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May 14, 2018

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**VIA EMAIL AND CERTIFIED MAIL**

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

**Re: Northern States Power Company  
Advance Prudence – Biomass PPAs Application  
Case No. PU-17-270**

**Deferred Accounting – Biomass PPAs Application  
Case No. PU-17-271**

**Deferred Accounting – Laurentian PPA Termination Application  
Case No. PU-17-322**

Dear Mr. Nitschke:

Northern States Power Company, doing business as Xcel Energy (NSP or Xcel Energy or the Company), submits to the North Dakota Public Service Commission (Commission) this Reply to the Comments of Red Willow Management, LLC, on behalf of Biomass Suppliers and Haulers (Red Willow), and Associated Contract Loggers and Truckers (ACLT) of Minnesota.

The information and arguments provided by Red Willow and ACLT do not provide a basis upon which to reject the Settlement Agreement reached by Staff and the Company, and do not necessitate a formal hearing. Consequently, the Company respectfully requests that the Commission approve the Settlement Agreement without an additional hearing.

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## **I. BACKGROUND**

### **A. THE COMMISSION'S NOTICE**

On November 29, 2017, the Commission noticed a hearing in the above referenced Cases. On January 18, 2018, the Company and Advocacy Staff entered into a Settlement Agreement in the above referenced Cases to resolve all issues. On February 2, 2018, the Commission held a hearing on the Settlement Agreement. Because two items in the Settlement Agreement were not included in the original Commission Notice, on March 29, 2018, the Commission issued a Notice of Opportunity for Consolidated Hearing to allow comment and requests for hearing on two matters that were not the subject of the issues in the original notice of hearing in this case. The additional issues noticed are:

1. Is NSP's proposal to terminate its power purchase agreement with Laurentian Energy Authority, LLC prudent?
2. Is it reasonable and appropriate to waive the provisions of the Automatic Adjustment Clause rule (N. D. Admin. Code section 69- 09-02-39) to permit recovery of the costs of the Benson Power LLC, Pine Bend, and Laurentian Energy Authority, LLC transactions through NSP's Automatic Adjustment Clause?

### **B. RED WILLOW COMMENTS**

Red Willow submitted Comments to the Commission on May 4, 2018. Red Willow represents some of the suppliers and transporters for Benson Power. According to its Comments, Red Willow does not represent any suppliers or transporters for Laurentian. Red Willow questions whether the early termination agreement with Laurentian is prudent because Laurentian may default under the existing contract in the future. Red Willow also argues that NSP should not be allowed to recover the costs associated with the early termination of the PPAs through the Automatic Adjustment Clause because the costs should be considered a "negative, capacity or demand charge," which are excluded from recovery under N.D.C.C. § 69-09-02-39.

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### **C. ACLT COMMENTS**

The ACLT, a nonprofit trade association, also submitted Comments to the Commission on May 4, 2018. According to the ACLT, its members include all of the biomass suppliers for Benson Power and the majority of the biomass suppliers for Laurentian, although the Comments were submitted on behalf of the timber industry as a whole, and not any specific biomass suppliers. ACLT argues that the Laurentian termination would not be prudent and use of the Automatic Adjustment Clause to recover transaction costs would not be reasonable or appropriate because: the return to shareholders approved in the Minnesota proceeding was not reasonable or appropriate; the environmental and economic costs to the Minnesota public outweigh the benefits of the transactions; NSP overvalued the Benson Power Plant; Laurentian was presumably not going to be able to meet the contractual PPA requirements; and, the Renewable Development Fund (RDF) costs (which are not being recovered from North Dakota customers) were not properly considered.

## **II. DISCUSSION**

### **A. RESPONSE TO RED WILLOW COMMENTS**

As a primary matter, Red Willow does not seem to have any interest in the Laurentian transaction because it represents only Benson suppliers and transporters. Likewise, Red Willow does not represent any North Dakota customers or any other interests, so it has no interest in which regulatory cost recovery mechanism the Commission selects in this Case. In any event, Red Willow's Comments have not raised any new issues that were not previously addressed in the Application, Company and Staff witnesses' Direct Testimony, and the February 2, 2018 Hearing.

The standard for granting an ADP is not, as Red Willow suggests, whether the Company could have negotiated a better deal or waited for Laurentian to default on the PPA. That type of criterion would lead to never-ending conjecture over potential outcomes that are inherently unknowable and would prevent the Commission from approving transactions because it would be impossible to know whether a slightly better deal could have been reached. This matter was raised at hearing and the record currently reflects that the current Laurentian transaction guarantees the cost savings from the transaction. The applicable standard for granting an ADP is whether, given

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all the known facts, the transaction is prudent.<sup>1</sup> In this Case, the early termination of the Laurentian PPA is prudent as reflected in the Settlement Agreement.

NSP engaged in extensive negotiations with Laurentian to terminate the PPA early in order to provide known savings to its customers.<sup>2</sup> NSP calculated that terminating the Laurentian PPA will save its customers \$87 million (\$4.8 million for North Dakota) over the life of the contract, which equates to approximately a 39% savings over the existing agreement.<sup>3</sup> Staff Witness James Heidell estimated that the transaction will save customers between \$70.5 million and \$89.5 million.<sup>4</sup> Under both NSP and Staff's analysis, North Dakota customers will benefit significantly if the Laurentian PPA is terminated. Thus, it is prudent, reasonable, and in customers' best interests for the Commission to grant an ADP for the Laurentian PPA early termination.

NSP also disagrees with Red Willow's assertion that the PPA termination payments should be deemed a "negative, capacity or demand charge" that are not recoverable through an Automatic Adjustment Clause. Termination payments are for neither capacity nor demand; they are for termination of an agreement. In any event, the Commission has broad authority to "permit deviation from a standard" in the Automatic Adjustment Clause statute "[i]f a particular circumstance prevents the use of a standard or its use would result in an undue burden[.]"<sup>5</sup> As a result, the Commission may allow recovery of PPA termination costs through the Automatic Adjustment Clause if it is in the best interests of the customers.

Use of the Automatic Adjustment Clause to recover termination costs as they are incurred was suggested by Staff in this Case as a way of avoiding the addition of a return component associated with creating a regulatory asset.<sup>6</sup> Staff Witness Joel

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<sup>1</sup> N.D.C.C. § 49-05-16(1).

<sup>2</sup> NSP's Application for Deferred Accounting – Laurentian PPA Termination at p. 11.

<sup>3</sup> Direct Testimony of James Heidell at p. 22.

<sup>4</sup> Direct Testimony of James Heidell at p. 35.

<sup>5</sup> N.D.C.C. § 69-09-02-39(10).

<sup>6</sup> Direct Testimony of Joel Jeanson at pp. 14-16; Direct Testimony of Victor Shock at pp. 2-3.

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Jeanson concluded that allowing recovery of termination costs as they are incurred, rather than through a regulatory asset, represents a fair solution for both Xcel Energy's North Dakota Customers and Xcel Energy.<sup>7</sup> The Commission is empowered to, and it would be reasonable and appropriate, to waive the provisions of the Automatic Adjustment Clause rule (N. D. Admin. Code section 69-09-02-39) to permit recovery of the PPA termination costs through NSP's Fuel Cost Rider.

## **B. RESPONSE TO ACLT COMMENTS**

Most of the ACLT's Comments address environmental or economic issues that affect only Minnesota. Those impacts are immaterial to the Commission's prudence decision or approval of a deviation from Automatic Adjustment Clause rules.

Under N.D.C.C. § 49-05-16(1), when assessing the prudence of a transaction the Commission may only "consider the benefits of having the resource addition located in *this state*." (emphasis added). Additionally, the North Dakota legislature has barred consideration of environmental externality costs in evaluating the prudence of resources. N.D.C.C. § 49-02-23. As a result, the Minnesota economic and environmental issues raised by the ACLT—such as the return approved by the MPUC, the impact on Minnesota forest health and employment, and the use of Minnesota RDF money on Minnesota communities affected by the transactions—are irrelevant to the Commission's prudence determination. Neither do issues have any bearing on which cost recovery mechanism is most appropriate in this Case.

Finally, the ACLT's speculation that NSP could have negotiated a better price for the Benson plant is outside of the scope of the Commission's Notice because only the prudence of Laurentian is at issue. Moreover, the record reflects that the costs of the Benson transaction are appropriate and prudent. By agreeing to purchase the plant and shut it down, NSP was able to lock in considerable savings for customers compared to continuing under the existing terms of the PPA.

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<sup>7</sup> Direct Testimony of Joel Jeanson at p. 16.

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### III. CONCLUSION

The record in this Case is robust, and the Comments of Red Willow and the ACLT have not raised any issues that require additional consideration. Therefore, the Company respectfully requests that the Commission issue an Order adopting the Settlement Agreement in the above referenced Cases without a formal hearing.

Respectfully submitted,

BRIGGS AND MORGAN, P.A.

*/s/ Zeviel T. Simpser*

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The addresses shown above are the respective addressees' last reasonably ascertainable mailing addresses.

Further, Affiant sayeth not.

  
Theresa Senart

Subscribed and sworn to before me  
this 14th day of May, 2018.

  
Notary Public

