



February 22, 2016

Darrell Nitschke, Executive Secretary
North Dakota Public Service Commission
Dept. 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

RE: FIRST REVISED NEGOTIATED AGREEMENT
CASE NOS. PU-12-813, *ET. AL.*

Dear Mr. Nitschke:

Enclosed for filing in the above referenced Cases, please find the executed version of the First Revised Negotiated Agreement (Revised Agreement) between Northern States Power Company (NSP) and Commission Advocacy Staff. The unexecuted version of the agreement was filed on Friday, February 19, 2016.

Thank you.

Sincerely,

DAVID SEDERQUIST
SR. REGULATORY CONSULTANT

cc: Mitch Armstrong
Illona Jeffcoat-Sacco
Pat Fahn
Jerry Lein
Mike Diller
Jack Schuh
Blaine Johnson
ALJ Timothy Dawson - OAH File Nos. 20150578, 20150579, 20150580, 20150581, 20150582, 20150583, 20150584 and 20160685

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Northern States Power Company / Public Service Commission Advocacy Staff
Christopher Clark / John Schuh

STATE OF NORTH DAKOTA
BEFORE THE
PUBLIC SERVICE COMMISSION

NORTHERN STATES POWER COMPANY
2013 ELECTRIC RATE INCREASE
APPLICATION

CASE NO. PU-12-813

FIRST REVISED NEGOTIATED AGREEMENT
RELATING TO
NORTH DAKOTA GENERATION RESOURCE POLICY

I. INTRODUCTION

This First Revised Negotiated Agreement (Agreement) is entered into by Northern States Power Company, a Minnesota corporation (NSP or the Company) and the North Dakota Public Service Commission (Commission) Advocacy Staff (Staff) as of February 22, 2016. NSP and Staff may each be referred to as a “Party” and may be collectively referred to as the “Parties.” This Agreement revises and supersedes the Negotiated Agreement Relating to North Dakota Generation Resource Policy executed by the Parties and filed with the Commission on September 30, 2015 (Original Negotiated Agreement) by incorporating revisions to the Original Negotiated Agreement consistent with the Commission’s direction provided at the February 3, 2016 work session in this Case.

This Agreement stems from the Parties’ commitments contained in the Revised Second Amended Comprehensive Settlement Agreement (Rate Settlement) in Case Nos. PU-12-813, PU-13-706, PU-13-707, PU-13-708, PU-13-742, PU-13-743, PU-13-194, PU-13-195 (collectively, the Rate Case) adopted by the North Dakota Public Service Commission (Commission) on February 26, 2014. As required by the Rate Settlement, the Parties have negotiated in good faith to obtain this Agreement

utilizing the guiding principles in Section II.A of the Rate Settlement as a basis for their negotiations (which are provided for reference as Schedule 1 to this Agreement). However, additional information not available when the Rate Settlement was entered into (*e.g.*, the Company's 2015 Resource Plan (Case No. PU-15-19), additional proposed resource additions and the Clean Power Plan) have led the Parties to slow down and reassess how to viably approach the very complex issue of divergent state energy policies.

The Parties concur that varying state energy policies within the NSP System footprint have led to differences in each state's approach to generation resource development. Given this, and the Company's plans to add significant generation resources to its system over the next twenty years to address load requirements, replace aging infrastructure, and comply with new environmental regulations, the Parties have determined that the repricing approach contemplated in the Rate Settlement (and referred to as the "Restack") may not be sufficiently robust to address concerns regarding differing state energy policies while allowing the Company a reasonable opportunity to earn its authorized rate of return.

Therefore, the Parties have determined that the development of an effective long-term framework to resolve these issues is imperative. By this Agreement, the Company binds itself to devise and implement a regulatory framework to: 1) address the impact of divergent state energy policy on NSP's customers; 2) increase the geographic diversity of NSP System generation while maintaining system reliability; and 3) provide monetary value to North Dakota customers in the event the Company is unable to make good on this Agreement.

The Parties intend this Agreement to provide a "bridge period" for the Company to propose and implement, in collaboration with the Commission and Staff, a long-term "Resource Treatment Framework," or RTF. This Agreement binds the Company to file an RTF proposal with the Commission no later than January 1, 2017,

with the intention to implement it no later than January 1, 2018. This Agreement also requires the Company to accelerate, from 2036 to 2025, its commitment to construct and install an integrated NSP System thermal generating resource in eastern North Dakota, preferably near the city of Fargo.

II. INVESTMENT IN NORTH DAKOTA THERMAL GENERATION

The Parties agree that the Commission has long encouraged the Company to invest dispatchable, thermal system generation in eastern North Dakota. The Parties also agree that there are local reliability and system benefits in locating thermal generation within or near its North Dakota service territory. In light of this, the Company agreed as part of the Rate Settlement to develop up to 400 MW of dispatchable, thermal generation in eastern North Dakota by 2036 (the 2036 Commitment) consistent with least cost planning and prudent ratemaking principles.

Since making the 2036 Commitment, the Company has completed its 2016-2030 Resource Plan and has identified a capacity need arising in 2025. To fulfill this need with thermal generation in North Dakota, and to reciprocate the cost recovery provisions agreed to by Staff in Section III of this Agreement, the Company agrees to develop, own, and operate (or alternatively, cause to be developed and operated on its behalf through a power purchase agreement or other contractual arrangement) a combustion turbine with a capacity of at least 200 MW in eastern North Dakota, no later than December 31, 2025. The costs of the generating facility will be allocated to all state jurisdictions served by the Company in a manner consistent with other NSP System resources.

Attainment of this commitment is contingent on the Company's receipt of all necessary and appropriate permits and regulatory approvals. Further, except as modified by this Section II, all provisions of the 2036 Commitment remain in place, including without limitation, the requirements that the combustion turbine agreed to

in this paragraph reasonably: 1) address a system capacity need, and 2) represent a least-cost resource when also considering the local reliability and system benefits of developing thermal generation in North Dakota.

If for any reason the Company does not place in service the combustion turbine contemplated by this Section II by December 31, 2025, the Company will provide a refund to North Dakota customers in 2026 equal to fifty percent of the revenues collected from North Dakota customers during the ten year period of 2016-2025 that represents the difference between the actual revenues received by the Company for the biomass power purchase agreements (identified below) and the amount North Dakota customers would have paid for these resources had they been disallowed for recovery by the Commission; recognizing that – if disallowed – North Dakota customers would have paid an adjusted system average cost of fuel for the energy (and associated capacity) from these resources. The biomass contracts subject to this paragraph are: 1) KODA Energy LLC; 2) WM Renewable Energy (MN Methane); 3) Pine Bend; 4) FibroMinn; 5) Laurentian Energy Authority I; and 6) St. Paul Cogeneration.

III. RECOVERY OF SELECTED GENERATION RESOURCES

A. *Existing System Resources.* In recognition of the Company's accelerated commitment to construct thermal generation in North Dakota, and the interest of the Parties to achieve a long-term RTF, the Parties agree that the resources listed in Attachment A to this Agreement are to be excluded from the calculation of the Company's North Dakota Fuel Cost Rider beginning the later of January 1, 2016 or the date this Agreement is adopted by the Commission. The North Dakota portion of the capacity and energy costs of all other NSP System resources (including Company-owned facilities and Power Purchase Agreements) in-service as of February 26, 2014 are to be recovered by the Company through its base rates,

Fuel Cost Rider (FCR), and/or Renewable Energy Rider (RER), as may be applicable, during the term of this Agreement. The Parties further agree that the costs of the Border Winds, Pleasant Valley, and Odell wind resource additions currently being constructed are to be included in the Company's rate base, Fuel Cost Rider (FCR), and/or Renewable Energy Rider (RER), as applicable. The Commission's recent Orders in Case Nos. PU-15-95 and PU-14-810 (Aurora Solar and Solar Portfolio) denying Advance Determination of Prudence are unaffected by this Agreement.

B. *Pending Resource Additions.* The Parties agree that the proposed Calpine Mankato Combined Cycle PPA currently pending before the Commission in Case No. PU-15-96 is not subject to this Agreement.

C. *Future Pre-RTF Resource Additions.* In the event that the Company proposes other resource additions between the date this Agreement is executed by the Parties and the date an RTF is implemented by the Commission, the Company will bring these resources for approval before the Commission consistent with its obligations under the Rate Settlement, Case No. PU-12-59 and Case No. PU-07-776.

IV. RESOURCE TREATMENT FRAMEWORK

The Parties recognize that the Company, and the utility industry as a whole, is entering a period of significant uncertainty. This uncertainty includes the potential for new federal environmental regulations regulating carbon dioxide emissions and their impact on the utility industry. Further, the Company is entering a 20 year period in which it anticipates significant portions of its generating fleet will be retired and replaced.

In light of this, the Parties have entered into this Agreement to address short-term treatment of resources (*i.e.*, existing and certain pending resources) and provide time for careful consideration as to how the Company should best proceed to ensure

future generation resources are in place – and the costs properly assigned – to meet the energy and capacity needs of its customers.

To that end, the Parties agree that the Company, in consultation and collaboration with the Commission and its Staff, will propose a long-term RTF which shall address the Company’s long-term plans for addressing divergent state energy policies. The Company must file the proposed RTF with the Commission no later than January 1, 2017 with the expectation that the RTF, if approved by the Commission, will be implemented on January 1, 2018. Mutual agreement between the Company and Staff is desired but not a prerequisite to the Company making the filing contemplated by this paragraph.

V. OTHER MATTERS

A. *Extension of Rate Case Moratorium.* In the Rate Settlement the Company agreed to a moratorium for further rate adjustments until 2017. To provide sufficient time for the Commission to consider the Company’s RTF during 2017, the Company commits to extend this rate case moratorium one additional year. To that end, the Company may not increase base rates – on an interim or permanent basis – prior to January 1, 2018. To ensure that rates remain just and reasonable during 2017, in the event that the Company’s annual weather-normalized earnings exceed a 10.25 percent return on equity during 2017, the Company will refund to customers one hundred percent (100%) of any weather-normalized revenue associated with the excess earnings.

B. *Other Commitments of the Company.* To facilitate successful implementation of this Agreement, the Company agrees to waive: a) any claims regarding the enforceability of this Agreement; and b) any claims against the Commission with respect to the adequacy of rates set by the Commission resulting strictly from this Agreement. The waiver in this paragraph is effective as of the date this Agreement is

executed by the Company and terminates on January 1, 2018. Further, the waiver in this paragraph does not limit or prohibit NSP's right to request rehearing or appeal of any Commission order with respect to either the prudence of a particular resource or the adequacy of rates set by the Commission.

C. *Commitment of Advocacy Staff.* To facilitate successful implementation of this Agreement, Staff agrees to cooperate with the Company consistent with negotiating principle 7 of the Rate Settlement.

D. *Demand Allocator.* The Parties agree that the conclusions of the Allocator Study filed with the Commission on April 27, 2015 support the continued use of the 12 CP jurisdictional allocation method. To that end, this Agreement establishes a rebuttable presumption that the 12 CP jurisdictional allocation method is appropriate for allocating applicable system costs between North Dakota, South Dakota and Minnesota. In the event that circumstances have sufficiently changed such that Staff believes it is appropriate to rebut the rebuttable presumption established in this paragraph: 1) Staff will notify NSP of its intentions as early as possible; and 2) Staff will work in good faith with NSP to reach agreement on an appropriate allocation methodology in light of the rebuttable presumption established in this paragraph. The provisions of this paragraph expire on December 31, 2025.

VI. OTHER TERMS AND CONDITIONS

A. *Environmental Attributes.* "Environmental Attributes" are those credits, allowances, offsets and other similar rights associated with renewable electric generation that can be used to (i) satisfy the Company's renewable energy requirements in any of the states it operates in, and/or (ii) claim responsibility for, ownership of, avoidance of, or reduction of legally-recognized emissions or pollutants. The Company and Staff agree to establish the principle that it would be inequitable to allocate Environmental Attributes to the Company's North Dakota

jurisdiction from a generation resource in the event that 1) the Commission rejects an Advanced Determination of Prudence for such resource, unless and until full recovery of the allocable North Dakota costs is approved in a later proceeding, or 2) costs of the generation resource are disallowed in a rate case or other proceeding.

In the event that new regulations promulgated by the federal government under the Federal Clean Power Act, 42 U.S.C. §§ 7401, *et. seq.*, known as the Clean Power Plan, 80 Fed. Reg. 64661 (Oct. 23, 2015) (to be codified at 40 C.F.R. pt. 60), or any Clean Power Plan successor regulations, state or federal implementation plans, or related court orders conflict with the provisions of this Section VI.A., then these regulations, plans, or court orders shall control.

B. *Special Accounting.* The Company may petition the Commission for special accounting treatment for any disallowances that result from this Agreement.

C. *Basis of Negotiated Agreement.* This Agreement is subject to the approval of the Commission.

D. *Negotiations Privileged.* All offers, discussions and information exchanged related to the negotiation of this Agreement are considered privileged by the Parties and may not be used in any manner in connection with any regulatory proceedings or otherwise, except as provided by law. In the event that the Commission does not approve this Agreement, it shall not constitute part of the record in Case No. PU-12-813 and no part thereof may be used by any Party for any purpose in any other proceeding.

E. *Applicability and Scope.* This Agreement is binding on the Parties, and their successors, assigns, agents, and representatives for the specified term.

F. *Effect on Rate Settlement.* This Agreement is a product of the Rate Settlement. It will control over the terms of the Rate Settlement with respect to the subject matter contained herein.

G. *Ongoing Support.* The Parties will jointly support the approval of this Agreement, without amendment or modification, by the Commission.

H. *Complete Agreement.* This Agreement and any Attachments and Schedules attached hereto will constitute the entire agreement between the Parties relating to the subject matter herein and will supersede all prior contracts and understandings between them relating to such matters.

I. *Counterparts.* This Agreement may be executed in any number of counterparts by the Parties, each of which when so executed will be an original, but all of which together will constitute one and the same instrument.

J. *Effective Date.* This Agreement shall be effective upon the Commission issuing a final, non-appealable order adopting this Agreement. The Company will make all necessary compliance filings to reflect this Agreement in a timely manner and guided by a schedule established jointly by the Parties.

K. *Termination for Commission Modification.* This Agreement is subject to approval by the Commission who retains continuing oversight pursuant to N.D.C.C. § 49-05-09. If the Commission order initially approving this Agreement modifies or conditions this Agreement it will be considered terminated if either Party files a letter with the Commission within thirty (30) calendar days of the order date stating that the modification is unacceptable.

L. *Petition for Modification or Termination.* The Company may petition the Commission for modification or termination of this Agreement for good cause shown.

VII. CONCLUSION

The Parties agree that the provisions of this Agreement will support the Commission's interest in advancing North Dakota's energy policy priorities and lead to a just and reasonable outcome.

[SIGNATURE PAGE FOLLOWS]

Dated this 22nd day of February, 2016.

Northern States Power Company,
A Minnesota corporation

By: 

Christopher B. Clark
President
Northern States Power Company (MN)

Dated this 22nd day of February, 2016.

Northern Dakota Public Service Commission Staff

By: s/John M. Schuh

John M. Schuh, Advocacy Staff
Counsel to the Commission

[SIGNATURE PAGE TO FIRST REVISED NEGOTIATED AGREEMENT]