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No. **21**, Original

In The
SUPREME COURT of the UNITED STATES
October Term, 1965

STATE OF WISCONSIN,

*Plaintiff,**v.*STATE OF MINNESOTA and NORTHERN STATES
POWER CO., a Minnesota Corporation,*Defendants.*

**MOTION FOR LEAVE TO FILE COMPLAINT
AND PROPOSED COMPLAINT**

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Plaintiff,

v.

STATE OF MINNESOTA and NORTHERN STATES

POWER CO., a Minnesota Corporation,

Defendants.

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Wisconsin, by its Attorney General, asks leave of the Court to file its complaint against the State of Minnesota and the Northern States Power Company submitted herewith.

BRONSON C. LA FOLLETTE
Attorney General of Wisconsin

JOHN H. BOWERS
*Deputy Attorney General
of Wisconsin*

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*Assistant Attorney General
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*Assistant Attorney General
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Counsel for Plaintiff

STATEMENT IN SUPPORT OF MOTION

This is a proposed action by the State of Wisconsin against the State of Minnesota and the Northern States Power Company proposed to be instituted in this Court under authority of Article III, Section 2, Clause 2, of the Constitution of the United States. The purpose of the proposed action is to enjoin the State of Minnesota from authorizing construction, and the Northern States Power Company from constructing an electric generating station on Lake St. Croix at Oak Park Heights, Minnesota.

The St. Croix is the last large clean river near a major metropolitan area in all of the Midwest. The State of Minnesota has authorized construction and the Northern States Power Company proposes to begin construction or has begun construction on the first of two coal operated, steam electric generating units at Oak Park Heights, Minnesota. The first unit would have a capacity of 550,000 kilowatts with provisions for a second unit of somewhat larger size. The first building would be approximately 200 feet wide, 350 feet long, 250 feet high, with a smokestack of approximately 50 feet in diameter at its base and 30 feet in diameter at the top, and approximately 700 feet high above finish grade; with barge coal unloading facilities, and providing for a coal storage pile approximately one-half mile long, one-quarter mile wide and 50 feet high. The boiler capacity would be rated at 240 tons of coal per hour. The coal would be delivered to the site by barges coming from the Mississippi River into the St. Croix River, and up the St. Croix to the Oak Park Heights location.

In addition to the physical plant there would be other outbuildings, and the plant would require cooling water

from the river with a minimum pumping capacity of 177,500 gallons per minute to a maximum pumping capacity of 296,000 gallons per minute. The cooling process would raise the temperature of the water 17 degrees in summer and 30 degrees in winter. The water would be taken from the river, circulated through the condensers, and pumped back into the river with the increased temperature.

The State of Wisconsin alleges the St. Croix River is a great natural resource well worth careful husbandry. It has a unique fishery. It is relatively unpolluted throughout its entire course. It is located at the doorstep of more than 2,000,000 people. There is great variety in plants, animals, topography and water conditions, which give people an opportunity for practically all forms of outdoor recreation including wilderness camping, fishing, bathing, and pleasure boating.

The State alleges the right and duty of society to protect itself from undesirable and disagreeable conditions and, in this particular instance, the conditions are such as to warrant equitable imposition. The Northern States Power Company has other locations available in areas which will not have the impact of destroying a natural resource such as St. Croix Valley and St. Croix River. In addition, the State alleges the Northern States Power Company will not suffer irreparable injury since it is possible for it to pass any increased costs to the consumer and, in view of the alternate sites available that do not destroy a natural resource, the State of Wisconsin asks for leave to file a complaint praying for an injunction against the unwarranted destruction of natural resources. If this project is not en-

joined, it will be the first of many industries which will completely destroy this great natural resource.

Counsel for Plaintiff

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STATE OF MINNESOTA and NORTHERN STATES
POWER CO., a Minnesota Corporation,

Defendants.

COMPLAINT

The State of Wisconsin, by its Attorney General, brings this suit in equity against the defendants, the State of Minnesota and the Northern States Power Company, and for its cause of action states:

I.

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States.

II.

The Northern States Power Company is a corporation organized, existing and doing business under and by virtue

of the laws of the State of Minnesota with its principal office and place of business at Minneapolis, Minnesota.

III.

The defendant, Northern States Power Company, is an electric utility in the business of furnishing electric power to the public.

IV.

The St. Croix River is 165 miles long. For its first 37 miles, it is wholly in Wisconsin. The last 120 miles of its length the river forms the border between the State of Wisconsin and the State of Minnesota. The river empties into the Mississippi River at Prescott, Wisconsin.

V.

The upper St. Croix River, north of the twin cities of Taylor Falls, Minnesota, and St. Croix, Wisconsin, is considered a wild river. The lower St. Croix River, known as Lake St. Croix, is a natural lake. It has the attributes of a lake more than that of a river.

VI.

The St. Croix is relatively unpolluted through its entire course and Lake St. Croix is located in the vicinity of the metropolitan area of Minneapolis and St. Paul, Minnesota, where more than 2,000,000 people live. The river presently is used primarily for outdoor recreation.

VII.

The Northern States Power Company proposes to construct a steam, electric generating plant to be known as

A. S. King Plant near Oak Park Heights, Minnesota. The said defendant also proposes to construct a second plant at the same location as part of their future expansion. The initial plant proposed by the defendant is to be a coal burning, steam generating plant with a 550 megawatt capacity. The said plant is to be located on the west bank of the St. Croix River in the village of Oak Park Heights, Washington County, Minnesota, on a site of approximately 180 acres which includes part of the NE $\frac{1}{4}$ of Section 3, Township 29 North, Range 20 West; all of Government Lots 2 and 3, Section 2, in the same Township and Range and part of Government Lot 5, Section 34, Township 30 North, Range 20 West. Said facility is to include a:

Power House—each unit approximately 200 ft. wide, 350 ft. long, 200 ft. high.

Stacks—each unit approximately 50 ft. in diameter at base, 30 ft. in diameter at top, approximately 700 ft. high above finish grade.

Intake Canal—approximately 900 ft. long, 10 ft. wide at bottom, 150-200 ft. wide at ground surface, with trash removal structure and control gates at river end.

Screen House—at power house end of intake canal—approximately 150 ft. wide, 60 ft. long, 40 ft. high.

Discharge Canal—approximately 1000 ft. long, 80 ft. wide at bottom, with control gate.

Barge Coal Unloading Facility—continuous-type unloader, cellular dolphins, barge movers, mooring area for 15 barges.

Coal Conveying Facilities—belt conveyors, transfer structures, reclaim hoppers, belt loaders, crusher house, personnel and storage building.

Coal Storage Pile—approximately 2400 ft. long, 1200 ft. wide, 50 ft. high, maximum.

Substation—approximately 300 ft. by 400 ft., with outdoor structures and equipment.

Miscellaneous—access roads, rail spur, parking lot, landscaping, walks, slope protection, yard lighting, wells for sanitary water and make-up system, sewage disposal system.

COAL REQUIREMENTS, Unit No. 1:

Boiler Capacity—3,850,000 lbs. of steam per hour,
rated 240 tons of coal per hour, rated

Capacity of bunkers—2,000 tons, approximately

Capacity of stockpile—1,500,000 tons, maximum

Length of barge season—32 weeks

Capacity of barge unloading facility—3,000 tons
per hour, free digging rate

Size of barges—35 ft. wide, 195 ft. long, 9 ft. draft
(1400-ton capacity)

—52.5 ft. wide, 290 ft. long, 9 ft. draft (3200-ton
capacity)

Number of barges unloaded per shift of 8 hours:
11 to 12 of 1400-ton capacity, 5 to 6 of 3200-
ton capacity

ASH REQUIREMENTS, Unit No. 1:

Ash production: 48,000 lbs. per hour, rated

Annual ash production: 190,000 tons, approximately

Disposal: As fill in swampy area of plant site, especially at north end of site

Particulate matter: Controlled by precipitating equipment to remove 99% of the suspended material in the flue gas or to a dust load of 0.02 grain per cubic foot of gas.

Cooling Water, Unit No. 1:

Temperature rise through condensers: 10° to 17°
F (design not firmed)

Minimum pump capacity: 177,500 gpm (395 cfs)

Maximum pump capacity: 296,000 gpm (660 cfs)

Consumptive use: 29,000,000 gallons per year, approximately (well water)

Non-consumptive use: 361,000 acre-feet per year, approximately (river water)

VIII.

The defendant, Northern States Power Company, proposes the construction of a plant, the use of the St. Croix River for barge traffic to supply coal, the use of the St. Croix River water for the purpose of cooling the condensers, and the use of the air in the area to disperse the coal gases and ashes through the 800 foot smokestack.

IX.

The defendant, Northern States Power Company, has available and has considered other proposed sites and has

the power of condemnation to condemn land for other sites. The other sites proposed have been found feasible and would not destroy the natural resources. The other sites would be built in heavy industrial area where recreational uses have been depleted.

X.

On August 5, 1964, NSP-Minn filed an Application with the Water Pollution Control Commission of Minnesota for a permit for the discharge of circulating water to the St. Croix River from the proposed Allen S. King Plant, Unit No. 1, to be constructed in Oak Park Heights, Minnesota. On the same date Company filed an Application with the Commissioner of Conservation of Minnesota for a permit to appropriate water from the St. Croix River for use in cooling condensers in said plant. In accordance with applicable statutes, a joint public hearing was held before both State agencies on the two applications.

XI.

On May 24, 1965, the Water Pollution Control Commission of Minnesota granted a permit for the discharge of cooling water from the proposed St. Croix Plant into the St. Croix River under conditions contained therein.

XII.

On June 7, 1965, the Commissioner of Conservation of the State of Minnesota granted a permit to appropriate water from the St. Croix River for use in cooling condensers in the proposed St. Croix Plant pursuant to Findings, Conclusions and Order made that date by said Commissioner.

XIII.

On November 19, 1964, NSP-Minn made an application for a building permit to the Village Council of the Village of Oak Park Heights, Minnesota, to construct the St. Croix Plant in Oak Park Heights. A building permit was issued to Company pursuant to an ordinance of said Village Council adopted on November 30, 1964.

XIV.

That the State of Minnesota by its laws has authorized the proposed plant and in spite of the vain attempt to stop the proposed plan by the State of Wisconsin, the State of Minnesota has failed to take any action to prohibit the destruction of the unique character of the St. Croix River Valley by the defendant, Northern States Power Company.

XV.

The State of Wisconsin alleges that as a result of the proposed steam generating plant and the subsequent additions to the said plant, the St. Croix River Valley will suffer irreparable harm in that the area will suffer environmental pollution in that the natural beauty of the area would be affected and the recreational value of the St. Croix Valley will be destroyed.

XVI.

That the defendant is required to obtain a license under the Federal Power Act. Under section 49 Statutes 842, 16 U. S. C. A. section 803 (a), the Federal Power Commission is required to consider a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development,

and for other beneficial public uses, including recreational purposes. The license was not obtained.

XVII.

That the rights of the State of Wisconsin, the riparian owners on the St. Croix in the State of Wisconsin, other land owners and citizens of the State of Wisconsin, and users of the water of the St. Croix, are being taken by the construction and proposed operation of the plant and by the defendant's unlawful use of the water of the St. Croix River, its pollution of river and air, and the destruction by the defendant of the area for recreational purposes.

WHEREFORE, the Complainant prays that the defendant, Northern States Power Company, be permanently enjoined from constructing the proposed dam at Oak Park Heights, Minnesota on the St. Croix Lake or any other location on the St. Croix River and the State of Minnesota be enjoined from permitting the construction and maintenance of the proposed plant.

Respectfully submitted,

STATE OF WISCONSIN

BRONSON C. LA FOLLETTE

*Attorney General of the State
of Wisconsin*

JOHN H. BOWERS

*Deputy Attorney General
of Wisconsin*

A. J. FEIFAREK

Assistant Attorney General

ROY G. TULANE

*Assistant Attorney General
Counsel for Complainant.*

June 10, 1965.

STATE OF WISCONSIN }
COUNTY OF DANE } SS.

A. J. FEIFAREK, being duly sworn, deposes and says that he is an Assistant Attorney General of the State of Wisconsin, the Complainant herein, and that he has read the foregoing complaint and that he is informed and believes that the contents thereof are true.

Sworn to before me this 25th day of August,
1965.

Jane P. Conway
Notary Public, Dane County,
Wisconsin

My Commission Expires: July 20, 1969

