



122 E. Broadway Avenue
Bismarck, ND 58501

December 13, 2012

P.O. Box 460
Bismarck, ND 58502-0460
Phone (701) 258-0630
Fax (701) 258-6498

Illona A. Jeffcoat-Sacco
Attorney at Law
Public Service Commission
State Capitol
Bismarck, ND 58505-0480

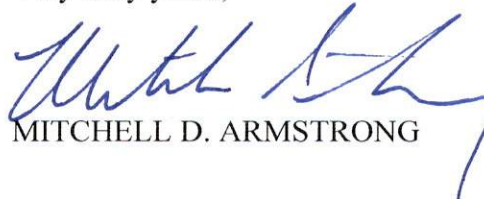
In re: City of Oxbow, et. al. v. North Dakota Public Service Commission and
Northern States Power Company, a Minnesota Corporation
Civil Number: 09-2012-CV-03147

Dear Ms. Jeffcoat-Sacco:

Enclosed is a copy of Northern States Power Company's Response to Appellants' Supplemental Brief Showing Appellants are Aggrieved and Interested Parties with regard to the above-captioned matter.

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**
Adrienne L. Buckman**

Very truly yours,


MITCHELL D. ARMSTRONG

tmh
enclosure

Jeffcoat-Sacco.9

* Licensed in North Dakota

■ Licensed in Minnesota

● Licensed in South Dakota

▲ Licensed in New York

* Board Certified Civil Trial
Specialist by National Board
of Trial Advocacy

DEC 13 2012

STATE OF NORTH DAKOTA
COUNTY OF CASS

IN THE DISTRICT COURT
EAST CENTRAL JUDICIAL DISTRICT

CIVIL NO. 09-2012-CV-03147

IN THE MATTER OF:

City of Oxbow, et al.,

Appellants,

v.

North Dakota Public Service Commission and
Northern States Power Company, a Minnesota
corporation,

Appellees.

**NORTHERN STATES POWER
COMPANY'S RESPONSE TO
APPELLANTS' SUPPLEMENTAL
BRIEF SHOWING APPELLANTS
ARE AGGRIEVED AND
INTERESTED PARTIES**

INTRODUCTION

To maintain this appeal, the four remaining Appellants must have suffered an actual injury as a result of the North Dakota Public Service Commission ("NDPSC") Order. The Appellants' Supplemental Brief demonstrates that three of these individuals, Michael Bice, Kristi Houska, and Jim Huesman, cannot satisfy this requirement. Rather, they criticize the NDPSC decision and assert speculative, unsupported allegations of harm and therefore their appeal should be dismissed.¹

ARGUMENT

To have standing to challenge an administrative decision, an appellant must suffer an actual injury, *i.e.* a legal interest that may be enlarged or diminished by the decision to be appealed. *Washburn Pub. Sch. Dist. No. 4 v. State Bd. of Pub. Sch. Educ.*, 338 N.W.2d 664, 667 (N.D. 1983). "The right invaded must be immediate, not merely some possible, remote consequence." *King v. Stark Cnty.*, 72 N.D. 717, 719, 10 N.W.2d 877, 878 (1943).

¹ Northern States Power Company's Motion to Dismiss is also founded on the fact that none of the four Appellants were an official party to the proceeding. This argument is beyond the scope of the Court's directed briefing on injury only.

Only one of the four remaining Appellants arguably satisfies this standard—Paul Reinke. He will have an easement across his property for the transmission line facilities. The other three Appellants live more than a half mile away from the NDPSC approved route. And, while they have fears about the impacts the transmission line, as well as the Diversion Project, might have, they have no property interest that is affected by the Order, and as their submission makes clear, they have no other actual immediate injury.

Bice's concerns, for example, relate primarily to the impact of the Diversion Project on development in his community. (Supplemental Brief at pp. 3–4; Transcript at p. 179.) He offers no evidence that the transmission line itself would impact development or his business. (Supplemental Brief at pp 3–4.) Similarly, Houska testified she is concerned that the magnetic fields from the transmission line may have adverse health effects. (*Id.*) But there is no evidence that magnetic fields from the transmission line will be present a half mile away or that these fields will create a direct injury to Houska. Lastly, Huesman does not state any potential injury. (*Id.*) Instead, he merely criticized the route location and any consideration of the Diversion Project in determining the route. (*Id.*; Transcript at p. 207.)

The claims of harm by Bice, Houska, and Huesman are speculative and unsupported by record evidence. Their disagreement with an administrative decision is insufficient to confer standing, as recognized by the North Dakota Supreme Court: “ ‘Mere dissatisfaction or displeasure of an individual . . . is not enough to give such individual right of appeal from such decision.’ ” *Washburn*, 338 N.W.2d at 666 (N.D. 1983) (quoting *Huber v. Miller*, 101 N.W.2d 136, 140 (N.D. 1960) (rejecting taxpayers' appeal of board of county commissioners' decision)). Because Appellants have not suffered an injury in fact, they should be dismissed.

CONCLUSION

NSP respectfully requests that its Motion to Dismiss be granted in its entirety.

Dated: December 13, 2012

BRIGGS AND MORGAN, P.A.

By: /s/Lisa M. Agrimonti

Lisa M. Agrimonti (# 06547)

Zeviel 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

5066940

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

AFFIDAVIT OF SERVICE BY E-MAIL

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Diane Bailey-Andersen, being first duly sworn, deposes and states she is over the age of 18 and not a party to the above-entitled matter. That on the 13th day of December 2012, she served a copy of the attached **NORTHERN STATES POWER COMPANY'S RESPONSE TO APPELLANTS' SUPPLEMENTAL BRIEF SHOWING APPELLANTS ARE AGGRIEVED AND INTERESTED PARTIES** through the Odyssey File and Serve system and e-mailed to the following:

Mitchell D. Armstrong
Special Assistant Attorney General
122 E. Broadway Ave.
Bismarck, ND 58501
Email: marmstrong@smithbakke.com

Jennifer A. Braun
Ronald K. Hettich
P.O. Box 1817
415 11th Street South
Fargo, ND 58107-1817
Email: jennifer@aalandlaw.com
Email: ron@aalandlaw.com

Diane Bailey-Andersen

Subscribed and sworn to before me
this 13th day of December 2012.

Notary Public