

May 2, 2018

Mr. Darrell Nitschke
Executive Director
North Dakota Public Services Commission
State Capitol
600 E. Blvd. Ave.
Bismark, ND 58505-0480

Re: In the Matter of Petitions for Authority for Deferred Accounting to defer recognition of the transactional, plant closing and other associated costs of transactions proposed for Benson (Case No. PU-17-271); Advance Determination of Prudence (ADP) for proposed transactions relating to Power Purchase Agreements for the Benson Power biomass plant (Case No. PU-17-270); and Application for Authority for Deferred Accounting to defer recognition of costs of terminating the current PPA with Laurentian Energy Authority with a series of buyout payments (Case No. PU-17-322).

Case No. PU-17-270, PU-17-271 and PU-17-322

The Associated Contract Loggers & Truckers (ACLT) of Minnesota, a 501(c)(6) nonprofit trade association, established in 1989, submits the following Comments and requests a Consolidated Hearing in regards to the cases noted. The Associated Contract Loggers & Truckers (ACLT) of Minnesota represents over 200 timber industry related companies, including loggers, truckers, mills and equipment vendors that will all be impacted directly or indirectly by the Termination of the Benson Power / Xcel Energy biomass Power Purchase Agreement and the Termination of the LEA / Xcel Energy biomass Power Purchase Agreement. Additionally, all of the biomass suppliers affiliated with Benson Power and the majority of the suppliers affiliated with the Laurentian Energy Authority are members of the ACLT.

The following comments are submitted on behalf of the Minnesota timber industry as a whole, AND NOT ANY SPECIFIC OR INDIVIDUAL BIOMASS SUPPLIER, and the private and public land managers of Minnesota's timber lands as supported by the attached records.

As a result of the Settlement Agreement filed on January 18, 2018 by NSP and Advocacy Staff, with the NDPSC included an Advance Determination of Prudence for NSP's decision to terminate its PPA with Laurentian Energy Authority; and recovering the costs through NSP's automatic adjustment clause for Benson Power and Laurentian Energy Authority. Neither of these matters was the subject of any issue included in the November 29, 2017 notice. Therefore the proposed Settlement Agreement under consideration by the NDPSC includes two matters that were not the subject of the issues in the original notice.

67 PU-17-271 Filed 05/04/2018 Pages: 3
Comments and Request for Hearing
Associated Contract Loggers & Truckers (ACLT) of Minnesota
Scott Dane, Executive Director

67 PU-17-270 Filed 05/04/2018 Pages: 3
Comments and Request for Hearing
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61 PU-17-322 Filed 05/04/2018 Pages: 3
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These issues are;

1. Is NSP's proposal to terminate its Power Purchase Agreement with Laurentian Energy Authority prudent?
2. Is it reasonable and appropriate to waive the provisions of the Automatic Adjustment Clause rule to permit recovery of the costs of the Benson Power, Pine Bend and Laurentian Energy Authority transactions through NSP's Automatic Adjustment Clause?

In regards to these issues, the Associated Contract Loggers & Truckers of Minnesota contends that it is not reasonable or appropriate to waive the provisions of the Automatic Adjustment Clause to permit recovery of the costs of Benson Power Plant Power Purchase Agreement Termination, acquisition of the Plant, closing of the Plant, and demolishing of the Plant. Nor is the termination of the Laurentian Energy Authority Power Purchase Agreement prudent.

This position is based on and supported by the following information:

1. NSP (Xcel Energy) testified in the Minnesota Public Utilities Commission Hearing that if the MNPUC did not approve a 9% return (\$20 million dollars) for their shareholders on the cost to terminate the PPA's then they would not culminate the transaction. Regardless of the projected \$600-\$700 million dollar benefit to their ratepayers which they based their filings on. This return to the shareholders on the termination costs from the ratepayers is not warranted, reasonable, or appropriate.
2. The public cost of the transaction exceeds the cost benefit to the purported ratepayers. The Minnesota Department of Natural Resources Economist issued a finding that the operation of the biomass facilities had approximately a \$75 million dollar annual economic impact, or \$750 million dollars over the remaining PPA period. Substantial additional public costs associated with forest health and the environment noted by the U.S. Forest Service, Superior National Forest Supervisor, the MNDNR Commissioner and St. Louis County add additional expense through increased fire danger, negative impacts to forest management, and other associated expenses. Documentation attached.
3. The Minnesota Department of Employment and Economic Development conducted a rudimentary Economic Impact Study of the closing of the Benson Power Plant and found a slightly positive economic impact. However, a response to the study noted many inaccurate assumptions and deficiencies that, when accounted for, reveal a negative economic impact. See attached response.
4. The MNPUC conceded that the restrictive legislative language that allowed Xcel Energy / NSP to petition for the termination of the PPA's and recovery of costs was

unusually restrictive and in essence “tied their hands” and did not allow for many of the public interests considerations commonly required for consideration in determining the comprehensive public benefit, impact and cost. If these factors could have also been considered it may have influenced a different outcome.

5. Perhaps most importantly, NSP (Xcel Energy) has negotiated a premium value of the Benson Power Plant, 50% above its determined value as evidenced through the bankruptcy filing and documents. Allowing NSP (Xcel Energy) to recover these overvalued costs at the expense of the ratepayers should not be permitted.
6. The Laurentian Energy Authority recognized that they were not going to be able to meet the contractual PPA requirements of biomass generated electricity, ie. An average threshold of biomass generated power over the term of the PPA, and were therefore going to be liable for a \$10 million dollar penalty. Xcel / NSP neglected to include that revenue in their filings which in essence equates to an additional \$10 million dollar deferred revenue to Xcel / NSP and adds \$10 million dollars to the buyout compensation paid to Laurentian Energy Authority.
7. In addition to these issues and costs, NSP / Xcel Energy has supported transfer of \$20 million to the City of Benson (2-4 times the property tax loss from the closure of the plant) and \$34 million to the cities of Hibbing and Virginia for the retirement of the bonds issued to build the biomass operations from the Renewable Development Fund. Xcel Energy has argued before the State Legislature that since the source of these funds is from Xcel Energy’s ratepayers, these funds are in essence Xcel Energy ratepayer funds and therefore an appropriate use. Accepting this argument, an additional \$54 million in PPA termination expenses must be considered.

Based on these factors, NSP’s / Xcel Energy’s proposal to terminate the Power Purchase Agreement with Laurentian Energy Authority is not prudent, and furthermore, due to the inflated costs of the PPA buyouts, acquisition of the Benson facility, demolishing of the Benson facility, deferred income, additional ratepayer funds (\$54 million) and other associated costs it is not reasonable or appropriate to waive the Automatic Adjustment Clause for the recovery of the costs associated with the buyout of the Benson Power and Laurentian Energy Authority PPA’s.

Therefore, the Associated Contract Loggers & Truckers of Minnesota requests consideration of these facts and the scheduling of a Hearing on the above referenced cases.

Respectfully Submitted,

Scott Dane
Executive Director
Associated Contract Loggers & Truckers of Minnesota
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