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December 11, 2015

VIA U. S. AND ELECTRONIC MAIL

Mr. Darrell Nitschke, Executive Secretary
North Dakota Public Service Commission
600 East Blvd.
Bismarck, ND 58505

RE: INFORMATION REQUESTS AT RENEWABLE ENERGY RIDER (RER)
AND TRANSMISSION COST RIDER (TCR) INFORMAL
HEARINGS CASE NOS. PU-15-683 AND PU-15-684

Dear Mr. Nitschke:

Northern States Power Company, doing business as Xcel Energy, respectfully submits the attached responses to requests for information from the North Dakota Public Service Commission, made during the Informal Hearings of the above-referenced dockets held on December 2, 2015. The requests were as follows:

- A. Related to the RER charge:
1. Commissioner Christmann asked for a description of how the North Dakota Investment Tax Credit (NDITC) is calculated, and the impact on the RER.
 2. Commissioner Fedorchak asked what the estimated fuel cost savings, if any, would be that would potentially offset the RER charges.

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David Sederquist

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B. Related to the TCR charge:

1. Commissioner Kalk requested information pertaining to when the Company's line relocation costs near a roadway are reimbursed by the respective state Department of Transportation.

We have included responses to these questions as Attachments A-1, A-2, and B-1. Please contact me if you have any further questions. Thank you.

Sincerely,



David H. Sederquist
Sr. Regulatory Consultant

CC: Jerry Lein
Sara Cardwell

Northern States Power Company, Minnesota
North Dakota Investment Tax Credit Calculation

<u>Border Winds Generating Facility</u>	<u>Preliminary Project Cost</u>	<u>Preliminary ITC Cost Basis*</u>
Turbine, Land, O&M Building, Substation, Collection Substation	257,614,000	239,114,000
Transmission	5,120,000	0
Oversight Cost	2,386,000	2,386,000
Transmission Serving Generation	335,000	335,000
	<u>265,455,000</u>	<u>241,835,000</u>
North Dakota ITC rate		<u>15%</u>
Total North Dakota ITC		<u>36,275,250</u>

North Dakota Century Code Section 57-38-01.8 provides for an investment tax credit (ITC) based on the amount invested in certain qualifying renewable energy facilities, including the Border Winds Project. ND statute does not provide detailed guidance as to what costs qualify for the ITC, but because ND law generally conforms to federal guidance, the Company assumes the ND ITC base is similar to the federal ITC base under IRC Sec. 48. In general, under IRC Sec. 48, costs includible in the ITC base exclude land, buildings, transmission assets, and intangibles.

NSPM is estimating a North Dakota ITC for the Border Winds Project of \$36,275,250. As noted above, this credit can only be utilized to the extent of NSPM's North Dakota income tax. NSPM is currently forecasted to have a cumulative North Dakota income tax liability of \$8,374,822 from 2015 through 2029 (when the credit carry-forward expires). Therefore, only \$8,374,822 of the North Dakota ITC benefit (or \$5,443,634 net of the federal tax exemption) will be accrued.

* Certain investments do not qualify for the ND ITC.

Xcel Energy Inc. & Affiliates
 North Dakota Tax Liability
 2015-2029

NSPM Separate Company

	<u>ND Inc. Tax</u>	<u>ND Inc Tax net of Fed*</u>	<u>Gross-up Factor</u>	<u>Revenue Req'ment</u>
2015	\$0	\$0	1.6077558	\$0
2016	\$56,217	\$36,541	1.6077558	-\$58,749
2017	\$586,271	\$381,076	1.6077558	-\$612,677
2018	\$649,581	\$422,228	1.6077558	-\$678,840
2019	\$682,753	\$443,789	1.6077558	-\$713,504
2020	\$640,000	\$416,000	1.6077558	-\$668,826
2021	\$640,000	\$416,000	1.6077558	-\$668,826
2022	\$640,000	\$416,000	1.6077558	-\$668,826
2023	\$640,000	\$416,000	1.6077558	-\$668,826
2024	\$640,000	\$416,000	1.6077558	-\$668,826
2025	\$640,000	\$416,000	1.6077558	-\$668,826
2026	\$640,000	\$416,000	1.6077558	-\$668,826
2027	\$640,000	\$416,000	1.6077558	-\$668,826
2028	\$640,000	\$416,000	1.6077558	-\$668,826
2029	<u>\$640,000</u>	<u>\$416,000</u>	1.6077558	<u>-\$668,826</u>
Total	\$8,374,822	\$5,443,634		-\$8,752,034

* Federal income taxes are deductible in ND

Impact of ND Investment Tax Credit - 2016

RER Rate - 2016 (as filed)		
2016 Revenue Requirements	\$	2,161,014
Forecasted kWh Sales		2,309,682,896
RER Cost per kWh	\$	0.000936

Non-heating customer typical bill impact (750 kWh): \$0.70

RER Rate - 2016 (NDITC excluded)		
2016 Revenue Requirements	\$	2,219,763
Forecasted kWh Sales		2,309,682,896
RER Cost per kWh	\$	0.000961

Non-heating customer typical bill impact (750 kWh): \$0.72

Difference		
2016 Revenue Requirements	\$	58,749
Forecasted kWh Sales		2,309,682,896
RER Cost per kWh	\$	0.000025

Non-heating customer typical bill impact (750 kWh): \$0.02

Border Winds, Courtenay Generation Facilities
2016 Fuel Cost Off-set

1	Est. Wind Production (MWH)*	490,167	
2	Approx. Incremental Replacement Cost/mWh	<u>\$20.72</u>	
3	Incremental Replacement Cost	\$10,156,260	Ln 1 x Ln 2
4	NSPM/NSPW Interchange Allocator	84.13%	
5	ND Jurisdictional Energy Allocator	<u>6.56%</u>	
6	Composite ND Allocation	5.52%	Ln 4 x Ln 5
7	ND Replacement Impact	\$560,524	Ln 3 x Ln 6
8	Total ND Sales (KWH)	2,309,682,896	
9	Incremental Cost per KWH	\$0.000243	Ln 7 / Ln 8
10	Avg. Mo. Non-heating Residential Usage (kWh)	750	
11	Residential savings per month	\$0.18	Ln 9 x Ln 10

* Courtenay Generating Facility commercial operations date is anticipated to be on or near Dec. 31, 2016, so there is no production modeled here.

**Summary of Utility Relocation Cost Allocation
in North Dakota, South Dakota, and Minnesota**

When utility facilities need to be relocated due to road improvement projects, allocation of the relocation costs depends on general principles of property law, federal and state statutes and regulations/rules, the road authority's policies, and the specific terms of the permit issued to the utility or an agreement between the utility and the road authority. The following sections provide a general overview of utility relocation cost allocation for state, local, and federally-funded road improvement projects in North Dakota, South Dakota, and Minnesota.

I. North Dakota.

A. State Highway.

By statute, utility facilities may be placed in state highway rights-of-way outside of the limits of a municipality, so long as the utility obtains permission from and complies with the requirements of the North Dakota Department of Transportation ("NDDOT"). See N.D.C.C. §§ 24-01-39 and 24-01-40. The NDDOT's policy regarding installation of utility facilities within highway rights-of-way, and the allocation of costs associated with utility relocation for a state highway improvement project (without federal funding), are outlined in A Policy for Accommodation of Utilities on State Highway Right-of-Way Manual (December 2006) ("Utility Accommodation Policy"), which is available on the NDDOT's website at: <https://www.dot.nd.gov/manuals/manuals-publications.htm>.

When a utility must be relocated because it conflicts with a proposed state highway improvement project, the relocation costs are allocated as follows:

1. For utility facilities installed after 1959 within 100 feet of the centerline of a state highway, or within 75 feet of the centerline of a county highway, the utility facilities must be relocated at the utility's expense. See Utility Accommodation Policy, Section I.F.1; see also N.D.C.C. §§ 24-01-42 and 24-01-43 (enacted in 1959).
2. Except as noted above, a utility will be reimbursed for moving its facilities if it has pre-existing property rights. See Utility Accommodation Policy, Section I.F.2. In other words, if the utility's easement rights existed prior to the existence of the highway right-of-way in which its facilities are located, or the utility's facilities are located outside of the highway right-of-way within a private easement, then the NDDOT must pay to relocate the facilities. However, "betterments" to the utility facilities – changes that improve the facilities – are not eligible for reimbursement. See Utility Accommodation Policy, Section I.F.3.
3. If the utility does not have pre-existing rights, then the utility will have to relocate facilities within highway right-of-way at its own expense. See Utility Accommodation Policy, Section I. When the NDDOT issues a utility right-of-

way permit authorizing a utility to install facilities within existing highway right-of-way, this condition will be included in the permit.

B. County and Township Roadways.

With respect to utility relocation cost allocation associated with county and township road improvements (without federal funding), the same principals applied at the state level apply generally at the county and township levels. *See Handbook for North Dakota County Engineers and Highway Supervisors, Ch. 12 Public Utilities (December 2004) (citing to utility accommodation provisions in N.D.C.C. Ch. 24-01).* Thus, while specific permit conditions may vary, utility relocation costs are typically allocated as follows: (1) if the utility's facilities are within the road right-of-way per the utility's pre-existing property rights, or the utility facilities are located outside of road right-of-way in a private easement, then the county or township will reimburse the utility for relocation of the utility's facilities; and (2) if the utility's facilities were installed within the existing road right-of-way, then the utility is typically responsible for the cost to relocate the facilities if necessary to accommodate a road improvement project. The latter policy is often included in the permit or other approval issued by the county or township. As noted above, relocation costs for utility facilities installed within 75 feet of a county road right-of-way after 1959 are the responsibility of the utility. *See N.D.C.C. §§ 24-01-42 and 24-01-43 (enacted in 1959).*

C. City Roads and Public Rights-of-Way.

In North Dakota, cities have the right to franchise the construction and operation of utilities within the city. *See N.D. Const., Art. VII, § 11; see also N.D.C.C. §§ 49-03-01(1) and 49-03-01.3.* As such, cities enter into franchise agreements (adopted as franchise ordinances) with public utilities, and those agreements outline cost allocation in the event a utility's facilities must be relocated or removed.

Generally, the franchise agreements follow the basic cost allocation principles applied at the state, county, and township levels: (1) if the utility's facilities are within public right-of-way per the utility's pre-existing property rights, or the utility facilities are located outside of public right-of-way in a private easement, then the city will reimburse the utility for relocation of the utility's facilities; and (2) if the utility's facilities were installed within the city's existing public right-of-way, then the utility is typically responsible for the cost to relocate the facilities if necessary to accommodate a road improvement or other city improvement project. However, the specifics regarding what types of activities require a utility to remove facilities from a public right-of-way at its own expense vary. Thus, determining cost allocation requires an analysis of the facts at hand applying the specific provisions of the applicable franchise agreement.

D. Federally Funded Highway Projects.

In North Dakota, there are specific cost allocation provisions that apply if a highway or road improvement project is federally funded. If utility facilities must be relocated in conjunction with a federally aided interstate project, then the cost of relocation must be paid by the state out of state highway funds as part of the project costs, unless the payment would violate

a legal contract between the utility and the state (*e.g.*, a NDDOT utility right-of-way permit). *See* N.D.C.C. § 24-01-41(1).

With respect to federally funded highway improvement projects at the county, township or city level, utility relocation costs must be paid by the applicable political subdivision as part of the cost of the federally aided project, unless doing so would violate a legal contract between the utility and the political subdivision (*e.g.*, a utility right-of-way permit or a franchise agreement), or the roadway existed before the utility facility. *See* N.D.C.C. § 24-01-41.2(1).

Neither of these statutory provisions affects the utility's right to compensation for removal of facilities within the utility's private right-of-way. *See* N.D.C.C. §§ 24-01-41(6) and 24-01-41.2(6).

II. South Dakota.

A. State and Local Roadways.

By statute, state, county, and local authorities may grant permits to electric utilities to occupy portions public right-of-ways. *See* S.D. Codified Laws § 31-26-22 (authorizing the South Dakota Department of Transportation (“SDDOT”) to issue permits); § 31-26-1 (authorizing county commissioners to grant permits within the county's jurisdiction); § 49-34-1 (authorizing municipalities and counties to grant the use of public right-of-ways to electrical utilities on the terms determined by the public authority).

The South Dakota legislature has established by statute a uniform statewide policy for when these utilities must be relocated from any public highway. *See* S.D. Codified Laws § 31-26-23. This statute sets the following default rule: If a utility's facilities are installed within an existing public right-of-way, the utility bears the cost to relocate the facilities if necessary to accommodate a road improvement. If the utility's facilities are located outside of public right-of-way in a private easement, then the public entity will reimburse the utility for relocation of the utility's facilities. *See* S.D. Codified Laws § 31-26-23.

However, the default rule is subject to modification by an agreement in writing between the utility and responsible public entity. *See* S.D. Codified Laws §§ 31-26-23. A separate statute also provides that SDDOT may enter into agreements with utilities providing for future relocation of a utility's facilities from a public right-of-way at SDDOT's expense. *See* S.D. Codified Laws §§ 31-26-23. 31-26-23.1. Further, as in other states, cities also have the right to franchise the construction and operation of utilities within the city. *See* S.D. Codified Laws § 9-35-1. Accordingly, the South Dakota Department of Transportation or other political subdivisions of the state may enter into agreements with a utility that outline cost allocation in the event a utility's facilities must be relocated or removed from a public right-of-way.

While permit conditions and agreements between utilities and public entities may vary, if a utility's facilities are located outside of road right-of-way in a private easement, then the public entity will generally reimburse the utility for relocation of the utility's facilities. If the utility's facilities were installed within the existing road right-of-way, then the utility is typically

responsible for the cost to relocate the facilities if necessary to accommodate a road improvement.

B. Federally Funded Highway Projects.

Pursuant to 23 CFR 645 Subpart A, the federal government will reimburse SDDOT for costs incurred under an approved transportation department/utility agreement. Typically, a project is eligible where the utility facility is located pursuant to pre-existing private property rights. 23 CFR 645.107 (1). Subpart 645.107 provides additional scenarios where federal funds may be used to reimburse cost associated with the relocation of utility facilities. *See* 23 CFR 645.107(b) through (k).

III. Minnesota.

A. State Highway.

1. Facilities located in the trunk highway right-of-way pursuant to a permit.

Minnesota may allow utility owners to locate their facilities on trunk highway right-of-way by permit. *See* Minn. Stat. § 222.37. When the Commissioner of the Minnesota Department of Transportation (“Mn/DOT”) determines that improvements or changes to the right-of-way are necessary for public use, utility owners must relocate their facilities at their own expense. Minnesota Rules, Part 8810.3300, subpart 3.

2. Facilities sited outside of the right-of-way on utility’s private property.

In many instances, utilities facilities are located on private property (utility owned fee or utility owned easements), and those private property rights are located outside of the trunk highway right-of-way. Where a highway project expands the highway right-of-way and Mn/DOT acquires a utility owned property right, Mn/DOT will reimburse the utility for the actual cost of relocation, removal, or rearrangement of its facilities. 2007 Mn/DOT Utilities Manual, p. 54.

3. Municipal relocations that qualify as a first move.

If a transportation project requires a municipality to relocate a facility that was within the limits of a municipal street when the state took that street over as a trunk highway, the state may reimburse the municipality for the actual cost of that relocation if it is the first relocation of that facility. The state requires documented proof that the facility was located within the municipal street at the time the street is taken over. Minnesota Rules, Part 8810.3300, subpart 3.

B. County and Township Roadways.

Sections 237.162 and 237.163 of the Minnesota Statutes, and the rules promulgated, thereunder, govern the use and regulation of the public right-of-way. Generally, a utility with a facility located entirely within the road right-of-way is required to relocate its facility at its own

expense “when it is necessary to prevent interference, and not merely for the convenience of the local government unit with: (1) a present or future local government use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way. Minnesota Rules, Part 7819.3100.

Where the utility facility is located outside of the public right-of-way pursuant to private property rights (utility owned fee or easement), and the road project requires the taking of the property rights, the public entity will reimburse the utility for the cost of relocation.

C. City Roads and Public Rights-of-Way.

In Minnesota, cities have the right to grant franchises for the construction and operation of utilities within a city. Minn. Stat. § 216B.36. Accordingly, cities often enter into franchise agreements with public utilities, and the franchise agreements outline the cost allocation in the event a utility’s facilities must be relocated or removed.

D. Federally Funded Highway Projects.

In Minnesota, if utility facilities must be relocated in conjunction with a federally aided interstate project, then the cost of relocation must be paid by the state out of state highway funds as part of the project costs, unless the payment would violate a legal contract between the utility and the state. *See* Minn. Stat. § 161.46.

With respect to federally funded highway improvement projects at the county, township or city level, federal funds may be used, on a pro rata basis, to pay for the cost of a utility relocation where the utility’s facility is located on utility owned property (fee or easement), and the taking of that private property right will be compensable in eminent domain proceedings. 23 CFR 645.107 (a)(1). If the utility’s facilities are located within the existing right-of-way pursuant to a permit, as is noted above, the permit conditions will control.