

August 9, 2021

VIA ELECTRONIC MAIL and
FEDERAL EXPRESS

North Dakota Public Service Commission
Attention: Steven M. Kahl, Executive Secretary
600 East Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480

Re: Northern States Power Company
Advance Determination of Prudence
200 MW Heartland Divide Wind II Facility
Case No. PU-20-433
OAH File No. 20200421

Dear Mr. Kahl:

Enclosed for filing in the above referenced case, please find Applicant Northern States Power Company's (Xcel Energy) Post-Hearing Brief.

Please feel free to contact me with any questions or concerns.

Sincerely,

DORSEY & WHITNEY LLP



Zev Simpson

ZS/mrl

Enclosure

cc: Via Email and Certified Mail -

Timothy J. Dawson, Administrative Law Judge (w/encl.)
John M. Schuh, Advisory Counsel, Public Service Commission (w/encl.)
Mitchell D. Armstrong, Special Assistant Attorney General (w/encl.)
Jon C. Lengowski, Special Assistant Attorney General (w/encl.)
Brian Johnson, Advocacy Staff, Public Service Commission (w/encl.)
Adam Renfandt, Advocacy Staff, Public Service Commission (w/encl.)
Victor Schock, Advocacy Staff, Public Service Commission (w/encl.)

**STATE OF NORTH DAKOTA
BEFORE THE
NORTH DAKOTA PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Northern States Power Company
for an Advance Determination of Prudence
Heartland Divide Wind II

Case No. PU-20-433
OAH FILE NO. 20200421

Post-Hearing Brief of Northern States Power Company

August 9, 2021

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	1
	A. The Honeycrip LLC ESA and the Procurement of 300 MW of Incremental Generation.....	1
	B. The Dakota Range III PPA and the Commission’s Grant of that ADP	3
	C. The Instant Application for ADP for the Heartland Divide II PPA.....	6
	D. The Renewable*Connect Program	9
III.	ARGUMENT	9
	A. Applicable Standard.....	10
	B. The Heartland Divide II PPA Is Prudent	11
	C. There is No Meaningful Difference from the Dakota Range III PPA	14
	D. Mr. Heidell’s Concerns Do Not Support a Denial of the ADP.....	15
	1. The Project Appropriately Supplies the Renewable Energy Required Under the Honeycrisp ESA.....	16
	2. The Zone 3 Location Does Not Impact the Prudence of the PPA	19
	3. The PPA is Least Cost	20
	4. The Proposed Bifurcation is Not a Barrier to Approval	21
	E. Conditions are Not Necessary.....	21
IV.	CONCLUSION.....	25

I. INTRODUCTION

In response to questions raised at the June 10, 2021 hearing in the above-referenced Case, Northern States Power Company (Xcel Energy, NSP or Company) submits this Brief Supporting Its Application for Advance Determination of Prudence to the North Dakota Public Service Commission. The load from the data center will benefit the system¹ and the Heartland Divide II PPA is an appropriate resource to attract that new customer; however, even if the data center is not built, the Heartland Divide II PPA is prudent because the attractive pricing will result in savings for North Dakota customers. Just as the Commission approved the earlier Dakota Range III PPA,² it should now approve the Heartland Divide II PPA. There are no meaningful differences between the two projects sufficient to justify the approval of one and the denial of the other.

II. BACKGROUND

A. **The Honeycrip LLC ESA and the Procurement of 300 MW of Incremental Generation**

In 2019, the Company reached an agreement with Honeycrisp LLC (an affiliate of Google LLC) to develop a data center campus at the Company's Sherco generating

¹ The Company made this point at the hearing. N. States Power Co., Advance Determination of Prudence – 200 MW Heartland Divide Wind II, Case No. PU-20-433, Hearing Transcript, at 115:22–116:1 (June 10, 2021) (“June 10 Hearing Transcript”).

² N. States Power Co., Advance Determination of Prudence – 151.2 MW Dakota Range III, Case No. PU-18-430, Findings of Fact, Conclusions of Law, and Order, at 4–5 (Dec. 3, 2019) (“Dakota Range III ADP Order”).

plant site in Sherburne County, Minnesota.³ The parties executed a Retail Electric Service Agreement (Honeycrisp ESA) to serve the planned data center.⁴ A critical component of the Honeycrisp ESA is the procurement of enough incremental renewable generation to match the data center site’s expected annual energy use.⁵ The Company can “bank” RECs for the renewable electricity generated, including before the load is realized on the integrated NSP System.⁶ The RECs banked can be used to offset future energy use at a data center.⁷

The Company entered into the Honeycrisp ESA and sought to have the new data center located within its service territory because of the advantages such customers bring to the system. With a larger volume of sales, costs for customers across the system are lowered because each pays a smaller proportion of fixed costs,⁸ and large data center projects are particularly desirable because their demand for energy is steady.

At the time the Company signed the Honeycrisp ESA, it estimated that it would need to procure an initial 300 MW of incremental wind generation, prior to the data center’s commercial operation date (COD), to capture federal production tax credit (PTC) pricing, cover anticipated initial future load growth, and otherwise fulfill its

³ N. States Power Co., Advance Determination of Prudence – 200 MW Heartland Divide Wind II, Case No. PU-20-433, Ex. 2 (Application), at 1, 7 (Oct. 29, 2020) (“Heartland Divide II ADP Application”).

⁴ *Id.* at 7.

⁵ This will be demonstrated by retiring Renewable Energy Credits (RECs) in amounts equal to the site’s annual energy use. *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ N. States Power Co., Advance Determination of Prudence – 151.2 MW Dakota Range III, Case No. PU-18-430, Rebuttal Testimony of Bria E. Shea, at 7:12–8:10 (June 12, 2019).

obligations under the ESA in a planned and prudent manner.⁹ The Commission previously approved the power purchase agreement between the Company and Dakota Range III, LLP (Dakota Range III PPA) to fill approximately half of this commitment—*i.e.* the first 150 MW nameplate of wind energy forecast to be needed for the data center.¹⁰ The Company now seeks to procure the remaining 150 MW through the Heartland Divide II PPA.

B. The Dakota Range III PPA and the Commission’s Grant of that ADP

On December 27, 2018, the Company filed its Application for Advance Determination of Prudence for the Dakota Range III PPA for new wind energy generation from a 151.2 megawatt facility (Dakota Range III) located in Grant and Roberts counties, South Dakota.¹¹ The Company explained in its application that it intended to procure 300 MW of wind energy before the COD and that the Dakota Range III PPA was “the Company’s *first step* in procuring the incremental renewable energy needed to meet” its customer’s (Honeycrisp was then-referred to as the “C&I Customer”) objective, making it clear that *additional procurement* would be necessary.¹²

⁹ Heartland Divide II ADP Application, *supra* note 3, at 1, 7.

¹⁰ See Dakota Range III ADP Order, *supra* note 2, at 4–5, in which the Commission granted an ADP with the following conditions: 1) NSP was to provide financial compensation to North Dakota customers for their share of RECs in the same manner and form as for other NSP projects, and (2) North Dakota customers are to be held harmless and not pay for any costs associated with procuring RECs that NSP may have to acquire to satisfy its commitments under the Honeycrisp ESA.

¹¹ See N. States Power Co., Advance Determination of Prudence – 151.2 MW Dakota Range III, Case No. PU-18-430, Application (Dec. 27, 2018) (“Dakota Range III ADP Application”).

¹² *Id.* at 2 (emphasis added); *see also id.* at 6 (describing the Dakota Range III PPA as “the *first* renewable resource in support of the C&I Site”) (emphasis added).

In support of the ADP, the Company stated that although Honeycrisp’s “load [would] be based in Minnesota, North Dakota customers [would] benefit primarily from the impact that the increased Minnesota load has on the allocation of NSP System costs.”¹³ Specifically, the Company asserted that “the additional load [would] result in the reduction of the percentage of system costs paid for by North Dakota customers under the [twelve month coincident peak (12CP)] demand allocator.”¹⁴ Notwithstanding the need for the Dakota Range III PPA to support the data center (then-referred to as the C&I Site), the Company sought approval of the PPA “as a *system* energy resource, as the attractive price of energy under the PPA [would] lower NSP’s overall fuel costs and result in significant benefits for the Company’s customers.”¹⁵ Indeed, the Company’s conservative modeling estimated that Dakota Range III produces savings at \$22 million system-wide on a present value of revenue requirement (PVRR) basis compared to its base case.¹⁶ The Company further explained that “when the addition of the Google data center load is included in its modeling, the cost savings produced by the Dakota Range III PPA increase for NSP customers system-wide on a PVRR basis” and that “the addition of the Google load to the NSP System will produce additional savings for North Dakota customers due to the resulting changes to various jurisdictional cost allocators.”¹⁷

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 2–3 (emphasis in original).

¹⁶ *Id.* at 3; *see also* Dakota Range III ADP Order, *supra* note 2, at 2, ¶ 8.

¹⁷ *Id.* at 3, ¶¶ 10–11.

In response, James A. Heidell provided testimony on behalf of the Advocacy Staff. Mr. Heidell acknowledged that “NSP plans to acquire approximately 300 MW of incremental wind generation to serve the anticipated energy requirements in the first phase of the data center build-out” and that “Dakota Range III is *the first phase* of that procurement.”¹⁸ In his analysis, Mr. Heidell acknowledged that the Company did not project an immediate capacity need and that, in the Company’s Strategist base case load forecast, new capacity resources are not added to the system until 2027.¹⁹ Nonetheless, in response to the question “Why should the Commission grant an ADP for the project,” Mr. Heidell responded: “The Project is expected to lower the Company’s system average cost, *consequently* the Project is considered ‘least cost.’”²⁰ Indeed, the Commission found that “Advocacy Staff performed its own analysis and concurred with NSP that the addition of Dakota Range III will lower costs for customers in a range from \$31 million on a PVRR basis to \$48 million on a PVRR basis.”²¹ Mr. Heidell recommended that the Commission grant the ADP.²²

On December 3, 2019, the Commission granted the ADP for the Dakota Range III PPA with conditions.²³

¹⁸ N. States Power Co., Advance Determination of Prudence – 151.2 MW Dakota Range III, Case No. PU-18-430, Direct Testimony of James A. Heidell, at 13:21–23 (May 30, 2019) (emphasis added).

¹⁹ *Id.* at 17:1–3.

²⁰ *Id.* at 17:7–9 (emphasis added).

²¹ Dakota Range III ADP Order, *supra* note 2, at 2, ¶ 9; *see also* N. States Power Co., Advance Determination of Prudence – 151.2 MW Dakota Range III, Case No. PU-18-430, Direct Testimony of James A. Heidell, at 28:26–29:3 (May 30, 2019).

²² *Id.* at 5:22–6:16.

²³ *See* Dakota Range III ADP Order, *supra* note 2, at 4–5.

C. The Instant Application for ADP for the Heartland Divide II PPA

In seeking the ADP for the Dakota Range III PPA, the Company made it clear that it would also need to acquire the remaining 150 MW of the planned initial 300 MW of incremental wind generation required by the Honeycrisp ESA. The Heartland Divide II Project PPA is that next 150 MW phase.²⁴

The Heartland Divide II PPA represents one of the last opportunities for incremental wind generation the Company can pursue in the near future to serve the planned data center because MISO's generator interconnection queue study process continues to be oversubscribed and behind schedule and because, even when studies are completed, new wind generation resources are often assigned high transmission upgrade costs which may result in withdrawal from the queue.²⁵ Based on these challenges, the Company conducted a targeted solicitation of resource options available that had or were thought to soon have transmission interconnection cost certainty.²⁶ Two projects were identified and Heartland Divide II in central Iowa provided a bid, which ultimately led to the Heartland Divide II PPA.²⁷ "The Heartland Divide Wind II Project will be a 200 MW wind facility located in Audubon County, Iowa with a targeted . . . COD of December 31, 2021 and a PPA term of 25 years."²⁸ The Project

²⁴ Heartland Divide II ADP Application, *supra* note 3, at 1.

²⁵ *Id.* at 2.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 6.

will interconnect to the MISO system at MidAmerican Energy's Fallow Avenue 345 kV substation in Adair County, Iowa, which is in MISO's Local Resource Zone 3.²⁹

The Heartland Divide II PPA is necessary for supporting the data center, as explained, which itself should provide significant benefits to all NSP customers, including North Dakota customers.³⁰ Like the Dakota Range III PPA,³¹ the attractive price of energy under the Heartland Divide II PPA will lower NSP's overall fuel and purchased energy costs and result in significant benefits to the Company's customers.³² As was the case with the Dakota Range III PPA, even if the data center were not driving the need for the resource addition, the PPA would still benefit customers as a system resource because the fixed energy pricing from the PPA will lower the Company's overall fuel costs and result in lower costs for customers.³³

Although the data center load will be based in Minnesota, North Dakota customers will benefit from the impact that the increased Minnesota load has on the jurisdictional allocation of NSP System costs.³⁴ Specifically, the additional load will likely result in the reduction of the percentage of overall system costs paid for by North Dakota customers under both the 12CP demand allocator and the energy allocator.³⁵

²⁹ *Id.*

³⁰ *Id.* at 7.

³¹ Dakota Range III ADP Application, *supra* note 11, at 2–3.

³² Heartland Divide II ADP Application, *supra* note 3, at 3, 7, 16. This fact is uncontroverted on the record, no party has proposed that Heartland Divide II will not result in overall lower system costs, the only disputed issue is by how much.

³³ *Id.* at 3, 7.

³⁴ *Id.* at 3.

³⁵ *Id.* at 3, 14.

The record demonstrates that both the Company and Advocacy Staff’s economic analysis of the Heartland Divide II PPA indicates that it is an economically-beneficial resource addition³⁶ and can be used by the Company to meet its obligations under the Honeycrisp ESA.³⁷ Consistent with the approach used in the ADP application for the Dakota Range III PPA, the Company modeled the Heartland Divide II PPA’s economic costs and benefits in the context of its full system and assuming the net incremental costs of serving the data center load—consistent with the most recent Integrated Resource Plan.³⁸ This showed that the entire 200 MW Project results in customer benefits on a system-wide basis of \$97.4 million, on a PVRR basis.³⁹ Although the purchase price of the Heartland Divide II PPA is higher than the purchase price of the Dakota Range III PPA, the projected savings of \$97.4 million⁴⁰ under the Heartland Divide II PPA are greater than the savings that the Company projected under the Dakota Range III PPA (of \$22 million⁴¹), and both the Company’s and Mr. Heidell’s analysis show net savings.

³⁶ *Id.* at 2–3, 12; N. States Power Co., Advance Determination of Prudence – 200 MW Heartland Divide Wind II, Case No. PU-20-433, Direct Testimony of James A. Heidell, at 28:6–8 (Apr. 6, 2021).

³⁷ Heartland Divide II ADP Application, *supra* note 3, at 2.

³⁸ *Id.* at 2.

³⁹ *Id.* at 2–3, 12. The ESA is designed to cover incremental costs of the data center and the Company’s modelling includes the costs of serving the initial build-out.

⁴⁰ *Id.*

⁴¹ Dakota Range III ADP Order, *supra* note 2, at 2, ¶ 8.

D. The Renewable*Connect Program

Because only 150 MW of the Heartland Divide Wind II Project is required to meet the requirements of the Honeycrisp ESA, the remaining 50 MW will be assigned to the “Renewable*Connect” program in Minnesota.⁴² This program offers Minnesota customers the option to voluntarily purchase blocks of renewable energy and, as such, the energy costs will be borne directly by participants in that program.⁴³ “The Company began offering the Renewable*Connect pilot in 2017 to meet customer demand for a voluntary green tariff, consistent with Minnesota’s Renewable and High-Efficiency Rate Options statute (Minn. Stat. § 216B.169).”⁴⁴ As of the time of the Company’s Application, there were “over 2,500 customers on the waiting list for the Renewable*Connect program, and the Heartland Divide II Project represents the final piece of [the Company’s] sourcing plan to serve these prospective customers.”⁴⁵ Since this program is based in Minnesota and energy from the 50 MW will not be allocated to North Dakota customers, the Company is not seeking an ADP for that 50 MW portion of the Project.⁴⁶

III. ARGUMENT

The Heartland Divide II PPA is a prudent resource addition because it will reduce costs and benefit North Dakota customers. Although there is disagreement

⁴² Heartland Divide II ADP Application, *supra* note 3, at 1, 7.

⁴³ *Id.* at 1–2, 7–8.

⁴⁴ *Id.* at 8.

⁴⁵ *Id.*

⁴⁶ *Id.* at 1–2, 8.

between witnesses as to the amount of savings, they all forecasted anticipated savings. Moreover, the Commission already approved the ADP for the similarly situated Dakota Range III PPA, and the record does not support a departure from that precedent. The ADP should be approved without conditions or with only those conditions imposed on the similarly-situated Dakota Range III PPA.⁴⁷

A. Applicable Standard

The North Dakota Century Code section 49-05-16(1)(d) authorizes the Commission to issue an ADP if it “determines that the resource addition is prudent.”⁴⁸ This standard is similar to the “honestly and prudently invested” standard that the Commission uses for ratemaking.⁴⁹ The general prudence standard calls for determining whether the utility action was reasonable at the time it was taken under all relevant circumstances.⁵⁰ For the determination that the resource addition is prudent with respect to facilities located or to be located in North Dakota, the Commission must consider the benefits of having the resource addition located in North Dakota.⁵¹

⁴⁷ See Dakota Range III ADP Order, *supra* note 2, at 4–5. While the Company has advocated for approval without conditions and also does so in this brief, it also recognizes that approval upon the same conditions as those earlier used in the Dakota Range III PPA would be consistent with precedent.

⁴⁸ N.D.C.C. § 49-05-16(1)(d).

⁴⁹ See N.D.C.C. § 49-06-02.

⁵⁰ See 1 David J. Muchow & William A. Mogel, ENERGY LAW AND TRANSACTIONS, § 4.02[3][b] (LexisNexis Matthew Bender 2021) (citing CHARLES F. PHILLIPS JR., PUBLIC UTILITIES REPORTS, INC., THE REGULATION OF PUBLIC UTILITIES at 292 (2d ed. 1985)).

⁵¹ N.D.C.C. § 49-05-16(1)(d).

B. The Heartland Divide II PPA Is Prudent

While the PPA is necessary to support the data center, it will also provide cost reduction benefits to all NSP customers, including North Dakota customers. As set forth in the Application and witness testimony—including Mr. Heidell’s testimony—the Heartland Divide II PPA is an economically-beneficial resource addition. That is, adding the Heartland Divide II PPA to the system results in customer savings relative to a future where it is not included.

Specifically, the Company’s EnCompass⁵² modeling estimates that the entire 200 MW Project would result in customer benefits on a system-wide basis of \$97.4 million, on a present value of revenue requirements (PVRR) basis.⁵³ Mr. Heidell, on the other hand, estimated that the savings would be closer to \$57 million.⁵⁴ While concluding that “NSP conducted a reasonable analysis in EnCompass,” he noted that “there is a range of reasonable results given the uncertainties surrounding fuel prices, generation

⁵² In connection with the Dakota Range III PPA approved by the Commission, the Company used the Strategist resource planning model. Dakota Range III ADP Application, *supra* note 11, at 9–14. Here, the Company used the EnCompass resource planning model. Heartland Divide II ADP Application, *supra* note 3, at 11. Like Strategist, “EnCompass simulates the operation of the NSP System and estimates the total cost of energy over the life of the project on a present value basis.” *Id.* “[O]ne of the primary differences between EnCompass and Strategist is that EnCompass evaluates resource needs and cost on a chronological hourly basis, which better accounts for hourly variations on [NSP’s] system.” *Id.* As the Company adds more variable resources to the system, it becomes increasingly important to ensure that resource needs on an hourly basis are appropriately considered. *Id.*

⁵³ *Id.* at 12–14.

⁵⁴ N. States Power Co., Advance Determination of Prudence – 200 MW Heartland Divide Wind II, Case No. PU-20-433, Direct Testimony of James A. Heidell, at 28:6–8 (Apr. 6, 2021) (testifying that the project savings will be approximately \$40 million less than the Company’s estimate of \$97.4 million based on dispatching the Project into Zone 3, which would result in approximately \$57 million in savings).

additions, generation retirements, and load.”⁵⁵ But, the dispute over the *amount* of savings should not ultimately be the deciding factor on whether or not to grant the ADP.⁵⁶ Rather, this Commission should focus on the *fact* of predicted savings for North Dakota customers and other benefits driving the Project. There is no “threshold” cost savings set to trigger the determination that a resource addition is prudent. Indeed, in previously recommending that the Commission grant the ADP for the Dakota Range III PPA, Mr. Heidell responded to the question “Why should the Commission grant an ADP for the project” with the statement that “***The Project is expected to lower the Company’s system average cost . . .***”⁵⁷ That is, the focus was simply on whether the project would lower the system’s average cost and result in savings for North Dakota customers, and *not* whether the cost-savings met a certain threshold or was more or less than represented by the Company in the application.

In testimony, Mr. Heidell agreed that there would be savings for North Dakota customers from the Heartland Divide II PPA, stating in his direct testimony that “NSP was reasonable to assume the PPA will provide energy cost savings for ND

⁵⁵ *Id.* at 25:21–24.

⁵⁶ In any event, the Company’s witness Farah Mandich explained at the hearing that Mr. Heidell’s calculation did not capture all of the cost savings. June 10 Hearing Transcript, *supra* note 1, at 77:2–13, 78:16–25. Ms. Mandich also explained, in response to questions about the use of the entire 200 MW in the Company’s cost analysis, that “even if you take 25 percent of the savings out [to exclude the 50 MW reserved for the Renewable*Connect program], the project still results in significant savings to customers” according to the Company’s modeling. *Id.* at 69:19–22. Ms. Mandich focused on the fact that “the project results in benefits to customers broadly on the system . . .” *Id.* at 70:11–12.

⁵⁷ N. States Power Co., Advance Determination of Prudence – 151.2 MW Dakota Range III, Case No. PU-18-430, Direct Testimony of James A. Heidell, at 17: 7–9 (May 30, 2019) (emphasis added).

ratepayers”⁵⁸ and further stated at the hearing that “[t]here is some expected cost benefits, that’s correct.”⁵⁹ While he clarified that these were “expected” savings rather than “guaranteed” savings,⁶⁰ he had previously recommended approval of the Dakota Range III PPA simply because it was “*expected* to lower the Company’s system average cost”⁶¹ and not in response to any “guarantee.” Moreover, there is no statutory or Commission requirement that applicants guarantee specific results, and it is not clear how the Company could ever “guarantee” the exact amount of savings when requesting an *advance* determination of prudence.

In addition to the savings predicted by both Company witnesses and Mr. Heidell, the Heartland Divide II PPA will also bring the benefits associated with a large, new data center customer, which are discussed in Section III.D.1 below. However, even if the data center is not built, the Heartland Divide II PPA is still expected to provide savings.⁶² At the very least, no witness has testified that the Heartland Divide II PPA will harm North Dakota customers in any way. Mr. Heidell’s reticence to recommend approval for this PPA deviates from his prior recommendation for approval of the Dakota Range III PPA based on there being no net harm to North Dakota customers.⁶³

⁵⁸ N. States Power Co., Advance Determination of Prudence – 200 MW Heartland Divide Wind II, Case No. PU-20-433, Direct Testimony of James A. Heidell, at 6:11–12 (Apr. 6, 2021).

⁵⁹ June 10 Hearing Transcript, *supra* note 1, at 105:13–106:3.

⁶⁰ *Id.* at 97:21–23, 102:13–20.

⁶¹ N. States Power Co., Advance Determination of Prudence – 151.2 MW Dakota Range III, Case No. PU-18-430, Direct Testimony of James A. Heidell, at 17: 7–9 (May 30, 2019) (emphasis added).

⁶² Heartland Divide II ADP Application, *supra* note 3, at 3, 7.

⁶³ N. States Power Co., Advance Determination of Prudence – 151.2 MW Dakota Range III, Case No. PU-18-430, Direct Testimony of James A. Heidell, at 6:9–10 (May 30, 2019).

In fact, although the purchase price of the Heartland Divide II PPA is more expensive than the Dakota Range III PPA, the Company's modeling shows more cost savings—at \$97.4 million—and Mr. Heidell's analysis likewise shows material savings. Accordingly, the Heartland Divide II PPA is prudent. For the same reasons, the issues raised at the hearing about the demands of the Company's customers driving the PPA are irrelevant to the Application at hand.

The proposed Heartland Divide II PPA is prudent, as it represents an opportunity to lower customers' fuel costs while facilitating the addition of the data center load to the NSP System which will benefit all customers. It is prudent for the same reasons the earlier Dakota Range III PPA was prudent.

C. There is No Meaningful Difference from the Dakota Range III PPA

The Commission already approved the Dakota Range III PPA (with conditions), pursuant to which the Company acquired the first 150 MW required under the Honeycrisp ESA. The Commission has thus already considered the Honeycrisp ESA and determined that it is appropriate for the Company to acquire wind generation resources to meet the requirements of that agreement.

As they are separate PPAs involving different projects, there are some differences between Dakota Range III and Heartland Divide II. However, those differences do not justify granting one ADP and denying the other. Dakota Range III was approved because the testimony from both parties showed that the project would reduce system costs for North Dakota customers, and the testimony in this case

regarding the predicted savings, if not the exact amount, is similarly undisputed. In exercising its quasi-judicial functions, the Commission must have a reasonable, non-arbitrary basis if it wishes to depart from its own precedent.⁶⁴ Nothing in the record supports such a departure, including, as discussed in the following section, Mr. Heidell's concerns. At the very least, the Commission should grant the ADP with the same conditions imposed on the Dakota Range III PPA. To do otherwise would be to act arbitrarily and contrary to the Commission's past practice.

D. Mr. Heidell's Concerns Do Not Support a Denial of the ADP

None of Mr. Heidell's concerns justify denial of an ADP and the Company disagrees that the concerns raised should be considered in a prudence determination which is to focus on *the benefits* of having the resource addition.

Of note, Mr. Heidell did not recommend a denial of the ADP. Rather, he agreed that cost savings would flow from the Heartland Divide II PPA and otherwise described numerous favorable factors to approve the ADP: that "NSP reasonably expects that the Project will lower power costs to ND customers by decreasing net power costs to NSP as a result of selling the Project's output into MISO's Zone 3 energy markets at a price greater than the PPA cost," that "[t]he incremental energy from the Project is not enough to materially impact NSP's resource energy mix or MISO's overall reliability," that "[t]he resource addition aligns with NSP's stated intention to use Dakota Range III

⁶⁴ See 5 Jacob A. Stein and Glenn A. Mitchell, ADMINISTRATIVE LAW § 40.02 (2021).

and the Project to fulfill incremental renewable generation requirements under the Honeycrisp RESA,” and that “[t]he Project appears to align with the long-term objectives of the Company.”⁶⁵ Nonetheless, Mr. Heidell raises four concerns for this Commission’s consideration.⁶⁶ None of these concerns support a denial of the ADP.

1. The Project Appropriately Supplies the Renewable Energy Required Under the Honeycrisp ESA

First, Mr. Heidell’s concern that the Project is not necessary to meet energy/capacity requirements ignores his prior acknowledgment that this resource is necessary to meet the Company’s contractual obligations, which he fully accepted in recommending approval of the Dakota Range III PPA. Indeed, in connection with that PPA, Mr. Heidell also noted the fact that the PPA did not meet a capacity need: “[t]he PPA does not meet an immediate need for capacity as the first capacity resource added to the system in the reference case is a combustion turbine in 2027.”⁶⁷ In response to the question “Does the Company need the Project to meet its capacity requirements?”, Mr. Heidell responded:

The Company does not project an immediate capacity need. In the Company’s Strategist base case load forecast, which does not consider the additional Google Data Center load, new capacity resources are not added to the system until 2027 when the model adds a 374 MW combustion turbine in addition to a combined cycle project.⁶⁸

⁶⁵ N. States Power Co., Advance Determination of Prudence – 200 MW Heartland Divide Wind II, Case No. PU-20-433, Direct Testimony of James A. Heidell, at 7:24–8:9 (Apr. 6, 2021).

⁶⁶ *See id.* at 6:14–7:2.

⁶⁷ N. States Power Co., Advance Determination of Prudence – 151.2 MW Dakota Range III, Case No. PU-18-430, Direct Testimony of James A. Heidell, at 7:21–23 (May 30, 2019).

⁶⁸ *Id.* at 16:29–17:4.

Nevertheless, Mr. Heidell recommended approval of the Dakota Range III PPA, and the Commission approved that ADP. That is, there was no concern that this issue weighed against the prudence of the resource addition necessary to meet the Company's contractual obligations.⁶⁹ That precedent should be followed here. The Heartland Divide II PPA is merely a continuation of the Company's efforts to procure the initial 300 MW of wind generation necessary for the Honeycrisp ESA.⁷⁰ Mr. Heidell acknowledged this in his direct testimony: "The resource addition aligns with NSP's stated intention to use Dakota Range III and the Project to fulfill incremental renewable generation requirements under the Honeycrisp RESA."⁷¹ This fact simply did not trump the cost saving benefits of the PPA in that prior matter, and there are also system benefits to attracting a new, large customer.

Large customers benefit the system as a whole, and data centers are particularly desirable large customers because of their 24/7 operations. In an era of energy

⁶⁹ At the June 10, 2021 hearing, Mr. Heidell attempted to substantiate his differentiation of the Heartland Divide II PPA from his prior support of the Dakota Range III PPA, stating that due to "additional analysis done for this ADP," he still had a concern that "the company is long on energy" even though "the expectation is a lower cost." June 10 Hearing Transcript, *supra* note 1, at 101:24–102:9. He further stated that "the Google energy services agreement" was "the complication" that made this case "no longer black and white" compared to the Dakota Range III PPA. *Id.* at 104:3–18. As shown above, Mr. Heidell's attempts to differentiate this case lack merit. The Honeycrisp ESA was the basis for seeking approval of the ADP for Dakota Range III PPA, which was (like the Heartland Divide II PPA) not necessary to meet capacity requirements but sought to meet contract obligations. There simply is no new "complication."

⁷⁰ At the hearing, the Company's witness—Allen Krug—was questioned about the fact that the Heartland Divide II PPA was not needed to meet energy and capacity requirements associated with NSPs' retail load obligations. *Id.* at 22:21–25. Mr. Krug explained that "the need is created by [the Company's] need to acquire sources to add the Honeycrisp load" (*id.* at 23:1–11) — *i.e.* to complete the 300 MW of wind generation need for the Honeycrisp ESA that started with the previously approved Dakota Range III PPA.

⁷¹ N. States Power Co., Advance Determination of Prudence – 200 MW Heartland Divide Wind II, Case No. PU-20-433, Direct Testimony of James A. Heidell, at 8:6–8 (Apr. 6, 2021).

efficiency initiatives and slow and potentially declining load growth, new large projects are one way to counteract those trends and increase system load. Material increases in load benefits customers across the system by spreading system costs across a higher sales volume.⁷² By their nature, data centers operate 24 hours a day, seven days a week. As a result, data center projects represent the best type of large customer to attract to the energy grid because they purchase a large volume of electricity and consume energy on a steady basis.⁷³ Their load factors can help stabilize energy transmission, which also helps to ensure greater reliability.⁷⁴ Data centers allow generation facilities to run more efficiently when running at reduced capacity during off-peak hours.⁷⁵

Companies considering the construction of new data centers often have corporate sustainability goals, as is the case in this instance. For example, both Amazon and Facebook have similarly sought to bring renewable generation resources onto the grid in connection with their data center developments.⁷⁶ Consequently, a utility seeking to attract a new data center may have to commit to new renewable generation, as was

⁷² N. States Power Co., Advance Determination of Prudence – 151.2 MW Dakota Range III, Case No. PU-18-430, Rebuttal Testimony of Bria E. Shea, at 7:12–8:10 (June 12, 2019).

⁷³ See Michael F. Kaestner, *Sensible Bytes: States Need A New Approach to Justify Their Recruitment of Internet Data Centers*, 38 WM. & MARY ENVTL. L. & POL'Y REV. 733, 757 (2014) (citation omitted).

⁷⁴ *Id.* (citation omitted).

⁷⁵ *Id.* at 758 (citation omitted).

⁷⁶ Rich Miller, *Amazon Buys Solar, Wind Power to Speed Shift to a Renewable AWS Cloud*, DATA CENTER FRONTIER (Dec. 10, 2020), <https://datacenterfrontier.com/amazon-buys-green-power-to-speed-shift-to-renewable-aws-cloud/>; Press Release, Amazon, *Amazon Announces Five New Utility-Scale Solar Projects to Power Global Operations In China, Australia, and the U.S.* (May 21, 2020), <https://press.aboutamazon.com/news-releases/news-release-details/amazon-announces-five-new-utility-scale-solar-projects-power>; Facebook, *Data Centers*, <https://sustainability.fb.com/data-centers/> (last visited Aug. 5, 2021); Emily Holbrook, *Facebook Signs PPA for 155MWac of Solar Energy to Help Power Utah Data Center*, ENVIRONMENT + ENERGY LEADER (Sept. 9, 2020), <https://www.environmentalleader.com/2020/09/facebook-signs-ppa-for-155mwac-of-solar-energy-to-help-power-utah-data-center/>.

the case in this instance. As with the approved Dakota Ridge III PPA, this project satisfies the obligations pursuant to the Honeycrisp ESA. It is part of an effort to bring a new, desirable customer onto the system. Importantly, it will also result in savings for North Dakota customers, as discussed above.

2. The Zone 3 Location Does Not Impact the Prudence of the PPA

Second, with respect to the MISO Zone 1 vs. Zone 3 issue, it is significant that Mr. Heidell never recommended any condition to the approval of the ADP to address this issue. That is because the fact that the resource is in Zone 3 does not affect the prudence of the PPA. As explained at the hearing, although the project is located in a different zone from the majority of the Company's load, the Company evaluated the locational marginal prices both in the vicinity of the project as opposed to other projects that the Company has on the system, which showed no significant difference between the LMP gap for those two analyses.⁷⁷ While the Company used Zone 1 for pricing estimates as one of its simplifying assumptions in system planning, the supplemental screening indicated that there was not a significant difference between the price at that node and the price that the Company would experience for other projects in Zone 1.⁷⁸ There simply was no "betting on the MISO market" as the Company builds resources to serve customers, not to bet on the market.

⁷⁷ June 10 Hearing Transcript, *supra* note 1, at 70:19–25; *see also id.* at 71:1–10.

⁷⁸ *Id.* at 90:8–20.

3. The PPA is Least Cost

Third, Mr. Heidell's assertion that the project may not be the "least cost" is merely based on a "possibility" that the Company did not select the lowest cost resource.⁷⁹ In his direct testimony, Mr. Heidell stated that it was "unclear" whether the PPA was the least cost option⁸⁰ and whether "with more time, the Company could have identified a lower-cost wind resource, or a Zone 1 resource of comparable-cost."⁸¹ But, these statements could be true of any and all projects. That is, with every project there is a theoretical possibility that a lower-cost alternative might be found at some point in the future; moreover, the Company followed a competitive acquisition process even if that process was targeted.⁸² Indeed, the Company confirmed that the project "displayed favorable economics and – when compared to other projects bid into [its] initial 2019 solicitation – scored favorably on all qualitative factors by which [NSP] evaluate[s] bids, such as PPA conformity and transmission certainty metrics."⁸³ The Heartland Divide II proposal was the only available option to meet the requirements of the Honeycrisp ESA and there was no other way to further demonstrate that it was "least cost." Notwithstanding the above, Mr. Heidell confirmed in connection with his

⁷⁹ N. States Power Co., Advance Determination of Prudence – 200 MW Heartland Divide Wind II, Case No. PU-20-433, Direct Testimony of James A. Heidell, at 31:7–9 (Apr. 6, 2021) ("[I]t is possible that NSP did not select the lowest cost resource as a result of establishing a selection criterion that focused on having a renewable resource online by the end of 2021 with known interconnection costs.").

⁸⁰ *Id.* at 6:24–25.

⁸¹ *Id.* at 18:17–18.

⁸² June 10 Hearing Transcript, *supra* note 1, at 23:21–24.

⁸³ Heartland Divide II ADP Application, *supra* note 3, at 8.

recommendation to approve the Dakota Range III PPA that all that was necessary to show that the PPA was the “least cost” option was the cost-saving benefit: “The Project is expected to lower the Company’s system average cost, *consequently the Project is considered least cost.*”⁸⁴

4. The Proposed Bifurcation is Not a Barrier to Approval

Finally, as to Mr. Heidell’s concern that the proposed bifurcation of the 200 MW between the Honeycrisp ESA and the Renewable*Connect Program was “complex” is defeated by the Company’s prior showing of other instances of bifurcation.⁸⁵

E. Conditions are Not Necessary

As both sides note, there is a clear benefit to the proposed resource addition in this state. The concerns noted do not negate those benefits and therefore no conditions should be placed on the approval of the requested ADP. However, the Company does recognize that the Commission granted the ADP for Dakota Range III subject to two conditions, and while it does not believe those conditions were necessary it accepts that issuing the ADP subject to them would be consistent with Commission precedent.

⁸⁴ N. States Power Co., Advance Determination of Prudence – 151.2 MW Dakota Range III, Case No. PU-18-430, Direct Testimony of James A. Heidell, at 17:7–9 (May 30, 2019) (emphasis added). At the June 10, 2021 hearing, Mr. Heidell attempt to shift his basis for questioning whether the Heartland Divide II PPA was “least cost,” stating:

Now, when I say the lowest-cost resource, it’s not necessarily that at the time that the company decided that they needed to buy or needed to purchase this for the Honeycrisp contract, but in the context of the supplemental resource plan, which says we don’t need a resource until the next decade for more than 10 years yet. And so to me, it’s not clear that there’s necessarily a least-cost resource in the long-term system planning perspective.”

June 10 Hearing Transcript, *supra* note 1, at 98:18–99:2.

⁸⁵ N. States Power Co., Advance Determination of Prudence – 200 MW Heartland Divide Wind II, Case No. PU-20-433, Rebuttal Testimony of Allen D. Krug, at 8:16–9:2 (May 14, 2021).

Turning to the first proposed condition, no express limitation needs to be placed on the total PPA costs. The PPA is structured to protect the interests of customers through various safeguards—including specific milestone dates, penalties for failing to meet those dates, default provisions, security fund requirements, and insurance requirements, no material changes to the costs will be borne by North Dakota customers, and NSP plans to seek additional Commission review for any contract modification.⁸⁶

The Company should also not be required to provide North Dakota customers with their share of the Project's RECs, which is the next proposed condition.⁸⁷ The RECs are needed to meet the Company's obligations under the Honeycrisp ESA and the Company should not be required to allocate the RECs generated by the project to each retail jurisdiction.⁸⁸ As discussed in Mr. Shaw's direct testimony, it would be inequitable for North Dakota customers to enjoy the cost-sharing benefits of the data center load through the demand and energy allocators if North Dakota customers are not also paying their share of the renewable resource costs needed to attract the data center to the NSP System service area.⁸⁹ In that same way, it would be inequitable for North Dakota customers to be compensated for a share of the RECs generated by the

⁸⁶ See Heartland Divide II ADP Application, *supra* note 3, at 9–11, 16; see also N. States Power Co., Advance Determination of Prudence – 200 MW Heartland Divide Wind II, Case No. PU-20-433, Rebuttal Testimony of Allen D. Krug, at 4:8–14 (May 14, 2021).

⁸⁷ If the value of the RECs were shared with North Dakota customers, the result would be even more favorable pricing.

⁸⁸ Heartland Divide II ADP Application, *supra* note 3, at 9.

⁸⁹ N. States Power Co., Advance Determination of Prudence – 200 MW Heartland Divide Wind II, Case No. PU-20-433, Direct Testimony of Christopher J. Shaw, at 16:18–25 (Oct. 29, 2020).

Project that are needed to match the anticipated data center load. The resource is necessary to meet the needs of the Honeycrisp ESA and North Dakota customers are still receiving the benefits of the Project via cost savings. While RECs have value, but for the addition of Honeycrisp, “there would be no value at all to be had here, meaning that North Dakota customers wouldn’t benefit from the increased load on the NSP system.”⁹⁰ Accordingly, the Company is seeking different treatment as without the allocation of the RECs to the project, the Company “would not be able to have completed the agreement with Honeycrisp.”⁹¹ As explained in the Application and at the hearing, if all of the RECs are not needed for the data center project, “[t]hen they would ultimately be allocated to all customers.”⁹² Notwithstanding the foregoing, the Company does recognize that a similar condition was placed on the Dakota Range III PPA and that such a condition would, therefore, be consistent with precedent.

There is similarly no need for the next proposed condition: the proposed requirement that ND customers be insulated from potential costs associated with the Company’s need to purchase RECs.⁹³ However, while this proposed condition would be unnecessary, the Company recognizes that this condition was placed on the Dakota

⁹⁰ June 10 Hearing Transcript, *supra* note 1, at 34:24–35:3.

⁹¹ *Id.* at 14:15–20.

⁹² Heartland Divide II ADP Application, *supra* note 3, at 9–10; June 10 Hearing Transcript, *supra* note 1, at 14:21–24.

⁹³ N. States Power Co., Advance Determination of Prudence – 200 MW Heartland Divide Wind II, Case No. PU-20-433, Direct Testimony of James A. Heidell, at 14:7–11 (Apr. 6, 2021).

Range III PPA and, therefore, that such a condition would be consistent with precedent.

The last proposed condition, that the Company be required to treat the 50 MW reserved for the Renewable*Connect program as a system resource, is not needed. Mr. Heidell’s reasoning for this condition is that allocating the 50 MW to serve the Renewable*Connect program “reduces the benefit of the Project to ND customers and could create precedent allowing a company to bifurcate a resource acquisition between a system resource and a non-system resource.”⁹⁴ Again, a condition should not be placed on approval just because there could be *additional* benefits realized by the resource addition. Such a requirement would set a concerning precedent requiring any prudence determination to be based on a showing of more than the intended benefits. Rather than a concern, Mr. Heidell’s testimony on this issue supports the prudence of the Heartland Divide II PPA. Mr. Heidell explained at the hearing: “[T]his is a low-cost resource, that in my mind, the whole resource should be treated as a system resource as its benefits—benefits—it could benefit all customers.”⁹⁵ He further reasoned that “[i]f a project has value, then I think the whole project should be included”⁹⁶ and that “if the estimated savings are there . . . and you expect savings, you might as well take them all.”⁹⁷ The request to avoid a “reduction” in benefit supports

⁹⁴ *Id.* at 8:17–20.

⁹⁵ June 10 Hearing Transcript, *supra* note 1, at 100:11–15.

⁹⁶ *Id.* at 103:2–3.

⁹⁷ *Id.* at 110:17–20.

the Company's contention that the project will benefit North Dakota customers. In any event, the Renewable*Connect Program cost is not being borne by ND customers and should not be treated as a system resource.

IV. CONCLUSION

The proposed Heartland Divide II PPA is prudent, as it represents an opportunity to lower customers' fuel costs while facilitating the addition of the data center load to the NSP System. It also does not differ meaningfully from the Dakota Range III PPA for which the Commission already granted an ADP. The Company therefore respectfully requests that the Commission grant the requested ADP for the Heartland Divide II PPA.

Respectfully submitted,

Dated: August 9, 2021

By: /s/ Zeviel T. Simpser
Zeviel T. Simpser
North Dakota Bar #06794
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
Telephone: (612) 492-6129
Email: simpser.zev@dorsey.com

and

Shubha M. Harris (*pro hac vice*)
Principal Attorney
Xcel Energy Services, Inc.
401 Nicollet Mall
Minneapolis, MN 55401
Telephone: (612) 215-4517
Email: shubha.m.harris@xcelenergy.com

<p>Brian Johnson Special Assistant Attorney General North Dakota Public Service Commission 600 E Boulevard Ave. Dept 408 Bismarck, ND 58505-0060</p>	<p>Adam Renfandt Public Utility Analyst North Dakota Public Service Commission 600 E Boulevard Ave, Dept 408 Bismarck, ND 58505-0408</p>
<p>Victor Schock Public Utility Analyst North Dakota Public Service Commission 600 E Boulevard Ave, Dept 408 Bismarck, ND 58505-0408</p>	

Franklin Lutz

(Affiant Signature)

Subscribed and sworn before me this 9th day of August, 2021.

Sandra Demland

Notary Public
Hennepin County, Minnesota

