

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

**Northern States Power Company
Merge with New Century Energies, Inc.
Application**

Case No. PU-400-99-418

**Northern States Power Company
1997 Electric Operations
Annual Report**

Case No. PU-400-98-246

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

April 12, 2000

Appearances

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

James P. Johnson, Senior Attorney, Northern States Power Company, 414 Nicollet Mall, Minneapolis, MN 55401, appearing for Northern States Power Company.

Daniel S. Kuntz, Attorney at Law, Zuger Kirmis and Smith, 316 North Fifth Street, Bismarck, ND 58502-1695, appearing for Northern States Power Company.

William W. Binek, Chief Counsel, Public Service Commission, State Capitol, 600 East Boulevard, Bismarck, ND 58505, appearing for 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 as procedural hearing officer.

Preliminary Statement

On July 30, 1999, in Case No. PU-400-99-418, Northern States Power Company (NSP) filed an application for the approvals and authorizations necessary under North Dakota law to:

- (1) allow NSP to complete corporate mergers pursuant to an agreement with New Century Energies, Inc. (NCE) to form Xcel Energy Inc. (Xcel);

(2) allow NSP to transfer its electric and gas utility assets and operations in North Dakota to a new utility subsidiary of Xcel, called "New NSP Utility" for purposes of the Application;

(3) declare that all Certificates of Public Convenience and Necessity and other authorities provided or issued by operation of law or order of the Commission to NSP, a Minnesota corporation, for the ownership and operation of NSP's electric and natural gas utility systems in North Dakota, be deemed to be held by New NSP Utility as though such authorities and certificates were reissued by the Commission to New NSP Utility effective upon the closing of the corporate mergers; and

(4) amortize the North Dakota jurisdictional portion of the costs to achieve the merger as a jurisdictional expense to offset non-fuel merger savings during the first three years after the merger is effectuated.

On November 3, 1999, NSP submitted pre-filed direct testimony and exhibits of Kent T. Larson, David H. Sederquist and John D. Winter in support of the application.

On October 6, 1999, the Commission issued a Notice of Hearing and Notice of Public Discussion Meetings in Case No. PU-400-99-418. Public discussion meetings were held as scheduled on November 18, 1999, by interactive video conference at Minot, Bismarck, Fargo and Grand Forks, North Dakota. Members of the public were invited to appear and participate in the public discussion meetings.

The Notice set an evidentiary hearing on the proposed merger for January 13, 2000. The Notice identified the following issues to be considered at the hearing:

1. Need for the service.
2. Fitness and ability of applicant to provide service.
3. Effect on other public utilities providing similar service.
4. Adequacy of proposed service.
5. Technical, financial, and managerial ability of applicant to provide service.
6. Compatibility of the proposal with the public interest.

On November 17, 2000, the Commission issued a Notice of Rescheduled Public Hearing, rescheduling the merger hearing for January 10, 2000.

On November 24, 1999, Minnkota Power Cooperative, Inc. (Minnkota) filed a petition to intervene in Case No. PU-400-99-418. After presiding Judge Allen C. Hoberg granted a short extension of time, Otter Tail Power Company

(Otter Tail) filed a petition to intervene in the merger case on December 6, 1999, requesting the opportunity for discovery and a continuance of the evidentiary hearing date. No other petitions to intervene were filed.

On December 14, 1999, NSP filed an answer opposing the Otter Tail motion for continuance of the evidentiary hearing. NSP did not oppose the Minnkota or Otter Tail motions to intervene. On December 15, 1999, the Commission granted the Minnkota and Otter Tail motions to intervene, but did not act on the Otter Tail motion for a continuance.

Judge Hoberg conducted a prehearing conference on December 21, 1999, and established dates for discovery and the filing of intervenor and Commission Staff direct testimony. On December 29, 1999, with the concurrence of the parties, the Commission granted Otter Tail's motion for continuance and issued a Notice of Rescheduled Public Hearing, rescheduling the hearing to begin February 3, 2000.

On January 3, 2000, Otter Tail filed a notice of withdrawal and motion indicating it had reached a settlement with NSP resolving the concerns stated in Otter Tail's motion to intervene. Otter Tail stated it supported approval of the merger, and asked the Commission to strike from the record the paragraphs of the intervention opposing the merger. On January 12, 2000, the Commission acknowledged, and approved to the extent a hearing had been held or convened, Otter Tail's request to withdraw certain portions of its petition to intervene.

On January 18, 2000, Minnkota filed a notice of withdrawal indicating it had reached a settlement with NSP resolving the concerns stated in Minnkota's motion to intervene. Minnkota stated it supported approval of the merger and asked the Commission to strike from the record the paragraphs of the intervention opposing the merger. On January 26, 2000, the Commission acknowledged, and approved to the extent a hearing had been held or convened, Minnkota's request to withdraw certain portions of its petition to intervene.

On December 3, 1999, Commission Staff filed its earnings investigation report in Case No. PU-400-98-246 recommending that the electric rates for Northern States Power Company (NSP) be reduced to result in an annual revenue reduction of \$844,000 per year. On December 10, 1999, NSP filed its response to the staff report, asserting future expected increases in costs that would more than offset the reduction recommended by staff. On December 15, 1999, the Commission conducted an informal hearing on the matter.

On January 28, 2000, Commission Staff submitted the pre-filed direct testimony of Mike Diller in Case No. PU-400-99-418.

On February 1, 2000, NSP and Commission Staff jointly filed a Settlement Agreement in both dockets along with an NSP explanatory cover letter. On

February 2, 2000, Commission Staff filed a memorandum supporting the reasonableness of the Settlement Agreement.

The merger hearing was held as scheduled on February 3, 2000, at the Commission's office in Bismarck, North Dakota.

On February 9, 2000, the Commission issued a Notice of Opportunity for Hearing regarding the filing of the Settlement Agreement in the earnings proceeding, Case No. PU-400-98-246. The notice indicated that the issue to be determined in the earnings case was whether the settlement is reasonable and should be approved. Interested persons were invited to comment on the settlement in writing. No comments were received.

On February 11, 2000, NSP and Commission Staff submitted late-filed exhibits as requested during the hearing. On February 14, 2000, NSP filed proposed Findings of Fact, Conclusions of Law and Order.

On February 16, 2000, NSP caused a notice of the proposed Settlement Agreement to be published in the Fargo, Grand Forks and Minot daily newspapers, which serve the largest communities in NSP's North Dakota electric and natural gas service areas. The notice indicated written comments regarding the Settlement Agreement could be submitted to the Commission. No comments were received.

Findings of Fact

Description of Transaction

1. NSP is a Minnesota corporation providing electric and natural gas public utility service in North Dakota. NSP provides retail electric service 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 surrounding areas. NSP provides natural gas service in Fargo, Grand Forks, West Fargo, Briarwood, Buffalo, Casselton, Emerado, Frontier, Horace, Mapleton, Oriska, Prairie Rose, Reile's Acres, Thompson and Tower City, North Dakota, and surrounding areas.

2. NSP is predominately an operating public utility that generates, transmits and distributes electricity and distributes natural gas in North Dakota, Minnesota and South Dakota. A division of NSP called Black Mountain Gas provides natural gas distribution service in Arizona (approved in North Dakota in Case No. PU-400-99-35). NSP's most significant subsidiary is Northern States Power Company -Wisconsin (NSP-W), also an operating public utility, which serves electric and natural gas customers in Wisconsin and the upper peninsula of Michigan. NSP also owns Viking Gas Transmission Company, which operates a 500 mile interstate natural gas pipeline serving portions of North Dakota,

Minnesota and Wisconsin, subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC). NSP is also engaged in non-regulated businesses through wholly owned subsidiaries whose primary focuses are on independent power supply, energy-related services, and affordable housing.

3. The application describes NCE as a registered holding company subject to the jurisdiction of the U.S. Securities and Exchange Commission (SEC) under the federal Public Utility Holding Company Act (PUHCA). NCE owns three public utility subsidiaries: Public Service Company of Colorado (PSCo), Southwestern Public Service Company (SPS), and Cheyenne Fuel, Light & Power Company (Cheyenne). PSCo and Cheyenne are predominately operating public utilities that generate, transmit and distribute electricity and distribute natural gas in the states of Colorado and Wyoming, respectively. SPS is predominantly an operating public utility, which generates, transmits, and distributes electricity in Texas, New Mexico, Oklahoma, and Kansas. NCE also owns Westgas Interstate, Inc., which operates a 24-mile interstate natural gas pipeline serving Cheyenne, Wyoming, subject to the jurisdiction of the FERC. NCE is also engaged in non-regulated businesses through wholly-owned subsidiaries whose primary focuses are on international electric distribution, independent power supply, wholesale electricity and natural gas brokering, energy related services, and engineering services.

4. NSP states that on the closing date of the transaction, NCE will be merged with and into NSP, with NSP the surviving corporation. NSP will be renamed Xcel Energy, Inc. (Xcel). Each issued and outstanding share of NCE common stock will be canceled and converted into the right to receive 1.55 shares of Xcel common stock. Xcel will register with the SEC under PUHCA.

5. NSP states that on or just prior to the closing date of the merger, the electric and natural gas assets, liabilities and operations of NSP, with the exceptions noted below, will be transferred to a newly formed subsidiary of Xcel called "New NSP Utility" for purposes of this proceeding. After the merger, New NSP Utility will be a utility operating company subsidiary of Xcel and will provide electric and gas utility service in North Dakota. The property transferred from NSP to New NSP Utility will include all the property, assets and liabilities of NSP with the exception of:

- A. The equity investment in and any debt issued by NSP non-utility subsidiaries;
- B. The equity investment in and any debt issued by NSP-W or secured by NSP-W assets;
- C. The property and assets of Viking Gas Transmission Company and Black Mountain Gas (subject to receipt of all pending regulatory approvals to spin-down the assets of BMG into a wholly-owned NSP subsidiary prior to the merger); and

D. The investment in Mandatorily Redeemable Preferred Securities of Subsidiary Trusts.

6. NSP testified that the Boards of Directors for NSP and NCE unanimously approved proceeding with the merger transaction during meetings held in March 1999. In June 1999, the shareholders of both companies approved the merger by a wide margin. NSP identified the proposed merger as a "merger of equals" because it brings together two mid-continent, financially healthy companies with low utility rates.

7. NSP states that the business of Xcel will consist of owning utility companies and various non-utility enterprises. Xcel will be headquartered in Minneapolis, Minnesota. The electric and natural gas utility operations in North Dakota, Minnesota and South Dakota will be owned and operated by New NSP Utility. NSP-W, BMG, PSCo, SPS and Cheyenne will also be utility operating company subsidiaries of Xcel, and will continue to provide electric and/or natural gas service in their respective states and service areas. The operating utilities will receive corporate services from Xcel Energy Services, the service company subsidiary of Xcel, and costs will be allocated to New NSP Utility according to cost allocation methods determined by the SEC.

The Settlement Agreement

8. The Settlement Agreement between NSP and Commission Staff addresses both the merger, Case No. PU-400-99-418 and the earnings investigation, Case No. PU-400-98-246. The Settlement Agreement contains several commitments by NSP beyond those provided in the Application.

9. NSP agrees to a \$250,000 (0.25%) electric rate reduction for customers in North Dakota effective January 1, 2001, subject to effectuation of the merger.

10. NSP agrees to file an electric Performance Based Ratemaking (PBR) plan within 10 days after the Commission order approving the merger. The filing of the PBR plan is not contingent on effectuation of the merger.

11. NSP agrees to exclude executive severance costs from the regulatory deferral and amortization of costs to achieve the merger. The North Dakota jurisdictional share of these non-deductible transition costs, which NSP estimated to be \$417,388 in late-filed Exhibit 10, will not be amortized as a jurisdictional expense. The revenue requirements associated with these excluded costs will also be excluded from cost of service studies in future NSP rate proceedings.

12. NSP and Staff agree that costs to achieve the merger be deferred and amortized over a three year period starting with the effective date of the merger. NSP also agrees that during the three-year amortization period it will not seek rate recovery of any merger costs in excess of merger savings. The settlement

agreement does not specify total costs to be amortized and the Commission makes no findings or conclusions in this proceeding regarding the recovery of specific costs or the appropriate level of total costs to achieve the merger.

13. NSP agrees to provide the Commission and Staff access to the records of Xcel, New NSP Utility and the Xcel service company.

14. NSP agrees to waive any right of New NSP Utility to claim preemption of Commission authority to disallow recovery of costs allocated to New NSP Utility under the service agreement with the Xcel Service Company (subject to SEC jurisdiction) or the Joint Operating Agreement with the other Xcel operating utilities (subject to FERC jurisdiction). This preemption waiver supplements the commitment contained in the NSP Application.

15. NSP agrees to file with the Commission the accounting entries reflecting the transfer of NSP's electric and gas operations in North Dakota to New NSP Utility not later than the date Xcel is required to submit this filing to the FERC, under the January 12, 2000 FERC order approving the merger (FERC Merger Order). *Northern States Power Company et al.*, 90 FERC ¶ 61,020, January 12, 2000, ordering paragraph (G).

16. NSP and Staff agree that Commission approval of the Settlement Agreement should resolve the earnings investigation, Case No. PU-400-98-246, and the case should be closed.

Merger Benefits

17. NSP states that, as modified by the Settlement Agreement, the merger offers expected benefits. In most cases, these benefits result from enhancing the ability of Xcel to reduce costs without sacrificing service and reliability. The general areas of benefits are:

A. Maintenance of competitive rates. NSP's average electric and natural gas rates are already lower in North Dakota than in Minnesota, NSP's largest jurisdiction. The ability of the merged companies to reduce costs (or minimize cost increases) will help New NSP Utility to sustain competitive rates in the future. In addition, the Settlement Agreement will provide a further North Dakota electric rate reduction of \$250,000 per year and the filing of a PBR plan.

B. Integration of corporate and administrative functions. Through consolidation, Xcel and Xcel Energy Services will combine numerous corporate and administrative functions, reducing information systems, labor and non-labor costs. Additional savings in the areas of insurance, regulatory, legal, audit and accounting should be realized. With the assistance of Deloitte Consulting, LLC, NSP and NCE developed

comprehensive estimates of merger savings. NSP and NCE estimate that during the first ten years this merger will achieve approximately \$1.1 billion of savings relating to the combined Companies' regulated operations (including fuel, production and natural gas supply savings), net of costs to achieve the savings. NSP testified that NSP and NCE have established integration teams consisting of key personnel from each company to develop specific plans for achieving these estimated savings.

- C. **Lower gas supply costs.** NSP and NCE plan to coordinate the management of their natural gas resource portfolios. Integration of transportation contracting and scheduling, commodity purchasing, and peaking/storage assets management could save approximately \$77.4 million gas-related costs over the ten-year period.
- D. **Lower electric fuel costs and increased electric production efficiencies.** The combined Xcel operating companies will be able to achieve greater efficiencies in procurement of fossil fuel and through coordinated electric supply production. NSP estimates the total 10-year savings to be \$18.5 million, excluding \$22 million of additional savings possible through a proposed 100 MW transmission service contract path between NSP and SPS. New NSP Utility, NSP-W and the NCE utility operating companies would enter into a Joint Operating Agreement (JOA) to allocate electric production and transmission costs and revenues from the integrated operations of the Xcel operating company systems. In addition, the so-called "Interchange Agreement" between NSP and NSP-W would remain in effect, and would be assigned by NSP to New NSP Utility. The Interchange Agreement would then allocate the costs and revenues allocated to the "NSP Zone" under the JOA between New NSP Utility and NSP-W. The JOA was accepted for filing by the FERC Merger Order, ordering paragraph (L).
- E. **More diverse service territory.** The regulated electric and gas service area of Xcel will cover portions of the mid-continental U.S. from near the Canadian border (NSP in Grand Forks and Minot) to Phoenix, Arizona (Black Mountain Gas) and Amarillo, Texas (Southwestern Public Service). This means vulnerability to the financial impact of changes in local economic, competitive and climactic conditions in a single market will be reduced.
- F. **Implementation of best practices.** NSP and NCE expect the merger will result in implementation of operational innovations called "best practices" which will allow NSP to improve its electric and gas distribution service in North Dakota over time. NSP testimony at the hearing described certain best practices of NCE, which NSP is already considering adopting upon effectuation of the merger.

18. To the extent the savings from the merger reduce costs to New NSP Utility or offset future cost increases that would otherwise result in rate increases, the savings will be beneficial to NSP's North Dakota customers over and above the benefit of the initial electric rate reductions.

Allocation of Savings

19. NSP will allocate the identified merger savings to the North Dakota jurisdiction, for the most part, using the same methodologies presented in NSP's most recent general rate filings. Two major steps implement allocation: allocation to company (e.g., to NSP), and then allocation to jurisdiction (e.g., to North Dakota). Specifically, NSP and NCE's savings allocation methodology is to:

- A. *direct assign* to the greatest extent possible, placing the savings directly with the appropriate company or jurisdiction;
- B. *develop specific allocation factors* to accurately reflect how savings will be realized;
- C. *use general allocation factors* to apportion savings that cannot be directly assigned to any company or jurisdiction or for which a specific allocation factor cannot be developed.

20. NSP estimates that the portion of the total \$1.1 billion net savings resulting from the merger allocable to North Dakota is approximately \$23.2 million. Of that total, NSP estimates approximately \$19.6 million is allocable to the NSP North Dakota electric operation, including \$0.4 million of electric fuel and production savings; and \$3.6 million is allocable to the natural gas operation, including \$1.7 million of natural gas supply savings. Any electric fuel/production and natural gas supply savings will be passed directly to NSP's North Dakota customers through operation of the Fuel Clause Adjustment and Purchased Gas Adjustment clause provisions of NSP's tariffs. NSP estimates that NSP's North Dakota electric and gas operations will receive approximately 1.9% and 0.5% of the \$1.1 billion total savings, respectively.

Impact on Customer Service

21. NSP anticipates that NSP-ND will continue to operate as a regional business unit in North Dakota after the merger. As of the time of the hearing, NSP and NCE had not completed staffing for the merged organization, but NSP does not anticipate there will be any immediate, material impact on NSP's electric and gas distribution service policies, operations or performance in North Dakota as a result of the merger. The Commission retains ongoing oversight of NSP's service quality and customer service.

Rate Plan and Design

22. As part of its electric rate reduction under the Settlement Agreement, NSP will file compliance tariff sheets within 30 days of the merger to decrease electric rates by \$250,000 per year, or approximately 0.25%, effective January 1, 2001. In its testimony at the hearing, NSP agreed to propose an "across the board" reduction to the extent possible. The Commission generally finds this proposed rate design fair and reasonable. However, the Commission will consider the specific rate design when it reviews the compliance filing.

23. NSP's electric rates, reduced as proposed by the Settlement Agreement and subject to approval and implementation of an appropriate rate design, are fair and reasonable. Moreover, the Commission retains jurisdiction to review NSP's electric and natural gas rates on a continuing basis.

Other Public Interest Issues

24. NSP states that the proposed merger will not materially affect employee levels in NSP's North Dakota service centers in Grand Forks, Fargo, and Minot. NSP has been reducing employee levels incrementally over the years to control costs and avoid rate increases. The merger is expected to continue this process. Most employee reductions occurring as a result of the merger will occur in centralized corporate support departments.

25. NSP states that the post-merger capital structure of New NSP Utility will be very similar to that of NSP, and should not adversely affect NSP's electric and gas rates or services provided to North Dakota customers. Moreover, the Commission retains full regulatory oversight over New NSP Utility's capital structure and the return on capital to be reflected in its rates.

Summary

26. The Commission finds there is a need for electric and natural gas distribution services throughout NSP's service area.

27. The Commission finds that New NSP Utility, as proposed, will be fit and able to provide electric and natural gas distribution services.

28. The Commission finds no evidence of any adverse effect on other public utilities providing similar service.

29. The Commission finds that New NSP Utility, as proposed, will have the technical, financial, and managerial ability to provide service.

30. The Commission finds that the proposed merger is compatible with the public interest.

31. The Commission finds the proposed Settlement Agreement is reasonable and should be approved.

32. The Commission finds the earnings investigation, Case No. PU-400-98-246 is resolved and should be closed.

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

Conclusions of Law

1. The Commission has jurisdiction of this matter.
2. The proposed merger and related transactions are compatible with the public interest and should be approved.
3. The proposed Settlement Agreement is reasonable and should be approved.
4. There is a need for electric and natural gas distribution services throughout NSP's service area.
5. New NSP Utility, as proposed, will be fit and able to provide electric and natural gas distribution services.
6. There is no evidence of adverse effects on other public utilities providing similar service.
7. New NSP Utility will have the technical, financial, and managerial ability to provide service.
8. NSP and its successor, New NSP Utility, are entitled to a transfer of authorities and certificates of public convenience and necessity.

Order

The Commission orders:

1. The Settlement Agreement between NSP and Commission Staff is APPROVED.
2. The Application for approval of the corporate merger transactions, as amended by the Settlement Agreement, is GRANTED.

3. Case No. PU-400-97-246 is CLOSED.
4. Northern States Power Company is authorized to implement its proposed merger with New Century Energies, Inc. pursuant to the Agreement and Plan of Merger.
5. The application to transfer the authorities and certificates of public convenience and necessity currently held by NSP is APPROVED, effective with the date that the merger and related transaction are complete. Effective upon closing of the merger and related transactions, all certificates of public convenience and necessity and other authorities provided or issued by operation of law or order of the Public Service Commission to NSP for the ownership and operation of electric and natural gas utility systems in North Dakota shall be deemed to be held by New NSP Utility as though such authorities and certificates were reissued by the Commission to New NSP Utility.
6. NSP shall notify the Commission when the merger and related transactions close. The Commission recognizes that NSP currently operates portions of its system without certificates of public convenience and necessity, either by operation of law or due to lost certificates. The Commission may issue new or transferred certificates of public convenience and necessity to implement this order upon notification by NSP that the merger transactions are complete.
7. NSP shall file an application to transfer the certificates of corridor compatibility and route permits it currently holds under N.D.C.C. Chapter 49-22 within sixty (60) days of merger closing.
8. Within ten (10) days of the issuance of this Order, Northern States Power Company shall file its proposed electric Performance Based Regulation Plan for Commission consideration. Nothing in this order limits the Commission's authority to review, reject or modify the proposed PBR plan.
9. Within thirty (30) days of merger closing, Northern States Power Company shall file for Commission approval proposed compliance tariffs to implement the Settlement Agreement electric rate reductions effective January 1, 2001. The compliance filing shall propose an "across the board" rate reduction to the extent feasible. NSP shall include a draft bill insert with its compliance filing, so as to assure timely customer notice of the settlement rate reduction under North Dakota Administrative Code § 69-09-02-02.1.

10. NSP shall file accounting entries with the Commission reflecting the transfer of NSP's electric and natural gas utility assets and liabilities in North Dakota to New NSP Utility not later than the date such accounting entries are required to be filed by the FERC Merger Order dated January 12, 2000.

PUBLIC SERVICE COMMISSION

Susan E. Wefald
Commissioner

Bruce Hagen
President

Leo M. Reinbold
Commissioner