NO. PU-12-59

**PETITION REQUESTING RECONSIDERATION
AND PROPOSAL FOR RATEMAKING PROCEEDING**

INTRODUCTION

Northern States Power Company, doing business as Xcel Energy (Xcel Energy or the Company), respectfully submits this Request for Reconsideration and Proposal to the North Dakota Public Service Commission. Specifically, we request reconsideration of Finding of Fact 10 of the December 21, 2012 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (Order) in the this Case, pursuant to North Dakota Century Code Section 28-32-40 and North Dakota Administrative Code Section 69-02-06-02. We additionally propose and commit to actions to initiate the further ratemaking proceedings contemplated by the Order, and propose a resolution for interim costs to ensure the Company and customers are not harmed pending the outcome of that further proceeding.

Finding of Fact 10 of the Order appears to prevent our recovery of Prairie Rose Wind (PRW) purchased energy costs until such time as the further proceedings ordered by the Commission are complete. It is our understanding from the record and recent discussions with Commission Staff that the Commission may not have meant, in adding Order Point 2 just prior to issuing its Final Order, to prevent the Company's recovery of PRW energy costs incurred during the pendency of the further ratemaking proceedings. We acknowledge, however, the Commission may have intended this addition to the Order to protect North Dakota customers from potential over-recovery of PRW energy costs while the ultimate ratemaking treatment is determined.

For the reasons we discuss in this filing, we believe recovery of PRW costs incurred during the pendency of the ordered future ratemaking proceedings are allowed through the Company's Commission-approved Fuel Cost Rider (FCR). However, until such time that the ultimate ratemaking treatment is determined, we propose two

alternative methods for treatment of these costs that we believe are available, if parties agree. The first alternative is recovery of PRW energy costs through the FCR, subject to refund or adjustment. This approach is consistent with the need to develop a record of evidence before altering an approved ratemaking mechanism and tariff such as the FCR, and would recover the energy costs from customers that benefit from the energy as the costs are incurred, similar to other energy costs.

In the alternative, we propose deferred accounting treatment for these energy costs while the further proceedings take place. While Deferred Accounting may result in “catch-up” recovery of any approved costs for a period of time in the future, it will insulate customers from rate impacts during the pendency of the future ratemaking proceedings, and ensure the Company is not unduly impacted during the interim period.

In this filing, we:

- Provide and discuss the specific grounds upon which this request for reconsideration rests, as required by N.D. Admin. Code § 69-02-06-02;
- Discuss recovery through the FCR (subject to refund or adjustment) of costs incurred prior to completion of the ordered further ratemaking proceedings;
- Discuss deferred accounting as an alternative interim cost treatment mechanism; and
- Propose Company actions to initiate the further ratemaking proceeding contemplated by the Commission.

We respectfully request the Commission:

1. Reconsider Finding of Fact 10 of the Order and amend its second sentence to allow for interim treatment of PRW energy costs through either:
 - (a) The FCR, subject to refund or adjustment, pending the outcome of the further proceedings ordered by the Commission; or,
 - (b) Deferred Accounting, pending the outcome of the further proceedings ordered by the Commission; and
2. Approve our proposal to initiate the ratemaking determination proceeding as part of our pending electric rate case (Case No. PU-12-813); and
3. Conduct a hearing on this petition for reconsideration if the Commission determines that it is necessary.

A. Background

On January 31, 2012, Xcel Energy filed an application with the Commission seeking an Advanced Determination of Prudence (ADP) for a Purchased Power Agreement

with Geronimo Wind Energy, its successors and assigns, for the 200 MW PRW Project (the Resource Addition). The Commission issued a Notice of Hearing on the application August 1, 2012, and held a public hearing on October 22, 2012. At the hearing, pre-filed testimony was received, witnesses were cross examined, and a record was developed.

On November 30, 2012, the parties to this proceeding – the Company and Commission Advocacy Staff – filed a Stipulation and Agreement (Stipulation) that set out the parties’ understanding of the adequacy of the record in this case with respect to ratemaking treatment for the PRW resource addition. Among other things, the parties agreed that the “record in this Case is not sufficient to support any decision by the Commission with respect to the ratemaking effect of a denial of an ADP for the Resource Addition.”¹

On December 5, 2012, the Commission held a Work Session to discuss the Company’s ADP application. At this Work Session, the Commissioners in attendance determined that the appropriate course of action was to dismiss the Company’s application as untimely. Ratemaking treatment for the Resource Addition was not discussed at this Work Session.

On December 21, 2012, the Commission held a regularly-scheduled meeting to address, among other things, the final Order in this Case. At this meeting, an additional Order Point that had not been previously discussed was added to require further proceedings to establish a record regarding the appropriate ratemaking treatment for the costs of the Resource Addition.

From our assessment of the audio recording of this meeting and our understanding from discussions with Commission Staff, we believe there may not have been sufficient time to fully contemplate the implications of the specific Order language requiring such further proceedings prior to issuing the Order later that morning. We further believe that if the Commission would have had sufficient time to fully review the language of Finding of Fact 10, it would have made a finding consistent with the record (including the Stipulation) and procedural posture of this Case. The Company thus respectfully requests reconsideration of this limited aspect of the Order.

B. Standard of Review

North Dakota Century Code § 28-32-40 establishes the criteria under which a Commission Order may be found in error and establishes broad Commission

¹ Stipulation at 2.

discretion with respect to review of a petition for reconsideration.² The Commission has reconsidered its Orders when those Orders were not supported by the evidence, or supported by evidence not appropriately considered in the proceeding.³ As required by North Dakota Admin. Code § 69-02-06-02, the specific grounds upon which we base this request for reconsideration is that the record in this proceeding is insufficient to disallow any energy costs or determine ratemaking implications. Therefore, reconsideration is appropriate. We discuss the insufficiency of the record below.

Finding of Fact 10 provides:

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. [Emphasis added.]

The record in this proceeding is insufficient to support the ratemaking implications of the second sentence in Finding of Fact 10. The fact that questions regarding cost recovery were raised in this proceeding does not support prohibiting the Company from recovering these purchased energy costs during the pendency of a future proceeding. As previously noted, the Stipulation expressly provided the parties agreement that the “record in this Case is not sufficient to support any decision by the Commission with respect to the ratemaking ...” Finding of Fact 10 is inconsistent with the record and effectively revises the Company’s Commission-approved FCR tariff – a filed rate – without a proceeding or a record to support such a revision.

We additionally believe that a reasonable interpretation of the Order, which concludes that the Company’s ADP application is moot (Conclusion of Law 3), and dismisses the application altogether, with prejudice, is that the Commission considers the ADP application as never having been made. Had the Company never submitted the ADP application – the ADP statute allows but does not require such filings⁴ – the

² N.D.C.C. § 28-32-46 provides that a Commission Order is in error if it is not lawful, procedurally correct, based on all of the evidence in the record or supported by a preponderance of the evidence. N.D.C.C. § 28-32-40(4) (“[t]he administrative agency may deny the petition for reconsideration or may grant the petition on such terms as it may prescribe”).

³ *Re Northern States Power Company*, 141 P.U.R. 4th 452 (N.D.P.S.C. 1993).

⁴ See N.D.C.C. § 49-05-16 (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].

Company would be allowed to recover the PRW energy costs through the FCR, absent a finding that the costs were not prudent. Because the Company is authorized to recover the costs of “[e]nergy purchased from a renewable energy source” through its Commission-approved FCR,⁵ the costs of PRW should be recoverable under the FCR unless and until the Commission determines otherwise.⁶

The Commission did not make such a determination in the Order. Because the application has been dismissed as moot and there is no determination of prudence, there is no basis to alter the operation of the FCR tariff at this time. Moreover, as we have described, the record in this proceeding is insufficient to make such an alteration to the Commission-approved FCR tariff before the further proceedings are held.

C. Interim Period Cost Treatment Alternatives

In acknowledgement of the further proceedings ordered and our understanding of the intent of Finding of Fact 10, we propose two interim cost treatment alternatives that would ensure that the Commission’s action in this case is consistent with the customer protection intention of Finding of Fact 10 – and that prevents harm to both customers and the Company: (1) recovery through the Fuel Cost Rider, subject to potential refund or adjustment; and, (2) Deferred Accounting. While these alternatives are not authorized under our current FCR tariff or the automatic adjustment clause rules,⁷ we believe that under the current circumstances the Commission may order this interim ratemaking treatment, if all parties agree.⁸ We discuss these alternatives below:

1. Fuel Cost Rider Recovery, Subject To Refund or Adjustment

One alternative is recovery of PRW energy costs through our existing, approved FCR tariff mechanism until the Commission makes its final ratemaking determination in separate, future proceedings. However, to ensure customers are protected, given that the ultimate ratemaking treatment for those costs is not yet determined, we propose to recover these costs subject to refund or true-up.

⁵ Northern States Power Company, North Dakota Electric Rate Book – NDPSC No. 2, Fuel Cost Rider, Section No. 5, Second Revised Sheet No. 76.

⁶ See N.D.C.C. § 49-02-03 (requiring hearing before the Commission may find existing rates unjust and unreasonable and fix new rates).

⁷ See N.D. Admin. Code § 69-09-02-39.

⁸ See *In re Otter Tail Power Company*, Docket No. PU-401-93-520, 1993 WL 560361 (N.D.P.S.C. 1993) (providing that recovery of certain costs can be retroactively addressed upon agreement of the parties but absent such agreement constitutes retroactive ratemaking).

From the perspective of customer bills, interim recovery through the FCR will facilitate costs to be recovered from customers during the period in which they consume the energy generated by PRW. If the Commission ultimately decides that the ratemaking treatment of these costs should be altered, we can initiate a process that credits customers for any difference in approved costs through the same FCR mechanism.⁹

2. *Deferred Accounting*

A second alternative that would preserve the Company's opportunity to recover the interim PRW energy costs, and would not immediately impact customers, is Deferred Accounting. Deferred Accounting treatment would avoid any billing of customers of PRW energy costs during the pendency of the ratemaking proceedings, while also protecting the interests of the Company by preserving the ability for future recovery after the further proceedings. PRW energy costs deferred during the interim period but ultimately approved for recovery would be recovered from customers over a future Commission-approved amortization period.

While this methodology minimizes immediate impact to customers, it creates a mismatch between the period in which the energy is used and the related recovery of costs, and may "stack" current and interim costs on North Dakota customers during the future recovery period.

Both of these interim cost recovery methodologies:

- Ensure customers and the Company are not harmed during the interim period while the further proceedings are conducted; and
- Protect customers, consistent with our understanding of the intent of Finding of Fact 10.

In Section F below, we propose alternative wording for Finding of Fact 10 that affirmatively addresses the ratemaking treatment that is consistent with the record in this proceeding, incorporates our proposals for treatment of interim PRW costs, and establishes our pending rate case as the proceeding in which to determine final ratemaking treatment for PRW costs.

D. Proceedings to Determine Ratemaking Treatment

⁹ One of the issues to be addressed in the further proceedings would be how to calculate alternative energy costs if the PRW energy costs are determined to be not fully recoverable in the FCR. The difference between the PRW energy cost and the calculated cost of an alternative energy resource would be subject to a future FCR true-up.

The Commission ordered “[f]urther proceedings to establish a record regarding the appropriate ratemaking treatment for the costs of the purchase power agreement with Geronimo Wind Energy, LLC.” (Ordering Clause 2)¹⁰ Therefore, a record will be established with respect to the appropriate ratemaking treatment for PRW energy costs not resolved in this Case.

The Order does not expressly establish a new case to review the ratemaking treatment for the PRW energy costs. The Company proposes that its pending electric rate case filed December 18, 2012 in Case No. PU-12-813, may be an appropriate proceeding in which to consider the ratemaking issues, since the Company’s entire 2013 electric revenue requirement, including the PRW energy costs, can be reviewed in that proceeding. To this end, we commit to filing supplemental testimony in our pending rate case regarding the appropriate ratemaking for the PRW energy costs within 30 days of the Commission approving this proposed course of action.¹¹

E. Proposed Change to Finding of Fact 10

As noted above, reconsideration of Finding of Fact 10 is appropriate. Below, we propose alternative wording that establishes our pending electric rate case as the proceeding in which the ratemaking determinations will be made. The proposed wording also clarifies that there is no ratemaking determination being made in the Order; provides for treatment of interim PRW energy costs through either the FCR tariff (subject to refund or adjustment) or the establishment of deferred accounting; and, alleviates the FCR tariff issue by clarifying that these proposed cost treatment alternatives are agreed-to by parties:

1. *Recovery through the FCR, subject to refund*

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 in the Company’s recently filed 2013 test year electric rate case (Case No. PU-12-813). before any ~~The costs of the PPA are recovered from North Dakota ratepayers. by the Company through its Fuel Cost Rider will be subject to refund or adjustment pending the completion of~~

¹⁰ See N.D.C.C. § 49-02-02 (providing for the Commission to hold hearings on its own motion); *See also* N.D.C.C. § 49-02-03 (providing for the Commission to fix rates).

¹¹ If the Commission instead orders a separate proceeding, the Company would make additional filings pursuant to the procedures and schedule determined by the Commission.

the proceedings that determine ratemaking treatment, as agreed-to by the parties.

2. *Deferred Accounting of interim costs*

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 in the Company's recently filed 2013 test year electric rate case (Case No. PU-12-813). ~~before any~~ All costs of the PPA are recovered from North Dakota ratepayers. shall receive deferred accounting treatment subject to the outcome of the further proceedings that determine ratemaking treatment, as agreed-to by the parties.

F. Rehearing

North Dakota Century Code § 69-02-06-02 requires a petition for reconsideration to state if rehearing or oral argument is requested. At this time, Xcel Energy does not believe that rehearing or oral argument is necessary. However, to the extent that the Commission requires additional information or desires additional explanation with respect to this Petition or proposed next steps, the Company believes that a hearing may be the most appropriate forum.

CONCLUSION

Xcel Energy respectfully requests that the Commission:

1. Reconsider Finding of Fact 10 of the Order and, as agreed-to by parties, amend its second sentence to allow for interim treatment of PRW energy cost through either:
 - (a) The FCR, subject to refund or adjustment, pending the outcome of the further proceedings ordered by the Commission; or,
 - (b) Deferred Accounting, pending the outcome of the further proceedings ordered by the Commission; and
2. Approve our proposal to initiate the ratemaking determination proceeding as part of our pending electric rate case (Case No. PU-12-813); and
3. Conduct a hearing on this petition for reconsideration if the Commission determines that it is necessary.

Dated: January 7, 2013

Northern States Power Company

Respectfully submitted,

BRIGGS AND MORGAN, P.A.

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