

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF COMMISSION</b>	)	EL16-037
<b>STAFF’S REQUEST TO INVESTIGATE</b>	)	
<b>NORTHERN STATES POWER COMPANY</b>	)	COMMISSION STAFF’S MOTION
<b>dba XCEL ENERGY’S PROPOSED FUEL</b>	)	AND BRIEF FOR ORDER TO
<b>CLAUSE RIDER</b>	)	SHOW CAUSE WHY CERTAIN
	)	COSTS INCLUDED IN PROPOSED
	)	FUEL CLAUSE RIDER SHOULD
	)	NOT BE DISALLOWED

COMES NOW, Staff of the South Dakota Public Utilities Commission (Commission) and hereby files this Motion pursuant to SDCL Chapter 49-34A, including but not limited to SDCL §§ 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-25, and 49-34A-26. Specifically, Staff requests the Commission issue an Order to Show Cause pursuant to ARSD 20:10:01:45 requiring Northern States Power Company dba Xcel Energy (hereafter NSP) to come forward and show cause as to why certain expenses should not be disallowed.

**I. Factual Background**

Certain projects, as discussed below, fail to meet the requirements for cost recovery and should, therefore, be disallowed as a matter of law. The facts behind this filing are generally as stated in the Factual Background section of the Petition to Suspend Proposed Fuel Clause Rider filed by Staff on November 30, 2016. The facts are also set forth in the attached Affidavit of Jon Thurber.

In brief summary, Staff specified three projects in particular of which NSP sought recovery through its fuel clause filed on November 30, 2016, or indicated an intent to recover in a subsequent filing,<sup>1</sup> which are not eligible for inclusion in rates charged to South Dakota

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<sup>1</sup> The Marshall project was included in the November 30, 2016, filing. At that time, Staff was aware NSP would also seek recovery of the North Star Solar and Aurora Solar projects in a subsequent filing.

customers. In 2016, NSP acquired three solar projects – North Star Solar (100 MW), Marshall Solar (63 MW), and Aurora Solar (100 MW). The levelized cost of energy (LCOE) for the projects is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], respectively, with North Star Solar and Marshall Solar having purchase power agreements (PPAs) over a 25-year term, and Aurora Solar over a 20-year term. NSP has not shown that the Marshall, North Star, and Aurora PPAs are prudent resource decisions.

Through its review, Staff identified several additional PPAs that NSP has entered into to satisfy the requirements of Minnesota statutes or have a cost per MWh that is significantly above current market prices for electricity. NSP has not shown that the PPAs listed on Exhibit\_JPT-2, Exhibit\_JPT-3, or Exhibit\_JPT-4 attached to the Affidavit of Jon Thurber, are cost effective.

The State of Minnesota has passed several mandates which materially affect the way that NSP operates its system. NSP has an obligation under the Minnesota Solar Energy Standard (SES) requirements, Minn. Stat. section 216B.1691, subd. 2f(a)-(c), to serve 1.5 percent of its retail customers with solar energy by the end of 2020, and establishes a 10 percent solar energy goal by 2030. In addition, per Minnesota statute 216B.1612, public utilities were to file with the Minnesota PUC for approval of a Community-Based Energy Development tariff to “optimize local, regional, and state benefits from renewable energy development and to facilitate widespread development of community-based renewable energy projects *throughout Minnesota*” (*emphasis added*) by December 1, 2007.

The Renewable Energy Development Fund (RDF) program was authorized by the Minnesota Legislature in 1994 (Minn. Stat. §116C.779) and established in a 2006 Minnesota PUC Order. The RDF statute provides that funds in the RDF account may be expended to (1)

increase the market penetration in Minnesota of renewable resources, (2) promote the start-up, expansion, and attraction of renewable energy projects and companies in Minnesota, (3) stimulate research and development within Minnesota into renewable energy technologies, and (4) develop near-commercial and demonstration scale electric infrastructure delivery projects if those delivery projects enhance the delivery of renewable energy.

## **II. Legal Analysis**

Every public utility is required to furnish adequate, efficient, and reasonable service. SDCL 49-34A-2. When determining the rates for that service, the Commission is required to “give due consideration to the public need for adequate, efficient, economical, and reasonable service and to the need of the public utility for revenues sufficient to enable it to meet its total current cost of furnishing such service...and to earn a fair and reasonable return upon the value of its property.” SDCL 49-34A-8. These are the standards to which the legislature has determined every public utility operating as a monopoly in this state be held. Therefore, it is essential to weigh every cost sought of South Dakota ratepayers against the standard established by the legislature before recovery can be allowed. When a utility builds or purchases new plant, was it needed? Does it provide adequate, efficient, economical, and reasonable service?

NSP has the obligation to prove that all charges filed are “prudent, efficient, and economical and are reasonable and necessary to provide service to [its] customers in this state.” SDCL 49-34A-8.4. In this statute, the legislature specifically directs the Commission to focus exclusively on the customers in this state. Thus, if a public utility builds or acquires a certain type of generation for the purpose of placating the demands of a large customer or voting bloc in another state, that expense does not qualify for recovery from South Dakota ratepayers.

Certainly, because this is an integrated system and economic benefit is to be had from power

purchase on a larger scale, the public utility is not limited to acquiring expenses based solely on the needs of the South Dakota portion of its customer base. If a company is in need of additional generation, it is reasonable and necessary for the public utility to analyze such need on an integrated system basis, provided the need can be met for the entire system resulting in just and reasonable rates.

The hallmark of SDCL 49-34A-8.4 is that charges must be prudent. After a careful and exhaustive review of the costs included in NSP's proposed fuel clause rider, Staff determined that the costs associated with the Aurora Solar, Marshall Solar, and North Star Solar PPAs were not prudent and are, therefore, not eligible for recovery from South Dakota ratepayers under SDCL 49-34A-8.4. Furthermore, costs associated with the projects identified in Exhibit\_JPT-2, Exhibit\_JPT-3, and Exhibit\_JPT-4 attached to the Affidavit of Jon Thurber, should be further examined to determine whether these costs are appropriately paid for by South Dakota ratepayers.

The legislature has provided clear guidance for evaluating renewable projects to meet South Dakota's renewable energy objective. SDCL 49-34A-104 requires retail electricity providers to make an evaluation to determine if the use of renewable energy is reasonable and cost effective considering other electricity alternatives. As stated in the attached Affidavit, NSP failed to make this necessary comparison.

The Commission has the authority to enter an Order to Show Cause pursuant to SDCL 49-1-11(4) and ARSD 20:10:01:45. Because SDCL 49-34A-8.4 places the burden squarely on the utility to support its rates, in spite of the fact that Staff initiated the show cause, the burden remains with NSP to demonstrate to the Commission that the charges should not be disallowed.

### **III. Request for Relief**

WHEREFORE, Staff requests the Commission issue an Order to Show Cause requiring NSP to come forward on or about August 25, 2017, or such other date as shall be set by the Commission, and show why the costs described in the attached Affidavit should not be disallowed from NSP's proposed fuel clause rider filed on November 30, 2016, and subsequent fuel clause rider filings. Specifically, Staff requests testimony be taken regarding whether costs associated with the North Star Solar, Marshall Solar, and Aurora Solar projects, as well as costs associated with projects identified in Exhibit\_JPT-2, Exhibit\_JPT-3, and Exhibit\_JPT-4 attached to the Affidavit of Jon Thurber, should be passed on to South Dakota customers through the fuel clause rider. Staff reserves the right to request or recommend other costs be disallowed should testimony or discovery leading up to the evidentiary hearing yield information on costs other than those identified above which are not appropriate for recovery as a matter of law.

Staff requests that in conjunction with the Order to Show Cause, the Commission issue a procedural schedule directing NSP to file prefiled testimony no later than June 16, 2017; followed by Staff testimony by July 14, 2017; NSP rebuttal by August 4, 2017; and a hearing to be held either August 23-25, 2017, or August 29-September 1, 2017.

Dated this 8th day of May, 2017.



Kristen N. Edwards  
Staff Attorney  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
Phone (605)773-3201  
[Kristen.edwards@state.sd.us](mailto:Kristen.edwards@state.sd.us)