

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Northern States Power Company
Performance Based Regulation
Application**

Case No. PU-400-00-195

[Attachments](#)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

December 29, 2000

Appearances

Commissioners Bruce Hagen, Leo M. Reinbold, Susan E. Wefald.

James P. Johnson, Assistant General Counsel, Xcel Energy Services Inc., 800 Nicollet Mall, Minneapolis, MN 55402, appearing on behalf of Northern States Power Company d/b/a Xcel Energy.

William W. Binek, Chief Counsel, Public Service Commission, State Capitol, 600 East Boulevard, Bismarck, ND 58505, appearing on behalf of the Public Service Commission Staff.

Allen C. Hoberg, Administrative Law Judge and Director, Office of Administrative Hearings, 1707 North 9th Street - Lower Level, Bismarck, ND 58501-1882, appearing as procedural Hearing Officer.

Preliminary Statement

On April 20, 2000 Northern States Power Company (NSP or Company) filed an application for approval of a Performance-Based Regulation (PBR) plan for purposes of regulating NSP's retail electric operations in North Dakota. NSP termed its plan the Performance Linking Utility Stakeholders (PLUS) plan. NSP proposes the plan be in effect for a five year term from January 1, 2001 to December 31, 2005. If approved, the plan would create an alternative form of regulation for NSP's electric operations in North Dakota. NSP asserts the proposed plan would comply with the Commission's Guidelines for Filing Alternative Regulation Proposals issued September 20, 1995 in Case No. PU-439-94-590.

On July 19, 2000, the Commission issued a "Notice of Hearing and Notice of Public Discussion Meeting" in the instant case and in Case No. PU-401-00-36, a case involving a similar PBR plan filed by Otter Tail Power Company (Otter Tail). The notice scheduled a public discussion meeting for September 6, 2000 and public hearings for October 23-24, 2000. The notice set forth the following issues to be considered:

1. Are the plans consistent with Commission guidelines?

2. Would the plans result in quality service and reasonable electric rates?
3. Would the plans support safe and reliable electric infrastructure and the financial viability of the utilities?
4. Would implementing the plans be in the public interest?

On September 6, 2000, the Commission conducted a public discussion meeting as scheduled, with public participation available through ten video conference sites at Belcourt, Bismarck, Bottineau, Devils Lake, Fargo, Fort Totten, Grand Forks, Jamestown, Minot and Wahpeton, North Dakota. Any written comments received from members of the public during the course of the proceeding were filed in the public input file in this case.

On October 23-24, 2000, the Commission conducted public hearings as scheduled. At the conclusion of the hearings, the Hearing Officer required the parties to submit briefs and proposed findings of fact and conclusions of law by December 1, 2000. Alternatively, in lieu of briefs, NSP and Staff were permitted to submit a settlement agreement resolving the disputed issues.

On November 20, 2000, the Commission held an informal working session to discuss NSP's proposal. On November 29, 2000, NSP and Staff submitted a settlement agreement. The Commission held a second informal working session to discuss the agreement on December 1, 2000. On December 8, 2000 NSP and Staff filed an amendment to the settlement agreement and the Commission held additional working sessions to discuss the amendment on December 11 and 15, 2000. Following those working sessions, NSP and Staff submitted a revised settlement agreement on December 28, 2000.

Discussion

On September 20, 1995, after numerous workshops with industry and other interested parties, the Commission issued "Guidelines for Filing Alternative Regulation Proposals" (Guidelines) in Case No. PU-439-94-590. The Guidelines indicated the Commission would consider proposals for alternative forms of regulation from traditional "cost-based rate of return" regulation. The Guidelines set forth both goals and criteria for alternative regulation proposals, which include:

- Goals: a plan should (1) promote utility efficiencies; (2) align customer and shareholder interests; (3) maintain/improve customer service; (4) allow utilities to be flexible; (5) minimize regulatory costs; and (6) improve public participation.
- Criteria: a plan should be (1) comprehensive; (2) administratively simple; (3) easily communicated; (4) balanced; and (5) flexible.
- The guidelines indicated that any proposal (1) must show the utility's base rates are just and reasonable at the start of the alternative mechanism; (2) should be

for a limited period of time, and include a review date; (3) provide for a periodic review of the utility's profits pursuant to criteria in the plan; (4) enable the Commission to judge the success of the plan at its completion; and (5) must not violate the Territorial Integrity Act.

Findings of Fact

1. NSP is a Minnesota corporation providing electric and natural gas public utility service in North Dakota. NSP and its predecessor ("Old NSP") have continuously provided electric public utility service in North Dakota pursuant to authorizations provided by North Dakota law or issued by the Commission. NSP provides retail electric service under Commission jurisdiction in the communities of Fargo, Grand Forks, Minot, West Fargo, Berthold, Burlington, Buxton, Des Lacs, Hatton, Larimore, Mayville, Portland, Reynolds and Thompson, North Dakota, and certain surrounding areas.
2. NSP is a utility operating company subsidiary of Xcel Energy Inc., which was created by the merger of Old NSP and New Century Energies, Inc. on August 18, 2000. Xcel Energy Inc. is a registered holding Company subject to the jurisdiction of the U.S. Securities and Exchange Commission ("SEC") under the Public Utility Holding Company Act ("PUHCA
3. NSP's application for approval of its PLUS plan was filed pursuant to a settlement agreement between NSP and Commission staff (Staff) in Case Nos. PU-400-99-418, an application requesting approval of NSP's merger with New Century Energies, Inc., and PU-400-98-246, a Staff investigation of NSP's electric earnings. This prior settlement agreement was approved by a May 10, 2000 Commission Order in those dockets.
4. The key components of NSP's PLUS plan include 1) a "dynamic allowed ROE" range which can vary based on Company performance, 2) a revenue sharing mechanism, 3) establishment of service performance standards, and 4) price capping flexibility to adjust prices under specified circumstances.
5. NSP proposes to implement its plan for the period January 1, 2001 to December 31, 2005. The Commission finds this term will allow sufficient time to evaluate operations under this alternative regulation plan.
6. The annual performance and financial reporting provisions of the plan, as modified by the revised settlement agreement, are reasonable. The interim review proposed for June 2003 is reasonable and consistent with the Guidelines.
7. Concurrently and independently with plan implementation, NSP will reduce non-fuel base retail electric rates to NSP's North Dakota electric service customers by \$261,000 annually (approximately 0.25%), pursuant to the Commission order dated

May 10, 2000, in Case Nos. PU-400-99-418 (Merger with New Century Energies, Inc.) and PU-400-98-246 (Electric Rate Investigation). The Commission finds this rate adjustment results in just and reasonable initial rates at the time the plan is initiated.

8. The proposed baseline Return on Equity (“ROE”) of 12.0%, the ROE deadband of +/- 1.0% around the baseline, and the annual dynamic ROE adjustments in terms of “basis points,” subject to NSP’s performance under each performance standard, are reasonable. The baseline ROE is comparable to the ROE used to resolve utility earnings investigations over the past few years, and the +/- 1% deadband is within a zone of reasonableness.

9. The proposed revenue sharing mechanism, as modified by the revised settlement agreement, is reasonable. This mechanism provides:

If NSP’s reported actual earnings fall within the ROE deadband around the authorized ROE (as adjusted by the performance points) in a plan year, no revenue sharing will take place.

If NSP’s actual reported earnings for any plan year exceed the deadband, the corresponding revenue ‘sufficiency’ will be calculated, and 50% of this dollar amount will be refunded to customers during the July billing cycle of the following year. Customers of record on March 31 following the Plan year will be issued refunds by bill credit prorated on the basis of their electric usage for the twelve months ending March 31.

If NSP’s actual reported earnings for any plan year are below the deadband, 50% of the corresponding revenue “deficiency” may be recovered through a surcharge on NSP’s electric rates effective no later than 24 months after the Plan year. However, NSP has agreed to defer recovery of a reported fiscal year deficiency by recording the amount as a regulatory asset until the following plan year revenue sharing amount, if any, is reported. If the prior year deficiency is fully offset by the current year reported revenue sufficiency, the sufficiency will be used to eliminate the regulatory asset, and no rate surcharge will be imposed. If the deficiency from the prior year is not fully offset, any remaining deficiency balance may be reflected in rates applicable to bills issued between the 18th and 24th month following the plan year when the deficiency occurred, subject to the Rate Change procedures described herein.

10. Treatment of NSP’s economic development expenditures as a jurisdictional expense for financial reporting purposes is reasonable. This will provide greater consistency in treatment of this cost component between the NSP and Otter Tail plans.

11. The proposed reliability performance measures and standards, as modified by the revised settlement agreement, are reasonable. The Customer Average Interruption Duration Index (CAIDI) and System Average Interruption Frequency Index (SAIFI) are individual reliability measures widely used in the electric utility industry, the product of

which is the System Average Interruption Duration Index (SAIDI) reliability measure originally proposed by NSP. By using both component standards, NSP will be measured on both the frequency of customer outages and the time it takes to restore power. Each measure will carry a potential reward or penalty of a 25 basis point adjustment to the authorized ROE deadband.

12. The proposed customer satisfaction performance measures, as modified by the revised settlement agreement, are reasonable. NSP will be measured based on both the relationship surveys for all three customer classes (Residential, Commercial, Large Industrial), and two transaction surveys relating to NSP's call center and electric service functions. The survey results will reflect the percentage of respondents who give NSP an 'excellent' or 'very good' rating. Each of the two survey standards will carry a potential reward or penalty of a 25 basis point adjustment to the authorized ROE deadband.

13. The proposed pricing measures and standards, as modified by the revised settlement agreement, are reasonable. NSP will be measured by 1) its average residential price per kWh compared to the 26 jurisdiction mid-western utility peer group; and 2) the annual change in average residential price relative to the change for the lowest priced utility in the peer group. The price measures will be calculated annually based on utility price data compiled in the Edison Electric Institute's "Typical Bills and Average Rate Report" for the 12 month period ending December 31st. Each of the two price measures will carry a potential reward or penalty of a 25 basis point adjustment to the authorized ROE deadband.

14. The proposed employee safety measure and standards, are reasonable. To be consistent with the other individual plan standards, it is appropriate that the employee safety measure carry a potential reward or penalty of a 25 basis point adjustment to the authorized ROE deadband.

15. The proposed price cap factor, as modified by the revised settlement agreement, is reasonable. The price cap factor will be the lower of 1) the annual percentage change in the utility peer group's average residential price per kWh for the reporting year, or 2) 60% of the change in the Consumer Price Index (CPI) for the reporting year.

16. The proposed rate change criteria, as modified by the revised settlement agreement, are reasonable. The plan imposes an electric rate freeze on NSP whenever: 1) its previous year reported ROE was higher than 100 basis points below the baseline ROE (as adjusted for performance), or 2) NSP's average residential rates were higher than the utility peer group average residential rate. If neither condition exists, then NSP may increase its electric rates by an overall percentage not to exceed the price cap factor, subject to the rate change procedures of the plan.

17. The proposed rate decrease criteria, as modified by the revised settlement agreement are reasonable. It is appropriate that NSP be required to reduce its retail electric rates under the plan if: 1) NSP's reported ROE for the plan reporting year was

more than 100 basis points above the baseline ROE (as adjusted for performance), 2) NSP's average residential rates are higher than the PLUS utility peer group average residential rate, and 3) the price cap factor is negative.

18. The proposed rate change procedure described in the revised settlement agreement is reasonable and consistent with state law. To implement any permissive rate change or mandatory rate reduction, NSP must file a notice of rate change and accompanying tariffs under N.D.C.C. § 49-05-05 after submission of the plan year performance report on May 1 but at least 30 days before the effective date of the proposed rates (July 1).

19. The revised settlement agreement contemplates that any notice of rate change filed under the plan will not be suspended by the Commission under N.D.C.C. § 49-05-06, but the revised rates would be allowed to go into effect on the date proposed. The plan allows the Commission to order a one-time billing "true up" if the Commission determines, after hearing, that the notice of rate change filed by NSP was not reflective of the plan results or requirements.

20. The Commission agrees that rates established consistent with the plan are presumed just and reasonable, and non-discriminatory. The Commission also appreciates that the revised settlement agreement provides an ability to require billing true-ups as an alternative to suspending rate changes. However, the Commission's statutory authority and responsibility to suspend rate filings when it is necessary and appropriate to do so cannot be contracted away. Further, this Commission cannot act to bind a future Commission. Therefore, the Commission does not approve the Section 4.D. Rate Change Procedure of the revised settlement agreement to the extent that section is inconsistent with this finding.

21. Any increases or decreases in costs of electric service caused by governmentally imposed changes in taxes or accounting practices will be implemented within 60 days of the effective date of the change.

22. Use of 36 months of historic demand data for purposes of annual plan financial reporting is reasonable because it will mitigate volatility in the jurisdictional allocation factor. The use of a 36 month jurisdictional demand allocator is only for financial reporting purposes under the plan and has no precedential effect in future electric rate proceedings after the plan term expires or the plan is suspended or terminated.

23. The plan procedures for suspension or termination of the plan during the five year term are reasonable because they provide protections for both North Dakota electric customers and NSP. As provided by the revised settlement agreement, NSP may request, or the Commission may on its own motion initiate a proceeding, to suspend or terminate the Plan prior to December 31, 2005 in the event of:

- Passage of retail access legislation at either the federal or state level;
- Merger and acquisition events affecting NSP's structure and operations;

- Natural disasters affecting NSP's North Dakota electric operations (major storms, floods, etc.);
- Unusual events affecting NSP's operations (major generating plant failure, damage to major transmission or distribution lines, etc.); or
- Material and sustained earnings extremes (defined as returns on equity +/- 5.0% from the ROE deadband, prior to sharing).

24. The plan is consistent with Commission guidelines.

25. The plan promotes quality service and reasonable electric rates.

26. The plan promotes safe and reliable electric infrastructure and the financial viability of the utility.

27. Implementing the plan is in the public interest.

From the foregoing Findings of Fact, the Commission makes its:

Conclusions Of Law

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. For purposes of initial plan implementation, NSP's recently adjusted electric rates effective January 1, 2001 are just and reasonable and non-discriminatory.

3. Rates established consistent with the plan during the plan term are appropriately presumed just and reasonable and non-discriminatory.

4. The plan promotes quality service and reasonable electric rates.

5. The plan promotes safe and reliable electric infrastructure and the financial viability of the utility.

6. Implementing the plan is in the public interest.

Order

The Commission orders:

1. The attached revised settlement agreement is approved, except as specified in Findings of Fact paragraph 20.
2. NSP's PLUS plan, as modified by the approved portion of the attached revised settlement agreement, is approved.
3. NSP d/b/a Xcel Energy is authorized to implement the plan as modified by the revised settlement agreement for its electric utility operations in the State of North Dakota for the term January 1, 2001 to December 31, 2005.
4. NSP shall submit a single comprehensive stand-alone document describing the plan as modified by the approved portion of the attached revised settlement agreement by January 31, 2001.
5. NSP shall submit all annual performance and financial reports required by the plan (as modified) by May 1st of each plan year. The Commission may require interim reports during the plan term as necessary.
6. The plan is be subject to suspension or termination for good cause, as provided in the revised settlement agreement.
7. The Commission will review the operation and results of the plan upon receipt of reports for the 2002 plan year.

PUBLIC SERVICE COMMISSION

Susan E. Wefald
Commissioner

Bruce Hagen
President

Leo M. Reinbold
Commissioner

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**CONCURRING OPINION
COMMISSIONER SUSAN E. WEFALD**

December 29, 2000

Today the Commission is adopting Performance Based Regulation plans for purposes of regulating Northern States Power Company's and Ottertail's retail electric operations in North Dakota. This plan is the result of months of study and work by the Commission, Commission Staff, and utility representatives.

The plan promotes utility efficiencies, aligns customer and shareholder interests, works to maintain or improve customer service, allows utilities to be flexible, minimizes regulatory costs, and improves public participation. In other words, it is a win – win situation, good for consumers and good for NSP and Ottertail.

The companies will be measured on four areas of performance with this plan. These areas are reliability, customer satisfaction, price standards, and an employee safety standard.

Customers should know that they play a role in determining the companies' performance each year. Each company will be doing several surveys of customers each year to determine the customers' satisfaction with their electric service.

Also, public input played a role in determining the provisions of the settlement. Ideas from letters received from the public were incorporated into the settlement.

The plan will be in place for 5 years and will be evaluated after 2 years.

These particular performance based regulation plans are unique to our state and our utilities. For anyone wishing to study the plans in more detail, the Commission order and the settlements will be available very soon on the Commission web site. The Commission and our staff will be happy to discuss the plans at any time.

I am proud of the work done by all parties on this project and am committed to the operational success of these plans.

Commissioner Susan E. Wefald

Attachments

[Final Settlement Agreement – 12-28-00](#)

[Final Settlement Agreement – ROE Deadband Explanation](#)