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December 29, 2023

**-Via Electronic Filing and UPS-**

Steven M. Kahl, Executive Director  
North Dakota Public Service Commission  
State Capitol Building, Dept. 408  
600 East Boulevard  
Bismarck, ND 58505-0480

**Re: Application to Amend Order  
Case No. PU-07-776 - Electric Rate Increase Application**

Dear Mr. Kahl:

Enclosed for filing, please find an original and seven copies of an application from Northern States Power Company, doing business as Xcel Energy, requesting that the Commission amend the December 31, 2008 Order Adopting Settlement in the above captioned Case. By this Application, Xcel Energy is requesting that the Commission amend the December 22, 2008 Settlement Agreement in this Case (Prior Settlement) and adopt language proposed in the First Amended and Restated Settlement Agreement (Amended Settlement) as attached to the Application.

The Prior Settlement in this case imposed an obligation on the Company to file with the Commission applications for advanced determinations of prudence (ADP) for certain qualifying generation and transmission projects. Through the enclosed Application, the Company is requesting Commission adoption of the Amended Settlement to remove the requirement to submit an ADP under certain circumstances.

If you have any questions regarding the information contained in this filing, please contact Alex Nisbet at 701-929-0547 or [alex.j.nisbet@xcelenergy.com](mailto:alex.j.nisbet@xcelenergy.com).

SINCERELY,

ALEX NISBET  
REGULATORY POLICY SPECIALIST

STATE OF NORTH DAKOTA  
BEFORE THE  
NORTH DAKOTA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION TO  
AMEND THE ORDER TO REMOVE THE  
REQUIREMENT TO FILE AN ADP

CASE No. PU-07-776

**APPLICATION**

**I. INTRODUCTION**

Northern States Power Company, doing business as Xcel Energy (Xcel Energy or the Company), submits to the North Dakota Public Service Commission (Commission) this Application to amend the Commission's December 31, 2008 Order Adopting Settlement in the above captioned Case. By this Application, Xcel Energy is requesting that the Commission amend the December 22, 2008 Settlement Agreement in this Case (Prior Settlement) and adopt the attached First Amended and Restated Settlement Agreement (Amended Settlement).

The Prior Settlement required the Company to file with the Commission applications for advanced determinations of prudence (ADP) in certain circumstances<sup>1</sup>. Since that time, the Company has filed several ADP applications and through those proceedings the Company's obligations have been further refined with respect to filing and timing requirements.

The original intent of the obligation to file ADPs was to increase transparency and engage the Commission regarding significant resource acquisitions in advance of general rate proceedings. The ADP filings and hearings allow for extensive dialogue between the Company and the Commission (hereinafter the Parties), and they provide the Commission an opportunity to provide input to the Company regarding resource acquisitions. However, the ADP process has proven to be costly, time consuming for both the Commission and the Company, and unnecessarily adversarial in nature. Given the new integrated resource planning requirements in North Dakota, the ADP requirement is duplicative and potentially wasteful.

As the Commission is aware, the North Dakota Century Code (NDCC) and the North Dakota Administrative Code (Admin Code) were revised effective January 1, 2023 to include new requirements for electric public utilities to file resource plans on a

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<sup>1</sup> Prior Settlement at pages 5 and 6.

three-year cycle. The new resource plan procedural framework set forth in the NDCC and the Admin Code provides a far better forum for the Parties to holistically review and plan resource acquisitions in North Dakota.

The benefits of the new resource planning requirements are well articulated in the following testimony from Commissioner Haugen-Hoffart before North Dakota's Administrative Rules Committee on December 5, 2022:<sup>2</sup>

The resource planning rules include a requirement that an investor-owned utility must file a resource plan on a three-year cycle that would identify the resources to meet its forecasted capacity and energy needs over a horizon of at least fifteen years. Such a requirement would provide a forward-looking and proactive opportunity for the Commission to assess and influence a utility's plan for power plant additions and retirements and a utility's plan for power plant additions and retirements and a utility's plan for providing reliable and resilient electric service. The resource planning rules will allow the Commission to determine the benefits and costs a resource plan offers ratepayers over several years, to participate in a utility's resource planning efforts that operate across several state jurisdictions, and to engage each utility in development of investment and retirement plans that are made years in advance.

The Company will be filing an integrated resource plan (IRP) for North Dakota in early February 2024 that complies with the new resource planning requirements. The Company has already met with Commission Staff to discuss modelling sensitivities and other jurisdiction specific requirements set forth in the Admin Code revisions. We look forward to working closely with the Commission and Commission Staff on our IRP filing.

The adoption of a resource-planning process in North Dakota presents a significant change impacting the Prior Settlement. In prior years, the Commission did not have a vehicle outside the ADP process in which to formally consider the Company's resource acquisitions. Now these resources will be considered in our IRPs.

In addition, after discussions between the Company and Commission Staff, the Company has agreed to provide an annual notification of new power purchase agreements (PPAs) of any size to be included in the Company's Fuel Cost Rider (FCR). The Company currently provides an annual notification to the Commission of

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<sup>2</sup> <https://www.psc.nd.gov/database/documents/22-0163/028-020.pdf>

any new PPAs less than 50 MW that have been added to the FCR, which was a requirement of the Comprehensive Settlement Agreement in Case No. PU-12-813<sup>3</sup>.

Further background regarding Case No. PU-12-813 that has applicability to this matter is that the Commission's Order in that case permitted the Company to include only the costs of renewable projects in the FCR that are located in North Dakota and for which the Commission has granted an ADP, and eligible projects must be placed in service at the time of recovery.<sup>4</sup>

In light of the foregoing, the Company has requested that the Commission adopt the Amended Settlement to remove the requirement to submit an ADP under certain circumstances. The Amended Settlement includes language that the Company **may** submit an ADP at its discretion pursuant to NDCC Section 49-05-16. Approval of the proposed change would place the Company in the same position as the two other investor-owned utilities in North Dakota that are not required to file ADPs.

As further detailed in Section V below, the Company requests prompt Commission direction on this matter as the Company would be required to file ADPs in early February 2024 as part of the 800 MW Firm Dispatchable Proceeding that is before the Minnesota Public Utilities Commission (MPUC). It is our understanding that these additional ADPs would be a considerable time burden upon the Commission and Staff in 2024. If the Commission does not approve the request to amend the Prior Settlement, we are requesting a three-month extension to file these ADPs in order to obtain further information through the MPUC process.

In support of this filing, Xcel Energy provides:

- Background regarding the ADP requirement and integrated planning in North Dakota;
- A description of the proposed amendments; and
- Request for a timely decision in this matter given the 800 MW Firm Dispatchable Proceeding in Minnesota.

Also provided with this application is the following attachment:

- Attachment A: Redline indicating proposed amendments to the Prior Settlement adopted on December 31, 2008.

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<sup>3</sup> Order Adopting Settlement in Case No. PU-12-813 – page 10 of Revised Second Amendment Comprehensive Settlement Agreement - <https://www.psc.nd.gov/database/documents/12-0813/200-010.pdf>

<sup>4</sup> Id at pages 11 and 12.

## II. FILING INFORMATION

Pursuant to Section 69-02-02-04 of the North Dakota Administrative Code, the following information is provided:

### A. Contact information for utility making the filing

Ian Dobson  
Lead Assistant General Counsel  
Xcel Energy Services Inc.  
414 Nicollet Mall – 401, 8<sup>th</sup> Floor  
Minneapolis, MN 55401  
(612) 370-3578  
[ian.m.dobson@xcelenergy.com](mailto:ian.m.dobson@xcelenergy.com)

Alex Nisbet  
Regulatory Policy Specialist  
Xcel Energy  
2302 Great Northern Drive  
PO Box 2747  
Fargo, ND 58108-2747  
(701) 929-0547  
[alex.j.nisbet@xcelenergy.com](mailto:alex.j.nisbet@xcelenergy.com)

We request that all communications regarding this proceeding, including data requests, also be directed to:

Christine Schwartz  
Regulatory Administrator  
Xcel Energy  
414 Nicollet Mall – 401, 7<sup>th</sup> Floor  
Minneapolis, MN 55401  
[regulatory.records@xcelenergy.com](mailto:regulatory.records@xcelenergy.com)

### B. Date of filing and proposed effective date

The date of this filing is December 29, 2023. The Amended Settlement would be effective immediately upon approval of the Commission via Order.

### C. Statutory Authority

We submit this application pursuant to N.D.C.C. Section 49-05-09, which provides:

The commission, at any time, upon due notice to the public utility affected and after opportunity to be heard as provided in the case of complaints, may rescind, alter, or amend any decision made by it. Any order rescinding, altering, or amending a prior order or decision, when served upon the public utility affected, shall have the same effect as an original order or decision.

## **D. Articles of Incorporation**

Pursuant to Section 69-02-02-04 of the North Dakota Administrative Code, a certified copy of Xcel Energy's Articles of Incorporation is on file with the Commission, as is an original Certificate of Good Standing.

## **III. BACKGROUND**

### **A. ADP Obligation and Subsequent Refinements**

The central issue of the PU-07-776 rate case was whether North Dakota customers should pay for a portion of the integrated system costs incurred by the Company to satisfy environmental and renewable requirements imposed or facilitated by Minnesota law<sup>5</sup>. Then, as now, the states that the Company serves have at times differing energy priorities.

In an effort to eliminate or minimize conflicts surrounding energy resource decisions and the associated costs in future rate cases, the Parties agreed to regulatory procedures to ensure appropriate Commission involvement and oversight of the Company's future resource plans and the selection of future generation and transmission projects to be added to the system serving North Dakota.

The Company agreed to provide the Commission its Minnesota-filed resource plans complete with an alternative system-wide resource plan that strictly meets both Federal and North Dakota environmental and renewable requirements for the same time period as the Minnesota Resource Plan<sup>6</sup>. However, the filing was informational only and the Commission was not required to take formal action on these resource plans.

The Prior Settlement established the Company's obligation to file ADP applications with the Commission in certain circumstances, providing<sup>7</sup>:

In accordance with N.D.C.C. § 49-05-16 the Company agrees to file for an ADP finding from the Commission for all proposed new construction, rehabilitation, or acquisition of an energy conversion facility, renewable energy facility, transmission facility or proposed energy purchase in which:

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<sup>5</sup> Prior Settlement at page 3.

<sup>6</sup> Id at page 4.

<sup>7</sup> Id at page 6.

1. The Company proposes to allocate all or part of the related costs to the North Dakota jurisdiction for recovery in electric rates; and
2. The capacity of the generation facility or purchase is at least 50 MW; and/or the length of the transmission facility is at least 50 miles long.

The Company will identify its proposed cost- allocation methodology in the ADP petition as an item for which a determination of prudence by the Commission is requested.

This obligation was further refined in Case No. PU-12-59 where the Commission established precedent that an application was not timely if the Company was obligated to undertake a particular resource addition prior to filing its application. Additionally, in response to the Commission's concerns in that Case, the Company filed a Letter of Commitment in that Case obligating Xcel Energy to make its ADP applications within fourteen days of making a similar filing before the MPUC<sup>8</sup>.

Using input from the Commission through various ADP filings and the informational resource plans, the Company was to then be able to determine how best to proceed to both meet the needs of its North Dakota customers and recover its system-wide cost of providing service. However, as further discussed below, the ADP requirement is no longer necessary and is overly burdensome due to recent changes to the resource planning framework in North Dakota.

## **B. New North Dakota Resource Plan Requirements**

Senate Bill (SB) No. 2313 was enacted during the 2021 North Dakota legislative session and added new sections regarding integrated resource planning to Chapter 49-05 of the NDCC. In addition, Section 69-09-12 was added to the Admin Code effective January 1, 2023 to guide the process of resource planning for investor-owned utilities in the state and to provide further clarification on the implementation of SB 2313.

As stated in the Introduction of this Application, support and input was provided by the Commission regarding these NDCC and Admin Code additions in Case No. PU-22-163. In addition, the Company provided comments in Case No. PU-22-163 via a June 16, 2022 letter from Dave Sederquist to the Commission in which he states:

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<sup>8</sup> Geronimo Wind ADP Application, Letter of Commitment, Case No. PU-12-59 (Nov 5, 2012).

Xcel Energy plans and operates an integrated Upper Midwest system that serves customers in five states. While we believe the integrated system provides benefits to our customers across the states we serve, in some instances we have procured resources that have not been accepted in all jurisdictions. We are hopeful that a North Dakota resource planning process will not only provide the Commission with information about our future plans, but also provide a forum to better identify and address Commission concerns in advance of resource acquisition decisions. Our resource plans provide a critical guide to achieving Company goals, procuring resources, and meeting our customers' needs safely and reliably. We believe the proposed rules will allow direction from the Commission to be better incorporated in our system plans.

The new resource planning requirements can be found at Sections 49-05-04.4 and 49-05-17 of the NDCC and include the following highlights:

- An integrated resource plan must include the electric public utility's forecast of demand for electric generation supply over the planning period with recommended plans for meeting the forecasted demand plus an additional planning reserve margin for ensuring adequate and sufficient reliability of service,
- A least cost plan for providing adequate and reliable service to retail customers which is consistent with the provisions of this title and the rules and orders adopted and issued by the Commission,
- The Commission may contract or consult with an expert to evaluate the resource plan – and the public utility is to pay a fee up to \$250,000 for this evaluation, and
- The Commission can request any additional information related to how an electric public utility intends to provide sufficient electric generation service for use by retail customers within the state over the planning period.

Additional clarification regarding resource plans can be found at 69-09-12 of the North Dakota Administrative Code – some important points are as follows:

- Resource plans are filed on a three-year cycle (the utility shall file a supplement upon commission request),
- During an investigation, an electric public utility may request a commission determination on any issue related to the resource plan. Approval, rejection, or modification of a resource plan, or a commission determination may be presented as prima facie evidence in other proceedings,
- The resource plan must have a planning horizon of at least 15 years,

- The resource plan must provide a North Dakota preferred plan,
- Except as otherwise required by law or by order of the commission, the North Dakota preferred plan may not select resources based on a carbon cost, greenhouse gas reduction goals, renewable energy standards, emissions goal, or other externalities,
- The resource plan must include reliability and resource adequacy assessments using quantitative metrics, and
- The resource plan must include information on how the electric public utility intends to reconcile potential jurisdictional differences in resource selection.

#### **IV. PROPOSED AMENDMENTS**

The ADP process is costly and time consuming for both the Commission and the Company, and unnecessarily adversarial in nature. Given the new integrated resource planning requirements in North Dakota, the ADP requirement is duplicative and wasteful.

After discussions between the Company and Commission Advocacy Staff, the Company has agreed to provide an annual notification of new PPAs of **any** size to be included in the Company's FCR. The Company currently provides an annual notification to the Commission of any new PPAs less than 50 MW that have been added to the FCR, which was a requirement of the Comprehensive Settlement Agreement in Case No. PU-12-813.

Further background regarding Case No. PU-12-813 that has applicability to this matter is that the Commission's Order in that case permitted the Company to include only the costs of renewable projects in the FCR that are located in North Dakota and for which the Commission has granted an ADP, and eligible projects must be placed in service at the time of recovery.

In light of the foregoing, the Company has requested that the Commission adopt the Amended Settlement to remove the requirement to submit an ADP under certain circumstances. The Amended Settlement includes language that the Company may submit an ADP at its discretion pursuant to NDCC Section 49-05-16. Approval of the proposed change would place the Company in the same position as the other two investor-owned utilities in North Dakota that are not required to file ADPs.

## V. 800 MW FIRM DISPATCHABLE PROCEEDING

On July 1, 2019, the Company filed with the MPUC our 2020-2034 Upper Midwest Integrated Resource Plan (2020 IRP). The 2020 IRP discussed the need for firm dispatchable resources to meet customer demand, system restoration needs, and our capacity requirements as baseload plants retire and additional renewable generation comes online. The MPUC approved a revised version of the Company's IRP in its Order dated April 15, 2022 (2020 IRP Order). The 2020 IRP Order addressed the need for additional firm dispatchable resources starting in 2027. In Order Point 3, the MPUC found that the Company likely needs up to 800 MW of firm dispatchable resources:

In addition to the resources discussed in Ordering Paragraph 2, the Commission finds that it is more likely than not that there will be a need for approximately, but not more than, 800 MW of generic firm dispatchable resources between 2027 and 2029...

On May 24, 2023 the Company submitted a Notice Petition in compliance with the MPUC's 2020 IRP Order. This Notice Petition initiated a competitive resource acquisition process for up to 800 MW of firm dispatchable resources in accordance with the 2020 IRP Order and the Xcel-Bid Contested Case/Track 2 bidding process. The MPUC has now provided a procedural schedule for the Contested Case/Track 2 bidding process. On November 22, 2023 the Company published a notice to potential applicants with a January 22, 2024 deadline for interested competitors to file proposals to meet the resource need. The Company plans to file proposals in this process designed to meet this need, one of them being the proposed Bison CT Project located approximately five miles north of Mapleton, North Dakota.

The Company requests prompt Commission direction on this matter as the Company would be required to file ADPs for each project it proposes in early February 2024 as part of the 800 MW Firm Dispatchable Proceeding. It is our understanding that these additional ADPs would be a considerable time burden upon the Commission and Staff in 2024. If the Commission does not approve the request to amend the Prior Settlement, we are requesting a three-month extension to file these ADPs (May 5, 2024) in order to obtain further information through the MPUC process that will be beneficial for any eventual ADPs that must be filed in North Dakota.

## **VI. CONCLUSION**

We respectfully request approval of our application to amend the Commission's December 31, 2008 Order Adopting Settlement in Case No. PU-07-776. In the alternative, we seek a three-month extension to the filing deadline (May 5, 2024) for the ADPs that must be filed as part of the 800 MW Firm Dispatchable Proceeding in Minnesota.

Dated: December 29, 2023

Northern States Power Company

STATE OF NORTH DAKOTA  
BEFORE THE  
PUBLIC SERVICE COMMISSION

Randy Christmann  
Julie Fedorchak  
Sheri Haugen-  
Hoffart

Chair  
Commissioner  
Commissioner

APPLICATION OF NORTHERN STATES POWER  
COMPANY, A MINNESOTA CORPORATION, FOR  
AUTHORITY TO INCREASE RATES FOR ELECTRIC  
SERVICE IN NORTH DAKOTA

CASE NO. PU-07-776

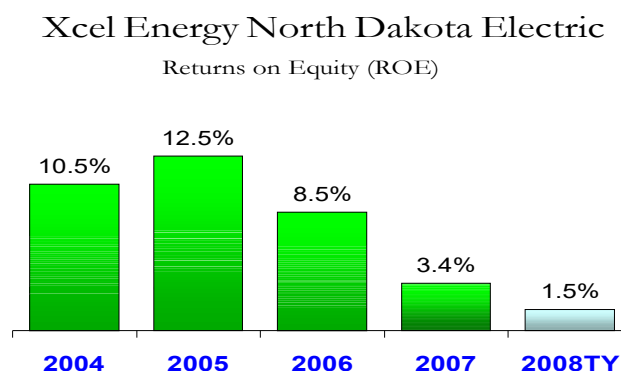
**FIRST AMENDED AND RESTATED SETTLEMENT AGREEMENT**

This First Amended and Restated Settlement Agreement (this “Settlement Agreement”) is entered into this xx day of December xxxx08, by and between the North Dakota Public Service Commission Advocacy Staff (“Staff”) and Northern States Power Company (“Xcel Energy” or the “Company”), a Minnesota corporation operating in North Dakota (collectively, the “Parties”). ~~It replaces entirely the Settlement Agreement dated December 17, 2008 and the Amendment to Settlement Agreement dated December 19, 2008 which have been combined into this replacement Settlement Agreement.~~ This Settlement Agreement amends and restates, and supersedes in its entirety, the Settlement Agreement dated December 22, 2008 that was adopted by the North Dakota Public Service Commission (“Commission”) on December 31, 2008. This Settlement Agreement resolves all outstanding issues in the above-captioned proceeding in a manner consistent with the public interest and will result in just and reasonable rates for the Company’s retail electric operations in North Dakota.

## BACKGROUND

Xcel Energy's electric operations in North Dakota were revenue deficient in 2006 and 2007, earning substantially below the authorized return on equity ("ROE") of 11.5 percent, as shown in Figure 1 below. Projected ROE for the 2008 test year, absent rate relief, was 1.54 percent.

**Figure 1**



Prior to this rate application, the Company had not filed a general electric rate increase application since November 1992 (Case No. PU-400-92-399). During this period, Xcel Energy did implement two modest performance-based rate increases under the provisions of the "PLUS Plan." authorized in Case No. PU -400-00-195. Those increases were triggered by above-target operating and rate performance, and below-authorized earnings.

In 2007, Xcel Energy's average residential electric rate was ranked as the lowest among investor-owned utilities in the states of North Dakota, Iowa, Minnesota, Montana, South Dakota, Wisconsin and Wyoming. This was the fourth year since 2001 in which the Company's North Dakota residential electric rates were the lowest in the region. With the increase contemplated in this Settlement Agreement, Xcel Energy's North Dakota residential rates are expected to

remain within the top six of the thirty service territories comprising this regional comparison group. Moreover, even with the agreed-to increase, the Company's North Dakota rates will have averaged an annual increase of less than one percent since 1993, well under half the rate of inflation over the same period.

See Attachment A for a summary of the procedural history of this case, leading to the Settlement Agreement.

### **TERMS**

The Parties agree to the provisions as defined below and supported by Attachments B, C, D, and E to this Settlement Agreement.

### **ENERGY POLICY**

In this case, the Company determined its revenue requirement in part based on the costs of operating a single, multistate, and integrated system of generation and transmission facilities, with a corresponding allocation of those costs to the North Dakota jurisdiction.

Staff challenged whether North Dakota customers should pay for a portion of the integrated system costs incurred by the Company to satisfy environmental and renewable requirements imposed or facilitated by Minnesota law. During this proceeding, this issue became central to this rate case.

To eliminate or minimize conflicts surrounding energy resource decisions and the associated costs in future general rate proceedings, the Parties agree to adhere to the following regulatory procedures to ensure appropriate Commission involvement and

oversight of the Company's future resource plans and selection of future generation and transmission projects to be added to the system serving North Dakota.

#### **A. North Dakota Resource Planning Process**

The Parties to this Agreement recognize that Xcel Energy, with its multi-state utility system, seeks to provide its customers the benefits of operating an integrated system while at the same time complying with the energy goals and policies of the states it serves. Currently, these states have different and/or conflicting energy priorities. The intent of the Energy Policy provisions of this Settlement Agreement is to provide a framework for identifying future plans and investments and, to the extent applicable, state-specific energy goals and policies and their implications for serving North Dakota customers. Using input provided by the Commission, the Company will be able to determine how best to proceed to both meet the needs of its North Dakota customers and recover its system-wide cost of providing service.

Xcel Energy agrees to provide to the Commission its Minnesota-filed Resource Plans ("RPs") for the integrated NSP System (Minnesota, Michigan, North Dakota, South Dakota and Wisconsin) as it has in the past. In addition to these overall RPs, the Company agrees to provide an alternative system-wide resource plan (the "North Dakota version") that strictly meets both Federal and North Dakota environmental and renewable requirements for the same time period addressed by the Minnesota Resource Plan.

While no formal action by the Commission on these RP scenarios would be required, the Parties envision that the Commission would consider the submissions on an informal basis and provide input to the Company's planning process. The intent of this provision is to seek and obtain such input prior to

Company investments in resources for which it intends to seek recovery from North Dakota customers.

The Company also agrees to file with its annual Ten Year Plan required by N.D.C.C. § 49-22-04 and N.D.A.R. § 69-06-02-01 a summary of the key generating and transmission investments or purchase agreements that it intends to construct or enter into within the next five years. This summary will provide an anticipated schedule of future applications for Advance Determination of Prudence (“ADP”) pursuant to N.D.C.C. § 49-05-16 that the Company ~~may file~~would commit to filing with the Commission (see Section B of this Settlement Agreement).

Finally, the Company agrees to meet with the Commission and Staff as necessary to conduct updates on its resource planning efforts and decisions, and discuss the Ten Year Plan filed in that year. Such updates would include, but not be limited to, details regarding the above described alternative planning analyses, the specific projects identified in the five-year horizon, key management decisions being considered or made regarding the generation fleet and transmission systems, issues or trends in the energy industry impacting generation and transmission, the status of energy policies or laws approved or under consideration across the integrated NSP-System, as well as other pertinent planning topics of interest to the Commission. The Company commits to keeping the Commission and its Staff informed on a timely basis of any major changes in its Resource Plan or significant legislative initiatives under consideration in another jurisdiction.

Xcel Energy will file its next Ten Year Plan report on or before July 1, 2009. In the report, the Company will provide the results of its North Dakota version of

the Resource Plan (based on the current 2008-2022 RP) outlined in this Settlement Agreement. Thereafter, Xcel Energy agrees to file the complete RP and updated North Dakota version on a schedule that corresponds to its overall Resource Planning cycle. In this first and all future Ten Year Plans, the Company will include and describe the current five-year action plan for generation and transmission facilities and its anticipated schedule for filings under the ADP statute.

## **B. Advanced Determination of Prudence**

In accordance with N.D.C.C. § 49-05-16 the Company ~~agrees to may~~ file for an ADP finding from the Commission for all proposed ~~resource additions- new construction, rehabilitation, or acquisition of an energy conversion facility, renewable energy facility, transmission facility or proposed energy purchase, in which:~~

- ~~1. The Company proposes to allocate all or part of the related costs to the North Dakota jurisdiction for recovery in electric rates; and~~
- ~~2. The capacity of the generation facility or purchase is at least 50 MW; and/or the length of the transmission facility is at least 50 miles long.~~

~~The Company will identify its proposed cost allocation methodology in the ADP petition as an item for which a determination of prudence by the Commission is requested.~~

The Parties anticipate that RP and ADP processes will provide a sound basis for Commission decision-making and substantially reduce the likelihood that the disputes of this case will occur in future rate proceedings. To the extent that these new processes reveal continued concern with individual resource decisions or cost

assignments to jurisdictions, the Parties agree to work together on alternative approaches that might be employed while still allowing the Company to recover its costs of service and earn a reasonable return. Such efforts will include advocacy by the Company for cost recovery statutes to directly assign costs and benefits of mandated expenditures to the jurisdiction imposing the mandate when appropriate.

### **C. North Dakota Depreciation Study**

The Company's proposed depreciation expense in this case was based on a uniform depreciation expense for use in all jurisdictions. In its testimony and post-hearing briefs, Staff challenged the reasonableness of the Company's methodologies in several respects.

In response, the Parties agree to the following process for establishing depreciation expenses:

- The Company will use the principles adopted in this Settlement Agreement in establishing depreciation rates for use in North Dakota. The Company will reflect its North Dakota depreciation rates in its annual North Dakota earnings reports and will file depreciation rates consistent with these principles as part of the Company's next electric rate case.
- For informational purposes, the Company will submit to the Commission the various depreciation studies and related documents that are periodically filed with the Minnesota Public Utilities Commission. Such filings include: Annual Review of Remaining Lives, Average Service Life and Vintage Group Filing (every five years), Triennial Review of Nuclear Decommissioning

- Ninety days before filing its next electric rate case, the Company will report to the Commission on whether it intends to propose North Dakota specific depreciable lives for distribution facilities, and the reasons for its proposal.
- Both Parties agree that, unless directed otherwise by the Commission, rate recovery -- past, present, and future -- for the removal and retirement of Company utility property will be used solely for the retirement of the Company's utility property and recognized as a regulatory liability.

### **REVENUE REQUIREMENTS**

As a result of the adjustments agreed to herein and described below, the Parties agree to an increase in Xcel Energy's electric rates for retail customers in North Dakota to ultimately yield an annual retail sales and miscellaneous revenue increase of approximately \$10,855,000 or 7.4 percent. As shown in Table 1 below and on Attachment B, the rates implemented on March 1, 2009 will reflect an increase in base rates of \$12,785,000 offset by projected fuel clause reductions as a result of customer credits from wholesale margins of \$1,930,000.

**Table 1**

<b>Implementation</b>	<b>Base Rates</b>	<b>Fuel Rates</b>	<b>Overall Revenue</b>
March 1, 2009	\$12,785,000	(\$1,930,000)	\$10,855,000

An interim rate refund will be issued to customers for the difference between the interim rate increase placed into effect on February 5, 2008 and the Settlement Agreement amount. The interim rate refund will reflect the fact that wholesale margins were credited to the interim revenue requirement. However, such margins will be credited to the fuel clause adjustment on a prospective basis, coinciding with

final rates. See Attachment C for the calculation of the annualized interim rate refund.

Following is a description of the specific test year adjustments agreed to in this Settlement Agreement. (See also Attachment B):

#### **D. Return on Equity**

The Parties agree to a return on equity of 10.75 percent as outlined in the previous settlement with Staff. The adjustment reduces the original revenue request by \$1,562,000 and agrees to share any earnings above 10.75% with customers (see other Terms and Conditions for a full discussion of this sharing mechanism).

The Parties also agree that a 10.75% ROE will be used for purposes of determining interim rates in the Company's next electric rate case.

#### **E. Generating Plant Service Lives**

For purposes of determining the overall revenue requirement, the Parties agree to:

- Extend the service lives of the Sherco Generating Station, and five other combustion plants (Angus C. Anson, Granite City, High Bridge, Inver Hills, and Key City) as proposed by Staff. The Company will reflect the longer service lives in final rates implemented in this docket. The adjustment reduces the revenue requirement by \$1,362,000.
- Reduce the depreciation rates for its transmission and distribution assets to effect an adjustment in the reserve balance, thereby recalibrating the balance to be more in line with theoretically calculated levels. This adjustment reduces the revenue requirement by \$1,180,000.

- Recover removal costs in depreciation rates for transmission and distribution based on a net present value methodology rather than on a future cost methodology (using Staff's alternative five year historical average for the purposes of this case). This adjustment reduces the revenue requirement by \$437,000.
- The Parties recognize that the life extension has already been approved for the Monticello nuclear generating plant and that this fact eliminates the need for continued accruals to the existing escrow account, as reflected in the revenue requirement in this rate case. The Parties also agree to return, effective beginning March 1, 2009 and completed by the end of 2010, the amounts that North Dakota customers contributed to the decommissioning escrow account for the Monticello plant. This provision reduces the revenue deficiency for final rates by \$212,000. Because this provision applies only to final rates (effective after March 1, 2009), it results in no change to the interim rate refund in this proceeding.

In addition, the Parties agree to determine final rates using a remaining life for the Prairie Island nuclear generating plant that assumes approval of the requested life extension for this facility. This adjustment results in a \$2,162,000 decrease to the test year revenue requirement.

The Company has sought the necessary approvals for life extension and spent fuel storage from the Nuclear Regulatory Commission (NRC) and the Minnesota Public Utilities Commission (MPUC) for the Prairie Island nuclear generating plan, but those petitions are pending.<sup>2</sup> Final approvals from the NRC and MPUC are not expected prior to 2010. In recognition of the possibility that life extension and fuel storage may not be obtained, the Parties further agree that the Company will track the rate benefit provided by this provision. The rate benefit being tracked is the revenue requirement

difference due to depreciation recognized using the longer remaining life versus the depreciation calculated using the current license life. In the event the needed regulatory approvals for life extension and fuel storage are not received, the amount in the tracker account shall become a regulatory asset, with an appropriate offset to accumulated depreciation, that will be recoverable from customers in a manner to be determined by the Commission in the Company's next electric rate case.

In addition, within 60 days of the determination that life extension or the necessary additional fuel storage has been denied, the Company shall file a petition with the Commission to adjust North Dakota rates to recover the remaining investment in the Prairie Island nuclear generating plant over the remaining life as determined by the operating license.

The Parties also agree that in no event is this provision intended to limit or deny the Company the opportunity to recover all prudent costs associated with the Prairie Island nuclear generating plant. Instead, this provision is intended to respond to the Commission's expectation that life extension for this plant will be approved and its expressed desire to provide the benefits of such extension at this time.

In all other respects, the Parties recommend that the Commission approve the methodologies used by the Company in this proceeding.

The service life extensions and other depreciation-related and escrow fund refunds reduce the revenue increase request by \$6,335,000.

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<sup>2</sup>The Prairie Island life extension requires approval of a new operating license from the Nuclear Regulatory Commission and a Certificate of Need ("CON") from the Minnesota Public Utilities Commission. Pursuant to Minn. Stat. § 216B.242, the Minnesota Public Utilities Commission's approval of a CON for additional nuclear storage will take effect after the close of the next legislative session after approval of the CON.

## **F. Generation and Transmission Investments**

The Parties agree to allow recovery of the Company's proposed costs of its investments in the King and High Bridge power plants and the Grand Meadows wind farm and associated transmission investments. The Parties recognize that these investments were primary issues of dispute in this proceeding. The Parties reached agreement on this issue as a whole, and believe that the RP, ADP, earnings sharing, and rate moratorium provisions all facilitate the resolution of this issue and result in reasonable rates. Further, the Parties agree that the Company's refurbishment and repowering of two of its aging coal-fired power plants were prudent and economic investments, especially considering the strategic location of these plants. Moreover, Staff acknowledges that the Grand Meadow Wind Farm is able to take advantage of existing production tax credits to produce low and stable-priced energy that will contribute to Xcel Energy's efforts to meet North Dakota's renewable energy objective of supplying 10 percent of its retail energy needs with renewable resources. For these reasons, this Settlement Agreement provides for recovery of Company's costs associated with the King, High Bridge, and Grand Meadow generating facilities.

## **G. Wholesale Margins**

For purposes of determining the overall revenue requirement, the Parties agree to provide to ratepayers 85 percent of all asset-based and 50 percent of non-asset-based margins achieved by the Company through the fuel clause. Passing these credits directly to customers through the fuel clause as they are realized ensures that neither customers nor the Company are disadvantaged by a non-representative margin forecast in the test year. By sharing the gains on asset-based sales, the Parties recognize that the Company is incented to maximize the benefit from these sales. Further, the non-asset sharing at 50 percent is more than adequate to assure that any costs imposed on customers as a result of this activity is fully credited.

#### **H. Amortization of Nuclear Refueling Expenses**

For purposes of determining the overall revenue requirement, the Parties agree to an annual amortization expense level of \$2,492,407, which approximates the levelized annual amortization after refueling outages have occurred for all three of the nuclear units at the Prairie Island and Monticello nuclear generating plants. This provision results in no change to the revenue requirement initially filed in the rate case. Given that other provisions of this Settlement Agreement provide for the accelerated life extension for Prairie Island, earnings sharing and a rate moratorium, the Parties believe this approach is reasonable. Attachment D shows these costs.

#### **I. Renewable Development Fund**

For purposes of determining the overall revenue requirement, the Parties agree to remove the test year expenses related to Renewable Development Fund research and development grants and disbursements. The adjustment reduces the rate increase request by \$170,000.

#### **J. Charitable Contributions**

For purposes of determining the overall revenue requirement, the Parties agree to remove the Company's costs associated with 50 percent of its charitable contributions. The adjustment reduces the rate increase request by \$86,000.

#### **K. Incentive Compensation Cap**

For purposes of determining the overall revenue requirement, the Parties agree to a reduction in the cap on incentive compensation from the Company's proposed level of 25 percent to 15 percent of base salary. Accordingly, costs associated with the incentive compensation of the employee's total compensation is capped at 15 percent of an individual's base salary, and costs for incentive compensation in excess of 15 percent of the employee's base salary will not be included in rates. The adjustment

reduces the rate increase request by \$35,000.

**L. Mercury Emissions Control**

For purposes of determining the overall revenue requirement, the Parties agree to a reduction in costs related to monitoring mercury emissions reduction efforts at its King and Sherco generating plants to meet Minnesota mercury emissions requirements. The adjustment reduces the revenue increase request by \$12,335.

**M. MISO Schedule 16 and 17 Costs**

For purposes of determining the overall revenue requirement, the Parties agree to recovery of Midwest Independent Systems Operator (“MISO”) Schedule 16 and 17 costs in the fuel clause. Fuel clause treatment is appropriate given that, like all other MISO Day 2 charge types which are also recovered through the fuel clause, they are non-discretionary charges billed out by the MISO, and they have been recovered through the fuel clause in North Dakota for the past three years. Fuel clause treatment is also consistent with the present treatment of these costs in South Dakota. This adjustment does not impact the overall revenue increase, since the recovery of these costs is just being shifted from base rates to fuel clause rates. This adjustment does, however, reduce the base rate revenue requirement by \$532,000.

**N. Private Fuel Storage**

The Parties clarify that the rate increase contained in this Settlement Agreement provides for recovery of the Company’s costs associated with Private Fuel Storage. The Parties agree that the Company’s effort in securing such a facility was prudent and appropriate in light of delays in the development of a Federal repository for spent nuclear fuel. This provision results in no change in the Company’s proposed test year revenue requirement.

## **RATE DESIGN**

The Parties agree to the following revenue requirement apportionment among customer classes for the March 1, 2009 rate increase:

1. Residential service: \$5,157,000 or 8.9 percent;
2. Commercial (non-demand metered) service: \$972,000 or 9.3 percent; and
3. Commercial (demand metered) service: \$6,656,000 or 8.6 percent.

These changes are further shown on Attachment E to the Settlement Agreement.

This apportionment reflects base rate percentage changes by customer class that are consistent with the Company's originally proposed class revenue allocation, as shown on the attachment.

The Parties agree to the filed tariff changes proposed in the Company's initial filing, as amended to reflect the change in revenue requirement contained in this Settlement Agreement. In amending the tariffs, the Parties agree to using the Company's proposed rate design principles in the development of final rates to implement the approved revenue requirement contained in this Settlement Agreement.

The Company shall file compliance tariff pages setting forth the revised electric rates and tariffs provided by this Settlement Agreement at least thirty (30) days prior to the effective date of final rates.

## **INTERIM RATES**

The Parties agree the interim rates will remain in effect for all customer classes until February 28, 2009. Refunds will be issued to customers within ninety (90) days of the implementation of final rates for the difference between the interim revenue level and the March 1, 2009 revenue level agreed to in this Settlement. Based on current

information, the Parties estimate that customers will receive \$6,328,000 in base rate refunds (see Attachment C).

## **OTHER TERMS AND CONDITIONS**

### **O. Customer Refunds for Earnings Above Authorized ROE**

The Parties agree to an earnings-sharing mechanism that will result in customer refunds if the Company's net income exceeds a 10.75 percent ROE for its North Dakota electric operations.

If the Company earns in excess of 10.75 percent ROE during the 2009 or 2010 calendar years, the Company will refund to customers revenues corresponding to earnings as shown below:

- 50% of earnings above 10.75% up to and including 11.25%; and
- 75% of earnings above 11.25%.

Earnings sharing refunds would be applied to customer accounts as a one-time bill credit as soon as practical on or after July 1<sup>st</sup> of the following calendar year.

### **P. Rate Moratorium**

The Parties agree to a moratorium on an electric rate increases until 2011 for Xcel Energy's North Dakota operations. This moratorium does not preclude the Company from submitting a rate application for electric rates prior to 2011, but no change in customer rates would be implemented before January 1, 2011.

### **Q. Basis of Settlement Agreement**

It is agreed this Settlement Agreement is a negotiated settlement agreement subject to approval by the Commission. Except for the purpose of setting interim rates and depreciation expenses in the Company's next electric rate case, the Settlement Agreement does not establish any principle or precedent, nor adopt or recommend any specific type or amount of expense or rate base, for this or any future proceeding.

#### **R. Effect of the Settlement Negotiations**

It is understood and agreed that all offers of settlement and discussions related to this Settlement Agreement are privileged and may not be used in any manner in connection with proceedings in this case or otherwise, except as provided by law. In the event the Commission does not approve this Settlement Agreement, it shall not constitute part of the record in this proceeding and no part thereof may be used by any party for any purpose in this case or in any other.

#### **S. Applicability and Scope**

This Settlement Agreement shall be binding on the Parties, and their successors, assigns, agents, and representatives. Consistent with the Commission's settlement guidelines, this Settlement Agreement does not set policy or overturn precedent. This Settlement Agreement shall not in any respect constitute an agreement, admission or determination by any of the Parties as to the merits of any specific allegation or contention made by the Parties in this proceeding.

#### **T. Effective Date**

This Settlement Agreement shall be effective on the date of the Commission Order approving the Settlement Agreement. The revised rates and tariff agreed to by this Settlement Agreement shall be effective on the dates specified in the Revenue Requirements Section of this Settlement Agreement.

## **V. Modification**

If the Commission Order modifies or conditions approval of this Settlement Agreement, it shall be deemed terminated if either Party files a letter with the Commission within three (3) business days of the date of such Order stating that a condition or modification to the Settlement Agreement is unacceptable to such party.

## **CONCLUSION**

The Parties have agreed to the forgoing terms to resolve the contested issues in the electric rate case proceeding. These terms are a result of negotiations between the Parties, are in the public interest and will result in reasonable electric rates. For these reasons, the Parties urge the Commission to approve the Settlement Agreement.

**[SIGNATURE PAGE FOLLOWS]**

**[SIGNATURE PAGE"TO  
FIRST AMENDED AND RESTATED SETTLEMENT AGREEMENT]**