

**OVERLAND LAW OFFICE**

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February 8, 2002

Allan W. Klein  
Administrative Law Judge  
Office of Administrative Hearings  
100 Washington St. So., Suite 1700  
Minneapolis, MN 55401-2138

RE: Comment for the Record  
Xcel 345kV and 115kV lines  
OAH Docket No. 6-2901-16384-2

Dear Judge Klein and Parties:

Enclosed for filing please find my Comments regarding the Route Permit application.

These comments are my personal comments based on experience and knowledge in this area, with documentation acquired in various transmission proceedings, but are not made in the course of representation of any client. I certify that by copy of this letter the service list has been served via email.

In reviewing the Memorandum accompanying the Order Denying Intervention, I have specific objections to be entered on the record. While it is true that I am "no stranger to energy regulator proceedings," I am aware that intervention is a commitment that requires much time and effort, and I have no funding for an intervention in this matter. Any effort would be my own effort, my own time, my own money. I chose to participate in this matter as a member of the public because I believed that I would be afforded the opportunity to participate, but that was not the case.

The evening before the opening day of the hearing, I received a call from EQB staff John Wachtler, who then completed a conference call at Judge Klein's request, and I was discouraged from attending that first day. At that time, it was my understanding that the reasoning was that there would be utility witnesses who would not be there on any other day, and I agreed that it was important that those witnesses and landowners have time to make their comments. I was encouraged to go another day, not that first day, but I pledged to prepare for the other-than-Xcel utility witnesses, and reserve questioning of Xcel witnesses for another day. Before the hearing began, Judge Kline convened a short meeting between Xcel, EQB and myself, and I was told that the focus was to be on landowners, and I would receive little time for questioning. It was my belief that the purpose of my not questioning Xcel witnesses that day was to allow the utility

witnesses time, and that I was prepared to question them, and also to afford local residents the opportunity to comment for the record. As the hearing progressed, and I tried to raise issues, each time I was told to “keep it short” and was not able to address the issues I felt were important to address and I felt that my efforts were regarded as an intrusion or imposition. The order states:

*The Petition did list the issues that PIN hoped to discuss, and did demonstrate that none of the other intervenors appeared to be prepared to discuss them. However, the Petition failed to demonstrate the PIN (or its members) had any interest in the proceeding that could not be met by its participation as a non-party.*

The Petition to Intervene was my last ditch effort to secure adequate time to raise issues that were unaddressed, necessary because each time I attempted to raise an issue or wanted to ask a question, despite lack of others waiting in line to make comments, I was confronted with “keep it short” and other similar comments. Further, in my efforts to provide notice to landowners, rather than inform landowners of the “Buy the Farm” provision, I was requested to give my contact information so that landowners could ask about it – yet how can a landowner ask about something when it is not known what they should ask about! The questions I asked were important for clarification or for informing the record – at one point, Xcel had to call a recess to determine their response to a question which should have been considered long prior! Another example is where the Nobles County Planning staff asked for cooperation from Xcel regarding placement and construction of poles to facilitate planned future road changes and he did not appear satisfied with the answer and I wanted to enter information about Chisago County, which was sent a bill in early August, 2001, by the utility for over \$600,000.00 for new poles on their Co. Rd. 37 construction, and that these new poles would have to be relocated at county expense at the time of the upgrades. The county regarded as blackmail.<sup>1</sup> I asked this project manager, Pam Rasmussen, also Chisago’s project manager, who was present at an August 8, 2001, County/Xcel meeting where this was discussed, and she “could not remember.” My questioning was met with “We will not go through the Chisago record in this proceeding.” In my experience, past behavior is indicative of future behavior, and Xcel’s treatment of Chisago County and its disregard for a planned road upgrade and attempt to force agreement to the Chisago project is relevant to this case given the Nobles County Planner’s request for cooperation.

Meanwhile, the two “Intervenors” who were granted status, despite their likewise untimely Petitions and their prior participation in the SW MN 345kV proceeding as Intervenors and witnesses which gives them knowledge of proper process, were not present and contributed nothing to the record. There were NO intervenors questioning witnesses, there was no party protecting the public interest. That alone should be sufficient to trigger an alarm and demonstrate need for Intervention. Apparently, however, that is not sufficient. If Intervenors do not show up, and if members of the public are not allowed to fully question other-than-applicant utility witnesses, how will the record be developed? If Intervenors are not present and participating, how will the record be developed? If members of the public are chilled in their participation, how will the record be developed? What kind of record do we have?

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<sup>1</sup> Information available on [www.co.chisago.mn.us](http://www.co.chisago.mn.us) Since that meeting in August, 2001, a relocation agreement has been reached, and the following payments were made:

12/13/02	154,080.00
09/17/03	125,040.00
11/18/03	14,871.28
02/06/04	51,172.00
05/05/04	<u>178,500.00</u>

Total: 510,279.28 with relocation agreement is better than \$600,000 and no agreement!

Also for the record, I do not have a preference between the routes for the 345kV line. However, I take issue with Xcel's claims and justifications for one route over the other which, when investigated, reveal incomplete or skewed information.

**THE REASONS GIVEN BY XCEL FOR ITS PREFERRED ROUTE OVER A SHARED CORRIDOR ARE NOT SUPPORTED BY FACTS**

Xcel lists several reasons as its justifications for its preference for a new route which separately or in toto do not support a deviation from PEER non-proliferation, which requires use of existing corridors wherever possible. See People for Environmental Enlightenment and Responsibility v. Minn. Environmental Quality Council, 266 N.W. 2d, 858 (Minn. 1978).

**The shared easement option would take longer and delay wind outlet**

This reason for preference of the "Interstate 90" route for the 345kV line is not valid because very little of the potential capacity of the 345kV line is for Buffalo Ridge wind outlet. This is demonstrated by the powerflows entered in the record of this proceeding (and in the initial Certificate of Need case). Xcel was insistent that the 345kV line be included. The powerflows entered show the Buffalo Ridge wind outlet that enters into the 345kV line. 1-H is the label for the collection of transmission projects that was granted a Certificate of Need, and which includes the 345kV line. Also entered into this record is the chart showing the capacity of this line according to the conductor specifications.<sup>2</sup>

The chart showing the capacity of the line gives the capacity for various configurations. This line will be a 345kV bundled 954kcmil ACSS conductors. The relevant parts of the chart, from left to right: The first column on the left represents the size of the conductor, and go down to where the "954" value is found; then follow across to the far right, to the column that lists "345," representing the voltage, and "2" representing the conductors bundled in groups of 2, as this conductor is. The capacity of this line is 2066-2085. This is listed on the MAPP Form 1<sup>3</sup> as a 2085 capacity.

There are two powerflows on the record.<sup>4</sup> One of the powerflows is the 1-H "50/50 Option," which assumes that half of the Buffalo Ridge wind is built in the north and one half is built in the south. The other is the 1-H "100/0" option, which assumes all generation is in the south and none is in the north.

The highlighted horizontal bold line labeled SPLT1634 is the Split Rock (Sioux Falls) substation. To the right, the highlighted horizontal bold line labeled in handwriting "Nobles" is the Nobles substation, corrected during the SW MN 345kV proceeding during the testimony of Xcel's Rick Gonzalez. Near the bottom, the highlighted horizontal bold line in the bottom center of the diagram labeled LAKEFLD2010 is the Lakefield Jct. substation. The Nobles substation is the only outlet from Buffalo Ridge into this line. Perpendicular at the horizontal bold line representing the Nobles substation is the circled figure "302" on the Option 1-H 100/0, which means that 302 MW is going from the Nobles substation into this 345kV line in question. For the other powerflow, at the horizontal bold line representing the Nobles substation is the circled figure "213" on the Option 1-H 50/50, which means that 213 MW is going from the Nobles

<sup>2</sup> CoN proceeding, Xcel Application, Ex. 35, App. 7, Table 2.

<sup>3</sup> MAPP's Form 1, used to report planned transmission to the North American ELeetric Reliability Council (NERC).

<sup>4</sup> Option 1-H 100/0 and 50/50

substation into this 345kV line in question. The Option 50/50 was the option chosen, as much generation is planned for northern Buffalo Ridge, not all of it will be in the south. Therefore, 213 MW from the 50/50 option is the predicted outlet MW going into this line. 213MW of the 2085 capacity is just over 10%, not the predominant share in anyone's imagination! Given this small proportion of capacity that is Buffalo Ridge outlet, is it reasonable to claim that delay in construction of this 345kV line will delay Buffalo Ridge wind outlet?

**Xcel claims that the shared route will cost more – but has it met it's burden of production?**

**Xcel's breakdown of easement acquisition costs is sketchy at best**

Xcel does not offer much in the way of its estimates of easement costs. Attached is information from the Arrowhead docket to show a more appropriate breakdown of these costs.<sup>5</sup> These estimates set out the specifics of the estimated easement costs in far greater detail than does Xcel. Xcel has no breakdown by which to determine whether these costs are reasonable, and there is no breakdown to determine whether one option would have greater easement acquisition costs than another. This is important to the EQB decision because the "Buy the Farm" provision, which does apply to landowners facing this 345kV line, does apply. In Xcel's application, RoW cost is estimated at 5-7% of the Line Cost.<sup>6</sup> Has Xcel included any estimate for Buy the Farm condemnations in its calculations? Yes. How much? We don't know. Look at the way it is broken down in the Arrowhead proceeding, and ask whether Xcel has provided this information in this case – clearly it has not. What is the impact on the Buy the Farm provision and other easement costs in deciding one route over another? Is it reasonable to presume that one route would cost more than another route if this information is not disclosed? Is it reasonable to presume costs would be the same when one route already has an easement and another would be new easements?

**Xcel has not determined what would be paid to Alliant if shared corridor is Ordered.**

Xcel stated that it has not determined what might be paid to Alliant if a shared route would be ordered. This was clearly not addressed by Xcel in its application, because when the question was asked, Xcel needed a 10 minute break to provide its answer, which ultimately was that it does not have any information on that issue. Xcel did state that it believed that there would be no easement payment to Alliant, that it would "rebuild" the Alliant line at its expense and that there would be no payment to Alliant. Alliant should have been asked if this is a reasonable presumption or if it had different information. However, there is nothing on the record other than that Alliant does not believe it should have any financial responsibility for the construction cost if a shared route is ordered. Beyond that, the record is silent and there is not sufficient information to know whether Xcel's claims are true or estimate the economic impact on a shared easement.

**Xcel claims that a shared route would create higher construction costs because supplemental/replacement generation is required, but has not factored standby generation into the cost of the Interstate option.**

Xcel's perspective is that a 22 week risk is "too much" and requires that substitute generation be brought in to provide an acceptable reliability level. However, it was finally revealed by Xcel

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<sup>5</sup> WPS Land Rights documents.

<sup>6</sup> Xcel EQB Application, Appendix E.

that where 6 weeks is deemed “acceptable” and which happens to be the length of time at risk in the separate corridor option, there would not be separate generation during that 6 week time. Is it reasonable to have separate generation protecting from “freezing in the dark in an incubator without a job” for 22 weeks, yet not have that same protection for 6 weeks? Is it reasonable to presume that the cost of coverage for 6 weeks should not be included in the cost estimate for the Interstate route when it is included in the cost estimate for the shared route? Should that standby generation be required in either case if the risk is that great? What is the cost of inclusion of the costs of rental and interconnection for 6 weeks of standby generation , and if this cost is added to the Interstate option, are the routes essentially the same cost?

**Xcel falsely claims that reliability concerns and industry practice require that standby generation running at all times.**

Xcel claims that if the shared corridor is chosen, standby generation is required, and that standby generation must be running at all times to provide the same level of reliability. However, this does not take into account industry recognition that planned outages are acceptable, and that where planned, standby generation is sufficient, and it does not have to be running. Testimony of M.Steckelberg, GRE. The cost of continual running is the lion’s share of the cost of stand by generation. The cost of continual running generation was included in the cost estimate for the shared corridor option, and this is not reasonable as the generation need not run.

**Xcel falsely claims that reliability concerns and industry practice require that the 345kV line not be double circuited.**

Xcel claims that reliability standards require that the 345kV line not be double circuited, and that the line is at risk for “common mode” outages. As Mike Steckelberg testified, he does not regard this as a concern. Should we?

**Xcel DOES USE LEASE AGREEMENTS FOR EASEMENTS**

Despite testimony about lack of knowledge of such an option, Xcel does use leases for easements. See Northern States Power v. MT Properties, Inc., C0-99-1310, April 4, 2000.<sup>7</sup> In this case, an easement lease was by contract to be renegotiated, and Xcel did not like the amount set by the arbitrators, raising the lease from \$27,054 annually in 1969 to \$145,000 annually. The arbitrators determination was upheld by the court. This is instructive both in terms of options available for landowner compensation and for the potential for a lease as an easement share arrangement with Alliant.

**Xcel HAS NOT NOTIFIED LANDOWNERS OF THE “BUY THE FARM” OPTION**

Under specific questioning, Xcel’s Pam Rasmussen testified that for the landowners faced with the 345kV transmission line, and to which the “Buy the Farm” provision applies, Xcel has not notified them that the “Buy the Farm” option is available to them, that Xcel would not notify them that the “Buy the Farm” option is available to them, and that Xcel would not provide the list to let another notify them that the “Buy the Farm” option is available to them. This is not reasonable. The landowners must be notified so that they may carefully consider their options before they enter into an easement agreement or condemnation proceeding.<sup>8</sup>

<sup>7</sup> <http://www.lawlibrary.state.mn.us/archive/ctapun/0004/1310.htm>

<sup>8</sup> Data Practices request pending.

If there are any questions, please let me know.

Very truly yours,

Carol A. Overland  
Attorney at Law

cc: Service List via email

# Appendix A

## Form 1 of 2 for Reporting Lines and Transformers In the Baseline Reliability Study (MTEP-04)and 2004 MAPP Regional Plan (2004-2013)

The

Note #1:

PLANNED projects are the preferred solution to an identified issue. PROPOSED projects are a tentative solution to an identified issue. The projects in this list are projected for service on the date indicated. They are expected to be needed to meet existing commitments including network and native load growth. Because there is always the possibility of delay in permitting and construction, or for modification or deferral of projects as system conditions change, Transmission Providers should not assume that these projects are in service when selling new transmission service. New transmission service should be conditioned on the completion of these projects.

### Planned Transmission Lines and Transformers:

Row ID Number	Expected In Service Date (m/d/y)	MISO Area/Service Region	From:	To:	Circuit #	Voltage (KV)	Map Grid Location	Line Mile Estimates			Need Estimate (SUM of Columns *100 %)				Status (Note #1 above)	Reporting Source or TO	In Model (Y/N)	Project Group Number
								Rebuild or Upgrade	New	Total Miles	Summer Rating (MVA)	Native Network Load	Gen Interconnection	Transmission Service				
1081	6/1/06	N-MW	Parsons Lake	Parsons	1	115	TC detail		4.3	4.3	300	100			Planned	GRE		
1082	6/1/06	N-MW	Pyroclast	Em Creek	1	115	TC detail	9.5	2.5	12.0	300	100			Planned	GRE		
1083	6/1/06	N-MW	Vermilion River	Empire	1	115	TC detail	6.0	6.0	200	100			Proposed	GRE			
1087	6/1/06	N-MW	Pressant Valley (6075)	Crabtree (60647)	1	181	TC detail	30.0	30.0	288	100			Proposed	RPU	N		
7777	6/1/06	N-MW	Barton	Northern Hills	1	161	TC detail	15.0	15.0	268	100			Proposed	RPU	N		
277	6/1/06	N-MW	AI Lake	Vermilion River	1	115	TC detail	4.2	4.2	200	100			Planned	XEL	Y		
667	6/1/06	N-MW	Eden Prairie	345-115 Tr	1	345/115	TC detail	0.0	0.0	672	100			Proposed	XEL	N	TC TX	
988	6/1/06	N-MW	Eden Prairie	345-115 Tr	2	345/115	TC detail	0.0	0.0	672	100			Proposed	XEL	N	TC TX	
989	6/1/06	N-MW	Eden Prairie	345-115 Tr	1	345/115	TC detail	14.3	14.3	310	100			Proposed	XEL	N	TC TX	
570	6/1/06	N-MW	Eden Prairie	345-115 Tr	1	345/115	TC detail	14.3	14.3	310	100			Proposed	XEL	N	TC TX	
571	6/1/06	N-MW	Eden Prairie	345-115 Tr	1	345/115	TC detail	14.3	14.3	310	100			Proposed	XEL	N	TC TX	
572	6/1/06	N-MW	Eden Prairie	345-115 Tr	1	345/115	TC detail	14.3	14.3	310	100			Proposed	XEL	N	TC TX	
573	6/1/06	N-MW	Eden Prairie	345-115 Tr	1	345/115	TC detail	14.3	14.3	310	100			Proposed	XEL	N	TC TX	
574	6/1/06	N-MW	Eden Prairie	345-115 Tr	1	345/115	TC detail	14.3	14.3	310	100			Proposed	XEL	N	TC TX	
239	12/1/06	N-MW	Eden Prairie	345-115 Tr	1	345/115	TC detail	14.3	14.3	310	100			Proposed	XEL	N	TC TX	
272	12/1/06	N-MW	Eden Prairie	345-115 Tr	1	345/115	TC detail	14.3	14.3	310	100			Proposed	XEL	N	TC TX	
1076	12/1/06	N-MW	Eden Prairie	345-115 Tr	1	345/115	TC detail	14.3	14.3	310	100			Proposed	XEL	N	TC TX	
377	12/1/06	N-MW	Eden Prairie	345-115 Tr	1	345/115	TC detail	14.3	14.3	310	100			Proposed	XEL	N	TC TX	
378	12/1/06	N-MW	Eden Prairie	345-115 Tr	1	345/115	TC detail	14.3	14.3	310	100			Proposed	XEL	N	TC TX	
302	7/1/07	N-MW	Fenton	Charismatic	1	115	TC detail	14.0	14.0	600	100			Proposed	XEL	N	Wind 625	
308	7/1/07	N-MW	Nobles Co	Fenton	1	115	TC detail	14.0	14.0	600	100			Proposed	XEL	N	Wind 625	
307	7/1/07	N-MW	Nobles Co	Lakeford Jct	1	345	TC detail	42.0	42.0	2095	100			Proposed	XEL	N	Wind 625	
309	7/1/07	N-MW	Nobles Co	Lakeford Jct	1	345	TC detail	42.0	42.0	2095	100			Proposed	XEL	N	Wind 625	
311	7/1/07	N-MW	Nobles Co	Lakeford Jct	1	345	TC detail	42.0	42.0	2095	100			Proposed	XEL	N	Wind 625	
1088	12/1/07	N-MW	Lawrence Creek	115-69 transformer	1	115/69	TC detail	7.0	7.0	310	100			Proposed	XEL	N	Wind 625	
274	12/1/07	N-MW	For Lake	RURD	1	181	H7	18.0	18.0	434	100			Proposed	XEL/JLT	N	Wind 625	
275	12/1/07	N-MW	Rurid	Wynbridge Jct	1	181	H7	18.0	18.0	434	100			Proposed	XEL/JLT	N	Wind 625	
286	12/1/07	N-MW	Wynbrg 230	Wynbridge Jct	1	230/115	G4	18.7	18.7	75		25		Proposed	OTR/MPG	N	Wind 625	
301	12/1/07	N-MW	Chicago	Landon	1	115	TC detail	7.0	7.0	310	100			Proposed	OTR/MPG	N	Wind 625	
304	12/1/07	N-MW	Lawrence Creek	161-115 transformer	1	161/115	TC detail	2.1	2.1	310	100			Planned	XEL	Y	41	
305	12/1/07	N-MW	Lawrence Creek	161-115 transformer	1	161	TC detail	2.1	2.1	310	100			Planned	XEL	Y	41	
306	12/1/07	N-MW	Landon	St Croix Falls	1	115	TC detail	2.1	2.1	310	100			Planned	XEL	Y	41	
310	12/1/07	N-MW	Landon	St Croix Falls	1	115	TC detail	2.1	2.1	310	100			Planned	XEL	Y	41	
312	12/1/07	N-MW	St Croix Falls	Lawrence Creek	1	161	TC detail	2.4	2.4	300	100			Planned	XEL	Y	41	
578	6/1/06	N-MW	Inner Hills	Apple River	2	115	TC detail	1.8	1.8	310	100			Proposed	GREENEL	N	TC TX	
579	6/1/06	N-MW	Parsons Lake	345-115 Tr	1	345/115	TC detail	0.0	0.0	672	100			Proposed	XEL	N	TC TX	
578	6/1/06	N-MW	Parsons Lake	345-115 Tr	2	345/115	TC detail	0.0	0.0	672	100			Proposed	XEL	N	TC TX	
136	6/30/06	N-MW	Arrowhead	Weather	1	345	TC detail	220.0	220.0	800	60		25	Planned	ATCo	Y	1	
316	6/30/06	N-MW	Arrowhead 230-230 Phase-Str	Weather	1	230/230	TC detail	800	800	100				Planned	MP	Y	1	
319	6/30/06	N-MW	Arrowhead 345/230	Weather	1	345/230	TC detail	800	800	100				Planned	MP	Y	1	
578	6/30/06	N-MW	Badgers	Portage Lakes	1	115	TC detail	30.0	30.0	182	100		0	Proposed	MP	Y	1	
581	1/1/06	N-MW	Dorsey	Portage Lakes	2	230	F2	43.5	43.5	384	100			Proposed	MP	Y	1	
234	12/1/08	N-MW	Marine River 345	Weather	3	345/230	F4	336	336	75		25		Proposed	TRM/POX	N	TC TX	
1098	12/1/08	N-MW	Bohwell	Weather	1	230	H4	85.0	85.0	390	75		25	Proposed	TRM/POX	N	TC TX	
582	6/7/09	N-MW	Red Rock	345-115 Tr	1	345/115	H6	67.2	67.2	100				Proposed	XEL	N	TC TX	
983	6/7/09	N-MW	Red Rock	345-115 Tr	2	345/115	H6	67.2	67.2	100				Proposed	XEL	N	TC TX	
1088	11/7/09	N-MW	Ridgeway Transformer	230-68.5	2	230/68.5	G2	10.7	10.7	100				Planned	MH	N		
1106	12/31/09	N-MW	Barton	Weather	1	181	H5	21.4	21.4	240	100			Proposed	DPC	N		
1090	3/31/10	N-MW	Weather	Stone Lake	1	230	H5	86.0	86.0	390	100			Proposed	DPC	N		
1091	3/31/10	N-MW	Weather	Weather	2	230	H5	86.0	86.0	390	100			Proposed	MH	N		
1092	3/31/10	N-MW	Weather	Weather	2	230	H5	86.0	86.0	390	100			Proposed	MH	N		
1093	5/1/10	N-MW	Oak Point Tap	Auger	1	115	F2	6.6	6.6	110.1	100			Proposed	MH	N		
1094	5/1/10	N-MW	Robber	Auger	1	115	F2	6.6	6.6	110.1	100			Proposed	MH	N		
1095	6/1/10	N-MW	Alma	Elk Mound	1	161	H6	45.0	45.0	314	100			Proposed	DPC	N		

Working Comments

Computation of SAC Overhead Conductor Ampacities

(Steady State)

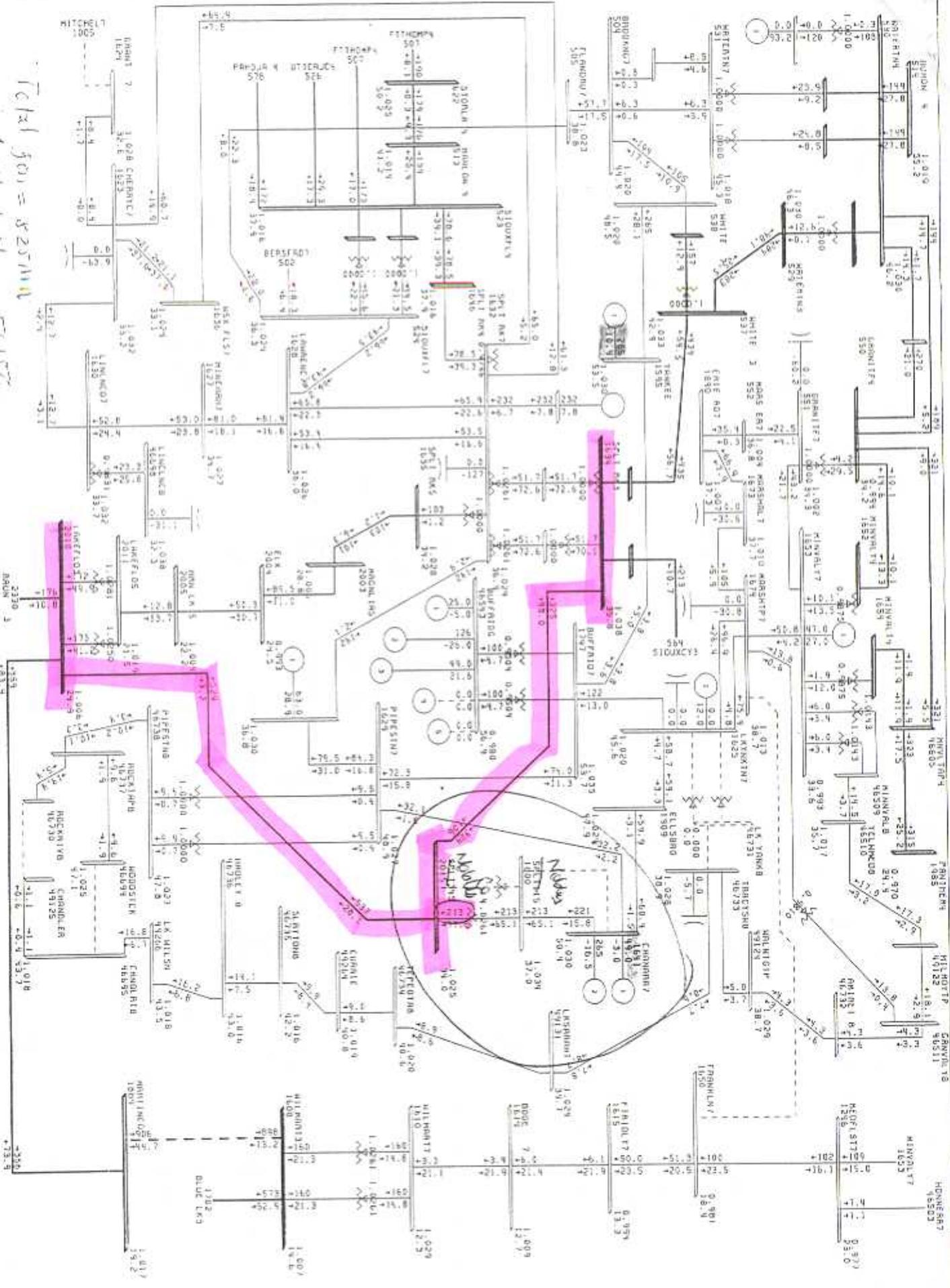
Per ANSI/IEEE Standard 738-1986

Wind speed	1.36 m/hr	2.00 m/s	Ambient air temp	40 C	104 F	Latitude	45 degrees N
Coefficient of emissivity	0.5	0.5	Conductor surface temp	200 C	392 F	Azimuth of line	90 degree
Coefficient of solar absorption	0.5	0.5				Elev above sea level	1000 ft
Air viscosity @ T ave		0.05463 lb/ft					
Air density		0.05403 lb/ft <sup>3</sup>					
Air thermal conductivity		0.0101 W/ft C					
Altitude of sun		68.1 degrees					
Azimuth of sun		180 degrees					
Heat rec'd by a surface		94.64 W/ft <sup>2</sup>					
Elevation correction factor		1.0340					

Km	Conductor	Resistance, Ohm/mi			Ohm/Mi	Conductor heat transfer, W/ft			Radiated heat loss	Solar heat gain	Ampacity "codebook"	MVA rating @ nominal voltage						Km		
		50 deg C	100 deg C	200 deg C		Forced convection heat loss qc1	Conductor correction factor qc2	max				1	2	3	4	5	6			
410	6/1	0.593	0.6978	0.9097	0.17228	46.46	39.77	40.46	16.72	2.30	690	70	117	141	164					410
266	6/7	0.633	0.6507	0.8461	0.16063	48.28	42.87	49.28	17.07	2.50	633	76	126	151	177					266
336	1B/1	0.684	0.3059	0.4700	0.08902	51.24	44.70	51.24	19.09	2.79	671	104	174	206	243					336
336	2B/7	0.721	0.3072	0.3623	0.4725	52.62	48.14	52.62	20.13	2.94	683	106	170	211	248					336
477	2B/7	0.858	0.2169	0.2557	0.3333	57.44	51.21	57.44	23.85	3.50	1111	133	221	266	310					477
477	24/7	0.846	0.2168	0.2556	0.3332	57.04	50.78	57.04	23.82	3.45	1106	132	220	264	308					477
558	2B/7	0.927	0.1660	0.2182	0.2856	59.73	53.05	59.73	25.88	3.78	1230	147	245	284	343					558
636	24/7	0.977	0.1631	0.1922	0.2504	61.34	55.37	61.34	27.27	3.98	1336	160	266	318	373					636
795	2B/7	1.108	0.1306	0.1539	0.2002	65.38	59.71	65.38	30.93	4.62	1858	186	310	372	434					795
795	4B/7	1.115	0.1313	0.1544	0.2006	65.59	59.93	65.59	31.13	4.65	1858	186	310	372	434					795
785	30/19	1.140	0.1307	0.1540	0.2006	66.33	60.74	66.33	31.82	4.65	1858	187	312	375	437					785
954	4B/7	1.165	0.1099	0.1291	0.1675	67.08	61.53	67.08	32.52	4.75	1745	209	348	417	482					954
1192	54/7	1.198	0.1094	0.1287	0.1673	67.86	62.51	67.86	33.39	4.88	1745	209	348	417	482					1192
1272	54/19	1.338	0.0863	0.1013	0.1313	71.95	68.86	71.95	37.35	6.46	2047	244	407	489	570					1272
1590	64/19	1.382	0.0851	0.0998	0.1286	73.14	68.17	73.14	38.58	6.63	2082	249	416	489	582					1590
2312	76/19	1.645	0.0857	0.0787	0.1189	77.41	72.89	77.41	43.13	8.30	1472	293	492	609	689					2312
		1.802	0.0505	0.0584	0.0742	83.72	79.94	83.72	50.30	7.35	1002	359	686	716	837					2312

Notes:  
Sun computations based on noon local sun time  
Solar absorption based on "Clear atmosphere"  
Azimuth of line: N-S = 0, E-W = 90

Xcel Energy  
Delivery System Planning & Engineering



Total for = 8257111  
 CYPRESS Hybrid 52/50

OPTIOM1-YANKEE-BUFFALO BRIDGE SAV. DANUBE TO TROY OPEN  
 ND-1949, MI-2150, MN-1065; 0 & AT CHB; 50 & AT YANKEE  
 CHA2-345.DRW WED, MAY 22 2002 14:06

100% BAILED  
 0.9200V 1.1000V  
 BUS - VOL TAPE (PUD) / ANGLE  
 BRANCH - MW/MVRR  
 EQUIPMENT - MW/MVRR

1-1-2002



Land Rights

7-14-99

Appraisals two per parcel company & property owner.  
 $\$750 \times 2 = \$1,500$

Land Per Acre  $\$2000$

Per mile Appraisals

Parallel Road  
 Parallel Railroad  
 Parallel Line

6  
 4  
 4  
 6  
 4

Cross Country  
 Parallel Pipeline

Parallel Line  
 $\$2000$   
 Acres Acre

$\$1,500$  Appraisals  
 $\$1,000$  Acquisition

2000  
 Per  
 mile

Row  
 Width

75'	9.09	18,180	(6) $\$9,000$	(6) $\$6,000$	33,180	33,200
90'	10.91	21,820	(6) $\$9,000$	(6) $\$6,000$	36,820	36,800
100'	12.12	24,240	(6) $\$9,000$	(6) $\$6,000$	39,240	39,200
115'	13.94	27,880	(6) $\$9,000$	(6) $\$6,000$	42,880	42,900

Parallel Road

43'	5.21	$\$10,420$	(6) $\$9,000$	(6) $\$6,000$	35,420	$\$35,400$
91'	11.03	22,060	(6) $\$9,000$	(6) $\$6,000$	37,060	37,100
115'	13.94	27,880	(6) $\$9,000$	(6) $\$6,000$	42,880	42,900

Parallel Pipe Line

108'	13.09	$\$26,180$	(4) $\$6,000$	(4) $\$4,000$	36,180	$\$36,200$
132'	16.0	32,000	(4) $\$6,000$	(4) $\$4,000$	42,000	42,000

Parallel Railroad

70'	8.48	$\$16,960$	(4) $\$6,000$	(4) $\$4,000$	26,960	27,000
98'	11.88	23,760	(4) $\$6,000$	(4) $\$4,000$	33,760	33,800
122'	14.79	29,580	(4) $\$6,000$	(4) $\$4,000$	39,580	39,600



ESTIMATE SHEET  
159-4702 Rev. 5-86

Quan.	Unit	Description of Item	Unit Price	Item Cost	Group Cost
		351.000 Clearing ROW			
	Acre		3200 -		
		670.000 Removal			
	Mile	Remove existing 46-138Kv wood pole line	11,700 -		
		680.000 Salvage			
	Mile	Material salvage from removed lines			
		350.200 Land Rights - Easements			
	Mile	75' ROW Parallel line	33,200 -		
	Mile	90' ROW " "	36,800 -		
	Mile	100' ROW " "	39,200 -		
	Mile	115' ROW " "	42,900 -		
	Mile	43' ROW Parallel road	35,400 -		
	Mile	91' ROW " "	37,100 -		
	Mile	115' ROW " "	42,900 -		
	Mile	108' ROW Parallel pipe line	36,200 -		
	Mile	130' ROW " "	40,000 -		
	Mile	70' ROW Parallel railroad	37,000 -		
	Mile	98' ROW " "	33,800 -		
	Mile	130' ROW " "	39,600 -		
	Mile	80' ROW - New	34,400 -		
	Mile	120' ROW - New	44,100 -		
	Mile	150' ROW - New	51,400 -		
		2000 Construction			

**LAND RIGHTS - EASEMENTS**  
 Wisconsin project miles 218.3  
 Number of parcels 1400  
 6.7 (Average number of parcels per mile)

Item	QTY	UNIT	ITEM	OWNER	MATL	OWNER	MATL	TOTAL	ITEM CONTRACT/LABOR	CONTRACT/LABOR TOTAL	Item Total	Cost
120' ROW - new cross country	23.8	mi			\$26,400			\$26,400	\$20,400	\$46,800	\$101,500	\$6,433,600
100' ROW - new parallel pipeline	48.1	mi			\$56,400			\$56,400	\$20,400	\$76,800	\$101,000	\$4,358,100
90' ROW - new parallel pipeline	8.3	mi			\$36,400			\$36,400	\$20,400	\$56,800	\$101,000	\$838,300
90' ROW - new parallel pipeline	2.2	mi			\$36,400			\$36,400	\$20,400	\$56,800	\$101,000	\$222,200
40' ROW - rebuild with existing line - cross country	23.1	mi			\$36,400			\$36,400	\$20,400	\$56,800	\$101,000	\$2,233,100
20' ROW - rebuild with existing line - cross country	31.9	mi			\$36,400			\$36,400	\$20,400	\$56,800	\$101,000	\$3,221,900
20' ROW - rebuild with existing line - railroad pipeline	2.1	mi			\$36,400			\$36,400	\$20,400	\$56,800	\$101,000	\$312,100
10' ROW - rebuild with existing line - railroad/pipeline	26.3	mi			\$36,400			\$36,400	\$20,400	\$56,800	\$101,000	\$3,666,200
10' ROW - rebuild with existing line - road	2.5	mi			\$36,400			\$36,400	\$20,400	\$56,800	\$101,000	\$352,600
Legal assistance with acquisition (L)	208.3	mi			\$0			\$0		\$0	\$0	\$1,874,700
Ballast performance Study	1	bid			\$0			\$0		\$0	\$200,000	\$22,913,000
Pipeline performance study	1	bid			\$0			\$0		\$0	\$1,000,000	\$308,000
Nemadji River Crossing - Environmental Impact Study	1	bid			\$0			\$0		\$0	\$1,000,000	\$1,000,000
												\$24,613,000

**NOTES**

- (A) \$2,500 per acre land value
- (B) Approximate \$2,000 per parcel - \$13,400 per mile
- (C) Restoration payments \$2,500 per mile
- (D) Contingency \$4,500 per mile
- (E) Assumed 100 million gallon action at \$18,750 per action

ESTIMATE ITEM DESCRIPTION	QTY	UNIT	ITEM	Owner Materials		Contractor Labor		TOTAL	ITEM CONTRACT/LABOR	CONTRACT/LABOR TOTAL	Item Total	EXTENDED ITEM
				OWNER	MATL	OWNER	MATL					
<b>CLEARING ROW</b>												
ROW clearing & restoration (Western - Bass Lake)	443	acre			\$0.00			\$0.00	\$3,800.31	\$3,800.31	\$1,796,635	\$1,500,022
ROW restoration only (Western - Bass Lake)	1321	acre			\$0.00			\$0.00	\$1,135.52	\$1,135.52	\$2,620,651	\$890,442
ROW clearing & restoration (St. Louis River - Bass Lake)	790	acre			\$0.00			\$0.00	\$1,317.20	\$1,317.20	\$5,807,800	\$6,807,800
ROW restoration only (St. Louis River - Bass Lake)	696	acre			\$0.00			\$0.00	\$1,279.37	\$1,279.37	\$6,807,800	\$6,807,800
<b>TOTAL</b>												
<b>SALVAGE</b>												
Materials salvaged from existing 60-230KV line (St. Louis River - Bass Lake)	42.1	mi			(\$280)			(\$280)	\$0	(\$280)	(\$17,388)	(\$17,388)
Materials salvaged from existing 60-230KV line (Western - Bass Lake)	23	mi			(\$210)			(\$210)	\$0	(\$210)	(\$66,430)	(\$66,430)
Materials salvaged from existing 345KV line (Western - Bass Lake)	3.6	mi			(\$5,340)			(\$5,340)	\$0	(\$5,340)	(\$31,230)	(\$31,230)
<b>TOTAL</b>												
<b>REMOVAL</b>												
Remove existing 66-230KV wood pole line (St. Louis River - Bass Lake)	42.1	mi			\$0			\$0	\$3,918	\$3,918	\$1,547,408	\$1,547,408
Remove existing 66-230KV wood pole line (Western - Bass Lake)	23	mi			\$0			\$0	\$2,918	\$2,918	\$573,114	\$573,114
Remove existing 345KV wood pole line (Western - Bass Lake)	4	mi			\$0			\$0	\$42,407	\$42,407	\$169,630	\$169,630
<b>TOTAL</b>												

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (1998).*

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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
C0-99-1310**

<

**Filed April 4, 2000**

**Affirmed**

**Halbrooks, Judge**

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Hennepin County District Court

File No. CT 98-018161

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David D. Meyer, Steven J. Quam, Fredrikson & Byron, P.A., 1100 International  
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Harold J. Bagley, Northern States Power Company, 5th Floor, 414 Nicollet Mall,  
Minneapolis, MN 55401 (for appellant)

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Byron D. Olsen, Stanley J. Duran, Mark S. Radke, Felhaber, Larson, Fenlon &  
Vogt, P.A., 601 Second Avenue South, Suite 4200, Minneapolis, MN 55402-4302  
(for respondent)

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Considered and decided by Halbrooks, Presiding Judge, Kalitowski, Judge,

and Schumacher, Judge.

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Appellant challenges an order denying its motion to vacate an arbitration  
award that set the amount of annual rental payments appellant was required to pay  
respondent for an electric-transmission easement. Appellant contends that the

arbitration panel's determination of rental payments and award of interest exceeded the scope of its authority. We affirm.

### **FACTS**

In 1969, appellant NSP and respondent MT Properties, Inc.'s (MT) predecessor-in-interest negotiated the terms of an electric-transmission-line easement. The easement permitted NSP to construct and maintain an electric-transmission line, including the necessary towers, along MT's railroad corridor. The easement runs along approximately 6.1 miles of MT's railroad corridor which extends from St. Paul to Fridley, Minnesota.

The easement agreement required NSP to pay \$27,054 each year for the first ten years. According to the agreement, NSP and MT must determine a fair and reasonable annual payment to be paid during each succeeding five-year period. If the parties are unable to agree on the amount, the easement agreement provides for arbitration to resolve the annual payment issue. The agreement specifies that the issue was to be decided by a panel of three arbitrators. NSP and MT each select one arbitrator and those two arbitrators choose a third. The decision of two arbitrators becomes final and binding on NSP and MT.

The parties successfully negotiated annual payments through the five-year period that ended on May 9, 1994. They were unable, however, to agree to annual payments for the May 10, 1994 through May 9, 1999 period. Following several failed negotiations, MT invoked the easement agreement's arbitration provision.

In December 1997, an eight-day arbitration was held. Both NSP and MT called several witnesses to testify regarding the rental value of the easement. MT's appraiser opined that the fair and reasonable rental value of the easement was \$439,500 per year. NSP's witnesses testified that the easement did not interfere with the highest and best use of the land, and NSP argued that the annual payment should be the minimum payment provided for in the original contract, i.e., \$27,054.

The arbitrators issued a decision on September 1, 1998. Two of the arbitrators determined that the fair and reasonable annual payment was \$145,000. Their decision was accompanied by findings of fact, conclusions of law, and a memorandum. The arbitrator selected by NSP dissented from the majority decision.

The majority also decided to retain jurisdiction over the dispute for the purpose of deciding the amount of interest NSP owed MT if the parties were unable to reach a settlement on that issue. The parties were unable to agree on what, if any, interest was due, and the arbitrators issued a second decision on January 15, 1999, ordering pre-award and post-award interest at a rate of 10% per year.

NSP brought a motion in district court to vacate the arbitration award. It argued that the arbitrators exceeded their authority and issued a decision that was arbitrary or capricious. The district court denied NSP's motion and confirmed the arbitration award in its entirety. This appeal followed.

## DECISION

### 1. Standard of Review

An appeal from an arbitration award is subject to an extremely narrow standard of review. *State, Office of State Auditor v. Minnesota Ass'n of Prof'l Employees*, 504 N.W.2d 751, 755 (Minn. 1993). An arbitration award may be vacated only on the grounds listed in Minn. Stat. § 572.19, subd. 1 (1998). *Hunter, Keith Indus. v. Piper Capital Mgmt.*, 575 N.W.2d 850, 854 (Minn. App. 1998). The party seeking to vacate the award has the burden of proving the invalidity of the arbitration award. *National Indem. Co. v. Farm Bureau Mut. Ins. Co.*, 348 N.W.2d 748, 750 (Minn. 1984).

Arbitrators are the final judges of both law and fact and their award will not be reviewed or set aside for mistake of either law or fact in the absence of fraud, mistake in applying their own theories, misconduct, or other disregard of duty. *Cournoyer v. American Television & Radio Co.*, 249 Minn. 577, 580, 83 N.W.2d 409, 411 (1957). “This court must exercise ‘every reasonable presumption’ in favor of the award’s finality and validity.” *Hunter, Keith*, 575 N.W.2d at 854 (quoting *State Auditor*, 504 N.W.2d at 754). When parties have availed themselves of the benefits of arbitration, judicial interference should be kept to a minimum. *AFSCME Dist. Council 96 v. Independent Sch. Dist. No. 381*, 351 N.W.2d 33, 35 (Minn. App. 1984), *review denied* (Minn. Sept. 12, 1984).

### 2. Determination of Rental Payments

NSP contends that the arbitrators exceeded their authority by issuing a decision on the rental value of the easement that was arbitrary or capricious. A court shall vacate an arbitration award if “[t]he arbitrators exceed their powers.” Minn. Stat. § 572.19, subd. 1(3). We will vacate an arbitration award under this provision of the statute

only when the objecting party meets its burden of proof that the arbitrators have *clearly* exceeded the powers granted to them in the arbitration agreement.

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*State Auditor*, 504 N.W.2d at 755 (quotation omitted) (emphasis in original).

Our review of the record reveals that both parties presented substantial evidence regarding what they believed was the appropriate valuation of the easement. NSP presented evidence to the arbitrators and argues on appeal that its easement does not interfere with, or in any way diminish, the highest and best use of MT’s railroad corridor. NSP reasons that the annual rental payment should, therefore, be, if not zero, no more than the minimum payment provided for by the agreement.

On the other hand, MT presented evidence at the hearing based on the “across-the-fence” method of valuation. This method examines the value of land adjacent to the subject land to determine the value of that land. According to MT’s appraisers, this is the most appropriate valuation method in this case. Based on this valuation method, MT’s appraiser determined the annual rental value of the easement should be \$439,500.

The arbitration agreement is silent regarding the method by which the parties or the arbitrators are to determine the “fair and reasonable rental value of the easement.” The parties each presented evidence regarding the valuation method that they deemed appropriate, and the majority of the arbitrators agreed with the method proposed by MT. This appears to be the type of decision wholly within the scope of the arbitrators’ authority. *See State Auditor*, 504 N.W.2d at 755 (holding that where arbitration agreement does not define a relevant term “the arbitrator was free to adopt a reasonable definition”). The arbitrators’ adoption of the across-the-fence valuation method was not unreasonable.

NSP bargained for this decision in 1969 when it entered into the easement agreement and provided that disputes regarding the annual payment were to be resolved by arbitration. Its argument that the decision was arbitrary or capricious is without merit. The parties presented conflicting evidence regarding the appropriate annual payment over the course of an eight-day hearing. The arbitrators, exercising their duty as the finders of fact, determined the fair and reasonable rental value of the easement. NSP has not met its burden of proving that the arbitration panel clearly exceeded its power under the agreement.

Further, we note that NSP asks us to hold that an arbitrary or capricious decision by an arbitration panel inherently exceeds the panel’s power. Because the arbitrators’ decision in this case was not arbitrary or capricious, we do not need to decide this issue. We do note, however, that there is no caselaw or

statutory authority in this jurisdiction that would require such a holding if the arbitrators' decision were in fact arbitrary or capricious.

### **3. Award of Interest**

NSP also challenges the arbitration panel's award of interest to MT. In the September 1, 1998 decision, the arbitrators recognized that MT had not been paid the majority of the annual payments it was entitled to for the disputed five-year period. The panel stated in its decision that it would retain jurisdiction over the question of interest in the event that the parties were unable to settle the issue on their own. The parties were unable to agree to what, if any, interest should be paid. On January 15, 1999, two of the three arbitrators determined that NSP owed MT pre-award and post-award interest of 10% per year. The arbitrators stated that the arbitration agreement gave them the authority to award interest and Minn. Stat. § 572.15(a) (1998) required them to award interest.

As mentioned above, the agreement calls for the arbitrators to determine a "fair and reasonable rental value of the rights herein granted." There is, however, no express mention of interest in the agreement. NSP contends that the question of interest was not arbitrable and that the arbitration panel exceeded its authority by awarding interest to MT. This court's review of an arbitrability determination is *de novo*. *Independent Sch. Dist. No. 88 v. School Serv. Employees Union Local 284*, 503 N.W.2d 104, 106 (Minn. 1993). There is a presumption in favor of arbitrability. *Id.* at 107. The burden of proving that a matter is not arbitrable is on

the objecting party. *Morrison v. Northern States Power Co.*, 491 N.W.2d 675, 677 (Minn. App. 1992), *review denied* (Minn. Jan. 15, 1993).

In determining whether the arbitrators exceeded their authority, we consider whether an award draws its “essence” from the parties’ agreement. *City of Minneapolis v. Police Officers’ Fed.*, 566 N.W.2d 83, 87 (Minn. App. 1997). If an award is rationally derived from an agreement, viewed in the light of the agreement’s language, content, and indicia of intent, it should be upheld. *Id.* The two-arbitrator majority concluded that they were “not precluded from determining that interest was part of the component of the fair and reasonable rental value to be paid by NSP for the rights conveyed by them.” We agree.

The absence of language in the agreement regarding whether or not interest can be included in a determination of the fair and reasonable rental value does create an ambiguity regarding the scope of the arbitrator’s authority. But because we exercise “[e]very reasonable presumption \* \* \* in favor of the finality and validity of the arbitration award,” *State Auditor*, 504 N.W.2d at 754 (citation omitted), we will not vacate this award on this record. Merely demonstrating a lack of specific language in the agreement permitting interest, as opposed to demonstrating that the arbitration or a collateral agreement prohibits an award of interest, is not sufficient to establish that the arbitrators clearly exceeded their authority. *See id.* at 755.

Additionally, the arbitrators concluded that Minn. Stat. § 572.15(a) required them to award interest. That statute reads, in part, that an arbitration “award *must*

include interest.” *Id.* (emphasis added). NSP contends that this strict application of this statute could potentially produce absurd results. But the award of interest in this case was not absurd, and more importantly, the interpretation of this statute is an issue of law. We do not reach the issue of whether the arbitrators misapplied this statute. *See State Auditor*, 504 N.W.2d at 754 (noting that arbitrators are the final judges of law and an award will not be vacated solely because the arbitrators erred in interpreting the law). Rather, we affirm the award of interest as having drawn its essence from the arbitration agreement. *Police Officers’ Fed.*, 566 N.W.2d at 87 (noting that arbitrators do not exceed their powers if the award draws its essence from the agreement).

**Affirmed.**

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