

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,

v

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

Defendant.

**DEFENDANT NORTHERN STATES
POWER COMPANY d/b/a XCEL
ENERGY'S MEMORANDUM
OF LAW IN OPPOSITION TO PLAINTIFF
POWER LINE TASK
FORCE, INC.'S MOTION FOR
SUMMARY JUDGMENT AND IN
SUPPORT OF ITS CROSS-MOTION
FOR SUMMARY JUDGEMENT**

INTRODUCTION

Defendant Northern States Power Company d/b/a Xcel Energy's (Xcel Energy) has moved for transfer of venue or, in the alternative, for Rule 12.02(e) dismissal of this action. Plaintiff Power Line Task Force, Inc. (Task Force) has, nevertheless, simultaneously moved for summary judgment. Task Force brings its motion before Xcel Energy's answer is filed and before any discovery has been conducted. Besides being premature, Task Force's motion is, like its complaint, woefully inadequate. Task Force's conclusory legal analysis requires little response from Xcel Energy other than to (1) clarify the narrowness of Task Force's action; (2) highlight the relevant portions of Xcel Energy's exhaustive memorandum in support of its motion to dismiss; and (3) set forth the prematurity of Task Force's motion if it somehow survives Xcel Energy's Rule 12.02(e) motion to dismiss and Rule 56 cross-motion for summary judgment.

STATEMENT OF FACTS

Xcel Energy incorporates by reference its statement of facts from its Memorandum of Law in Support of Its Motion for Transfer of Venue and, in the alternative, for Rule 12.02(e) Dismissal (Xcel Dismissal Memo.).

The key issue raised by the parties' cross dispositive motions is whether Xcel Energy applied for its line upgrade project before August 1, 2001. Xcel Energy's exhaustive efforts between March 2, 1999 and August 1, 2001 to procure the necessary state and local approvals for its line upgrade project are a matter of undisputed public record. *See* Xcel Dismissal Memo. at viii-xii & Exhs. A1-A10; *id.* at ii-viii and xii-iii & Exhs. B1-B13.

By the August 1, 2002 "effective date" of the new Power Plant Siting Act (PPSA) requirements, Xcel Energy's line upgrade project had already been subjected to the Minnesota Environmental Quality Board's (MEQB) eight-month long environmental review and Task Force's unsuccessful 13-month legal challenge to MEQB's negative declaration on the need for an environmental impact statement. Exhs. A1-A3. By this date, the Minnesota Public Utilities Commission (MPUC) had likewise refused Task Force's request that the line be shut down due to environmental concerns, and MPUC's refusal had been judicially upheld. Exhs. A4-A5.

In addition, Xcel Energy's line upgrade project had by August 1, 2001 already been automatically approved by two of the five cities with jurisdiction over the line - i.e., Newport and Inver Grove Heights. Ex. B9 at 9. The line upgrade project had been formally applied for since March 2, 1999 in another of the five cities - i.e., Mendota Heights. Ex. B3; *NSP v. Mendota Heights*, 646 N.W.2d 919 (Minn. Ct. App.), *review denied* (Minn. Sept. 25, 2002). The line upgrade project had since at least May 4, 2001 been applied for in yet another of the five cities - i.e., South St. Paul. Ex. B5. And the line upgrade project was on April 4, 2000

effectively applied for in the fifth and final city with jurisdiction over the line - i.e., Sunfish Lake. Xcel Energy effectively applied in Sunfish Lake with 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 environment impact review of the project. Ex. B1¹. 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 South St. Paul, Mendota Heights and Sunfish Lake." Ex. B5 at 3 (emphasis added); *see also* Ex. B 14 (contemporaneous "application checklist" notes that "C.U.P. applications required for South St. Paul, Mendota Heights, and Sunfish Lake - in progress") (emphasis added).

Despite this record, Task Force clings to its last ditch argument that Xcel Energy's line upgrade was not "applied for before August 1, 2001" because its formal conditional use permit (CUP) application to Sunfish Lake was not submitted until November 13, 2001, or over three months after the "effective date" of the new PPSA requirements. To advance this argument, Task Force is forced to contend that if any one segment of an entire line upgrade project was not formally applied for before August 1, 2001, then the entire project was not applied for and the previously procured environmental reviews and local zoning approvals are for naught. In other words, the project approval process must start all over under the new PPSA requirements.

Except for Task Force's position, the recorded public opinions on this issue are uniformly against Task Force's strained construction. The one court, the two relevant agencies (i.e., MPUC

¹ Sunfish Lake's "Mayor Tiffany described the [environmental impact review] report as a 'slightly scaled down environmental impact statement.' He also stated, in response to remarks directed at [the cities' consultant for the environmental impact review] by [Task Force], that the [cities'] Steering Committee 'was totally satisfied that [the consultant] produced an unbiased report' and '[i]t's unbelievable the volume of objective measurable data to support [the consultant's] conclusions.'" Ex. B9 at 13.

and MEQB), the regulated utilities and the two cities that have looked at this specific issue have all concluded that such a project is exempt from the new PPSA requirements if it has one or more applications pending before local governments by August 1, 2001.

The only court to address the issue was the Dakota County District Court. The district court addressed the issue in the context of its review of Sunfish Lake's reliance on the certificate of need requirement to deny Xcel Energy's requested zoning approvals. Over Sunfish Lake and Task Force's arguments to the contrary, the district court rejected Sunfish Lake's denial based on this certificate of need requirement "[b]ecause Xcel [Energy] had an application for approval of this project before various cities before August 1, 2001[.][which is the effective date of the certificate of need requirement,] it does not need [M]PUC review at all." Ex. B9 at 26 (emphasis added).

The two state agencies with primary regulatory authority over utility projects agree with the Dakota County District Court. On March 20, 2002, 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). It is illogical to conclude that MPUC ordered this listing of exempt projects if it had not itself already determined that such projects are exempt.

MPUC's implicit determination is underscored by its failure to take any action to stop the continued local permitting and construction of these projects. On March 31, 2001, the utilities identified five projects, notably the southeast metro line upgrade, that they deemed to be "exempt by virtue of having one or more applications pending before local governments by August 1, 2001." Ex. C5 at 5 ¶ 4. MPUC actually or constructively knew that the utilities were, without further notice from MPUC, going to continue with the local permitting and eventual construction

of these listed projects. Indeed, in the 13 months since receiving the list of exempt projects, all but the Glen Lake -Westgate - Gleason Lake line upgrade project have received local zoning approvals and at least three have commenced the construction of these projects. Exhs. C15-C18.

MEQB explicitly made the same determination with regard to Great River Energy's (GRE) upgrade application for its Hutchinson to Big Swan 18-mile 69kV transmission line to be upgraded to 115kV. Unlike Xcel Energy's two and one-half years of state and local review of its line upgrade project before the new PPSA's August 1, 2001 "effective date," GRE merely acted at the last minute to submit "applications to two of the three local units of government with permitting authority prior to August 1, 2001[,] and applied to the third local unit of government on August 9," 2001. Ex. C7. Indeed GRE's first local zoning applications were on July 31, 2001. Ex. C6. MEQB nevertheless ruled on February 21, 2002 "that 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. C7.²

The only other governmental bodies to address this issue - i.e., Minnetonka and Sunfish Lake - agreed with both the Dakota County District Court and the two state agencies. Minnetonka addressed the issue with regard to Xcel Energy's Glen Lake - Westgate - Gleason Lake line upgrade project. This line upgrade project extends from Minnetonka into Wayzata and Eden Prairie. Xcel Energy initially applied for permit approval from Minnetonka on May 27, 1999, but this application was denied on September 27, 1999. Exhs. C22-C23. Xcel Energy has made no other application to Minnetonka or any other city on this line upgrade project. Rather than challenging the permit denial, Xcel Energy engaged in public and private negotiations with

² The Hutchinson Joint Planning Area Board must have agreed. It proceeded with its review and eventual approval of GRE's project. Ex. C15. The Hutchinson Joint Planning Area Board could not legally have approved of GRE's line upgrade project if the project was subject to the new PPSA requirements.

Minnetonka to resolve their differences of opinion regarding how the project shall be routed and who should pay for any agreed upon added costs. Id. In the interim, the August 1, 2001 deadline passed. Xcel Energy was concerned that, because it had no pending application for this project, it was subject to the new PPSA requirements. Minnetonka disagreed. Its position was as follows:

The City believes that Minnesota Laws 2001, Chap. 212, Art. 7 does not apply to the proposed upgrading of Xcel's facilities in Minnetonka because the formal approval process required by City Ordinance No. 2001-13 had already begun and the first two steps had been completed when the law became effective. We 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 our prior to August 1, 2001.

Ex. C9 (emphasis added). Xcel Energy agreed to "respect the City's interpretation of its own ordinance with respect to Minn. Stat. Chapter 212, given the ordinance's requirement to participate in an official process prior to August 1, 2001." Ex. C10; Ex. C11.

Minnetonka's interpretation of when an application is made is significant for at least two reasons. First, Minnetonka's interpretation presupposes that the application before August 1, 2001 to just one local unit of government with jurisdiction over the line was sufficient to exempt the entire line from the new PPSA requirements. Minnetonka did not care that the line project had not been applied for elsewhere.

Second, Minnetonka's multiple step permit review process for large utility line projects was the template for Sunfish Lake's permit review process. Ex. C 19 ("[t]he City of Sunfish Lake has instructed its staff to review the city of Minnetonka's zoning ordinance in order to review and revise the City's zoning ordinance in regard to transmission line permitting"); *compare* Ex. C20 at 5-8 (Minnetonka Code of Ordinances ch. 3, § 300.21(o)) *and* Ex. C21 (Sunfish Lake City Code § 1224.01-.05). Accordingly, if Xcel Energy and Minnetonka's routing negotiations over the line constitutes being "applied for" under Minnetonka's ordinance, then most assuredly Xcel

Energy's 12-month \$130,000 "environmental impact review" pursuant to Sunfish Lake's April 4, 2000 resolution, coupled with the other state and local reviews, constitutes being "applied for" under Sunfish Lake's nearly identical ordinance.

Finally, Sunfish Lake initially denied Xcel Energy's line upgrade project in part due to the project's supposed need to be reviewed under the new PPSA requirements. Ex. B9 at 25-27.³ But, after losing that argument before the Dakota County District Court (*id.*), Sunfish Lake granted the required zoning approvals. Ex. B 11. In so doing, Sunfish Lake necessarily accepted that it had the authority - vis-a-vis MPUC and MEQB - to grant the approvals. And the Court of Appeals approved this settlement. Ex. B 12.

³ It is noteworthy that, despite Sunfish Lake's extraordinary efforts to justify its zoning denial, the city elected not to even argue that Xcel Energy failed to comply with § 116C.576's route permit requirements. *See* Ex. B9.

ARGUMENT

I. TASK FORCE'S ACTION RESTS ENTIRELY ON XCEL ENERGY'S SUPPOSED NON-COMPLIANCE WITH THE NEW PPSA REQUIREMENTS

As clarified by its summary judgment motion, Task Force's complaint apparently states four separate causes of action - namely, (1) MERA violation (complaint ¶¶11-18); (2) nuisance (*id.* ¶¶ 19-24); (3) trespass (*id.* ¶¶25-29); and (4) invasion of privacy (*id.* ¶¶30-34).⁴ But each claim is premised upon the same allegation - that is, that "Xcel [Energy] may not construct the aforesaid transmission line without first obtaining [1] a Certificate of Need from the [M]PUC [under § 216B.243] and [2] a Route Permit from the [M]EQB" under § 116C.57. *Id.* ¶¶ 18, 24, 29 & 34 (brackets added).

Naturally then, Task Force's only requested relief is "[a]n Order declaring and adjudging that Defendant Xcel [Energy] must obtain [1] a Certificate of Need from the PUC and [2] a

⁴ As reflected in its Rule 12.02(e) motion to dismiss, Xcel Energy reasonably interpreted Task Force's cursory complaint as solely a MERA action, with its nuisance, trespass and invasion of privacy references meant to substantiate its requisite threshold showing of harm under MERA. But Xcel Energy's motion to dismiss arguments are not materially affected by Task Force's clarification of its complaint. Xcel Energy's motion and supporting memorandum should thus be read to encompass each of Task Force's four claims.

Moreover, Task Force's independent nuisance, trespass and invasion of privacy claims underscore the propriety of Xcel Energy's requested venue transfer back to Dakota County District Court. These three claims are all based upon alleged injuries to real property. Complaint ¶¶ 21, 26 & 31. But for Task Force's MERA claim, its nuisance, trespass and invasion of privacy claims would have to be filed in the district court where the real property is situated - namely, the Dakota County District Court. *See* Minn. Stat. § 542.02 ("[a]ction ... for injuries to lands within this state, shall be tried in the county where such real estate or some part thereof is situated") (emphasis added); *Christenson v. Town of Dollyment*, 241 Minn. 409, 63 N.W.2d 367 (1954) (under § 542.02, trespass claim had to be brought in the county where the land is located); *State ex rel. Bd. of Water Comm'rs of City of St. Paul v. Dist. Court of Ramsey County*, 230 Minn. 507, 510-11, 42 N.W.2d 201, 203 (1950) (under § 542.02, where the "principal and primary relief sought" in a trespass action related to lands in Anoka County, the action must be held in that county); *see also State ex rel. Schmitt v. Hoffman*, 233 Minn. 186, 189, 46 N.W.2d 468, 470 (1951) (§ 542.02 applied to mandamus action to compel highways commissioner to condemn land because the "sole issue ... concern[ed] a taking of or injury to land"). (emphasis added).

Route Permit from the EQB prior to constructing the aforesaid transmission line;" and "[a]n Order restraining Defendant Xcel [Energy] from constructing the aforesaid transmission line without obtaining [1] a Certificate of Need from the PUC, and [2] a Route Permit from the EQB." Id. ¶¶1 1-2 (brackets added). Task Force's summary judgment brief reasserts that its requested relief is "to bar Xcel [Energy] from proceeding with the new power line until - and unless - it obtains both [1] a *Certificate of Need* from the PUC and [2] a *Route Permit* from the EQB, both statutory requirements imposed by the legislature in Minn. Stat. § 216B.243 and § 116C.57, subd. 2, respectively." Task Force Sum. Judg. Brief at 13 (brackets added; italics in original); id. at 14-16.

Otherwise stated, Task Force's complaint fails to state a claim for relief if it cannot substantiate Xcel Energy's supposed non-compliance with the new PPSA requirements - that is, the "certificate of need" and route permit requirements.

II. TASK FORCE'S ENTIRE ACTION MUST BE SUMMARILY DISPOSED

To avoid the unnecessary repetition of its prior arguments, Xcel Energy incorporates by reference its Rule 12.02(e) motion to dismiss arguments. These arguments not only preclude Task Force's summary judgment motion but they also compel the summary disposal of Task Force's action. Whether pursuant to its Rule 12.02(e) motion to dismiss or pursuant to its alternative cross-motion for summary judgment with this responsive brief,⁵ Xcel Energy is entitled to the summary disposal of Task Force's entire action.

⁵ Rule 56 authorizes Xcel Energy to move for summary judgment with its responsive memorandum. *Kabanuk Diversified Investments, Inc. v. Credit General Ins. Co.*, 553 N.W.2d 65 (Minn. Ct. App. 1996).

A. The project is exempt from the new PPSA requirements

There has been no requisite non-compliance with the new PPSA requirements if Xcel Energy's line upgrade project is exempt from these requirements. And the project is exempt if this Court finds that (1) these requirements apply prospectively and (2) Xcel Energy's line upgrade project was "applied for before August 1, 2001." Neither of these two issues is debatable. Xcel Dismissal Memo. at 7-11.

The new PPSA requirements at issue are prospective because, among other things: (1) statutes are presumptively prospective (Minn. Stat. § 645.21); (2) the new PPSA's "effective date" is expressly prospective (Exhs. C2-C3); (3) analogous provisions of the new PPSA are prospective (Minn. Stat. §§ 116C.576 & 216B.2425, subd. 6); (4) the only court to address the requirements applied them prospectively (Ex. B9 at 25-27); (5) MPUC's own interpretation of the new PPSA "effective date" is prospective (Ex. C4 at 4 ¶ A(4); Ex. C5 at 5 ¶ 4); (6) MEQB's own interpretation of the new PPSA "effective date" is prospective (Exhs. C6-C7); (7) the two cities to address the requirements applied them prospectively (Exhs. C9 & B11); and (8) the Minnesota Supreme Court has recognized the need to apply like requirements prospectively (*No Power Line v. Minnesota Environmental Quality Council*, 262 N.W.2d 312, 321-22 (Minn. 1977)). Not surprisingly, then, the affected utilities interpreted and proceeded with the approvals of their project applications consistent with their interpretation that the new PPSA requirements are prospective. Ex. C5 at 5 ¶ 4. And for nearly two years, neither the state agencies (i. e., MPUC and MEQB) nor the local zoning bodies with jurisdiction over these pending line projects have done anything but approve the permitting and construction of these line projects. Exhs. B11 & C14-C18.

Similarly, the two and one-half years of exhaustive governmental reviews of this project prior to the August 1, 2001 "effective date" of the new PPSA requirements compel this Court's

finding that the project was "applied for [before] August 1, 2001." Any other interpretation would cause the entire permit process to start anew, not only for this line but for each of the other lines that was pending before August 1, 2001. *See, e.g.*, Ex. C5 at 5 ¶ 4. Indeed three of these projects, notably Xcel Energy's southeast metro line upgrade (Ex. C18), are under construction and would have to be stopped until state approvals are obtained. Exhs. C16-C18. Such obstruction for the purpose of having the state redo what was already locally approved would undermine the fundamental legislative purpose of streamlining the PPSA process. Ex. C 1 at 13. Task Force's brief conspicuously fails to analyze either of these issues.

B. The new PPSA's "certificate of need" requirement is, in any event, inapplicable to the less than 10-mile long project

There has, in any event, been no non-compliance with the new PPSA's "certificate of need" requirement if this Court finds that, as a matter of law, the applied for line upgrade project is less than 10 miles long. Xcel Dismissal Memo. at 2 - 3.

South St. Paul's May 4, 2001 application specifically identified that "this upgrade involves rebuilding line 0818," which is the 6.36-mile line between the Red Rock and Rogers Lake substations. Ex. B5 at 1; Ex. B15 (map identification of line 0818); *see also* Ex. B16 ("928-01 ... Project Title: Red Rock-Rogers Lake Line 0818"); Ex. B17 ("9-7-01 . . . Project Title: Red Rock-Rogers Lake Line 0818"); Ex. B 18 ("February 9, 2000 . . . Red Rock - Rogers Lake 115kV"); Ex. B19 (Line 0818 renamed "5529 115 RED ROCK-ROGERS LAKE (FUTURE)"). In case there was any confusion, Xcel Energy's application added that it "proposes to add a second 115kV circuit between the Red Rock and Rogers Lake Substation." *Id.* (emphasis added).

And Xcel Energy's Sunfish Lake application was equally explicit in limiting its project to the 6.36-mile phase one line upgrade from Red Rock to Rogers Lake. Its November 13, 2001

transmittal letter to its application provided unambiguously that "the entire line upgrade project involves an upgrade of the existing 115kV transmission line from the Red Rock Substation is Newport to the Rogers Lake Substation in Mendota Heights." Ex. B8 at 2 (emphasis added).

The environmental reviews of the entire 14.7-mile southeast metro line cannot transform what Xcel Energy actually applied for - i.e., the 6.36-mile "phase one" project - into a *de facto* application for an upgrade for the entire 14.7-mile line. This is especially true where, as here, Minnesota's "phase" and "connect" rules required the full line to be subject to the environmental review. Minn. R. 4410.1000, subp. 4 & 4410.2000, subp. 4.⁶

Task Force's MERA action based on Xcel Energy's supposed non-compliance with the certificate of need requirement also fails if this Court determines, as a matter of law, that the certificate of need requirement excludes any environmental review. Xcel Dismissal Memo. at 13-15.

In fact, a fundamental purpose of the new PPSA requirements was to exclude environmental review from the certificate of need requirement. *See* Minn. Stat. §§ 116C.575, subd. 5 & 116C.57, subd. 2c.

⁶ As part of the Metropolitan Airport Commission's (MAC) addition of the north-south runway, Xcel Energy was forced, beginning in 2000, to relocate its Bloomington Substation. In the process, Xcel Energy procured the necessary approvals for the rebuilding of the line from the eastern most edge of Bloomington to the new East Bloomington Substation and then to the Wilson Substation in Bloomington, except for those portions of the line on federal lands. But Bloomington's approval of the rebuilding of the portion of the line from the western most boundary of the runway protection zone (RPZ) to its Wilson Substation was conditioned upon Xcel Energy's procurement of Bloomington's final administrative approval. Xcel Energy has neither sought nor received this final administrative approval. Indeed this completion of the "phase two" route is not yet needed. Ex. B9 at 9. Mendota Heights approved of the approximately 2.5 mile portion of the "phase two" line from the Rogers Lake Substation to the western edge of Mendota Heights out of pure convenience.

C. Xcel Energy's local zoning approvals otherwise satisfied the new PPSA's route permit requirement

There has, as well, been no non-compliance with the new PPSA's route permit requirement if this Court determines, as a matter of law, that Xcel Energy satisfied § 116C.576's alternate process for the route permit requirement: obtaining local route permit approval. Xcel Dismissal Memo. at 15-17. With regard to 100kV to 200kV line projects, there is literally no difference between the standard local zoning approvals obtained by Xcel Energy and the § 116C.576 alternative local route permit approvals. In light of this, Xcel Energy's local approvals must count for something. Either they prove that Xcel Energy's project was exempt from the new PPSA requirements by virtue of being "applied for [before] August 1, 2001" or they prove Xcel Energy's complied with § 116C.576's alternate local route permit approval process, or both. The statutory purpose of avoiding duplication compels this Court to find that the local approvals satisfy one or both of these requirements.

III. ALTERNATIVELY, TASK FORCE'S SUMMARY JUDGMENT MOTION IS PREMATURE

At a minimum, Task Force's summary judgment motion is premature. Even if this Court somehow finds that Task Force has stated a cause of action upon which relief can be granted, there is no way that Task Force is entitled to summary judgment on any of its four claims. If Xcel Energy's legal arguments regarding its exemption from or compliance with the new PPSA requirements do not persuade the Court, then Xcel Energy should be given the opportunity to conduct discovery.

Because of the required deference to agency determinations (*Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824-26 (Minn. 1977)), Xcel Energy has the right to conduct discovery, including subpoenas and depositions, with the agencies primarily in charge of implementing the new PPSA requirements - namely, MPUC, MEQB and MDH. There is no substantiated reason

to believe that these agencies would do anything other than confirm that a 100kV to 200kV line project that was pending by August 1, 2001 before any one local zoning body is exempt from the new PPSA requirements. *See* Ex. C4 at 4 ¶ A(4) (MPUC ordered that utilities 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"). (emphasis added).

Xcel Energy must also be given the opportunity to conduct discovery on the bases for Task Force's claims of (1) an environmental threat under MERA; (2) a nuisance; (3) a trespass; and (4) an invasion of privacy. Task Force's complaint establishes absolutely no individualized bases for these supposed harms. And there is no Minnesota case that holds that a supposed regulatory non-compliance ipso facto establishes any of these actions. The adjudicated record underscores the need for Task Force to substantiate its `alleged harms. The 80-year-old line predates the birth of every Task Force member and the construction of every Task Force members' house. Ex. B9 at 20-22. And because of the added height and the reconfiguration of the lines, the upgrade will cause "substantial reductions" in EMF levels. *Id.* at 22-25. Where, then, is the requisite environmental harm, nuisance, trespass and/or invasion of privacy?

CONCLUSION

Each of Task Force's four claims relies upon its proof of Xcel Energy's non-compliance with the new PPSA requirements. But the unmistakable conclusion is that Xcel Energy's project either is exempt from or has complied with these requirements, or both. As such, Task Force's claims must be summarily disposed of under Rule 12.02(e) or Rule 56. As an alternative, Xcel Energy is entitled under Rule 56.06 to conduct discovery before these claims are finally ruled upon.

DATED: May 12, 2003

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ACKNOWLEDGMENT

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

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