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Nos. A07-1975, A07-2070  
STATE OF MINNESOTA  
IN COURT OF APPEALS

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Greg Siewert, *et al.*,  
Respondents,  
v.  
Northern States Power Company d/b/a Xcel Energy,  
Appellant.

Wabasha County District Court Case No. C5-04-498

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**SUPPLEMENTAL BRIEF  
OF NORTHERN STATES POWER COMPANY**

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## INTRODUCTION

In determining the application of the filed-rate doctrine our focus is on the impact the court's decision will have on agency procedures and rate determinations. ... [R]espondents underestimate the extent to which a judicial decision in their favor would interfere with rate-making. ... A judgment from the court in this matter – whether or not it merely construes the tariff – will interfere with the rate-making process.

*Hoffman v. N. States Power Co.*, 743 N.W.2d 751, 756 (Minn. App. 2008).

The Siewerts resort to fear-mongering to elude *Hoffman*. The sky is not falling. This case does not require the Court to map the bounds of the filed-rate doctrine; rather, *Hoffman* and its foundational precedents just need to be brought to bear on this lawsuit. The regulatory impact posed by the Siewerts' services-and-facilities challenge is precisely what *Hoffman* found to be antithetical to the filed-rate doctrine.

## DISCUSSION

The filed-rate doctrine unquestionably forecloses lawsuits that thrust the judiciary into disputes over the services that regulated entities must provide. *Hoffman*, 743 N.W.2d at 755 (“This preclusion against suit extends to claims challenging the services provided in exchange for a filed rate.”). This bar to litigation applies regardless of whether the cause of action is “properly characterized as a request for additional services or enforcement of the tariff ‘as it stands.’” *Id.* at 756 Bottom line: if the claim implicates NSP's tariff-based services, the filed-rate doctrine requires that recourse be sought before the Minnesota Public Utilities Commission (“MPUC”).

This limitation on judicial interference emanates from the fundamental premise of regulated commerce. NSP has no choice about to whom electricity must be sold, how

much to charge for that service, or what the service must entail. By virtue of the MPUC's control over NSP's tariff, all ratepayers receive standard services at the same reasonable price. To preserve and protect process integrity and uniformity and to control costs, the filed-rate doctrine insulates the regulatory scheme from litigation that would have the effect of imposing extra-tariff duties.

The Siewerts try to avoid *Hoffman* by pronouncing that "this case is not about services that were not provided." Siewert supp. br. at 1. What else could the case be about? To establish liability the Siewerts must prove that NSP should have done something more or different than the services and facilities provided pursuant to the tariff; a verdict against NSP would, in effect, compel the provision of the services and facilities demanded by the Siewerts, irrespective of the tariff. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959) ("[R]egulation can be as effectively exerted through an award of damages as through some form of preventative relief."). The Siewerts alone would benefit from such different services and facilities. Such regulation-by-lawsuit would be a clear filed-rate doctrine violation. *Hoffman*, 743 N.W.2d at 756.

The Siewerts would have the doctrine only preclude breach-of-contract claims. *Hoffman* disagrees: NSP's rate-related services cannot be subjected to lawsuits "whether properly characterized as a request for additional services or enforcement of the tariff as it stands." *Id.* Again, it is the effect – not the form – of a claim that matters. *Id.* And the effect of the relief sought here is additional services.

If NSP had promised the services and facilities sought by this lawsuit, enforcement of such an agreement would be barred by the filed-rate doctrine. *AT&T v.*

*Central Office Tel., Inc.*, 524 U.S. 214, 24 (1998) (rejecting breach of extra-tariff agreement claims). The Siewerts cannot secure services for which they could not contract simply by invoking the common law tort remedies. See *Hoffman*, 743 N.W.2d at 756 (the regulatory impact controls). If the Siewerts are barred from judicially enforcing the tariff, then surely NSP cannot be charged with duties that were never incorporated into the tariff and were never part of the rate-setting calculus. *Id.*

Finally, *Adams v. N. Illinois Gas. Co.*, 809 N.E.2d 1248 (Ill. 2004) adds nothing to the analysis. *Adams* was decided under Illinois law, which embraces the *AT&T concurrence* that would limit the filed-rate doctrine to claims that “seek to alter the terms and conditions provided for in the tariff.” *Id.* at 1265 (quoting *AT&T*, 524 U.S. at 229 (Rehnquist, C.J. concurring)). Neither the *AT&T* majority nor this Court placed such a restriction on the doctrine’s application. *Hoffman*, 743 N.W.2d at 756.

Equally important, the claim in *Adams* did not implicate tariff services; rather, the company was being charged with an independent duty to warn about a third party’s defective product. *Id.* at 1253-54. Thus unlike in this case and *Hoffman*, the *Adams* claimant was not seeking “additional services or enforcement of the tariff.” *Hoffman*, 743 N.W.2d at 756.

### CONCLUSION

*Hoffman* is indistinguishable for filed-rate doctrine purposes. As in *Hoffman*, a jury verdict based upon the Siewerts’ challenge to tariff-based services and facilities would have a regulatory effect on those services and facilities outside of the rate-setting scheme. Such a quintessential offense to the filed-rate doctrine cannot be condoned.

Dated: February 26, 2008

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