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December 4, 2007

Burl Haar, Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101

Re: *In the Matter of the Applications of Northern States Power Company d/b/a Xcel Energy and Dairyland Power Cooperative for a Certificate of Need and a Route Permit for a 115 kV and 161 kV Transmission Line from Taylor's Falls to Chisago County Substation*, MPUC Docket Nos. E-002, ET3/CN-04-1176 (Need) and E-002, ET3/TL-06-1677 (Route), OAH Docket No. 8-2500-17840-2

Dear Dr. Haar:

This letter is filed on behalf of the Minnesota Department of Commerce Energy Facility Permitting Staff (EFP Staff) to advise the Minnesota Public Utilities Commission (Commission) that, in lieu of filing exceptions, the EFP Staff has identified in the Administrative Law Judge's (ALJ) Report certain issues of concern to the Department which subsequently will be addressed in the EFP Staff recommendations and proposed route permit. Because the EFP Staff advises the Commission and is not a formal party in the route proceeding, it does not seem appropriate for the EFP Staff to file exceptions to the ALJ Report. However, the EFP Staff wishes to alert the Commission at this time to particular issues it has concerning the report. These are briefly noted and explained below.

First, as the Commission knows, the Companies' application for a route permit was submitted and processed under the alternative process in Minn. R. 7849.5500 to 7849.5720, including the provision describing the ALJ's role in such a process. This rule provision, Minn. R. 7849.5710, subp. 2 (2007) states, "[t]he hearing examiner shall not prepare a report or make any recommendation to the commission unless the commission requests the hearing examiner to do so." The Department's EFP Staff has treated the application in the same manner as it has treated past applications under the alternative process. In this case, the EFP Staff requested the ALJ to make findings of fact from which the EFP Staff could form its recommendation to the Commission. As such, the EFP Staff is not certain why the ALJ issued a full report with recommendations to the Commission, other than for expediency with the combined certificate of need proceeding. The EFP Staff checked the Commission's Order sending the route docket to the ALJ but did not find any such request from the Commission to the ALJ, although the Commission certainly has done that with regard to the certificate of need docket. Thus, the EFP Staff recommends that the Commission not consider the ALJ's recommended route modification as the final recommendation, but, rather, review the EFP's briefing packet which will provide recommendations based upon the full record in compliance with all statues and rules.

Second, as stated above, the EFP Staff will address recommendations for routing in its briefing packet based on the information in the record, suggesting additional findings as appropriate. However, the EFP Staff wish to inform the Commission now that they cannot recommend the ALJ's preferred "around-the-lakes" alternative, based on the information in the record. This alternative was not evaluated as a route alternative in the Department's Environmental Assessment and, therefore, landowners along this route did not receive individual notices and may not be aware that their property could be condemned. In addition, the "around-the-lakes" alternative would likely require a wider route width than the 200 feet suggested by Xcel Energy for any other route, according to the testimony of its witness, Tom Hillstrom.

Third, Xcel's post-hearing briefs state that, of the alternatives presented, only the Newell Avenue underground alternative is viable. The EFP Staff will address this alternative in its report to the Commission. The City of Lindstrom also includes this alternative as one of three options that it considers to be reasonable (First Avenue underground, Newell Avenue underground, and around the lakes).

In conclusion, the Department EFP Staff are not filing exceptions concerning the route docket for the reason noted above, and any exceptions the Department EFP Staff may take to the ALJ Report will be fully addressed in the EFP Staff's briefing to the Commission to be presented after all party exceptions have been received. The EFP Staff make no comment on the ALJ's recommendation on the Certificate of Need application.

Sincerely,

KAREN FINSTAD HAMMEL
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Enc.
cc: All parties of record

AG:1902247

AFFIDAVIT OF SERVICE by
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STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, *Pat Silberbauer*, state that at the City of St. Paul, County of Ramsey, State of Minnesota, on the 4th day of December 2007, I e-filed the attached **Letter on behalf of the Minnesota Department of Commerce Energy Facility Permitting Staff (EFP Staff)** ***[regarding in lieu of filing exceptions with the MPUC]***, and served the same by depositing in the United States Mail, at said city, a true and correct copy thereof, properly enveloped, with prepaid first class postage, addressed to:

All parties on the attached service list

/s/ *Pat Silberbauer*

MPUC Docket No. E-002/CN-04-1176
MPUC Docket No. E-002/TL-06-1677

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