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October 23, 2003

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The Honorable Karen Asphaug
Dakota County District Court Judge
Dakota County District Court
Dakota County Judicial Center
1560 West Highway 55
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Re: Power Line Task Force v. Northern States Power Company
d/b/a Xcel Energy
Court File No: 19-C7-03-9371

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Dear Judge Asphaug:

Plaintiff Power Line Task Force respectfully addresses two issues in response to Defendant's Xcel Energy's October 7, 2003, supplemental letter on the issues before the Court.

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I. Northern States Power Company d/b/a Xcel Energy's own August 13, 2001, petition describes the line as a 14.7 mile project.

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In Xcel's written and oral arguments to the Court on the Motion to Dismiss, Xcel described the Southeast Transmission Line as two separate projects whereby each project is less than 10 miles in length. See Defendant's Memorandum in Law in Opposition to Plaintiff Power Line Task Force, Inc.'s Motion for Summary Judgment, p. 11. Defendant uses the South St. Paul May 3, 2001, Conditional Use Permit application as evidence that "the applied for line upgrade project is less than 10 miles long." Id., attached here at Tab A. These arguments and documents raise no new issue of material fact. The facts remain clear: the Southeast Metro Transmission Line Project is 14.7 miles in length.

This application addresses, as it states, Xcel's desire "to upgrade its existing transmission system within the City." It therefore does not address other portions of its proposed project. Xcel is in error in suggesting anything regarding the full project can be inferred from documentation addressing only a small portion; although it is notable the application still refers to the 14.7 mile upgrade as the "Southeast Metro Electric System Upgrade" which includes two phases of construction, not two separate projects.¹

¹ According to dictionary.com, the word "phase" means, "An aspect; a part: *every phase of the operation.*" Phases are part of a project. As we show herein, Xcel's semantic parsing raises no issue of material fact. Its two phases are part of one project, as its documents establish.

As it turns out, South St. Paul's City Council, after extensive review of the proposal, voted unanimously to reject Xcel's application. This led Xcel to petition this court for an Alternative Writ of Mandamus.² Xcel included documentation supporting its petition to this court as its Exhibit B6, attached here at Tab B. Therein, Xcel continually refers to the 14.7 mile long Southeast Metro Transmission Line as the "Project." In addition, in this Verified Petition for Alternative Writ of Mandamus, Xcel refers to "a single-circuit 115kV transmission line which crosses six communities and supplies power to the entire southeast metro area." See Xcel's Exhibit B6 at p. 5. Once again, it was Xcel who submitted these documents to this court. The petition further describes how the line connects the Red Rock Substation, Stockyards Substation, Rogers Lake Substation, the Airport Substation and the Bloomington and Wilson Substations. Id. In describing the "Project", Xcel states that "[a]pproximately 120 structures will be installed, spaced an average of 500 feet apart." See Xcel's Exhibit B6, at p. 6.³

Elsewhere in its own documentation to the court, Xcel provides additional evidence that the distance between the Red Rock Substation and the Wilson Substation is 14.7 miles. See Xcel's Exhibit A1, attached here at Tab C.

Xcel wants the law to read that the transmission line ends at certain substations of its choosing. Clearly, Xcel is NOT arguing that the transmission line ends at all substations, as there are six (6) substations along the Southeast Metro Transmission Line. Xcel cannot pick and choose where the transmission line begins and ends in order to avoid applying to the PUC. In order to remain consistent, Xcel must either say that the line is one complete line or five separate lines.

It cannot be five separate lines because Xcel argued in its August 13, 2001, Petition for an Alternative Writ that the transmission line must be considered as a whole for practical purposes. Thus, Xcel maintained that the "Red Rock-Rogers Lake and Rogers Lake-Wilson lines work as components of the interconnected transmission system. Failure of one or more circuits in this system could result in an overload of these lines or other lines." See Xcel Exhibit B6, p. 5. Xcel asserted this argument to show that the transmission line was necessary to provide adequate energy to "six communities" and "power to the entire southeast metro area." Id. In short, Xcel agrees the project is 14.7 miles long.

Now Xcel wants to divide the line into less than 10 miles sections. The only logical reason for this change is the passing of Minnesota Statute Section 216B.243 and the added Certificate of Need requirements. Clearly, the Southeast Transmission Line, by Xcel's own admissions in its own documents submitted to the Court, is longer than 10 miles making it subject to the new requirements for the Public Utility Commission's Certificate of Need statute.

The Xcel executive in charge of this project is Dave G. Callahan. (Mr. Callahan was present in the courtroom when this case was argued.) Mr. Callahan swears in a verified and notarized statement dated August 9, 2001, that the information contained in Xcel's Exhibit B6 is true. See Xcel's Exhibit B6 at p. 26, attached here at Tab B. This means that Xcel is now arguing that its previous sworn statements submitted to this court are false. Included among the statements Xcel is attempting to discredit is the assertion that the Project is 14.7 miles long.

² In its petition, Xcel asserted that the City had not acted within the time specified by Minn. Stat. 15.99, which requires that zoning applications must be resolved within 120 days. (Since the EQB Route Permit application is not a zoning request, it is unlikely that Xcel would have raised this issue had South St. Paul truly been acting in lieu of the Environmental Quality Board.)

³ Calculations show that 120 poles spaced an average of 500 feet apart computes to 59500 feet. (119 X 500) One mile equals 5280 feet. Therefore, 59500 feet equals approximately 11 miles.

information in the Writ verified by Mr. Callahan was, of course, the genesis of the subsequent settlement between Xcel and the City.

II. Northern States Power Company d/b/a Xcel Energy's Southeast Metro Transmission Line began in March 2000 contradicts an August 13, 2001 petition describing construction as beginning in the late fall of 2001.

In its October 7, 2003 letter, Defendant alleges that construction began on the transmission line "route" prior to August 1, 2001. Heretofore, Defendant has not presented any evidence to support this assertion nor has it alleged in its argument to the Court that construction began prior to that date. In support of its new claim that construction had begun prior to August 1, 2001, Defendant submits purported new evidence, a series of reports entitled, "Compressive Strength of Cylindrical Concrete Specimens." See Xcel's Exhibit 31.

Exhibit 31, dated March, 2000, does not evidence the work done for the Southeast Metro Transmission Line. Rather, it entitles the project as the "Red Rock Substation." The exhibit never makes mention of the Southeast Metro Transmission Line, nor other project titles found on Xcel documents relating to this project. (See Ex. B-15, B-16, B-17, b-19, *line 0818*; See also, Ex.B-18, *Red Rock- Rogers Lake 115kV*). As such, these documents clearly refer to construction at the substation. As shown immediately below, such construction does not require PUC or EQB approval.

The documents provided by Xcel show that tests were performed on a section of concrete added to the substation for equipment. This impacts a site, not a transmission route, which is the issue before this Court. Defendants want to say that this is proof that construction began on the transmission line route. The definition of "route" is "the location of a high voltage transmission line between two end points." See Minn. State Stat. §116.52, subd. 8. Therefore, substations are not transmission lines. Exhibit 31 points to an improvement at a substation, not construction on the Southeast Metro Transmission Line route. Construction on the substation has no effect on the issues before the Court, because it, at most, involves construction on a site, not on the transmission line route, which is the issue under Section 216B.243. The issue is whether Xcel began construction on the transmission line route prior to August 1, 2001. This document does not evidence construction on the route.

Far more importantly, Xcel itself stated on August 13, 2001, that construction on the Southeast Metro Transmission Line had not yet begun. In its August 13, 2001, petition for a Writ of Mandamus in the City of South St. Paul case Xcel states that, although construction was originally scheduled to begin in the fall of 1999, "[C]onstruction **will** now begin in late fall of 2001." Xcel's Exhibit B6, p. 6 (emphasis added), attached here at Tab B. Clearly, Exhibit 31 is not evidence of construction on the Southeast Metro Transmission Line and the suggestion it provides such evidence directly contradicts Xcel's statement in its August 13, 2001 petition.

In order to avoid compliance with the Certificate of Need and Route Permit statutes, Xcel appears to be scrambling to locate any document that may be connected in any remote way to construction of the Southeast Metro Transmission Line. For the reasons discussed above, Xcel cannot produce such evidence, because it cannot exist.

Again, we are not addressing mere speculation here. As the executive in charge of the project, Dave Callahan would necessarily have known of any construction before the August 1, 2001 deadline. He swore in his notarized verification that all statements in Exhibit B6 were correct, thereby including those stating that construction would begin after that date.

In summary, Xcel's documents clearly indicate the Southeast Metro Transmission Line is more than 10 miles in length. See Xcel's Exhibit B6. See also, Xcel's Exhibit A1. It is also clear that construction had not occurred on that line prior to August 1, 2001. See Xcel's Exhibit

B6. Again, as set out above, the evidence establishing these material facts come from documents supplied by Xcel itself. Since, as Xcel's documents show, it had not begun before the August 2001 deadline to construct its new, double circuit 115kV 14.7 mile transmission line, Xcel is required to apply for a Certificate of Need from the PUC in compliance with Minnesota Statute Section 216B.243 prior to beginning any construction. It is also required to apply to the EQB for a route permit in compliance with Minnesota Statute Section 116C. 57. Xcel admittedly has never applied to either the EQB or the PUC for the required permits.

Even as this court considers its ruling, Xcel is attempting to begin construction on the line. Xcel sent out an October 10, 2003, letter to landowners affected by the Southeast Metro Transmission Line detailing the proposed route. See the Affidavit of Roger Conant and the October 10, 2003 letter to landowners detailing transmission line construction plans, attached here at Tab D. Despite the pending motions, Xcel seeks to move forward without approval from either the PUC or the EQB.

Xcel is so confident that it will prevail that it continues to go forward with construction on the line. Xcel's confidence is misplaced. Xcel's own documents clearly show that there is no issue of material fact concerning the length of the line or the timing of construction. Because the Southeast Metro Transmission Line is an 115kV 14.7 mile project whose construction had yet to begin as of August 13, 2001, Minnesota statutes 516B.243 and 116C.57 clearly apply.

Therefore, Power Line Task Force again respectfully requests this Court to grant Power Line's Motion for Summary Judgment against Xcel.

Very truly yours,

Richard G. Morgan

RGM/eam
Enclosures

cc: Jack Perry (w/enc., via U.S. Mail)
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