

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CASE TYPE: Other Civil

Power Line Task Force, Inc., on its behalf and
on behalf of the State of Minnesota,

Court File No. MC 03-003400

Plaintiff,

**DEFENDANT NORTHERN STATES
POWER COMPANY d/b/a
XCEL ENERGY'S REPLY
MEMORANDUM IN SUPPORT OF
ITS MOTION FOR
TRANSFER OF VENUE OR,
IN THE ALTERNATIVE,
RULE 12 DISMISSAL'**

v.

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

Defendant.

ARGUMENT SUMMARY

The objective of Task Force's response brief to Xcel Energy's motion for transfer of venue or dismissal is transparent: to complicate and misdirect. Task Force treats the Court to quotations from Presidents Ronald Reagan and John F. Kennedy and from Vice President Spiro Agnew, as well as references to *Brown v. Board of Education* and a Shakespearean play. PLTF Response Brief at 15 & 10 n.12. Task Force attempts to supplement the record with an expert opinion on whether a transmission line application can be submitted in phases or segments of the entire line. *Id.* at 29-30. Task Force spends five pages refuting a collateral estoppel argument that was never made. *Id.* at 31-35. And Task Force apparently seeks to use its brief to amend its pleadings to object to an already-built one-half mile segment of the 6.36-mile "phase one" line in Inver Grove Heights. *Id.* at 40-42. Indeed it supports its new claim by submitting a hearsayladen affidavit regarding the alleged death of a child due to the reconfiguring of this one-half

¹ Xcel Energy's reply brief is timely. Under Rule 6.05, Task Force's late service of its response memorandum gave Xcel Energy another day to file its reply brief. This is not true of Task Force's reply memorandum in support of its motion for summary judgment, which was not timely filed.

mile segment of line. *Id.* As Task Force's veteran counsel is well aware, none of this extracurricular material is relevant.

Rather, all that is relevant is whether judicial economy and comity supports this Court's discretionary transfer of venue back to the Dakota County District Court. And if not, the issue is whether Xcel Energy's line upgrade project was "applied for on or after August 1, 2001" because of Xcel Energy's formal CUP application to Sunfish Lake on November 13, 2001 for the 1.268mile segment of the line which runs through the city. Because it is undisputed that all other municipal segments of the line upgrade project were "applied for [before] August 1, 2001" (Exhs. B9 at 9, B3, B5 & B1), the only way to rule in favor of Task Force is to do what Task Force and its expert insist cannot be done - namely, treat the Sunfish Lake segment of the line, together with Xcel Energy's CUP application for this municipal segment, as a stand alone project which is separate from the rest of Xcel Energy's 6.36- (or 14.7-) mile line upgrade project. But, by law, the "route" being applied for must begin and end at a substation (Minn. Stat. § 116.52), and there are no substations in Sunfish Lake. In addition, the two state agencies (Exhs. C4 at 4 ¶ A(4) & C7), the one court (Ex. B9 at 26), the four local zoning bodies (Ex. C15; Exhs. B9 at 2527 & BI; Ex. C9; Exhs. B24-B25) and all of the utilities (Ex. C5 at 5 ¶ 4) that have looked at the issue agree that in determining whether the new PPSA requirements apply to a particular transmission line project, the project being "applied for" is the entire line and not the individual municipal segments of the line. They thus uniformly agree that the application for any one municipal segment of the line - let alone applications for four of the five (or, as argued by Task Force, five of the six) municipal segments - renders the entire line "applied for."

In any event, Xcel Energy timely "applied for" its line upgrade project even if the 1.268mile portion of the line running through Sunfish Lake is segmented out from the rest of the line. Xcel Energy applied for this municipal segment on April 4, 2000 through Sunfish Lake's

resolution for what turned out to be a year-long, \$130,000 "environmental impact review" of the project. Ex. B1. The resolution itself (*id.* at 1), as well as Xcel Energy's May 4, 2001 South St. Paul application, confirms that, because of this "environmental impact review," it "is in the process of obtaining the required conditional use permit[] from ... Sunfish Lake." Ex. B5 at 3 (emphasis added).

ARGUMENT

I. VENUE SHOULD BE TRANSFERRED BACK TO THE DAKOTA COUNTY DISTRICT COURT

A. Xcel Energy did not waive its right to move for transfer of venue

Upon being served Task Force's complaint, Xcel Energy immediately challenged the venue of this action in lieu of an answer. Task Force, nevertheless, claims that Xcel Energy has waived any objection to venue, citing the Company's removal of the first judge assigned to the case, and its motion for stay of discovery.

It is well-settled law in Minnesota that an objection to venue may be waived either by failing to timely object to the venue or by seeking affirmative relief in the allegedly improper venue. *In re Kowalke's Guardianship*, 46 N.W.2d 275, 284 (Minn. 1950). In this case, however, there can be no question that Xcel Energy timely objected to this action's venue in Hennepin County. Nor can it be seriously contended that Xcel Energy has sought affirmative relief in this venue that now precludes granting a transfer.

Certainly filing for removal of a judge cannot be found to be "relief," let alone affirmative relief as Task Force asserts. Removal of a judge is granted or denied without any regard whatsoever to the substance of the action. *See Minn. R. Civ. P. 63.03*. And as to Xcel Energy's motion for stay of discovery, it was brought after the company's objection to venue. Moreover, Xcel Energy explicitly noted that it was seeking the stay because its motion for transfer of venue or, in the alternative, dismissal, was pending and should be decided before

discovery was allowed. Xcel Energy's Memorandum of Law in Support of its Motion to Stay Discovery at 1. To ask that discovery not be allowed until the court resolves a prior venue objection cannot be treated as seeking affirmative relief so as to defeat the venue objection. *Cf., e.g., In re Kowalke's*, 46 N.W.2d at 284 (party waived venue objection in guardianship case where it first raised objection after the court denied its guardianship petition); *Albrecht v. Sell*, 100 N.W.2d 895, 897 (Minn. 1961) (venue objection waived where plaintiff, after transfer of venue, adopted the venue change in its notice of trial and then waited seven months before raising a venue objection); *Rosnow v. Comm'r of Pub. Safety*, 444 N.W.2d 591, 594 (Minn. Ct. App. 1989) (party waived venue objection where it first raised the objection in the middle of trial).

Xcel Energy has not waived its objection to the venue of this action.

B. Judicial economy and comity encourages venue in the Dakota County District Court

Task Force recognizes the record fact that each of the three disputed local zoning approvals for Xcel Energy's line upgrade project was procured through the Dakota County District Court. PLTF Response Brief at 14. Yet Task Force contends that these zoning disputes are irrelevant to the current action. *Id.* To the contrary, the key issue in this case is whether Xcel Energy's line upgrade project was "applied for [before] August 1, 2001." And because, prior to August 1, 2001, such line upgrade applications were required to be made to the local zoning bodies with jurisdiction over the line (*No Power Line v. Minnesota Environmental Quality Council*, 262 N.W.2d 312, 317 (Minn. 1977)), whether the project was "applied for [before] August 1, 2001" turns on precisely what was submitted in these zoning disputes, all of which has been before the Dakota County District Court.

In the *NSP v. Mendota Heights* litigation, the district court had to thoroughly analyze the thick record of city's two and one-half year review of this application. *NSP v. Mendota Heights*,

646 N.W.2d 919 (Minn. Ct. App.), *rev. denied* (Minn. Sept. 25, 2002). The district court had to do so in order to determine whether Mendota Heights' ultimate CUP denial was untimely under Minn. Stat. § 15.99.

In the *NSP v. South St. Paul* litigation, the Dakota County District Court had to analyze the pleadings sufficiently to determine whether the stipulated settlement agreement between the city and Xcel Energy, which reversed the city's initial CUP denial, was fair and appropriate. Ex. B7.

And, in the *NSP v. Sunfish Lake* litigation, the Dakota County District Court had to thoroughly analyze the voluminous record to determine whether the city's CUP denial was arbitrary and capricious. Exhs. B9 & B 13; Exhs. B 11-B 12. Tellingly, the district court's review was not limited to issues related just to the 1.268-mile segment of line running through Sunfish Lake. To the contrary, the district court reviewed and relied upon the state agencies' environmental reviews of the entire "phase one" and "phase two" portions of the line project, as well as the year-long "environmental impact review" that Xcel Energy agreed to pay for pursuant to an April 4, 2000 resolution of the Sunfish Lake City Council. Ex. B9 at 10-15.

By virtue of its prior reviews of the municipal line applications, the Dakota County District Court is the court which is best equipped to determine whether Xcel Energy submitted its project application before August 1, 2001. Task Force gives no reason for asking this Court to review all of the relevant municipal zoning application documents that the Dakota County District Court has already reviewed.

And judicial comity compels that if any district court is to conclude that the zoning decisions procured through the Dakota County District Court should be nullified by the new PPSA requirements, then that court making that decision should be the Dakota County District Court.

II. THE PROJECT IS EXEMPT FROM THE NEW PPSA REQUIREMENTS

A. Task Force must demonstrate that the Sunfish Lake portion of the line is a stand alone project

Task Force's response brief clarifies its sole substantive argument, which is that Xcel Energy's line upgrade project was "applied for on or after August 1, 2001" because Xcel Energy formally filed a CUP with Sunfish Lake on November 13, 2001 for the 1.268-mile segment of the line running through the city.² In order to sustain this argument, Task Force must demonstrate that the Sunfish Lake segment of the southeast metro line is a stand alone project. This is because the rest of the line was "applied for [before] August 1, 2001." Ex. B9 at 9 ("Newport and Inver Grove Heights classified the project as a permitted use for which no further zoning approval was required because the upgrade does not change the existing use"); Ex. B3 (March 2, 1999 CUP application to Mendota Heights); Ex. B5 (May 4, 2001 CUP application to South St. Paul); Ex. B 1 (April 4, 2000 "environmental impact review" resolution of the three cities).³

² Task Force repeatedly misrepresents that there are "four and one-half months," rather than three and one-half months, between the August 1, 2001 statutory deadline and Xcel Energy's submission to Sunfish Lake of its November 13, 2001 CUP application.

³ To the extent that this was, as Task Force alleges, a 14.7-mile project extending from the Rogers Lake Substation in Mendota Heights to the new East Bloomington Substation and then to the Wilson Substation in Bloomington, Task Force's argument is further weakened. As part of MAC's north-south runway project, Xcel Energy was forced in June 2000 to apply for and procure from Bloomington the approvals for the line upgrade within MAC's runway protection zone (RPZ). Exhs. B20-B25; *see* Xcel Energy's Memo. in Opp. to Task Force's Summary Judgment Motion at 12 n.6. In fact, the eastern portion of the upgrade within the RPZ has already been fully constructed, while the construction of the western portion of the upgrade line is underway. Ex. B26. Consequently, with regard to the supposed 14.7-mile project, Xcel Energy had by August 1, 2001 "applied for" at least five of six (rather than four of five) municipalities with jurisdiction over the line.

B. Task Force cannot demonstrate that the Sunfish Lake portion of the line is a stand alone project

1. Municipal segments of a line are part of the entire project

Task Force cannot, as a matter of law, meet its burden. A "route" is a statutorily-defined term. It is "the location of a high voltage transmission line between two end points," which for a transmission line are at its substations. Minn. Stat. § 116C.52, subd. 8 (emphasis added). But there are no substations in Sunfish Lake. Thus, the 1.268-mile segment of line running through Sunfish Lake cannot constitute a "route," precluding it from being an independent project.

Indeed, Task Force supports this conclusion, introducing an "expert" opinion that large power lines must not be "treat[ed] ... in separate 'phases,' or segments." Task Force Response Brief at 29; *id.* at 30 (dividing the project into "phases" or "segments" constitutes "Balkanizing the line in a way that is both impractical and unrealistic"). Task Force's "expert" opines that "the power line is considered to be an integrated project running from beginning to the end of the project." *Id.* at 30 (emphasis added). The expert further clarifies that "the construction project itself is generally viewed as the totality of the length of the line, even though it may be constructed incrementally over time." *Id.* at 29-30 (emphasis added). Otherwise stated, municipal segments (and CUP applications therefore) can not, according to Task Force's own expert, constitute a separate project.

2. All agree that the zoning application for any one municipal segment of a line before August 1, 2001 renders the entire line "applied for"

For purposes of determining whether a line project was "applied for [before] August 1, 2001," everyone (besides Task Force) who has looked at this issue agrees that the project being "applied for" cannot be "Balkanized" or "segmetized" by the individual municipal applications required by local zoning laws. Rather all agree that once one municipal segment of the line project is "applied for," then the entire line project is "applied for."

Task Force fatally volunteered that the issue of when a multi-jurisdictional line project has been "applied for" should be determined by the state agencies charged with enforcement of the new PPSA requirements. In fact, Task Force instructs this Court that "Xcel [Energy's] argument to give its long transmission line a 'free pass' shall be directed to the [M]EQB, which has authority to determine environmental matters under the **Route Permit** process." Task Force Response Brief at 40 (bold in original; underlining added). This issue has, however, already been "directed" to the two state agencies with authority to enforce the new PPSA requirements - *i.e.*, MEQB and MPUC.

MEQB determined on February 21, 2002 that because Great River Energy (GRE) made "applications to two of the three local units of government with permitting authority prior to August 1, 2001[,] ... this project was begun prior to the effective date of the [new PPSA] and therefore is not subject to the amendments to the [PPSA] and a permit from the [M]EQB is not required." Ex. C7. One month later, MPUC agreed.⁴ MPUC ordered the utilities to provide it with "a listing of projects that the utilities believe are exempt by virtue of having one or more applications pending before local governments by August 1, 2001" (Ex. C4 at 4 ¶ A(4) (emphasis added)), and it naturally has taken no action since then to stop the continued local permitting and construction of the five projects which the utilities identified on March 31, 2002 as being exempt. Ex. C5 at 5 ¶ 4. The agencies could not have been clearer: one or more application pending before local governments before August 1, 2001 exempts a line from the new PPSA requirements.

Task Force makes no attempt to dispute Xcel Energy's contention that such agency determinations are entitled to substantial deference. *Reserve Mining Co. v. Herbst*, 256 N.W.2d

⁴It appears that MPUC's March 20, 2002 Order was, in part, responsive to GRE's March 6, 2002 request for just such clarification. Ex. C8.

808. 824-26 (Minn. 1977) (adhering to the "fundamental concept that decisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies' expertise and their special knowledge"); *see also* Minn. Stat. § 14.69 (2002) (defining the scope of judicial review of an administrative agency determination). Instead Task Force underscores that such agency determinations and rules "are presumed valid and entitled to substantial deference." Task Force Response Brief at 23 (citing *In re R.B.P.*, 640 N.W.2d 351 (Minn. Ct. App. 2002)).

The only court to address this did so for the precise project at issue here, and it agreed with the state agencies. Rejecting Sunfish Lake's and Task Force's arguments to the contrary, the Dakota County District Court ruled that "[b]ecause Xcel [Energy] had an application for approval of this project before various cities before August 1, 2001 [,] it does not need [M]PUC review at all." Ex. B9 at 26 (emphasis added).⁵

The four local zoning bodies that have addressed the issue also rejected the notion that a project is not "applied for [before] August 1, 2001" if one municipal segment of the line was not applied for by that deadline. Despite receiving GRE's application for its Hutchinson to Big Swan 18-mile 69kV transmission line upgrade on August 9, 2001, 10 days after the other two local zoning bodies with jurisdiction over the project received the application, the Hutchinson Joint Planning Area Board accepted jurisdiction over GRE's project and proceeded with its review and eventual approval of the project. Ex. C15. Of course, the Hutchinson Joint Planning

⁵ As Task Force is well aware, Xcel Energy has never argued that Task Force is collaterally estopped by the Dakota County District Court decision from re-raising this legal issue because the decision was not part of a final judgment. In fact, pursuant to Xcel Energy's motion, the Court of Appeals dismissed Task Force's appeal of this decision because it was not a final judgment. *NSP v. Sunfish Lake*, No. C4-02-6854 (Minn. 1st Jud. Dist. Order & Memo. dated May 31, 2002) (Ex. B9), *appeal dismissed*, No. C0-02-1285 (Minn. Ct. App. Order dated Sept. 3, 2002) (Ex. B13).

Area Board could not legally have approved of GRE's line upgrade project if the project was subject to the new PPSA requirements.

Sunfish Lake eventually followed suit. Despite initially agreeing with Task Force's strained construction of when a project is "applied for" (Ex. B9 at 25-27), Sunfish Lake ultimately granted the required zoning approvals (Ex. B 11), and in doing so, it necessarily accepted that it had the authority - vis-a-vis MPUC and MEQB - to grant the approvals.

Minnetonka similarly determined that "[w]e believe that the law does not apply where there had been required participation in developing alternatives pursuant to a local approval process mandated by a city ordinance such as ours] prior to August 1, 2001." Ex. C9 (emphasis added).⁶ And, to the extent that this project was for the entire 14.7-mile length of the southeast metro line, Bloomington made the same determination. Xcel Energy did not file its Bloomington zoning application on the western segment of its MAC-required 115kV line project until October 21, 2001. Ex. B23. Bloomington nevertheless assumed jurisdiction over the project, presumably due to Xcel Energy's June 2000 zoning application for its eastern segment of this line, subsequently granting its conditional approval. Exhs. B24-B25; Xcel Memo. in Opp. to Task Force's Motion for Summary Judgment at 12 n.6.

3. Rules of statutory construction compel everyone else's construction of "applied for"

The "effective date" of the new PPSA is tied to the statutorily-undefined phrase "applied for." There is no statutory definition of the phrase, particularly as it relates to multi-jurisdictional projects. Several rules of statutory construction nevertheless compel the same

⁶ Based upon Xcel Energy's willingness to abide by Minnetonka's interpretation of its own ordinance (Exhs. 10 & 23), Minnetonka encouraged its legislators to drop the legislation that Minnetonka - not Xcel Energy - initiated to clarify any ambiguity regarding the Legislature's intent that the city retained jurisdiction over this line upgrade project. Ex. C12. Xcel Energy had nothing to do with proposing this legislation.

conclusion reached by everyone to date - namely, that for purposes of determining when it has been "applied for," the entire line project must be evaluated as one project, with the application for one municipal segment of the project constituting commencement of the application process for the entire line project.

a. The statutory purpose compels everyone else's construction of "applied for"

"Applied for" must be construed so as to advance the purpose of the statute. Minn. Stat. § 645.16 (the object of all interpretation and construction of laws is to ascertain and effectuate the intention of the Legislature). The stated purpose of the new PPSA requirements is to ensure that permitting of large utility projects is "done in a sensible, reasonable, non-duplicative fashion." Ex. C 1 at 13. Task Force's argument would do the opposite.

There is no public policy benefit of Task Force's requested review of the southeast metro upgrade project under the new PPSA requirements. The five line projects that the utilities identified for MPUC as "exempt" from the new PPSA requirements (Ex. C5 at 5 ¶ 4) would, under Task Force's statutory construction, be (1) automatically stripped of their existing local zoning approvals; (2) enjoined from either completing the pending construction of the project or using the already built projects; and (3) required to begin the entire permit approval process all over. And for what?

While the projects would this time around have to procure MPUC's certificate of need, the projects could under Minn. Stat. § 116C.576 opt for the same exact local route permit approval that they have already procured. And three of these five line projects - i.e., GRE's Hutchinson to Big Swan project, and Xcel Energy's Westgate-Glen Lake-Gleason Lake and southeast metro projects - are largely upgrades of existing lines along the same right of way. Consequently, the review of these projects under the route permit review process is quite limited. Due to a judicially-recognized state public policy against the proliferation of new transmission

line corridors, the cities had to, "as a matter of law, choose a pre-existing route [for the upgraded transmission line] unless there [were] extremely strong reasons not to do so." *People for Environmental Enlightenment and Responsibility (PEER) v. Minnesota Environmental Quality Council*, 266 N.W.2d 858, 868 (Minn. 1978) (emphasis added).

Moreover, MEQB and MPUC have already had full opportunity to review this project. And any omissions were certainly cured by the three cities' \$130,000 "environmental impact review." In other words, Task Force seeks a protracted and expensive repeat of the same review that has already been conducted, apparently for the sole reason that it wants another chance to argue the same points it has already argued and lost before the various state agencies and local governments that have already reviewed the line. This is in direct contravention of the legislative goal of "a sensible, reasonable, non-duplicative" review of such projects.

b. Task Force's construction of "applied for" is irreconcilable with other provisions of the new PPSA

"Applied for" must also be reconciled with the new legislation. *Pestka v. County of Blue Earth*, 654 N.W.2d 153 (Minn. Ct. App. 2002) (statutes that form part of a complete statutory scheme should be construed together). Task Force's interpretation that each municipal segment of a line project had to have been "applied for [before] August 1, 2001" in order for that project to be exempt is irreconcilable with Minn. Stat. § 116C.576's alternative route permit review process. Not surprisingly, Task Force's response completely ignores § 116C.576.

Section 116C.576, subd. 1(b) allows utilities to procure their required route permit from the local zoning bodies rather than MEQB. And this local alternative provides that the application to one local zoning body with jurisdiction over the project triggers the application date for each of the required local zoning bodies with jurisdiction over the project to request the MEQB to assume jurisdiction over the route review. *Id.* More specifically, recognizing that a transmission line project may well have several local zoning bodies with jurisdiction over the

project and that the applicant may not apply for all local approvals at once, the 60 days in which each of the local zoning bodies has to demand that MEQB conduct the route permit review commences when the application is first received by any one of these bodies. *Id.*

Similarly, Minn. Stat. § 216B.2425, subd. 6 sets forth a "fast-track" for MPUC's certificate of need determination, which expressly exempts "any transmission line proposal that has been approved by, or was pending before, a local unit of government, the environmental quality board, or the public utilities commission on August 1, 2001." (Emphasis added). Subdivision 6 thus exempts projects that were "pending before a local unit of government" - i.e., a single local zoning body. And there is absolutely no reason for the Legislature to have intended to exempt approved or pending line projects from § 216B.2425, subd. 6's "fast-track" certificate of need requirement but not from the non-"fast-track" certificate of need requirement under § 216B.243 or the route permit requirement under § 116C.57. Task Force conspicuously fails to give even one reason why the Legislature would choose to do this.

c. Task Force's construction of "applied for" is absurd

"Applied for" cannot be interpreted to lead to an absurd result. Minn. Stat. § 645.17(1); *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn. 2001). There could be few, if any, results that would be more out-of-step with the legislation's goal of "a sensible, reasonable, non-duplicative" review than that requested by Task Force. There is absolutely nothing in the legislative history or public policy that would support the literal undoing of over four years of state agency reviews and court-granted and approved local permits, particularly given the documented need for the electrical services at issue. Equally troubling is that this result would necessarily apply to other exempt projects, all but one of which is fully permitted, while a couple are fully constructed and operational.

C. Regardless, the project was "applied for [before] August 1, 2001," even in Sunfish Lake

The line upgrade project was "applied for [before] August 1, 2001" even in Sunfish Lake. Xcel Energy effectively applied for its CUP pursuant to Sunfish Lake's April 4, 2000 resolution, which required Xcel Energy to prepare and pay for what turned out to be an independent third party's year-long \$130,000 "environmental impact review" of the project. Ex. B 1. The resolution itself indicated that this "environmental impact review" was part of Sunfish Lake's application review process. Indeed, because of this "environmental impact review" process, Xcel Energy represented in its May 4, 2001 South St. Paul CUP application that it "is in the process of obtaining the required conditional use permits from ... Sunfish Lake." Ex. B5 at 3 (emphasis added); *see also* Ex. B 14 (contemporaneous "application checklist" notes that "C.U.P. application[] required for. .. Sunfish Lake - in progress") (emphasis added).

Apparently recognizing that Xcel Energy's application process in Sunfish Lake did begin with the city's April 4, 2000 resolution for the "environmental impact review," Task Force's response is, in its entirety, as follows:

Strangely, Xcel [Energy] also claims that it began the application process in Sunfish Lake on April 4, 2000, pursuant to some type of agreement between Mendota Heights and South St. Paul for "environmental impact review." [Xcel

Dismissal Memo.], p. v.

[T]he "environmental impact review" conducted by two communities has no bearing on whether, or when, an actual application was filed, which is the triggering date for the two respective statutes. Indeed, Xcel [Energy] admits that it "submitted to Sunfish Lake an application" on November 13, 2001, which is four and one-half months *after* the Power Plant Siting Act went into effect.

PLTF Response Brief at 11 (underlining added; bold & italics in original).

Contrary to Task Force's misrepresentation, Xcel Energy cited to and relied upon the April 4, 2000 resolution of Sunfish Lake - not "some type of agreement between Mendota Heights and South St. Paul" - to claim that its application was filed well before August 1, 2001.


That Xcel Energy subsequently filed a CUP application with Sunfish Lake on November 13, 2001 does not erase the 12-month delay and \$130,000 expense it incurred in response to Sunfish Lake's requested "environmental impact review." Perhaps in Task Force's world such a delay and expense mean nothing but, for a public utility corporation legislatively mandated to provide safe, reliable and cost-effective electric service to its ratepayers, this process was very real and substantial. *Compare* Exhs. 9 & 23 (Minnetonka determined that route negotiating process constituted being "applied for").

CONCLUSION

Round V of Task Force's crusade against this line should be summarily dismissed. Every entity that has looked at the issue and every rule of statutory construction compels this result. Indeed even Task Force's own expert undermines its contrary argument.

DATED: May 16, 2003

BRIGGS AND MORGAN, P.A.

B, 

Jack Y. Perry (#209272)
Thomas Erik Bailey (#236871)

2400 IDS Center
Minneapolis, MN 55402
(612) 334-8400

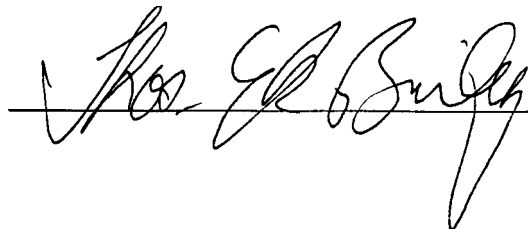
Of Counsel

Harold J. Bagley (#0003906)
Assistant General Counsel, Xcel Energy
U.S. Bancorp Center 800 Nicollet Mall,
Suite 2900 Minneapolis, MN 55402-2023
(612) 215-4586

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

ACKNOWLEDGMENT

The undersigned acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211, subd. 3.

A handwritten signature in black ink, appearing to read "Ross J. Burley", is written over a horizontal line. The signature is cursive and somewhat stylized.

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