

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Northern States Power Company
Advanced Prudence - 460MW Solar – Sherburne Cnty, MN
Application

Case No. PU-21-152

ADVOCACY STAFF’S POST-HEARING BRIEF

I. INTRODUCTION AND PROCEDURAL BACKGROUND

[¶ 1] On April 26, 2021, Northern States Power Company (“NSP” or “the Company”) filed an application for an advanced determination of prudence for a 460 MW solar project at the Company’s Sherburne County Generating Station site (“the Project” or “Sherco Solar”). Ex. 3. The Company fully acknowledged the Project was driven by Minnesota policy priorities and was initially proposed in response to the Minnesota Public Utilities Commission’s investigation to identify investments utilities could undertake to support economic relief and recovery in the wake of the COVID-19 pandemic. Id. at p. 2.

[¶ 2] The application noted:

Specifically, when externality values are excluded from modeling, as required under North Dakota law, Sherco Solar is not the least cost option for filling the identified capacity need in 2026. Rather, the “North Dakota Plan” resource planning analysis in our most recent IRP selected a dispatchable resource, modeled as a greenfield combustion turbine (CT), to meet the identified capacity need.

Id. As a result, NSP was “not requesting a determination that the entire Project and all associated costs are prudent under North Dakota planning principles,” but instead proposed to recover costs based on a generic new resource addition and market prices for the energy generated by the Project. Id. at 2-3. In other words, at the time it made the

decision to proceed with the Project, NSP acknowledged the Project was not prudent under North Dakota law, but requested some mechanism to recover costs associated with it from North Dakota customers.

[¶ 3] Advocacy Staff, through James Heidell (“Heidell”), filed testimony opposing NSP’s application on December 17, 2021. Ex. 13. Heidell recommended the Commission deny the ADP/request for proxy pricing. Id. at 6:5-8. In the event proxy pricing was allowed by the Commission, Heidell recommended several modifications to NSP’s proposal. Id. at 6:10-7:1. Shortly after Heidell’s testimony was filed, all Project activities were stalled due to a U.S. Department of Commerce investigation relating to imports of solar panels. Ex. 12 at p. 3:13-23.

[¶ 4] In October 2022, NSP filed its rebuttal testimony. Exs. 7 & 12. Although it acknowledged the determination of prudence must be made at the time the decision was made to proceed with the Project, NSP then requested an advanced determination of prudence based on changes that had occurred during the delay. NSP asserted the Project was now the least cost approach due to tax credit provisions of the Inflation Reduction Act passed in August 2022. Ex. 12 at pp. 4-5. Alternatively, NSP continued to request a proxy pricing mechanism for North Dakota customers. Id.

[¶ 5] In response, Heidell filed testimony opposing NSP’s request for an ADP and continuing to oppose the proxy pricing mechanism. Ex. 15. Heidell recommended the Commission deny NSP’s ADP because it had not demonstrated the Project was the least cost capacity resource under the updated analysis. Id. at 4:1-9. He explained NSP’s analysis was based on outdated assumption about the accredited capacity. Id. If the Commission approved the ADP, Heidell recommended several conditions. Id. at 5:21-

6:4. Heidell continued to recommend denial of the proxy pricing mechanism, and proposed several modifications to it if the Commission approves proxy pricing. Id. at 5:11-19; 6:6-26.

[¶ 6] NSP submitted surrebuttal testimony, asserting the Project was the least-cost resource, and its levelized cost of energy is competitive assuming the Project “qualifies for the full 10-year production tax credit (PTC) plus a 10 percent ‘energy community’ bonus credit available under the Inflation Reduction Act.” Ex. 8 at 8:3-7. NSP’s surrebuttal continued to request the use of MISO CONE as a proxy price for accredited capacity. Id. at 11:3-12.

[¶ 7] The hearing occurred on July 11, 2023. The evidence reflects NSP has not established prudence, NSP should not receive proxy pricing, and alternatively, if proxy pricing is allowed, the alternative proposed by Heidell should be adopted. Advocacy Staff requests the application be denied, and any cost recovery for this Project in this proceeding be denied and addressed in NSP’s next rate case.

II. APPLICABLE LAW AND ARGUMENT

[¶ 8] Section 49-05-16, N.D.C.C., allows a public utility to seek an advance determination of prudence for a resource addition. The Commission may issue an order approving the prudence of a resource addition if it determines the resource addition is prudent. N.D.C.C. § 49-05-16(1)(d). Advocacy Staff agrees with NSP that the general prudence standard calls for determining whether the utility action was reasonable at the time it was taken under all relevant circumstances.

A. NSP Has Not Established Prudence.

[¶ 9] Despite the Company's arguments to the contrary, the evidence demonstrates the Project is not prudent under the law. As of April 16, 2021 at the latest, NSP made the decision to proceed forward with the Project. Tr. at 13:1-6 (Docket No. 43). In its application, NSP did not even seek a determination of prudence, but instead admitted the Project was not least-cost under North Dakota law and requested a cost-sharing mechanism at the time it made the decision to proceed with the project. Ex. 3 at p. 2; see also Tr. at 13:7-16, 18:5-15, 23:10-13; 52:14-18. On this basis alone, NSP's request for an ADP should be denied.

[¶ 10] NSP's subsequent testimony and its post-hearing brief assert the Project is now the least-cost project to meet its self-inflicted capacity need in the mid-2020's. Even if this contention is assumed to be accurate, it is irrelevant because the Project was not prudent at the time NSP made the decision to proceed forward with it. Regardless, NSP has not established the Project is prudent even if the Commission disregards the undisputed fact the Project was not prudent under North Dakota law at the time NSP made the decision to pursue it.

[¶ 11] After a substantial delay, in its rebuttal testimony NSP asserted the Project was now least-cost due to tax credits passed in August 2022. Although the Project's total cost increased during the delay, NSP asserted the Project was now the least cost solution to solve its self-inflicted capacity need due to new tax credits available from the Inflation Reduction Act passed in August 2022. Tr. at 18:16-19:12. In other words, NSP asserted the Project now qualified as "prudent" because the federal government enacted legislation to help pay for it. While this may be convenient for NSP's prudence

argument, it does not change the fact that the Project was not prudent at the time NSP made the decision to pursue it and filed the Application.

[¶ 12] Further, even with the new tax credits available, NSP has not established the Project is prudent. As Heidell explained, NSP's analysis was based on an outdated assumption regarding the accredited capacity, ignoring that MISO has adopted a seasonal capacity accreditation. Ex. 15 at p. 5:1-9. In addition, Heidell explained that NSP is long on energy and is relying on the energy market to make up a fair amount of the cost of the Project, all while the amount of solar coming into the system is likely to depress the value of energy sold into the MISO market. Tr. at 143:10-144:3. While NSP updated its cost projections, it did not update its capacity analysis.

[¶ 13] Advocacy Staff agrees the cost of the project and the need are appropriate considerations, but all circumstances must be evaluated to determine prudence. There is no dispute NSP has a need for capacity in the mid-2020's. But, the need for this capacity is largely, if not entirely, created by NSP's decision to retire high-capacity resources early in pursuit of its and Minnesota's policy goals before there is a reasonable, cost-efficient, reliable method to replace those resources. Regardless of one's view of those goals, pursuing them at a swift pace without reliable and cost-effective replacement resources to meet the created capacity needs is not prudent. The costs associated with such decisions should not be borne by North Dakota customers.

[¶ 14] The genesis of these proceedings began at least as far back as 2010 when a study raised an issue with the life cycles of Sherco units 1 and 2. Tr. at 47:13-21. By 2015, NSP was proposing to retire Sherco Units 1 and 2 early. Id. at 48:4-19. Minnesota approved the resource plan in 2017, resulting in a plan to retire Sherco Unit 2 in 2023 and

Sherco Unit 1 in 2026. Id. at 126:10-127:25. These decisions, based on Minnesota's and NSP's policy goals, are a significant factor for the needed capacity NSP asserts supports the Project.

[¶ 15] Now, the Company is proposing a solar project, which is not typically considered a capacity resource (see Tr. at 72:25-73:18), to fill a capacity need created significantly by the early retirement of traditionally greater-capacity resources. Tr. at 14:16-22 (Shaw testifying the early retirements of Sherco 1 and 2 are significant factors to the capacity need driving this Project). This can hardly be considered prudent. Further, the Company did not even engage in its usual resource planning methodology. Ex. 4 at 5:8-17 (Mandich testifying "The Company is not requesting that the full costs of Sherco Solar be deemed prudent in this ADP, and we did not conduct a traditional resource planning analysis of the proposed resource addition using EnCompass, our preferred capacity expansion and production cost modeling tool.") Instead, while the North Dakota plan originally called for 374 megawatts of firm dispatchable capacity, the Company's later modeling restricted the outcome for the Sherco interconnection to a solar resource and removed the Sherco combined-cycle unit from the analysis based on a settlement in Minnesota. Tr. at 70:15-71:6 (Mandich testifying "we only allowed the model to select solar for that interconnection."); Tr. at 142:1-10.

[¶ 16] The Company attempts to justify this by explaining the cost of a gas pipeline to the site is simply too high and there is not enough time for any other resource. Yet, there is minimal information regarding the cost of a gas pipeline in evidence and there was no effort by NSP to evaluate methods to lower costs of a gas pipeline. NSP's assertions there is not "enough time" to consider other resources at the Sherco site is

hollow. There is no evidence there was not enough time to plan for a thermal resource at the site since the decision was made in 2017 to retire Sherco Units 1 and 2 early. Put simply, the goal/policy has always been to install a non-thermal resource at this site and the planning and modeling was directed to ensure that result.

[¶ 17] Further, while the stated need for the Project is capacity, NSP is unaware how much accredited capacity will result from this Project. There is always some level of speculation involved in planning the appropriate future resource, but the speculation involved with this Project borders on willful ignorance. For example, while NSP updated its modeling and cost projections when it was favorable to its position, it has not updated its capacity analysis for this Project even though MISO approved seasonal accreditation for capacity approximately eighteen months ago. Advocacy Staff fully acknowledges it is unknown what the accredited capacity of the Project will be when MISO's process is completed, but it is known that it will be seasonal accreditation. Yet, NSP asserts the seasonal accreditation was not known at the time it decided to proceed with the Project. Tr. at 73:19-74:8. NSP cannot have it both ways. Asking the Commission to consider "new" cost information when NSP contends it supports the application, but refusing to update modeling based on MISO's seasonal accreditation because it occurred after the application is inconsistent and reflects a process designed to reach a preferred result. This is not reflective of prudent planning.

[¶ 18] In summary, the Commission should deny NSP's application for an ADP for one or a combination of the following reasons:

1. The Project was not prudent at the time NSP made the decision to proceed with it;

2. The capacity “need” relied on to support the Project was created in substantial part by NSP’s voluntary decisions to shut down high-capacity resources early to meet its carbon-free goals;
3. A solar project is not the most efficient resource to meet a capacity need;
4. The underlying modeling to justify the Project contained restrictions leading to a preferred result;
5. NSP has ignored changes in capacity accreditation that will impact the Project while updating projections that appear to support the Project; and
6. The cost of the Project is dependent on selling excess energy into the MISO market under circumstances that reflect the value of energy will be depressed.

[¶ 19] In the event the Commission grants an ADP for this Project, Advocacy Staff requests the following conditions:

- If NSP procures additional seasonal capacity to make up for the shortfall between the assumed capacity in its ADP filing and actual capacity, then North Dakota customers should not have to pay the allocated share of that increased seasonal capacity.
- Cost recovery under the ADP is limited to the revenue requirements (combined impact of capital costs and tax benefits) identified by NSP in its response to NDPSC-8-008 Attachment A.
- NSP should file quarterly status reports on the project until it reaches COD.

Ex. 15 at 5:21-6:4.

B. The Proxy Pricing Mechanism Should Be Denied

[¶ 20] Although NSP’s application was styled as a request for ADP, NSP’s application only sought a proxy pricing mechanism for the Project. NSP requested the Commission assign North Dakota customers their share of the costs of a greenfield CT,

using MISO's CONE value for the capacity provided by the Project, and charge North Dakota customers their share of the energy produced using the day-ahead locational marginal price (LMP). Heidell disagreed with instituting a proxy pricing mechanism and alternatively suggested a different pricing method if proxy pricing was ordered by the Commission. Advocacy Staff asserts the proxy pricing mechanism should be denied because it is not allowed by law, and if proxy pricing is ordered, the Commission should allow a proxy pricing mechanism as described in Heidell's testimony.

1. **There is no authority to establish proxy pricing through an ADP application.**

[¶ 21] NSP's application was brought pursuant to N.D.C.C. § 49-05-16, the statute addressing an advance determination of prudence. Although NSP did not initially request prudence for the Project, it requested a proxy pricing mechanism to recover costs from North Dakota customers for the Project. However, NSP has provided no legal authority for a proxy pricing mechanism outside of approved riders or tariffs through the ADP process, and Advocacy Staff has found none. There is no language in N.D.C.C. § 49-05-16 allowing an ADP proceeding to be contorted to a cost recovery proceeding for an imprudent Project.

[¶ 22] As a result, NSP's request for a proxy pricing mechanism should be denied, and recovery should be addressed in NSP's next rate case to determine appropriate recovery, if any, from North Dakota customers. Tr. at 144:4-145:13 (Heidell describing several factors supporting denial of a proxy pricing mechanism). When a project is not prudent but there are some benefits associated with it to North Dakota customers, any cost associated with the Project is better addressed through a rate case to result in just and reasonable rates under all circumstances (including ensuring North

Dakota ratepayers do not get charged for the early retirement of Sherco Units 1 and 2 while also paying for the replacement of those units) rather than addressing cost recovery on a project-by-project basis.

2. **If a proxy pricing mechanism is allowed, Advocacy Staff's recommendation should be accepted.**

[¶ 23] As stated above, Advocacy Staff opposes any proxy pricing mechanism in this proceeding. However, if the Commission disagrees and orders a proxy pricing mechanism, the proxy pricing mechanism should be consistent with Heidell's testimony in Ex. 13 (pp. 32:19-33:9) and Ex. 15 (pp. 6:6-26; 21:24-22:13).

[¶ 24] Heidell recommended, if a proxy pricing mechanism is allowed, the Commission:

- Set the proxy capital cost of capacity equal to the cost of a brownfield CT assumption as defined in the most recent Upper Midwest Resource Plan Alternate Proposal (IRP).
- Adjust the proxy capacity cost in each period to reflect an offset for the energy market margins the brownfield CT would earn in the MISO energy markets.
- Adjust the capacity value to reflect the differential between the spring, fall, and winter capacity value of Sherco Solar versus the CT as the CT will have a similar accredited capacity in all seasons but it is unlikely that the spring, fall, and winter capacity of Sherco Solar will be as high as the summer capacity.
- Clarify that ND customers will only pay for the actual seasonal accredited capacity that is relevant to the Project as determined by the MISO and is subject to changes as determined by MISO.
- Adjust ND customers' cost share of the capacity based upon the prevailing demand cost allocation factors between the NSP utilities.
- Explicitly exclude ND customers from any future renewable integration costs assigned to the Project by MISO.
- Establish that the approval is non-precedential.

Ex. 15 at 6:6-26.

[¶ 25] As Heidell explained, NSP's use of MISO CONE is inconsistent with its most recent IRP in which they calculated the cost of a combustion turbine, whether it be brownfield or greenfield. Tr. at 145:17-24. Further, MISO CONE uses a 13.4% return on equity, which is significantly higher than NSP's approved ROE. Id. at 146:8-14. In addition, MISO CONE levelizes the cost over 20 years, while the Project is projected to have a 35-year life resulting in over-recovery. Id. at 146:15-23. Heidell also explained a brownfield measure was more appropriate because there were other sites that could have been more aggressively pursued for a combustion turbine. Id. at 147:24-148:17; see also Ex. 17 & Tr. p. 121:23-122 (indicating Inver Hills and Blue Larke are possible brownfield CT locations).

[¶ 26] If a proxy pricing mechanism is allowed, the mechanism should be based on Heidell's testimony as it is more reflective of the options available, NSP's North Dakota plan at the time it made the decision, and provides appropriate protections for North Dakota customers in this novel situation.

III. CONCLUSION

[¶ 27] For the foregoing reasons, Advocacy Staff requests the Commission deny NSP's application in its entirety. Alternatively, if a proxy pricing mechanism is ordered, the mechanism should be based on Heidell's recommendations and conditions.

Dated this 13th day of October, 2023.

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