

NORTH AMERICAN WATER OFFICE
SAVE OUR UNIQUE LANDS

Complainants

v.

MINNESOTA POWER

Respondent.

NOTICE OF COMPLAINT

Minnesota Statutes 216.13 provide for commencing a proceeding before the Commission. North American Water Office and Save Our Unique Lands request the Minnesota Public Utilities Commission review, investigate, and provide relief regarding the complaint alleged within this document.

SUMMARY

1. The complainants seek relief directing the Minnesota Environmental Quality Board to turn over any oversight and/or regulation of the Arrowhead-Weston Transmission Line Project to the Minnesota Public Utility Commission (MPUC) and for the MPUC to discharge its duties pursuant to Minnesota 216B.2421. Substantial changes in the situation at hand no longer allow for construction under Minn. Stat. §§ 116C.51-.69. Instead, the project should be legally evaluated under 216B.2421, as changes in this project are so substantial, that they no longer meet the exemption of a permit under Minn. Stat. § 116C.57, recommended by Administrative Law Judge Kenneth Nickolai on

January 29, 2001, and adopted by the Minnesota Environmental Quality Board (MEQB), March 19, 2001. By providing no regulatory oversight of this project, the State of Minnesota has failed both to ensure protection of the environment, and to provide due process for citizens along the route of the transmission line. The Minnesota Public Utility Commission therefore, has an obligation, as a state agency, to perform their legally prescribed duties. The Minnesota Public Utility Commission is ordered to serve the interests of citizens of Minnesota, relative to operation of the electric transmission system, a state publicly regulated asset. Furthermore, without regulatory oversight of this project, a foreign corporation, the American Transmission Company, is allowed to finance a project being administered by Minnesota Power, who represents the project in face only. Minnesota Power is a public utility under Minnesota Statute section 216B.02, subdivisions 4 and 6, and holds the needed exemption permitting from the MEQB, in addition to the legal authority for condemnation and/or the right of eminent domain in Minnesota under Minnesota Statutes Section 222.36 and 300.04. ATC has no such authority and should not be allowed to usurp such authority by using MP as its proxy. At the point of intended transference of the project, an additional burden may be placed upon Minnesota ratepayers. Should the American Transmission Company become a Minnesota utility after construction of the project, certain Minnesota ratepayers, yet to be identified may bear, without due process, the construction cost of the Arrowhead Project, as they become part of the footprint of the American Transmission Company.

The Recommendation, Findings of Fact, and Order adopted by the MEQB as an exemption requires that all, “necessary permits be obtained from the federal and state

agencies and local units of government with appropriate jurisdiction” prior to commencement of construction. Currently, all federal and state agencies involved in this project have not permitted the project, such as the Wisconsin Department of Natural Resources, United States Army Corps of Engineers 404 permitting, and United States National Park Service for a crossing at the Namekagon River.¹ Allowing any construction in Minnesota to proceed at this time is in direct violation of the exemptions conditions. The Minnesota Environmental Quality Board and the Attorney General should be ordered to enforce these conditions.

PARTIES

2. The North American Water Office (NAWO), a non profit organization, has its office in Lake Elmo, MN. Save Our Unique Lands (SOUL), a grass roots non profit organization has its main office in Glen Flora, WI, and also supports a branch chapter in Proctor, MN.

3. The Minnesota Environmental Quality Board (MEQB) was the agency which statutory had the authority, at the time of the exemption permit filing, to approve an exemption for construction of the Minnesota portion of the Arrowhead-Weston Transmission Line Project, of which approximately 12.5 miles is located in the state of Minnesota, and a rebuild of a local load serving 115kV transmission line, part of which was to be relocated from the existing corridor. Due to the length of the line, Minn. Stat. § 116C.57 allowed for the exemption permitting by the MEQB.

¹ Recently, a meeting was held regarding citing of the transmission line within three miles of an operating airport within Douglas County. American Transmission Company had indicated that they may again need to return to the Wisconsin Public Service Commission to reroute this project in Wisconsin, due to a large mistake in project routing. This will involve more project time, as up to forty landowners may now need to begin the notification process in Wisconsin; potentially reopening this docket for the third time.

STATEMENT OF FACT

4. Both NAWO and SOUL are 501 (c) 3 organizations which have as part of their mission statements emphasis in environmental protection and social justice through the responsible usage of energy.

5. Both NAWO and SOUL were parties to the Minnesota Environmental Quality Board Exemption; docket number MP-HVTL-EA-1-99, which resulted in both the Findings of Fact, attached as exhibit A, and the adoption of the Findings of Fact (The Order) by the MEQB, attached as exhibit B.

6. The Order adopted by the MEQB clearly gives rights to Minnesota Power, a Minnesota utility, for the construction of the Arrowhead Project in Minnesota. In non compliance with this order, Minnesota Power is not the utility financing, planning to own, or operate the 345kV portion of the project, known as the Arrowhead-Weston Project. Minnesota Power is intending to operate the 115 or 230kV portion of the project, but is not financing any portion of this project. Minnesota Power is not financing a purchase of the right of way needed for the project, but is soliciting purchase of easements in the utilities name for a third party, the American Transmission Company LLC, which has publicly stated its intention to both own and operate this transmission line in both states.

7. Minnesota Power filed with the Allete² Form 10-K 2002 in June, 2002, and again in June 2003. These filings, attached as exhibit C indicates that:

Minnesota Power, The American Transmission Company (ATC), and Wisconsin Public Service Corporation, filed new cost estimates with the PSCW estimating that the

² Allete is the “parent” corporation to which Minnesota Power is a subsidiary.

Wausau-Duluth electric transmission line will cost \$396 million...Despite the cost increase, Minnesota Power and transmission planners throughout the region believe the transmission line is necessary. Minnesota Power will be actively involved in the permitting and construction activities; however, it does not intend to finance nor own the proposed line.

8. Minnesota Power through the American Transmission Companies' detailed itemization of cost prepared for the Public Service Commission of Wisconsin³ and attached as exhibit D, reveals that MP's financial involvement in this project from 6/30/02-12/31/08 is \$600,000.00. This cost is listed as "MPL internal cost to complete". This cost appears under the heading of "Local Engineering" which as defined in this document "local engineering costs include the Applicants (ATC's) costs, legal costs associated with engineering activities, communication and outreach costs. Local engineering costs do not include licensing costs associated with obtaining the PSCW CPCN and the MEQB exemption." This is the only contributory cost shown that will be made by Minnesota Power to the Arrowhead-Weston Project. Minnesota portion of the project is listed as \$55,727,188.

The right of way procurement appears under a separate heading "Land Rights-Easements", and will be taken "by others". It is clear that Minnesota Power has spent \$2,175,910 on the project prior to its decision to inform the Securities and Exchange Commission it would be involved in permitting and construction, but not "finance nor own the proposed line". It is also clear, that as the project proceeds, they will dedicate some

³ American Transmission Company, Minnesota Power and Wisconsin Public Service Corporation, Arrowhead to Weston 345kV Transmission Line, Cost Estimate Audit Report, Revision 1. This was prepared by Black and Veatch at the request of the ATC for this reopened hearing, Docket 05-CE-113., at the Wisconsin Public Service Commission. Due to the lack of any filing with either regulatory agency in Minnesota, Wisconsin or at the FERC, this is the most detailed documentation of finances between the corporations available. ATC has indicated during this same hearing under oath an "agreement in principle" exists, but i.e. no documentation of such an agreement was made available to any parties upon request.

\$600,000.00 to the project, over and above what they have stated to the Securities and Exchange Commission. It is clear this funding falls quite short (amount needed in excess of \$600,000 budgeted would be \$55, 127,188 if Minnesota Power was fiscally the primary party constructing the project) of the capital investment needed to build the project. Minnesota Power applied for, and was given the rights to the exemption of the Power Plant Siting Act by the MEQB, as a sole applicant. What they were not given, under this Order, or Finding of Fact was the legal authority to continue the project as proxy for third party transference. The project also includes a rebuild of the poles, conductors, base, and new right of way purchased (including an updated easement to be given by landowners with an existing easement for transmission on their property) which will consist of a local load serving transmission line now being rebuilt as a double circuited line with the Arrowhead-Weston 345kV project, and all being built with financing from the American Transmission Company. This financing of the rebuild and a 3.2 mile upgrade for a line to be used for local load service by Minnesota Power appears to be totally financed by the American Transmission Company. American Transmission Company is not a domestic corporation nor is it a public utility in the State of Minnesota and is therefore using Minnesota Power as its proxy to procure the required easements and permits in Minnesota. With Minnesota Powers lack of intent to own and operate this project, they have removed themselves as the primary applicant who was granted the exemption rights by the MEQB.

9. MP statements to employees concerning attempts to begin construction in Minnesota are found in February 16, 2004 PowerGram, The Newsletter for Employees of Minnesota Power, attached as exhibit E:

“MP employees, as well as workers contracted by MP, are performing the work relating to the line’s Minnesota portion. It’s expected that the 220 mile line will be completed sometime in 2008. It will be constructed, owned and operated by the American Transmission Company.”

10. February 18, 2004 the American Transmission Company, as per its Vice President in charge of the Arrowhead-Weston project, had responded, via WDIO Eyewitness News to a statement made by Mark Liebaert, a SOUL board member, who questioned (exhibit F):

“...whether the Wisconsin-based American Transmission Company can condemn property in Minnesota.” ATC Vice President Mark Williamson said they can and will condemn Minnesota land to keep this project going. Williamson said, “We try to be very generous so that if we actually have to go to court and we do as public infrastructures have the right of eminent domain. We try to structure it in a way so that if we make a deal then if you go to court you see the landowners get the money than the lawyer.”

11. Minnesota 7819.0100 defines at subpart 25 defines utility service as “services provided by a public utility as defined in Minnesota Statutes, section 216B.02, subdivisions 4 and 6”. At 216.02 subd. 4 a Minnesota Public Utility is described:

“Public utility” means persons, corporations or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof but does not include...

American Transmission Company, LLC is not a utility in the state of Minnesota, therefore lacking the power of eminent domain, or the legal means to conduct any utility business within Minnesota.

12. At a March 18th meeting of the Midway Township Planning and Zoning Board, a question was read to Mr. Robert Lindholm, an employee representing Minnesota Power at this meeting (as witnessed by the affidavits at exhibit G):

Q. Which company will own and operate the proposed transmission line on our properties?

A. Since this is not a legal question, I will say the ATC will own the line, but MP will manage it.

At another meeting, Thursday, March 24th, Midway Town Hall, the following statement was made, again, by Mr. Robert Lindholm, “every single nickel of the Arrowhead Weston is ATC's”.

A conclusion must be drawn that the lines of ownership, operation, condemnation and/or outright easement purchase has not been represented properly to Minnesota governmental bodies, as required both by the Finding of Fact, and Minnesota Statutes in seeking permitting of this project by local authority.

13. March 8, 2004, SOUL, a landowner along the transmission right of way in the Town of Midway, responded to a letter from Scott Stenger, Director of Right of Way Acquisition-Pro Source Technologies, Inc, who has indicated a need to purchase an existing, right of way with a new contract. SOUL’ s letter and answers received are attached as Exhibit H. One of the answers, from Mr. Robert Lindholm, states:

“For the Minnesota portion of the Arrowhead-Weston power line, Minnesota Power and its contractors will acquire right-of-way and construct the line. After construction, Minnesota Power and American Transmission Company (ATC) will seek regulatory approval to transfer ownership of the line to ATC. ATC will contract with Minnesota Power to maintain the Minnesota portion of the line.”

14. The Finding of Fact, Conclusions, and Recommendations at 15 states:

In all the segments, the 345 kV circuit will consist of two-wire bundled 1272 kcmil ACSR conductor for each of the three segments for a total of twelve. The 115 kV circuit will consist of a single 954 kcmil ACSR conductor. The 230 kV segment will use a single 954 kcmil ACSR conductor, the same as that used on the 115 kV portion of the line. Shield wire and optical ground wire will be utilized for lighting protection and communication. The 345

kV HVTL will include new steel structures, hardware, insulators and wire. The proposed 345 kV HVTL will have a minimum clearance of 30 feet from the conductor to ground. The line has a maximum achievable operating temperature of 100 degrees Centigrade (212 degrees Fahrenheit).

The Finding of Fact was adopted in full by the Minnesota Environmental Quality Board (exhibits A and B). Exhibit H represents the costs, and displays a change in conductor, contrary to the specifications of conductor to be used as stated by the MEQB. To be purchased by the American Transmission Company to complete this project:

1272 KCM ACSR 45/7 (six wires)

954 KCM ACSR 54/7 (three wires)

The variance is demonstrated by the required use of two wire bundled conductor for three segments, as opposed to six wires proposed for purchase of 1272 KCM ACSR, and a single 954 KCM ACSR as required by the MEQB and the three wires proposed for purchase and construction by the American Transmission Company. This change in the conductor size and number of conductors may affect dynamic performance. The affects of these changes in regards to operation of the transmission line have not been discussed or reviewed as they have not been permitted, by the MEQB, as part of the Arrowhead Project. The changes in the project are listed within a document which was presented to the Wisconsin Public Service Commission, an agency that has no jurisdiction over the Minnesota portion of the project. As a part of the record in the Wisconsin proceeding, witness Art Hughes, called for SOUL, gave testimony which stated that neither the American Transmission Company nor Minnesota Power had performed the necessary dynamic studies for this segment of the line, nor the potential for voltage collapse (and general problems in the electrical area around Arrowhead) was serious and unstudied. To make these changes without these ongoing

studies, plus further study of the phase-shifting transformer need to be done to ensure performance of the transmission line that meets the expectations for which it was designed. It is therefore currently unclear exactly what the proposed changes in conductors may make that could alter the intended operation of this transmission line. Simply stated, more information is needed to evaluate the impacts of these changes. What is additionally clear is that new information regarding the phase shifting transformer was made available to the Wisconsin Public Service Commission. This, along with additional information about the conductor changes, coupled with the information presented to the Wisconsin Public Service Commission, which documents a Minnesota Power study of the phase shifting transformer would allow for a better understanding of all changes in the project. This document, dated November 5, 2001 was released ten months after the Finding of Fact, and was therefore unavailable to the MEQB at time of hearing. Certainly examining all proposed changes to this project would be in the best interest of the State of Minnesota, especially in the electrically delicate Arrowhead area. An affidavit from Dr. Hughes is also attached as exhibit I.

CAUSE OF ACTION

15. The allegations of paragraphs one through fourteen are repeated as if fully set forth herein.

16. Due to the American Transmission Company fully financing this project, intending to own the easements, certain equipment located within the Arrowhead Substation, managing the project to the point of reimbursing Minnesota Power employees for time spent on this project, American Transmission Company should have to apply for both status as a

Minnesota Utility, and a permit for this project under Minnesota Statutes 216B.2421.

17. The project has changed in design; therefore it is not the same project as specified at Finding of Fact at 15, by Administrative Law Judge Kenneth Nickolai, and further adopted as part of the exemption to the Power Plant Siting Act, by the Minnesota Environmental Quality Board. Furthermore, without all of the necessary permits in place, all construction on this project should be halted immediately, as it should have never been allowed.

18. The Minnesota Public Utility Commission has jurisdiction to regulate or deny permitting of this transmission line, as per Minnesota Statutes 216B.2421, to review the line as intended to be constructed, and to either award or deny the American Transmission Company to proceed with the project. Minnesota Power has clearly told the Securities and Exchange of their intent to no longer finance this project, just as the American Transmission Company has told the state of Wisconsin, they intend to spend \$55,727,188 to construct the Minnesota Portion of this project. Minnesota Power lost the ability to proceed as the named applicant for the exemption to this project when it gave up control over the American Transmission Company, yet proceeds to construct a project in its name, when it clearly no longer is funding the project, nor will it own, and it is unclear as to its role in operation of this project. There have been no affiliated interest agreements applied for either in Minnesota, or with the Federal Energy Regulatory Commission (FERC). It is clear, however, that a foreign corporation is at this time financing, and intends to own and operate the transmission line. This is a breach of the exemption afforded under Minn. Stat. §§ 116C.51-.69. At this time, there is no regulatory agency currently looking into the substantial,

fundamental and ethical changes which have taken place regarding this project.

Wherefore the complainants, North American Water Office and Save Our Unique Lands request that the Minnesota Public Utilities Commission commence to rescind the exemption permit granted to Minnesota Power, and require the American Transmission Company to apply for a permit to construct the Arrowhead Project under Minnesota Statutes 216B.2421, and to order the Attorney General to initiate all appropriate civil and criminal proceedings against Minnesota Power and the American Transmission Company, LLC required to redress violations of Minnesota Rules and Statutes due to unauthorized transmission line construction in Minnesota.

Dated June 3, 2004

George Crocker, Executive Officer
North American Water Office

Thomas Kreager, President
Save Our Unique Lands