

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

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Power Line Task Force

Court File No.: C3-99-10352

Plaintiff,  
v.

Minnesota Environmental Quality Board  
and Northern States Power Company,

Defendants.

**DEFENDANT NORTHERN STATE  
POWER COMPANY'S MEMORANDUM  
IN OPPOSITION TO MOTION FOR  
NEW TRIAL OR RELIEF  
FROM JUDGMENT**

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INTRODUCTION

On August 24, 2000, this Court issued an Order granting defendants, the Minnesota Environmental Quality Board (Board) and Northern States Power Company (NSP), summary judgment against plaintiff Power Line Task Force.<sup>1</sup> Plaintiff alleged the negative declaration by the Board in the matter of the Southeast Metro 115 kV Transmission Line Project was arbitrary and capricious. This Court held, as a matter of law, the Board was not arbitrary or capricious in concluding the proposed line route for the Project did not have the potential to cause significant environmental effects.

Three months after the Court's Order and six months after oral argument, Plaintiff requests a new trial or relief from judgment based on "newly discovered evidence." Plaintiff has not provided any newly discovered evidence. Plaintiff has provided information developed after the Board made its decision. In addition, Plaintiff has provided information available to the Board at

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<sup>1</sup> On August 18, 2000, Northern States Power Company completed a merger with New Century Energies, Inc., with the merged entity named Xcel Energy Inc. Northern States Power Company is a subsidiary of Xcel Energy Inc. As the preceding action referred to Northern States Power Company, this brief will refer to Defendant as Northern States Power company ("NSP").

the tie of its decision. Both types of information are irrelevant to the Board's negative declaration. Plaintiff is not entitled to a new trial or relief from judgment and its motion must be denied,

#### STATEMENT OF FACTS

As this Court's Order describes the relevant facts regarding the Project and the Board's negative declaration, it is only necessary to briefly identify key events prior and subsequent to the Board's negative declaration. This case arises out of NSP's proposal to upgrade its southeast metropolitan electric transmission system by installing a new 115 kV transmission line, referred to as the Southeast Metro 115 kV Transmission Line Project (Project). Order at p. 3. On April 6, 1999, NSP initiated environmental review with the Board. Order at p. 3; Board Findings of Fact, Conclusion and Order, paragraph 6 at p. 4, attached as Exhibit 1. Defendant Board was designated as the government unit responsible for preparation of an environmental assessment worksheet (EAW). Order at p. 3. NSP submitted completed data portions of the EAW to the MEQB. Order at p. 3. Both NSP and Plaintiff suggested alternative routes for the proposed transmission line. Order at p. 3.

On May 31, 1999, the Board published the EAW. Order at p. 3. After publishing the EAW, the Board received public comments. Order at pp. 3-5. The Board also conducted public meetings to determine whether an environmental impact statement (EIS) was required. Order at p. 5. Roger Conant, a spokesperson for Plaintiff, participated in these public meetings. Order at p. 5.

On November 18, 1999, the Board met and considered the Project. Order at p. 5. Prior to the meeting, the Board received additional communications and information from concerned citizens, including Plaintiff's representatives. Order at p. 5. At the conclusion of the meeting, the Board passed a resolution for a negative declaration on the need for an EIS. Order at p. 5. The Board's negative declaration is based on the conclusion that the Project does not have the potential

for significant environmental effects. Exhibit 1, Board Findings of Fact, Conclusion and Order, Order at p. 9.

The Project, as proposed by NSF and reviewed by the Board, will require conditional use permits from municipalities in which the Project will be located.' Affidavit of James Alders, paragraph 2. Prior to initiating environmental review and through the environmental review process, NSP consulted with representatives of the municipalities regarding the project. Id., paragraph 3. After the Board's negative declaration, NSP and the municipalities agreed to a process whereby alternatives to the project and its proposed route would be investigated. Id., paragraph 4. As part of the process, the municipalities retained a consultant, Commonwealth Associates, Inc. Id., paragraph 5. The municipalities requested that NSP pay the fees of Commonwealth Associates. While NSP pays the fees of Commonwealth Associates, the consultant, is directed by the municipalities, specifically a Steering Committee comprised of the mayors of South St Paul, Sunfish Lake and Mendota Heights. Id., paragraph 6. On September 20, 2000, the Steering Committee directed Commonwealth Associates to develop alternatives to the Project. Id., paragraph 7. On October 18, 2000, Commonwealth Associates presented the Steering Committee with information on alternatives to the Project. Id., paragraph 8.

NSP did not review or consult with Commonwealth Associates in the preparation of the alternatives. Id., paragraph 9. The first time NSP saw the alternatives developed by Commonwealth Associates was at the October 18, 2000 Steering Committee meeting. Id., paragraph 10. NSP is currently reviewing the alternatives and does not endorse the alternatives or agree they are economically or technically feasible. Id., paragraph 11.

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<sup>2</sup> The Project, as proposed by NSP and reviewed by the Board, will cross portions of the cities of Newport, South St. Paul, Inver Grove Heights, Sunfish Lake, Mendota Heights and Bloomington. Exhibit 1. Board findings of Fact Conclusion and Order, paragraph 1 at p. 2.

## STATEMENT OF LAW

Rule 60.02(b) allows the Court to receive a party from a final judgment, order or proceeding and to order a new trial because of “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial pursuant to Rule 59.03.” Minn.R.Civ.P. 60.02(b). “The matter of granting a new trial for newly discovered evidence rests largely in the discretion of the trial court, and such discretion is to be exercised cautiously and sparingly and only in furtherance of substantial justice.” Johnson v. Lorraine Parks Apts., Inc., 128 N.W.2d 758,761 (Minn. 1964).

In ~~determining~~ whether to exercise its decision in granting a motion for new trial, this Court must consider each of the elements of Rule 60.02(b). A new trial may be granted where the petitioner establishes (1) that the newly discovered evidence was not within petitioner’s or his counsel’s knowledge before trial (2) that the evidence could not have been discovered through due diligence before trial, (3) that it is not cumulative, impeaching, or doubtful evidence; and (4) that the evidence would probably produce a different, or more favorable result. Weiland v. State, 457 N.W.2d 712,714 (Minn.1990) (quoting State v. Caldwell, 322 N.W.2d 574, 588 (Minn.1982)). Additionally, Minnesota courts have held that “[g]enerally expert testimony does not constitute newly discovered evidence warranting a new trial.” State v. Blasus, 445 N.W.2d 535, 543 (Minn.1989). For the ‘irst element, to be newly discovered evidence within the meaning of Rule 60.02(b), evidence must have been in existence at the time of ~~trial~~ but not known to the party at that time. Swanson v. Williams, 228 N.W.2d 860,861 (Minn. 1975).

## ARGUMENT

Plaintiffs motion must be denied for three reasons. Plaintiff presents three categories of information: information on alternatives to the Project analysis of levels of electric and magnetic fields (EMF) from the Project, and studies related to alleged health effects from EMF. None of this

information is newly discovered evidence as contemplated by Rule 60,02(b) and the Minnesota courts. First, the information presented by Plaintiff was either not in existence at the time of the Board's negative declaration or was in possession of the Board at the time of their decisions. Second, Plaintiff had the opportunity for discovery both during environmental review and after bringing its complaint against the Board. If the Plaintiff wished to develop additional evidence, it had the opportunity to do so. Third, the information presented by Plaintiff would not produce a different or more favorable result. Before analyzing the information presented by Plaintiff, it is important to clarify the last statement that the information presented by Plaintiff would produce a different or more favorable result. In this case, the result is the Board's negative declaration. Plaintiff's complaint, upon which this Court granted summary judgment, contended the Board was arbitrary and capricious in making the negative declaration. To grant Plaintiff's motion, this Court must find that if the Board possessed the alleged newly discovered evidence that a negative declaration is arbitrary and capricious

1. Information on alternatives to the Project is not newly discovered evidence requiring a new trial.

Plaintiff submits information on alternatives developed by a third-party consultant to municipalities impacted by the Project. Exhibit B is a packet of information from Commonwealth Associates, Inc., dated October 18, 2000. This information was developed after the Board's decisions and cannot be newly discovered evidence. Swanson v. Williams, 228 N.W.2d 860, 861 (Minn. 1975).

If the information had been provided to the Board, it would not have produced a different or more favorable result. Even if the information on alternatives had been before the Board during its deliberations, a negative declaration would not have been arbitrary and capricious. The decision before the Board on November 18, 2000 was whether the Project had the potential to cause significant environmental effects. In making this determination the Board considered four factors.

See Minn.R. 4410.1700, Subpart 7 (1977). In considering whether an EIS is necessary, the Board compared the impacts that may be reasonably expected to occur from the project” with the four factors. Minn.R. 4410.1700, Subpart 6 (1977). The Board reviewed the Project and not alternatives when it made its negative declaration. Indeed, the purpose of an environmental assessment worksheet is to determine whether a project has the potential to cause significant environmental effects, so as to require analysis of alternatives.

Plaintiff also refers to a study of the prepared by the Mid-Continent Area Power Pool (MAPP). This study was available and discussed during environmental review. Affidavit of Roger Conant at paragraph 7. It is not newly discovered evidence. Plaintiffs complaint is that it disagrees with the conclusions that NSP draws from the MAPP study. Namely, NSP contends the Project, as proposed, best meets the stated need and to the extent there are alternatives they are inferior to the Project. Plaintiff has not been shy during the environmental review process and proceedings in this Court about accusing NSP of fraud, misrepresentation and withholding information. Plaintiff however, had a remedy. The Board, not NSP, prepared the EAW and performed the environmental review. If Plaintiff had a problem with NSP’s statements during the process, the place to raise them was during the process. After the complaint in this case, Plaintiff had an opportunity for discovery. See Scheduling Order, February 17, 2000, attached as Exhibit 2. If Plaintiff had a problem with NSP’s statements during this proceeding, the place to investigate them was through discovery. Plaintiff cannot convert its failures into a new trial or relief from judgment.

2. Information on levels of EMF is not newly discovered evidence requiring a new trial

Plaintiff submits an affidavit of David A. Blecker, who states magnetic fields in proximity to transmission lines which are part of the Project, will increase in the future with increased line loadings. Affidavit of David A. Blecker at paragraph 15. This is not newly discovered information. NSF provided this information to the Board during environmental review. A graph showing the

magnetic field with different line loadings was attached to the Board's Findings of Fact, Conclusion and Order. This information was available to the Board and included in their deliberations. To the extent Mr. Blecker relies on the Commonwealth Associates information to impeach the data provided by NSP, this impeachment cannot be newly discovered evidence as the information from the third-party consultant was not available during the deliberations. Attaching the information to an affidavit of a purported expert does not make it newly discovered evidence. State v. Blasus, 445 N.W.2d 535,543 (Minn.1989).

3. ~~Information on alleged health effects from EMF is not newly discovered evidence requiring a new trial.~~

Plaintiff submits four studies related to health effects from EMF, Exhibits G-J. Three of the four studies were published late in 2000. Exhibit H, a study in the British Journal of Cancer, was published in September, 2000. Exhibits I and J, two studies in the journal Environmental Health Perspectives, were published in August and October, 2000, respectively. These three studies were published after the Board's deliberations; they cannot be newly discovered evidence for the purposes of granting a new trial. Swanson v. Williams, 228 N.W.2d 860, 861 (Minn. 1975). The fourth study, Exhibit G from the International Journal of Radiation Biology, was published in 1999. The study on its face does not identify when it was published. If it was published after the November, 1999 deliberations of the Board, it is not newly discovered evidence as it was not available for the deliberations. Id.

If the study was published before the November, 1999 deliberations by the Board, it is not newly discovered evidence as it was publicly available to Plaintiff and Plaintiff exercising due diligence could have provided it to the Board. See Brown v. Bertrand, 94 N.W.2d 543 (Minn. 1959). Plaintiff is conversant in the literature regarding alleged health effects from EMF. Plaintiff, in fact, maintains an internet website, where it makes available research on EMF. See [www.powcrlinefacts.com](http://www.powcrlinefacts.com). Throughout the environmental review process, Plaintiffs representatives

provided the Board with information related to EMF. See Order at pp. 9-10 (“It is undisputed Plaintiff provided the MEQB members with written and oral arguments on the issue of whether EMF created the potential for significant environmental effects with respect to project.”). If Plaintiff believed this study was important, Plaintiff was able to and would have provided it. If it did not, Plaintiff cannot now contend it is newly discovered evidence.

In any event, these four studies, even if provided to the Board, would not have produced a different or more favorable result. In other words, even if the results of these studies had been before the Board during its deliberations, its negative declaration would not have been arbitrary and capricious. As this Court acknowledged in its Order, “the parties agreed the most important information the MEQB received was the NIEHS [National Institute of Environmental Health Sciences] report.” Order at p. 10. The Board relied on this report in concluding that the Project does not have the potential to cause significant environmental effects. Four studies published after this report, which is acknowledged as the most comprehensive analysis of alleged health effects from EMF to date, do not contradict the force and validity of its conclusions. This particularly true given the nature of scientific studies in general, and studies related to EMF specifically. Research on EMF is published continuously. The results of this research need to be replicated and reviewed before they form the basis for any public policy decision. The authors of most studies recognize and acknowledge this fact. For example, the authors of the study from the International Journal of Radiation Biology conclude:

It is hoped that the findings in this paper will be of value in designing future case-control studies of childhood leukemia and other cancers in relation to high voltage power (transmission) line exposures, as well as re-assessing the results of existing studies. The overall aim in future work is to establish risk factors for living under power lines based on increased exposure to environmental pollution.

Plaintiffs Memorandum of Law, Exhibit G at 1519. If the results of the studies submitted by Plaintiff are replicated and subject to the type of review exemplified by the NIEHS report, the

studies may be relevant to decision-makers like the Board in the future. In their current state, however, they would not have produced a different or more favorable result.

CONCLUSION

Plaintiffs motion must be dismissed. Plaintiff has not provided any newly discovered evidence which requires a new trial. The majority of the information provided was produced after the Board's decision. The remainder of the information was available to the Board during its deliberations. None of the information would have produced a different or more favorable result

DATED: December 4, 2000.

NORTHERN STATES POWER COMPANY,  
d/b/a Xcel Energy

By 

Michael C. Connelly  
Attorney ID No. 0174968

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612-215-4580



November 24, 1999

**FILE COPY**

To: City of Newport  
City of South St. Paul  
City of Sunfish Lake  
City of Mendota Heights  
City of Bloomington

RE: Southeast Metro 115 kV Transmission Line Project

On November 18, 1999, the Minnesota Environmental Quality Board (EQB) issued a negative declaration on the need for an Environmental Impact Statement on the Southeast Metro 115 kV Transmission Line Project. The negative declaration is based on a conclusion that the proposed line route does not have the potential to cause significant environmental effects. A copy of the Findings of Fact Conclusion and Order is enclosed. Excepting the Environmental Assessment Worksheet, which was provided to **all** jurisdictions earlier, we also have enclosed all other materials comprising the record of decision on this matter.

In making its decision, the EQB noted that the negative declaration should not preclude local permitting jurisdictions from considering alternative routes that may better comply with planning and development criteria at the local level.

If you have any questions about this record, please contact Mr. Bob Cupit of my staff at 651-296-2096.

Sincerely,

Michael Sullivan  
Executive Director

cc: City of Inver Grove Heights  
Jim Alders, NSP  
Lou Schatz., Petitioner Representative

658 Cedar St.  
St. Paul, MN 55155

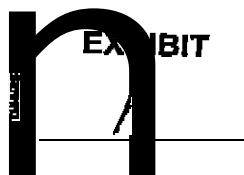
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RESOLUTION OF THE  
MINNESOTA ENVIRONMENTAL QUALITY BOARD

Negative Declaration

WHEREAS, the MEQB as the Responsible Governmental Unit has prepared an Environmental Assessment Worksheet for the proposed Southeast Metro 115 kV Transmission Line Project in accordance with Minnesota Rules parts 4410.1200 to 4410.1600; and

WHEREAS, the MEQB has reviewed and evaluated the information in the record and determined that the project does not have the potential for significant environmental effects considering the factors set out in Minnesota Rules part 4410.1700, subpart 7.

NOW THEREFORE BE IT RESOLVED, that the MBQB approves and adopts the proposed Findings of Fact and Conclusions, and issues an Order for a Negative Declaration on the Southeast Metro 115 kV Transmission Line Project.

BE IT FURTHER RESOLVED, that the Chair of the Board is authorized to sign the Findings of Fact Conclusions and Order.

November 18, 1999 Vote: 10 Yes, 3 No

STATE OF MINNESOTA  
ENVIRONMENTAL QUALITY BOARD

In the Matter of the Need  
For an Environmental Impact  
Statement for the Proposed  
Southeast Metro 115 kV Transmission Line Project

FINDINGS OF FACT,  
CONCLUSIONS AND  
ORDER

This matter came before the Minnesota Environmental Quality Board (MEQB) at a regular meeting held on November 18, 1999.

FINDINGS OF FACT

*Project Description*

1. Northern States Power Company (NSP) proposes to upgrade its southeast Twin Cities metropolitan electric transmission system with the addition of a second 115,000 volt (115 kV) line connecting its Red Rock, Rogers Lake and Wilson Substations. The 14.7 mile project alignment begins at the Red Rock Substation in Washington County, connects to the Rogers Lake Substation in Dakota County and ends at the Wilson Substation in Hennepin County. The alignment crosses portions of the cities of Newport, South St. Paul, Inver Grove Heights, Sunfish Lake, Mendota Heights and Bloomington.
2. NSP proposes to construct the new line by replacing the existing single circuit 115 kV line with a double circuit line. Both the existing and the new electrical conductors would be carried on new single steel pole structures on the centerline **in** the existing right of way. The new structures will have a typical height of 84 to 100 feet, about 25 feet taller than existing structures. No new right of way will be required. To accomplish addition of a new circuit without widening the existing right-of-way, the new structures are taller. The existing mix of wood double-pole and lattice steel structures will be replaced with single, larger diameter steel poles. None of the existing substations will require expansion: equipment additions at the substations will occur within the existing fenced area. Spaced an average of 500 feet apart, approximately 130 structures will be installed. The magnetic field from the proposed lines will be lower than the magnetic field from the existing line.
3. Installation of the transmission line will involve typical construction and impact mitigation practices. Personnel and equipment will move materials onto the right of way and erect the line, with most activity occurring at structure sites. Temporary access to structure sites by equipment will be along the ROW or, where available and to avoid sensitive areas, from adjacent public and private roads. Line maintenance would occur over the life of the proposed project and would involve periodic aerial and ground patrols. Except **in** special access situations, permanent access roads are not maintained. As needed, for routine or emergency repairs, work would be performed on the line by the utility within rights conveyed in easements. ROW are trimmed or cleared of potentially conflicting vegetation about every five years,

4. Construction is planned in two phases. **Phase 1** consists of the eastern portion from Red Rock Substation to Rogers Lake Substation with construction scheduled to begin in the fall of 1999. Phase 2 consists of the portion from Rogers Lake Substation to Wilson Substation that would be constructed in 2002.

### *Procedural*

5. A valid petition under Minn. Rules 4410.1100 requesting the preparation of an Environmental Assessment Worksheet (EAW) for NSP's proposed Southeast Metro 115 kilovolt transmission line was received on March 24, 1999.

6. Prior to a determination on whether the petition supported requiring preparation of an EAW, by letter dated April 6, 1999, NSP stated its wish to initiate environmental review pursuant to Minn. Rules 4410.1000, citing its interest in providing good environmental information to the affected city planning commissions and councils in a timely manner.

7. Having dual status by rule as both a petitioned and discretionary (volunteered) EAW, preparation began on an EAW without requiring an order of the EQB.

8. NSP has not yet filed applications for 'a Conditional Use Permit as required by five of the six municipalities in which the project will be located. NSP must also obtain permits from the Minnesota Pollution Control Agency, the Minnesota Department of Natural Resources, and **from** the U.S. Army Corps of Engineers.

9. NSP filed the data portion of the environmental assessment worksheet with EQB staff and the EAW was prepared by the EQB staff.

10. Notice of the availability of the EAW was published in the EQB Monitor on May 31, 1999, starting the 30-day EAW public comment period required by Minn. Rules 4410.1600. Notice of availability of the EAW was also mailed to the project's interested party list on June 1, 1999, including all persons signing the petition.

11. The EAW was distributed to the official EQB distribution list as required by Minn. Rule 4410.1500 on June 1, 1999.

12. A press release containing the notice of availability of the EAW for public review was provided to the St. Paul Dispatch and the Minneapolis Tribune newspapers on June 2, 1999.

13. The public comment period for the EAW closed on June 30, 1999. A copy of the responses to comments, which are incorporated in these Findings of Fact, was mailed to all commenters on August 12, 1999.

### *EAW Comments and Staff Responses*

14. Twenty three comment letters were received on the EAW: ten from government agencies, one from an environmental group, one from an adjacent nature center, and eleven from individuals, including two from state legislators. All comments have been incorporated into the record before EQB.

15. The following two corrections in the EAW are made as follows. Page 2 of the EAW states that replacement towers will range in height from 8.4 to 100 feet while page 4 states that towers will range in height from 100 to 140 feet, Both references should read 84 to 100 feet. Page 4 of the EAW states that "Width of Right of way" is 50 feet, This should be followed by the word "typical" in parentheses, NSP states that there is a section of right of way in South St. Paul where the existing right of way is 40 feet in width.

16. The principal issue addressed in the comment letters is the potential impact on human health resulting from exposure to the electric and magnetic fields (EMF) associated with the operation of electrical circuits. The EAW includes assessments of the impact and magnitude of electric and magnetic fields and ground currents on human health and safety at pages 15-17.

17. The effects of electric and magnetic fields in the human environment have been studied since the early 1970's. The Board has commissioned several reviews of the literature over time to assist the Board in regulatory decisions for new electric energy facilities. The most recent was in 1993 in which Dr. Asher Sheppard, the Board's consultant, found that health effects had not been conclusively demonstrated by any one study on human beings or animals, nor by the body of evidence from epidemiology and laboratory studies of animals, tissues, and cells.

18. Dr. Sheppard also concluded that the outlook was for continuing controversy with little chance of a scientific resolution until possibly 1998. At the time of his report Dr. Sheppard believed that the results of several major research projects in epidemiology of childhood leukemia and several studies of cancer in animals that were begun in the 1991-1992 period should be available by 1998 He also believed that the results of the federal EMF RAPID program authorized by Congress in the Energy Policy Act of 1992 should also be available by 1998. In fact these studies have been completed and the results have, been published,

19. EQB staff has reviewed the existing reports. EQB staff has prepared a memorandum on electric and magnetic fields reflecting the recent developments in scientific literature including the National Research Council and the National Institutes of Environmental Health Sciences reports released this year. (Electric and Magnetic Fields of Power Frequency Transmission Lines, August 12, 1999, by John P. Hynes, mailed to the EQB on August 12, 1999) Staff concludes in this memorandum that the current evidence does not indicate that the electric and magnetic fields expected from transmission lines represent a potential for significant environmental effect.

20. The Minnesota Department of Health has noted that the magnetic field measurement shown in the table on page 16 of the EAW is incorrectly labeled "Line Current, Amps". The correct labeling should be "Line Current, Milligauss". The existing line data in the table is based on actual models, The Department, and other commenters, also requested additional data indicating the magnetic fields that will be generated under anticipated growth in electric use. NSP has provided additional data, included as Exhibit 1.

21. The comment letter from the City of Bloomington raises questions that are beyond the scope of this EAW and are design dependent issues that the city address in its review of NSP's application for a conditional use permit.

22. Several commenters believe that the additional 115 kV circuit on new, higher poles will be a significant increase in visual and land use impact over the existing line. They emphasize that

some areas crossed by the alignment are now too dense with urban development, and that opportunities for additional, compatible use of the existing right of way have been foreclosed.

23. The average additional height of 25 feet and the additional density of the new circuit will make the new facility significantly more visible in the local communities and generally in the landscape. For the period of construction, there will be daytime nuisance disturbance, particularly in smaller lot neighborhoods of South St. Paul. The vegetation clearing necessary for construction and operation may create a dramatic change in the right of way cover in some areas, such as Sunfish Lake and the crossings of the Minnesota and Mississippi Rivers. Vegetation that NSP has allowed to establish on the existing right of way may have to be clearcut in some areas. NSP's policy is to consider minimum vegetation clearing whenever possible.

24. Several commenters raise concerns that the presence of the proposed facility was a safety hazard, resulting from downed lines and inadvertent contact. While such hazards do exist, the risks are managed by regulatory code and preventative utility practice, and are not generally considered to be a significant safety threat.

25. Several commenters assert that the proposed facility will create a significant noise nuisance. Under certain conditions the line may produce a characteristic "humming" noise during operation. The facility will be operated in compliance with state standards for noise. It is not a significant impact issue, particularly when compared to other noise sources in an urban environment.

26. The question of whether the proposed facility is necessary for NSP's electric system operation is raised by several commenters. The need issue is beyond the scope of an EAW.

27. The potential for impacts on wildlife is focused on two issues in the comments. A concern for bird collisions with the line, and resulting mortality, is raised. In this instance, there is no quantifiable basis for assuming that bird mortality resulting from line collisions will significantly reduce migrant or resident bird populations. The potential for such loss by collision with the proposed line cannot be calculated.

28. A second wildlife issue is concern is whether the necessary clearing and construction disturbance will dramatically alter wildlife habitat in portions of the right of way that support relatively natural environments. The disturbance necessary for construction may cause a significant reduction of habitat within the right of way for some wildlife. The effect diminishes after construction as vegetation reestablishes. If the right of way is then managed for maximum vegetation cover, there should not be a significant long-term reduction in habitat that is present under the existing line.

29. Several commenters believe the project will have a significant impact on property values. Effects on property values is an economic issue that is outside of the scope of an EAW, and has not been analyzed in this record.

30. Ten of the 23 commenters recommended that the EQB order an EIS for the project. Two believed that nothing should be done before a more genetic analysis of regional transmission needs is completed. The Minnesota Department of Natural Resources and the Metropolitan Council made advisory comments and recommended that an EIS need not be prepared. The

remaining nine commenters did not make a specific recommendation, but most expressed concern about potential adverse effects.

31. One reasonable basis for determining significance of potential impacts is to compare the project data with the thresholds for mandatory environmental review contained in Minn. Rules 44 10.4300. In the mandatory EAW category for Agriculture and Forestry, clearcutting of 80 or more acres in a shoreland area, or 640 acres in other areas, has been established as a categorical threshold for activities that may have the potential for significant environmental effects. The proposed project will include a total of 89 right of way acres. Of that, 20 acres are wooded and an additional five acres are in residential landscaping.

32. An additional basis for determining significance is to compare the project with other land use in the area to determine if it is consistent with existing development. The local area has typical existing urban infrastructure, including roads, pipelines, and transmission lines. Land use along the proposed alignment varies from open and undeveloped to very dense, small lot residential. Throughout the project alignment, land uses have changed significantly since the existing right of way was acquired in the 1920's. Adjacent land along one third of the existing right of way is built up along the right of way and presents compatibility concerns to local jurisdictions. However, the proposed project is not a unique or unusual development activity for which effects have not been ascertained.

#### ***EIS Need Criteria***

33. Minnesota Rules, part 4410.1700 list four criteria for determining the need for an EIS:

- The type, extent, and reversibility of environmental effects.
- The cumulative potential effects of related or anticipated future projects
- The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority
- The extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or of EIS's previously prepared on similar projects.

34. The project is subject to local control, including conditional use permits. In addition, the project is subject to federal, state, or local permits, as described in the EAW. These permits will also help make certain that the project is constructed and operated in accordance with the project description provided to the MEQB for the EAW.

## CONCLUSIONS

1. The MEQB has jurisdiction in determining the need for environmental impact statements on new transmission lines.
2. The environmental assessment worksheet for the proposed Southeast Metro 115 kV Transmission Line Project was prepared and noticed by the MEQB as required by the Minnesota Environmental Policy Act and Minn. Rules 4410.0200 through 4410.6500. Responses have been provided to all substantive and timely comments.
3. The record, including the EAW, the comments on the EAW, and the responses to EAW comments includes adequate information to determine whether the proposed transmission line project has the potential for significant environmental effects.
4. *The type, extent, and reversibility of environmental effects.* The EAW outlines the potential negative environmental effects due to construction and operation of this project. The proposed transmission line will be an additional man-made feature in the local landscape. It will affect areas which support both wildlife and human habitat, However, the physical changes that are anticipated are **not** shown to be unique **or** significant relative to other general land uses that have been developed in the area. Transmission lines are generally considered removable from the landscape without leaving permanently irreversible impacts, but as a practical matter, they are assumed to be permanent. Because the new facility will be built within an existing right of way, there will be no land use conversion, The new facility will be significantly higher than the existing line, and therefore more visible.
5. *The cumulative potential effects of related or anticipated future projects.* The project is planned to be built in two phases. There are no related or anticipated future projects.
6. *The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority.* The Minnesota Department of Natural Resources will further review potential effects and mitigation when the proposer applies for a Utility Crossing Permit necessary for crossing public waters. Five of the six municipalities crossed have authority to approve the project with a Conditional Use Permit, and can include mitigation provisions in permits if they approve the project.
7. *The extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or of EIS'S previously prepared on similar projects.* The routing and construction of electric transmission lines have been reviewed by the EQB in past EAW's and EIS's. There is an adequate degree of experience and standard practice supporting the Board's consideration of this common infrastructure.
8. Based on the criteria listed in Minn. Rules, part 4410.1700, the project does not have the potential for significant environmental effects.
9. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

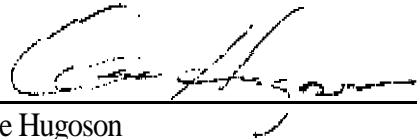
**ORDER**

Based on the Findings of **Fact** and Conclusions contained herein and the entire record:

The Minnesota Environmental **Quality** Board hereby determines that the proposed Southeast Metro 115 kV Transmission Line Project does not have the potential for significant environmental effects and issues a negative declaration on the need for an environmental impact statement.

Approved and adopted this November 18, 1999,

State of Minnesota  
Environmental Quality Board

A handwritten signature in black ink, appearing to read "Gene Hugoson", is written over a solid horizontal line.

Gene Hugoson  
Chair

Attachment: Exhibit I, EMF Data



STATE OF MINNESOTA  
COUNTY OF RAMSEY

FILED  
Court Administrator

FEB 17 2000

  
Clerk

DISTRICT COURT  
SECOND JUDICIAL DISTRICT  
COURT FILE NO. C3-99-10952

~~Power Line Task Force,~~  
Plaintiff(s),

v.

SCHEDULING ORDER

Minnesota Environmental Quality Board,  
Defendant(s).

Informational Statement Forms have been filed by Stephen B. Young for plaintiff(s), Dwight S. Wagenius for defendant(s) and Michael C. Connelly for intervener Northern States Power Company, Based on the information contained therein, a review of the file and the proceedings herein,

**IT IS HEREBY ORDERED THAT:**

1. Any deadline set forth in this order may not be extended by the stipulation of the parties without leave of the court.
2. All discovery shall be noticed so as to be completed by **May 26, 2000**. This cutoff date for discovery is also the deadline to bring and hear motions to compel discovery. No motion will be heard unless the parties have conferred in an attempt to *resolve their differences* prior to the hearing. The moving party shall certify to the court in writing, before the time of the hearing, compliance with this rule or any reasons for not complying. (Minnesota Gen. Rule Pratt. 115.10).
3. Dispositive motions must be scheduled so that **they are heard by June 30, 2000**. Parties intending to bring dispositive motions should schedule the motion eight weeks prior to the deadline, or earlier. Counsel should monitor the status of the motion calendars and plan accordingly. **The failure to schedule a motion timely will not be grounds for any extension of the motion deadline.** No motion will be heard unless the moving party certifies in writing the attempts of the parties to resolve their differences prior to the motion hearing.

DATED: FEBRUARY 17, 2000

  
LOUISE DOVRE BORKMAN  
DISTRICT COURT JUDGE



MICHAEL CHRISTOPHER CONNELLY  
NSP  
414 NICOLLET MALL  
MPLS MN 55401

Ramsey County  
St. Paul, Minnesota

Case Number: C3-99-010952

--- Re: POWER LINE TASK FORCE ---  
VS. MINNESOTA ENVIRONMENTAL QUALITY BOARD [BJORKMAN]



5. As part of the process, the municipalities retained a consultant, Commonwealth Associates, Inc.

6. The municipalities requested that NSP pay the fees of Commonwealth Associates. While NSP pays the fees of Commonwealth Associates, the consultant is directed by the municipalities, specially a Steering Committee comprised of the mayors of South St. Paul, Sunfish Lake and Mendota Heights

7. On September 20, 2000, the Steering Committee directed Commonwealth Associates to develop alternatives to the project.


a. On October 18, 2000, Commonwealth Associates presented the Steering Committee with information on alternatives to the Project.

9. NSP did not review or consult with Commonwealth Associates in the preparation of the alternatives.

10. The first time NSP saw the alternatives developed by Commonwealth Associates was at the October 8, 2000 Steering Committee meeting.

11. NSP is currently reviewing the alternatives and does not endorse the alternatives or agree they are economically or technically feasible.

FURTHER AFFLANT SAITH NOT.

  
\_\_\_\_\_  
JAMES R. ALDERS

Subscribed and sworn to before me  
this 4th day of December, 2000.

  
\_\_\_\_\_  
Notary Public

