

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Northern States Power Company
Advanced Prudence –
200 MW Heartland Divide Wind II Application**

**Case No. PU-20-433
OAH File No. 20200421**

**ADVOCACY STAFF'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

September 7, 2021

Appearances

Commissioners Julie Fedorchak, Randy Christmann, and Brian Kroshus.

Zeviel T. Simpser, Attorney, Dorsey & Whitney LLP, 50 South 6th Street, Suite 1500, Minneapolis, Minnesota 55402, and Shubba M. Harris, Principal Attorney, Xcel Energy Services Inc., 401 Nicollet Mall, Minneapolis, Minnesota 55401, on behalf of Northern States Power Company, a Minnesota corporation.

Mitchell D. Armstrong and Jon C. Lengowski, Special Assistant Attorneys General, 122 East Broadway Avenue, Bismarck, North Dakota 58501, on behalf of Public Service Commission Advocacy Staff.

John M. Shuh, General Counsel, Public Service Commission, State Capitol, 600 East Boulevard Avenue, Bismarck, North Dakota 58505, on behalf of the Public Service Commission Advisory Staff.

Timothy J. Dawson, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503.

Preliminary Statement

On October 30, 2020, Northern States Power Company (NSP), d/b/a Xcel Energy, filed an application with the North Dakota Public Service Commission (Commission) seeking an advance determination of prudence (ADP) under North Dakota Century Code (N.D.C.C.) Section 49-05-16 for a power purchase agreement (PPA) between NSP and Heartland Divide Wind II, LLC, for wind energy from a 200 megawatt (MW) facility (Heartland Divide Wind II).

On May 5, 2021, the Commission issued a Notice of Public Hearing, scheduling a public hearing for June 10, 2021 at 8:15 a.m. in the Commission Hearing room, 12th Floor, State Capitol, 600 East Boulevard Avenue, Bismarck, North Dakota 58505. The Notice specified that the issue to be considered was whether NSP should be granted an advanced determination that its proposed resource addition is prudent.

On June 10, 2021, the public hearing was held as scheduled.

Having allowed all interested persons an opportunity to be heard and having heard and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. NSP is an investor-owned electric utility headquartered in Minneapolis, Minnesota, authorized to provide public utility service in North Dakota under the regulatory jurisdiction of the Commission.
2. In Case No. PU-07-776, NSP agreed to file an application for an advanced determination of prudence for any proposed resource addition larger than 50 MW. Later in Case No. PU-12-59, NSP committed to file all advance determination of prudence applications within 14 days of seeking similar approvals in Minnesota. Moreover, pursuant to the Commission's February 26, 2014 Order Adopting Settlement in Case No. PU-12-813, NSP has committed not to include renewable energy resources or purchases over 50 MW in the Fuel Cost Recovery rider unless and until the Commission grants an ADP for the resource.¹
3. NSP filed its petition seeking approval for the Heartland Divide II PPA in Minnesota on October 29, 2020 (MPUC Docket No. E002/M-20-806).
4. Heartland Divide Wind II is a proposed 200 MW wind energy facility located in Audubon County, Iowa with a targeted Commercial Operation Date of December 31, 2021 and a PPA term of 25 years. The project 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.
5. NSP testified that it is procuring the Heartland Divide II PPA to meet its obligations under a Retail Electric Service Agreement (ESA) with Honeycrisp LLC (Honeycrisp), a subsidiary of Google, LLC, to provide electric service in connection with a proposed data center to be located at NSP's Sherco generating plant site in Sherburne County, Minnesota.
6. NSP testified that a critical component of the Honeycrisp ESA is the obligation to procure sufficient incremental renewable generation to match the data center's expected annual energy use. NSP testified that at the time it 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, to capture federal production tax credit (PTC) pricing, cover anticipated initial future

¹ Recently, the Settlement Agreement in Case No. PU-20-441, which was adopted in the Commission's August 18, 2021 Order, provided further guidance regarding treatment of those generation resources not approved by the Commission.

load growth, and otherwise fulfill its obligations under the ESA in a planned and prudent manner.

7. This Commission previously approved (with conditions) the power purchase agreement between NSP 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. Specifically, on December 3, 2019, this Commission granted the ADP for the Dakota Range III PPA in Case No. PU-18-430.
8. NSP testified that the Heartland Divide II PPA will procure the remaining 150 MW to comply with its obligations under the Honeycrisp ESA. NSP further testified that the Heartland Divide II PPA represents one of the last opportunities for incremental wind generation NSP can pursue in the near future 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.
9. As to the remaining 50 MW, NSP testified that it would be assigned to the "Renewable*Connect" program in Minnesota which offers Minnesota customers the option to voluntarily purchase blocks of renewable energy for a premium and, as such, those energy costs will be borne directly by the participants in that Minnesota program.
10. NSP testified that the addition of the Heartland Divide Wind II not only satisfies obligations under the Honeycrisp ESA, but will also provide cost reduction benefits to NSP's customers, including those in North Dakota. NSP testified that it 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 NSP's customers, while facilitating the addition of the data center load to the NSP System.
11. NSP testified that its EnCompass 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.
12. NSP testified that even if the data center was 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. Accordingly, NSP testified that the PPA will generate savings for customers even if the data center load does not materialize.
13. Advocacy Staff performed its own analysis and testified the addition of the Heartland Divide Wind II will likely result in minimal cost savings for customers. Advocacy Staff did not opine as to whether the Commission should grant the ADP. Instead, Advocacy Staff contended whether the project is prudent or not depends

on the weight placed on anticipated cost savings versus other concerns with the project.

14. If the Commission determines the project is prudent, Advocacy Staff recommended that four conditions be placed on an approval of the ADP: 1) a limitation of total PPA costs to what NSP identified in its Application; 2) the requirement that NSP provide North Dakota customers with their share of the Project's Renewable Energy Credits (RECs); 3) the insulation of North Dakota customers from potential costs associated with NSP's need to purchase additional RECs to satisfy the Honeycrisp ESA; and, 4) a requirement to treat the full 200 MW as a system resource
15. NSP testified that it disagreed with the conditions proposed by Advocacy Staff and requested that the ADP be approved without conditions.

[Remaining Findings if the Commission Determines the Project is Not Prudent]

16. While Advocacy Staff agreed there were minimal anticipated cost savings associated with the project, it also pointed out concerns. Those concerns included that the project is not needed to serve NSP's retail load absent NSP's obligation under the Honeycrisp ESA to procure new renewable energy sources; the project is not needed for capacity; the project is located in Zone 3; NSP failed to incorporate capacity requirement costs into the estimated system savings; and allocating 50 MW to exclusively serve the Renewable*Connect program reduces the benefit of any potential cost savings and could create a precedent allowing a company to bifurcate a resource acquisition between a system resource and non-system resource. The testimony at the hearing expanded on these concerns.
17. The testimony at the hearing showed this project originated because Honeycrisp demanded new, green energy. NSP witnesses testified there is sufficient energy presently on its system to meet the customer demand, but it needs this project to meet Google's requirement that the energy be "new." In actuality, NSP does not need the energy to serve the anticipated Honeycrisp ESA load in the near term. Instead, it needs the renewable energy credits to fulfill the Honeycrisp ESA. In addition, NSP has indicated the Honeycrisp load may not materialize, and even if it does, the amount of the load is uncertain. As a result, NSP has evaluated the project's economic impact and asserted cost savings as a system resource. However, the anticipated cost savings are not certain to materialize, and the amount of the cost savings is not substantial. Further, the anticipated cost savings are based upon a belief that the cost of the PPA will be less than the price of energy in the market over the next 25 years. Given the lack of need for either the energy or capacity and the uncertainty that the Honeycrisp load will materialize, it is too speculative to base prudence solely on anticipated minimal cost savings based on anticipated market energy prices over the next twenty-five years. Resource planning should be made based on the needs of all customers and not the demands of a potential large customer.

18. Further, NSP witness Krug testified the primary basis for the prudence of this PPA is that it will result in customer savings. Yet, NSP specifically seeks to only apply 75% of those savings to its system customers. If the project is so beneficial so as to be prudent without any established need for the energy or capacity, it is questionable why those benefits would not be passed to the entire system.

Based on the foregoing Findings of Fact, the Commission makes its:

Conclusions of Law

1. The Commission has jurisdiction in this matter.
2. NSP has not shown that the Heartland Divide Wind II PPA merits an advance determination of prudence at this time under N.D.C.C. § 49-05-16.

From the foregoing Findings of Fact and Conclusions of Law, the Commission issues its:

Order

The Commission orders NSP's application for an advance determination of prudence for the Heartland Divide Wind II PPA is DISMISSED with[out] prejudice.

[Findings if the Commission Determines the Project is Prudent]

16. As to the first proposed condition, that there be an express limitation placed on the total PPA costs, NSP asserts 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. Accordingly, NSP testified that no material changes to costs will be borne by North Dakota customers, and that NSP plans to seek additional Commission review of any contract modification. The proposed condition is consistent with the terms of the PPA and NSP's representations, and as a result, the Commission agrees this condition is reasonable. Further, the asserted basis for a prudence determination is "cost savings." As a result, it is important for NSP to ensure any additional costs do not consume the asserted "cost savings."
17. As to the second proposed condition, that North Dakota customers be provided their share of the Project's RECs, NSP testified that the RECs are needed to meet its obligations under the Honeycrisp ESA and NSP should not, therefore, be required to allocate the RECs generated by the project to each retail jurisdiction. NSP testified that 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. In that same way, NSP testified that it would be inequitable for North

Dakota customers to be compensated for a share of the RECs generated by the Project that are needed to match the annual anticipated data center load.

18. Advocacy Staff asserts the RECs should be treated in the same manner whether the Google load materializes or not. Advocacy Staff asserts that the benefits of the RECS from the project are part of what North Dakota customers will be paying for and they should receive their full benefit of the bargain whether the Google load materializes or not.
19. As to the third proposed condition, that North Dakota customers be insulated from potential costs associated with NSP's need to purchase RECs, Advocacy Staff testified that Dakota Range III alone will produce a sufficient number of RECs until at least 2031 and that the expected average load of the data center between 2024-230 is 393 GWH/year while Dakota Range III is expected to generate 569 GWH/year during that same time period.
20. As to the second and third proposed conditions, Advocacy Staff's position is reasonable, more consistent with traditional ratemaking concepts, and consistent with the manner RECs have been addressed by the Commission. If RECs allocated to North Dakota from their project or other sources are used to meet Honeycrisp ESA obligations then 100 percent of the market value of those RECs should be credited to North Dakota customers.
21. With respect to the last condition, that NSP be required to treat the entire 200 MW as a system resource, Advocacy Staff contends that if prudence is granted based on anticipated cost savings, such a condition would be appropriate because allocating 50 MW to serve the Renewable*Connect program would reduce the benefit of the Project to North Dakota customers. The evidence reflects the Renewable*Connect program was designed for certain customers willing to pay a small premium in order to choose their energy resource. Because NSP is basing its prudence argument on cost savings, the Commission sees no valid reason to exclude certain customer savings arising out of the same PPA from the system. If the project provides customer savings, those customer savings should be provided to all customers on the system.

Based on the foregoing Findings of Fact, the Commission makes its:

Conclusions of Law

1. The Commission has jurisdiction in this matter.
2. NSP has complied with the provision of N.D.C.C. section 49-05-16 as well as the Settlement Agreements in Case Nos. PU-07-776 and PU-12-813. Additionally, NSP has complied with its commitments in Case No. PU-12-59.
3. NSP has demonstrated the prudence of the 200 MW Heartland Divide Wind II PPA. However, we conclude that the requested conditions by Advocacy Staff should be applied for the reasons stated above.

From the foregoing Findings of Fact and Conclusions of Law, the Commission issues its:

Order

NSP's application for an advanced determination of prudence for its power purchase agreement with Heartland Divide Wind II, LLC is GRANTED with the following conditions:

- a. The total costs approved as prudent are those identified in NSP's Application, and any additional costs are only approved upon further Commission review;
- b. North Dakota customers shall receive financial compensation for their share of RECs associated with the project in the same manner and form as North Dakota customers receive financial compensation for their share of RECs for other NSP projects;
- c. North Dakota customers be held harmless and not pay for any costs associated with procuring RECs that NSP may have to purchase to satisfy its commitments under the Honeycrisp ESA; and
- d. NSP must treat the full 200 MW of the PPA as a system resource.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Julie Fedorchak
Chair

Brian Kroshus
Commissioner