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July 30, 2015

— Via Email and Federal Express —

Mr. Darrell Nitschke, Executive Secretary
North Dakota Public Service Commission
State Capitol Building – 12th Floor
Bismarck, North Dakota 58505

Re: APPLICANT'S PROPOSED ORDER AND LATE FILED EXHIBITS
REQUEST FOR APPROVAL OF AN ADVANCE DETERMINATION OF PRUDENCE
(ADP) FOR A POWER PURCHASE AGREEMENT WITH AURORA SOLAR, LLC FOR
UP TO 100 MW OF SOLAR GENERATION (CASE NO. PU-15-095)

Dear Mr. Nitschke:

Northern States Power Company, doing business as Xcel Energy, submits to the North Dakota Public Service Commission in the above-referenced matter, the Company's Proposed Order and the following late filed exhibits:

NSP-LF1 – MISO Cost Benefit Analysis

NSP-LF2 – Minnesota Law and Goals, Dates – cheat sheet

*NSP-LF3 – How Does Solar Cost Flow to Wisconsin Company
(Wisconsin Interchange Agreement Whitepaper)*

*NSP-LF4 – Table 1, p. 10 update – (ND view of table 10)
(Fall 2014 Forecast, 2016-2030 Resource Plan Charts)*

NSP-LF5 – Advanced Determination of Prudence Issue Timeline

*NSP-LF6 – Minnesota Competitive Bid Process Overview
(force or impact of ND law)*

Darrell Nitschke
July 30, 2015
Page 2 of 2

An original and four (4) copies of the Proposed Order and late filed exhibits are being provided via Federal Express. Please contact me if you have any questions regarding this filing.

Sincerely,



DAVID H. SEDERQUIST
Sr. Consultant, Regulation & Finance

Enclosures

cc: Mike Diller
Illona Jeffcoat-Sacco
Victor Schock
Jack Schuh
Jerry Lein

Advanced Determinations of Prudence Issue Timeline
(force or impact of ND law)

I. Introduction

At the July 21, 2015 hearing, the Commission raised questions with respect to the legal and practical implications of granting or denying an application for an advanced determination of prudence (ADP) pursuant to North Dakota Century Code Section 49-05-16 (the ADP Statute). This late filed exhibit provides a history of the ADP Statute, reviews the various commitments the Company has made with respect to the use of the ADP Statute, and then discusses the legal and practical implications of a Commission denial of an ADP application.

II. Timeline

- 2005 – ADP Statute enacted.¹
- 2008 – The Company agreed 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” of a capacity of at least 50 MW or length of 50 miles.²
- 2009 – ADP Statute amended to provide for filing fee.³
- 2010 – Question raised during CapX2020 Transmission Lines ADP hearings as to the effects of failure to grant an ADP; parties informally agreed that failure to grant an ADP does not mean that the Commission could not at some later point find the project prudent; no formal determination of this issue made by the Commission.⁴
- 2011 – ADP Statute amended to 1) define the term “resource addition,” to mean the 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, 2) replace the *annual* project status reporting requirement to a *periodic* reporting requirement, and require the reporting of any material changes in

¹ 2005 North Dakota Laws Ch. 396, § 1 (H.B. 1324).

² Case No. PU-07-776 (Xcel Energy Test Year 2008 Rate Case Settlement).

³ 2009 North Dakota Laws Ch. 40, § 5 (S.B. 2137).

⁴ See Case No. PU-09-678.

- circumstances affecting the resource addition, , and 3) allow a utility to request deferred accounting for recovering the costs of a project for which the Commission has ordered a discontinuation of prudence⁵, limit the amortization period for such a project to 5 years, and disallow any return on investment for the period after the discontinuance is issued.
- 2012 – Prairie Rose Wind ADP Case.
 - Company commits to filing applications for ADP within 14 days of making similar Certificate of Need and/or power purchase agreement (PPA) approval filings in Minnesota.⁶
 - Parties brief but Commission does not decide the appropriate application of the prudence standard.⁷
 - Commission dismisses application with prejudice for not being “advanced” since there was no regulatory condition precedent in the applicable PPA.⁸
 - Company includes North Dakota regulatory approval conditions precedent in all PPAs going forward
 - 2013 – ADP Statute amended to increase amount of filing fee.⁹
 - 2014 – In settlement of its 2013 Test Year rate case, the Commission adopted the settlement agreement that required:
 - An ADP be granted for any PPA of a resource of 50 MW or greater prior to its inclusion in the Company’s Fuel Cost Rider (FCR); and
 - An ADP granted for any North Dakota renewable energy project prior to its inclusion in the Company’s Renewable Energy Rider.¹⁰

III. Implications of Denial of ADP

As indicated in the above the timeline, the Company is required through settlement agreements or other commitments to file ADPs in a manner that provides the Commission an opportunity to review the Company’s proposed resource additions through a pre-approval process. The Company must also obtain an ADP prior to utilizing certain cost recovery mechanisms. This means that the Company is subject to requirements that go beyond the terms of the

⁵ 2011 North Dakota Laws Ch. 347, § 1 (H.B. 1221).

⁶ Case No. PU-12-059 (Nov. 5, 2012 Letter to the Commission).

⁷ See Case No. PU-12-059 (Applicant’s Post-Hearing Brief).

⁸ Case No. PU-12-059 (Order dismissing Prairie Rose Wind application).

⁹ 2013 North Dakota Laws Ch. 360, § 5 (S.B. 2112).

¹⁰ Case No. PU-12-813 (Order Adopting Settlement).

ADP statute. By statute, the Commission's issuance of an ADP is binding for ratemaking purposes.¹¹ However, the additional requirements agreed to over the years raises additional implications beyond the plain terms of the ADP Statute should the Commission deny an application for ADP.

At a minimum, denial of an ADP for a PPA would mean that the Company may not recover the costs of a particular PPA through traditional means (*i.e.*, through the FCR) unless and until a subsequent ADP is issued by the Commission. This is in contrast with the Commission's general fuel adjustment rules which allow the qualifying costs of purchased power to flow through a utility's FCR without prior approval.¹² Given the Company's settlement commitments, the Commission's pre-approval of a PPA through an ADP is a *necessary* requirement for cost recovery of the PPA resource. Therefore, the denial of an Xcel Energy ADP request for a PPA is a denial of recovery of the costs of the PPA.

That said, the Company recognizes that the Commission may revisit its orders at any time¹³ and that the Company may make additional applications for reconsideration and issuance of an ADP subsequent to a Commission denial of an initial ADP application. This means that, in theory, the Company may seek to include in rates, at some later time, the costs of a resource addition denied an ADP. The Company has done so in the past.¹⁴ However, a Commission denial of an ADP is a strong indication that it is unlikely that the Commission would grant an ADP in a subsequent proceeding.

From a practical perspective, the Commission's denial of an ADP for a PPA is an indication of the Commission's view of a particular resource addition; the Company then takes this view into account in managing its business. For example, denial of ADP may trigger the Company's ability to terminate a PPA since it will not have assurance of recovery of the North Dakota portion of the costs of that resource addition. Alternatively, if the Company decides to move forward with a PPA for which the Commission has denied an ADP, it will do so recognizing that it will not recover a portion of the costs of the resource addition from its North Dakota customers. Therefore, we may seek to utilize

¹¹ N.D.C.C. § 49-05-16.

¹² N.D.A.C. § 69-09-02-39.

¹³ N.D.C.C. § 49-05-09.

¹⁴ Case No. PU-12-813 (including in rates the costs of the Prairie Rose Wind project through settlement of the 2013 Test Year rate case).

the energy and capacity from that PPA for purposes other than serving our North Dakota customers in an effort to recoup our costs. Consequently, it is possible that the capacity and energy from such PPA may not be available to our North Dakota customers at some later date.

In summary, while it is technically feasible that the Company could seek, at some later point in time, recovery of a particular resource addition for which an ADP has been previously denied, the ADP process as applicable to Xcel Energy acts as a pre-approval process for PPAs (50 MW and larger) and the Company may not recover the costs of the PPA without the Commission's subsequent reconsideration and issuance of an ADP.