

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of Northern
States Power Company d/b/a Xcel Energy
And Dairyland Power Cooperative for a
Certificate of Need for a 115kV and 161kV
Transmission Line from Taylors Falls to
Chisago County Substation

PUC Docket: E-002/CN-04-1176
E-002/TL-06-1677

OAH Docket: 8-2500-17840-2

**CONCERNED RIVER VALLEY CITIZENS (CRVC) EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE REPORT**

1. Without exception, no party or witness in these dockets has written, stated or maintained that the proposed project is exempt from Minnesota environmental laws. The parties **have** created a substantial record of competing claims regarding whether the proposed project complies or does not comply with Certificate of Need and Routing statutes and rules, and whether the Applicants have met, or failed to meet, their burden of proof under the Need and Routing statutes and rules.

Minnesota environmental laws apply equally to the proposed project but have been ignored by the Applicants and Department of Commerce throughout the Administrative Hearing process. The Administrative Law Judge (ALJ) report also ignores a failure by the Applicants to consider project alternatives required under the Minnesota Environmental Rights and Environmental Policy Acts, and a failure by the Applicants to meet their burden of proof under the Acts. *See* Minn. Stat. §§ 116B.04 and

116D.04, Subd. 6. Consequently, the Administrative Law Judge has created a gap in the record that the Public Utilities Commission (PUC) must now fill. Since standards of proof exist for a showing of compliance with Minnesota's environmental laws that are different from those required in the Need and Routing statutes and, since the ALJ has not weighed in to sort out the different burdens of proof, it will become a responsibility of the PUC. *See* CRVC Initial Brief at pages 20-21 for a discussion of the statutory differences.

2. The Administrative Law Judge Report states 96 findings, 120 conclusions, a recommendation and a short memorandum. CRVC disagrees with any number of stated conclusions (see CRVC Initial Brief and Reply Brief for a more complete record of our disagreements) but CRVC's stated exceptions are chiefly concerned with environmental law compliance. The ALJ makes three arguments in the memorandum. The third discusses the Around the Lakes Over Head Alternative and the Minnesota Supreme Court decision in *People for Environmental Enlightenment and Responsibility Inc. ("PEER"), v. Minnesota Environmental Quality Council*, 266 N.W.2d 858 (Minn. 1978). The ALJ draws a distinction between the *PEER* case and the present case and states they are "factually different."

The ALJ correctly states "to the extent that the record speaks of unique regional assets deserving special guardianship, those assets exist along the proposed route in downtown Lindstrom." *See* ALJ Conclusions 91, 92, 98 and 105. The record does not

support the ALJ's assertion that assets deserving special guardianship do not exist "along the more rural path around Chisago Lake." When more is known about the Around the Lake Over Head Option, Minnesota environmental laws may require consideration of yet another alternative.

The ALJ actively promotes the Around the Lakes Over Head Option and relies heavily on public testimony to reinforce the recommendation. Again, the paradox is that the ALJ fails to bring Minnesota's environmental laws to bear to fortify his arguments in statute. The ALJ's arguments in favor of protecting the City of Lindstrom from scenic and economic harm by an above ground routing through the City are valid and sound. If the ALJ were to have applied the same legal reasoning and used the environmental law statutes as required, the Report would have concluded that the Applicants have not met their burden of proof for a route through, or even near Lindstrom, under the Minnesota Environmental Rights and Environmental Policy Acts.

The scenic, tourism and environmental harm the ALJ describes for the City of Lindstrom parallels the environmental harm caused by routing down the St. Croix National Scenic Riverway bluff face in Taylors Falls, crossing overhead at the Minnesota St. Croix Scenic Byway and crossing overhead at the St. Croix River in the vicinity of the dam. As discussed in *PEER*, each described action in the present case would cause "noncompensable" impacts and, since the actions are "likely to cause the pollution, impairment, or destruction of the air, water, land or other natural resources located within

the state,” a permit shall not be approved unless the Applicants can show that there is no feasible and prudent alternative. The Applicants have not met that burden of proof. Minn. Stat. § 116B.04; *PEER* 266 N.W.2d at 864. Minnesota law simply requires recognized assets to be protected from material environmental harm. Each described action, by itself, is enough to trigger active consideration of feasible and prudent project alternatives, not under Need and Routing statutes and rules, but under Minnesota’s environmental laws. The ALJ Report evidences sound reasons to protect local assets in Lindstrom but illustrates a serious legal blind spot for failing to require the Applicants to first prove there are no feasible and prudent alternatives or, failing that, to prove the alternative routes are more environmentally harmful than the proposed project, as required by Minnesota law.

Dated: December 3, 2007

Respectfully submitted,

Bill Neuman
Board Member, Representing
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Shellene Johnson, President

AFFIDAVIT OF SERVICE

I, **Bill Neuman**, being first duly sworn, deposes and says: that on the 3rd day of December, 2007, served the **Concerned River Valley Citizens (CRVC) Exceptions to the Administrative Law Judge Report**

**MN PUC Docket: E-002,ET3/CN-04-1176
E-002,ET3/TL-06-1677**

OAH Docket: 8-2500-17840-2

by electronic filing

December 3, 2007

Bill Neuman

Subscribed and sworn to before me

this 3rd day of December, 2007

Kathy E. Jacobson

Notary Public-Wisconsin

Commission Expires 6/28/2009

SERVICE LIST

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All Parties have agreed to E-File documents at: www.edockets.state.mn.us.

Filing with E-dockets shall constitute service on the Public Utilities Commission, the Department of Commerce and the Office of Administrative Hearings. As of this date, all parties have agreed to accept service by e-mail at the e-mail addresses listed below. However, where indicated, parties have requested that the e-mail be followed by mail or delivery of a hard copy. In the event that a pleading or attachment cannot be filed and served electronically, it must be filed and served on each of the parties at the addresses listed.

Documents that contain trade secret or nonpublic data may be e-filed, but may not be copied or served electronically.

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