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December 10, 2012

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DEC 11 2012

**PUBLIC SERVICE COMMISSION**

In re: City of Oxbow, et. al. v. North Dakota Public Service Commission and  
Northern States Power Company, a Minnesota Corporation  
Civil Number: 09-2012-CV-03147

Dear Ms. Jeffcoat-Sacco:

Enclosed is a copy of the Supplemental Brief Showing Appellants are Aggrieved and Interested Parties with regard to the above-captioned matter.

Very truly yours,

MITCHELL D. ARMSTRONG

- Sheldon A. Smith\*
- Randall J. Bakke\*\*\*
- Scott K. Porsborg\*\*\*
- Suzanne M. Schweigert\*
- Mitchell D. Armstrong\*\*
- Shawn A. Grinolds\*\*
- Stacy M. Moldenhauer\*\*
- David J. Smith\*\*
- Bradley N. Wiederholt\*\*
- Sandra L. Voller\*\*
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tmh  
enclosure

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DEC 10 2012

STATE OF NORTH DAKOTA

IN THE DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

CIVIL NO. 09-2012-CV-03147

City of Oxbow, Lonni Hayden, Warren Hayden, )  
 Kent Buhr, Danise Buhr, Jon Hager, Marcy )  
 Hager, Matt Quibell, Craig Jungberg, Colette )  
 Jungberg, Todd Miller, Nancy Miller, Vernon )  
 Skarie, June Skarie, Callie Schlieman, Brian )  
 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 )  
 and Northern States Power Company, a )  
 Minnesota Corporation )

Appellees. )

**SUPPLEMENTAL BRIEF  
SHOWING APPELLANTS  
ARE AGGRIEVED AND  
INTERESTED PARTIES**

At the hearing on the Motion to Dismiss, this Court allowed Appellants to file a supplemental brief on behalf of the four remaining appellants, Michael Bice, Kristi Houska, Jim Huesman, and Paul Reinke. The Court restricted the argument in the brief to evidence in the record. The Court explicitly stated that no new evidence was to be presented.

I. **MICHAEL BICE IS AN AGGRIEVED AND INTERESTED PARTY**

Under oath, Michael Bice testified at the January 30, 2012 hearing that he resides in Hickson, North Dakota, and is also the owner of the Knickerbocker in Hickson, North Dakota. (Transcript of PSC January 30, 2012 Hearing, hereinafter "Tr." P. 176). Mr. Bice stated that his home is in the Bakke addition, which is approximately one-half mile south of the proposed power line. (Tr. 181).

Mr. Bice discussed property values,

As Mr. Reinke had went to our deteriorated property values because of just an idea of the diversion. So now what happens if that [diversion] isn't built, and the power line is going to be built far before the diversion is built, we're sitting there 20 years from now and the diversion is a smaller one maybe around Fargo and we got this here which limits Oxbow or Hickson's or Bakke's or Pleasant Township's or Cass County's room for growth by itself.

(Tr. 180).

Mr. Bice's business, the Knickerbocker Liquor Locker, is a bar and liquor store, located at 412 Main Avenue, Hickson, North Dakota. (Tr. 182-83). Mr. Bice testified because of "the community around and potential for growth, without the power line being so close, would become a future interest of mine due to the fact that you can't build within 1,000 feet to the north, which is by some plotted developments, would be a concern." (Tr. 182).

The overall message from Mr. Bice was that his business would suffer damage if the community was not allowed its area for growth. This would cap the number of patrons that would frequent his establishment.

**II. KRISTI HOUSKA IS AN AGGRIEVED AND INTERESTED PARTY**

Ms. Houska lives in the Bakke Addition. As among Bice, Houska, and Huesman, she would be the appellant closest to the power line because her street is the third one in. (Tr. 214).

She stated that one of her major concerns regarded an Exhibit labeled 'Human Health and Safety' in NSP's application, which stated "under the proposed route section it says 'no significant impacts associated with human health and safety considerations are anticipated within the proposed route and Bison substation siting area.'" (Tr. 211). Ms. Houska describes further to the PSC that "we have two busloads that come out of the Kindred School District that come out of those areas. Busloads of children. And we live right in that Bakke subdivision that is about a half a mile, less than a half a mile away, right in our backyard in the field." (Tr. 211-12). She continues on to say "I don't care if it [NSP's Application] says no significant impacts, if there's any health impacts whatsoever and my children are associated with that, I don't want that." (Tr. 212). Ms. Houska testifies, "There is a back road that leads out of our development that is used for recreational purposes and those high lines are going to go right over that road. This road is used for walking, running, and for our kids to ride their bikes on... This is strictly used for all recreational purposes." (Tr. 212).

When questioned by Commissioner Kalk, Ms. Houska explains, "There's chemicals that are in the field, that's stirring up all of those particles. Also, I guess, once

the power lines are constructed, just what I've heard of the medical problems associated with them as well." (Tr. 215). She further testified that the road that the kids use a lot for recreational purposes will probably be closed down during the construction phase because the power line runs right over the top of it. (Tr. 216).

Ms. Houska's testimony sums up her concerns about the health risks. She states that children and families, including her own, would be at a loss to use the recreational path while the project is in the construction phase.

**III. JIM HUESMAN IS AN AGGRIEVED AND INTERESTED PARTY**

Mr. Huesman resides in the Bakke Addition, at 843 Main Avenue, Hickson, North Dakota. (Tr. 208). He testified at the hearing how "it seems senseless to devise a plan or even make changes to a plan that puts it closer to a group of 200 homes over something that is not reality. Because the reality is those homes exist and they're there right now and the diversion does not, its an idea." (Tr. 207).

**IV. PAUL REINKE IS AN AGGRIEVED AND INTERESTED PARTY**

Mr. Reinke's property, parcel number 136, is all wooded. (Tr. 158). The North Dakota Forest Service produced a survey of the trees on Mr. Reinke's property, and they found that there are several one-hundred year old trees. (Tr. 161).

Mr. Reinke states that he has "family and friends that live in the existing development" and that is why he would prefer a northern route rather than the proposed route that goes through his property. (Tr. 164). Mr. Reinke discussed that where the proposed power line route would go through his property "is great for bow hunting." (Tr. 167). Mr. Reinke's statements go to more than the loss of his trees, as it shows how

Mr. Reinke will be injured and aggrieved because of his loss of ability to bow hunt in the treed area where the trees will be cut down for the power line.

Commissioner Cramer makes an important comment that “we have a different appreciation for trees in North Dakota than they do in Minnesota, I think we could safely say.” (Tr. 167). Contextually, Commissioner Cramer’s remark insinuates North Dakotans appreciate trees more than Minnesotans because trees are a lot less abundant in North Dakota.

Mr. Reinke was asked by Commissioner Clark how far away the transmission line would sit from Mr. Reinke’s home. Mr. Reinke testified that “it’s far enough away to meet the bare minimum.” (Tr. 169). He further testified that “Stefan Olafson did mention to us that it was one of the two closest on the route to an established dwelling.” (Tr. 169).

Mr. Reinke testified about his concern regarding his family and friends that “live right adjacent to this proposed route and they have a huge concern that the devaluation of property values, with a 150-foot tower power line 400 yards north of their property.” (Tr. 172).

Overall, Mr. Reinke’s testimony at the January 30, 2012 hearing demonstrates losses to his ability to hunt on his own land, as well as the loss of trees in the wooded area of his property.

**CONCLUSION**

Based on the foregoing reasons, Appellants ask that this Court deny NSP's motion to dismiss, and keep Mr. Bice, Ms. Houska, Mr. Huesman, and Mr. Reinke as the remaining appellants.

Dated this 6<sup>th</sup> day of December, 2012.

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