

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

**St. Anthony Falls Hydroelectric Project  
FERC Project No: P -2056**

**MOTION TO INTERVENE**

SUBMITTED BY

**MISSISSIPPI WHITEWATER PARK DEVELOPMENT CORPORATION ,  
AMERICAN WHITEWATER,  
MISSISSIPPI CORRIDOR NEIGHBORHOOD COALITION,  
AMERICAN RIVERS,  
MINNESOTA CANOE ASSOCIATION,  
AMERICAN CANOE ASSOCIATION, and  
RIVERS COUNCIL OF MINNESOTA.**

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**INTRODUCTION**

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214, Mississippi Whitewater Park Development Corporation, American Whitewater, Mississippi Corridor Neighborhood Coalition, American Rivers, Minnesota Canoe Association, American Canoe Association, and Rivers Council of Minnesota hereby move to intervene in the above-captioned proceeding.<sup>1</sup>

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<sup>1</sup> All filings, orders, and correspondence respecting this intervention should be addressed to the persons listed on Exhibit A, Contact List, at end of this document.

Movants also seek action by FERC requiring Northern States Power (NSP), now Xcel Energy, to facilitate in-stream recreational and aesthetic enhancement of the Lower St. Anthony Falls dams site, and to mitigate future and ongoing impacts of NSP operations at this site, before the area is excluded from the Project boundary.

In lieu of this action requiring mitigation of the lower dams site in order to license or relicense the upper site (Upper St. Anthony Falls), and pursuant to prior precedent of the FERC regarding cessation of dam operations, we seek action by FERC to require NSP to file a “surrender application” with FERC before ceasing operations at the Lower St. Anthony Falls dams site. FERC has required such action elsewhere because projects on which an applicant wanted to cease operations continued to have impacts on the river in the environment. This is also true of the lower dams site herein in Minnesota. During the surrender process, resource agencies and the public would be able to provide comments regarding appropriate protection, mitigation, and enhancement measures necessary before abandoning this site.

The Commission’s actions in this proceeding will substantially affect the extent of public use of and access to the Mississippi River (River) in the Minneapolis/St. Paul Metropolitan area for the next 30 to 50 years, as well as the extent to which the lower dams site, an abandoned industrial area, can be reclaimed for public use. The River is a valuable environmental, ecological, recreational, scenic and cultural resource. The River within the project area is used for both passive recreation (hiking and sightseeing) and active recreation (canoeing, kayaking, fishing, biking, rollerblading etc.). The project area is at the heart of a metropolitan area with approximately 2.6 million people.

The Minnesota Legislature has designated the area as a Whitewater Trail, Minn. Stat. § Minn. Stat. § 85.0156. A Feasibility Study mandated by the Minnesota legislature found that a Whitewater Park constructed in the project area has the potential to provide in-stream water recreation opportunities for over 50,000 people per year and passive recreation for an additional 500,000

per year. The federal government has appropriated \$1 million to the Army Corps of Engineers for further study and design of the project. The 2001 Minnesota legislature provided the state match of \$333,333 for that COE appropriation, plus an additional \$267,000 to the Minnesota DNR for project coordination. And the Federal Water Resources Development Act has authorized an additional \$10 million to be appropriated to carry out construction of the project. The project has the hearty endorsement of all levels of government and community organizations. **It is clear that this project is in the public interest.**

The Park plans constitute a Comprehensive Plan of Development pursuant to section 10(a) of the FPA. Accordingly, the FERC must ensure that its actions are consistent with those plans.

### **I. DESCRIPTION OF MOVANTS**

In accordance with this Notice please note that the above-named Interveners/Movants are all non-profit organizations with members who use the Mississippi River, and who use and are interested particularly in the River in the area of St. Anthony Falls in Minneapolis. See the description of each Intervener in section II below.

### **II. GROUNDS FOR INTERVENTION**

Each Intervener named here has a particular interest in The River.

The Mississippi Whitewater Park Development Corporation (MWPDC) was created in 1995 and exists in particular to promote the creation of a whitewater park at Lower St. Anthony Falls. Its members include people who currently use the Mississippi River in the St. Anthony Falls area for non-motorized boating activity, including competitive kayak and canoe training, annual kayak and canoe races, recreational paddling, as well as hiking, biking, birdwatching and other activity. The MWPDC has met with representatives of NSP since early 1995 and as a

member of NSP's original St. Anthony Falls Advisory Committee. MWPDC has been the driving force behind legislation declaring the Lower Falls area to be an urban whitewater trail. Additionally, MWPDC has gathered resolutions of support for the Mississippi Whitewater Park proposal from the Minnesota State Legislature, Minneapolis City Council, Hennepin County Board, Minneapolis Parks and Recreation Board, nearby neighborhood and business groups, environmental organizations, and others. Each of these governmental, neighborhood, recreational and environmental groups have recognized the MWPDC as a legitimate representative of statewide recreational and environmental interests in the St. Anthony Falls area.

American Whitewater is a national organization with a membership of 8,400 individual whitewater boating enthusiasts and more than 160 local canoe club affiliates, representing approximately 80,000 whitewater paddlers. American Whitewater was founded in 1957 to protect and enhance the recreational enjoyment of private whitewater sports in America. American Whitewater is dedicated to safety, education, and the conservation of America's whitewater rivers. Its mission is to conserve America's whitewater resources and to enhance opportunities to safely enjoy them. Its website is located at [www.americanwhitewater.org](http://www.americanwhitewater.org). A significant number of its members reside in Minnesota. These members recreate on a regular basis on the Mississippi River adjacent to the St. Anthony Falls hydropower project. As such, these members and American Whitewater have a direct interest in this proceeding.

The Mississippi Corridor Neighborhood Coalition (MCNC) is a federation of nearly two dozen community groups in north, northeast and southeast Minneapolis, whose member organizations represent river communities from St. Anthony Falls up the Mississippi River to the northern city limits of Minneapolis. Formed in 1993, MCNC is a neighborhood-based advocacy group dedicated to reclaiming the upper Mississippi River corridor as a neighborhood amenity and restoring its ecosystem. It is the only neighborhood-based grassroots coalition in the upper urban Mississippi River corridor working on river and neighborhood

reclamation. MCNC members include those who lived directly on or near the river, who engage in many river-related activities, including walking, boating, biking, swimming, fishing, birding and nature photography. MCNC members have adopted a number of river front parks for ongoing cleanup. Other MCNC activities include publishing an Environmental Inventory, an award-winning Conceptual River Corridor Plan, and a quarterly newsletter, *On The River*. Members have served or advised many public and private bodies on Mississippi River issues.

American Rivers is a national river conservation organization founded in 1973 with a membership of more than 31,000. Its headquarters is in Washington, D.C. and it has field offices in Des Moines, IA, Chattanooga, TN, Glastonbury, CT, Lincoln, NE, Sioux Falls, SD, Seattle, WA, Portland, OR, Berkeley, CA, and Great Falls, MT. American Rivers' mission is to protect and restore America's river ecosystems and foster a river stewardship ethic. It has been involved in hydropower relicensing cases before the Commission for more than twenty years and has been a regular participant in formal policy discussions related to FERC hydropower regulation. It also maintains active programs in both river front development and restoration of the Mississippi River, both of which are affected by this project. American Rivers has widespread interest in all aspects of the Mississippi River and in all FERC relicensing projects.

The Minnesota Canoe Association is a regional organization with a membership of over 1200 individual canoe and kayak enthusiasts and 11 regional club affiliates. It was founded in 1969 to promote canoe racing, recreational enjoyment and safe use of the rivers and waterways in Minnesota and the Upper Midwest. More than 50% of its membership resides in the Minneapolis-St. Paul metropolitan area and these members recreate regularly on the Mississippi River in the area of the St. Anthony Falls Hydropower project.

The Rivers Council of Minnesota is a statewide organization made up of citizens who want to see rivers protected and improved in Minnesota and who want citizens to become stewards of river resources in their communities and who want to monitor them to assess their

health. It has been in existence approximately 5 years and has approximately 500 members, many of whom live and/or recreate in the 7 county metro area, including the St. Anthony Falls area. Many of its members have a distinct affinity for the Mississippi River and its attributes.

The American Canoe Association (ACA) is the nation's oldest and largest paddlesports organization, directly representing approximately 50,000 paddlers across the country. The ACA's mission is to serve the needs of all paddlers for safe, enjoyable, and quality paddling opportunities. The ACA carries out this mission by working to protect and restore the nation's recreational waterways, by providing safety education and paddling instruction to the public, and by conducting and providing support to paddling events.

Intervention in this proceeding is necessary because the applicant's licensing proposal does not pay adequate attention to the recreational potential of the River at the St. Anthony Falls area. The applicant, NSP, shows no interest in developing the River for non-power uses. NSP has, in fact, been hostile to widespread efforts to maximize the recreational potential of Lower St. Anthony Falls. As noted, the proposal to restore rapids at Lower St. Anthony Falls in the form of a whitewater park has broad community support. These intervenors are necessary participants in this proceeding to insure that this non-power interest is protected in the FERC proceedings.

### **III. STATEMENT OF POSITION**

- A. Licensee should be required to provide recreational opportunities by creating a whitewater channel at Lower St. Anthony Falls in accordance with the plans proposed in the Whitewater Park Feasibility Study performed on behalf of the Minnesota legislature.**

In 1998 the Minnesota Legislature and governor officially designated the lower dams site as an "urban whitewater trail." The legislation reads, in part, as follows:

**An urban whitewater trail is created** along the Mississippi river in the lower St. Anthony Falls area below the stone arch bridge in Minneapolis. **The trail must be primarily developed for whitewater rafters, canoers, and kayakers.**

Minn. Stat. § 85.0156 (Emphasis added.) At the same time the designation was made, \$100,000 was appropriated to the Minnesota Department of Natural Resources ("MNDNR") to conduct a Feasibility Study of the creation of a Whitewater Park at the lower dams site.

That Feasibility Study was completed in the summer of 1999. Movants understand that FERChas previously been provided a complete copy of the Feasibility Study by the Minnesota Department of Natural Resources. The Feasibility Study was conducted by outside experts -- the leading experts in the country, including the persons who designed the reconstruction of the Ocoee River in Tennessee for the whitewater events in the 1994 Olympics.

In short, the Feasibility Study states that a Whitewater Park is technically and economically feasible at Lower St. Anthony Falls. Once built, the park would put 50,000 or more people per year into the Mississippi River for in- whitewater recreation. Most projected users of the park would be rafters who have little or no prior whitewater experience. At least ten times that many additional people would enjoy the park adjacent to the whitewater channel annually. Once built, the park would pay for its own maintenance and upkeep, primarily from user fees, plus a comfortable surplus for future capital needs. In addition, users of the park would add upwards of \$3 million yearly to the local economy. It would be the finest facility of its kind anywhere in the world and would be a showcase for the Twin Cities, Minnesota and the Upper Midwest.

The proposed Whitewater Park would beat traditional park on the river front. As the centerpiece to the park, there would be a channel created for whitewater rafting, canoeing, and

kayaking. This channel would be in the same area where a rapid had existed prior to construction of the lower dam for hydropower in the 1890s, and it would create an island in an area that historically had several islands. Thus, the Whitewater Park would help to restore some of the original features of the river. The new channel would have a headgate to control the amount of water flowing into the channel. The channel would be designed to create different whitewater boating opportunities depending on the level of water flowing into the channel. The Whitewater Park and its channel would be used by residents of Minnesota, visitors to Minnesota, schools, neighborhood organizations, youth groups, church groups, outdoor recreation clubs, corporations, and others.

The proposed whitewater park has been endorsed by the Mayor of Minneapolis, the Minneapolis City Council, the Hennepin County Board of Commissioners, the Minneapolis Parks and Recreation Board, the Marcy Holmes Neighborhood Association (this is the neighborhood immediately adjacent to this portion of the river), the Mississippi Corridor Neighborhood Coalition, the Old St. Anthony Business Association (the neighborhood business association), Friends of the Mississippi, the Rivers Council of Minnesota, and many others. Despite this broad-based support for the proposed whitewater park, the concept is given only cursory attention in the NSP's Final Application.

A copy of the Feasibility Study has been provided to NSP and, on many occasions, representatives of the MWPDC and other movants have met with representatives of NSP to discuss the Whitewater Park. While all meetings have been cordial and at times NSP has indicated a willingness to cooperate with Whitewater Park planning (at various times NSP has stated its willingness to surrender any land it owns in the area for such purpose), NSP's ultimate position is hostile to the creation of the Whitewater Park.

Indeed, while NSP has publicly stated that it has no current plan to rebuild the power generation facility at the lower dam, it has also stated that it wants to reserve the right to build

such a plant; for that reason NSP concludes that it cannot support the construction of a whitewater park as outlined in the feasibility study (April 19, 2000 letter to the Minnesota DNR, attaching a June 30, 1999 memo with NSP's Comments). It is of great concern to us that NSP would demand a right to reserve this site, keeping it in an unimproved and unimprovable state indefinitely. In fact, NSP does not have the legal right to reserve the lower site and, unless NSP continues to operate under the current license, NSP would have to apply for a new license for the lower site if NSP wants it for future power use. Specifically, American Rivers and other advocates are concerned that the licensee (NSP) is improperly "banking" this lower site for future power use. NSP's position on this issue effectively makes impossible the creation of a whitewater channel and park at Lower St. Anthony Falls.

As noted, NSP has occasionally suggested that it will give up use of the land. But no formal commitment has been made, and even this is grossly insufficient, since it would simply take an unusable piece of property off NSP's tax and maintenance expense, while requiring NSP to do nothing about the unsightly "brownfield" which it proposes to leave, a relic of a location which had previously been a magnificent rapids and which has the potential to be one of the greatest recreational sites in the entire Midwest.

The applicant's present proposal for mitigation for the purpose of creating, preserving, and enhancing recreational opportunities is set out in Pages E53 - E56 of the application. The applicant's proposal is essentially a donation of land on Hennepin Island, the site of the power generation facility at Upper St. Anthony Falls, and an undetermined yearly contribution to the Minneapolis Park and Recreation Board for the maintenance of the East Bank Park development they have proposed. **None of the applicant's recommendations involve an enhancement of the river itself, and especially, none involve recreation or boating opportunities within the project area .**

The lower dams site currently has the most undeveloped recreational opportunities within the project area (and perhaps within the entire Mississippi valley, as St. Anthony Falls is the only waterfall and the only major geological feature on the entire Mississippi River). The activities associated with a Whitewater Park would work toward engaging the community with the health and vitality of the River. The Mississippi Whitewater Park proposal is the only plan currently proposed that would actually get citizens into the water for recreational purposes.

Providing the land or providing an access easement for the use of the land for a Whitewater Park would not impact the project's revenues in any way. The economic activity that would be generated by the 1/2 million visitors to the Whitewater Park per year would be a powerful economic stimulant for the surrounding businesses and neighborhood of the project area and would provide an unparalleled regional river recreation facility.

Additionally, projected net revenue that the applicant stands to gain from relicensing of the Upper St. Anthony Falls Hydro facility are estimated as high as \$90 million to \$300 million over the life of the license, based on last year's energy prices and known power generation capacity. Based upon NSP's 100+ years of use of both the Upper and Lower St. Anthony Falls, and on its projected use of the Upper Falls for another 30-50 years, it is appropriate that FERC require that NSP pay for recreational opportunity and restoration of rapids at Lower St. Anthony Falls in the form of the Mississippi Whitewater Park.

**B. NSP must be required to undertake substantial mitigation of the unused and unsightly Lower St. Anthony Falls dams site before the area is excluded from the Project area.**

The current Project area includes both the upper dam and the lower dams sites. The upper dams site is the location of the hydro plant that the license currently seeks to re-permit. The lower dams site was the location of a hydro facility that was undermined and washed into the River in 1987. The lower dams site was used to generate hydro-electric power for almost 100

years prior to its demise. The upper dam and lower dam locations have historically been operated under the same FERC permit.

NSP's application to exclude the lower dam site from the permit application appears to be an attempt to limit its responsibilities for mitigation and to leave fallow an abandoned industrial site that previously had been magnificent rapids, before being used to generate hydroelectric power for almost 100 years. These movants contend that such a result of severance of the lower dam site from the current application is contrary to the letter and spirit of the relicensing legislation and is not consistent with the public interests involved in this location. NSP's efforts to sever the two locations is an attempt to minimize its responsibilities to provide mitigation in the form of recreational, aesthetic, and economic opportunities within the project area. NSP's current efforts to exclude the lower dam site from its applications should be denied, and the entire sites should be treated as one project area until such time as NSP has satisfied its community obligations in regard to the Lower Fall site.

Precedent for mitigation at the lower site exists in several rulings, including a previous FERC ruling regarding cessation of operations by Great Northern on the Penobscot in Maine. If action cannot be taken regarding mitigation at the lower site in order to license the upper site, then FERC must require a Surrender application before NSP may abandon the lower site.

As the discussion above indicates, there are several material issues in this proceeding which require intervention. These include, but are not limited to, the following:

1. Licensee should be required to perform environmental, recreational, and aesthetic mitigation of the Lower St. Anthony Fall site before that area is excluded from the Project Area.
2. Failing that, Licensee should be required to submit a "Surrender Application" before ceasing operations at the Lower Dam Site.

3. Licensees should be required to implement the proposed Mississippi Whitewater Park at Lower St. Anthony Falls.

4. Licensees should be required to provide other recreational, aesthetic, and environmental mitigation to assist in transforming this abandoned industrial site into a vibrant part of the community.

5. Other relief as the FERC deems just.

**CONCLUSION**

For the above -stated reasons, the Commission should grant this Motion to Intervene; deny exclusion of Lower St. Anthony Falls from the Project Area until adequate commitments have been made to Lower St. Anthony Falls non -power obligations or until a Surrender Application has been approved; and require that NSP accommodate and pay for restoration of rapids in the form of the proposed Mississippi Whitewater Park at Lower St. Anthony Falls.

Respectfully submitted,

MISSISSIPPI WHITEWATER PARK  
DEVELOPMENT CORPORATION

Dated: August 7, 2001

\_\_\_\_\_  
By: William L. Tilton  
Its: Chair, Board of Directors

AMERICAN WHITEWATER

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: John Gangemi  
Its: Conservation Director

MISSISSIPPI CORRIDOR  
NEIGHBORHOOD COALITION,

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: David Olson  
Its President

AMERICAN RIVERS

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Andrew Fahlund  
Its:

MINNESOTA CANOE ASSOCIATION,

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: George Knotck  
Its President

AMERICAN CANOE ASSOCIATION

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: David Jenkins  
Its Director of Conservation and Public  
Policy

RIVERS COUNCIL OF MINNESOTA.

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: John Helland  
Its Board Chair

CERTIFICATE OF SERVICE

I certify that I have this 7<sup>th</sup> day of August, 2001, served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

## EXHIBITA ,CONTACTLIST

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