



414 Nicollet Mall
Minneapolis, MN 55401

March 30, 2023

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Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

–Via Electronic Filing–

RE: SUPPLEMENT TO PETITION
ELK CREEK – REPLACEMENT SOLAR ENERGY PURCHASE AGREEMENTS
DOCKET NO. E002/M-19-568

Dear Mr. Seuffert:

Northern States Power Company, doing business as Xcel Energy, submits to the Minnesota Public Utilities Commission this supplemental filing to our December 9, 2022 request for approval of two replacement Solar Energy Purchase Agreements to replace the Amended and Restated Solar Energy Purchase Agreement approved by the Commission in its May 18, 2021 Order in this docket, to serve our Renewable*Connect customers.

Portions of this filing and Attachments A through H are marked “Not-Public” as they contain information the Company considers to be trade secret data as defined by Minn. Stat. § 13.37(1)(b). This data includes confidential negotiation details, pricing and other contractual terms. The information has independent economic value from not being generally known to, and not being readily ascertainable by, other parties who could obtain economic value from its disclosure or use. The knowledge of such information in conjunction with public information in our Petition could adversely impact future contract negotiations, potentially increasing costs for these services for our customers. Thus, the Company maintains this information as a trade secret.

Attachments A through H are marked “Not-Public” in their entirety. Pursuant to Minn. R. 7829.0500, subp. 3, the Company provides the following description of the excised material:

1. **Nature of the Material:** Attachments A through H are PDF copies of letters between the Seller and the Company exchanged during the course of contract negotiations.

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2. **Authors:** The letters were prepared by the Seller’s management and the Company’s Purchased Power personnel.
3. **Importance:** The letters include confidential negotiation details, pricing and other contractual terms. The Seller and the Company protect this information as Not-Public as it has independent economic value from not being generally known to, and not being readily ascertainable by, other parties who could obtain economic value from its disclosure or use.
4. **Date the Information was Prepared:** Between October 2021 and March 2023

We have electronically filed this document with the Commission, and copies have been served on the parties on the attached service list. Please contact me at bria.e.shea@xcelenergy.com or Mary Martinka at mary.a.martinka@xcelenergy.com if you have any questions regarding this filing.

Sincerely,

/s/

BRIA E. SHEA
REGIONAL VICE PRESIDENT, REGULATORY POLICY

Enclosures
cc: Service List

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STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

IN THE MATTER OF XCEL ENERGY'S
PETITION FOR APPROVAL OF THE
ELK CREEK REPLACEMENT SOLAR ENERGY
PURCHASE AGREEMENTS
(LOUISE AND FILLMORE FACILITIES)

DOCKET NO. E002/M-19-568

SUPPLEMENT TO PETITION

INTRODUCTION

Northern States Power Company, doing business as Xcel Energy (the Company), submits to the Minnesota Public Utilities Commission (Commission) this supplement to our December 9, 2022 request for approval of two replacement Solar Energy Purchase Agreements (Replacement PPAs) – Louise Solar Project and Fillmore County Solar Project (Louise and Fillmore) – to replace the agreement approved by the Commission in its May 18, 2021 Order in this docket. The Replacement PPAs were approved by the Commission at its March 16, 2023 agenda meeting¹ and provide a combined total of 80 MW of solar power, which is intended to serve our Renewable*Connect (R*C) customers.

During the agenda meeting, the Commission required the Company to make a supplemental filing providing information regarding our analysis of the benefits of the Replacement PPAs considered during negotiations with the seller, National Grid Renewables (NGR), to resolve the resource challenges identified in the R*C proceeding.

Based on the discussion that occurred during the March 16, 2023 agenda meeting, we understand that Commissioners are concerned about the prudence of terminating the Elk Creek PPA when Elk Creek received power injection rights into MISO shortly after the parties executed the Replacement PPAs. We apologize for any confusion we may have caused regarding the status of the interconnection for Elk Creek.. At the time of

¹ The Commission's written Order memorializing decisions made at the March 16, 2023 agenda meeting is pending as of the date of this filing.

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negotiations, SPP had not yet issued its final results, and the timing of those injection rights was uncertain. While there were significant delays in the interconnection process, the Southwest Power Pool (SPP) restudy was completed and released in December, 2022. However, these power injection rights did not make the PPA viable. On May 6, 2022 – well before the parties executed the Replacement PPAs – NGR communicated to the Company that it could not proceed with the development of the project based on alleged events of *Force Majeure*, as discussed further below. That communication is provided as Attachment A. This left the Company with a decision to either pursue contractual remedies under the Elk Creek PPA (worth approximately **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]**) and seek replacement resources in the market or negotiate replacement PPAs with NGR.

After significant consideration analyzing each option, the Company decided that entering into a replacement PPA with NGR was the best and least cost option for our customers. The Company came to this conclusion for two reasons. First, the Company determined that the Replacement PPAs would likely be a lower-cost option than attempting to re-enter the market for additional solar, even when considering the possibility of obtaining termination fees from Elk Creek. This conclusion was informed by data the Company was receiving about the solar market, and was subsequently reinforced by information received in response to our ongoing solar RFP. Specifically, based on the responses to our RFP, the Replacement PPAs saved our customers at least **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** compared to the most likely replacement option bid into the RFP. Second, the Replacement PPAs the Company negotiated offered several stronger customer benefits and protections compared to the first PPA we negotiated with Elk Creek.

In this supplemental filing, we provide 1) further explanation of why the Elk Creek PPA was not viable, 2) the Company's available options, which were taken into account prior to negotiating a replacement PPA, and 3) an analysis of those options. In addition, we have included a letter from NGR which provides their description of the parties' negotiations as Attachment B.

I. THE ELK CREEK PPA WAS NOT VIABLE

Following its approval from the PUC, the Elk Creek PPA encountered a series of challenges that would ultimately render the project not viable. The Company attempted to work with NGR to overcome these challenges, but was unable to do so. For instance, the Company worked with NGR on two extensions to the Target COD, while negotiating replacement products in an effort to keep the rollout of R*C on schedule. These efforts were not enough to salvage the Elk Creek PPA. The result

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was that the parties ended up in a contentious dispute, in which the Company extracted significant concessions from NGR for repeated delays. Regardless, NGR was eventually prepared to breach the terms of the PPA and litigate the payment of its termination fee. The Company had to therefore weigh the potential benefits of re-entering the solar market, litigating NGR's termination fee, and further delaying R*C, against the potential outcome of negotiating a replacement PPA with NGR. Below, we outline the timeline of events that led to the Company signing the Replacement PPAs the Commission voted to approve on March 16, 2023.

Following Commission approval of the Elk Creek PPA, in March 2021, the Company and NGR extended the Target COD under the Elk Creek PPA by 17 months from December 2021, to May 2023. This extension was the result of delays in MISO system studies that prevented the Elk Creek project from moving forward. In consideration, the Company obtained NGR's agreement to provide Replacement Products and Services (Replacement Products) during the interim, which the Company could then use to maintain the original start date of our R*C product. The Replacement Products would be delivered in lieu of the payment of Liquidated Delay Damages.

Despite having an extension of its Target COD, in October 2021, NGR delivered their first notice of *Force Majeure* See Attachment C. This *Force Majeure* meant that, in NGR's view, it should not be held responsible for ongoing project delays. NGR's claim of *Force Majeure* was premised on a FERC-ordered restudy of the SPP affected system study for the MISO 2018 Definitive Planning Phase (DPP) would again cause it to miss its new May of 2023 Target COD. At that time, NGR also indicated that it was not intending to deliver Replacement Products as compensation for the continued delays.

The following month, in November 2021, NGR requested a second extension to the Target COD, as well as a rate increase of the Replacement Products. In addition, NGR notified the Company that it was taking steps to move the PPA to an "Alternative Site" consisting of two separate facilities at two separate locations. Furthermore, NGR insisted that the Company: (i) recognize the *Force Majeure* claim; (ii) excuse the delivery of Replacement; (iii) recalculate the Target COD as a result of the *Force Majeure* event; (iv) allow for an additional period of time before the Company could exercise its terminations rights; and, (v) acknowledge that Liquidated Delay Damages would not apply during this period. Given the uncertainty created by NGR's actions and demands, the Company made the difficult decision to delay the launch of R*C until it could gain certainty in the project's success.

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Although the launch of R*C was delayed, on January 1, 2022, NGR began delivering Replacement Products on time. NGR, however, repeatedly requested that it be allowed to stop providing the Replacement Products due to higher-than-expected cost. Since the Company did not begin the R*C program, the **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** value of these Replacement Products was refunded to the Company's customers as a credit to our fuel clause. Additionally, on March 16, 2022, the FERC-ordered restudy was formally completed and the results were published. The Company argued that the normal MISO and SPP DPP study process, notwithstanding FERC's intervention, was now back on track. As a result, the Company contended that the delay caused by the FERC ordered restudy had concluded, and therefore any *Force Majeure* claim from NGR had ended. In turn, the Company granted a delay to the Target COD by 153 days, which extended the Target COD for a second time, this time to October 31, 2023.

Although the Company contended that NGR's original claim of *Force Majeure* ended in March 2022, in April 2022, NGR sent the Company two additional Notices of *Force Majeure*, which are confidential Attachments D and E. Attachment D claimed that Russia's invasion of Ukraine caused "material disruption to the world steel markets," and Attachment E claimed that the DOC's circumventing antidumping investigation caused "delays and uncertainty," both of which NGR claimed would cause them not to be able to "meet any of the PPA Obligations." NGR then delivered another letter [Attachment F] formally requesting that the Company agree to suspend Replacement Products. The letter alleged that due to the Company's decision to postpone the R*C program, that the Company was "reaping material gains, to the detriment of [NGR]". The Company responded via letter, which is included as Attachment G, denying both claims, contending that neither the Russia invasion claim, nor the DOC investigation claim, prevented NGR from performing its obligations, and that their associated claims of *Force Majeure* were deficient.

Subsequently, and for the second time, in July 2022, NGR requested another rate increase to both the Replacement Power Products and the post COD energy. NGR originally proposed to raise the PPA rate from **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]**. The Company rejected the proposed increase, and NGR lowered its proposal to **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]**. NGR also asked for an additional 19-month extension to Target COD and a temporary (14 month) suspension of Replacement Products. Finally, in August 2022, NGR delivered an email restating their original claim of *Force Majeure* related to the FERC ordered restudy and insisted "that the *Force Majeure* would continue until receipt of a final affected system study for the project."

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Due to its alleged *Force Majeure* events, NGR claimed that the Company should not receive a termination fee if it breached the terms of the original PPA, and that the Company should return the value of the Replacement Products that we had received. While the Company disputed these claims, we considered the risks and delay associated with litigating this dispute, and elected to negotiate with NGR in an attempt to find a more beneficial result for our customers. The Company concluded that the potential benefits of renegotiated agreements seemed likely to outweigh the benefits of continuing to engage in a contentious dispute over a termination fee, while re-entering the market for a replacement PPA.

This series of events, along with NGR's May 6, 2022 letter referred to above, led the Company to conclude that NGR was prepared to breach on its obligations under the Elk Creek PPA, and litigate its termination fees. As a result, while the Company was prepared to pursue its rights under the original PPA, it recognized that the original PPA was not viable.

II. NEGOTIATING WITH NGR FOR REPLACEMENT PPAS PROVIDED THE BEST OUTCOME

Faced with a potential dispute over termination fees for the Elk Creek project and increasing solar prices, the Company concluded that the best option was to negotiate with NGR for replacement PPAs. In making this decision, the Company considering the direct costs of continuing a dispute with NGR over Elk Creek, the risk that it may not prevail in this dispute, and the likelihood of obtaining a favorable PPA from the market should the Elk Creek project fail. This last factor – the likelihood of obtaining a favorable PPA from the market – presented a significant challenge.

As noted in our December 9, 2022 Petition, the Company's market research indicated that PPA prices had risen significantly since the Elk Creek PPA was executed four years earlier. This meant that the Company would likely have had to pay substantially more for a replacement project if it elected not to negotiate with NGR. The Q3 Edison Energy Renewables Market Report, which was referenced in our Petition, stated the following: "With demand for renewables at record highs, prospective buyers with near-term renewables goals can expect delays in online dates as well as premiums for projects with allocated panels." The Q3 Edison Report also showed that, on average, throughout the MISO footprint, new PPAs were anticipated to be at \$58 per MWh, a prediction that was confirmed in the Q4 Edison Energy Market Report. This "average" price was also not reflective of the prices in Minnesota, which are typically higher since, due to its geographic location, Minnesota has lower irradiation in relation to the majority of the MISO footprint. This results in lower capacity factors, and therefore generally higher PPA prices in Minnesota, relative to

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the footprint average. In their Q3 report, Edison shows that PPA prices in MISO for solar had risen more than 80 percent between third quarter 2019 and third quarter 2022. As a comparison, this would equate to an adjusted rate of **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** for the original Elk Creek PPA. These market dynamics were also recognized by the Company through general industry research, informal discussions with developers and industry analysts, and other economic indicators.

These industry indicators of significantly increased prices were later validated by the Company's internal information. At the time we were negotiating with NGR, the Company was also engaged in our 2022 Solar RFP. Following the RFP, on December 23, 2022, the Company filed an informational letter with the Commission stating that "the solicitation did not yield the total 900 MW sought to support the Company's overall capacity" and that projects "were eliminated [from shortlisting] primarily for failure to meet RFP and technical feasibility requirements or because they were priced at a level we did not believe was in our customers' best interests."² Ultimately, the Company shortlisted bids with "a bid price below \$70 per MWh" As of the date of this supplemental filing, the Company has not yet completed the negotiations of the shortlisted projects, but we intend to provide further information and updates in our acquisition filing in that docket. As reflected in our letter filed in December, near-term utility scale solar projects are in scarce supply, and the RFP shortfall supports that any replacement project would be at or above \$70 per MWh. Assuming a market replacement rate of \$70 per MWh or above, the Company can confidently assume that our customers would have seen a minimum of **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** in increased costs under a replacement PPA, were we to have allowed the Elk Creek PPA simply to fail.

As demonstrated below, the costs associated with these higher market prices were significantly more than the increased costs that the Company ultimately paid by negotiating with NGR for replacement PPAs.

A. The Company's Options

As NGR states in their letter attached hereto (see Attachment B) "the Elk Creek project was not a viable project for investment under the commercial terms set forth in the [Amended and Restated] PPA" and "the [NGR] board would not have approved the Elk Creek project for start of construction." In other words, NGR determined it was in its best interest to walk away from the agreement. Faced with the likelihood of the PPA defaulting and the project failing, the Company was tasked

² Docket Nos. E002/RP-19-368 and E002/M-22-403.

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with determining a viable path forward. The PPA itself provided for certain remedies if NGR failed to perform; however, in the two cases described below, overall costs to our customers would increase. In the end, the Company's priority was to limit those cost increases for our customers.

1. *Option 1: Administer the Terms of the Elk Creek PPA*

The Company's first option was to simply continue administering the terms of the Elk Creek PPA. The Company could have continued a wait-and-see approach, and then, following a breach or failure that was uncontested by NGR, attempted to collect **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]**³ in liquidated damages available under the original PPA. As noted above, the Company expected NGR to dispute and litigate any claim for damages, resulting in further delay and uncertainty. Moreover, as discussed above, this option would have resulted in an estimated **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** of additional costs to our customers based the current market for solar resources.

2. *Option 2: Work With NGR to Transfer the PPA to Louise and Fillmore*

The Company's other option was to negotiate for a rate increase and amend the PPA, while replacing Elk Creek with Louise and Fillmore as the constructed facilities. As noted in their letter, NGR had already begun the process of replacing Elk Creek with Louise and Fillmore, each of which already had their study results and offered significantly better COD certainty. Although this option included a higher rate than the original PPA, we ultimately determined it was favorable, considering the market for an alternative projects, as described above. Additionally, this route enabled the Company to gain certainty on launching the R*C program. It also allowed us to use our updated PPA model with NGR, which includes more protections and benefits for our customers. Moreover, the Company is confident that our readiness to litigate for the termination fees in the original PPA helped secure a favorable replacement.

After months of additional negotiations, the Company insisted on a rate no higher than **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]**. This was a significant reduction from NGR's original proposal for Louise and Fillmore of **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]**.

³ In the letter from May 24, 2022, an amount of **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** is cited. The liquidated damages fee is **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]**, but we held **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** in security.

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Table 1: Comparison of the Costs and Benefits of the Company’s Options, below, lays out the monetary costs and benefits of the Company’s two options, and Section II, B. The Least Cost Option, below, offers more explanation about the negotiations and factors laid out in this table.

Table 1: Comparison of the Costs and Benefits of the Company's Options (\$M)

	Option 1	Option 2
Costs to Customers		
<i>[PROTECTED DATA BEGINS...</i>		
Impact of Higher PPA rate (relative to Elk Creek PPA)		
Benefits for Customers		
Collection of Liquidated Damages (which NGR would have disputed)		
Savings from eliminated Curtailment Costs(relative to Elk Creek PPA)		
Total Costs		
Net Benefit of Option 2		

...PROTECTED DATA ENDS]

As demonstrated by Table 1, Option 2: Work With NGR to Transfer the PPA to Louise and Fillmore, was the least cost option and offered COD certainty, making it the best option for our R*C customers. The Louise and Fillmore replacement PPAs provided a significantly lower cost option than seeking a replacement project in the market. In addition, the replacement PPAs eliminates compensable curtailment, which we have estimated in Table 1. The Company was able to obtain this result through diligent negotiations with NGR and by holding NGR to their obligations under the PPA. Through those negotiations, we were also able to obtain additional benefits that are not quantified in Table 1. We discuss those benefits below.

B. Additional Benefits

1. Utilizing Our Updated PPA Model

In addition to the favorable price, the Company negotiated other favorable terms for our customers. Since the original PPA with Elk Creek was executed, the Company updated our model PPA, which is the product of significant efforts the Company has undertaken to balance holding our PPA counterparties to their obligations, with supporting a project’s likelihood for success. In this case, among other key provisions, collecting a termination fee or something of equal or greater value for

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NGR's failure to perform was necessary, as the Company maintains that we expect developers to meet their obligations under contracts, as evidenced by our letter to NGR, which is provided as Attachment H. Therefore, although the Company agreed to cooperate with NGR on a price increase, the Company also demanded that NGR fully restate the PPA and adhere to the Company's most recent PPA model. The Company insisted upon this, as our most recent PPA model includes stronger protections for our customers, such as rate reductions for a counterparty's failure to meet their committed energy, delay damages for failure to reach critical development milestones, higher termination fees for failure to deliver, and 60 percent higher security requirements.

As noted above, by adopting the Company's most recent PPA model, NGR now assumes the curtailment risks that had previously been borne by the Company and our customers. As the Commission is well aware, curtailment costs on renewable PPAs pose a significant economic challenges to the development and operation of renewable resources. Over the past few years, the Company has seen approximately **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** curtailment on average at similar large scale solar projects on the NSP System. With NGR now assuming this risk, as shown in Table 1 above, the Company estimates an additional **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** in savings over the term of this PPA.

2. *Benefits Already Received by Our Customers*

The Company has worked to address numerous challenges to the development of the Elk Creek project over several years. Those efforts have included enforcement of the terms of the Original PPA to provide significant benefits for our customers. Those benefits include:

- **Replacement Products** – The Replacement Products (energy and capacity) delivered to Company yielded approximately **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** in net benefits. These dollars have already been collected by the Company, as described in NGR's April 19, 2022 letter [Attachment F], were at risk of being contested by NGR. Similar to a termination payment, 100 percent of these dollars would be returned to our customers.
- **Renewable Energy Credits** – The Company also received 156,234 renewable energy credits (RECs), which the Company and our customers will be able to use to meet our carbon free energy goals and the Renewable Energy Standard.
- **Zonal Resource Credits** – In addition, as a condition of the Replacement PPAs, NGR was required to deliver Planning Year 2023/2024 Capacity in the form of Zonal Resource Credits (ZRCs) which have already been provided to

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the Company. In Planning Year 2022/2023, those equivalent ZRCs yielded our customers **[PROTECTED DATA BEGINS**

PROTECTED DATA ENDS]. The Company's ratepayers keep this even if the Commission does not fully approve the Replacement PPAs.

3. Liquidated Damages under Replacement PPAs

Finally, as a term of the restated Replacement PPAs, NGR is required to pay the Company an additional **[PROTECTED DATA BEGINS**
PROTECTED DATA ENDS] in liquidated damages if the Commission does not fully approve the Replacement PPAs.

To recap, the Elk Creek PPA was not viable, as it encountered a series of challenges that, despite our best efforts, the Company and NGR were unable to overcome. NGR was eventually prepared to breach the terms of the PPA and litigate the payment of its termination fee. After assessing the situation and the market conditions at the time, the Company decided to negotiate the Replacement PPAs with NGR because it was the least cost option and offered COD certainty, making it the best option for our R*C customers. In the course of these negotiations, the Company was able to secure benefits for our customers that were not part of the Elk Creek PPA, such as rate reductions for a counterparty's failure to meet their committed energy, delay damages for failure to reach critical development milestones, higher termination fees for failure to deliver, 60 percent higher security requirements, and assumption of curtailment risks by NGR, instead of our customers.

CONCLUSION

In sum, the Elk Creek PPA was not viable at the time the Company and NGR executed the Replacement PPAs, and going back to the market was unfavorable and would have resulted in significantly higher costs to our customers as well as further delay to R*C. Working with NGR to replace Elk Creek with Louise and Fillmore was, therefore, the best, least cost, and most prudent option, as it saved our customers at least **[PROTECTED DATA BEGINS** **PROTECTED DATA ENDS]** and secured more protections for them by utilizing the Company's updated PPA model. The Company respectfully requests that the Commission allow the Company to recover the costs for the Replacement Projects and interim Replacement Energy, RECs, and Capacity from Renewable*Connect customers.

Dated: March 30, 2023

Northern States Power Company

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Northern States Power Company

Docket No. E002/M-19-568
Supplement to Petition – March 30, 2023
Attachments A-H

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4. **Date the Information was Prepared:** Between October 2021 and March 2023

CERTIFICATE OF SERVICE

I, Christine Schwartz, hereby certify that I have this day served copies of the foregoing document(s) on the attached list of persons.

by depositing a true and correct copy thereof, properly enveloped with postage paid in the United States mail at Minneapolis, Minnesota

or

electronic filing

Docket No. E002/M-19-568

Dated this 30th day of March 2023

/s/

Christine Schwartz
Regulatory Administrator

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