



2302 Great Northern Drive Fargo, ND 58102
(701) 929-0547
Alex.j.nisbet@xcelenergy.com

September 20, 2024

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

–Via E-Mail and U.S. Mail–

RE: APPLICATION TO AMEND THE ORDER
TO MODIFY THE COMMITMENT TO BUILD
THERMAL GENERATION IN NORTH DAKOTA
CASE NO. PU-12-813

Dear Mr. Kahl:

Northern States Power Company, doing business as Xcel Energy, submits to the North Dakota Public Service Commission (Commission) the enclosed Application to amend the Commission's March 9, 2016 Order Approving Settlement in Case No. PU-12-813. By this Application, Xcel Energy is requesting that the Commission amend the February 22, 2016 First Revised Negotiated Agreement in the above-noted Case and adopt the enclosed Second Revised Negotiated Agreement, which removes a December 31, 2025 deadline for the Company to build or locate in eastern North Dakota a natural gas-fired electric generation facility and replaces that timeline commitment with a mandatory semi-annual reporting requirement to the Commission.

Please contact me at alex.j.nisbet@xcelenergy.com if you have questions regarding this filing. Thank you for your time and consideration.

SINCERELY,

/s/

ALEX NISBET
REGULATORY POLICY SPECIALIST

Encls
cc: Victor Schock

1 PU-24-342 Filed 09/20/2024 Pages: 24
Application to Amend March 9, 2016 Order Approving Settlement in Case No. PU-12-813
to Modify the Commitment to Build Thermal Generation in North Dakota
Northern States Power Company
Alex Nisbet, Reg. Policy Specialist

STATE OF NORTH DAKOTA
BEFORE THE
NORTH DAKOTA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION TO
AMEND THE ORDER TO MODIFY THE
COMMITMENT TO BUILD THERMAL
GENERATION IN NORTH DAKOTA

CASE No. PU-12-813

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 March 9, 2016 Order Approving Settlement in Case No. PU-12-813. By this Application, Xcel Energy is requesting that the Commission amend the February 22, 2016 First Revised Negotiated Agreement in this Case (2016 Settlement Agreement) and adopt the attached Second Revised Negotiated Agreement (Amended Settlement).

The 2016 Settlement Agreement contained a commitment that by the end of 2025, the Company will build or have located in eastern North Dakota a natural gas-fired electric generation facility with a capacity of at least 200 MW. The commitment was contingent upon the Company's receipt of all necessary and appropriate permits and regulatory approvals. In addition, the turbine must reasonably address a system capacity need and represent a least cost resource when also considering the local reliability and system benefits of developing thermal generation in North Dakota.

If the combustion turbine is not in service by December 31, 2025, the Company agreed to refund to North Dakota customers half of the revenues associated with the continued cost recovery of six biomass PPAs from 2016 through 2025¹. The intent was to provide assurance that the Company will follow through on its commitment to construct the plant, or "monetary value" to North Dakota customers in the event the Company is unable to achieve the goal of building thermal generation in eastern North Dakota by the end of 2025.² This refund stipulation is without qualification, provided that the Company could always petition the Commission for an extension, or modification, if necessary.³

¹ 2016 Settlement Agreement at 4.

² Id at 2.

³ Direct Testimony of David H. Sederquist in support of Negotiated Agreement in Case No. PU-12-813, at 16 (November 30, 2015).

Commission Staff has long advocated for principled resource planning.⁴ With that sentiment in mind, it is our view that the thermal generation commitment detailed in this filing should be viewed as a positive means of incentivizing Company investment in North Dakota, as compared to a monetary penalty.

Since the 2025 thermal generation commitment was established in the 2016 Settlement Agreement, the Company has been taking deliberate steps to develop and propose a North Dakota resource that would satisfy the principles of prudent resource planning. For example, on January 22, 2024 the Company submitted a bid proposal to the Minnesota Public Utilities Commission (MPUC) to construct 447 MW of firm dispatchable resources directly adjacent to the Xcel Energy Bison Substation in Harmony Township, Cass County, North Dakota (the Bison Proposal). The proposed project, titled the Bison Generating Station, has an in-service date of September 2028 and includes two 210 MW gas-fired combustion turbine (CT) generators and three 9 MW gas-fired Reciprocating Internal Combustion Engines (RICE). The proposal was submitted as part of a bidding process that is being carried out to satisfy the Company's need for "firm dispatchable resources between 2027 and 2029" as found in the Company's 2019 Integrated Resource Plan (hereinafter referred to as the MN Firm Dispatchable Proceeding).

The proposed site for the Bison Generating Station is approximately 10 miles west of our Fargo load center and would allow the Company to maximize the use of existing transmission infrastructure, which includes the 345 kV Bison Substation, for interconnection.

Given its significant gas pipeline capacity needs as the first new gas plant proposed in the area, the Bison Generating Station would bear the cost for necessary natural gas system upgrades to provide adequate supply. Natural gas supply would be provided by WBI Energy (WBI) and would require substantial natural gas system improvements that would take 40 to 48 months to complete.

Upon thorough review of the Bison Generating Station proposal in the MN Firm Dispatchable Proceeding, the Bison Proposal in its current form, when also considering the local reliability and system benefits of developing thermal generation in North Dakota, has been deemed to be economically infeasible. This is primarily due to the significant costs associated with the natural gas system upgrades. In light of this, the Company has been seeking alternate means of securing lower cost natural gas supply for the Bison Generating Station.

⁴ Direct Testimony of Mike Diller in support of Comprehensive Settlement Agreement in Case No. PU-12-813, at 6 and 7 (December 20, 2013).

The Company has been meeting with the North Dakota Pipeline Authority (NDPA) regarding the development of a new pipeline to transport natural gas from the Bakken Formation to eastern North Dakota and beyond. The NDPA was created by the North Dakota legislature for the purpose of diversifying and expanding the North Dakota economy by facilitating development of pipeline facilities to support the production, transportation, and utilization of North Dakota energy-related commodities. The NDPA is looking to utilize funds from the State Bank of North Dakota to make the state government an “anchor shipper” on this potential new pipeline. Having the Bison Generating Station as an off-taker would make this potential new pipeline more feasible while making the Bison project more cost-effective. In addition, a new natural gas pipeline of this nature could provide access to cost-effective natural gas heating for residential customers and help the economic development efforts of small communities and various industries along the route.

The Company and the Commission have long agreed that there are local reliability and system benefits in locating thermal generation within or near our North Dakota service territory⁵. We continue to agree there are benefits and have tried to further these goals with our Bison Proposal. These potential benefits to our ratepayers and the entire state far surpass the “monetary value” to North Dakota customers in the event we are unable to build thermal generation in North Dakota by the end of 2025. To that end, the Company proposes modifying the thermal generation commitment to keep it in place beyond 2025 and provide an ongoing incentive for the Company to continue to pursue the construction of thermal generation in North Dakota.

In light of the foregoing, the Company requests that the Commission adopt the Amended Settlement to remove the December 31, 2025 deadline found in the 2016 Settlement Agreement and replace the timeline commitment with a mandatory semi-annual reporting requirement to the Commission. The semi-annual reports will provide information on pipeline development in the state as well as updates on the Bison Generating Station as it navigates regulatory processes in North Dakota and other jurisdictions. The Company is committed to providing reliable and affordable electricity service to customers in all jurisdictions. Removal of the prior deadline will allow time to refine and improve the plans for North Dakota generation consistent with prudent resource planning, while incentivizing investment in the state.

We are very appreciative of the effort and guidance of Staff and the Commission on this matter. If the Commission does not approve the request to amend the 2016 Settlement Agreement as sought herein, we would then review the thermal generation commitment in our next North Dakota electric rate case at which time the

⁵ 2016 Settlement Agreement at 3.

Commission can consider all circumstances and the parties could holistically address this commitment.

In support of this filing, Xcel Energy provides:

- Background regarding the thermal generation commitment and related regulatory proceedings; and
- A description of the proposed amendments.

Also provided with this application is the following attachment:

1. Attachment A: Redline indicating proposed amendments to the First Revised Negotiated Agreement dated February 22, 2016.

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, 8th Floor
Minneapolis, MN 55401
(612) 370-3578
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

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, 7th Floor
Minneapolis, MN 55401
regulatory.records@xcelenergy.com

B. Date of filing and proposed effective date

The date of this filing is September 20, 2024. 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. THERMAL GENERATION COMMITMENT AND RELATED REGULATORY PROCEEDINGS

A. Red River Valley Units 1 and 2 - Application for ADP and CPCN

On April 26, 2013 the Company filed an Application for Advance Determination of Prudence (PU-13-194) and Certificate of Public Convenience and Necessity (PU-13-195) for its proposal to add three 215 MW natural-gas-fired CT generators to its system (hereinafter referred to as the CT Cases). The first CT would be constructed at Xcel Energy's Black Dog generation plant in Burnsville, Minnesota (Black Dog Unit 6) for service beginning in 2017. The second and third CTs would be constructed at a new plant site to be located in the Red River Valley near Hankinson, North Dakota (Red River Valley Units 1 and 2) for service beginning in 2018 and 2019.

The Company's proposal was the result of the 2011-2025 resource planning cycle, which included filings with the North Dakota Public Service Commission (Case No. PU-10-580) and Minnesota Public Utilities Commission (MPUC Docket No.

E002/RP-10-825). That resource plan identified a capacity deficit of approximately 150 MW that was to grow to approximately 500 MW in 2019.

The timing of the three CTs was based on their cost-effectiveness relative to one another and the system as a whole. Because Black Dog Unit 6 was the most cost effective of the three combustion turbines the Company proposed, the Company recommended that it be developed first, followed by the Red River Valley units. Black Dog Unit 6 was therefore slated to address the 150 MW shortfall identified for 2017, and the Red River Valley Units were slated to address the remaining 350 MW shortfall identified for the 2018-19 period.

In late 2013 it became clear that Red River Valley 1 and 2 would not be selected at that time due to their high cost relative to other proposed projects. Supplemental testimony from James Alders dated November 13, 2013 in the CT Cases states as follows:

Strategist identified Red River Valley Unit 1 in combination with both Black Dog 6 and GRE's capacity credit proposal as the third least cost plan. [...]

Based on the information presented in the CAP, the Company is recommending that Black Dog 6, Calpine's Mankato Expansion, and Invenergy's Cannon Falls Expansion all be selected to move forward in the resource review process, with the final resource selection(s) determined upon completion of the PPA negotiation phase. The Company's proposed Red River Units continue to be viable options should the need arise and prudent PPAs are unable to be negotiated with Calpine and/or Invenergy.

Mike Diller, then Director of Economic Regulation at the PSC spoke to the benefits of constructing thermal generation in North Dakota, but recommended to the Commission that a lengthy timeline be provided in any ADP Order so that the resources can be added in an orderly manner. Mr. Diller's November 20, 2013 testimony in the CT Cases states as follows:

Q. Why do you suggest such a long time frame when you are concerned about energy security in the eastern part of the state

A. Perhaps it is the Midwestern culture at work in me again but I am trying to give NSP plenty of time to comply. I do not want to cause harm to NSP's shareholders. We have a long-term interest in a good relationship

with NSP. Financial harm to NSP should only occur when it refuses to act in the best interest of the people it serves as a monopoly service provider in our state. To that end, the commission has been granted plenty of authority over NSP's rates. If a utility does not provide service in North Dakota that is fair, equitable and in the interest of its North Dakota ratepayers, the commission should not be afraid to use its authority.

Giving NSP more than 20 years to build the projects proposed in this filing will allow for an orderly and planned development process. NSP operates a 10,000 MW and growing system making the addition of two 215 MW gas turbines over the next 20 years benign and very doable. It will allow NSP plenty of time to mitigate jurisdictional risk. It will allow plenty of time to refine and improve the plans for North Dakota generation. It will allow NSP to force North Dakota generation into its integrated resource plan so that future generation plans and decisions can be made in concert with the plans in North Dakota.

[...]

I think that the Commission should write its ADP order in such a way as to encourage the most efficient and feasible deployment of North Dakota generation. If possible, it should be written in a way so as to not preclude building the units somewhere other than Hankinson because a lot can change over the next 20 years. Perhaps the issue of gas availability near Fargo will be more plentiful and less costly than Hankinson sometime in the future and would be better for load stability and reliability located closer to its largest load center.

B. February 26, 2014 Order Adopting Settlement

The February 26, 2014 Order Adopting Settlement in Case No. PU-12-813 (2014 Order) approved the Revised Second Amended Comprehensive Settlement Agreement dated February 25, 2014 (2014 Settlement Agreement).

The 2014 Settlement Agreement was intended to address the longstanding interest of the Commission to “exert more control” over the Company’s resource mix service for North Dakota customers.⁶ The Company and Staff began attempting to address that interest in the PU-07-776 settlement agreement wherein the Company agreed to keep the Commission informed of its resource planning efforts through the then-new

⁶ 2014 Settlement Agreement at 12.

Advance Determination of Prudence law.⁷ The intent was for the Commission to provide early input into the Company's resource additions. That settlement agreement did improve awareness and enhance dialogue, but it was deemed insufficient to meet the Commission's desire of exerting more control over the resource mix for North Dakota customers.⁸

The 2014 Order and Settlement Agreement was entered into to develop a multi-year rate plan and address North Dakota energy policy goals. Specifically, the 2014 Settlement Agreement established:⁹

1. A four year rate plan;
2. A framework to ensure that the Company's North Dakota customers will be served by a resource mix consistent with North Dakota's energy policies; and
3. A path toward development of North Dakota based generation nearer to the Company's existing loads.

Section II.A of the 2014 Settlement Agreement set forth guiding principles for negotiations to satisfy the goal of setting electric generation costs that are reflective of the Commission's policy preferences. The Company and Commission Staff were to negotiate in good faith to develop an agreement intended to be final for the purposes of developing a baseline resource mix (real or proxy) to serve the Company's North Dakota customers.¹⁰

In addition to establishing a framework to ensure customers are served by a resource mix consistent with North Dakota energy policies, the 2014 Settlement Agreement established a path toward development of North Dakota based generation nearer to the Company's existing loads.

The 2014 Settlement Agreement found that the Red River Valley turbine generators were prudent resource acquisitions and the ADP requested in Case No. PU-13-194 should be granted. The 2014 Settlement Agreement also acknowledged that it was possible the two proposed North Dakota CTs would not be built, but the Company and Staff agreed that diversifying the location of the Company's generation mix provides benefits to all of our customers.

⁷ Id.

⁸ Id at 13.

⁹ 2014 Settlement Agreement at 3.

¹⁰ Id at 16.

The Company committed to develop up to 400 MW of thermal generation resources in North Dakota no later than 2036, consistent with the principles of orderly development of resources, the principle of least-cost development, and general concepts of prudent resource planning to meet incremental additional resource needs that may arise in that timeframe (the 2036 Commitment).¹¹ The Company was to incorporate this commitment into its planning efforts and advocate for the development of North Dakota-based generation in other affected jurisdictions, to the extent that it is cost-effective and necessary.¹²

C. March 9, 2016 Order Approving February 22, 2016 First Revised Negotiated Agreement (2016 Settlement Agreement)

After the 2014 Order was issued, Commission Staff and the Company began working towards the North Dakota generation mix requirements set forth in the 2014 Settlement Agreement. Early discussions in 2014 and 2015 focused on proxy pricing concepts and ways the Company could make its North Dakota system more “stand alone” in terms of the Commission being able to influence the types of future energy resources added to meet North Dakota load growth and replace retired plants.¹³

However, it soon became evident to Commission Staff and the Company that they would need to “slow down and reassess how to viably approach the very complex issue of divergent state energy policies.”¹⁴ Given the differences in each state’s approach to generation resource development, the significant generation that was to be added over the next 20 years, and pending environmental regulations, the Company and Commission Staff determined that a repricing approach contemplated in the 2014 Settlement Agreement would not be sufficient to address concerns regarding differing state energy policies.¹⁵

A verbal agreement was reached in June 2015 to narrow the focus of the ratemaking treatment to existing renewable PPAs listed in the 2014 Settlement Agreement. The key to this verbal agreement in principle was for the Company to consider accelerating its 2036 Commitment so that 6 biomass PPAs deemed “uneconomic resources” by Commission Staff would continue to be recovered in the Fuel Cost

¹¹ Id at 18.

¹² Id.

¹³ Direct Testimony of David H. Sederquist in support of Negotiated Agreement in Case No. PU-12-813, at 12 (November 30, 2015).

¹⁴ 2016 Settlement Agreement at 2.

¹⁵ Id at 2.

Rider (FCR)¹⁶. These biomass resources provide approximately 145 MW of baseload-type capacity and energy for the entire NSP system and allow for the continued fuel storage for NSP's nuclear fleet.

Since making the 2036 Commitment in the 2014 Settlement Agreement, the Company completed its 2016-2030 Resource Plan and identified a capacity need arising in 2025. The 2016 Settlement Agreement requires the Company to accelerate, from 2036 to 2025, its commitment to construct and install an integrated NSP System thermal generating resource in eastern North Dakota, preferably near the City of Fargo. Specifically, the Company agreed to:¹⁷

1. Develop, own, and operate (or alternatively, cause to be developed and operated on its behalf through a power purchase agreement or other contractual arrangement) a combustion turbine with a capacity of at least 200 MW in eastern North Dakota, no later than December 31, 2025;
2. The combustion turbine must reasonably address a system capacity need and represent a least cost resource when also considering the local reliability and system benefits of developing thermal generation in North Dakota;
3. The costs of the generating facility would be allocated to all state jurisdictions served by the Company in a manner consistent with other NSP System resources;
4. Attainment of this commitment is contingent on the Company's receipt of all necessary and appropriate permits and regulatory approvals; and
5. If the turbine is not in service by December 31, 2025, the Company will provide a refund to North Dakota customers in 2026 equal to fifty percent of the revenues collected from North Dakota customers during the ten year period of 2016-2025 that represents the difference between the actual revenues received by the Company for the biomass purchase agreements and the amount North Dakota customers would have paid for these resources had they been disallowed for recovery by the Commission; recognizing that – if disallowed – North Dakota customers would have paid an adjusted system average cost of fuel for the energy (and associated capacity) from these resources.

¹⁶ Direct Testimony of David H. Sederquist in support of Negotiated Agreement in Case No. PU-12-813, at 12 (November 30, 2015).

¹⁷ 2016 Settlement Agreement at 3 and 4.

The Commission had long encouraged the Company to invest dispatchable, thermal system generation in eastern North Dakota.¹⁸ The biomass refund was intended to provide assurance that the Company will follow through on its commitment to construct the plant, or “monetary value” to North Dakota customers in the event the Company is unable to achieve the goal of building thermal generation in eastern North Dakota by the end of 2025. This refund stipulation is without qualification, provided that the Company could always petition the Commission for an extension, or modification, if necessary.¹⁹

IV. PROPOSED AMENDMENTS

Since the 2025 thermal generation commitment was established in the 2016 Settlement Agreement, the Company has been taking deliberate steps to develop and propose a North Dakota resource that would satisfy the principles of prudent resource planning. Most notably, on January 22, 2024 the Company submitted a bid proposal to the MPUC to construct 447 MW of firm dispatchable resources directly adjacent to the Xcel Energy Bison Substation in Harmony Township, Cass County, North Dakota.

Upon thorough review of the Bison Generating Station proposal, the project in its current form, when also considering the local reliability and system benefits of developing thermal generation in North Dakota, has been deemed to be economically infeasible. This is primarily due to the significant costs associated with the natural gas system upgrades. In light of this, the Company has been seeking alternate means of securing lower cost natural gas supply for the Bison Generating Station.

The Company has been meeting with the North Dakota Pipeline Authority (NDPA) regarding the development of a new pipeline to transport natural gas from the Bakken Formation to eastern North Dakota and beyond. Having the Bison Generating Station as an off-taker would make this potential new pipeline more feasible while making the Bison project more cost-effective.

The Company requests that the Commission adopt the Amended Settlement to remove the December 31, 2025 deadline found in the 2016 Settlement Agreement and replace the timeline commitment with a mandatory semi-annual reporting requirement to the Commission. The semi-annual reports will provide information on

¹⁸ Id at 3.

¹⁹ Direct Testimony of David H. Sederquist in support of Negotiated Agreement in Case No. PU-12-813, at 16 (November 30, 2015).

pipeline development in the state as well as updates on the Bison Generating Station as it navigates regulatory processes in North Dakota and other jurisdictions. If, after a semi-annual report, the Commission has concerns regarding the Company's ability to meet its commitment, the Commission can, at its option and after hearing, take remedial action.

If the Commission does not approve the request to amend the 2016 Settlement Agreement as sought herein, we would then address the thermal generation commitment in our next North Dakota electric rate case at which time the Commission can consider all circumstances and the parties could holistically resolve this commitment.

V. CONCLUSION

We respectfully request approval of our application to amend the February 22, 2016 First Revised Negotiated Agreement in this Case (2016 Settlement Agreement) and adopt the attached Second Amended and Restated Settlement Agreement (Amended Settlement). If the Commission does not approve the request to amend the 2016 Settlement Agreement as sought herein, we would then review the thermal generation commitment in our next North Dakota electric rate case at which time the Commission can consider all circumstances and the parties could holistically address this commitment.

The Company greatly appreciates Commission and Staff's time and consideration on this matter.

Dated: September 20, 2024

Northern States Power Company

STATE OF NORTH DAKOTA
BEFORE THE
PUBLIC SERVICE COMMISSION

NORTHERN STATES POWER COMPANY
2013 ELECTRIC RATE INCREASE
APPLICATION

CASE NO. PU-12-813

SECOND~~FIRST~~ REVISED NEGOTIATED AGREEMENT

**RELATING TO
NORTH DAKOTA GENERATION RESOURCE POLICY**

I. INTRODUCTION

This ~~Second~~First Revised Negotiated Agreement (Agreement) is entered into by Northern States Power Company, a Minnesota corporation (NSP or the Company) and the North Dakota Public Service Commission (Commission) ~~Advocacy Staff~~ ~~(Staff)~~ as of ~~September~~February ____, 2024~~16~~. NSP and ~~the Commission~~Staff may each be referred to as a “Party” and may be collectively referred to as the “Parties.” This Agreement revises and supersedes the First Revised Negotiated Agreement ~~Relating to North Dakota Generation Resource Policy~~ executed by the Company and Commission Staff Parties and filed with the Commission on ~~February 22~~September 30, 2016~~5~~ (Original Negotiated Agreement) by incorporating revisions to the thermal generation commitment found herein ~~Original Negotiated Agreement consistent with the Commission’s direction provided at the February 3, 2016 work session in this Case.~~

This Agreement stems from the Parties’ commitments contained in the Revised Second Amended Comprehensive Settlement Agreement (Rate Settlement) in Case Nos. PU-12-813, PU-13-706, PU-13-707, PU-13-708, PU-13-742, PU-13-743, PU-13-194, PU-13-195 (collectively, the Rate Case) adopted by the North Dakota Public

Service Commission (Commission) on February 26, 2014. As required by the Rate Settlement, the Parties have negotiated in good faith to obtain this Agreement utilizing the guiding principles in Section II.A of the Rate Settlement as a basis for their negotiations (which are provided for reference as Schedule 1 to this Agreement). However, additional information not available when the Rate Settlement was entered into (*e.g.*, the Company's 2015 Resource Plan (Case No. PU-15-19), additional proposed resource additions and the Clean Power Plan) have led the Parties to slow down and reassess how to viably approach the very complex issue of divergent state energy policies.

The Parties concur that varying state energy policies within the NSP System footprint have led to differences in each state's approach to generation resource development. Given this, and the Company's plans to add significant generation resources to its system over the next twenty years to address load requirements, replace aging infrastructure, and comply with new environmental regulations, the Parties have determined that the repricing approach contemplated in the Rate Settlement (and referred to as the "Restack") may not be sufficiently robust to address concerns regarding differing state energy policies while allowing the Company a reasonable opportunity to earn its authorized rate of return.

Therefore, the Parties have determined that the development of an effective long-term framework to resolve these issues is imperative. By this Agreement, the Company binds itself to devise and implement a regulatory framework to: 1) address the impact of divergent state energy policy on NSP's customers; 2) increase the geographic diversity of NSP System generation while maintaining system reliability; and 3) provide ~~monetary~~ value to North Dakota customers in the event the Company is unable to make good on this Agreement.

The Parties intend this Agreement to provide a "bridge period" for the Company to propose and implement, in collaboration with the Commission and Staff,

a long-term “Resource Treatment Framework,” or RTF. This Agreement binds the Company to file an RTF proposal with the Commission no later than January 1, 2017, with the intention to implement it no later than January 1, 2018. This Agreement also requires the Company to provide semi-annual reports to the Commission on accelerate, from 2036 to 2025, its commitment to construct and install an integrated NSP System thermal generating resource in eastern North Dakota, preferably near the city of Fargo.

II. INVESTMENT IN NORTH DAKOTA THERMAL GENERATION

The Parties agree that the Commission has long encouraged the Company to invest dispatchable, thermal system generation in eastern North Dakota. The Parties also agree that there are local reliability and system benefits in locating thermal generation within or near its North Dakota service territory. In light of this, the Company agreed as part of the Rate Settlement to develop up to 400 MW of dispatchable, thermal generation in eastern North Dakota by 2036 (the 2036 Commitment) consistent with least cost planning and prudent ratemaking principles.

Since making the 2036 Commitment, the Company has completed subsequent its 2016-2030 Resource Plans and has identified a capacity need arising in the future 2025. To fulfill this need with thermal generation in North Dakota, and to reciprocate the cost recovery provisions agreed to by Staff in Section III of this Agreement, the Company agrees to develop, own, and operate (or alternatively, cause to be developed and operated on its behalf through a power purchase agreement or other contractual arrangement) a combustion turbine with a capacity of at least 200 MW in eastern North Dakota in the future, no later than December 31, 2025. The costs of the generating facility will be allocated to all state jurisdictions served by the Company in a manner consistent with other NSP System resources.

Attainment of this commitment is contingent on the Company's receipt of all necessary and appropriate permits and regulatory approvals. Further, except as modified by this Section II, all provisions of the 2036 Commitment remain in place, including without limitation, the requirements that the combustion turbine agreed to in this paragraph reasonably: 1) address a system capacity need, and 2) represent a least-cost resource when also considering the local reliability and system benefits of developing thermal generation in North Dakota.

To keep the Commission informed on the progress of this commitment, the Company agrees to provide semi-annual reports detailing the development of a North Dakota thermal generation resource and an update on natural gas pipeline development in the state (which could have beneficial impacts on resource costs). If, after a semi-annual report, the Commission has concerns regarding the Company's ability to meet its commitment, the Commission can, at its option and after hearing, take remedial action.~~If for any reason the Company does not place in service the combustion turbine contemplated by this Section II by December 31, 2025, the Company will provide a refund to North Dakota customers in 2026 equal to fifty percent of the revenues collected from North Dakota customers during the ten year period of 2016-2025 that represents the difference between the actual revenues received by the Company for the biomass power purchase agreements (identified below) and the amount North Dakota customers would have paid for these resources had they been disallowed for recovery by the Commission; recognizing that—if disallowed—North Dakota customers would have paid an adjusted system average cost of fuel for the energy (and associated capacity) from these resources.—The biomass contracts subject to this paragraph are: 1) KODA Energy LLC; 2) WM Renewable Energy (MN Methane); 3) Pine Bend; 4) FibroMinn; 5) Laurentian Energy Authority I; and 6) St. Paul Cogeneration.~~

III. RECOVERY OF SELECTED GENERATION RESOURCES

A. *Existing System Resources.* In recognition of the Company's ~~accelerated~~ commitment to construct thermal generation in North Dakota, and the interest of the Parties to achieve a long-term RTF, the Parties agree that the resources listed in Attachment A to this Agreement are to be excluded from the calculation of the Company's North Dakota Fuel Cost Rider beginning the later of January 1, 2016 or the date this Agreement is adopted by the Commission. The North Dakota portion of the capacity and energy costs of all other NSP System resources (including Company-owned facilities and Power Purchase Agreements) in-service as of February 26, 2014 are to be recovered by the Company through its base rates, Fuel Cost Rider (FCR), and/or Renewable Energy Rider (RER), as may be applicable, during the term of this Agreement. The Parties further agree that the costs of the Border Winds, Pleasant Valley, and Odell wind resource additions currently being constructed are to be included in the Company's rate base, Fuel Cost Rider (FCR), and/or Renewable Energy Rider (RER), as applicable. The Commission's recent Orders in Case Nos. PU-15-95 and PU-14-810 (Aurora Solar and Solar Portfolio) denying Advance Determination of Prudence are unaffected by this Agreement.

B. *Pending Resource Additions.* The Parties agree that the proposed Calpine Mankato Combined Cycle PPA currently pending before the Commission in Case No. PU-15-96 is not subject to this Agreement.

C. *Future Pre-RTF Resource Additions.* In the event that the Company proposes other resource additions between the date this Agreement is executed by the Parties and the date an RTF is implemented by the Commission, the Company will bring these resources for approval before the Commission consistent with its obligations under the Rate Settlement, Case No. PU-12-59 and Case No. PU-07-776.

IV. RESOURCE TREATMENT FRAMEWORK

The Parties recognize that the Company, and the utility industry as a whole, is entering a period of significant uncertainty. This uncertainty includes the potential for new federal environmental regulations regulating carbon dioxide emissions and their impact on the utility industry. Further, the Company is entering a 20 year period in which it anticipates significant portions of its generating fleet will be retired and replaced.

In light of this, the Parties have entered into this Agreement to address short-term treatment of resources (*i.e.*, existing and certain pending resources) and provide time for careful consideration as to how the Company should best proceed to ensure future generation resources are in place – and the costs properly assigned – to meet the energy and capacity needs of its customers.

To that end, the Parties agree that the Company, in consultation and collaboration with the Commission and its Staff, will propose a long-term RTF which shall address the Company's long-term plans for addressing divergent state energy policies. The Company must file the proposed RTF with the Commission no later than January 1, 2017 with the expectation that the RTF, if approved by the Commission, will be implemented on January 1, 2018. Mutual agreement between the Company and Staff is desired but not a prerequisite to the Company making the filing contemplated by this paragraph.

V. OTHER MATTERS

A. *Extension of Rate Case Moratorium.* In the Rate Settlement the Company agreed to a moratorium for further rate adjustments until 2017. To provide sufficient time for the Commission to consider the Company's RTF during 2017, the Company commits to extend this rate case moratorium one additional year. To that end, the

Company may not increase base rates – on an interim or permanent basis – prior to January 1, 2018. To ensure that rates remain just and reasonable during 2017, in the event that the Company’s annual weather-normalized earnings exceed a 10.25 percent return on equity during 2017, the Company will refund to customers one hundred percent (100%) of any weather-normalized revenue associated with the excess earnings.

B. *Other Commitments of the Company.* To facilitate successful implementation of this Agreement, the Company agrees to waive: a) any claims regarding the enforceability of this Agreement; and b) any claims against the Commission with respect to the adequacy of rates set by the Commission resulting strictly from this Agreement. The waiver in this paragraph is effective as of the date this Agreement is executed by the Company and terminates on January 1, 2018. Further, the waiver in this paragraph does not limit or prohibit NSP’s right to request rehearing or appeal of any Commission order with respect to either the prudence of a particular resource or the adequacy of rates set by the Commission.

C. *Commitment of Advocacy Staff.* To facilitate successful implementation of this Agreement, Staff agrees to cooperate with the Company consistent with negotiating principle 7 of the Rate Settlement.

D. *Demand Allocator.* The Parties agree that the conclusions of the Allocator Study filed with the Commission on April 27, 2015 support the continued use of the 12 CP jurisdictional allocation method. To that end, this Agreement establishes a rebuttable presumption that the 12 CP jurisdictional allocation method is appropriate for allocating applicable system costs between North Dakota, South Dakota and Minnesota. In the event that circumstances have sufficiently changed such that Staff believes it is appropriate to rebut the rebuttable presumption established in this paragraph: 1) Staff will notify NSP of its intentions as early as possible; and 2) Staff will work in good faith with NSP to reach agreement on an appropriate allocation

methodology in light of the rebuttable presumption established in this paragraph. The provisions of this paragraph expire on December 31, 2025.

VI. OTHER TERMS AND CONDITIONS

A. *Environmental Attributes.* “Environmental Attributes” are those credits, allowances, offsets and other similar rights associated with renewable electric generation that can be used to (i) satisfy the Company’s renewable energy requirements in any of the states it operates in, and/or (ii) claim responsibility for, ownership of, avoidance of, or reduction of legally-recognized emissions or pollutants. The Company and Staff agree to establish the principle that it would be inequitable to allocate Environmental Attributes to the Company’s North Dakota jurisdiction from a generation resource in the event that 1) the Commission rejects an Advanced Determination of Prudence for such resource, unless and until full recovery of the allocable North Dakota costs is approved in a later proceeding, or 2) costs of the generation resource are disallowed in a rate case or other proceeding.

In the event that new regulations promulgated by the federal government under the Federal Clean Power Act, 42 U.S.C. §§ 7401, *et. seq.*, known as the Clean Power Plan, 80 Fed. Reg. 64661 (Oct. 23, 2015) (to be codified at 40 C.F.R. pt. 60), or any Clean Power Plan successor regulations, state or federal implementation plans, or related court orders conflict with the provisions of this Section VI.A., then these regulations, plans, or court orders shall control.

B. *Special Accounting.* The Company may petition the Commission for special accounting treatment for any disallowances that result from this Agreement.

C. *Basis of Negotiated Agreement.* This Agreement is subject to the approval of the Commission.

D. *Negotiations Privileged.* All offers, discussions and information exchanged related to the negotiation of this Agreement are considered privileged by the Parties and may not be used in any manner in connection with any regulatory proceedings or otherwise, except as provided by law. In the event that the Commission does not approve this Agreement, it shall not constitute part of the record in Case No. PU-12-813 and no part thereof may be used by any Party for any purpose in any other proceeding.

E. *Applicability and Scope.* This Agreement is binding on the Parties, and their successors, assigns, agents, and representatives for the specified term.

F. *Effect on Rate Settlement.* This Agreement is a product of the Rate Settlement. It will control over the terms of the Rate Settlement with respect to the subject matter contained herein.

G. *Ongoing Support.* The Parties will jointly support the approval of this Agreement, without amendment or modification, by the Commission.

H. *Complete Agreement.* This Agreement and any Attachments and Schedules attached hereto will constitute the entire agreement between the Parties relating to the subject matter herein and will supersede all prior contracts and understandings between them relating to such matters.

I. *Counterparts.* This Agreement may be executed in any number of counterparts by the Parties, each of which when so executed will be an original, but all of which together will constitute one and the same instrument.

J. *Effective Date.* This Agreement shall be effective upon the Commission issuing a final, non-appealable order adopting this Agreement. The Company will

make all necessary compliance filings to reflect this Agreement in a timely manner and guided by a schedule established jointly by the Parties.

K. *Termination for Commission Modification.* This Agreement is subject to approval by the Commission who retains continuing oversight pursuant to N.D.C.C. § 49-05-09. If the Commission order initially approving this Agreement modifies or conditions this Agreement it will be considered terminated if either Party files a letter with the Commission within thirty (30) calendar days of the order date stating that the modification is unacceptable.

L. *Petition for Modification or Termination.* The Company may petition the Commission for modification or termination of this Agreement for good cause shown.

VII. CONCLUSION

The Parties agree that the provisions of this Agreement will support the Commission's interest in advancing North Dakota's energy policy priorities and lead to a just and reasonable outcome.

[SIGNATURE PAGE FOLLOWS]

Dated this _____ day of ~~September~~February, 2024~~16~~.

[SIGNATURE PAGE TO ~~SECOND~~FIRST REVISED NEGOTIATED
AGREEMENT]