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October 29, 2012

Lisa M. Agrimonti  
(612) 977-8656  
lagrimonti@briggs.com

**VIA FEDERAL EXPRESS**

Clerk of Court  
Cass County District Court  
211 South 9th Street  
P.O. Box 2806  
Fargo, ND 58108-2806

**Re: City of Oxbow, et al. vs. North Dakota Public Service Commission  
Civil No. 09-2012-CV-03147**

Dear Clerk of Court:

Enclosed for filing in the above-reference matter on behalf of Northern States Power Company, a Minnesota corporation ("NSP"), are the following documents:

1. Notice of Appearance;
2. Response of Northern States Power Company to Appellants' Notice of Appeal and Specifications of Error;
3. Notice of Motion and Motion to Intervene;
4. Brief in Support of Northern States Power Company's Motion to Intervene;
5. Notice of Motion and Motion to Dismiss;
6. Brief in Support of Northern States Power Company's Motion to Dismiss;
7. Affidavit of Lisa M. Agrimonti October 29, 2012;
8. Affidavit of Darrin F. Lahr October 26, 2012;
9. Affidavit of Gerald V. Chezick October 29, 2012;
10. Brief of Northern States Power Company in Opposition to Appellants' Motion for Stay of Public Service Commission Order; and
11. Affidavit of Service.

**128 PU-07-759** Filed: 10/29/2012 Pages: 74  
**APPEAL - NSP's Notice of Apear., Resp. to Notice of Appeal, Motions to Intervene and to Dismiss, Brief in Opp. to Stay**  
Public Service Commission  
Mitch Armstrong

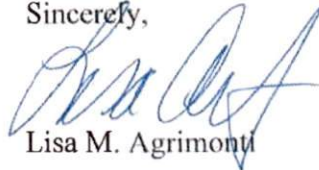
Clerk of Court  
October 29, 2012  
Page 2

I note that Appellants late this afternoon distributed a proposed stipulation to amend the caption to include NSP as an appellee. If the Court orders the amendment, NSP anticipates withdrawing the Motion to Intervene.

NSP further requests that the hearing on Appellants' Motion for Stay of Public Service Commission Order be set on the Court's first available date.

By copy, opposing counsel are served with same. Please call me with any questions.

Sincerely,



Lisa M. Agrimonti

LMA/dba  
Enclosures

cc: Mitchell D. Armstrong  
Jennifer A. Braun  
Ronald Hettich

STATE OF NORTH DAKOTA  
COUNTY OF CASS

IN THE DISTRICT COURT  
EAST CENTRAL JUDICIAL DISTRICT  
CIVIL NO. 09-2012-CV-03147

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IN THE MATTER OF:

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, Loretta Carson, Dennis Biewer, John Frusciante, Shyla Frusciante, Don Cossette, Marjorie Cossette, Angela R. Cossette, Jana Reinke, Paul Reinke, Kathleen Lingen, Chris Lange, Kay Mahar, Paige Plecity, Michael Sorby, Royce Granlund, 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,

v.

North Dakota Public Service Commission,

Appellee.

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**NOTICE OF APPEARANCE**

PLEASE TAKE NOTICE that the undersigned attorneys enter their appearance as counsel in the above-entitled action on behalf of Northern States Power Company, a Minnesota corporation ("NSP").

The undersigned attorneys respectfully request that all future correspondence and pleadings be forwarded to the undersigned.

Dated this 29<sup>th</sup> day of October 2012.

**BRIGGS AND MORGAN, P.A.**

By:   
\_\_\_\_\_  
Lisa M. Agrimonti (# 06547)  
Zeviel Simpser (# 06794)  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402-2157  
(612) 977-8400

**ATTORNEYS FOR NORTHERN STATES  
POWER COMPANY, A MINNESOTA  
CORPORATION**

STATE OF NORTH DAKOTA

COUNTY OF CASS

IN THE DISTRICT COURT

EAST CENTRAL JUDICIAL DISTRICT

CIVIL NO. 09-2012-CV-03147

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IN THE MATTER OF:

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, Loretta Carson, Dennis Biewer, John Frusciante, Shyla Frusciante, Don Cossette, Marjorie Cossette, Angela R. Cossette, Jana Reinke, Paul Reinke, Kathleen Lingen, Chris Lange, Kay Mahar, Paige Plecity, Michael Sorby, Royce Granlund, 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,

v.

North Dakota Public Service Commission,

Appellee.

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**RESPONSE OF NORTHERN STATES  
POWER COMPANY TO APPELLANTS'  
NOTICE OF APPEAL AND  
SPECIFICATIONS OF ERROR**

Pursuant to N.D. R. Civ. P. 24(c)(1), Northern States Power Company, Minnesota corporation (“NSP”), the only named party in the Public Service Commission (“PSC”) matter on appeal, submits this pleading that sets out a summary of the defenses for which intervention is sought. NSP hereby denies all of the Specifications of Error alleged by Appellants. The PSC’s Findings of Fact, Conclusions of Law and Order dated September 12, 2012 (“Order”) should be affirmed in all respects and the Appeal should be dismissed on the following grounds:

- (1) The Order is in accordance with the law;
- (2) The Order is not in violation of the constitutional rights of the Appellants, nor have the Appellants alleged that their constitutional rights were violated;
- (3) The provisions of the Administrative Agencies Practice Act were complied with in the proceedings before the PSC;
- (4) The rules and procedures of the PSC afforded Appellants a fair hearing;
- (5) The findings of fact made by the PSC are supported by a preponderance of the evidence;
- (6) The conclusions of law and order of the PSC are supported by its findings of fact;
- (7) The findings of fact made by the PSC sufficiently address the evidence presented to the PSC; and
- (8) There was no contrary recommendations by a hearing officer or an administrative law judge.

WHEREFORE, NSP prays for the following relief:

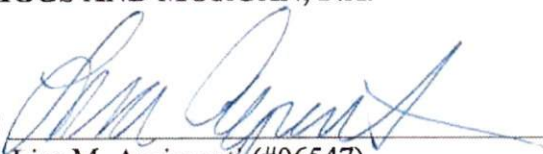
1. An opportunity to fully brief its opposition to the above-captioned appeal and a hearing;

1. An opportunity to fully brief its opposition to the above-captioned appeal and a hearing;
2. Affirmance of the PSC's Order;
3. Dismissal of the appeal; and
4. Such further relief the Court deems just, proper, and equitable.

Dated: October 29, 2012

**BRIGGS AND MORGAN, P.A.**

By:



Lisa M. Agrimonti (#06547)  
Zeviel T. Simpser (#06794)

2200 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402-2157  
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Email: [lagrimonti@briggs.com](mailto:lagrimonti@briggs.com)

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STATE OF NORTH DAKOTA

COUNTY OF CASS

IN THE DISTRICT COURT

EAST CENTRAL JUDICIAL DISTRICT

CIVIL NO. 09-2012-CV-03147

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IN THE MATTER OF:

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, Loretta Carson, Dennis Biewer, John Frusciante, Shyla Frusciante, Don Cossette, Marjorie Cossette, Angela R. Cossette, Jana Reinke, Paul Reinke, Kathleen Lingen, Chris Lange, Kay Mahar, Paige Plecity, Michael Sorby, Royce Granlund, 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,

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North Dakota Public Service Commission,

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**NOTICE OF MOTION AND  
MOTION TO INTERVENE**

**TO: JENNIFER A. BRAUN & RONALD K. HETTICH, AALAND LAW OFFICE, LTD., P.O. BOX 1817, 415 11TH STREET SOUTH, FARGO, NORTH DAKOTA 58107, ATTORNEYS FOR APPELLANTS.**

**PLEASE TAKE NOTICE** that the enclosed motion will be heard as soon as counsel can be heard at the Cass County Courthouse, 211 9th Street South Fargo, North Dakota, 58103. Northern States Power Company, a Minnesota corporation ("NSP"), will schedule a hearing and provide notice of the hearing.

COMES NOW, NSP, by and through its attorneys, Lisa M. Agrimonti and Zeviel T. Simpser, and pursuant to North Dakota Rules of Civil Procedure 24(a)(1), NSP, the only named party in the Public Service Commission matter on appeal, moves the Court to allow NSP to intervene as an Appellee in the above-captioned appeal.

This motion is based on the pleadings, the attached Affidavits of Lisa M. Agrimonti, Darrin F. Lahr, and Gerald V. Chezick, the enclosed Affidavit of Service, and all of the records, files, and proceedings herein.

Dated: October 29, 2012

**BRIGGS AND MORGAN, P.A.**

By: 

Lisa M. Agrimonti (#06547)

Zeviel T. Simpser (#06794)

2200 IDS Center

80 South Eighth Street

Minneapolis, Minnesota 55402-2157

Tel: (612) 977-8400

Fax: (612) 977-8650

Email: [lagrimonti@briggs.com](mailto:lagrimonti@briggs.com)

STATE OF NORTH DAKOTA  
COUNTY OF CASS

IN THE DISTRICT COURT  
EAST CENTRAL JUDICIAL DISTRICT  
CIVIL NO. 09-2012-CV-03147

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IN THE MATTER OF:

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, Loretta Carson, Dennis Biewer, John Frusciante, Shyla Frusciante, Don Cossette, Marjorie Cossette, Angela R. Cossette, Jana Reinke, Paul Reinke, Kathleen Lingen, Chris Lange, Kay Mahar, Paige Plecity, Michael Sorby, Royce Granlund, 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,

v.

North Dakota Public Service Commission,

Appellee.

---

**BRIEF IN SUPPORT OF NORTHERN  
STATES POWER COMPANY'S MOTION  
TO INTERVENE**

## I. INTRODUCTION

Northern States Power Company, a Minnesota corporation (“NSP”), respectfully requests that this Court grant NSP intervention based on NSP’s statutory right under the Administrative Agencies Practice Act (“Act”) to be a party to this appeal of the North Dakota Public Service Commission’s (“PSC”) Findings of Fact, Conclusions of Law, and Order in Docket No. PU-07-759 dated September 12, 2012 (“Order”).<sup>1</sup> NSP is the only official party to the administrative proceeding and seeks to defend, in all respects, the Order granting NSP a Certificate of Corridor Compatibility and a Route Permit to construct the North Dakota portion of the Fargo-St. Cloud 345 kV transmission line project (“Fargo Project”).

## II. BACKGROUND

NSP is a North Dakota public utility and serves approximately 86,000 retail electric customers in the state. (Order at p. 3, Findings of Fact ¶ 1.) NSP also owns approximately 12 substations and 250 miles of transmission lines in North Dakota. (*Id.*)

On December 30, 2010, NSP, on behalf of itself and the other anticipated owners, submitted an application to the PSC for a Certificate of Corridor Compatibility (“Corridor Application”) to construct the North Dakota portion Fargo Project. (Order at p. 1.) The Fargo Project was proposed by the CapX2020 Initiative comprised of 11 utilities that coordinated efforts to study, develop, permit, and construct transmission infrastructure to serve customer demand in the next decade. (Order at p. 3, Findings of Fact ¶ 3.) The Fargo Project is designed to meet customer demands in the Red River Valley. (*Id.*, ¶ 2.) The Fargo Project consists of a new 345 kV transmission line connecting a new Bison Substation to be located in Harmony Township to a new Quarry Substation in St. Cloud and an existing substation in Monticello,

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<sup>1</sup> Appellants did not include the Order in their filing. A copy of the Order is attached as Exhibit 1 to the Affidavit of Lisa M. Agrimonti dated October 29, 2012.

Township to a new Quarry Substation in St. Cloud and an existing substation in Monticello, Minnesota. (*Id.*; Affidavit of Gerald V. Chezick, October 29, 2012, ¶ 2. Construction is anticipated to commence in the first quarter of 2013 to meet a 2015 in-service date. (*Id.*)

NSP amended its Corridor Application in April 2011, and supplemented the application in May 2011. (Order at p. 2.) On October 3, 2011, NSP submitted a joint Application to the North Dakota Public Service Commission for a Waiver of Procedures and Timelines and Consolidated Certificate of Corridor Compatibility and Route Permit for the Fargo to St. Cloud 345 kV Transmission Line Project (“Joint Application”). (*Id.*)

On January 30, 2012, the PSC held a hearing on the Joint Application in Fargo, North Dakota. (Order at p. 2.) The PSC issued its Order on September 12, 2012. The Order approved a route for the transmission line and a corridor 300-feet wide. (*Id.* at p. 3 Findings of Fact 7 & 9, Order Point 2; Affidavit of Darrin F. Lahr dated October 26, 2012, (“Lahr Aff.”) ¶ 5.)

On October 12, 2012, Appellants filed a Notice of Appeal and Specifications of Error (“Notice”) seeking reversal of the PSC’s Order. (*City of Oxbow v. N.D. Pub. Serv. Comm’n*, File No. 09-2012-CV-03147, Doc. ID #1.) Appellants served NSP, but failed to name NSP as a party to the appeal. (*Id.* Doc. ID #1 & #5.)

### III. ARGUMENT

#### A. Legal Standards

Intervention is liberally granted in North Dakota. *Eichhorn v. Waldo Tp. Bd. of Sup’rs*, 2006 ND 214, ¶ 13, 723 N.W.2d 112, 116. NSP seeks to intervene as a party as a matter of right pursuant to N.D. R. Civ. P. 24(a)(1). This rule provides, in relevant part:

- (a) **Intervention of Right.** On timely motion, the court must permit anyone to intervene who:

is given an unconditional right to intervene by a statute . . . .

Such motion must be served in accordance with N.D. R. Civ. P. 5. The motion also “must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.” *Id.*

**B. Intervention Must be Granted to NSP**

NSP has a statutory right to participate in the appeal of the Order and with this motion has satisfied all requirements. Its intervention request must, therefore, be granted.

PSC siting decisions are reviewable under the Administrative Agencies Practice Act, N.D.C.C. §§ 49-22-19 (recognizing right to appeal to district court from adverse PSC ruling) and 28-32-42 (“Any party to any proceeding heard by an administrative agency . . . may appeal from the order within thirty days after notice of the order has been given . . .”). Section 28-32-42.5 mandates the procedure for this appeal:

The notice of appeal must specify the parties taking the appeal as appellants. The agency and all other parties of record who are not designated as appellants must be named as appellees. . . . The agency and all parties of record have the right to participate in the appeal.

(Emphasis added.)

NSP, therefore, has a statutory right to defend against this appeal of the PSC decision regarding NSP’s application to build a transmission line that can meet the demands of the Red River Valley load forecasts. (*See* Order at p. 3, Findings of Fact ¶ 2.)

As the Fargo Project proponent, NSP has a direct interest in the Order which authorizes NSP to construct the North Dakota portions of the Fargo Project and seeks to intervene to defend the well-reasoned decision of the PSC. NSP’s Response to the Notice of Appeal and Specifications of Error is being filed and served contemporaneously with this motion. NSP is also filing and serving a Motion to Dismiss and a Brief in Opposition to Appellants’ Motion for Stay of PSC Order.

NSP has complied with all of the requirements of Rule 24(c)(1) and Rule 5. The motion is being brought two weeks after receipt of the Notice, and therefore is timely. *See, e.g., City of Grand Forks v. Mik-Lan Recreation Ass'n, Inc.*, 421 N.W.2d 806, 809 (N.D. 1988) (allowing intervention one year after notification of the claim); *Quick v. Fischer*, 417 N.W.2d 843, 845 (N.D. 1988) (allowing intervention post-judgment because intervention was sought within the appeal period for the judgment). NSP has served its motion papers on Appellants in accordance with Rule 5. NSP has stated the reasons for intervention. Therefore, NSP must be granted party status in this appeal.

#### IV. CONCLUSION

NSP has a statutory right to intervene in this action and has complied with the requirements delineated in the North Dakota Rules of Civil Procedure for requesting intervention. NSP respectfully requests that the Court grant NSP's motion to intervene in this appeal.

Dated: October 29, 2012

**BRIGGS AND MORGAN, P.A.**

By: 

Lisa M. Agrimonti (#06547)

Zeviel Simpser (#06794)

2200 IDS Center

80 South Eighth Street

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STATE OF NORTH DAKOTA  
COUNTY OF CASS

IN THE DISTRICT COURT  
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IN THE MATTER OF:

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Appellants,

v.

North Dakota Public Service Commission,

Appellee.

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**NOTICE OF MOTION AND  
MOTION TO DISMISS**

**TO: JENNIFER A. BRAUN, RONALD K. HETTICH, AALAND LAW OFFICE, LTD.,  
P.O. BOX 1817, 415 11TH STREET SOUTH, FARGO, NORTH DAKOTA 58107,  
ATTORNEYS FOR APPELLANTS.**

**PLEASE TAKE NOTICE** that the enclosed motion will be heard as soon as counsel can be heard at the Cass County Courthouse, 211 9th Street South Fargo, North Dakota, 58103. Northern States Power Company, a Minnesota corporation ("NSP"), will schedule a hearing and provide notice of the hearing.

COMES NOW, NSP, by and through its attorneys, Lisa M. Agrimonti and Zeviel T. Simpser, moves the Court to dismiss the above-captioned appeal because Appellants lack standing to appeal.

This motion is based on the pleadings, the attached Affidavits of Lisa M. Agrimonti, Darrin F. Lahr, and Gerald V. Chezick, the attached Affidavit of Service, and all of the records, files, and proceedings herein.

Dated: October 29, 2012

**BRIGGS AND MORGAN, P.A.**

By: 

Lisa M. Agrimonti (#06547)

Zeviel T. Simpser (#06794)

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STATE OF NORTH DAKOTA

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Appellants,

v.

North Dakota Public Service Commission,

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**BRIEF IN SUPPORT OF NORTHERN  
STATES POWER COMPANY'S MOTION  
TO DISMISS**

## **INTRODUCTION**

This Appeal has been brought by 82 landowners and the City of Oxbow challenging the route and corridor designation by the North Dakota Public Service Commission, (“PSC”) for the Fargo-St. Cloud 345 kV Project (“Fargo Project”). Northern States Power Company, a Minnesota corporation (“NSP”), respectfully requests that this Court dismiss the appeal because the Appellants were not formal parties to the proceeding and therefore lack standing.

In the alternative, all Appellants with the exception of Paul Reinke should be dismissed from the case. The 82 other Appellants should be dismissed because even if formal intervention is not required to confer standing, they still had to participate in the hearing and suffer injury. Only four Appellants attended the hearing and Reinke is the only one of the four who owns property within the 150-foot approved route or the 300-foot approved corridor. Therefore, Reinke is the only Appellant with an even colorable argument that he is an aggrieved party with standing to appeal.

## **BACKGROUND**

On December 30, 2010, NSP, on behalf of itself and the other anticipated co-owners, submitted an application to the PSC for a Certificate of Corridor Compatibility (“Corridor Application”) to construct the North Dakota portion of the Fargo Project. (Findings of Fact, Conclusions of Law and Order dated September 12, 2012 (“Order”), attached to the Affidavit of Lisa M. Agrimonti dated October 29, 2012 (“Agrimonti Aff.”), Order at p. 1.) The Fargo Project was proposed by the CapX2020 Initiative comprised of 11 utilities that coordinated efforts to study, develop, permit, and construct transmission infrastructure to serve customer demand in the next decade. (Order at p. 3, Findings of Fact ¶ 3.) The Fargo Project is designed to meet customer electrical demands in the Red River Valley. (*Id.*, ¶ 2.) The Fargo Project consists of a

new 345 kV transmission line connecting a new Bison Substation to be located in Harmony Township, North Dakota to a new Quarry Substation in St. Cloud, Minnesota. (*Id.*) Construction is anticipated to commence in the first quarter of 2013. (*Id.*)

NSP amended its Corridor Application in April 2011, and supplemented the application in May 2011. (Order at p. 2.) On October 3, 2011, NSP submitted a joint Application to the North Dakota Public Service Commission for a Waiver of Procedures and Timelines and Consolidated Certificate of Corridor Compatibility and Route Permit for the Fargo to St. Cloud 345 kV Transmission Line Project (“Joint Application”). (Order at p. 2.) No person sought to intervene. (*See id.*)

On January 30, 2012, the PSC held a hearing on the Joint Application in Fargo, North Dakota. (*Id.*) NSP, the only party to the proceeding, and the PSC appeared at the hearing. (*Id.* at p. 1.) There were no other appearances. (*Id.*) The PSC maintained a list of attendees. (Hearing Attendance Sheet dated January 30, 2012, attached to Agrimonti Aff., Ex. 2.) Of the 83 Appellants named in this action, only four signed the attendance sheet at the hearing: Paul Reinke, Jim Huesman, Kristi Houska, and Michael Bice (collectively “Attendees”).<sup>1</sup> (*Id.*) The addresses provided by the Attendees at hearing are:

- Paul Reinke, 17538 50th Street Southeast, Hickson, North Dakota
- Jim Huesman, 843 Main Avenue, Hickson, North Dakota
- Kristi Houska, 111 Plum Tree Road, Hickson, North Dakota
- Michael Bice, 305 7th Street, Hickson, North Dakota

On September 12, 2012, the PSC issued its Order approving a route (“Approved Route”) and a 300-foot wide corridor centered on the Approved Route (“Approved Corridor”).

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<sup>1</sup> The Attendees also spoke at the hearing. (Affidavit of Darrin F. Lahr dated October 26, 2012 (“Lahr Aff.”), ¶ 4.)

Of the four Attendees, only one, Reinke, owns property within the Approved Route or Approved Corridor. The other three Attendees live more than a half mile from the Approved Route. (Order at p. 7, Findings of Fact ¶ 36; Lahr Aff., Ex. 1, Map of Approved Route and Approved Corridor, and Ex. 2, Map of Approved Route, Approved Corridor, Attendees, and selected Appellants.) Of the Appellants, only Reinke, Marjorie Cossette, and Angela Cossette own property within the Approved Route or Approved Corridor. (Lahr Aff., ¶ 7.) Appellants Marjorie Cossette and Angela Cossette (“Cossettes”) have granted NSP options for a 150-foot wide easement for the facilities. (Lahr Aff., ¶ 8.)

On October 12, 2012, Appellants filed a Notice of Appeal and Specifications of Error (“Notice”) seeking reversal of the PSC’s Order.

#### **ARGUMENT—APPELLANTS LACK STANDING**

##### **A. Legal Standards.**

The right to appeal an agency decision and the procedures for such review are established in the Administrative Agencies Practice Act (“Act”), Section 28-32-42, N.D.C.C. The Act provides, in relevant part, that “[a]ny party to any proceeding heard by an administrative agency ... may appeal from the order within thirty days after notice of the order has been given as required by section 28-32-39.” N.D.C.C. § 28-32-42.1. A “party” is defined under the Act as “each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.” N.D.C.C. § 28-32-01.8.

An appellant of an administrative decision must also be aggrieved by the decision. *Shark v. U.S. West Commc’ns, Inc.* 545 N.W.2d 194, 197 (N.D. 1996). To be aggrieved, the person must show a “personal, individual interest in the decision.” *Dakota Res. Council v. Stark Cnty. Bd. of Cnty. Comm’rs*, 2012 ND 114, ¶8, 817 N.W.2d 373, 376 (quoting *Huber v. Miller*, 101 N.W.2d 136, 140 (N.D. 1960)); *King v. Stark Cnty.*, 72 N.D. 717, 719, 10 N.W.2d 877, 878

(1943) (“The right invaded must be immediate, not merely some possible, remote consequence.”) (Citation omitted.) The appellant must demonstrate a “legal interest that may be enlarged or diminished by the decision to be appealed from. In other words, such party must be injuriously affected by the decision.” *Dakota Res. Council*, 2012 ND 114, ¶ 8, 817 N.W.2d at 376 (quoting *Huber v. Miller*, 101 N.W.2d 136, 140 (N.D. 1960)). For example, *Washburn Public School District No. 4 v. State Board of Public School Education*, concluded that no injury occurred where the party attempting to appeal neither gained nor lost land based on the agency’s decision. 338 N.W.2d 664, 666 (N.D. 1983).

Within the context of public utilities, a party has standing “when his rights are injuriously affected by the unauthorized or irregular acts of the [PSC] commissioners.” *Shark*, 545 N.W.2d at 197–98 (internal quotation marks omitted). More specifically, a party is aggrieved where (1) they “have suffered some threatened or actual injury resulting from the putatively illegal action” and (2) “the asserted harm . . . [is not] a generalized grievance shared by all or a large class of citizens,” but instead affects the party’s own rights and interests. *Id.* at 198.

**B. Appeal Should Be Dismissed In Its Entirety Because No Appellant Intervened In The PSC Administrative Proceeding.**

The Act requires that an Appellant be “admitted as a party” on the administrative proceeding or “properly seeking and entitled as of right to be admitted as a party.” N.D.C.C. § 28-32-01.8. Based on the plain reading of the statute, the appeal must be dismissed because no Appellant was admitted as a formal party to the PSC proceeding and no Appellant sought to intervene. Therefore, the Appellants lack standing to appeal.

C. **Even If Official Party Status Is Not Required, 82 Appellants Must Be Dismissed.**

Even if the “party” threshold were deemed to include non-intervenors, at a minimum, to be a “party” to an administrative proceeding, one must participate in the hearing. *Pederson v. N.D. Workers Comp. Bureau*, 534 N.W.2d 809, 810 (N.D. 1995). Moreover, every Appellant must be aggrieved to seek review of an administrative agency decision.

Of the 83 Appellants, four attended the hearing; 79 did not.<sup>2</sup> The 79 Appellants who did not participate in the hearing cannot meet the party requirement for maintaining an appeal. *See, e.g., Shark*, 545 N.W.2d at 199 (noting that one of the appellants “did not participate [in the PSC proceeding] and lacks standing to obtain judicial review of the PSC’s order”); *O’Connor v. N. States Power Co.*, 308 N.W.2d 365, 371 (N.D. 1981) (concluding that appellants seeking a review of a PSC order regarding electricity rates “were not involved in any of the proceedings concerning this matter before the PSC. Because they were not participants they could take no appeal under the Administrative Agencies Practice Act.”) Therefore, the 79 Appellants must be dismissed.

Of the four Appellants who attended the hearing, only one can show a personal interest that may have been harmed.<sup>3</sup> Reinke owns property within the Approved Route and an easement across his property will be required to construct the Fargo Project.

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<sup>2</sup> In fact, the hearing sign-in sheet does not reflect that a single resident of the City of Oxbow attended the hearing. (Agrimonti Aff., Ex. 2.)

<sup>3</sup> Of the 79 Appellants who did not attend the PSC hearing, only two own property within the Approved Route or the Approved Corridor, the Cossettes. The Cossettes have granted NSP options for construction of the Fargo Project. The City of Oxbow is outside the Approved Route and Approved Corridor and the nearest property of any Appellant is more than a half mile away. Consequently, these 79 Appellants also fail to meet the standing requirement because they are not aggrieved—they have no personal interest that will be harmed by the PSC Order. *See Washburn*, 101 N.W.2d at 140.

The three remaining Appellants who attended the hearing, Huesman, Houska, and Bice, have not and cannot identify any individual legal rights or interests that will be diminished by the PSC decision and therefore are not aggrieved. They do not own property within the Approved Route or Approved Corridor, but instead are located more than a half mile away. (Lahr Aff., Exs. 1 & 2; Order at p. 7, Findings of Fact ¶ 36.) Indeed, Appellants' brief in support of their Motion for Stay recognizes that only those who own property where the line will cross might suffer injury as a result of the Order. (Brief at p. 2 (describing the only impacts pending appeal as those "on the property where the Transmission Line will sit").) Consequently, Huesman, Houska, and Bice must also be dismissed from this appeal. *See Dakota Res. Council*, 2012 ND 114, ¶ 8, 817 N.W.2d at 376.

Therefore, if the Court concludes that formal intervention is not required to maintain an administrative appeal, 82 Appellants must be dismissed, leaving only Reinke. He is the only Appellant who both participated in the PSC proceeding and who owns property within the Approved Corridor and is the only Appellant who could possibly have standing to appeal.

### **CONCLUSION**

This appeal must be dismissed because Appellants lack standing to challenge the Order. All Appellants should be dismissed because they did not intervene in the PSC proceeding. In the alternative, the appeal must be dismissed as against 82 Appellants, leaving only Reinke, because he is the only Appellant who could arguably be an aggrieved party. He is the only Appellant who both participated in the hearing and who owns property within the Approved Corridor.

Dated: October 29, 2012

**BRIGGS AND MORGAN, P.A.**

By:   
\_\_\_\_\_  
Lisa M. Agrimonti (# 06547)  
Zeviel Simpser (# 06794)

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80 South Eighth Street  
Minneapolis, Minnesota 55402-2157  
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5003315v5

STATE OF NORTH DAKOTA  
COUNTY OF CASS

IN THE DISTRICT COURT  
EAST CENTRAL JUDICIAL DISTRICT  
CIVIL NO. 09-2012-CV-03147

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IN THE MATTER OF:

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, Loretta Carson, Dennis Biewer, John Frusciante, Shyla Frusciante, Don Cossette, Marjorie Cossette, Angela R. Cossette, Jana Reinke, Paul Reinke, Kathleen Lingen, Chris Lange, Kay Mahar, Paige Plecity, Michael Sorby, Royce Granlund, 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,

v.

North Dakota Public Service Commission,

Appellee.

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**AFFIDAVIT OF  
LISA M. AGRIMONTI  
OCTOBER 29, 2012**

STATE OF MINNESOTA )  
 ) ss  
COUNTY OF HENNEPIN )

LISA M. AGRIMONTI, being first duly sworn on oath, deposes and states as follows:

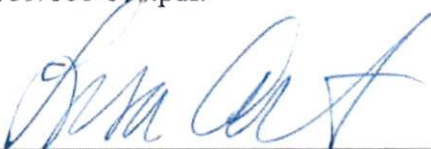
1. I am a shareholder in the law firm of Briggs and Morgan, P.A., and I am one of the attorneys for Northern States Power Company, a Minnesota corporation, in the North Dakota Public Service Commission ("PSC") docket at issue in the above-captioned appeal.

2. I make this Affidavit based on my personal knowledge of the facts stated herein.

3. Attached as Exhibit 1 is a true and correct copy of the PSC's Findings of Fact, Conclusions of Law and Order, dated September 12, 2012.

4. Attached as Exhibit 2 is a true and correct copy of the Hearing Attendance Sheet dated January 30, 2012 retrieved from the PSC's website at <http://www.psc.nd.gov/database/documents/07-0759/101-010.pdf>.

Further affiant sayeth not.

  
\_\_\_\_\_  
LISA M. AGRIMONTI

Subscribed and sworn to before me  
this 29th day of October 2012.

  
NOTARY PUBLIC

5007158v3



**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 Simpson, 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.

## Exhibit 1 to Affidavit of Lisa M. Agrimonti

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

## Exhibit 1 to Affidavit of Lisa M. Agrimonti

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 mills 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.

## Exhibit 1 to Affidavit of Lisa M. Agrimonti

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

## Exhibit 1 to Affidavit of Lisa M. Agrimonti

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.

## Exhibit 1 to Affidavit of Lisa M. Agrimonti

### 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

## Exhibit 1 to Affidavit of Lisa M. Agrimonti

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.

**Exhibit 1 to Affidavit of Lisa M. Agrimonti**

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

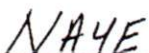
9. The Commission has jurisdiction pursuant to Chapter 49-22 of the North Dakota Century Code to ensure compliance with this order through construction and post-construction monitoring.

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**

**Exhibit 1 to Affidavit of Lisa M. Agrimonti**

**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

**Exhibit 1 to Affidavit of Lisa M. Agrimonti**

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

Exhibit 1 to Affidavit of Lisa M. Agrimonti



**Darrin F. Lahr**  
*Supervisor, Siting and Land Rights*

8701 Monticello Lane  
Maple Grove, Minnesota 55369  
Phone: (952) 493-1808  
Fax: (612) 573-4050  
Email: darrin.f.lahr@xcelenergy.com

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,

A handwritten signature in black ink that reads 'Darrin F. Lahr'.

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



Exhibit 1 to Affidavit of Lisa M. Agrimonti

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

## Exhibit 1 to Affidavit of Lisa M. Agrimonti

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

## Exhibit 1 to Affidavit of Lisa M. Agrimonti

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.

## Exhibit 1 to Affidavit of Lisa M. Agrimonti

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

## Exhibit 1 to Affidavit of Lisa M. Agrimonti

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-

Exhibit 1 to Affidavit of Lisa M. Agrimonti

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  
An Authorized Agent

Its \_\_\_\_\_

Exhibit 1 to Affidavit of Lisa M. Agrimonti

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.

## Exhibit 1 to Affidavit of Lisa M. Agrimonti

### 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**

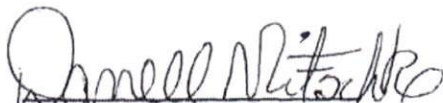
*This is to certify that the Commission has designated a transmission facility corridor for Northern States Power Company for construction of the Fargo Cap-X Transmission Project consisting of approximately 33 miles of double circuit 345 kV Electric Transmission Line and associated facilities extending 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**

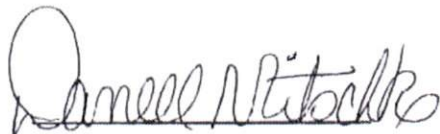
*This is to certify that the Commission has designated a transmission facility corridor for Northern States Power Company for construction of the Fargo Cap-X Transmission Project consisting of approximately 33 miles of double circuit 345 kV Electric Transmission Line and associated facilities extending 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 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.*

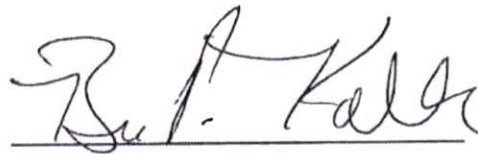
*Bismarck, North Dakota, September 12, 2012.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**



**Executive Secretary**



**Commissioner**

1/30/12

PU-07-757

Exhibit 2 to Affidavit of Lisa M. Agrimonti

Name	Address	Phone	Testify?
1) Carlita Dietz	19 Meridian Rd. Mapleton	701-362-5918	
2) Eric Hillman	314 5 <sup>th</sup> Ave Mapleton	793/1669	
3) Nancy Keeding	Contractors Leasing Fargo	311-0446	
4) Tony Kost	CONTRACTORS LEASING	FARGO 701 238 3210	
5) R. Scott Cury	Nor Pac LLC	Mapleton	
6) Steve Karacinski	Norpac	Mapleton 793-1222	
7) Joe Rindheim	mapleton	239-0080	
8) Shobhy Deltar	#4426-58th & Fargo 58124	532-0311	
9) Erik Johnson	Fargo City Attorney 505 Bldg Ste 206, Fgo,	701 280 1901	(No)
10) DAVE SEEDGUST	2302 GRN DR, Fgo	701-241-8632	
11) Mark Nisbet	"	Xcel Energy 701 241-8607	
12) Erik Kragstad	414 N. 40th St NW, Mpls	612-330-5701	
13) Dean Brintson	14000 Veit Place, Fargo, MN	763 928 2492	No
14) Carlee McLeod	PO Box 1756, Bismarck 58507	701-258-8861	NO
15) Kerth Bernat	PO Box 2806/Fargo 58108	701 241 572	No
16) Jason Lewis	Assistant Fargo City Attorney Fargo	280-1901	NO
17) Dean Kraft	16305 41 <sup>st</sup> SE Mapleton ND 58055	701 282 6061	Yes
18) Jennifer Kraft	16305 41 <sup>st</sup> Street SE mapleton, ND 58057	(701) 282-6061	No
19) Kirk Cossette	503 100 Ave S, Fargo, ND	(701) 238-7435	
20) LEO RICHARD	3700 17 <sup>th</sup> St S FARGO	701-238-9989	
21) Mark Richard	17107 50 <sup>th</sup> St. SE Horace	701-367-1702	
22) Gary Eggen	1222 Lake View Dr. Jessup Hills, ND	56537 218-710-0250	NO
23) John McKimney	K-B 23rd St S. FARGO, ND 58103	605-210-9677	
24) Randy Hajek	4308 165 Ave SE Davenport, ND 58021	701 238-6311	
25) J. J. Fuchs	9605 81 <sup>st</sup> S Horace ND 58047	701 261-4769	
26) Wally Jucks	9605 81st St S Horace 58047	701-277-1317	
27) Jack Dwyer	3330 Fichtner Dr. Ste 102 Fargo ND 58103	701-235-2090	
28) Steve Drabke	5066 173rd Ave SE Hickman ND 58047	701 371 3258	NO

Exhibit 2 to Affidavit of Lisa M. Agrimonti

	Name	Address	Phone	Testify?
29	Mike Bice	385 7th St. Hickson ND 58047	(701)-212-8878	?
30	Jim Huisman	843 Main Ave Hickson ND 58047	701-866-2314	
31	Todd Toppen	17070 Hwy 46 Horace ND 58047	701-371-7038	
32	Mark Askegaard	2519 Viking Circle Fargo, ND 58103	701-232-2552	
33	Kristi Hauka	111 Plum Tree Rd Hickson, ND	701-588-4155 y	
34	Paul Rinke	17538 50 <sup>th</sup> Street SE ND.	701-588-4125 y 361-0147 cell	
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STATE OF NORTH DAKOTA

COUNTY OF CASS

IN THE DISTRICT COURT

EAST CENTRAL JUDICIAL DISTRICT

CIVIL NO. 09-2012-CV-03147

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IN THE MATTER OF:

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, Loretta Carson, Dennis Biewer, John Frusciante, Shyla Frusciante, Don Cossette, Marjorie Cossette, Angela R. Cossette, Jana Reinke, Paul Reinke, Kathleen Lingen, Chris Lange, Kay Mahar, Paige Plecity, Michael Sorby, Royce Granlund, 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,

v.

North Dakota Public Service Commission,

Appellee.

---

**AFFIDAVIT OF  
DARRIN F. LAHR  
OCTOBER 26, 2012**

STATE OF MINNESOTA )  
 ) ss  
COUNTY OF HENNEPIN )

DARRIN F. LAHR, being first duly sworn on oath, deposes and states as follows:

1. I am employed as the Supervisor, Siting and Permitting by Xcel Energy Services Inc., the service company provider for Northern States Power Company, a Minnesota corporation (“NSP”). In my current position, I am responsible for the permitting of the Fargo to St. Cloud 345 kV Transmission Line Project (“Fargo Project”). I am responsible for managing the development of state and federal permit applications to construct the Fargo Project, the acquisition of land and easements, and the acquisition of other permits to allow construction. I am also the routing lead for the Fargo Project.

2. I make this Affidavit based on my personal knowledge of the facts stated herein.

3. I attended the Public Service Commission (“PSC”) hearing on January 30, 2012.

4. Appellants Paul Reinke, Jim Huesman, Kristi Houska, and Michael Bice attended and spoke at the PSC hearing on January 30, 2012.

5. On September 12, 2012, the PSC issued its Findings of Fact, Conclusions of Law and Order granting NSP a Certificate of Corridor Compatibility (“Approved Corridor”) and a Route Permit (“Approved Route”) for construction of the North Dakota portion of the Fargo Project (“Order”). The Approved Route is 150 feet wide and approximately 33 miles long and defined in the Order as Exhibit 2 in the hearing. The Approved Corridor is 300-foot wide centered on the centerline of the Approved Route. (Order, Finding 7 and Order point 2.)

6. Upon receiving the Notice of Appeal and Specifications of Error of Appellants, I directed our land rights acquisition contractor, Ulteig, to research the names and addresses of the

Appellants. At my direction and under my supervision, Ulteig looked up addresses using internet search tools including Google.

7. After receiving the addresses from Ulteig, I directed our routing consultant, Environmental Resources Management (“ERM”), to enter the addresses into a geographic information system and generate a map showing the Appellants’ addresses, the 300-foot Approved Corridor and the 150-foot Approved Route. At my direction and under my supervision, ERM prepared two maps attached to this affidavit: Exhibit 1 shows the Approved Route, Approved Corridor, and Appellants and Exhibit 2 shows the Approved Route, Approved Corridor, and call outs for the persons who attended the public hearing before the PSC based on the information provided on the official sign-in sheet for the hearing:

- Paul Reinke, 17538 50th Street Southeast, Hickson, North Dakota
- Jim Huesman, 843 Main Avenue, Hickson, North Dakota
- Kristi Houska, 111 Plum Tree Road, Hickson, North Dakota
- Michael Bice, 305 7th Street, Hickson, North Dakota

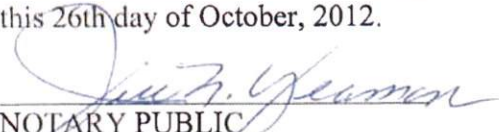
The sign-in sheet is attached to the Affidavit of Lisa M. Agrimonti dated October 29, 2012. Exhibit 2 also identifies the properties of the only Appellants who own land in the Approved Corridor and Approved Route: Paul Reinke, Marjorie Cossette and Angela Cossette. The map shows that the only Appellant who owns property within the Approved Corridor and who participated in the PSC hearing is Paul Reinke.

8. Appellants Marjorie Cossette and Angela Cossette have all executed options for 150-foot easements across their properties for construction of the Fargo Project. Paul Reinke has not executed an option to NSP for construction of the Fargo Project.

Further affiant sayeth not.

  
DARRIN F. LAHR

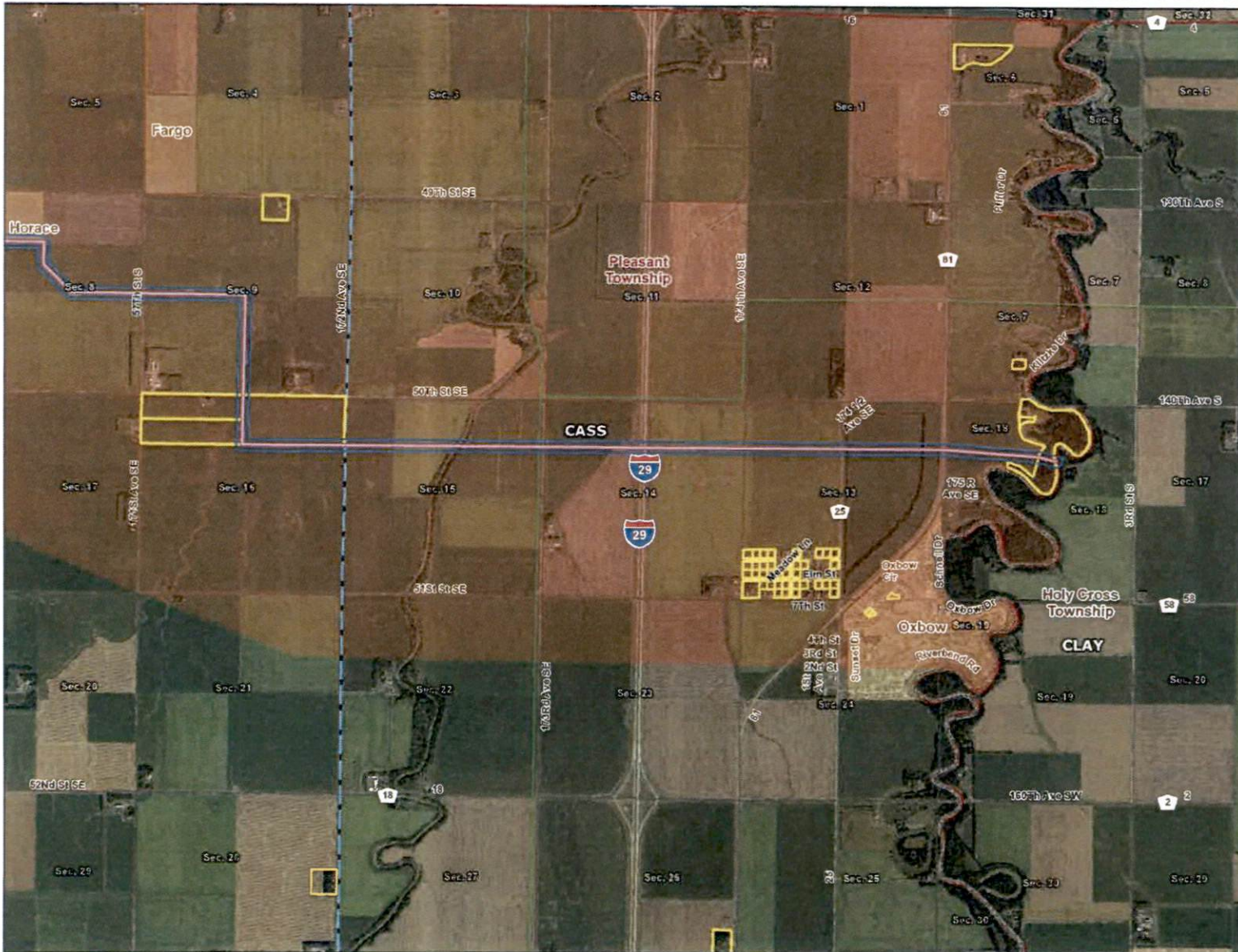
Subscribed and sworn to before me  
this 26th day of October, 2012.

  
NOTARY PUBLIC

5007160v2



EXHIBIT 1 TO AFFIDAVIT OF DARRIN F. LAHR



**Legend**

- Approved Route
- Approved 300 Ft Corridor
- Proposed Corridor
- Landowner Listed in Appeal
- Municipal Boundary
- Township Boundary
- Section Line
- Existing Substation

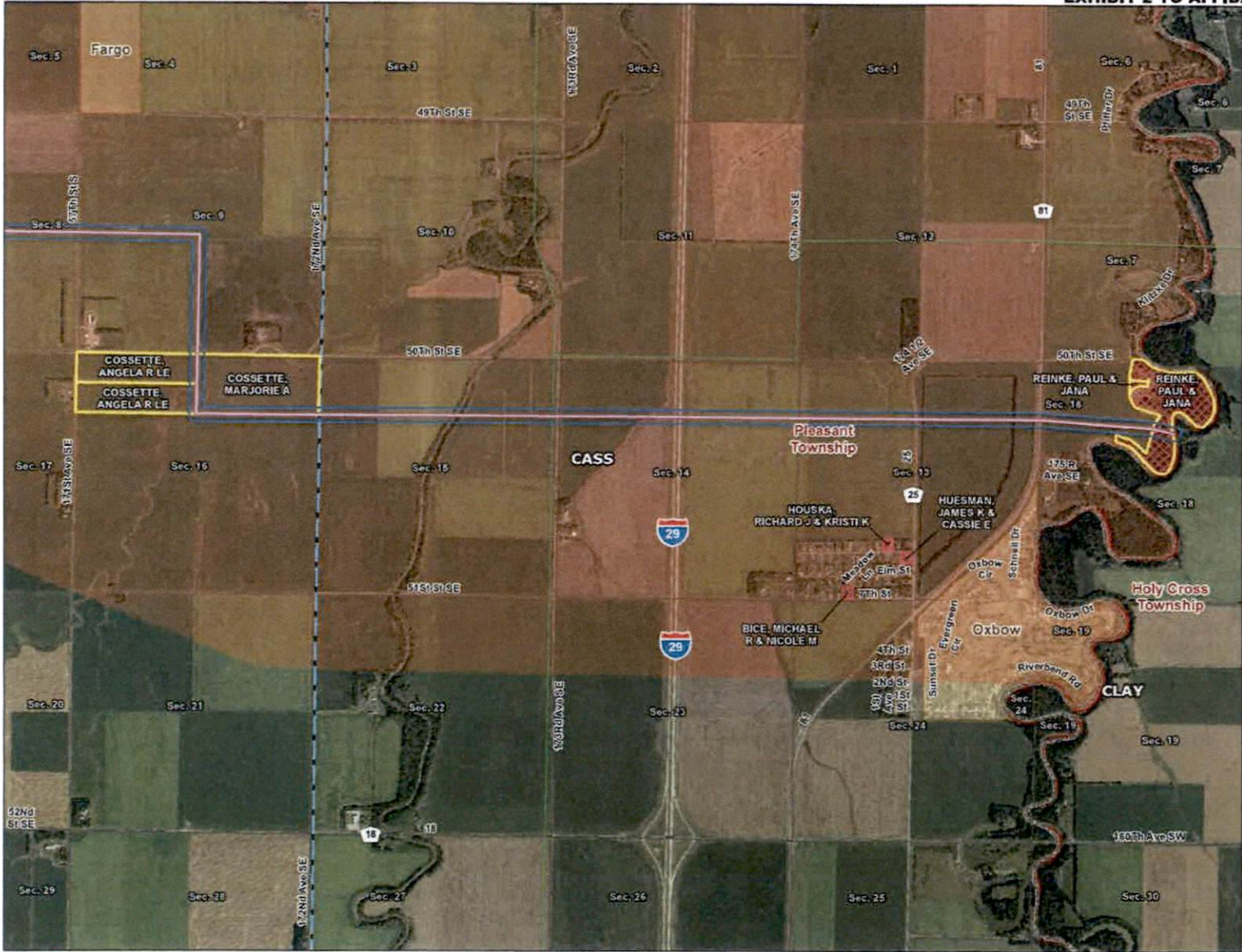
**Existing Transmission Line (kV)**

- 345
- 250
- 230
- 115
- 69

**ND Proposed Route  
Fargo to St. Cloud 345 kV  
Transmission Line Project**

DATE: 10/15/12	DRAWN BY: MLTEICHERT
File: \\0122295\Capt_McIntosh\Fargo_CapX2020\MapDocs\121318\ND_CapX2020_CapX2020_Approval_Map.mxd	

EXHIBIT 2 TO AFFIDAVIT OF DARRIN F. LAHR



**Legend**

- Approved Route
- Approved 300 Ft Corridor
- Proposed Corridor
- Landowner Listed in Appeal Along Approved Route
- Landowner Listed in Appeal Who Attended Hearing
- Municipal Boundary
- Township Boundary
- Section Line
- Existing Substation

**Existing Transmission Line (kV)**

- 345
- 250
- 230
- 115
- 69

1:25,000

0 500 1,000 2,000 3,000 4,000 Feet

**ND Proposed Route  
Fargo to St. Cloud 345 kV  
Transmission Line Project**

DATE: 10/24/12	DRAWN BY: MILTEICHERT
FileID: 22395 CapX Montevideo to Fargo QSW FargoM10/24/12101010_Opposite L_CapX_NC_Appel_Map_1.mxd	

STATE OF NORTH DAKOTA

COUNTY OF CASS

IN THE DISTRICT COURT

EAST CENTRAL JUDICIAL DISTRICT

CIVIL NO. 09-2012-CV-03147

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IN THE MATTER OF:

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 Nettetstad, Jayme Nettetstad, 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, Loretta Carson, Dennis Biewer, John Frusciante, Shyla Frusciante, Don Cossette, Marjorie Cossette, Angela R. Cossette, Jana Reinke, Paul Reinke, Kathleen Lingen, Chris Lange, Kay Mahar, Paige Plecity, Michael Sorby, Royce Granlund, 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,

v.

North Dakota Public Service Commission,

Appellee.

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**AFFIDAVIT OF  
GERALD V. CHEZIK  
OCTOBER 29, 2012**



and managing the schedule and costs of the Fargo Project since approximately mid-2009. Part of optimizing costs on a transmission project involves staging to take advantage of ideal ground conditions, availability of crews, and cost of materials. If a stay of the PSC's Findings of Fact, Conclusions of Law and Order dated September 12, 2012 were issued, NSP would be unable to undertake any construction in North Dakota. This constraint would preclude consideration of North Dakota construction options and could result in significant costs increases depending on the duration of the stay and the ability to proceed with work in Minnesota during the stay.

5. A stay would also adversely affect NSP's ability to maintain its local permits. Certain of these permits obtained for the Fargo Project, including the permit for Pleasant Township, are subject to conditions that require construction to commence within a specified time period (e.g., one year from issuance). NSP began obtaining local permits in the fall of 2011. NSP has obtained permits from every local government unit through which the line will run, including from Pleasant Township, in which many of the Appellants reside. None of the local government issued permits has been appealed. The options are set to expries at various times (depending on when they were executed), but the first option expires on December 21, 2012. NSP does not have the unilateral right to extend the options. If the stay the Appellants have requested were issued, NSP would lose the ability to commence construction in a local jurisdiction to preserve its rights under a local permit. NSP would have to seek an extension of the permit and if such extension were denied, the permit would expire.

6. NSP also would be unable to complete right-of-way acquisition for the Fargo Project. NSP has obtained options for easements or fee interests for 120 of 137 parcels and from 78 of 90 owners. NSP has also obtained an option to purchase the land for the Bison Substation. These options are for easements that authorize NSP to clearcut the easement area in order to construct the transmission line facilities. For the 17 remaining parcels, NSP will likely need to use the condemnation process to acquire the necessary land rights. NSP would not be able to commence condemnation proceedings to secure easements across those parcels for which it does not yet have an option or easement. A condemnation action could take a year or more to complete. While some construction during the pendency of condemnation was contemplated, a stay would lengthen the time of overlap, resulting in added construction inefficiency and cost to work around parcels included in the condemnation.

Further affiant sayeth not.

  
GERALD V. CHEZIK

Subscribed and sworn to before me  
this 29th day of October 2012.

  
NOTARY PUBLIC

5008004v4



STATE OF NORTH DAKOTA

COUNTY OF CASS

IN THE DISTRICT COURT

EAST CENTRAL JUDICIAL DISTRICT

CIVIL NO. 09-2012-CV-03147

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IN THE MATTER OF:

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 Nettetstad, Jayme Nettetstad, 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, Loretta Carson, Dennis Biewer, John Frusciante, Shyla Frusciante, Don Cossette, Marjorie Cossette, Angela R. Cossette, Jana Reinke, Paul Reinke, Kathleen Lingen, Chris Lange, Kay Mahar, Paige Plecity, Michael Sorby, Royce Granlund, 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,

v.

North Dakota Public Service Commission,

Appellee.

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**BRIEF OF NORTHERN STATES POWER  
COMPANY IN OPPOSITION TO  
APPELLANTS' MOTION FOR STAY OF  
PUBLIC SERVICE COMMISSION  
ORDER**

## INTRODUCTION

Northern States Power Company, a Minnesota corporation (“NSP”), received approval from the North Dakota Public Service Commission (“PSC”) on September 12, 2012 to construct the North Dakota portion of a 345 kV transmission line from Fargo to St. Cloud, Minnesota (“Fargo Project”). NSP has also obtained permits from local government units to construct the new transmission line in North Dakota and options for easements from 85 percent of the landowners on the approved route (78 of 90 landowners). The Fargo Project, scheduled for completion by the end of 2015, will provide needed electrical transmission support to the Red River Valley.

Appellants are the City of Oxbow and 82 individuals. Only three Appellants own property on the route approved by the PSC, two of whom have granted options to NSP. Appellants challenge the decision of the PSC and ask this Court to stay the PSC’s order in its entirety to prevent the removal of trees during the pendency of the appeal.

Appellants’ motion for stay should be denied because they have not met their burden of demonstrating that a stay is warranted under the four-factor analysis set forth in *Cass County Electric Cooperative v. Wold Properties, Inc.*, 253 N.W.2d 323, 327 (N.D. 1977). First, Appellants have not made any showing that they are likely to succeed on the merits of their appeal. Second, Appellants have not shown that any of them will suffer irreparable injury. At most, one Appellant has a potential injury, but that injury can be compensated with money damages and, thus, does not warrant a stay. The remaining Appellants have not even averred a potential injury at all. Third, Appellants have failed to show a lack of substantial harm to NSP if a stay were granted. Fourth, Appellants have failed to show that the public interest will not be harmed if a stay were issued.

Moreover, even if Appellants had carried their burden under *Cass County*, a stay of the entire PSC order is unwarranted. The only potential injury Appellants have alleged that would occur if construction proceeds is the removal of trees from Appellant Paul Reinke's<sup>1</sup> parcel on the North Dakota/Minnesota border. Consequently, if a stay were to issue, it should be limited to the Reinke parcel.

Finally, any stay must be conditioned on Appellants posting a supersedeas bond in an amount to protect NSP against damages resulting from the stay to be determined at a further hearing.

## **BACKGROUND**

### **I. NSP, CAPX2020, AND THE FARGO PROJECT.**

On December 30, 2010, NSP, on behalf of itself and the other anticipated co-owners ("CapX2020"),<sup>2</sup> submitted an application to the PSC for a Certificate of Corridor Compatibility ("Corridor Application") to construct the approximately 33-mile long North Dakota portion of the Fargo Project. (Findings of Fact, Conclusions of Law and Order dated September 12, 2012 ("Order"), attached to the Affidavit of Lisa M. Agrimonti dated October 29, 2012 ("Agrimonti Aff."), Order at p. 1, and p. 3, Findings of Fact No. 3.)) The Fargo Project is designed to meet customer demands in the Red River Valley. (Order at p. 3, Findings of Fact ¶ 2.) The Fargo Project consists of a new 345 kV transmission line connecting a new substation (the Bison Substation) to be located in Harmony Township, North Dakota to a new Quarry Substation in St. Cloud, Minnesota. (*Id.*; Affidavit of Gerald V. Chezik dated October 29, 2012 ("Chezik Aff."), ¶

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<sup>1</sup> Reinke is also the only Appellant with possible standing to appeal. (*See* NSP's Brief in Support of Motion to Dismiss.)

<sup>2</sup> CapX2020 is a joint initiative of eleven transmission-owning utilities that coordinated efforts to study, develop, permit, and construct transmission infrastructure, including the Fargo Project, to serve customer demand in the next decade. (Order at p. 3, Findings of Fact ¶ 3.)

3.) NSP's application to the PSC estimated the total cost of the Fargo Project and a 345 kV connection between Quarry and the Monticello Substation in Monticello, Minnesota to be between \$500 and \$750 million. (Chezik Aff., ¶ 3.)

Construction began along the portion of the line between Monticello and the new Quarry Substation. (*Id.*) That portion of the line was energized in December 2011. (*Id.*) The Fargo Project runs from the Quarry Substation to Alexandria, Minnesota, and from there to the Bison Substation. (*Id.*) Construction is underway on both of those segments. (*Id.*)

NSP amended its Corridor Application in April 2011 and supplemented the application in May 2011. On October 3, 2011, NSP submitted a joint Application to the North Dakota Public Service Commission for a Waiver of Procedures and Timelines and Consolidated Certificate of Corridor Compatibility and Route Permit for the Fargo to St. Cloud 345 kV Transmission Line Project ("Joint Application"). (Order at p. 2.)

On January 30, 2012, the PSC held a hearing on the Joint Application in Fargo, North Dakota. (Order at p. 2.)

On September 12, 2012, the PSC issued its Order approving a route ("Approved Route") and a 300-foot wide corridor centered on the Approved Route ("Approved Corridor"). The Order requires that NSP comply with all local zoning laws and obtain the necessary permits from local government units. (Order at p. 9, Order ¶ 5, Certification Relating to Order Provisions, ¶¶ 3-4.) NSP has obtained permits from every local government unit through which the line will run, including from Pleasant Township, in which many of the Appellants reside. (Chezik Aff., ¶ 5.) None of the local government issued permits has been appealed. (*Id.*)

NSP also has obtained options for easements from 78 of 90 affected landowners along the Approved Route, as well as an option to purchase the land for the Bison Substation. (*Id.*,

¶ 6.) The options are set to expire at various times (depending on when they were executed), but the first option expires on December 21, 2012. (*Id.*) NSP does not have the unilateral right to extend the options. (*Id.*)

## II. APPELLANTS, THEIR APPEAL, AND THEIR MOTION FOR A STAY.

Only three of the 83 Appellants—Reinke, Marjorie Cossette, and Angela Cossette—own property on the Approved Route. (Affidavit of Darrin F. Lahr dated October 26, 2012 (“Lahr Aff.”), ¶ 7.) Marjorie Cossette and Angela Cossette (“Cossettes”) have granted NSP options for a 150-foot wide easement for the facilities. (Lahr Aff., ¶ 8.) Reinke has not granted NSP an option. (*Id.*) As set forth in NSP’s Motion to Dismiss, at best, Reinke is the lone Appellant with the lawful right to pursue the appeal. (*Id.*)

Appellants have brought a motion for a stay. In support of the stay motion, the only injury Appellants assert is the removal of trees from parcels on the Approved Route:

The project is well underway in Minnesota and almost to the North Dakota-Minnesota border. Construction of the Transmission Line will have a significant impact on the property where the Transmission Line will sit. Trees that lie within the easement for the corridor will be clear cut to accommodate construction. This will adversely affect the interests of property owners where the Transmission Line will be placed.

(Brief at p. 2 (emphasis added).) The Approved Route does not go through the City of Oxbow nor does it lie within a half mile of 79 of the other Appellants. (Order, at p. 7, Findings of Fact ¶ 36.) The Cossettes have already granted NSP an option to obtain an easement granting NSP the right to construct the transmission line across their properties, including the right to remove trees for that purpose. Thus, the only Appellant with any potential harm is Reinke. In sum, Appellants seek a stay of the entire PSC Order to prevent the cutting of trees on Reinke’s property.

### III. THE IMPACT OF A STAY ON NSP AND CAPX2020.

If a stay of the PSC Order were entered in this case, NSP would suffer significant harm in several ways. First, NSP would be unable to undertake any construction work in North Dakota. (Chezik Aff., ¶ 4.) The inability to do work in North Dakota could result in significant costs increases depending on the duration of the stay and the ability to proceed with work in Minnesota. (*Id.*)

Second, if the PSC Order were stayed, NSP would not be able to commence condemnation proceedings to secure easements across those parcels for which it does not yet have an option or easement. (*Id.*, ¶ 6.) A condemnation action could take a year or more to complete and construction during the pendency of condemnation will result in significant construction inefficiency in working around parcels included in the condemnation. (*Id.*) While some parallel work was contemplated during condemnation proceedings, a stay would further complicate staging of construction and create inefficiencies. (*Id.*)

Third, a stay would also adversely affect NSP's ability to maintain its local permits. (Chezik Aff., ¶ 5.) Certain of these permits obtained for the Fargo Project, including the permit for Pleasant Township, are subject to conditions that require construction to commence within a specified time period (*e.g.*, one year from issuance). (*Id.*) NSP began obtaining local government units permits in the fall of 2011. (*Id.*) If the PSC Order were stayed, NSP would lose the ability to commence construction in a local jurisdiction to preserve its rights under a local permit. (*Id.*) NSP would have to seek an extension of the permit and if such extension were denied, the permit would expire. (*Id.*)

## ARGUMENT

### I. APPELLANTS' MOTION FOR A STAY MUST BE DENIED BECAUSE APPELLANTS HAVE FAILED TO MEET THEIR BURDEN OF SHOWING THAT A STAY IS NECESSARY.

#### A. Legal Standard.

The PSC Order remains effective and enforceable unless the District Court issues a stay. N.D.C.C. § 28-32-48. Section 28-32-48 further provides that the court may “impose terms and conditions for a stay.” *See also Bonde v. Stern*, 8 N.W.2d 457, 461 (N.D. 1943) (observing that there is no absolute or unconditional right to a stay pending appeal; rather it is within the district court’s “discretionary powers in determining whether proceedings shall be stayed pending [an] appeal, and if stayed, on what conditions the stay shall be granted”).

In evaluating a request for stay on appeal, a reviewing court considers the following factors:

- (a) The applicant for a stay must make a strong showing that the applicant is likely to succeed on the merits of the appeal;
- (b) The applicant for a stay must establish that unless a stay is granted he will suffer irreparable injury;
- (c) The applicant for a stay must show that no substantial harm will come to other interested parties; and
- (d) The applicant for a stay must show that granting the stay will do no harm to the public interest.

*Cass Cnty.*, 253 N.W.2d at 327. Appellants have not satisfied any of these factors. The Court should deny the motion for stay because Appellants cannot meet their burden to show that a stay is warranted.

#### B. Appellants Have Not Made The Required “Strong Showing” That They Are Likely To Succeed On The Merits Of Their Appeal.

Appellants have failed to demonstrate that they are likely to succeed on the merits of the appeal. Indeed, they provided no analysis of the alleged errors nor any citation to any rule or

statute with which the PSC allegedly failed to comply. This Court must apply a deferential and restrained standard of review on appeals from agency decisions. This Court must “not make independent findings of fact or substitute [its] judgment for that of the agency. [This Court] determine[s] only whether a reasoning mind reasonably could have determined that the factual conclusions reached were proved by the weight of the evidence from the entire record.” *In re Neb. Pub. Power Dist.*, 330 N.W.2d 143, 146 (N.D. 1983) (quoting *Asbridge v. N.D. State Highway Comm’r*, 291 N.W.2d 739, 744 (N.D. 1980)). More specifically, Section 28-32-46, N.D.C.C., governs the Court’s review of PSC decisions:

[T]he court must affirm the order of the agency unless it shall find that any of the following are present:

1. The order is not in accordance with the law.
2. The order is in violation of the constitutional rights of the appellant.
3. The provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions of law and order of the agency are not supported by its finding of fact.
7. The findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the appellant.
8. The conclusions of law and order of the agency do not sufficiently explain the agency’s rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge.

*See also Aggie Invs. GP v. Pub. Serv. Comm’n of N.D.*, 470 N.W.2d 805, 808-09 (N.D. 1991).

A review of the errors made in the Notice under the applicable standards shows that Appellants are unlikely to succeed on the merits. For example, while Appellants claim that “[t]here is no evidence to support the finding of a corridor width of three miles” (Notice, Error No. 6.), this claim is baseless, as the Order granted a 300-foot corridor not a three-mile corridor. (Order at p. 3, Findings of Fact ¶ 7, & p. 9, Order Point 2.) Appellants further assert that the “only evidence that was considered was what the City of Fargo wanted regarding the proposed Fargo-Moorhead Diversion Project.” (Notice, Error No. 12.) The Order itself refutes this claim by detailing all of the state siting criteria as well as other considerations. The PSC also approved a route modification to address a specific landowner’s concerns. (Order at p. 7, Findings of Fact ¶ 35.) Appellants also claim that “NSP failed to allow for a public meeting in the Oxbow area.” (Notice, Error No. 10. (emphasis added).) However, it is the PSC that holds hearings, not NSP; and the PSC properly held hearings. N.D.C.C. § 49-22-13. (*See also* Order at p. 2.)

The balance of Appellants’ alleged errors generally fall into three categories, that there was insufficient evidence, that the PSC failed to consider evidence, or that the conclusions were not supported by the facts. Given the deferential standard of review, the lack of any arguments in the Brief regarding merits, and the weakness of the claims apparent on their face, Appellants have not satisfied the first factor for the grant of a stay.

C. **Appellants Have Not Shown That They Will Suffer Irreparable Injury Unless The Stay Is Issued.**

Appellants have not demonstrated that, absent a stay, they will suffer an irreparable injury. An injury is irreparable where no adequate remedy at law, *i.e.*, damages, exists. *Nodak Mut. Ins. Co. v. Ward Cnty. Farm Bureau*, 2004 ND 60, ¶ 24, 676 N.W.2d 752, 761.

Only Reinke alleged any type of injury that would occur during the pendency of an appeal. His affidavit asserts that trees would be cleared from his property if the PSC-approved

project proceeded as planned. (Affidavit of Paul Reinke in Support of Motion for Stay of Public Service Commission Order, ¶ 4.) As previously discussed, the two Cossettes are the only other Appellants on the Approved Route, but they have already voluntarily granted an option for an easement and therefore cannot claim they will be harmed by construction of the Fargo Project. (Lahr Aff., ¶ 8.) The other individual Appellants are more than a half mile away from the Approved Route and have not even alleged they will be harmed in any way during the pendency of the appeal. City of Oxbow is similarly outside the Approved Corridor and Approved Route. Notably, more than 85 percent of the landowners who are within the Approved Route have agreed to the placement of the facilities on their property by granting NSP options and are not part of this appeal.

The injury claimed is not only limited to one Appellant, Reinke, it fails to meet the standard of irreparable injury under North Dakota law because the loss of trees results in calculable damages. *See Riffey v. Rush*, 199 N.W. 523, 523 (N.D. 1924) (determining whether to grant an injunction and refusing to consider as an irreparable injury the fact that “gardens, trees, and shrubbery will be trampled and injured” due to the construction of a baseball park, which would also bring “boisterous and noisy persons” close to appellants’ property). Appellants, therefore, have failed to demonstrate the second factor for granting a stay.

**D. Appellants Have Not Demonstrated A Lack Of Substantial Harm To NSP.**

Appellants have not and cannot demonstrate a lack of substantial harm to NSP if a stay of the entire Order were issued. The one attempt to meet this requirement is Reinke’s affidavit, in which he purports, in conclusory fashion, to know what harm might be suffered by NSP. Reinke’s assertions are inadmissible and inaccurate.

Reinke’s assertions are inadmissible because he has no personal knowledge of the Fargo Project requirements, timeframes, construction schedules, or customer obligations. As a result,

Reinke's affidavit is not competent evidence. *See Green v. Green*, 2009 ND 162, ¶ 13, 772 N.W.2d 612, 617 ("Affidavits are not competent when they fail to show a basis of actual personal knowledge or if they state conclusions without the support of evidentiary facts.").

Reinke's assertions are also inaccurate. As detailed in the facts above, and supported by the Chezik Affidavit, NSP would be precluded from constructing the North Dakota part of the Fargo Project if the stay issues. NSP's inability to exercise its rights under the Order would result in delays in property acquisition and could lead to significant cost increases depending on the duration of the stay and the ability to proceed with work during the stay. (Chezik Aff., ¶ 6.) Significantly, a stay would prevent NSP from commencing construction to preserve rights under existing permits which, unless extended, will expire beginning in December 2012. (Chezik Aff., ¶ 5.) The local permits are necessary for the Fargo Project to proceed and if one or more expires during the appeal, there would likely be additional procedures undertaken by the PSC and North Dakota courts resulting in further delay of the Fargo Project. Appellants, therefore, do not meet the third *Cass County* factor.

**E. Appellants Have Not Shown A Lack Of Harm To The Public Interest.**

Appellants have not tried to and cannot show a lack of harm to the public interest. The PSC concluded that the Approved Corridor and Approved Route would "ensur[e] continuing system reliability and integrity and ensur[e] that energy needs are met and fulfilled in an orderly and timely fashion." (Order at p. 8, Conclusions of Law ¶ 5.) Entry of a stay would prevent NSP from any construction in North Dakota toward this goal. And, as noted above, a stay could result in a significant delay to implementation of the Fargo Project and the benefits it provides due to the time limits on land rights acquisition and local permits.

Appellants have not shown any one of the four factors required for granting a stay. Therefore, Appellants' Motion for Stay of Public Service Commission Order must be denied.

**II. IF A STAY IS GRANTED, IT SHOULD BE LIMITED TO THE REINKE PROPERTY AND APPELLANTS MUST POST A SUPERSEDEAS BOND.**

Appellants seek a stay to prevent the cutting of trees. Reinke is the only appellant who would suffer the harm Appellants allege. To prevent this harm, the Court need only stay the Order to the extent necessary to prevent tree-removal on Reinke's property. In this way, Reinke's trees will be preserved pending the outcome of this appeal.

Further, if the Court concludes that a stay should be granted pursuant to N.D. R. Civ. P. 62(d), Appellants must post a supersedeas bond as a condition of such stay. Rule 62(d) provides, in relevant part: "If an appeal is taken, the appellant may obtain a stay by supersedeas bond . . . . The stay takes effect when the court approves the bond."

Generally, a supersedeas bond is "[a] bond required of one who petitions to set aside a judgment or execution and from which the other party may be made whole if the action is unsuccessful." *Cont'l Cas. Co. v. Kinsey*, 513 N.W.2d 66, 70 (N.D. 1994). A supersedeas bond is designed to maintain the status quo and protect the judgment holder against any loss it may sustain as a result of an unsuccessful appeal. *Verry v. Murphy*, 604 N.W.2d 453, 457 (N.D. 2000). Put simply, a supersedeas bond "secure[s] the non-appealing party against any loss it may sustain as a result of an ineffectual appeal." *In re Johnson's Estate*, 214 N.W.2d 109, 110 (N.D. 1973).

NSP will suffer significant harm if the PSC Order is stayed. Because the harm that NSP would incur relates to the scope of any stay the Court would enter, if a stay is granted, NSP requests that the Court set a hearing to determine an appropriate bond amount that will secure NSP against losses incurred due to imposition of the stay.

## CONCLUSION

Based on the foregoing, NSP respectfully requests that the Court deny Appellants' Stay Motion in its entirety. In the alternative, NSP requests that the Court appropriately limit the scope of the stay to the Reinke parcel and condition any stay on the posting of a supersedeas bond in an amount to be determined after further proceedings.

Dated: October 29, 2012

**BRIGGS AND MORGAN, P.A.**

By: 

Lisa M. Agrimonti (# 06547)

Zeviel Simpser (# 06794)

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STATE OF MINNESOTA            )  
  )SS  
COUNTY OF HENNEPIN         )

**AFFIDAVIT OF SERVICE VIA  
FEDERAL EXPRESS**

Diane Bailey-Andersen, being first duly sworn, deposes and states she is over the age of eighteen years and not a party to the above-entitled matter, and that on the 29th day of October, 2012, she served the following attached documents via Federal Express Priority Overnight shipping:

1. Notice of Appearance;
2. Response of Northern States Power Company to Appellants' Notice of Appeal and Specifications of Error;
3. Notice of Motion and Motion to Intervene;
4. Brief in Support of Northern States Power Company's Motion to Intervene;
5. Notice of Motion and Motion to Dismiss;
6. Brief in Support of Northern States Power Company's Motion to Dismiss;
7. Affidavit of Lisa M. Agrimonti October 29, 2012;
8. Affidavit of Darrin F. Lahr October 26, 2012;
9. Affidavit of Gerald V. Chezick October 29, 2012;
10. Brief of Northern States Power Company in Opposition to Appellants' Motion for Stay of Public Service Commission Order Notice of Appearance;

upon the following persons:

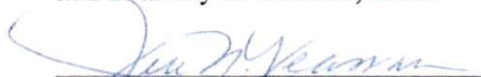
Mitchell D. Armstrong  
Special Assistant Attorney General  
122 E. Broadway Ave.  
Bismarck, ND 58501

Jennifer A. Braun  
Ronald K. Hettich  
P.O. Box 1817  
415 11<sup>th</sup> Street South  
Fargo, ND 58107-1817

by depositing true and correct copies of the same in Federal Express Priority Overnight envelope, shipping expenses pre-paid by the sender, and said envelopes addressed as shown above, which are the last known addresses of said persons.

  
Diane Bailey-Andersen

Subscribed and sworn to before me  
this 29th day of October, 2012.

  
Notary Public  
My commission expires: 1/31/2016

