

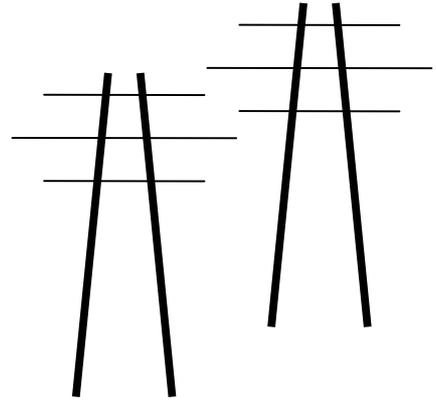
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June 1, 2009

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Burl Haar, Executive Secretary
Public Utilities Commission
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RE: Comment of Carol A. Overland, as an individual and not representing any party
Taylors Falls Motion for Amendment
Chisago Transmission, PUC Docket 06-1667

Dear Mr. Birkholz and Dr. Haar and PUC Commissioners:

THIS COMMENT MADE AS INDIVIDUAL WITH 13 YEARS OF PROJECT HISTORY

For the record, I am making this comment not representing any party, but as an individual who has represented various parties in this docket and other Chisago dockets and related matters over the course of the last 13 years since the Chisago Transmission Project was first proposed. A lot of history has occurred over this time, and the importance and complexity of the issues raised deserves a careful examination. I am making this Comment to raise recurring issues in this proceeding, those of failure of parties and agencies to give proper Notice, and of failure of parties and agencies to recognize the Agreement of Taylors Falls and St. Croix Falls with the Applicants. Similarly, Taylors Falls and St. Croix Falls have failed to speak up on the record regarding this matter until now, at this very late date. After a careful examination of the record, I request that the Commission grant the relief requested by Taylors Falls and St. Croix Falls and

amend the Order to reflect the configuration in the Agreement between the cities. Xcel will not be prejudiced by compliance with its Agreement!

ONCE AGAIN, PARTIES WERE NOT GIVEN NOTICE

Once again, as has happened before in this docket,¹ I was not served notice that this matter was pending and learned of it only after a conversation with a local resident about the LS Power plant proposed for the Chisago sub and necessary transmission. I had learned of the underlying issues in March and posted documents on my blog,² but I had no knowledge of the filing by the City of Taylors Falls.

Further, not only was Comment Period Notice defective, but the City of Taylors Falls apparently did not serve this Request for Amendment on any parties.³ It is not clear whether there was any staff direction to do so when this Request for Amendment was received, and there are no communications between MOES and Taylors Falls posted. Further, Mr. Birkholz did not serve the MOES project list or the project list for Chisago is incomplete. Please see service list attached to MOES Notice.⁴ I have not filed a Withdrawal of Appearance in this docket and should be on any and all service and notice lists in the two Chisago dockets.

When advised I should “sign up” for the list (for a project I have been working on for 13 years!) and provided a link, I went there and it was not possible to sign up – the Chisago Project is not one of the options provided!

On June 1, when I checked with PUC staff because this item was not on the docket, I was told it was not, and wouldn't be on the Docket and that it would probably be heard by the Commission on June 25th, but today, June 2nd, I looked to find that notices had been sent out today⁵... sigh...

COMMISSION SHOULD EXTEND COMMENT PERIOD WITH PROPER NOTICE

It was my understanding that the issue presented by the City of Taylors Falls would not be heard until some other date. But now, as of today, Commission Notice has been sent, sent on the same date that the Comment period ends. Who all was excluded from Notice of the Comment period?

¹ Notice of Appearance, City of Lindstrom, 2/26/07

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=eDocketsResult#{0F49C3DB-BFEC-4EEA-8779-0532B678C8B0}> ; Comments of Concerned River Valley Citizens

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=eDocketsResult#{0E7231EC-E49C-4AA1-A599-B18E1CC8513B}>

² See [Xcel - Undergrounding in Taylors Falls](#) April 4th, 2009

³ Taylors Falls Request of Amendment

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=eDocketsResult#{CAC235AD-74AE-4590-9ADC-483D348C9080}>

⁴ MOES Notice of Permit Amendment Request

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=eDocketsResult#{0ECEC133-713E-4B4E-BB11-1D2E1970EA35}>

⁵ Notice of Commission Meeting – Revised

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=eDocketsResult#{3017F418-809D-47B1-8DDF-E5079C72B280}>

Those of us excluded in prior Notice should have the opportunity to Comment. I doubt that I was the only party excluded – if I was the only one excluded, it’s just that much more curious! Proper notice should be sent, and that notice should include an extension of the Comment Period to those of us excluded previously.

ALL PARTIES HAD SUFFICIENT NOTICE OF CITIES’ AGREEMENT

It seems the state’s collective memory is defective, and that the state agencies have not been paying sufficient attention to the history of this project and have given any regard to the Agreement between Xcel f/k/a NSP and Taylors Falls/St. Croix Falls.

When the conflict between the Agreement and the ALJ Recommendation and PUC Order/Permit was brought to my attention, the fact of the existence of the Agreement was not news, nor should that Agreement be news to anyone involved in any way with this docket. However, I tried to determine whether the Agreement was entered into the record of the previous proceeding, MEQB Docket No. NSP-TR-4 and/or OAH Docket 7-2901-11843, and I could not find any information online. OAH’s Mary E. Osborn stated that they do not keep records for more than five years, and referred me to Greg Downing at the EQB, and I have left a message for him.

The agreement between then NSP and the cities of Taylors Falls and St. Croix Falls was a publicly debated agreement, and all parties in Dockets 04-1176 and 06-1677 had actual and constructive notice of the Agreement.

The parties entered into the agreement in September, 2000, and on September 4, 2007, it was entered into the record of the two most recent Chisago dockets by myself, at that time representing the City of Lindstrom. It is Exhibit 218 in the record,⁶ and all present at that time at the hearing, in addition to the ALJ, including Asst. A.G. Valerie Means, and PUC Staff Bob Cupit and Brett Eknes, received copies of the Agreement from Xcel the afternoon of September 4, 2007. The Agreement was discussed extensively the day it was entered. Transcript, Vol. 1B, p. 66-92.

This Agreement was also acknowledged by Xcel in its Routing Application:

5.1.2 CITY OF TAYLORS FALLS

Coordination with the City of Taylors Falls has led to an agreement regarding the general location for the Lawrence Creek Substation and the configuration of the transmission line through the City. Issues addressed with the City include aesthetic impacts in the St. Croix River valley and land use compatibility near the substation site. **The City has agreed to support the proposed project as it is presented in this application.**

Routing Application, Agency Contacts, §5.1.2, p. 80(emphasis added). This “bold” statement by Xcel is false – the City had agreed to support the proposed project as presented in the Agreement, which is very different.

⁶ Xcel witness Dunham, Transcript, Vol. 1B, p. 75, l. 14 – p. 92, l. 8.

In addition, Commissioner Reha was an ALJ at the Office of Administrative Hearings, and she was the mediator assigned to the Chisago case and handled the mediation that resulted in this Agreement. Although she properly recused herself from participation in this matter, her having intimate knowledge of the agreement should have triggered some notice to staff and/or Commissioners of the existence of an Agreement containing material terms that affect the Permit.

CITIES BOUND BY AGREEMENT TO SUPPORT CHISAGO PROJECT

In addition to route and configuration specifics, the Agreement contained the requirement that the Cities actively support the project which may have affected advocacy on their part to enforce the agreement:

19. COOPERATION IN APPROVAL PROCEEDINGS: The Cities shall become and remain Parties to any proceedings necessary for obtaining approval for construction of the Line, as long as such proceedings are pending. The Cities shall throughout such proceedings expressly advocate approval of construction of the Line with the characteristics set forth in this Agreement. Such advocacy for the Cities shall include written and oral testimony of a duly authorized witness or witnesses for each of the Cities, comments and briefs to the extent authorized by the government or regulatory body(ies) before which such proceedings are pending, and pre-hearing advocacy for an expeditious schedule for conduct and conclusion of such proceedings. The Cities shall adopt resolutions from their respective governmental bodies approving construction of the Line consistent with this Agreement, and shall submit those resolutions for inclusion in the record of any proceedings necessary for obtaining approval for construction of the Line. In addition, the City of St. Croix Falls shall make available such additional land as needed to enable the expansion of the DPC Border Substation to enable construction of the Line.

Agreement, p. 9. The Cities were not intervenors in the most recent Dockets and did not publicly participate or advocate in any way.

The Cities state that:

The Agreement required that the applicant propose and advocate before the necessary approval authorities for the configuration outlined in the Agreement. Xcel Energy did not propose this configuration to the Public Utilities Commission in their Route Permit Application.

Cities Request for Amendment, p. 4 of 7. However, there is no requirement in the agreement that Xcel/NSP propose and advocate for anything.⁷

XCEL IS BOUND BY MATERIAL TERMS AND CONFIGURATION IN AGREEMENT

⁷ The Cities also state that the routing application was filed in January 2005, but it was filed in 2007 after a Notice filing in late 2006.

Xcel, a party to the Agreement, is bound, as the Cities are, to the material terms and configuration in the Agreement.

XCEL'S APPLICATION IS CONTRARY TO MATERIAL TERMS OF AGREEMENT

Regarding undergrounding on the west side of the St. Croix River, the Agreement is clear:

(e) that the Line transition from overhead construction to underground construction on the existing right of way at a point just west of County Road 20 in the City of Taylors Falls, Minnesota, and that such underground construction continue east through the City of Taylors Falls to the existing dam facility on the St. Croix River, so that consistent with the policy goals of the National Wild and Scenic Rivers Act, 16 U.S.C. 1271 et. seq. and Minn. Rules C. 6105 et seq., the Minnesota portion of the Line within the St. Croix Scenic Riverway is constructed underground.

Agreement, § 7 (e), Configuration, p. 4.

The Agreement also states that:

This Agreement shall not be modified except by written modification signed by the Parties which specifically references this Agreement.

Agreement, §22, Integration, p. 9.

The Certificate of Need Application reflects this part of the Agreement:

The transmission line would be placed underground between County Road 20 and the St. Croix River and the existing overhead 69 kV transmission line would be removed.

Certificate of Need Application, Chapter 2, p. 2.11.

The Application, however, is another matter. In several sections of Xcel's Application, the Chisago Project, as proposed, is different that expressly stated in the Agreement.

Segment 6 - CSAH 20 to St. Croix Falls Substation (Rebuild from 69 kV to 161 kV) Segment 6 follows the existing 69 kV line for approximately 0.7 miles from the top of the west bluff to the St Croix River crossing. To mitigate visual impacts to the St. Croix River Valley, the 161 kV transmission line is proposed to be constructed underground from the top of the bluff to the base of the bluff at TH 95. From TH 95 east to the river crossing, the proposed line will be constructed above ground.

As part of the rebuild, Xcel Energy will remove the existing overhead transmission line and all existing distribution lines from the west bluff. At the river crossing, the Project would result in a net reduction of 10 wires crossing the river (the removal of 15 existing wires crossing the river and installation of three conductors and two shield wires).

Routing Application, p. 15.

Location of undergrounding and transition to above-ground is also vaguely mentioned in the application:

At the two points where the transmission line transitions between overhead and underground, special transition structures will be used. The west transition structure near CSAH 20 is proposed to be a single shaft, self-supported, galvanized steel structure with six davit arms for support of the cable terminators (Figure 3-9). This structure will be approximately 105 to 120 feet tall. The east transition structure near TH 95 is proposed to be a triple shaft, self-supported, self-weathering steel structure with two davit arms per shaft for support of the cable terminators (Figure 3-10) to transition to the two H-frame structures to the east. This structure will be approximately 65 to 80 feet tall.

Routing Application, p. 16-17.

However, as noted by Taylors Falls in its Request for Amendment, the configuration specified in the Agreement is listed in the application in the section of rejected alternatives:

3.4.4 TAYLORS FALLS ALTERNATIVES

In the City of Taylors Falls, underground construction was considered between CSAH 20 and the St. Croix River. However, the presence of a deep marsh and shallow bedrock between TH 95 and the river would require invasive construction techniques (open trenching and possible blasting) that would result in considerable impacts to the wetlands and woods present in this area. Therefore, burying the transmission line through the area east of TH 95 was rejected because it would be too damaging to the environment.

The visual impacts of the existing transmission line through this area are minimal due to the lower, flat terrain. In general, this portion of the transmission line is not visible from the Wisconsin side of the river. The use of relatively short wood and self-weathering steel H-frame structures will maintain the relatively low aesthetic impact of this portion of the transmission line. Spanning open water areas will allow Xcel Energy to minimize wetland impacts.

Routing Application, Discussion of Rejected Route Alternatives, §3.4.4, p. 38.

THE RECORD IS CONTRARY TO MATERIAL TERMS OF AGREEMENT

The Environmental Assessment parrots the language of Xcel's application except that it's "Segment 5" in the EA and "Segment 6" in the Application:

Segment 5 follows the existing 69 kV line for approximately 0.7 miles from the top of the west bluff to the St Croix River crossing. To mitigate visual impacts to the St. Croix River Valley, the 161 kV transmission line is proposed to be constructed underground from the top of the bluff to the base of the bluff at TH 95. From TH 95 east to the river crossing, the proposed line will be constructed above ground.

Environmental Assessment, Ex.518



← The map in the EA clearly shows the transition from underground to above-ground at Highway 95. Exhibit 518, EA, Appendix A, Map 4.

The discrepancy between the Agreement and the Application and Xcel plan was revealed in the hearing record where Xcel's witness Dunham addressed the point of transition from underground to above ground under cross-examination by Bill Neuman:

25 Q Okay. In your walks down the bluff and other study

1 of the area, what are the road -- can you maybe just
 2 describe what the road configurations are between
 3 the bottom of the steep bluff and then the dam
 4 itself?

5 A What do you mean by road configurations?

6 Q Describe what roads are there and how you're going
 7 to get under those or what you're going to do around
 8 those roads?

9 A The portion that Mr. Newman is talking about is
 10 pretty much right here (indicating).

11 JUDGE LIPMAN: And what you're pointing
 12 to is Exhibit 24, 1 of 3?

13 THE WITNESS: Yes.

14 JUDGE LIPMAN: When you say right here,
 15 if you could, for the benefit of folks who will be
 16 reading.

17 THE WITNESS: Let me see if I can find --
 18 bear with me for a second here. I would like to
 19 find -- I have potentially -- I don't know if I have
 20 one.

21 (Pause.)

22 I don't see any identification on these

23 roads, but we would be coming this route overhead
24 through -- heading west here. As we get across--and
25 some of you that know the roads in that area can

1 help me out a little bit better--but we would be
2 transitioning from overhead to underground right --
3 approximately on the east side of this road, which
4 is 95. (Indicating.)

5 Taking the -- transitioning it to
6 underground there, bringing it down the slope into
7 the -- I don't want to use the wrong terminology.
8 I'm going to say the lower river valley. That may
9 mean something totally different to somebody else.

10 But as we get down to the base of the transition, we
11 would get across this lower road, which it says near
12 Chisago Street right here, and due to the basalt we
13 would transition back to overhead with a flat
14 construction, taking into account visual.

15 And it's not a navigable area there.

16 We're working with -- Mr. Hillstrom can probably
17 elaborate on that a little bit better. But we would
18 take that overhead across the river into the St.
19 Croix Falls dam.

20 Does that answer your question, Mr.
21 Newman?

22 Q Yeah, in a way. So basically you would come down
23 the bluff face --

24 A Underground.

25 Q -- underground, transition and then cross Highway 95

1 and then Highway 16 above ground?

2 A I wish I had a map that showed these roads. But
3 where we would transition back to overhead we would
4 actually go underground underneath the road.

5 There's a -- we've look at a place when you just get
6 to the -- on the east side of the road there's a
7 real nice change in terrain for trying to make this
8 as obscure as possible. And we would transition it
9 back to overhead at that point and then take that
10 down the river. I'm sorry, I don't know road names
11 as well as I could. I could -- if I had a map I
12 could show you exactly.

13 Q But that's the first road you encounter down the
14 face?

15 A It is the last -- it is the last north-south road
16 before you get into the residential neighborhoods.

17 Q Okay. Coming back from the dam, going up the bluff,
18 there's -- it's a high rock outcropping, that's the
19 next land feature west of the dam. Is that true?

20 A Keep going.

21 Q West. West. Immediately west of the dam it's a
22 relatively high rock outcropping. Would that be
23 true?

24 A Well, you know the area well. I'm not understanding
25 your question as far as west of the dam. On the

1 west side of the St. Croix River?

2 Q Um-hum, yes.

3 A There's a high rock outcropping.

4 Q Yes, yes. And from that rock outcropping it drops
5 down onto another road, the first road away from the
6 river. And then is it also true that there's a
7 small swamp or wetlands area?

8 A Yes.

9 Q Then it hits the second road and then it starts up
10 the face?

11 A Okay. You're coming from the west. As you come --

12 Q From the east.

13 A Oh, you're coming from the east going west. You're
14 coming across the wetland, that would be overhead to
15 there, and as it begins to change elevation there,
16 just short of that road is where we're talking about
17 putting the transition structure.

18 Q Okay. Good. Yeah, that gets my question answered.

19 Now, a transition structure tends to be
20 pretty good size piece of equipment, is that true?

21 A Yes. They -- Yes. And there is a picture of that
22 in the Certificate of Need, yes. It's pretty good
23 size structure. It's about, ball park, 90 feet
24 tall.

25 Q Are you aware that there is a -- an officially

1 designated Minnesota state scenic byway that is that
2 lower road right there?

3 A Yes, I guess I'm aware. From personal experience,
4 not professional experience, just from driving that
5 road, yes.

6 Q So from the designated scenic byway that would be a
7 very large structure that would be immediately
8 visible from that roadway?

9 A Not knowing the terrain as you have, but I did drive
10 that road to the north and if we're talking about

11 the same scenic byway right there where they were
12 doing some remodeling, they had taken the retaining
13 wall, so to speak, out of that area, if we're
14 talking about this, it's a park as you go up north
15 and there's the overlook right there. (Indicating.)
16 Q Oh, you're up on the Highway 95. Yeah, that's
17 different. I'm thinking the lower road.
18 A So I'm not aware what you're talking about.
19 Q So there's a cement dam-like structure on the west
20 side of the river that comes back from the dam
21 itself along the -- a low road that is, you know,
22 just above the river. You're -- are you aware of
23 where that is?
24 A Not exactly, no.
25 Q Okay.

1 A How far north is it of the existing corridor that
2 might --
3 JUDGE LIPMAN: It's exactly on. The
4 corridor is --
5 THE WITNESS: I don't recall. I'm sorry,
6 Mr. Newman, I don't.
7 JUDGE LIPMAN: Perhaps, because there are
8 environmental issues involved, Mr. Hillstrom will be
9 the one to answer some of those rather detailed
10 questions.
11 THE WITNESS: Yes.
12 BY MR. NEWMAN:
13 Q In terms of construction techniques, are you -- if
14 you were ordered to install that line across that
15 wetlands area down below where you said the
16 transition structure was, is that possible? Are
17 there things that would make it not possible?
18 A I'm speaking from personal experience. Personally,
19 I have never done construction in that basalt that
20 you are talking about. It is, I would say,
21 possible. How -- what it would take to accomplish
22 that endeavor would be significant and very
23 disruptive, you know.
24 But to answer your question, is it
25 possible? Yes.

1 Q Have you looked at any fee ownership maps there to
2 determine whether the National Park Service owns, in
3 fact, part of that wetlands or part of that roadway?
4 A Have I?

5 Q Yeah.

6 A No.

Transcript, Vol. 1B, p. 116, l. 25 – p. 123, l. 6. This configuration, as described by Xcel’s witness Dunham, is contrary to the Agreement.

Written Comments offered by the St. Croix Scenic coalition pointed out the problems with the transition to above-ground occurring next to and crossing the Scenic Byway:

Written Comments from Saint Croix Scenic Coalition: In its written remarks, the Coalition detailed its concerns over the “direct negative visual impact from the proposed installation of the [High Voltage Transmission Line] where, after descending the River bluff face underground, it transitions to overhead and crosses Wild Mountain Road (County Highway 16), a part of the byway, in Taylors Falls.” The Coalition “vigorously oppose[s] overhead construction.” Instead, it urges a continuation of the underground routing “under the St. Croix Scenic Byway at County 16 before transition to overhead for the River crossing.” Submitted along with its comments were maps of the Byway and a copy of a study commissioned by the Coalition entitled “Attractiveness in the St. Croix Valley: An Analysis of Perceptual Judgment and Landscape Dimensions.”

ALJ Recommendation, p. 9⁸.

THE DECISION IS CONTRARY TO MATERIAL TERMS OF AGREEMENT

The routing and configuration sections of the Agreement were addressed by the ALJ in the Recommendation but there was no recognition of the conflict between Xcel’s Application and the Agreement

55. Applicants propose to place the new line underground through the land use district within the Lower St. Croix National Scenic Riverway, with the exception of the river crossing located in the vicinity of the St. Croix Falls dam. Under the proposal, the electric transmission line will continue on from the Border Substation to the Apple River Substation located near Amery, Wisconsin. In this segment, the transmission line will replace an existing 69 kV transmission line with a 161/69 kV double circuit line; upgrades which have been earlier approved by the Public Service Commission of Wisconsin.

ALJ Recommendation, p. 16⁹.

⁸ ALJ Order – Summary of Testimony at the Public Hearings & Findings of Fact, Conclusions & Recommendation, 11/19/07

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=eDocketsResult#{7C3001EF-8CAA-4CD3-BE06-5CECE77F7AE9}>

⁹ ALJ Order – Summary of Testimony at the Public Hearings & Findings of Fact, Conclusions & Recommendation, 11/19/07

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=eDocketsResult#{7C3001EF-8CAA-4CD3-BE06-5CECE77F7AE9}>

The routing and configuration sections of the Agreement were not addressed in the PUC Order – it is silent regarding specifics.¹⁰

The Permit attached to the Order is another matter. The routing and configuration at this location were addressed in the Permit, with this configuration as specified in conflict with that found in the Agreement:

Segment 7 will cross the St. Croix River into St. Croix Falls, Wisconsin. The structures used will be 80 foot (average) 161 kV single-circuit wood H-frame poles from TH 95 to the river. The structures employed for the river crossing will be a 70 foot (average) 161 kV single-circuit wood H-frame pole on each side of the St. Croix.

Permit, p. 4.¹¹

The record is replete with references to various configurations with varying specificity, but throughout, there is no specific recognition that these configurations conflict with the material terms of the Agreement between Xcel f/k/a NSP and Taylors Falls/St. Croix Falls.

DID TAYLORS FALLS EXERCISE DUE DILIGENCE?

Apparently, Taylors Falls was meeting with Xcel regularly, but it is not clear from its pleading when the discrepancy was discovered between the Agreement on one hand, and Xcel's application and the PUC permit on the other. See Taylors Falls' Request for Amendment. On one hand, the City can and should exercise due diligence by reviewing the application, available online, participating in the Citizens Advisory Task Force and keeping up with PUC and MOES docket comments available online. On the other hand, where the City of Lindstrom and the Chisago City did not receive notice or the application until they requested it, and notice of formation of the Task Force was not timely provided such that a city could nominate anyone and the meetings took place over only EIGHT DAYS, it's entirely possible that the city could have missed its opportunity to participate in that venue. The evidentiary hearings were held primarily in the area, as were public hearings, and were noticed and open to the public. The PUC Oral Argument and Deliberation was also noticed and open to the public. I did not see or hear any officials from Taylors Falls at the evidentiary or public hearings or at any of the proceedings before the PUC. What is the City's responsibility to monitor and/or participate in this proceeding? Is this laches?

AGREEMENT CONTAINS ARBITRATION CLAUSE

The Agreement contains an arbitration clause. It's quite difficult to successfully circumvent an arbitration clause. On that basis, this is probably in the wrong venue. Arbitration clauses are, in

¹⁰ PUC Order, E002/TL-06-1677, 2/20/08

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=eDocketsResult#{C177F2CA-BFAB-446B-B8F9-5512467A5A16}>

¹¹ Permit, p. 4.

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=eDocketsResult#{C177F2CA-BFAB-446B-B8F9-5512467A5A16}>

my view, a good example of adhesion contractual language, but the parties agreed to including that in the Agreement.

24. DISPUTERESOLUTIONPROCEDURES:

(a) Any unresolved matter (hereinafter referred to as a “Dispute”) between the Parties arising under this Agreement will be first addressed by members of the Steering Committee in an attempt to resolve the dispute.

(b) Arbitration of a Dispute shall be conducted in accordance with the provisions of Ch. 788, Wis. Statutes, and the procedures described below.

I Fifteen (15) days prior to the initiation of arbitration, notification shall first be given in writing to the other Parties. The failure to initiate arbitration within sixty (60) calendar days of such initial notice or within thirty (30) days after termination of any agreed-upon mediation proceedings, whichever occurs later, shall be deemed a waiver to arbitrate the Dispute. Any such waiver shall not prejudice a Party’s right to arbitrate a Dispute based on facts arising subsequent to the facts that gave rise to the previous Dispute.

(d) The arbitration shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each group of Parties whose interests are aligned shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. If the two appointed members cannot agree on a third member within 15 days, either group of Parties whose interests are aligned may request that the appointment be made by a District Judge of Hennepin County, Minnesota. All arbitration proceedings under this Agreement shall take place in Hennepin County, Minnesota, or such other place as the Parties may mutually agree. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

(e) The arbitrator shall have jurisdiction and authority to interpret, apply, or determine compliance with the provisions of this Agreement in so far as shall be necessary to the determination of the issues properly before him or her. The arbitrator shall not have jurisdiction or authority to add to, detract from, or alter the provisions of this Agreement or any applicable law or rule of civil procedure. Unless otherwise agreed, the arbitrator shall render a decision within ninety (90) days of the initiation of arbitration. In making the decision the arbitrator shall issue in writing appropriate findings and conclusions regarding the issues. The arbitrator shall have authority to require any Party to specifically perform its obligations under this Agreement. Pending the final decision of the arbitrators, the Parties agree to diligently proceed with the performance of all their other respective obligations required by this Agreement.

(f) Those Parties participating in the arbitration process shall bear equally in the cost of the arbitrator. Each Party shall be responsible for its own costs incurred during the arbitration process (including but not limited to expert witnesses, consultants

and attorneys fees, costs of exhibits and other incidental costs).

(g) Any Party may choose not to participate in the Dispute resolution process beyond the Steering Committee discussions. Any Party who chooses not to participate waives any right to challenge the results of the arbitration or to seek injunctive relief on any matter before the arbitrator.

(h) Nothing in these Dispute resolution provisions shall limit any Party's right to seek injunctive relief to preserve the status quo pending final resolution of the Dispute utilizing the Dispute resolution procedures provided herein.

Agreement, para. 24 DISPUTE RESOLUTION PROCEDURES, p. 9-11.

I raised this clause as problematic in the Comment period at the joint Taylors Falls/St. Croix Falls meeting. The parties agreed to this Arbitration clause, and all parties had counsel at that time.

HOW CAN THIS DISCREPANCY BEST BE RECTIFIED?

After a careful examination of the record, necessary to draft this Comment, it's apparent that the Agreement, the Record, the Recommendation and the Order and Permit are not consistent. At this time, I request that the Commission grant the relief requested by Taylors Falls and St. Croix Falls and amend the Order to reflect the configuration in the Agreement between the cities. **Xcel will not be prejudiced by a requirement to comply with its own Agreement!**

Very truly yours,



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