

Appendix B: South Dakota Public Utilities Commission Settlement Stipulation

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF)	SETTLEMENT STIPULATION
GREAT RIVER ENERGY AND NORTHERN)	
STATES POWER COMPANY D/B/A XCEL)	EL10-016
ENERGY FOR A PERMIT TO CONSTRUCT A)	
10.6 MILE, 345 KV TRANSMISSION LINE)	
(CAPX2020) IN BROOKINGS COUNTY NEAR)	
WHITE, SOUTH DAKOTA)	

It is hereby stipulated and agreed by and between Great River Energy and Northern States Power Company d/b/a Xcel Energy (jointly "Applicant") and the Staff of the South Dakota Public Utilities Commission ("Staff"; jointly "Party" or "Parties"), that the following Settlement Stipulation (Stipulation) may be adopted by the South Dakota Public Utilities Commission ("Commission") in the above-captioned matter. In support of its Application for a Facility Permit for the Brookings County to the South Dakota/Minnesota border 345 kV Transmission Line Project ("Application"), Applicant does hereby offer this Stipulation, the Application filed November 23, 2010, and all responses submitted by Applicant to the Staff's data requests. Staff offers no answering testimony or exhibits, conditioned upon the Commission accepting the following Stipulation and the Terms and Conditions.

1. INTRODUCTION

Great River Energy, a Minnesota cooperative corporation ("Great River Energy") and Northern States Power Company, a Minnesota corporation ("Xcel Energy"), are a part of the CapX2020 Transmission Initiative, which is a joint initiative of 11 transmission-owning utilities in South Dakota, North Dakota, Minnesota and Wisconsin. Great River Energy is the lead utility or development manager for the Brookings County – Hampton Project ("Project") and as such is responsible for obtaining major permits and developing and implementing the Project. The Brookings County – Hampton 345 kV Project includes new 345 kV electric transmission facilities of approximately 240 miles in length, expansion of four existing substations, including the Brookings County Substation, construction of four new substations in Minnesota and construction of electric system connections to tie existing high voltage transmission lines to the new facilities. The South Dakota portion of the Project ("Facility") consists of approximately 10.6 miles of double circuit 345 kV transmission facilities and modifications to the Brookings County Substation.

2. PURPOSE

This Stipulation has been prepared and executed by the Parties for the sole purpose of resolving Docket No. EL10-016 in consideration of the mutual promises hereinafter set forth, the Parties agree as follows:

- 1) Upon execution of the Stipulation, the Parties shall file this Stipulation with the Commission together with a joint motion requesting that the Commission issue an order approving this Stipulation in its entirety without condition or modification.
- 2) This Stipulation includes all terms and conditions of settlement and is submitted with the condition that in the event the Commission imposes any material changes in or conditions to this Stipulation which are unacceptable to either Party, this Stipulation may, at the option of either Party, be withdrawn and shall not constitute any part of the record in this proceeding or any other proceeding nor be used for any other purpose.
- 3) This Stipulation shall become binding upon execution by the Parties, provided however, that if this Stipulation does not become effective in accordance with Paragraph 2 above, it shall be null, void and privileged. This Stipulation is intended to relate only to the specific matter referred to herein; neither Party waives any claim or right which it may otherwise have with respect to any matter not expressly provided for herein; neither Party shall be deemed to have approved, accepted, agreed or consented to any rate making principle, or any method of cost of service determination, or any method of cost allocation underlying the provisions of this Stipulation, or be prejudiced or bound thereby in any other current or future rate proceeding before the Commission. Neither Party nor a representative thereof shall directly or indirectly refer to this Stipulation or that part of any order of the Commission relating to this Stipulation as precedent in any other current or future rate proceeding before the Commission.
- 4) The Parties to this proceeding stipulate that all prefiled exhibits and the data responses submitted on January 21, 2011, and March 18, 2011, will be made a part of the record in this proceeding. The Parties understand that if this matter had not been settled, the Parties would have filed direct and rebuttal testimony.
- 5) The terms and conditions contained in this Stipulation shall inure to the benefit of, and be binding upon, the respective successors, affiliates, owners, stockholders, partners, parents, subsidiaries, directors, officers, agents, employees, representatives, attorneys, and assigns of the Parties. In addition, the terms and conditions of this Stipulation, including all facts leading up to the signing of this Stipulation, shall bind the Parties, including consultants, contractors, and retained professionals.
- 6) This Stipulation constitutes the entire agreement between the Parties, and shall be deemed to supersede any other understandings or agreements, whether written oral, express or implied, relating to the Application. This Stipulation can only be amended or changed in a writing executed by both Parties.
- 7) This Stipulation shall be interpreted and construed in accordance with the laws of the State of South Dakota.

- 8) This Stipulation may be executed by electronic mail or facsimile and in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- 9) Staff and Applicant agree that subject to the four elements of proof under SDCL 49-41B-22, the Commission has authority to grant, deny, or grant upon reasonable terms, conditions or modifications a permit for the construction, operation, and maintenance of the Facility. The Parties further agree that Applicant has met its burden of proof pursuant to SDCL 49-41B-22 and is entitled to a permit as provided in SDCL 49-41B-24, subject to the following:

3. TERMS AND CONDITIONS OF THE SETTLEMENT STIPULATION

1.

Applicant will obtain all governmental permits which reasonably may be required by any township, county, state or federal agency or any other governmental unit for construction activity prior to engaging in the particular activity covered by that permit. Copies of any permits obtained by Applicant shall be sent to the Commission.

2.

Applicant shall construct, operate and maintain the Facility in a manner consistent with: 1) descriptions in the Application, 2) Application supplements, 3) responses to data requests, and 4) the Terms and Conditions of the Permit to Construct.

3.

Applicant agrees that the Commission's complaint process as set forth in ARSD 20:10:01 shall be available to landowners, other persons sustaining or threatened with damage as the result of Applicant's failure to abide by the conditions of the Permit or otherwise having standing to seek enforcement of the conditions of the Permit.

4.

Applicant shall provide each landowner on whose property the Facility is to be constructed with the following information:

- (a) A copy of the Commission's Order Granting Permit to Construct Facility in this matter;
- (b) Detailed safety information describing:
 - (1) reasonable safety precautions for existing activities on or near Facility;
 - (2) known activities or uses that are presently prohibited near Facility; and
 - (3) other potential dangers or limitations near the Facility;
- (c) Construction/maintenance damage compensation policies and procedures;

(d) Commission's address, website and phone number; and

(e) Contact person for Applicant including name and phone number;

5.

In order to ensure compliance with the terms and conditions of this permit pursuant to SDCL 49-41B-33, it is necessary for the enforcement of this Order that all employees, contractors and agents of Applicant, to the extent of its interest, involved in this Facility be made aware of the terms and conditions of this permit.

6.

Except as otherwise provided in the conditions of this Stipulation, Applicant shall comply with all mitigation measures set forth in the Application. Material modifications to the mitigation measures shall be subject to prior approval of the Commission.

7.

Applicant will negotiate road use agreements with Brookings County and all affected townships, if required, and will follow the terms of all road use agreements. Applicant shall take appropriate action to mitigate wind-blown particles created throughout the construction process, including but not limited to implementation of dust control measures such as road watering, covering of open haul trucks when transporting material subject to being wind-blown, and the removal of any soils or mud deposits by construction equipment when necessary.

8.

Applicant shall comply with the following conditions regarding road protection:

- (a) Applicant shall coordinate road closures with state and local governments and emergency responders and shall acquire all necessary permits authorizing crossing of county and township roads.
- (b) Applicant shall implement a regular program of road maintenance and repair throughout the active construction period to keep paved and gravel roads in an acceptable condition for residents and the general public.
- (c) After construction Applicant shall repair and restore, or compensate governmental entities for their repair and restoration of any deterioration caused by construction traffic such that the roads are returned to at least their preconstruction condition.

9.

Applicant will provide signage marking road closures in the Facility area at the nearest major intersection.

10.

All pre-existing public roads and lanes used during construction must be restored to at least their pre-construction condition, and privately owned areas used as temporary roads during construction must be restored to their original condition, except as otherwise requested or agreed to by the landowner or any governmental authority having jurisdiction over such roadway.

11.

Applicant shall promptly report to the Commission the presence of any critical habitat of threatened or endangered species in the siting area that Applicant becomes aware of and that was not previously reported to the Commission.

12.

Applicant will sponsor an archaeological and historic structures inventory of the facility area in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, Guidelines for Cultural Resource Survey Reports, 2005, and the South Dakota Historic Resource Survey Manual, 2006.

13.

Applicant agrees to avoid cultural resources sites not evaluated or eligible for listing on or listed on the National Register of Historic Places ("NRHP"). When NRHP-eligible or listed sites cannot be avoided Applicant will notify the State Historic Preservation Office ("SHPO") and the Commission of the reasons that complete avoidance cannot be achieved in order to coordinate minimization and/or treatment measures.

14.

If during construction, Applicant or its agents discover what may be a cultural resource, human skeletal remains and associated funerary objects, Applicant or its contractors or agents shall immediately cease work at that location and notify the landowner(s) and, the SHPO, and other authorities as appropriate (per SDCL 34-27-25 and SDCL 34-27-28 in the case of human burials). If it is determined, in coordination with SHPO, that a significant resource is present, Applicant shall develop a plan that is acceptable to the landowner and SHPO to minimize impacts to or treat the resource.

15.

Applicant shall provide the Stormwater Pollution Prevention Plan (SWPPP) when the Applicant has a final design for the Facility. The SWPPP will outline the water and soil conservation practices that will be used during construction to prevent or minimize erosion and sedimentation. The SWPPP will be completed before submittal of an application for a National Pollutant Discharge Elimination System (NPDES) general permit for construction activities. All contractors will have a copy of the SWPPP and requirements will be reviewed with them prior to the start of construction. Applicant will provide a copy of the SWPPP to the Commission as soon as it is prepared.

16.

Applicant shall take all necessary steps to mitigate construction related damages to rangeland and pastureland. Such actions shall include but not be limited to re-vegetation and weed control of the right-of-way ("ROW").

17.

Applicant shall restore all areas disturbed by construction of the Facility to their preconstruction condition, including their original pre-construction topsoil, vegetation, elevation, and contour, or as close thereto as is feasible, except as otherwise agreed to by the landowner.

18.

Applicant's obligation with respect to restoration and maintenance of the ROW shall continue throughout the life of the transmission line for disturbances caused by Applicant's or its agent's actions.

19.

Applicant shall work closely with landowners or land management agencies to determine a plan to control noxious weeds in and along the ROW. Landowner permission shall be obtained in writing before the initial application of herbicides.

20.

Restoration and clean-up along the ROW must be continuous and coordinated with ongoing construction through the completion of the project.

21.

Applicant shall repair or replace all private property removed or damaged during all phases of construction, including but not limited to, all fences, gates, utility, water supply, irrigation, or drainage systems. Applicant shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses.

22.

Applicant shall, in a manner consistent with its easement agreement with a landowner, indemnify and hold the landowner harmless for loss, damage, claim or actions resulting from Applicant's use of the easement, except to the extent such loss, damage claim, or action results from the negligence or willful misconduct of the landowner or his employees, agents, contractors, or other representatives.

23.

If it becomes necessary to materially deviate from the described centerline to accommodate engineering and applicable safety and construction requirements based upon actual conditions encountered during construction, all landowners affected by the deviation and the Commission must be notified in writing five working days before the material deviation may occur. The Commission must approve all material deviations from the Facility. For purposes of this paragraph, the term "material deviations" shall mean any action or activity outside the reasonable parameters of the permit.

24.

In order to mitigate interference with agricultural operations during and after construction, Applicant shall locate all structures, to the extent feasible and prudent, to minimize adverse impacts and interferences with agricultural operations, shelterbelts and other land uses or activities. Applicant shall take appropriate precautions to protect livestock and crops during construction.

25.

The terms and conditions of the permit shall be made a uniform condition of construction, subject only to an affirmative written request for an exemption addressed to the Commission. A request for an exemption shall clearly state which particular condition should not be applied to the property in question and the reason for the requested exemption. The Commission shall evaluate such requests on a case-by-case basis.

26.

If the presence or operation of the Facility causes interference with radio, television, or any other licensed communication device, Applicant shall take all appropriate action to minimize any such interference and shall make a good faith effort to restore or provide reception levels equivalent to reception levels in the immediate areas just prior to construction of the Facility. This mitigation requirement shall apply to homes or other structures in place at the time of construction but shall not apply to any dwellings or other structures built after construction of the Facility approved in this permit has been completed.

27.

Applicant shall use appropriate preventative measures to prevent damage to paved roads and to remove excess soil or mud from such roadways. Before commencing construction, Applicant shall furnish an indemnity bond in the amount of \$500,000 to comply with the requirements of SDCL 49-41B-38. Such bond shall be issued in favor of, and for the benefit of, all such townships, counties, and other governmental entities whose property is crossed by the transmission facilities. The bond shall remain in effect until released by the Commission, which release shall not be unreasonably denied following completion of the construction and repair period. Applicant shall give notice of the existence and amount of these bonds to all counties, townships and other governmental entities whose property is crossed by the transmission facilities.

28.

Applicant will provide Global Positioning System ("GPS") coordinates to affected landowners at any time during the life of the Facility. Coordinates will be provided in writing to landowners within 30 days of a request.

29.

Not less than 30 days prior to commencement of construction work in the field, Applicant will provide to Staff the most current pre-construction design, layout and plans. Applicant also will provide such additional Facility pre-construction information as Staff requests.

30.

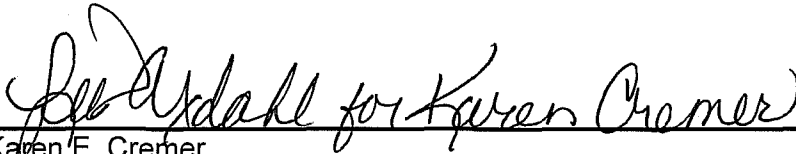
Ninety days upon conclusion of construction, Applicant shall file detailed maps with the Commission depicting the final as-built Facility.

31.

Prior to construction, Applicant will notify public safety agencies providing a schedule and location of work to be performed within their jurisdiction. The agencies contacted will include those sent notification on March 16, 2011, including the South Dakota Department of Public Safety, Sheriff of Brookings County, and Brookings County Office of Emergency Management.


Applicant shall implement the following sediment control practices:

- (a) Applicant shall use floating sediment curtains to maintain sediments within the construction ROW in lieu of straw bales when the depth of non-flowing water exceeds the height of straw bales or silt fence installation.
- (b) Applicant shall install sediment barriers in the vicinity of delineated wetlands and water bodies at locations as needed to prevent silt or soil from entering the delineated wetland or water body regardless of the presence of flowing or standing water at the time of construction.
- (c) Applicant shall consult with South Dakota Game, Fish and Parks (SDGFP) to avoid construction near water bodies during fish spawning periods, if any, and in which in-stream construction activities should be avoided to limit impacts on specific fisheries with commercial or recreational importance.



Karen E. Cremer
Staff Attorney
South Dakota Public Utilities Commission

Dated: 6-7-11



Will Kaul, Great River Energy
Vice President of Transmission
On behalf of Applicants Great River Energy and Northern States Power Company d/b/a Xcel Energy

Dated: June 6, 2011

Stipulation Agreement Exhibit 1

