

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Northern States Power Company  
Advance Prudence – Biomass PPAs  
Application**

**Case No. PU-17-270**

**Northern States Power Company  
Deferred Accounting – Biomass PPAs  
Application**

**Case No. PU-17-271**

**Northern States Power Company  
Deferred Accounting – Laurentian PPA  
Termination Application**

**Case No. PU-17-322**

**ORDER**

**June 27, 2018**

**Appearances**

Commissioners Randy Christmann, Julie Fedorchak, and Brian Kroshus.

Zeviel Simpser, Shareholder, and Lauren Pockl, Associate, Briggs and Morgan, P.A., 2200 IDS Center, 80 South 8th Street, Minneapolis, Minnesota, 55402, attorneys for Northern States Power Company.

Mitchell Armstrong, Smith Porsborg Schweigert Armstrong Moldenhauer & Smith, 122 East Broadway Ave., Bismarck, North Dakota 58502-0460, Special Assistant Attorney General for Public Service Commission Advocacy Staff.

Ilona A. Jeffcoat-Sacco, General Counsel, North Dakota Public Service Commission, 600 E. Boulevard Ave., Bismarck, North Dakota 58505, attorney for the Public Service Commission.

Patrick Ward, Zuger, Kirmis & Smith, 316 North Fifth Street, Bismarck, North Dakota, 58502-1695, Administrative Law Judge.

**Preliminary Statement**

On June 30, 2017, in Case No. PU-17-270, Northern States Power Company (NSP) filed an Application for Advance Determination of Prudence (ADP) for proposed transactions relating to power purchase agreements (PPAs) for the Benson Power, LLC biomass plant (Benson), the Pine Bend biogas plant (Pine Bend), and the Hennepin Energy Recovery Center (HERC).

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Also on June 30, 2017, in Case No. PU-17-271, NSP filed an Application for Authority for Deferred Accounting to defer recognition for the transactional, plant closing, and other associated costs of transactions proposed for Benson and Pine Bend.

On August 10, 2017, in Case No. PU-17-322, NSP filed an Application for Authority for Deferred Accounting that would allow NSP to defer recognition of the costs of terminating its current PPA with the Laurentian Energy Authority, LLC (Laurentian) with a series of buyout payments.

On November 29, 2017, the Commission issued a Notice of Consolidated Hearing, consolidating the captioned cases for hearing and scheduling a consolidated hearing for February 2, 2018. The notice identified the following issues to be considered:

1. Is NSP's proposal to terminate its biomass power purchase agreement with Benson Power, LLC, acquire the Benson facility and subsequently close the facility prudent?
2. Is NSP's proposal to terminate its power purchase agreement with Pine Bend biomass facility prudent?
3. Is NSP's proposal to extend the terms of its Hennepin Energy Recovery Center power purchase agreement prudent?
4. Should the Commission grant deferred accounting treatments for the costs of the proposed Benson transactions?
5. Should the Commission grant deferred accounting treatments for the costs of terminating the Laurentian and Pine Bend power purchase agreements?

On January 18, 2018, NSP and Advocacy Staff filed a Settlement Agreement, which the parties stated resolves the open issues in Case Nos. PU-17-270, PU-17-271, and PU-17-322. However, the Settlement Agreement addressed two issues not previously noticed.

On February 2, 2018, a hearing was held as scheduled in the Commission Hearing Room at the State Capitol in Bismarck, North Dakota.

On March 29, 2018, the Commission issued a Notice of Opportunity for Consolidated Hearing, which provided until May 4, 2018 for receiving written comments and hearing requests regarding the following additional issues covered by the Settlement Agreement but not previously noticed:

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?

On May 4, 2018, written comments were received from Red Willow Management, LLC on behalf of Benson Biomass Suppliers and Haulers (Red Willow). Also on May 4, 2018, written comments and a request for hearing were received from the Associated Contract Loggers & Truckers of Minnesota (ACLT).

On May 14, NSP filed its Reply to Comments of Red Willow and ACLT.

On May 17, 2018, Commission Advocacy Staff filed its response to comments from Red Willow and ACLT stating that Advocacy Staff joins in NSP's reply.

### **Discussion**

NSP requested advance determinations of prudence for the following three proposed transactions: (1) terminate the PPA for Benson (2) terminate the PPA for Pine Bend early through a series of negotiated terms; and (3) extend the terms of the HERC PPA on more favorable terms.

NSP requested that the following costs be deferred in a regulatory asset: (1) the North Dakota share of costs necessary to terminate the Benson PPA, acquire the plant, and shut it down, and also the North Dakota share of the operations and maintenance costs necessary to run the plant as it is shut down in an orderly fashion; and (2) the North Dakota share of the termination payment of \$1,050,000 for the Pine Bend PPA.

NSP requested to include a cost of capital return on the regulatory asset created by the requested deferrals.

NSP also requested to accumulate the costs incurred to terminate the Laurentian PPA in a regulatory asset, with a cost of capital return on the asset. The costs requested to be deferred for the Laurentian PPA would be the North Dakota share of \$108,500,000 in total termination payments. NSP did not request an ADP for the costs of the Laurentian termination.

The Settlement Agreement provided for, among other things:

1. Granting ADPs for the proposed Pine Bend and Laurentian transactions, with no conditions,
2. Granting an ADP for the proposed Benson transaction for all anticipated costs except the costs to reimburse the City of Benson for certain stranded water, wastewater, and electric distribution assets.
3. Withdrawal of NSP's request for an ADP for HERC.

4. Deferred accounting for the Pine Bend transaction, Laurentian transaction, and Benson transaction.
5. Establishment of a regulatory asset for the costs of the Benson transaction and recovery of the regulatory asset amortized equally over the 132 months following the closing of the Benson transaction.
6. A five percent rate of return on the purchased Benson assets for which an ADP is granted.
7. Recovery of the Pine Bend transaction and Laurentian transaction costs through the Fuel Cost Rider as they are incurred, in the month they are incurred.
8. Recovery of the Benson transaction costs through the Fuel Cost Rider, consistent with the deferral and amortization schedule identified therein.

The comments and requests for hearing filed by Red Willow and ACLT do not merit granting the requests for hearing. Most of the factual comments raised by Red Willow and ACLT are irrelevant to the issues before this commission. These include statements about the Minnesota proceedings and Minnesota impacts. Also irrelevant are Red Willow's and ACLT's allegations about recovery through the fuel adjustment, as neither organization asserts that it represents any North Dakota ratepayers. Any of Red Willow's or ACLT's comments or assertions that may be relevant to the issues before this commission, are based on facts already in the record that have already been adequately addressed in the record. The filings of Red Willow and ACLT provide no basis to incorporate any additional information into the record and no reason to reopen the hearing. The requests for hearing should be denied.

Having considered this matter, the Commission finds that the terms of the Settlement Agreement are reasonable, in the public interest, and will result in just and reasonable rates. Therefore, the Commission issues the following:

### **Order**

The Commission Orders:

1. The requests for hearing are DENIED.
2. The Settlement Agreement, a copy of which is attached to this Order and made a part of this Order, is APPROVED.
3. Subject to the terms and conditions of this Order and the Settlement Agreement, an advance determination of prudence is GRANTED for each of the following:
  - a. the Pine Bend Transaction
  - b. the Laurentian Transaction
  - c. the Benson Transaction.

4. Subject to the terms and conditions of this Order and the Settlement Agreement, NSP's request to withdraw its Application for an advance determination of prudence for the HERC transaction is GRANTED.

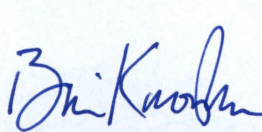
5. Subject to the terms and conditions of this Order and the Settlement Agreement, deferred accounting treatment is GRANTED for each of the following:

- a. the Pine Bend Transaction
- b. the Laurentian Transaction
- c. the Benson Transaction.

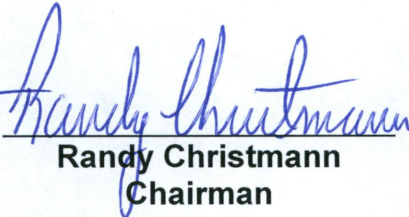
6. The request for a waiver of Commission's fuel adjustment rules under North Dakota Administrative Code section 69-09-02-39(10) is GRANTED.

7. NSP may recover the costs of the Pine Bend Transaction, the Laurentian Transaction, and the Benson Transaction through its Fuel Cost Rider.

### **PUBLIC SERVICE COMMISSION**



**Brian Kroshus**  
Commissioner



**Randy Christmann**  
Chairman



**Julie Fedorchak**  
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA

NORTHERN STATES POWER COMPANY  
ADVANCE PRUDENCE — BIOMASS PPAs  
APPLICATION

CASE No. PU-17-270

NORTHERN STATES POWER COMPANY  
DEFERRED ACCOUNTING — BIOMASS PPAs  
APPLICATION

CASE No. PU-17-271

NORTHERN STATES POWER COMPANY  
DEFERRED ACCOUNTING — LAURENTIAN PPA TERMINATION  
APPLICATION

CASE No. PU-17-322

**SETTLEMENT AGREEMENT**

This Settlement Agreement (this Agreement) is entered into as of the 18th day of January, 2018 by and between Northern States Power Company, a Minnesota corporation, doing business as Xcel Energy (Xcel Energy, NSP, or the Company) and North Dakota Public Service Commission Advocacy Staff (Advocacy Staff, and together with Xcel Energy, the Parties, and each a Party). The Parties have entered into this Agreement to address the Company's requests in the above referenced cases and to implement jointly supported outcomes. The Parties believe that, through this Agreement, they will be able to more efficiently address the issues in the above referenced Cases.

**I. BACKGROUND**

On June 30, 2017, Xcel Energy filed an Application for an Advanced Determination of Prudence (ADP) for proposed transactions relating to the Company's power purchase agreements (PPAs) for the Benson Power, LLC (Benson Power (f/k/a Fibrominn)) biomass plant (Benson facility), the Pine Bend biogas plant (Pine Bend facility), and the Hennepin Energy Recovery Center (HERC). Specifically, the proposed transactions are to (1) terminate the PPA with Benson Power (Benson PPA), acquire the Benson facility, and subsequently close the facility (Benson Transaction); (2) terminate the PPA with the Pine Bend facility (Pine Bend PPA) early through a series of negotiated terms (Pine Bend Transaction); and (3) extend the terms of the HERC PPA on more favorable terms (HERC Transaction, and collectively with the Benson Transaction and Pine Bend Transaction, the Proposed Transactions). The Company's ADP Application for the Proposed

Transactions was designated as Case No. PU-17-270 by the North Dakota Public Service Commission (Commission).

Also on June 30, 2017, the Company filed an Application for Authority for Deferred Accounting that would allow the Company to defer recognition for the transactional, plant closing, and other associated costs of the Benson Transaction and Pine Bend Transaction. More specifically, the Company requested that the following costs be deferred in a regulatory asset: (1) the North Dakota share of costs necessary to terminate the Benson PPA, acquire the plant, and shut it down, and also the North Dakota share of the operations and maintenance (O&M) costs necessary to run the plant as it is shut down in an orderly fashion; and (2) the North Dakota share of the termination payment of \$1,050,000 for the Pine Bend PPA. The Company also requested that it be allowed to include a cost of capital return on the regulatory asset created by the requested deferrals. The Commission designated the Company's request for deferred accounting as Case No. PU-17-271.

On August 10, 2017, the Company filed an Application for Authority for Deferred Accounting that would allow the Company to defer recognition of the costs of terminating its current PPA with the Laurentian Energy Authority, LLC (Laurentian or LEA) (the Laurentian PPA or LEA PPA) with a series of buyout payments (Laurentian Transaction). Specifically, the Company requested that it be authorized to accumulate the costs incurred to terminate the Laurentian PPA in a regulatory asset and that it be allowed to include a cost of capital return on the asset. The costs to be deferred in the regulatory asset for the Laurentian PPA relate only to the North Dakota share of the PPA termination payments totaling \$108,500,000. The Commission designated the Company's request for deferred accounting for the Laurentian PPA termination as Case No. PU-17-322.

On November 29, 2017, the Commission issued a Notice of Consolidated Hearing in the above captioned Cases. Pursuant to the Notice of Consolidated Hearing, the above captioned Cases were consolidated for hearing and the issues to be considered are: (1) is NSP's proposal to terminate its biomass power purchase agreement with Benson Power, LLC, acquire the Benson facility and subsequently close the facility prudent?; (2) is NSP's proposal to terminate its power purchase agreement with Pine Bend biomass facility prudent?; (3) is NSP's proposal to extend the terms of its Hennepin Energy Recovery Center power purchase agreement prudent?; (4) should the Commission grant deferred accounting treatments for the costs of the proposed Benson transactions?; and (5) should the Commission grant deferred accounting treatments for the costs of terminating the Laurentian and Pine Bend Power Purchase Agreements?

On December 26, 2017, Advocacy Staff submitted the Direct Testimonies of consultants Mr. James Heidell and Mr. Joel Jeanson. Mr. Heidell recommended that

the Company's request for ADPs for the Pine Bend Transaction and the Laurentian Transaction be granted without qualification. Mr. Heidell recommended that the Company's requested ADP for the Benson Transaction be granted subject to the disallowance of the transaction costs for the reimbursement to the City of Benson for the stranded costs of certain water, wastewater, and electric distribution assets. Mr. Heidell recommended that the Company's request for an ADP for the HERC Transaction be denied. Mr. Jeanson recommended that the Commission consider allowing Xcel Energy to recover the costs of the Pine Bend Transaction and Laurentian Transaction through the Fuel Clause Rider (FCR) rather than through a deferred asset. Mr. Jeanson also recommended that the costs of the Benson Transaction be converted to a regulatory asset and amortized over the remaining 11 years of the existing contract with no return. He further recommends approving recovery through the FCR immediately, with the option to revisit whether to include the costs in base rates and provide a return on investment during the next rate case.

Advocacy Staff and Xcel Energy have engaged in discovery and several settlement discussions. This Agreement is the result of those discussions and a mutual interest for the efficient prosecution and disposal of the above captioned matters. In light of such discussions and for the mutual promises made to each other, and for other good and valuable consideration, the Parties agree as follows:

## II. TERMS OF SETTLEMENT

### A. Grant of ADPs.

Advanced Determinations of Prudence for the Pine Bend Transaction, Laurentian Transaction, and the Benson Transaction are granted as follows:

1. The ADP for the Pine Bend Transaction is granted with no conditions;
2. The ADP for the Laurentian Transaction is granted with no conditions; and
3. The ADP for the Benson Transaction is granted for all anticipated costs of the Benson Transaction but for the costs to reimburse the City of Benson for certain stranded water, wastewater, and electric distribution assets as described by the Company and identified by Mr. Heidell.

### B. Grant of Deferred Accounting Authority.

The Parties agree that Xcel Energy has met the standard for deferred accounting for the Pine Bend Transaction, Laurentian Transaction, and Benson Transaction.

The Parties agree that Xcel Energy's requests for deferred accounting for the Laurentian Transaction and Pine Bend Transaction is granted and recovery of the regulatory asset shall be as provided in Section II.C of this Agreement. The parties further agree that the Company's biomass portfolio has been the subject of several proceedings and of concern to the Commission. To that end, the terms of the March 9, 2016, Order Approving Settlement in Case No. PU-12-813 *et al.* apply to any revenues collected under this Agreement for the Laurentian, Benson (a/k/a FibroMinn), and Pine Bend Transactions.

The Parties further agree that the Company is permitted to establish a regulatory asset for the costs of the Benson Transaction for which an ADP is granted pursuant to Section II.A of this Agreement; that recovery of such regulatory asset will be amortized equally over the 132 months following the closing of the Benson Transaction as provided for in Section II.C of this Settlement and that the Company shall be able to recover a five percent (5%) rate of return to reflect the time value of the amortization.

**C. Recovery of Transaction and other Deferred Costs.**

The Company shall recover through the FCR the costs of the Pine Bend Transaction and Laurentian Transaction as they are incurred, in the month they are incurred. The Company shall recover through the FCR the costs of the Benson Transaction, consistent with the deferral and amortization schedule provided for in Section II.B of this Agreement.

**D. Withdrawal of ADP Application for HERC Transaction.**

The HERC Transaction is, among other things, subject to the approval of both the Commission and the Minnesota Public Utilities Commission (MPUC). On December 28, 2017, the MPUC issued an order rejecting the HERC Transaction in MPUC Docket No. E002/M-17-532. In light of this, the Company believes that its application for an ADP for the HERC Transaction is now moot. Consequently, the Company's Application for an Advanced Determination of Prudence for the HERC Transaction is withdrawn.

**III. OTHER TERMS AND CONDITIONS**

**A. Basis of Settlement.**

This Agreement is a negotiated agreement subject to approval by the Commission. This Agreement does not establish any principle or precedent for this or any future proceeding. The Parties reserve for themselves all rights at law and equity not specifically addressed by this Agreement.

**B. Support for Settlement.**

The Parties agree to affirmatively support and advocate for the Commission's adoption of this Agreement without modification. Notwithstanding any other provision of this Agreement, this Section IV.B shall be binding on the Parties as of the date first written above.

**C. Effect of Negotiations.**

All offers of settlement and discussions related to this Agreement are privileged and may not be used in any manner in connection with proceedings in the above referenced Cases or otherwise, except as provided by law or by mutual agreement of the Parties. In the event the Commission does not adopt this Agreement, it shall not constitute part of the record in this proceeding and no part thereof may be used by any Party for any purpose in the above referenced Cases or in any other.

**D. Applicability and Scope.**

This Agreement shall be binding on the Parties, and their successors, assigns, agents, and representatives. Consistent with the Commission's settlement guidelines, this Agreement does not set policy or overturn precedent. This Agreement shall not constitute an agreement, admission, or determination by any of the Parties as to the merits of any specific allegation or contention made by the Parties in the above referenced Cases. This Agreement supersedes all previous agreements in the above referenced Cases. This Agreement is not intended to impact the final outcome of any other pending Case before the Commission, including without limitation, the Company's proposal for a Resource Treatment Framework in Case Nos. PU-12-813, *et. al.*

**E. Effective Date.**

This Agreement shall be effective on the date of the Commission Order approving this Agreement.

**F. Modification.**

If the Commission modifies or conditions approval of this Agreement, it shall be deemed terminated if either Party files a letter with the Commission within three (3) business days of the date of such order stating that a condition or modification to this Agreement is unacceptable to such Party.

**G. Counterparts.**

This Agreement may be executed in counterparts by Xcel Energy and Advocacy Staff, each of which when so executed will be an original, but all of which together will constitute one and the same instrument.

**CONCLUSION**

The Parties have agreed to the foregoing terms to resolve outstanding issues in the above captioned proceedings and provide for the efficient prosecution of unresolved issues. These terms are a result of negotiations between the Parties, are in the public interest, and will result in just and reasonable rates. For these reasons, the Parties urge the Commission to approve this Agreement.

**[SIGNATURE PAGE FOLLOWS]**

Authorized representatives of the Parties having caused this Settlement Agreement to be duly executed as of the date first set forth above.

Northern States Power Company,  
a Minnesota corporation

North Dakota Public Service Commission  
Advocacy Staff

By: \_\_\_\_\_

By: Mitchell D. Armstrong

Its: \_\_\_\_\_

Its: Counsel

**[SIGNATURE PAGE TO  
SETTLEMENT AGREEMENT  
CASE NOS. PU-17-270, PU-17-271, PU-17-322]**

EXECUTION VERSION

Authorized representatives of the Parties having caused this Settlement Agreement to be duly executed as of the date first set forth above.

Northern States Power Company,  
a Minnesota corporation

North Dakota Public Service Commission  
Advocacy Staff

By:  \_\_\_\_\_

By: \_\_\_\_\_

Its: *RVP of Rates + Regulatory Affairs* \_\_\_\_\_

Its: \_\_\_\_\_

[SIGNATURE PAGE TO  
SETTLEMENT AGREEMENT  
CASE NOS. PU-17-270, PU-17-271, PU-17-322]