

STATE OF MINNESOTA
COURT OF APPEALS

Power Line Task Force, Inc., a)
Minnesota not-for-profit corporation, on)
its own behalf and on behalf of the State)
of Minnesota,)

Plaintiffs,)

vs.)

Northern States Power Company, d/b/a)
Xcel Energy, a Minnesota corporation,)

Defendant.)

STATEMENT OF THE CASE

Trial Court File No. 19-C7-03-9371

Appellate Court Case No. _____

1. Court or agency of case origination and name of judge or hearing officer who presided.

Dakota County District Court, State of Minnesota

Chief Judge Karen Asphaug.

2. Jurisdictional statement.

- This appeal in this matter is from a final order of the trial court granting Xcel Energy's Motion for Summary Judgment, filed December 1, 2003.
- This order is appealable pursuant to Minn. R. Civ. App. P. 103.03(a) as a final judgment.

3. State type of litigation and designate any statutes at issue.

Civil. The following Minnesota State Statutes Sections are at issue: 116C.51-.69, 216B.243, 216B.2421, 216B.2425.

4. Brief description of claims, defenses, issues litigated and result below.

Power Line Task Force, a Minnesota nonprofit corporation consisting of homeowners and interested persons whose properties are near the Southeast Metro transmission line filed a civil suit alleging that Defendant Northern States Power Company d/b/a Xcel Energy violated the Minnesota Environmental Rights Act (MERA) when it failed to properly apply for a transmission line upgrade as required by the Power Plant Siting Act (PPSA) under Minnesota State Statutes 116C.57 and 216B.243. The suit was based upon Xcel's intent to upgrade the Southeast Metro transmission line to a 115 kV transmission line exceeding ten miles in length. According to the Power Line Task Force, Minnesota State Statute Sections 216B.243, and 116C.57 require that Xcel apply for a Certificate of Need from the Minnesota Public Utilities Commission and a Route Permit from the Minnesota Environmental Quality Board. Minnesota Statute Section 216B.243 requires that Xcel apply for a Certificate of Need prior to constructing the transmission line because the upgrade will have a capacity of 100 kilovolts or more with more than ten miles of its length in Minnesota. The Southeast Metro Transmission line is a 14.7 mile line connecting six substations. Minnesota Statute Section 116C.57 requires that Xcel apply for a Route Permit prior to constructing the transmission line because the upgrade will have a capacity of more than 100 kilovolts. Xcel did not apply to either agency for either permit.

Xcel claims that it satisfied the above requirements by applying to local units of government for zoning. Xcel also claims that the proposed transmission line is one project with two phases in which the two phases are less than 10 miles each.

As such, Xcel claims that they are not required to apply for the above permits.

Result Below: In its December 1, 2003 Findings of Fact, Conclusions of Law and Order, the trial court incorrectly found in the Xcel's favor. The trial court held that, 1) The Southeast Metro transmission line was one project in two phases, with each phase less than 10 miles in length; 2) that Xcel did not have to obtain a Certificate of Need under Minnesota State Statutes Section 216B.243 because the Southeast Metro transmission line was less than 10 miles long; 3) Xcel's procurement of local approvals for its "phase one" upgrade to the Southeast Metro transmission line in March, 1999 was in accordance with the requirements of Minnesota State Statute 116C.57; 4) Xcel unilaterally opted for local, instead of Minnesota Environmental Quality Board approval for the Route Permit as permitted under Minnesota State law; 5) Power Line's failure to support a prima facie case that Xcel's procurement of local approvals for its "phase one" upgrade violated MERA, or constituted nuisance, trespass or invasion of privacy.

5. Issues proposed to be raised on appeal.

- A. Did the trial court improperly find that the Southeast Metro transmission line is one 14.7 mile project in two phases, less than 10 miles each?
- B. Did the trial court improperly find that Xcel's application to local units of government satisfied the requirements under the Certificate of Need and Route Permit statutes?

6. Is transcript required? If so, full or partial transcript?

A full transcript is required.

7. Is oral argument requested? If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2?

Oral argument is requested. Oral argument is not requested at a location other than that provided in Rule 134.09, subd. 2.

8. Are formal briefs necessary? or Are trial memoranda, supplemented by a short letter argument, sufficient?

Formal briefs are necessary.

9. Names, addresses, zip codes and telephone numbers of attorney for appellant and respondent.

<u>Counsel for Appellant</u>	<u>Counsel for Respondent</u>
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Dated: January ____, 2004.

Respectfully submitted,

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