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April 19, 2017

Via Electronic Filing

Mr. Daniel Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

Re: ***In the Matter of the Formal Complaint and Petition for Relief by Minnesota Energy Resources Corporation Against Northern States Power Company d/b/a Xcel Energy for Violations of Minn. Stat. § 216B.01 and Commission Policy***

Docket No. _______

Dear Mr. Wolf:

Pursuant to Minn. Stat. § 216B.17, Minnesota Energy Resources Corporation ("MERC") respectfully submits this Verified Complaint and Request for Expedited Action ("Complaint") against Northern States Power Company d/b/a Xcel Energy ("Xcel Energy"). As set forth in the Complaint, MERC respectfully requests that the Commission: (1) hold a hearing as required under Minn. Stat. § 216B.17; (2) issue an order declaring that Xcel is in violation of Minn. Stat. § 216B.01 and Commission policy regarding the provision of natural gas by more than one utility in a given service area; (3) issue an order declaring that, under the circumstances, MERC has the exclusive right to provide natural gas service to a new proposed development; and (4) provide any additional relief that the Commission deems just and equitable.

Pursuant to Minn. R. 7829.1900, subp. 1, and as set forth more fully in the Complaint, MERC respectfully requests that the Commission handle this matter on an expedited basis. Finally, MERC has provided a copy of this Complaint to Xcel Energy consistent with Minn. R. 7829.1700, subp. 2

Thank you for your attention to this matter. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

/s/ Brian Meloy

Brian Meloy

STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

Formal Complaint and Petition for Relief by Minnesota Energy Resources Corporation Against Northern States Power Company d/b/a Xcel Energy for Violations of Minn. Stat. § 216B.01 and Commission Policy	MPUC Docket No. ___________ **VERIFIED COMPLAINT AND REQUEST FOR EXPEDITED ACTION OF MINNESOTA ENERGY RESOURCES CORPORATION**

Minnesota Energy Resources Corporation ("MERC") hereby submits this Formal Complaint against Northern States Power Company, d/b/a Xcel Energy ("Xcel") to the Minnesota Public Utilities Commission ("Commission") under Minn. Stat. § 216B.17. As discussed herein, Xcel has recently informed MERC of its intent to extend natural gas service to the new Minnesota Vikings complex in Eagan, Minnesota – an area that is located entirely in MERC's natural (although not exclusive) service territory and that has long been served solely by MERC.

MERC brings this Complaint out of necessity as Xcel's decision to extend gas service to a customer that is currently, and has in the past, received service from MERC undermines Commission policies regarding the duplication of energy facilities, raises safety concerns, and could result in stranded investment in gas infrastructure to the detriment of MERC's remaining customers. If this manner of "competition" is allowed, Xcel's actions will have far reaching consequences and establish a precedent that any gas utility can simply extend service to a large customer of another utility regardless of whether that customer is currently served by the utility or if the utility already has infrastructure in place to serve the customer. Such a fundamental change in the way gas utilities compete to serve Minnesota customers will ultimately result in poor outcomes for customers.

MERC, therefore, respectfully requests the Commission to issue an order declaring, under the unique circumstances presented here, that (1) Xcel's actions are inconsistent with Minn. Stat. § 216B.01 and Commission policies concerning the provision of natural gas by more than one utility in a given service area; and (2) MERC has the exclusive right to provide natural gas service to the Proposed Development. MERC further requests that the Commission grant relief on an expedited basis as Xcel has already started moving forward to supplant the service MERC currently provides.

I. PARTIES AND JURISDICTION

Complainant:	Minnesota Energy Resources Corporation 2665 145th Street West Rosemount, MN 55068
Complainant's Rep:	Amber S. Lee Regulatory and Legislative Affairs Manager Minnesota Energy Resources Corporation 2665 145th Street West Rosemount, MN 55068
Complainant's Counsel:	Brian Meloy Thomas Burman Stinson Leonard Street LLP 150 South Fifth Street, Suite 2300 Minneapolis, MN 55402
Respondent:	Northern States Power Company, d/b/a Xcel Energy 414 Nicollet Mall Minneapolis, MN 55401
Respondent's Counsel:	Scott Wilensky Executive Vice President and General Counsel Northern States Power Company, d/b/a Xcel Energy 414 Nicollet Mall Minneapolis, MN 55401

The Commission has jurisdiction to hear this matter, make findings of fact, and order all appropriate relief under, *inter alia*, sections 216A.05, 216B.01, and 216B.17 of the Minnesota

Statutes, and Chapter 7829 of the Minnesota Rules.

II. <u>INTRODUCTION</u>

Although reluctant to do so, MERC brings the instant Complaint to protect its ratepayers against recent actions by Xcel to expand natural gas service to a development located entirely within MERC's natural service territory. MERC has long provided natural gas to residential, commercial, and industrial customers in the City of Eagan, pursuant to a nonexclusive franchise. For the last three decades, MERC's natural service territory in the City has included certain commercial facilities that, in 2016, were purchased by the Minnesota Vikings to develop a new team headquarters and practice facility ("Proposed Development"). In total, the Proposed Development consists of approximately 200 acres that will be redeveloped with retail, housing and other commercial buildings. Since breaking ground in August 2016, MERC has been the exclusive provider of natural gas service to the property and all construction-related facilities.

In early April, however, Xcel informed MERC that it contracted with the Vikings to be the exclusive natural gas provider for the Proposed Development. To provide this service, Xcel will need to install new pipeline that will cross under Interstate 494 and over MERC's existing pipeline and into MERC's natural service territory. MERC will also be forced to abandon existing pipeline and related facilities located on the property, including those facilities that were recently installed to serve the construction-related demand for the Proposed Development.

MERC acknowledges that natural gas utilities in Minnesota do not operate in exclusive service territories, and that competition among utilities for new customers is a longstanding practice that serves important policy objectives. Nonetheless, utilities also respect one another's natural service territories once they are established and do not appropriate existing customers located in those territories. Xcel's departure from this established practice will have significant consequences on natural gas service. If permitted, Xcel's actions could establish a new practice whereby utilities intrude in one another's territory to poach large customers to the detriment of smaller customers who will be forced to absorb the cost of the utility's stranded assets.

Accordingly, MERC respectfully requests the Commission to issue an order declaring, under the unique circumstances presented here, that Xcel's actions are inconsistent with Minn. Stat. § 216B.01 and Commission policies concerning the provision of natural gas by more than one utility in a given service area. Absent such relief, MERC will need to determine whether it must change its business model to protect its ratepayers from similar attempts by Xcel or other utilities in the future, and to evaluate whether it must engage in similar practices to remain competitive.

III. **FACTUAL ALLEGATIONS**

1. MERC, a public utility under Minn. Stat. § 216B.02, Subd. 4, is a wholly-owned subsidiary of WEC Energy Group, Inc. MERC delivers natural gas to more than 232,000 customers in communities across Minnesota.

2. MERC provides natural gas service to residential, commercial, and industrial customers in the City of Eagan, Minnesota, pursuant to a nonexclusive franchise.

3. For the last three decades, MERC has provided natural gas service to certain commercial facilities located in the City that, until 2008, were used by Northwest Airlines as the company's corporate headquarters ("Existing Facilities").

4. In order to provide natural gas service to the Existing Facilities, MERC first constructed and installed natural gas pipeline and related infrastructure in 1985. Since then MERC has constructed new pipeline and infrastructure, which it continues to utilize.

5. The Existing Facilities and all infrastructure needed to serve those facilities are

located entirely within MERC's natural (although not exclusive) service territory.

6. Since the mid-1980s, the Existing Facilities and the property on which those facilities are located have received natural gas exclusively from MERC.

7. In January 2016, the Minnesota Vikings purchased the Existing Facilities and the property on which they are located for the purpose of developing a new team headquarters and practice facility ("Proposed Development"). The Vikings contracted with Kraus-Anderson Construction to construct the Proposed Development.

8. Construction on the Proposed Development began in August 2016. Since that time, MERC has provided natural gas service to Kraus-Anderson to meet the company's construction-related demand. MERC has incurred approximately $140,000 in direct costs from August 2016 to date in order to install meters and facilitate hookups for this construction-related service, which included the installation of metering that would be used to serve the Proposed Development once completed.

9. In August 2016, MERC abandoned approximately 3,500 feet of natural gas pipeline at the Vikings request to accommodate construction at the Proposed Development. MERC would not have abandoned this piping but for the Proposed Development.

10. MERC's existing pipeline and associated facilities are sufficient to meet the anticipated natural gas demands of the Proposed Development when it is completed. However, in early April 2017, Xcel informed MERC that it entered into an agreement with the Vikings to be the sole provider of natural gas to the Proposed Development. Before then, MERC expected that it would continue to provide natural gas to the Proposed Development, based on the last three decades of providing natural gas to Existing Facilities located on the property.

11. Shortly after notifying MERC that it would provide natural gas service to the

Proposed Development, the Vikings requested that MERC remove its existing meters, including those that were recently installed to serve Kraus-Anderson's construction-related demand.

12. Upon information and belief, Xcel will access the Proposed Development by constructing and installing a new connection to an existing high pressure line located northwest of the Proposed Development. In addition, Xcel must install the main necessary to supply the Proposed Development demand. MERC currently operates four-inch main that spans the perimeter of the Proposed Development for approximately two miles and Xcel will need to duplicate that main piping to serve the Proposed Development.

13. In order to access the Proposed Development, Xcel's new pipeline must cross over or under MERC's existing pipeline, presenting significant safety risks. In part, if there is a gas leak in the area, it will be difficult to determine whether that leak is coming from pipeline owned by MERC or Xcel.

14. If Xcel is allowed to provide natural gas service to the Proposed Development, MERC's pipeline and related infrastructure located in the surrounding area will not be fully utilized. This includes those lines and facilities recently installed to serve the construction of the Proposed Development. Therefore, the Proposed Development will not be able to utilize pipeline that is already in the ground, is capable of providing service to the Proposed Development, and is already included in MERC's rate base.

15. If required to abandon this pipeline and related infrastructure, MERC's existing ratepayers will be forced to absorb the stranded costs associated with those facilities.

16. While the Vikings informed MERC that Xcel is able to provide its natural gas service at a lower cost than what MERC would be able to provide, Xcel is required to construct new pipeline and related infrastructure to serve the Proposed Development.

17. Accordingly, Xcel's attempts to provide service to the Proposed Development will result in unnecessary duplication of pipeline and associated infrastructure and could cause significant safety concerns. In addition, Xcel's service will be to the detriment of MERC's existing ratepayers, who must absorb the stranded costs associated with the pipeline and related infrastructure that can no longer be utilized by MERC.

18. Attached as Exhibit A to this Complaint is a map showing the location of the Proposed Development, MERC's existing natural service territory and related pipelines and facilities, and the anticipated location of Xcel's proposed pipeline extension. The blue lines show the location of MERC's existing pipelines. The red dotted line shows the location of the line that MERC abandoned in August 2016 to accommodate the Proposed Development. The orange lines show Xcel's existing gas line located east of MERC's service territory, and the orange dotted line shows the anticipated location of the new pipeline to be constructed by Xcel to serve the Proposed Development.

IV. <u>ALLEGED VIOLATIONS</u>

Xcel's attempts to provide natural gas service to the Proposed Development runs afoul of the legislative purpose underlying the Minnesota Public Utilities Act ("MPUA"), Minn. Stat. §§ 216B.01, *et seq.* When the Legislature enacted the MPUA in 1974, it did not establish exclusive service territories for natural gas utilities. The Legislature recognized, however, that certain principles should guide the Commission when making decisions regarding the provision of natural gas and siting of associated facilities in the State:

> It is hereby declared to be in the public interest that public utilities be regulated as hereinafter provided in order to provide the retail customers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and the need to construct facilities to provide such services or to otherwise obtain energy supplies, ***to avoid unnecessary duplication of facilities which increase the cost***

> ***of service to the consumer and to minimize disputes between public utilities which may result in inconvenience or diminish efficiency in service to the consumers***.

Minn. Stat. § 216B.01 (emphasis added). Accordingly, the Legislature charged the Commission with ensuring that the provision of natural gas in the State (1) avoids unnecessary duplication of facilities, (2) does not increase the cost of service to the consumer, and (3) minimizes disputes between utilities that may cause inconvenience or inefficiencies in service to consumers.[1]

The Commission has also expounded on the benefits and disadvantages of having more than one natural gas utility compete in a given area. *See In the Matter of an Inquiry into Competition Between Gas Utilities in Minnesota*, Docket No. G-999/CI-90-563, 1995 WL 594725 (Minn. P.U.C. Mar. 31, 1995). As for the disadvantages, the Commission recognizes that competition may cause "wasteful duplication of service and higher per customer costs," and that utilities may be tempted "to 'waive' certain tariffed charges for new customers to the detriment of their current customers." *Id.* at *3. The Commission also recognizes, however, that "providing access to natural gas for a greater number of people and, hence, reducing these customers' heating costs may, on balance, outweigh the concern that the competition may result in provision of service somewhat above the lowest possible cost." *Id.* Ultimately, the Commission must "balance the interests of the utilities, competed-for customers, and current customers on a case by case basis." *Id.*

Based on the foregoing, Xcel's extension of service to the Proposed Development is inconsistent with Minn. Stat. § 216B.01 and the Commission's policies as to when competition

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[1] Although not directly applicable, the Commission's pipeline routing process is designed to achieve similar goals. Specifically, the process is designed to "locate proposed pipelines in an orderly manner that minimizes adverse human and environmental impact; . . . reduce delay, uncertainty, and duplication in the review process; and . . . ensure that pipeline routing permit needs are met and fulfilled in an orderly and timely manner." Minn. R. 7852.0200, subp. 4.

among utilities for natural gas service in the same territory should be promoted.[2] Because MERC has long provided natural gas service to the area, Xcel will not be expanding access to natural gas service to new customers. Nor will it provide service on a more efficient basis, as MERC already has pipeline infrastructure in the ground to serve the anticipated demand of the Proposed Development. Instead, by installing new pipeline in the area, Xcel will unnecessarily duplicate the infrastructure needed to serve the Proposed Development, creating inefficiencies. Xcel's actions will also result in greater costs to MERC's existing customers, who must absorb the expense associated with the stranded facilities that could have served the Proposed Development.

In addition, and most importantly, a dangerous precedent will be established if Xcel is allowed to provide service to facilities located in an area that has long been served by MERC. Natural gas utilities in the State have long followed the "First in the Field" rule. Under this rule, natural gas utilities are free to compete to provide service to new customers. The utility that reaches those new customers first is allowed to maintain those customers, thereby expanding its natural service territory. This has been the practice among utilities even when the customer premises have been sold to new owners. Once service is established, competitor utilities have not attempted to poach those customers away from the utility that was able to reach the customers first.

If Xcel is allowed to provide service to the Proposed Development, this could eviscerate the long-established First in the Field rule and result in more disputes between utilities. Utilities will be free to steal larger customers away from other utilities, to the detriment of existing smaller consumers who must absorb the cost of stranded assets, raising the rates applicable to

[2] As is apparent, the facts presented here can be easily distinguished between cases where two utilities are competing for new customers in a new development or where two utilities seek to serve an area that does not yet have gas service.

those customers.[3] MERC's existing business models are based on widespread acceptance of the First in the Field rule. If that rule is no longer the established norm, MERC must drastically change its business model to protect its ratepayers from other attempts by Xcel and other utilities to cherry-pick customers that have long been served by MERC. MERC must also evaluate whether it needs to engage in similar practices in order to remain competitive.

Disregard of the First in the Field rule will certainly result in duplication of facilities, thereby increasing the cost of service to consumers over time.[4] It will also result in increased conflict and greater inefficiencies as utilities compete for one another's existing customers. Therefore, disregarding this long-established practice will frustrate the purpose of the MPUA and the Commission's policies regarding the provision of natural gas by multiple utilities in a given area.

V. <u>REQUEST FOR RELIEF</u>

Accordingly, MERC respectfully requests that the Commission: (1) hold a hearing as required under Minn. Stat. § 216B.17; (2) issue an order declaring that Xcel is in violation of Minn. Stat. § 216B.01 and Commission policy regarding the provision of natural gas by more than one utility in a given service area; (3) issue an order declaring that, under the circumstances, MERC has the exclusive right to provide natural gas service to the Proposed Development; and (4) provide any additional relief that the Commission deems just and equitable.

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[3] The Commission's statues specifically recognize that a loss of a large customer negatively impacts remaining customers on the system and provide utilities with mechanisms to prevent such adverse outcomes. *See e.g.,* Minn. Stat. § 216B.163 regarding flexible rate tariffs. The natural progression of abandoning the "First in the Field" doctrine by the Commission would be cherry-picking of the high load customers on service territory borders. To counter, the utility losing customers would seek to offer flex rates to compete. In turn, flex rates would cut margins, resulting in unallocated stranded costs and resulting in greater revenue deficiencies and more frequent need to recover costs from a shrinking customer base that does not have competitive options.

[4] One of the Commission's chief responsibilities is to ensure that rates for all customers are just and reasonable. *See* Minn. Stat. § 216B.03.

VI. REQUEST FOR EXPEDITED PROCEEDINGS

MERC respectfully requests that the Commission hear and decide this matter on an expedited basis under Minnesota Rules 7829.1200 and 7829.1700-1900 and the Commission's inherent authority to enforce the statutes and rules it is charged with administering. An expedited process is warranted because the material factual allegations underlying this action are not in dispute and, as alleged above, Xcel has already taken steps to interfere with MERC's provision of natural gas in MERC's existing service territory.

MERC reserves the right to timely modify or expand its request for relief herein (*i.e.*, through an amended complaint) as supported by, *inter alia*, additional relevant information that becomes known to MERC after the filing of this Complaint with the Commission.

Respectfully Submitted,

Dated: April 19, 2017

STINSON LEONARD STREET LLP

/s/ Brian Meloy

Brian Meloy (#0287209)
Thomas Burman (#0396406)
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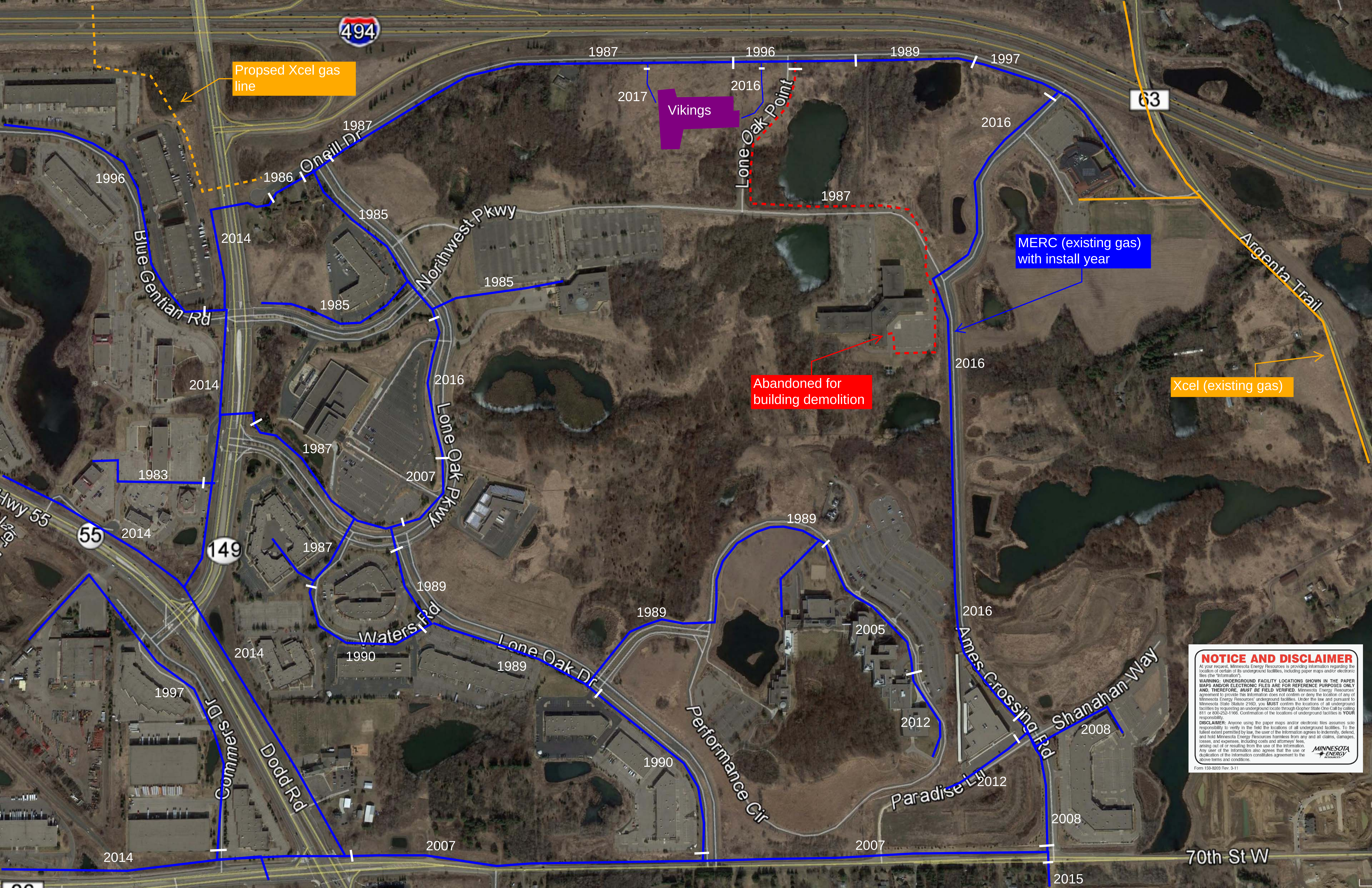
Minneapolis, Minnesota 55402
Telephone: (612) 335-1500
Facsimile: (612) 335-1657
brian.meloy@stinson.com
thomas.burman@stinson.com

Attorneys for Complainant Minnesota Energy Resources Corporation

EXHIBIT A

ILLUSTRATIVE MAP



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Propsed Xcel gas line
Vikings
MERC (existing gas) with install year
Abandoned for building demolition
Xcel (existing gas)
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55
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Onell Dr
Blue Gentian Rd
Northwest Pkwy
Lone Oak Point
Lone Oak Pkwy
Waters Rd
Lone Oak Dr
Argenta Trail
Ames Crossing Rd
Shanahan Way
Paradise Ln
Performance Cir
Commers Dr
Dodd Rd
Hwy 55
70th St W
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NOTICE AND DISCLAIMER
At your request, Minnesota Energy Resources is providing information regarding the location of certain of its underground facilities, including paper maps and/or electronic files (the "Information").
WARNING: UNDERGROUND FACILITY LOCATIONS SHOWN IN THE PAPER MAPS AND/OR ELECTRONIC FILES ARE FOR REFERENCE PURPOSES ONLY AND, THEREFORE, MUST BE FIELD VERIFIED. Minnesota Energy Resources' agreement to provide this Information does not confirm or deny the location of any of Minnesota Energy Resources' underground facilities. Under the law and pursuant to Minnesota State Statute 216D, you MUST confirm the locations of all underground facilities by requesting an underground locate through Gopher State One Call by calling 811 or 800-252-1166. Confirmation of the locations of underground facilities is YOUR responsibility.
DISCLAIMER: Anyone using the paper maps and/or electronic files assumes sole responsibility to verify in the field the locations of all underground facilities. To the fullest extent permitted by law, the user of the Information agrees to indemnify, defend, and hold Minnesota Energy Resources harmless from any and all claims, damages, losses, and expenses, including costs and attorneys' fees, arising out of or resulting from the use of the Information. Any user of the Information also agrees that the use or duplication of the Information constitutes agreement to the above terms and conditions.
Form 159-8203 Rev. 3-11

STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

Formal Complaint and Petition for Relief by Minnesota Energy Resources Corporation Against Northern States Power Company d/b/a Xcel Energy for Violations of Minn. Stat. § 216B.01 and Commission Policy	))))))))	MPUC Docket No. __________ **VERIFICATION OF DAVID G. KULT**

I, David G. Kult, being duly sworn, depose and state that the contents of the factual matters set forth in the foregoing Complaint of Minnesota Energy Resources Corporation are true, correct, accurate, and complete to the best of my knowledge, information, and belief.

NANCY L. LILIENTHAL
Notary Public-Minnesota
My Commission Expires Jan 31, 2020

David G. Kult
[NAME]

Subscribed and sworn to before me
this 19 day of April, 2017.

Nancy L. Lilienthal
Notary

MINNESOTA/9991000.1636/14770933.1

STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

Formal Complaint and Petition for Relief by Minnesota Energy Resources Corporation Against Northern States Power Company d/b/a Xcel Energy for Violations of Minn. Stat. § 216B.01 and Commission Policy	))))))))	MPUC Docket No. ____________ **CERTIFICATE OF SERVICE BY U.S. MAIL**

Pursuant to Minn. R. 7829.1700, subp. 2, the undersigned hereby certifies that on April 19, 2017, she served the **Verified Complaint and Request For Expedited Action of Minnesota Energy Resources Corporation** upon counsel for Northern States Power Company, d/b/a Xcel Energy, by mailing a true and correct copy thereof, enclosed in an envelope, postage prepaid, and by depositing the same in the U.S. Mail at Minneapolis, Minnesota:

Scott Wilensky
Executive Vice President and General Counsel
Northern States Power Company, d/b/a Xcel Energy
414 Nicollet Mall
Minneapolis, MN 55401

/s/ Susan A. Hartinger
SUSAN A. HARTINGER