

  
WINTHROP WEINSTINE  
ATTORNEYS AND COUNSELORS AT LAW

June 27, 2011

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The Honorable Beverly Jones Heydinger  
Office of Administrative Hearings  
P.O. Box 64620  
St. Paul, MN 55164-0620

**VIA E-FILING AND U.S. MAIL**

RE: In the Matter of the Application of Northern States Power Company, a Minnesota Corporation, for Authority to Increase Rates for Electric Service in Minnesota  
MPUC Docket No. E002/GR-10-971  
OAH Docket No. 15-2500-21773-2

Dear Judge Heydinger:

Enclosed for filing please find the Memorandum in Response to the June 13, 2011 Notice and Order to Show Cause for Verso Paper Corp. and Affidavit of Tammera R. Diehm in the above-referenced docket. The document has been filed with the e-Docket system and served on the attached service list. Also enclosed is our Affidavit of Service.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

/s/ Lloyd W. Grooms 

Lloyd W. Grooms

Enclosures

6112970v1

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
600 North Robert Street  
St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East, Suite 350  
St. Paul, Minnesota 55101-2147

In the Matter of the Application of  
Northern State Power Company, a  
Minnesota Corporation, for Authority to  
Increase Rates for Electric Service in  
Minnesota

OAH Docket No. 15-2500-21773-2  
MPUC Docket No. E002/GR-10-971

**MEMORANDUM IN RESPONSE TO  
THE JUNE 13, 2011 NOTICE AND ORDER TO SHOW CAUSE – VERSO PAPER**

**INTRODUCTION**

Verso Paper Corp. (“Verso”) respectfully submits this Memorandum in Response to the June 13, 2011 Notice and Order to Show Cause. For the reasons discussed below, Verso should retain its party status in this proceeding.

**FACTUAL BACKGROUND**

On January 13, 2011, pursuant to Minnesota Rules, part 1400.6200 and the Minnesota Public Utilities Commission (“MPUC”) December 27, 2010 Notice and Order for Hearing in the above-captioned matter, Verso filed a Petition to Intervene in the above-captioned matter (“Verso’s Petition”).

An Order granting Verso’s Petition as a party was issued on January 26, 2011 (“Order”). As noted in the Order, the then current parties to the proceeding, Xcel Energy, the Office of Energy Security (“OES”), the Office of Attorney General – Residential Utilities Divisions (“OAG-RUD”), Energy CENTS Coalition (“ECC”) and the Suburban Rate Authority (“SRA”) did not file any objections to Verso’s Petition. In fact, to date no party has raised any issue or

concern with Verso's intervention or party status in this proceeding. For the reasons set forth herein, Verso objects to any attempt to remove Verso, *sua sponte*, from this proceeding.

## ARGUMENT

### A. Introduction

Verso owns and operates a paper mill in Sartell which manufactures lightweight coated groundwood ("LWC") and uncoated supercalendered ("SC") papers. The primary uses for both products are magazines, catalogs, and newspaper inserts and supplements. The Sartell mill consists of a thermomechanical pulp ("TMP") manufacturing facility and paper mill with three paper machines. The Sartell mill is owned by an indirect, wholly-owned subsidiary of Verso, a publicly traded company. The Sartell mill does not disclose its financial results, but Verso's consolidated financial statements, which include the operations of the Sartell mill, are available online at [www.versopaper.com](http://www.versopaper.com).

The Sartell mill's #1 and #2 paper machines were built in 1905 and have been in operation ever since. These machines originally produced newsprint for the daily newspapers in nearby Minneapolis and St. Paul. Today they produce 102,200 tons of SC papers annually. The Sartell mill was purchased by St. Regis Corporation in 1946. St. Regis expanded the facility in 1982 with the installation of the #3 paper machine, TMP facility, and utility and environmental systems required to support the entire operation. The #3 paper machine manufactures 208,000 tons of LWC and SC paper annually.

Primary manufacturing inputs to the Sartell mill are hardwood and softwood pulpwood, purchased softwood kraft pulp, and a host of paper-making materials such as clay and other coating chemicals, and a significant amount of purchased energy in the form of coal and electricity.

Because of Verso's reliance on purchased electricity, the Sartell mill has worked jointly with Xcel Energy, the Department of Commerce, and other parties since the 1992 NSP Rate Case and has intervened and participated in numerous study groups to develop rate design, and has provided input and expertise regarding time of day rates, interruptible rates, and most recently real time pricing.

Verso is focused on producing top quality products safely and at a competitive cost and thereby securing the future of the Sartell mill's 450 employees and the surrounding community. The cost of purchased electricity is equivalent to approximately the wages of 250 employees. Monitoring and participating in the energy regulatory arena is a vital component of Verso's strategy to keep the Sartell mill viable in spite of the most challenging economic times in its 105 year history.

B. Verso has participated in previous rate cases

Verso and its predecessors, International Paper Company ("International Paper") and Champion International Corporation ("Champion"), have participated in each of the last three Xcel rate cases. In the 1992 Rate Case (Docket No. E002/GR-92-1185), Verso's predecessor, Champion, filed testimony, cross-examined witnesses, and filed briefs.

However, in the 2005 Rate Case (MPUC Docket No. E002/GR-05-1428; OAH Docket No. 3-2500-17033-2) and the 2008 Rate Case (MPUC Docket No. E002/GR-08-1065; OAH Docket No. 3-2500-20148-2), International Paper intervened as a party and then reviewed filed testimony and monitored the proceedings. Based on its review, International Paper did not believe any affirmative action was necessary and, accordingly, did not offer any direct testimony and did not cross-examine any of the witnesses. In the 2008 proceeding, neither the Administrative Law Judge ("ALJ"), the MPUC, nor any other party raised any questions or objections to International Paper's limited participation.

C. Minnesota law does not impose any specific affirmative obligations on intervening parties

Minn. R. 1400.7100 grants the intervening party the “right” to actively participate in a proceeding. The Rule does not impose any type of affirmative obligation to engage in any specific activity other than to respond to orders of the Court. Minn. R. 1400.7100, subp. 2 and 3. Minnesota courts have recognized that intervention is an important right, noting that a minimal threshold interest is sufficient to allow a petitioner’s intervention. “[T]he Minnesota Supreme Court noted that it has followed a policy of encouraging all legitimate interventions...[a party] should be allowed to intervene unless it is clear that [an identically situated] party will provide adequate representation for the absentee.” *In re: Hubbard*, No. 3-2000-17810-2, 2007 Minn. ENV LEXIS 7, at \*16 (Minn. OAH 2007) (citing *Costley v. Caromin House, Inc.*, 313 N.W.2d 21 (Minn. 1981)).<sup>1</sup> As noted below, Verso’s position is unique. There are no other parties that are identically situated and therefore, Verso has no assurance that its rights will be protected unless it participates as a full party.

D. Verso has actively participated in this proceeding

Like Verso’s participation in the previous proceedings, in the current matter, Verso reviewed Xcel’s prefiled testimony and, on the basis of that review, chose not to file testimony of its own. As part of this approach, Verso has continued to actively monitor and review the responses to information requests filed by the various parties. Based on Verso’s review of the testimony filed by other parties, specifically the Xcel Large Industrial Group (“XLI”), the Minnesota Chamber of Commerce (“MCC”), The Commercial Group (“CG”), OES, and OAG-RUD, Verso opted not to file rebuttal or surrebuttal testimony. Importantly, Verso’s decision not to file testimony or conduct discovery was not because Verso did not have an interest in the

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<sup>1</sup> In *Hubbard*, the respondent argued that the potential interveners “failed to file a verified pleading explaining the factual basis for their environmental concerns.” *In re Hubbard*, 2007 Minn. Env LEXIS 7 at \*10. The court rejected the attempt to disallow intervention and allowed the party to participate.

proceeding. Rather, Verso determined that the testimony and discovery conducted by other parties resulted in the disclosure of the information which was also of interest to Verso.

Prior to the evidentiary hearing, Verso reviewed the filings. Tammera Diehm of Winthrop & Weinstine appeared on behalf of Verso on the first day of the evidentiary hearing to monitor and evaluate the testimony provided and to demonstrate Verso's ongoing interest in participation in the proceeding. Verso monitored the cross-examination questions raised by the other parties and determined that its questions had been sufficiently answered. Therefore, no additional cross-examination was necessary.

With respect to subsequent testimony, Verso has elected to review transcripts to determine whether to file a brief or address inconsistencies in the testimony. To that end, Winthrop & Weinstine contacted the court reporter on June 9, 2011, to confirm the availability of transcripts and then ordered transcripts for selected witnesses on June 13, 2011 (prior to receiving the Notice and Order to Show Cause).

Based on these activities, Verso has actively participated in this proceeding by attending the evidentiary hearing, reviewing the record and monitoring the case to determine how to protect its rights, including the right to appeal.

E. Verso's participation in this case preserves its rights

Verso filed its Petition to Intervene as a party because only intervening as a party is a necessary step in preserving certain rights. Given the potential adverse consequences that Verso would suffer under a rate increase, Verso was compelled to file a Petition to Intervene at the outset to avoid a future denial of party status due to a lack of timeliness and to avoid having its rights subsequently limited to specific issues.

Participation in a rate case is expensive for a private party. While some parties may decide to participate in groups or have associations represent them to defer these costs, no party

should be compelled to forfeit its right to participate in the manner that it deems most appropriate to protect its rights and interests in a cost-effective way. For instance, Verso believes that neither the MCC nor the XLI adequately protects its interest, nor does it believe that joining these groups would be a cost-effective means of having its interests represented. Verso was effectively left with three options: (1) join a group and incur a cost that it does not believe is warranted or of good value; (2) forego intervention and forfeit its rights, most importantly, Verso's ability to advocate for its individual rights and interests; or (3) petition to intervene and then participate in what it believes to be the most cost-effective manner—which, in this case, has meant confining itself to a meaningful review of the record without engaging in the procedural steps of presenting testimony or cross-examining witnesses.

F. Verso's status as a party does not unduly burden any other party and prohibiting Verso from participating would result in prejudice

While Verso's involvement in this proceeding may differ from others' participation, allowing Verso to participate in this way neither imposes an undue burden on any of the parties nor does it interfere with or encumber the proceedings in any way. In contrast, if Verso were compelled to perform each of the steps merely for the sake of protecting its interest, the proceedings would be expanded and extended to no effective end. To require a party to present testimony or engage in cross-examination for the sole purpose of not being removed as a party would do nothing more than create unnecessary work for the intervening party, the other parties to the case, the ALJ and its staff.

While not raised in the Order to Show Cause, it is important to acknowledge that Verso's status as a party to this proceeding preserves its right to appeal. In prior proceedings, courts have dismissed claims brought by individuals who had not formally intervened, stating “[r]elators, as interested landowners, could have intervened, become parties to the proceeding, and participated in the contested case hearing, but did not do so.” *In the matter of the Application of Minnesota*

*Pipe Line Company for a Certificate of Need for a Crude Oil Pipeline*, Minn. App. Ct. A07-1318 (available online at <http://www.lawlibrary.state.mn.us/archive/ctapun/0806/opa071318-0610.pdf>).

To exclude Verso as a party at this point in the proceeding would be highly prejudicial to Verso's interests. Upon review of the record, Verso may still elect to file a brief in this matter or, based on other parties' briefs, file a reply brief. After being actively engaged in this proceeding for over five months, Verso would now be precluded from potentially participating in this most critical part of the proceeding. Further, removing Verso as a party may prejudice Verso's right to appeal the decision which will ultimately be made in this proceeding.



## CONCLUSION

While striking Verso as a party could have an enormous adverse effect on Verso and the substance of the proceedings, Verso's continuation as a party is of little or no consequence to the other parties or the mechanics of the proceedings. Verso has effectively elected to limit itself to a record created by others, but should not be precluded from the final steps in the process merely because of the manner in which it chose to participate in the early part of the proceeding. For all of the foregoing reasons, Verso respectfully requests that it retain full party status in this proceeding.

Dated: June 27, 2011

WINTHROP & WEINSTINE, P.A.

By:  Lloyd W. Grooms

Lloyd W. Grooms

225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402  
(612) 604-6400

**ATTORNEYS FOR VERSO PAPER  
CORP.**

6096013v5

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
600 North Robert Street  
St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East, Suite 350  
St. Paul, Minnesota 55101-2147

In the Matter of the Application of  
Northern State Power Company, a  
Minnesota Corporation, for Authority to  
Increase Rates for Electric Service in  
Minnesota

OAH Docket No. 15-2500-21773-2  
MPUC Docket No. E002/GR-10-971

**AFFIDAVIT OF TAMMERA R. DIEHM  
IN SUPPORT OF MEMORANDUM IN RESPONSE TO  
THE JUNE 13, 2011 NOTICE AND ORDER TO SHOW CAUSE – VERSO PAPER  
CORP.**

I, Tammera R. Diehm, having been duly sworn upon oath, state as follows:

1. I am an shareholder with the law firm of Winthrop & Weinstine, P.A., located at 225 South Sixth Street, Suite 3500, Minneapolis, Minnesota.
2. As one of the attorneys representing Verso Paper Corp. (“Verso”) in the above-captioned matter, I submit this affidavit in support of Verso’s Memorandum in Response to the June 13, 2011 Notice and Order to Show Cause – Verso Paper (“Order”).
3. I attended the evidentiary hearing on June 1, 2011.
4. I have reviewed the Memorandum in Response to the June 13, 2011 Notice and Order to Show Cause – Verso Paper Corp.

5. The factual information included is true and correct to the best of my knowledge.

FURTHER YOUR AFFIANT SAYETH NOT.

*Tammera R Diehm*

/s/ Tammera R. Diehm

Tammera R. Diehm

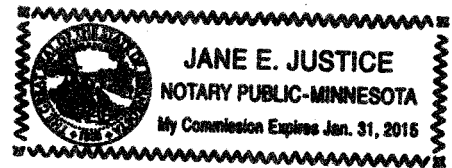
Subscribed and sworn to before me  
this 27<sup>th</sup> day of June, 2011.

/s/ Jane E. Justice  
Notary Public

*Jane E Justice*

My Commission Expires: January 31, 2015.

6096604v1



BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
600 North Robert Street  
St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East, Suite 350  
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**AFFIDAVIT OF SERVICE**

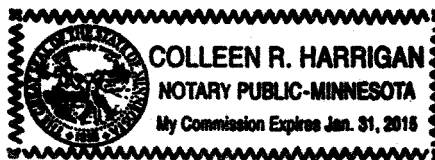
STATE OF MINNESOTA    )  
                                          ) ss.  
COUNTY OF HENNEPIN    )

Jane E. Justice, of the City of Shoreview, County of Ramsey, the State of Minnesota,  
being first duly sworn, deposes and says that on the 27<sup>th</sup> day of June, 2011, she served the  
attached **Memorandum in Response to the June 13, 2011 Notice and Order to Show Cause –  
Verso Paper** to all said persons on the attached Service List, true and correct copies thereof, by  
e-Filing and/or by depositing the same enclosed in an envelope, postage prepaid in the United  
States Mail in the post office at Minneapolis, Minnesota.

/s/ Jane E. Justice Jane E. Justice  
JANE E. JUSTICE

Subscribed and sworn to before me this  
27<sup>th</sup> day of June, 2011.

Colleen R. Harrigan  
/s/ Colleen Harrigan  
Notary Public



My Commission Expires: January 31, 2015

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@state.mn.us	Office of the Attorney General-DOC	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_10-971_CC-SL -- Rate Case
Gail	Baranko	gail.baranko@xcelenergy.com	Xcel Energy	414 Nicollet Mall/7th Floor Minneapolis, MN 55401	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
Christopher	Clark	christopher.b.clark@xcelenergy.com	Xcel Energy	5th Floor 414 Nicollet Mall Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
James	Denniston	james.r.denniston@xcelenergy.com	Xcel Energy Services Inc.	414 Nicollet Mall 5th Floor Minneapolis, MN 55401	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
Rebecca	Eilers	rebecca.d.eilers@xcelenergy.com	Xcel Energy	414 Nicollet Mall, 7th Floor Minneapolis, MN 55401	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	Yes	OFF_SL_10-971_CC-SL -- Rate Case
Ronald M.	Giteck	ron.giteck@state.mn.us	Office of the Attorney General-RUD	Residential Utilities Division BRM Tower 445 Minnesota Street, 900 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_10-971_CC-SL -- Rate Case
Janet	Gonzalez	Janet.gonzalez@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_10-971_CC-SL -- Rate Case
Lloyd	Grooms	lgrooms@winthrop.com	Winthrop and Weinstine	Suite 3500 225 South Sixth Street Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
Burt W.	Haar	burt.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_10-971_CC-SL -- Rate Case

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Beverly	Heydinger	beverly.heydinger@state.mn.us	Office of Administrative Hearings	PO Box 64620 St. Paul, MN 551640620	Paper Service	Yes	OFF_SL_10-971_CC-SL -- Rate Case
Alan	Jenkins	aj@jenkinsatlaw.com	Jenkins at Law	2265 Roswell Road Suite 100 Marietta, GA 30062	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
Linda S.	Jensen	linda.s.jensen@state.mn.us	Office of the Attorney General-DOC	1400 BRM Tower 445 Minnesota Street St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_10-971_CC-SL -- Rate Case
James	Johnson	james.p.johnson@xcelenergy.com	Xcel Energy Services Inc.	414 Nicollet Mall 5th Floor Minneapolis, MN 55401	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
Richard	Johnson	johnson@moss-barnett.com	Moss & Barnett	4800 Wells Fargo Center 90 South Seventh Street Minneapolis, MN 55402	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
Mara	Koeller	maran.koeller@xcelenergy.com	Xcel Energy	414 Nicollet Mall 5th Floor Minneapolis, MN 55401	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
Robert S	Lee	RSL@MCMLAW.COM	Mackall Crouse & Moore Law Offices	1400 AT&T Tower 901 Marquette Ave Minneapolis, MN 554022859	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
Matthew P	Loftus	matthew.p.loftus@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 5 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
Paula	Maccabee	Pmaccabee@visi.com	Just Change Law Offices	1961 Selby Avenue St. Paul, MN 55104	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Pam	Marshall	pam@energycents.org	Energy CENTS Coalition	823 7th St E St. Paul, MN 55106	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
Mary	Martinka	mary.a.martinka@xcelenergy.com	Xcel Energy Inc	414 Nicollet Mall Minneapolis, MN 55401	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
Andrew	Moratzka	apm@mcmlaw.com	Mackall, Crouse and Moore	1400 AT&T Tower 901 Marquette Ave Minneapolis, MN 55402	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
Richard	Savelkoul	rsavelkoul@felhaber.com	Felhaber, Larson, Fenton & Vogt, P.A.	444 Cedar St Ste 2100 St. Paul, MN 55101-2136	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
Janet	Shaddix Eiling	jshaddix@janetshaddix.com	Shaddix And Associates	Ste 122 9100 W Bloomington Bloomington, MN 55431	Electronic Service Fwy	Yes	OFF_SL_10-971_CC-SL -- Rate Case
James M.	Strommen	jstrommen@kennedy-graven.com	Kennedy & Graven, Chartered	470 U.S. Bank Plaza 200 South Sixth Street Minneapolis, MN 55402	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
SaGonna	Thompson	Regulatory.Records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case
Kari L.	Valley	kari.l.valley@xcelenergy.com	Xcel Energy Service Inc.	414 Nicollet Mall Minneapolis, MN 55401	Electronic Service	No	OFF_SL_10-971_CC-SL -- Rate Case