

APPENDIX A

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

CASE TYPE: Other Civil

Northern States Power Company
d/b/a Xcel Energy,

Court File No. C4-02-685

Petitioner,

v.

**SETTLEMENT AGREEMENT
AND RELEASE**

City of Sunfish Lake,

Respondent,

and

Power Line Task Force, Inc., Douglas P.
Beedon, and Duncan H. Baird,

Intervenors.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) memorializes the settlement the undersigned have reached in the above-entitled action.

A. Definitions

1. "Xcel" means Petitioner Northern States Power, d/b/a Xcel Energy.
2. "City" means the Respondent City of Sunfish Lake.
3. "Claims" shall mean any and all past, present, or future claims, disputes, demands, actions and causes of action, petition, suits, debts, liabilities, obligations, damages (whether general,

special, punitive, statutory, or other), penalties, costs, losses, expenses, and attorneys' fees (whether incurred prior to or after the date of the Agreement), whether known or unknown, liquidated or unliquidated, fixed or contingent, direct or indirect, suspected or unsuspected, premised on direct recovery, contribution, or indemnity, whether based on contract, tort, statute, or other legal or equitable theory of recovery, whether written or oral, among or between Xcel and City that were raised in the Action.

4. "Action" means the litigation pending in Minnesota District Court, First Judicial District, Dakota County entitled Northern States Power Company d/b/a Xcel Energy v. City of Sunfish Lake, Court File No. C4-02-6854, and all claims and defenses that were asserted therein.

B. Recitals

1. Xcel applied to City for a conditional use permit and a major site and building plan (collectively, CUP) and minor variance on November 13, 2001 in conjunction with its plan to double circuit the existing single circuit 115kV transmission line that runs through the City.

2. City denied Xcel's CUP and minor variance applications on February 5, 2002.

3. Xcel filed a Verified Petition for Alternative Writ of Mandamus against City on February 26, 2002 and an Amended Verified Petition for Alternative Writ of Mandamus (Amended Petition) on March 15, 2002.

4. City filed its Answer and Request for Discharge of Writ and Dismissal of Suit on March 22, 2002, and its Amended Answer to Xcel's Amended Petition and Counterclaims against Xcel on April 3, 2002.

5. Xcel filed a Motion for Partial Summary Judgment on April 12, 2002 .

6. The hearing on Xcel's motion was held on May 13, 2002.

7. The Court issued its Order on May 31, 2002 granting Xcel's Motion for Partial Summary Judgment and ordering City to issue to Xcel its requested CUP and minor variance.

8. Xcel and City have been engaged in settlement negotiations, which have resulted in the present Agreement.

9. Xcel and City have considered the merits of their Claims and defenses, together with the costs, inconvenience, and risks of proceeding with litigation, and have agreed upon an amicable settlement of all of the Claims as between them, without any admission of liability.

10. Xcel and City have agreed to resolve all of the disputes, disagreements, and Claims between them and they desire to forever end and terminate each and every such Claim that has been made in the Action.

11. Xcel and City stipulate and agree that the purpose of the settlement is to resolve all Claims and relieve each party to this Agreement from the liability associated with such Claims. It is the intent of both parties that this Agreement resolve any alleged liability for Claims in this Action.

C. **Agreement**

1. Issuance of CUP and Minor Variance. City shall issue to Xcel a CUP and minor variance for its project to construct an above-ground double circuit transmission line within Xcel's proposed route by adopting the Resolution attached as Appendix B to this Agreement subject to the Court's approval of this Agreement and its attachments.

2. Approval of Settlement and Dismissal. Xcel and City agree to execute and file the Stipulation and Order for Approval of Settlement and Dismissal With Prejudice, which is attached as

Appendix C to this Agreement. Xcel and City agree to submit Appendix C to this Agreement to the Court for its approval as soon as possible following the execution of this Agreement by the parties. This Agreement is not effective unless and until it is approved by the Court pursuant to the above.

3. Costs. Xcel and City agree to bear their own costs regarding this litigation and release all right to seek costs and damages related to Xcel's CUP and minor variance applications from the other party, with the exception that Xcel agrees to pay City \$6,500 within 30 days of the effective date of this Agreement for City's CUP processing costs. No credit for costs already paid by Xcel to City shall apply as against the \$6,500 to be paid by Xcel to City pursuant to this provision.

4. Cooperation. Both parties agree that with regard to press and other third-party inquiries, this Agreement reflects the basis for the parties' decision to settle. In addition, both parties agree to cooperate to move the project forward so it can be constructed as scheduled under the terms of the Agreement.

5. Intervention. In the event that a third party files a lawsuit challenging City's issuance of this CUP and minor variance, Xcel shall move to intervene and City shall not oppose such intervention.

6. Waiver of Appeal by City. City agrees not to appeal the Court's May 31, 2002 Order.

7. Releases. Xcel and City agree to the mutual release as set forth below.

D. Release

1. Release by Xcel and City. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Xcel and City hereby absolutely, generally, fully, completely and unconditionally release and forever discharge the other party from any and all

Claims in the Action. This release expresses a full and complete settlement on any liability claimed and, regardless of the adequacy of the compensation, is intended to resolve all Claims between Xcel and City in the Action, except such obligations reflected in this Agreement.

2. No Admission of Liability. This Release is given to avoid the further costs of litigation and shall not be treated as an admission of liability, responsibility, or wrongdoing on the part of Xcel or City.

E. General Provisions

1. Entire Agreement. This Agreement represents the only agreement between the parties to this Agreement concerning the subject matter hereof and supersedes all prior agreements, whether written or oral, relating thereto. This Agreement is a complete and fully integrated agreement.

2. No Waiver. Any waiver of any term or condition of this Agreement by any party to this Agreement shall not operate as a waiver of any other term or condition or continued breach of such term or condition, or any other term or condition, nor shall any failure to enforce a provision of this Agreement operate as a waiver of such provision or of any other provision.

3. Headings. The captions and headings of this Agreement are for convenience only and shall in no way limit or otherwise affect any of the terms or provisions contained herein.

4. Severability. Should any provision of this Agreement, or its application, to any extent be held invalid or unenforceable, the remainder of this Agreement and its application, excluding such invalid or enforceable provisions, shall not be affected by any such exclusion and shall continue to be valid and enforceable to the fullest extent permitted by law or equity.

5. Counterparts. Any number of counterparts hereof may be executed and each such executed counterpart shall be deemed an original, but all such counterparts together shall constitute one and the same Agreement. Copies of this Agreement with signatures transmitted by facsimile shall be deemed to be original signed versions of this Agreement.

6. Governing Law and Forum. This Agreement shall for all purposes be governed and interpreted in accordance with the laws of the state of Minnesota in the courts of Minnesota.

IN WITNESS WHEREOF, each of the parties hereto has executed this Settlement Agreement in the manner appropriate to each and warrants that it has authority to do so.

DATED: June —, 2002

**NORTHERN STATES POWER
COMPANY d/b/a XCEL ENERGY**

By:
Its:

DATED: June, 2002

BRIGGS AND MORGAN, P.A.

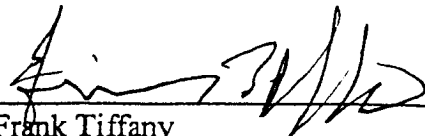
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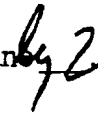
**ATTORNEYS FOR PETITIONER
NORTHERN STATES POWER**

DATED : July 2, 2002

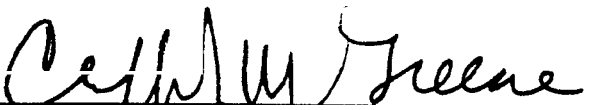
CITY OF SUNFISH LAKE

By: 
Frank Tiffany

Its: Mayor

DATED: Jun  2002

GREENE ESPEL, P.L.L.P.

By: 
Clifford M. Greene (#37436)
William P. Hefner (#258349)

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Minneapolis, MN 55402-1415
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**ATTORNEYS FOR RESPONDENT
CITY OF SUNFISH LAKE**

APPENDIX B

CITY OF SUNFISH LAKE DAKOTA COUNTY, MINNESOTA

RESOLUTION NO. 02-

RESOLUTION REGARDING THE APPLICATION OF XCEL ENERGY FOR A CONDITIONAL USE PERMIT AND FOR SITE PLAN APPROVAL AND FOR A VARIANCE RELATING TO RECONSTRUCTING AN EXISTING SINGLE CIRCUIT TRANSMISSION LINE WITH A DOUBLE CIRCUIT TRANSMISSION LINE ALONG THE PROPOSED ROUTE

WHEREAS, Northern States Power Company d/b/a Xcel Energy ("Xcel") filed applications for a conditional use permit, for site plan approval and for a minor variance in conjunction with its plan to reconstruct the existing single circuit 15kV transmission line that runs through the City of Sunfish Lake ("the City") with a double circuit transmission line along the proposed route; and

WHEREAS, the City Council denied Xcel's applications on February 5, 2002, Resolution No. 02-04; and

WHEREAS, Xcel commenced a mandamus lawsuit against the City on February 26, 2002 that challenged the City's denial, entitled *Northern States Power Company d/b/a Xcel Energy v. City of Sunfish Lake*, Court File No. C4-02-6854; and

WHEREAS, the Court granted Xcel's Motion for Partial Summary Judgment on May 31, 2002 and ordered the City to issue to Xcel a conditional use permit and minor variance; and

WHEREAS, legal counsel appointed by the League of Minnesota Cities ("LMC") to represent the City in the lawsuit, as well as LMC counsel and the City Attorney, have consulted with the City Council regarding the issues involved in the litigation, including the City's options for appealing the Court's May 31, 2002 Order; and

WHEREAS, some of the issues raised in Xcel's lawsuit are matters of first impression as to which there is no case law precedent and proceeding with the lawsuit may be justified in order to establish a precedent; and

WHEREAS, although there are plausible arguments in favor of the City's action, nonetheless, because of the nature of the issues involved, the uncertainties of litigation, and the substantial litigation expenses, which are not budgeted, the City Council upon careful consideration has concluded that the following action is in the best interests of the City and all of its citizens;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Sunfish Lake, Minnesota:

1.) That the City not proceed with its defense of the litigation, including an appeal of the Court's May 31, 2002 Order, upon condition that it be released from any financial obligation to Xcel based on the causes of action raised in the litigation, including damages and attorney's fees, arising from the lawsuit or any act or omission of the City in connection, in anyway whatsoever, with Xcel's applications.

2.) That any conditional use permit ordered by the Court, or otherwise issued by the City, contain the conditions in Attachment 1 to this Resolution.

3.) That subject to Court approval, the City approves Xcel's applications subject to the conditions stated on Attachment 1 to the Resolution; the City's approval of Xcel's applications, together with the conditions stated on Attachment 1, shall become effective upon the Court's approval of the Settlement Agreement and Release between Xcel and the City.

4.) That subject to Court approval, the City approves the attached Settlement Agreement and Release and authorizes its Mayor and specially-appointed legal counsel to execute such Settlement Agreement and Release.

Passed: July 2 2002.

Approved: *July 2* June 2002.

Mayor:

F R. Ti



ATTACHMENT 1 TO APPENDIX B

CONDITIONS RELATING TO XCEL ENERGY'S CONDITIONAL USE PERMIT, VARIANCE AND SITE & BUILDING PLAN APPROVAL

1. All transmission line reconstruction must be consistent with the conditional use permit application and submittal information dated November 13, 2001.
2. All poles and accessory equipment must be maintained in good condition at all times.
3. All poles must be galvanized and left in a light gray finish.
4. All reconstruction to the transmission line within Sunfish Lake must be completed by July 1, 2005, except that the City shall extend this completion date for a period to account for delays caused by unforeseen circumstances.
5. Xcel Energy is responsible for all necessary repairs and for timely restoration as a result of this project. Restoration shall be completed as soon as practicable after completion of the project.
6. Third party co-location of wireless or cellular antennas on the poles is not authorized by this conditional use permit and must be separately applied for and approved by the City pursuant to its ordinances.
7. Xcel Energy must obtain all necessary approvals, if any, from applicable governmental units or agencies.
8. In the event that the State of Minnesota or the Federal Government establishes standards for EMF that are applicable to the proposed line, Xcel Energy shall comply with such standards.
9. During the construction, Xcel shall use reasonable practices to minimize erosion, to protect significant trees and to protect environmentally sensitive areas. Depending on the circumstances, such measures may include:
 - a) Placing a silt fence around the downstream sides of the foundation holes and around the disturbed soil areas, including material stockpiles, in order to prevent soil erosion.
 - b) Orange construction fencing around the drip lines of significant trees, which would be classified as hardwood trees such as maples, sugar maples and all varieties of oak trees, in order to protect roots from construction damage.

- c) Placing erosion control blankets, as opposed to mulch, in areas of steep slope, for protective cover over the top of the newly reseeded turf areas to minimize soil erosion loss.

Prior to construction, Xcel shall confer with the City Engineer to identify the appropriate practices that Xcel will utilize.

10. Excess material generated from the foundation excavation shall be removed from the project area, unless placement on site is approved by the directly impacted landowners in consultation with the City Engineer.

11. City agrees not to exercise the consultation provisions under paragraphs 9 and 10 in such a way as to delay unnecessarily the project.

12. Consistent with easement rights, existing vegetation may only be removed if reasonably necessary or advisable for the construction operation, or maintenance of the line.

13. Unless dictated by exigent circumstances (e.g., power outages, MnDOT regulations), construction shall be conducted only during the normal business hours of 7:00 a.m. to 7:00 p.m. from Monday through Friday.

14. Access for construction vehicles shall be via Xcel's easement rights or any other agreements with landowners. Xcel shall use reasonable efforts to keep the streets free of mud from construction vehicles.

15. New pole structures shall be located as close to the right of way centerline and as close to the existing structures as practicable in light of sound engineering standards and other relevant factors.

16. The poles must be constructed as proposed, which is approximately 25 feet above the height of the existing line.

APPENDIX C

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT
CASE TYPE: Other Civil

Northern States Power Company
d/b/a Xcel Energy,

Court File No. C4-02-685

Petitioner,

v.

City of Sunfish Lake,

**STIPULATION AND ORDER
FOR APPROVAL OF SETTLEMENT
AND DISMISSAL WITH PREJUDIC
ON ALL CLAIMS**

Respondent,

and

Power Line Task Force, Inc., Douglas P.
Beedon, and Duncan H. Baird,

Intervenors.

STIPULATION

WHEREAS, Petitioner Northern States Power Company d/b/a Xcel Energy (Xcel) has filed this lawsuit seeking Writs of Mandamus commanding the Respondent City of Sunfish Lake (City) to grant a conditional use permit and to approve a major site and building plan (collectively, CUP) and minor variance permitting Xcel to upgrade its existing transmission line within the City;

WHEREAS, this Court granted Xcel's Motion for Partial Summary Judgment with respect to Xcel's first and second causes of action in its Amended Verified Petition for Alternative Writ of Mandamus;

WHEREAS, the parties have entered into a Settlement Agreement and Release to resolve all outstanding claims between them (Appendix A);

WHEREAS, subject to the Court's approval, City through its City Council, has agreed to adopt a resolution (Appendix B) approving Xcel's CUP and minor variance applications; and

WHEREAS, Xcel agrees that this dispute may be resolved in accordance with the terms set forth in the Settlement Agreement and Release.

DATED: June_, 2002

BRIGGS AND MORGAN, P.A.

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**ATTORNEYS FOR PETITIONER
NORTHERN STATES POWER
COMPANY d/b/a XCEL ENERGY**

DATED: July 2, 2002

GREENE ESPEL, P.-L.L.P.

BY 
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William P. Hefner (#258349)
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Minneapolis, MN 55402-1415
(612) 373-0830

ORDER

NOW THEREFORE, this Court does hereby Order that:

1. The parties' agreement to resolve this dispute is fair and reasonable and is therefore approved;
2. City is commanded by the Settlement Agreement and Release to issue to Xcel its requested CUP and minor variance in the form set forth in City's Resolution (Appendix B), permitting Xcel to reconstruct its transmission lines within the City, in accordance with the terms of said Resolution and its accompanying conditions; and
3. The pending lawsuit, including all claims that have been or could have been brought for damages, attorneys' fees and costs, except as specifically exempted in the Settlement Agreement and Release (Appendix A), is dismissed with prejudice.

WITNESS the Honorable Rex D. Stacey, Judge of said Court, and the seal thereof, this
day of June 2002.

The Honorable Rex D. Stacey