



# MEMORANDUM OF UNDERSTANDING

April 19, 2002

Northern States Power Company – Minnesota

## MEMORANDUM OF UNDERSTANDING

**Parties:** Northern States Power Company (a Minnesota Corporation), doing business as Xcel Energy, Inc.  
United States Fish And Wildlife Service, Region 3  
Minnesota Department of Natural Resources, North Dakota State Game and Fish Department, South Dakota Game, Fish and Parks Department

**Date:** 04/19/2002

### **1. Statement of Purpose**

The purpose of this Memorandum of Understanding (MOU) is to establish procedures and policies to be employed by the undersigned Company, the Service, and the State in dealing with migratory birds that may be present, injured or killed on the Company's property during the period of this MOU. It is the intent of the signatories to this MOU that the development and implementation of an avian protection plan (APP) by the Company shall be a cooperative, non-adversarial endeavor, and all parties enter into this agreement with the intent to take reasonable steps to facilitate its successful execution. The goal of the parties is to eliminate the unlawful take of migratory birds.

In order to achieve this goal, the Company will develop and maintain a comprehensive APP for its facilities and take reasonable steps to resolve any situations occurring on Company property which may pose a threat to migratory birds. Through the MOU and the Service's permitting procedures, the Company will retain records of mortalities and injured birds found on Company property, as discussed below.

The Service will exercise its discretionary authority not to submit for prosecution unlawful takings of migratory birds occurring on Company property or facilities during the term of this MOU, unless the Company commits a material breach of the MOU. The Service will also provide the Company with permits authorizing, where appropriate, removal of migratory bird nests from company facilities, as discussed below.

### **2. Period and Termination**

This MOU shall take effect immediately upon the date of its execution. This MOU shall be subject to termination upon 30 days written notice by any of the parties. Upon fulfillment of the terms and conditions of this MOU, at the Company's request, the Service shall provide the Company with written confirmation of such fulfillment.

### **3. Definitions**

For the purpose of this MOU, the following terms have these meanings:

"The Company" means Northern States Power Company (a Minnesota Corporation), its employees, agents, representatives, designees, successors and assigns.

"Company property" means real property directly under and within the right-of-way of Company facilities, whether owned or operated by the Company, and real property owned or managed by the Company.

"Company facilities" means electric power transmission and distribution equipment owned, operated or maintained by the Company.

"The Service" means the U.S. Fish and Wildlife Service, Region 3.

"The State" means Minnesota Department of Natural Resources, North Dakota State Game and Fish Department, South Dakota Game, Fish and Parks Department.

"Migratory birds" means the list of avian species described in 50 CFR § 10.13.

"Active nest" means a nest or nesting material that appears to contain or be occupied by eggs, young birds, adult birds, or adult birds which may be incubating eggs.

"Inactive nest" means a nest or nesting material that does not appear to contain or be occupied by eggs, young birds, adult birds, or adult birds which may be incubating eggs.

"Avian Protection Plan" and "APP" mean a comprehensive, professionally designed, managed and implemented program which evaluates threats posed to migratory birds by the Company's property and facilities and which seeks to eliminate these threats, so far as is possible, by such means as retrofitting, redesign and other methods in accordance with electric power industry standards present during the implementation of the plan.

"Special Purpose Permits" means those permits described in 50 CFR § 21.27, including, but not limited to, salvage, possession, nest removal, and rehabilitation permits.

"Depredation Permits" mean those permits described in 50 CFR § 21.41.

#### **4. Development and Implementation of an Avian Protection Plan (APP)**

##### **A. Development Of A Draft APP**

Within 90 days after execution of this MOU, the Company shall arrange for the assessment of the Company facilities by qualified personnel for the purpose of developing a comprehensive APP. On or before a date agreed upon by the parties after execution of this agreement, the Company shall present to the Service a comprehensive written draft APP. If requested to do so by the Company, the Service will assist in the development of the APP by providing available technical information to the Company. The draft APP shall be designed by the Company using principles generally accepted by the electric power industry and/or the Service as providing the most effective means of protecting avian species from harm associated with electric power transmission or distribution. The draft APP shall describe in detail the actions to be taken to retrofit or modify the Company facilities or otherwise protect raptors and other migratory birds that may come into contact with the Company facilities. The draft APP shall include a schedule for the execution and completion of such actions, as well as an accounting of the material and approximate costs associated with implementation of the APP.

## **B. APP Approval**

The draft APP shall be subject to the approval of the Service, which shall not unreasonably withhold, condition, or delay approval. Within 60 days of receipt of the draft APP, the Service shall review and either approve the draft APP or provide written comments to the Company. The parties agree to work together to resolve any areas of dispute concerning the content of the draft APP. If, within 180 days after communication of the Service's comments to the Company, the Company is unable to develop an APP acceptable to both parties, either party may terminate this MOU according to the terms of Paragraph 2 of this agreement. Should the Service fail to provide written approval or comments on the draft APP within the 60 day period, the APP shall be considered approved by the Service.

## **C. APP Implementation**

The Company shall begin implementation of the final APP within 30 days following Service approval of the draft APP. Subject to the consent and approval of any third-party owners of affected property, the Company shall, at all times during the period covered by this MOU, allow the Service [and the State, if a signatory] access to Company property for the purpose of assessing implementation of the APP. The Service acknowledges that implementation of the APP, as it affects real or personal property of third parties, is subject to the consent and approval of such third parties. The Company shall make all reasonable efforts to secure approval from third-party owners for access as described above, and for implementation of the APP on property owned by third parties.

## **5. Enforcement Responsibility And Discretion Of The Service**

The Migratory Bird Treaty Act (16 U.S.C. § 703-712) prohibits the taking, killing, possession, sale, transportation and importation of migratory birds, their eggs, parts and nests, except when specifically authorized by the Secretary of the Interior. The Bald and Golden Eagle Protection Act (16 U.S.C. § 668) also prohibits the taking, possession, selling, purchasing, bartering, offer to sell, purchase or barter, transportation, exporting or importing, at any time or in any manner, of any bald eagle, commonly known as the American eagle, or any golden eagle, alive or dead, or any part, nest or egg thereof, except when specifically authorized by the Secretary of the Interior. While the acts have no provision for allowing unauthorized take, the parties recognize that some birds may be killed at structures associated with electrical transmission and distribution even if all reasonable measures to avoid such takes are implemented. The Service's Division of Law Enforcement carries out its mission to protect migratory birds not only through investigations and enforcement, but also through fostering relationships with individuals, companies, and industries who pro-actively seek to eliminate their impacts on migratory birds. While it is not possible under the acts to absolve individuals or companies from liability even if they implement avian mortality avoidance measures, enforcement will be focused, as it has been in the past, on those individuals or companies that take migratory birds with disregard for their actions and the law, and where no valid conservation measures have been properly applied. While the Company is party to the MOU, the Service will deem the Company to be sincere in its efforts to pro-actively protect migratory birds. The Service will exercise its discretionary authority not to submit for prosecution the unlawful take of migratory birds which occur on Company property or facilities, unless the Company commits a material breach of the MOU.

**6. Permit Requirements for Temporary Possession of Migratory Birds**

Upon the execution of the MOU, the Company will apply for a "Special Purpose Permit" from the Service which will authorize, but not require, the Company to retrieve, transport and temporarily possess carcasses of migratory birds, including eagles, according to the terms of the permit(s). Upon receiving such permit(s), the Company shall comply with the reporting and other requirements of the permit(s). The Service shall not unreasonably delay or deny issuance and renewal of such permit(s). If the Company has been issued Service permit(s) prior to the execution of this MOU, the provisions and conditions of such permits shall be subject to review by the Service to ensure that their terms provide for compliance with this MOU.

**7. Reporting/Retrieval Procedures: Avian Injury**

Upon discovering or being advised of any migratory bird found injured but still alive on Company property or facilities, the Company shall immediately report the injured bird to the Service [or the State, if a signatory]. A general description of the apparent nature and extent of the injury, along with a description and the location of the bird, shall be provided in order to facilitate recovery by the Service, [or the State, if a signatory], or its designee. The Service [or the State, if a signatory] may authorize, but cannot require, the Company to take temporary possession of the injured bird. If, in the judgment of the Company, an emergency situation exists with respect to an injured bird, such as entanglement in electric power equipment, retrieval of the bird by the Company may be authorized telephonically by the Service [or the State, if a signatory] on a case-by-case basis.

**8. Reporting/Salvage Procedures: Avian Death**

Upon discovering or being advised of any dead migratory bird on Company property or facilities, the Company shall contact the Service [or the State, if a signatory] within three (3) working days of such discovery. Such report shall include information describing the location, including proximity to and description of the nearest Company facility, apparent species of the dead bird and the details of its discovery. Following issuance of the special purpose salvage permit discussed above, the Company shall be authorized, but not required, to salvage such carcasses for later transfer to the Service [or the State, if a signatory]. The Company shall make reasonable attempts to inspect the dead bird to ascertain the presence or absence of bands, markers, or neck collars. If a dead bird is marked with a band, marker, or neck collar, the Company will advise the Service [or the State, if a signatory] of this fact during initial notification regarding the carcass.

The Service shall report to the Company any injured or dead bird which is reported to the Service by any means within three (3) working days of such notification or reporting. The report shall include available information describing the location of take, including proximity to and description of the nearest Company facility, apparent species of the dead bird and details of its discovery.

**9. Procedures Concerning Migratory Bird Nests**

All actions taken regarding the nests of migratory birds shall be in accordance with the terms and conditions of a Service Special Purpose Permit or other authorization, as follows:

**A. Removal, Molestation And Disturbance of Active Migratory Bird Nests**

Active nests of migratory birds present on Company property or facilities shall not be

moved, molested or disturbed by the Company unless first approved by the Service [or the State, if a signatory], or otherwise authorized within this MOU.

**B. Emergency Removal of Active Nests Of Non-Endangered/Threatened, Non-eagle Migratory Birds.**

The active nest of a migratory bird which is not listed as endangered or threatened within the Endangered Species Act, and which does not appear to be an eagle nest, which the Company believes poses an imminent danger to human health, safety, or property, or an impediment to the safe and efficient provision of electrical power requiring emergency action, may be removed by the Company without prior approval of the Service (or the State, if a signatory). Prior to any such "emergency nest removal," however, the Company must make a diligent attempt to notify the Service [or the State, if a signatory] and seek approval for the removal. If such notification cannot be accomplished prior to the emergency nest removal, the Company shall notify the Service (or the State, if a signatory) during the first business day following the emergency nest removal of the date, of the conditions and reason(s) for such emergency nest removal.

**C. Emergency Removal Of Inactive Nests of Non-listed, Non-eagle Migratory Birds.**

The inactive nest of a migratory bird which is not listed as endangered or threatened within the Endangered Species Act, and which does not appear to be an eagle nest, which the Company believes poses an imminent danger to human health, safety, or property, or an impediment to the safe and efficient provision of electrical power requiring emergency action, may be removed by the Company without prior approval of the Service or the State. Within a reasonable time following such removal, the Company shall notify the Service (or the State, if a signatory) of the date, conditions and reason(s) for the emergency nest removal.

**D. Nests of Endangered/Threatened Migratory Birds**

Nests of migratory bird species which are listed at the time as Endangered or Threatened within the Endangered Species Act, whether active or inactive, shall not be removed, molested or disturbed by the Company unless specifically authorized by the Service, verbally or in writing, prior to such removal, molestation or disturbance.

**10. Eagle Permits**

Actions taken by the Company that affect a non-endangered or non-threatened eagle species or its nest may also require the issuance of an eagle permit by the Service. Issuance of eagle permits will be on a case-by-case basis, and the Service shall not unreasonably deny or withhold such permit upon receiving a valid justification and application from the Company.

**11. Record-Keeping Procedures**

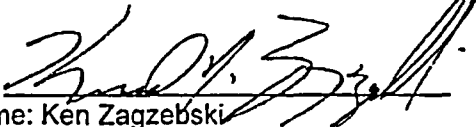
The Company shall create and maintain records of all actions taken under this MOU. Such record-keeping shall comply with the requirements of regulations and conditions associated with any permits issued by the Service and shall also include complete and accurate information pertaining to the date, location, specimen description, specimen condition, reporting action taken, retrieval and/or possession action(s) taken and personnel involved in each such action. The Company shall also keep and maintain records of the actions taken to develop and implement the APP. The Company shall permit the Service to inspect such records at any time

during regular business hours, upon reasonable prior notice.

Three months and two weeks after the date of the execution of this MOU, the Company shall complete and submit to the Service a report compiling the information described above regarding actions that occurred during the initial three-month period. The Company shall submit similar reports to the Service every six months thereafter, and within 30 days of the termination of this MOU. The reports to be submitted every six months are due within 30 days following each such period.

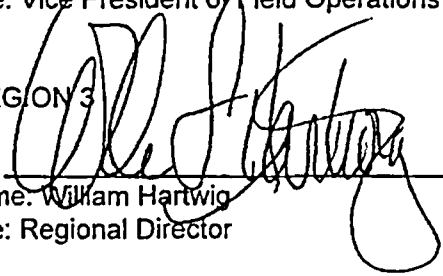
Northern States Power Company (a Minnesota Corporation), doing business as Xcel Energy, Inc.

Date: 04/19/2002

BY:   
Name: Ken Zagzebski  
Title: Vice President of Field Operations

U.S. FISH AND WILDLIFE SERVICE REGION 3

Date: 03/11/2003

BY:   
Name: William Hartwig  
Title: Regional Director

Minnesota Department of Natural Resources

Date:

BY: \_\_\_\_\_  
Name:  
Title:

North Dakota State Game and Fish Department

Date:

BY: \_\_\_\_\_  
Name:  
Title:

South Dakota Game, Fish and Parks Department

Date:

BY: \_\_\_\_\_  
Name:  
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