

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Northern States Power Company Case  
Advanced Prudence –  
460 MW Solar – Sherburne Cnty. MN**

**No. PU-21-152  
OAH File No. 20210274**

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

**October \_\_, 2023**

**Appearances**

Commissioners Randy Christmann, Sheri Haugen-Hoffart, Julie Fedorchak

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Mitchell D. Armstrong, Special Assistant Attorney 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.

**Preliminary Statement**

On April 26, 2021, Northern States Power Company (NSP), d/b/a/ Xcel Energy, filed an application with the North Dakota Public Service Commission (Commission) North Dakota Century Code (N.D.C.C.) Section 49-05-16 for a 460 megawatt (MW) solar facility located at the Sherburne County Generation Station (Sherco Solar or the Project). NSP fully acknowledged the Project was driven by Minnesota policy priorities and the selection of a solar resource to meet its capacity need was not consistent with North Dakota planning priorities. Application at p. 2. The North Dakota Plan selected a dispatchable resource to meet the identified capacity need. As a result, NSP did not request a determination that the entire Project and all associated costs are prudent, but proposed to recover from North Dakota customers costs based on a generic new resource addition and market prices for the energy generated by the Project. Application at p. 3.

On April 12, 2023, the Commission issued a Notice of Public Hearing, scheduling a public hearing for July 11, 2023 at 8:30 a.m. in the Commission Hearing room, 12<sup>th</sup> 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 July 11, 2023, the public hearing was held as noticed.

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. At the time of its application, NSP's 2020-2034 Upper Midwest IRP Supplement forecasted a 92 MW net capacity deficit on the system arising in 2026 and growing to 1,016 MW by 2030, caused in part by unit retirements. NSP's most recent 2020–2034 Upper Midwest Integrated Resource Plan (IRP) forecasted that NSP will have a system capacity need of 210 MW in 2026 that is anticipated to grow to 2,443 MW in 2030.
3. This Project is intended to address the capacity deficit arising in 2026, which is significantly contributed by NSP's decision to retire Sherco Units 1 and 2 early. NSP is planning to retire Sherco Unit 2 in 2023 and Sherco Unit 1 in 2026. Previously, these units' anticipated lives were through 2034, and North Dakota customers are paying for these units through 2034 based on NSP's most recent rate case. The Commission has never approved the early retirements of Sherco Units 1 and 2.
4. NSP's application recognized this Project was not the least-cost resource to fill its capacity need under North Dakota law and proposed a cost sharing mechanism to assess costs of the Project to North Dakota customers. Application at p. 14. NSP did not conduct a traditional resource planning analysis of the project using EnCompass, its preferred capacity expansion and production cost modeling tool. Further, models used by NSP to support the Project included restrictions that pre-ordained the selection of this Project.
5. While a solar resource provides accredited capacity, solar is not the most efficient resource to fill an accredited capacity need. NSP predicts this Project will have an initial capacity factor of 50%, and decreasing every year thereafter. This prediction is likely overstated as MISO has been reevaluating accredited capacity for non-thermal generation and has implemented a seasonal construct for capacity accreditation.

6. NSP has not submitted any evidence of the accredited capacity expected for the Project under the seasonal construct, asserting it would be speculative and irrelevant because the seasonal construct was not finalized at the time of the Application. Yet, NSP has updated its cost information based on tax credits in the Inflation Reduction Act passed after the Application was filed, and after NSP made the decision to proceed with this Project. It is unknown what the accredited capacity of this Project will be under the seasonal construct or under NSP's analysis. Regardless, this Project is being proposed to fill an accredited capacity need at a site where higher capacity resources currently exist, but are being retired early.
7. In its Application, NSP acknowledged this Project was not the least cost resource to meet the stated need under North Dakota law. Instead, it requested a proxy pricing methodology. During the course of these proceedings, NSP asserted tax credits through the Inflation Reduction Act passed in 2022 made the Project the least cost resource. But, NSP made the decision to proceed with this Project well before the passage of the Inflation Reduction Act in August 2022. Prudence is evaluated at the time a decision was made and this Project was not prudent at the time NSP made the decision to pursue it even if it is now the least cost resource, which is highly disputed.
8. The Commission finds that NSP has not established the Project is a prudent resource addition to satisfy the capacity need under North Dakota law at the time it committed to pursuing the Project. Even if the later passage of the tax credits in the Inflation Reduction Act in August 2022 and assuming NSP will qualify for all of those tax credits, NSP has not established prudence.
9. NSP proposed, as an alternative in the event the Commission did not find the Project prudent, a proxy pricing methodology pursuant to which North Dakota customers would be able to pay for accredited capacity from the Project and the energy North Dakota customers consumed. The Company proposed to use the day-ahead locational marginal pricing (LMP) at its MISO commercial pricing node, to be determined on an hourly basis, to account for the value of the energy produced from the Project. The Company also proposed MISO's cost of new entry (CONE) for the year 2024–2025 to value the accredited capacity added to the Company's system which would be applied to the accredited capacity of the Project for its full life.
10. Advocacy Staff opposed the use of a proxy pricing methodology, and alternatively, proposed significant modifications to NSP's proposed methodology. The Commission is not convinced there is legal authority in this proceeding to allow recovery through a new proxy pricing methodology. Generally, NSP can recover

interim costs through mechanisms approved in rate cases, such as the fuel cost rider and the renewable energy rider. However, those do not appear to apply to these circumstances and NSP has not asserted it can recover costs for this Project through any currently-existing mechanism. Recovery for interim expenses is not guaranteed, and the circumstances of this case do not support creating a proxy pricing methodology in this proceeding. The appropriate recovery for this Project, if any, is better addressed in a rate case considering all circumstances.

### **Conclusions of Law**

1. The Commission has jurisdiction in this matter.
2. NSP has not established the 460 MW Sherco Solar Project is prudent under the applicable law.
3. The Company's proposed alternative proxy pricing methodology is not supported by any legal authority, and regardless, is more appropriately evaluated in the context of a rate case. The Commission declines to create an alternative proxy pricing methodology in this prudence proceeding.

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

### **Order**

1. NSP's application for an advanced determination of prudence for its solar resource addition at Sherco is DENIED.

### **PUBLIC SERVICE COMMISSION**

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**Sheri Haugen-Hoffart**  
Commissioner

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**Randy Christmann**  
Chair

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**Julie Fedorchak**  
Commissioner