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February 15, 2024

**-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: Case No. PU-23-366 Application to Amend Order in  
Case No. PU-07-776 - Electric Rate Increase Application**

Dear Mr. Kahl:

Enclosed for filing, please find an original and seven copies of clean (Attachment A) and redlined (Attachment B) versions of the First Amended and Restated Settlement Agreement (the Amended Settlement Agreement) executed on February 15, 2024 by Northern States Power Company, doing business as Xcel Energy (the Company). The Amended Settlement Agreement amends, restates, and supersedes in its entirety, the prior settlement agreement dated December 22, 2008 (the Prior Settlement Agreement) that was adopted by the North Dakota Public Service Commission (Commission) on January 14, 2009.

The Prior Settlement Agreement 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. By application dated December 29, 2023, the Company requested the Commission remove the requirement to submit an ADP under certain circumstances (the Application). The Application included proposed settlement agreement language that was discussed during an informal hearing held between the Commission and the Company on January 24, 2024. During the informal hearing, the Commission expressed a preference for revised settlement language containing a commitment that the Company would agree to file for an ADP upon request by Commission motion or order.

After discussions with Commission Staff, the preferred language of the Commission has now been included in the attached Amended Settlement Agreement. The Company respectfully requests that the Commission issue an order approving and adopting the attached Amended Settlement Agreement.

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  
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-23-366

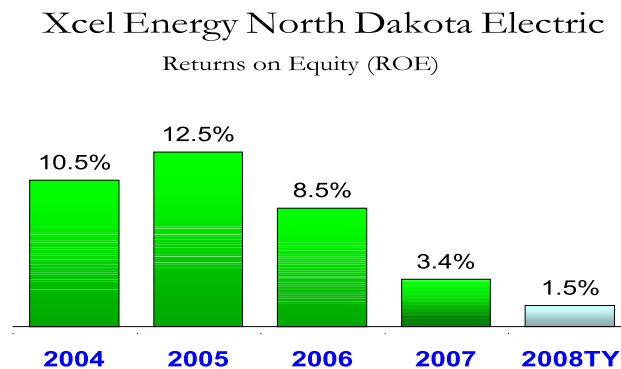
**FIRST AMENDED AND RESTATED SETTLEMENT AGREEMENT**

This First Amended and Restated Settlement Agreement (this “Settlement Agreement”) is entered into this 14th day of February 2024, by and between the North Dakota Public Service Commission (“Commission”) and Northern States Power Company (“Xcel Energy” or the “Company”), a Minnesota corporation operating in North Dakota (collectively, the “Parties”). This Settlement Agreement amends and restates, and supersedes in its entirety, the Settlement Agreement dated December 22, 2008 that was adopted by the Commission on January 14, 2009. 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.

North Dakota Public Service Commission Advocacy Staff (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 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 may file for an ADP finding from the Commission for all proposed resource additions including new construction, rehabilitation, or acquisition of an energy conversion facility, renewable energy facility, transmission facility or proposed energy purchase. The Company also agrees to file for an ADP finding upon request by Commission motion or order.

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.

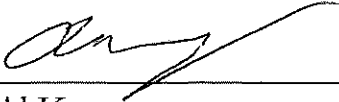
## **CONCLUSION**

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]**

Dated this 14<sup>th</sup> of February 2024

Northern States Power Company,  
A Minnesota corporation

By:   
\_\_\_\_\_  
Al Krug  
AVP State Regulatory Policy

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

STATE OF NORTH DAKOTA  
BEFORE THE  
PUBLIC SERVICE COMMISSION

~~Susan E. Wefald-Randy  
Christmann  
Julie Fedorchak  
Sheri Haugen-Hoffart  
Kevin Cramer  
Tony Clark~~

~~Julie Fedorchak  
Sheri Haugen-  
Hoffart~~

~~Chair~~Pre  
sident  
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-~~23-366~~07-776

**FIRST AMENDED AND RESTATED SETTLEMENT AGREEMENT**

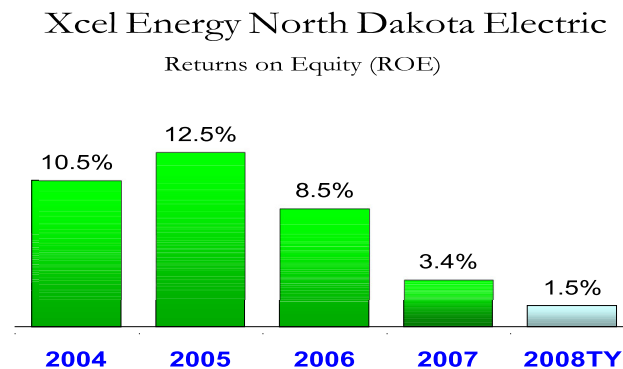
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outstanding issues in the above-captioned proceeding in a manner consistent with the public interest and will result in just and reasonable rates for the Company's retail electric operations in North Dakota.

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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 including new construction, rehabilitation, or acquisition of an energy conversion facility, renewable energy facility, transmission facility or proposed energy purchase. ~~in which: The Company also agrees to file for an ADP finding upon request by Commission motion or order.~~

- ~~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]**