

Jeffcoat-Sacco, Illona

From: Mitch Armstrong <MArmstrong@smithbakke.com>
Sent: Monday, October 29, 2012 2:56 PM
To: Jeffcoat-Sacco, Illona
Subject: City of Oxbow v. PSC
Attachments: Affidavit of Service.pdf; North Dakota Public Service Commission's Brief in Response to Motion for Stay.pdf

Attached is the brief filed today in response to the motion for stay for your file and the Commission's information.

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From: Sara Small
Sent: Monday, October 29, 2012 2:54 PM
To: Mitch Armstrong
Subject: City of Oxbow v. PSC

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127 PU-07-759 Filed: 10/29/2012 Pages: 29
APPEAL - copy of NDPSC Brief in Response to Motion for Stay

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

CIVIL NO. 09-2012-CV-03147

City of Oxbow, Lonni Hayden, Warren)
 Hayden, Kent Buhr, Danise Buhr, Jon)
 Hager, Marcy Hager, Matt Quibell, Craig)
 Jungberg, Colette Jungberg, Todd Miller,)
 Nancy Miller, Vernon Skarie, June Skarie,)
 Callie Schlieman, Brian Nettestad, Jayme)
 Nettestad, Gregg Christensen, Cindy)
 Christensen, Teri Lingen, Curt Lingen,)
 Donna Peterson, Stanley Todd Miller,)
 Jacqueline Miller, Nicole Bice, Dave Zens,)
 Brenda Zens, James Haugrud, Bree Reinke,)
 Paul Reinke, Kathleen Lingen, Chris)
 Lange, Kay Mahar, Paige Plecity, Michael)
 Sorby, Royce Grandlund, Darren Fitch,)
 Matt Peterson, Jim Huesman, Stacey)
 Biewer, Marcus Larson, Colleen Isralson,)
 Tanya Harmon, E. John Carlson, David)
 Harmon, Linda Covell, Don Covell, Daniel)
 Zink, Arden Breimeier, Kristi Houska,)
 Richard Houska, Ray Holzhey, Maria)
 Baker, Ted Johnson, Pat Baker, Karla)
 Slusher, Neal Roesler, Patricia Redlin,)
 Gary Redlin, Jody Slusher, Patrick Reinke,)
 James A. Schlieman, Mary Jane Nipstad,)
 Doug Lingen, Brenda Carlson, Michael)
 Bice, Roger Kotchian, Ryan Binek, Elroy)
 Bakke, Ina Bakke, Raymond Grimen,)
 Debra L. Larson, Noreen Granlund, Curt)
 Bjertness, Gary Cossette)

Appellants,)

vs.)

North Dakota Public Service Commission,)

Appellee.)

**NORTH DAKOTA PUBLIC SERVICE
 COMMISSION'S BRIEF IN RESPONSE
 TO MOTION FOR STAY**

I. INTRODUCTION

The appellants have appealed the North Dakota Public Service Commission's ("PSC") September 12, 2012, *Findings of Fact, Conclusions of Law, and Order* ("Order"). In the *Order*, the PSC issued a certificate of corridor compatibility and route permit to Northern States Power ("NSP") for the construction of a transmission line for the North Dakota portion of a Fargo, North Dakota, to St. Cloud, Minnesota, power line. See generally *Order* (Sept. 12, 2012) (attached as Exhibit A). Approximately 33 miles of the transmission line are to be located in North Dakota. Id. at p. 3, Finding 6. The North Dakota portion of the line was authorized by the PSC from a river crossing in Pleasant Township to a switching station in Harmony Township. Id. at Finding 7. The appellants have requested a stay of the PSC's order and a waiver of the cost bond.

The PSC is in the process of preparing the record on appeal in this matter pursuant to N.D.C.C. § 28-32-44. The PSC asserts its *Order* complies with the law and is based on a reasoned analysis of the evidence. The appellants have not provided any argument indicating the *Order* is likely to be reversed. Further, the appellants have not included NSP as a party to this appeal. The PSC believes the requested stay cannot be adequately considered until NSP is a party to this appeal because the stay is largely an issue between the appellants and NSP. See N.D.C.C. § 28-32-42(5) ("The agency and all parties of record have the right to participate in the appeal").

II. APPLICABLE LAW AND ARGUMENT

An appeal of an administrative agency's order does not stay the enforcement of the order unless the court to which the appeal is taken so orders. N.D.C.C. § 28-32-48. Stays on appeal are also addressed in N.D.R.Civ.P. 62. The following guidelines should be considered in conjunction with evaluating whether a stay should be ordered upon appeal: whether the applicant for stay has

made a strong showing it is likely to succeed on the merits; the applicant has established that unless a stay is granted he will suffer irreparable injury; the applicant can show that no substantial harm will come to other interested parties; and granting the stay will do no harm to the public interest. Cass County Elec. Co-op., Inc. v. Wold Properties, Inc. 253 N.W.2d 323, 327 (N.D. 1977).

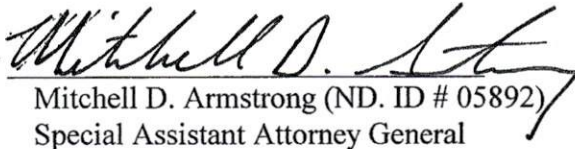
The appellants have not made “a strong showing” that success is likely on the merits. As most of the appellants did not appear before or submit any information to the PSC during the administrative process below, it is unknown how they contend the *Order* did not comply with the law or is not based on the evidence presented. The PSC asserts its *Order* complied with the law and reached a decision based on the evidence presented. Further, it is unclear how long this appeal will last. The proceedings below indicated construction of the project would begin in the first quarter of 2013 to accommodate a planned 2015 in-service date to meet Red River Valley load forecasts. *Order* at p. 3, Finding 3. Presumably, a stay would have an impact on the in-service date, construction, and other schedules. Therefore, the stay could have an impact on the public as well because the project at issue is being constructed to meet anticipated electricity needs in 2015.

For the most part, the effects of a stay are more appropriately addressed by the appellants and NSP. Therefore, the PSC does not take a strong position on the appellants’ motion, but asserts all parties should be heard and the applicable law followed.

III. CONCLUSION

For the foregoing reasons, the PSC asserts the stay should not be considered until all parties are heard and all applicable considerations under the law are addressed.

Dated this 29th day of October, 2012.

By 

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Attorneys for Appellee, North Dakota Public
Service Commission

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Northern States Power Company
Fargo-St. Cloud MN 345 kV
Cap-X Transmission Line
Siting Application**

Case No. PU-07-759

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

September 12, 2012

Appearances

Commissioners Tony Clark, Kevin Cramer, and Brian P. Kalk.

Lisa M. Agrimonti, Attorney, and Zeviel Simpser, Attorney, Briggs and Morgan, P.A., 220 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402, on behalf of Applicant, Northern States Power Company, a Minnesota corporation (NSP).

Mitchell D. Armstrong, Special Assistant Attorney General, 122 E. Broadway Avenue, Bismarck, North Dakota 58501, on behalf of the Public Service Commission.

Al Wahl, Administrative Law Judge, Office of Administrative Hearings, 1701 North Ninth Street, Bismarck, North Dakota 58501, as Procedural Hearing Officer.

Preliminary Statement

On November 14, 2007, NSP filed a Letter of Intent (LOI) to submit an application for a Certificate of Corridor Compatibility for the North Dakota portion of a 345 kilovolt (kV) transmission line from a substation in the Fargo, North Dakota area to St. Cloud, Minnesota. Xcel Energy requested in its LOI that the Commission shorten the one-year waiting required between the filing of the LOI and the filing of an application.

On December 14, 2007, the Commission shortened the one-year waiting period to thirty days and assessed a filing fee of \$100,000.

On October 6, 2010, in Case Nos. PU-09-676 and PU-09-678, the Commission adopted a settlement granting an advance determination of prudence for the Fargo-St. Cloud transmission line and three other Cap-X regional transmission line projects.

On December 30, 2010, NSP, on behalf of itself and the other anticipated co-owners of the proposed project, filed an application for a certificate of corridor compatibility for a new 345 kV electric transmission line and associated facilities proposed from near Fargo, North Dakota in Cass or Cass and Richland counties to St.

Cloud, Minnesota (Application). NSP filed an amendment to its application on April, 13, 2011 (Amended Application), and a supplemental filing on May 16, 2011.

On October 3, 2011, NSP on behalf of itself and the other anticipated co-owners of the proposed transmission line and associated facilities, filed applications for a waiver of procedure and time schedules, certificate of corridor compatibility and route permit for the North Dakota portion of a new 345 kV electric transmission line and associated facilities proposed from near Fargo, North Dakota in Cass County to St. Cloud, Minnesota (Applications). Specifically, NSP requested that the Commission, pursuant to N.D.C.C. § 49-22-07.2, waive the provisions of N.D.C.C. § 49-22-08.1, 49-22-13, and N.D. Admin. Code § 69-06-01-02, which require separate hearings of such applications.

On December 21, 2011, the Public Service Commission issued a Notice of Filing and Notice of Hearing and deemed the Applications complete. The Commission scheduled the hearing for January 30, 2012 at 10:00 a.m. (CDT) at the Fargo City Commission Room, 200 3rd Street North, Fargo, North Dakota on NSP's Consolidated Application.

The Notice of Hearing identified the following issues to be considered:

1. Will the location, construction, and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility locations minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?
4. Is it appropriate for the Commission to waive procedures and time schedules as requested, including the request for a single consolidated application for corridor certificate and route permit?

On January 30, 2012 at 10:00 a.m. (CDT), a public hearing was held in Fargo, North Dakota. NSP presented two witnesses and several members of the public offered comments. Warren Township also presented a request to include additional conditions in the Commission's order in this proceeding.

Also on January 30, 2012, NSP submitted an executed Certification Relating to Order Provisions – Transmission Facility Siting. (Hearing Exhibit 10),

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. NSP is a Minnesota corporation duly authorized to conduct business in the State of North Dakota as a public utility subject to the jurisdiction and regulation of the Commission pursuant to Title 49 of the North Dakota Century Code. NSP presently serves approximately 86,000 North Dakota retail electric customers in and around Fargo, Grand Forks, and Minot, North Dakota. NSP owns approximately 250 miles of transmission lines and 12 substations in North Dakota.
2. NSP proposes to construct a 345 kV transmission line from a proposed Bison Switching Station to be located in Harmony Township, North Dakota to a New Quarry Substation, located west of the City of St. Cloud, Minnesota (Fargo Project). The North Dakota portion of the Fargo Project will begin at a point on the North Dakota – Minnesota border and end at the proposed Bison Switching Station. Transmission line construction is anticipated to begin in the first quarter of 2013 to accommodate a planned 2015 in-service date based on meeting Red River Valley load forecasts.
3. The Fargo Project is being constructed as part of the CapX2020 Initiative, whose goal is to study, develop, permit and construct transmission infrastructure needed to implement long-term and cost-effective solutions for customers to meet the growth in energy demand expected between 2009 and 2020. The 11 utilities currently participating in the CapX2020 Initiative are: Great River Energy, NSP, Central Minnesota Municipal Power Agency, Dairyland Power Cooperative, Minnesota Power, Minnkota Power Cooperative, Inc., Missouri River Energy Services, Otter Tail Power Company, Rochester Public Utilities, Sothern Minnesota Municipal Power Agency, and WPPI Energy (collectively the CapX2020 Utilities).
4. Great River Energy, Minnesota Power, Missouri River Energy Services, NSP, and Otter Tail Power Company are the CapX2020 Utilities participating in and expected to own a share of the Fargo Project (the Participating Utilities).
5. The transmission line and Bison Switching Station will be constructed by NSP.
6. The North Dakota portion of the transmission line will be approximately 33 miles in length.
7. NSP proposed a corridor one mile wide but has agreed to a corridor 300 feet wide representing the area for which a cultural resource pedestrian survey has or will be conducted. The proposed corridor extends west from the North Dakota/Minnesota border within Pleasant Township until diverging north in Addison Township. The proposed corridor terminates at the proposed Bison Switching Station siting area in Harmony Township.
8. The proposed route is located within the proposed corridor and extends west from the North Dakota/Minnesota border in Pleasant township, near Oxbow, until turning north in Normanna Township and continuing north for a short distance across Warren Township. In Warren Township, the proposed route diverges west, and then

turns north in Addison Township and continues north until terminating at the proposed Bison Switching Station siting area in Harmony Township.

9. The Participating Utilities will elect their ownership share of the Fargo Project at some point in the future, but prior to construction of the North Dakota portion of the Fargo Project, and enter into a series of agreements providing for the ownership, construction, operation, maintenance, and capacity of the North Dakota portion of the Fargo Project.

10. The transmission line will be owned, operated, and maintained by the Participating Utilities. NSP is the designated "project manager" for the Fargo Project.

11. The proposed Bison Switching Station will be constructed, owned, and maintained by NSP.

Project Design

12. The transmission line will be mostly constructed on self-weathering or galvanized steel poles. The typical structure will be between 130 and 175 feet tall. The typical pole will have a 36-48 inch base with a 6-12 foot foundation diameter. Site specific conditions may require other structures to be used, such as structures having reduced or increased height or multiple pole structures.

13. The transmission line will be 3-phase. The proposed conductor will be composed of two 954 Aluminum Conductor Steel Supported (ACSS) cables or conductors of comparable capacity. Each conductor is 954,000 circular mils or approximately 1.2 inches in diameter. The typical spans between structures will be between 600 and 1,000 feet. Their right-of-way will be mostly 150 feet wide. In some limited instances, where specialty structures are required for long spans, poor soil conditions, or in environmentally sensitive areas, up to 180 feet of right-of-way may be needed.

14. The transmission line will be constructed in a double-circuit compatible configuration. A double-circuit compatible configuration means that the transmission line will be placed on structures capable of supporting a second 345 kV circuit. NSP stated that a double circuit line could be operated within the same right-of-way for the proposed transmission line.

15. The proposed Bison Switching Station will be a 345 kV switching station designed to provide in and out interconnections to the Jamestown to Maple River 345 kV transmission line. NSP anticipates acquiring up to 80 acres for the substation to provide for the fenced area, equipment, and a buffer area.

16. The proposed transmission line and associated facilities will be designed and constructed to meet or surpass all relevant state codes and standards of the National Electric Safety Code, NSP standards, and in accordance with Avian Power Line Interaction Committee suggested practices for raptor-safe design.

17. The total cost of the Project from the new Bison Substation near Fargo to the new Quarry Substation West of St. Cloud is estimated to be between \$500 and \$750 million.

Siting Criteria

18. Section 49-22-16(3) of the North Dakota Century Code provides that an applicant for a route permit from the Commission shall obtain all permits that may be required to construct and operate the transmission facility.

19. North Dakota Administrative Code, Chapter 69-06-08 sets forth certain criteria to guide the Commission in evaluating the suitability of granting an application for a Certificate of Corridor Compatibility. The criteria as set forth in Section 69-06-08-02 are classified as Exclusion Areas, Avoidance Area, Selection Criteria, Policy Criteria.

20. North Dakota Administrative Code, Chapter 69-06-08 provides that Exclusion and Avoidance Areas may be located within a corridor, but at no point shall such an area encompass more than 50% of the corridor width, unless there is no reasonable alternative.

21. North Dakota Administrative Code, Section 60-06-08-02 provides that a transmission facility route must not be sited within an Exclusion Area. A transmission facility route must not be sited within an Avoidance Area unless the Applicant shows under the circumstances there are no reasonable alternatives.

22. In accordance with the Commission's Selection Criteria, a corridor may be approved if it is demonstrated that any significant adverse impacts that will result from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum or managed at an acceptable minimum.

23. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits from the adoption of certain policies and practices.

24. NSP evaluated a corridor width of approximately three miles.

25. NSP submitted information in its Application, Amended Application, supplemental filings, and testimony at the January 30, 2012 hearings, concerning compliance with the Commission Exclusion and Avoidance Areas Criteria as applied to the proposed corridor and route.

26. At no point within the proposed corridor does an Exclusion or Avoidance Area encompass more than 50% of the corridor width.

27. NSP has performed a Class III pedestrian survey in an area three hundred feet in width centered on the proposed route centerline in areas for which affected landowners

have granted access. The State Historic Preservation Office has concurred with the findings of such surveys recommending that no significant properties are affected. NSP has committed to perform additional Class III pedestrian surveys when access is obtained in those areas for which it was not granted access.

28. NSP has consulted with numerous local, state, and federal agencies, which are identified in its supplemental filing. No agency has objected to construction of the Fargo Project as of the date of this order.

29. A review of wetlands in the area of the Proposed Corridor and Route was conducted for the transmission line and Bison Switching Station and the results are included in the applications. Less than 1% of the proposed corridor contains wetlands, and the proposed route will impact 4 acres of wetlands. If impacts to Clean Water Act jurisdictional waters are unavoidable and less than one-half acre, NSP will seek project authorization under a Section 404 US Army Corps of Engineers (USACE) Nationwide Permit application. Permanent impacts to jurisdictional waters will be mitigated according to USACE requirements.

30. No rare or unique resources have been identified along the route. It is not anticipated that the proposed transmission facility will impact rare and unique resources. NSP has consulted with the United States Fish and Wildlife Service (USFWS) to develop an avian conservation measure and line marking plan as may be necessary.

31. There is one rural residence within 500 feet of the proposed route. The owners of this residence have consented to the location of the Fargo Project within 500 feet of this residence and have executed a waiver of this routing avoidance area criteria. There are no places of business within 500 feet of the proposed route.

32. NSP submitted information in its Applications, Amended Applications, supplemental filing, and through its testimony that any significant adverse effects from the location, construction, and maintenance of the transmission line and Bison Switching Station as they relate to the Selection Criteria listed at Section 69-06-08-1(3) of the North Dakota Administrative Code, will be at an acceptable minimum or will be managed and maintained at an acceptable minimum.

33. NSP submitted information in its Applications, Amended Applications, supplemental filings, and through its testimony at the hearing to demonstrate its commitment to maximize, to the extent possible, the benefits of the proposed transmission lines and Bison Switching Station to meet the Policy Criteria set forth in Section 69-06-08-1(4) of the North Dakota Administrative Code.

34. NSP submitted information in its Applications and at the hearing that good cause exists to waive procedures, time, schedules and public hearings otherwise required by the Siting Act.

Route Modification Requests

Kraft Airstrip

35 Public Witness Dean Kraft operates two private airstrips on his property in Mapleton Township, T139 N, R51 W of Cass County. The proposed route parallels his west runway at a distance of approximately ½ mile. There is an existing Western Area Power Administration (WAPA) Transmission line crossing east-west approximately 1,000 feet north of the two airstrips. Mr. Kraft testified that immediately after takeoff planes have to turn to avoid flying underneath the WAPA line and the proposed route would interfere with the ability for planes taking off from the western runway to avoid the WAPA line by turning westerly. NSP submitted an Amendment to Late-Filed Exhibit 32 proposing a routing option acceptable to Mr. Kraft and affected neighboring land owners that would address the airstrip issue. The Commission finds the amended routing option should be approved.

Pleasant Township/Red River Crossing

36. Several public witnesses oppose the proposed route location through Pleasant Township. The proposed route extends through a field approximately ½ mile North of the northern most residences along the north edge of the Bakke Addition to the city of Oxbow. The proposed route through this area is bounded to the north by residences approximately ¼ mile away.

37. In its application and testimony, NSP described the route selection process as iterative. NSP evaluated several potential routes and the Commission's selection criteria with respect to those routes. This process included several public input meetings. Initially, NSP preferred a route approximately four miles north of the proposed route. However, the public input sessions revealed concerns with such a route, including its relationship to the proposed Fargo-Moorhead Diversion Project.

38. As NSP continued to evaluate the routing options, the City of Fargo raised concerns regarding locations north of the proposed route and requested the route be as far south and west from the city as possible so as not to impede construction of the proposed diversion. Upon submission of the proposed route, the City of Fargo withdrew its concerns because of the further south location and reduction in width outside the proposed diversion channel. NSP described the strong feedback it received from other local governments and residents in the area north of the proposed route, requesting the route not be located in those areas due to future development, particularly considering the diversion project as proposed would effectively set a limit on expansion in the area. As a result of the proposed diversion project and other concerns raised, NSP determined it was more prudent to select a route further south.

39. While NSP considered routes further south than the proposed route, NSP preferred to locate the route as far north as possible to be closer to the load center associated with the city of Fargo and to have a better ability to interconnect with other lines in the area and potential future projects. NSP testified that the further south the route is located the more difficult it will be to construct future tie-lines for maintaining

voltage support to the Fargo load center. With the consideration that this is a reliability line, these considerations are important.

40. Overall, NSP testified the proposed route resulted in a shorter transmission line, fewer impacts, more interconnection options with existing and potential lines, and better reliability to the load center associated with the city of Fargo. As NSP described, not all impacts are mitigatable and a unique set of impacts are present for each particular area.

41. The Pleasant Township Board of Supervisors issued a conditional use permit for the proposed route on March 20, 2012.

42. Based on the foregoing, the Commission finds the proposed location of the route is appropriate, satisfies the Commission's selection criteria, will result in minimal adverse effects and should be approved.

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

Conclusions of Law

1. The Commission has jurisdiction over this proceeding under North Dakota Century Code Chapter 49-22.
2. The transmission line and associated Bison Switching Station proposed by NSP are transmission facilities as defined in North Dakota Century Code Section 49-22-03(12).
3. The proposed transmission facility is of such design, length, location, and purpose that it will produce minimal adverse effects, as defined in North Dakota Century Code Section 49-22-07.2.
4. The Application, Amended Application, supplemental filing, and Consolidated Application submitted by NSP meet the corridor and route evaluation criteria required by Chapter 49-22 of the North Dakota Century Code.
5. The proposed transmission facility corridor and route will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.
6. The proposed transmission facility and route are compatible with the environmental preservation and the efficient use of resources.
7. The requested waivers of procedure is justified based upon: the minimal impacts on the environment and the welfare of the citizens of North Dakota; the lack of objection to the proposed transmission by federal, state, and most local government bodies and agencies or by the majority of landowners along the route; and the objective to have a reliable integrated transmission system in North Dakota.

8. The proposed transmission facility is of such length, design, location, and purpose that it will produce minimal adverse effects.

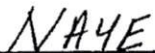
9. The Commission has jurisdiction pursuant to Chapter 49-22 of the North Dakota Century Code to ensure compliance with this order through construction and post-construction monitoring.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes its:

Order

1. NSP's application for a waiver of procedures and time schedules is granted.
2. Certificate of Corridor Compatibility for Transmission Facility Corridor No. 139 is issued to NSP, on behalf of itself and the Participating Utilities, designating a Corridor for its proposed transmission facility as described in NSP's Application and as presented at the hearing for a width equivalent to that of the Class III pedestrian surveys performed or to be performed by NSP in compliance with this order.
3. Route Permit for the Construction of a Transmission Facility No. 152 is issued to NSP, granting authority to construct the transmission line in the route location as described in Exhibit 2. For the location of the route in the Kraft airstrip area the approved route is as identified in the amendment to late-filed exhibit 32 filed June 7, 2012.
4. NSP shall perform a Class III pedestrian survey for those portions of the proposed corridor for which it was unable to obtain access prior to the issuance of the Certificate of Corridor Compatibility and Route Permit and shall obtain the concurrence of the State Historical Preservation Office of the findings of such Class III pedestrian survey prior to beginning construction on those portions of the proposed route. NSP may construct those portions of the route for which the State Historical Preservation Office has stated its concurrence.
5. The Certification Relating to Order Provisions – Transmission Facility Siting with accompanying Tree and Shrub Mitigation Specifications submitted January 30, 2012, is incorporated by reference and attached to this Order, except that NSP may clear cut the entire width of the right-of-way through windbreaks, shelterbelts and all other wooded areas.

PUBLIC SERVICE COMMISSION



Kevin Cramer
Commissioner



Brian P. Kalk
Chairman



Bonny M. Fetch
Commissioner

Dissenting Opinion
Commissioner Kevin Cramer

September 12, 2012

**Northern States Power Company
Fargo-St. Cloud MN 345 kV CapX Transmission Line
Siting Application**

Case No. PU-07-759

We cannot lose sight of the affect our decision will have upon the property rights of our citizens. Although the benefit of this project will be socialized, the negatives are not. No one is more aware of the impacts of this facility than the people that will be expected to live with it. Because I feel the proposed river crossing is not in the best interest of our constituents, I respectfully dissent.

The Energy Conversion and Transmission Facility Siting Act, the Administrative Practices Act, and our rules require of me, and my fellow Commissioners, siting approval which is in accordance with the law, and whose facts are supported by a preponderance (greater weight) of the evidence. The North Dakota Supreme Court recognizes that, with highly technical subject matter such as this, our decision will be afforded "appreciable deference" if appealed. It is critical that this Commission arrives at a correct decision now, as its outcome will carry with it significant, generational consequences.

Advocates of the proposed route and corridor have cited the following considerations in support of their position, namely: need, reliability, timing, cost, the Red River Diversion Project and the Minnesota approved route. I do not question the relevancy of these factors. Rather, when discussed in the context articulated below, I humbly feel that these issues give weight to my position.

I agree that this project is necessary, as demonstrated by my respective approvals for advance prudence and certificate of need. Likewise, I accept this project's termination point, and its proposed placement west of the Fargo-Moorhead metropolitan area. It is because of the line's high voltage (345 kV), and type of current (AC rather than DC), that I feel reliability will be economically met; not its southern placement relative to the metro area. To advocate reliability on placement near the metro area advocates placement through the city; yet, such reasoning would dictate a route entirely devoid of the human element. If the route's proposed southern placement can be so influenced by our State's assumed growth, then at least equal weight should be afforded to the established communities of Oxbow and Hickson.

The companies advocate that deviations carry with it the potential for expanded costs and an extended building schedule. Inflation and its affect upon families, seniors and businesses is a primary consideration in all my decisions; both presently in my role as an economic regulator, as well as during my past tenure as state economic development director. It is precisely because of this experience that I am not persuaded by the companies' assessment. When properly adjusted (e.g. over a 50 year life expectancy and the MISO allocation process), the eventual costs are not so significant to override the concerns I articulate in this opinion. I extend this same logic to project delay. Considering the long term consequences overwhelmingly borne by those citizens who realize little or no benefit, I am not sufficiently convinced to accept the companies' proposals.

The record includes discussion pertaining to the Red River Diversion Project and its affect upon the proposed river crossing. It is my belief that there are other routes that both further insures this

project's placement on the "wet" side of the diversion channel as well as affords appropriate weight to growing and established communities.

The United States Government has bestowed upon **North Dakota** the decision to site this 130 to 175 foot high electric transmission line with a 150 to 180 foot right of way. Our rules allow the Commission to consider whether such a structure is minimally evasive to the visual effect on an adjacent, **North Dakota** landowner or landowners (in contrast to, for example, a pipeline). In my opinion the border crossing, predetermined by the State of Minnesota, constitutes as an abrogation of our sovereignty. This is especially disconcerting in light of this project's construction in Minnesota prior to our approval. Because multijurisdictional route reconciliation is neither a new, nor uncommon, issue, this agency's denial of the present applications should not be fatal. I am fully confident that the companies can produce to this Commission more acceptable submissions for our approval.



Kevin Cramer, Commissioner



Darrin F. Lahr
Supervisor, Siting and Land Rights

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January 26, 2012

VIA EMAIL AND FEDERAL EXPRESS

Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

**Re: Northern States Power Company
Fargo-Monticello MN 345 kV Cap-X Transmission Line
Siting Application
Case No. PU-07-759**

Dear Mr. Nitschke:

Northern States Power Company, a Minnesota corporation, applicant in the above-referenced case, provides for filing to the North Dakota Public Service Commission the enclosed and executed Certification Relating to Order Provisions.

Please feel free to contact me if you have any questions or concerns.

Sincerely,

Darrin F. Lahr

Supervisor, Siting and Land Rights,
Xcel Energy Services Inc., as agent for
Northern States Power Company,
a Minnesota corporation

74 PU-07-759 Filed: 1/30/2012 Pages: 10
Exhibit 10

Northern States Power Company



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Northern States Power Company
Fargo-Monticello MN 345 kV Cap-X Transmission Line
Siting Application

Case No. PU-07-759

CERTIFICATION RELATING TO ORDER PROVISIONS –
TRANSMISSION FACILITY SITING

I am Greg Chamberlain, a representative of Northern States Power Company ("Company") with authority to bind NSP to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission will be subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
3. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the transmission facility including all city, township, and county zoning regulations.
4. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the transmission facility that requires said license or permit.
5. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the transmission facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated on construction activities on a weekly basis.
6. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission is subject to suspension or revocation and

may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.

7. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order Issuing a Certificate of Corridor Compatibility or Route Permit, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
8. Company agrees to construct and operate the energy conversion facility in accordance with all applicable safety requirements.
9. Company agrees to construct and operate the transmission facility in the manner described in Company's application, in any late filed exhibits, and supplemental materials (Application). To the extent there are any conflicts or inconsistencies between Company's Application and the provisions in this Certification Relating to Order Provisions, the Certification provisions control.
10. Company agrees to report promptly to the Commission the presence in the permit area of any critical habitat or threatened species, endangered species, bald eagles, or golden eagles of which Company becomes aware and which were not previously reported to the Commission.
11. Company understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
12. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society and clearance to proceed is given by the Commission.
13. Company understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits Company to open cut the road.
14. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the transmission facility and that will accommodate their previous use, and that areas used as

temporary roads or working areas during construction must be restored to their original condition.

15. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures approved by the Commission are taken.
16. Company understands and agrees that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be stripped and segregated from the subsoil. Except along segments of the line using the double ditching method, any area on which excavated subsoil will be placed must also be stripped of topsoil. After backfilling is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.
17. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
18. Company understands and agrees that its obligation for reclamation and maintenance of the right-of-way will continue throughout the life of the transmission facility.
19. Company understands and agrees that its obligation for reclamation and maintenance of the transmission facility, associated facilities, and roadways will continue throughout the life of the transmission facility.
20. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
21. Company understands and agrees that it shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the construction of the transmission facility.
22. Company understands and agrees that it shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.
23. Company understands and agrees that it shall repair or replace all drainage tile broken or damaged drainage tile as a result of construction and operation of the transmission facility.

24. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
25. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
26. Company understands and agrees that it shall, as soon as practicable upon the completion of the construction of the transmission facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
27. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.
28. Company understands and agrees that it shall advise the Commission of any extraordinary events which take place at the site of the transmission facility, including injuries to any person, or the death of any threatened or endangered species on the site within five business days of such event.
29. Company understands and agrees that it shall advise the Commission of the discovery of a large number of dead birds or bats on the site within five business days of such event.
30. Company understands and agrees that it shall implement a procedure for how complaints concerning the transmission facility will be handled by Company
31. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
32. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the transmission facility or of any plans to modify the site plan for the transmission facility. Company understands and agrees to obtain written approval from the Commission prior to any modifications to the site plan or the transmission facility. Approval may be granted after notice and opportunity for hearing.
33. Company agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission, and will provide this information within 3 months of the Commission order approving the corridor. Company also agrees to provide an electronic version of the approved corridor that can be imported into ESRI GIS mapping software within 3 months of the Commission order

approving the corridor. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.

34. Company agrees to provide the Commission with both an electronic and a paper copy of the design specifications for the construction of the transmission facility showing the location of the transmission facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the as-built facility design specifications that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.
35. Company understands and agrees that the authorizations granted by any Certificate of Corridor Compatibility or Route Permit issued by the Commission for the transmission facility are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.
36. Company understands and agrees that in the event Company desires to construct, within any corridor granted by a Certificate of Corridor Compatibility in this proceeding, a transmission facility or energy conversion facility that was not included in Company's application in this proceeding, Company shall apply to the Commission for a Route Permit or Site Certificate for the facility.
37. Company shall notify the Commission, as soon as reasonably possible, if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined and clearance to proceed has been given by the Commission.
38. Company understands and agrees that the corridor certificate and route permit are subject to suspension or revocation and may, after hearing, be suspended or revoked for failure to comply with the Commission's order, requirements of the One-Call Excavation Notice System under North Dakota Century Code Chapter 49-

23, the conditions and criteria of the certificate or permit or subsequent modification, or failure to comply with applicable statutes, or rules, regulations, standards, and permits of other state or federal agencies.

Dated this 26 day of January, 2012.

NORTHERN STATES POWER COMPANY

By 
Greg Chamberlain, Director
Transmission Portfolio Delivery
As Authorized Agent

Its _____

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Northern States Power Company
Fargo-Monticello MN 345 kV Cap-X Transmission Line
Siting Application

Case No. PU-07-759

Tree and Shrub Mitigation Specifications

Inventory

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (e.g., *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), must be inventoried before cutting. The inventory must record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, must be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1 inch diameter at breast height (dbh) or greater must be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way must be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs must be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil must be preserved and replaced after construction. Shrubs must be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared must be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by a sampling method that will properly represent the woody vegetation population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (Commission) and approved prior to the start of construction must define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots must be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

Clearing for Construction

7. Trees and shrubs must be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The maximum width of clear cuts through windbreaks, shelterbelts and all other wooded areas is 50 feet, unless otherwise approved by the Commission.
9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced must be noted on the inventory.

Replacement

10. Prior to tree and shrub replacement, documentation identifying the number and variety of trees and shrubs removed, as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings, must be filed with the Commission for approval.
11. Two 2-year-old saplings must be planted for every one tree removed. Two shrubs (stem cuttings) must be planted for every one shrub removed.
12. Except in the case of invasive or noxious species, trees and shrubs must be replaced by the same species or similar species, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service. Invasive or noxious species must be replaced by similar non-invasive or non-noxious species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.
13. Landowners must be given the option of having replacement trees and shrubs planted on the landowner's property, either on or off the right-of-way. The landowner must also be given the opportunity to waive those options in writing in order to have replacement trees and shrubs planted off the landowner's property.
14. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings must be filed with the Commission.
15. Tree and shrub replacements must be inspected annually, in September, for three years. The first annual inspection must be at least one year from the anniversary date of the original plantings. A report of each annual inspection must be submitted to the Commission by October 1 of each year, documenting the condition of plantings and any woodlands work completed as of September of each year. If after the third annual report the survival rate is less than 75%, the Commission may order additional planting(s).

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

Route Permit Number 152

This is to certify that the Commission has designated a transmission facility corridor for Northern States Power Company for construction of the Fargo Cap-X Transmission Project consisting of approximately 33 miles of double circuit 345 kV Electric Transmission Line and associated facilities extending from a point along the North Dakota / Minnesota border located in Pleasant Township to a new Bison Substation to be constructed in Harmony Township, Cass County, North Dakota.


This permit is issued in accordance with the Order of this Commission dated September 12, 2012 in Case No. PU-07-759 and is subject to the conditions and limitations noted in that Order.

Bismarck, North Dakota, September 12, 2012.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

Corridor Certificate Number 139

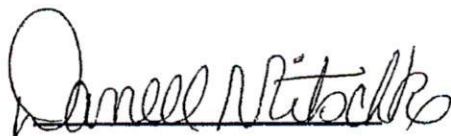
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This certificate is issued in accordance with the Order of this Commission dated September 12, 2012 in Case No. PU-07-759 and is subject to the conditions and limitations noted in that Order.

Bismarck, North Dakota, September 12, 2012.

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Secretary



Commissioner

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

CIVIL NO. 09-2012-CV-03147

City of Oxbow, Lonni Hayden, Warren)
 Hayden, Kent Buhr, Danise Buhr, Jon)
 Hager, Marcy Hager, Matt Quibell, Craig)
 Jungberg, Colette Jungberg, Todd Miller,)
 Nancy Miller, Vernon Skarie, June Skarie,)
 Callie Schlieman, Brian Nettestad, Jayme)
 Nettestad, Gregg Christensen, Cindy)
 Christensen, Teri Lingen, Curt Lingen,)
 Donna Peterson, Stanley Todd Miller,)
 Jacqueline Miller, Nicole Bice, Dave Zens,)
 Brenda Zens, James Haugrud, Bree Reinke,)
 Paul Reinke, Kathleen Lingen, Chris)
 Lange, Kay Mahar, Paige Plecity, Michael)
 Sorby, Royce Grandlund, Darren Fitch,)
 Matt Peterson, Jim Huesman, Stacey)
 Biewer, Marcus Larson, Colleen Isralson,)
 Tanya Harmon, E. John Carlson, David)
 Harmon, Linda Covell, Don Covell, Daniel)
 Zink, Arden Breimeier, Kristi Houska,)
 Richard Houska, Ray Holzhey, Maria)
 Baker, Ted Johnson, Pat Baker, Karla)
 Slusher, Neal Roesler, Patricia Redlin,)
 Gary Redlin, Jody Slusher, Patrick Reinke,)
 James A. Schlieman, Mary Jane Nipstad,)
 Doug Lingen, Brenda Carlson, Michael)
 Bice, Roger Kotchian, Ryan Binek, Elroy)
 Bakke, Ina Bakke, Raymond Grimen,)
 Debra L. Larson, Noreen Granlund, Curt)
 Bjertness, Gary Cossette)

Appellants,)

vs.)

North Dakota Public Service Commission,)

Appellee.)

AFFIDAVIT OF SERVICE

