

**BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

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**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

**In the Matter of Application of Great River
Energy, Northern States Power Company
(d/b/a Xcel Energy) and unknown others for
Certificates of Need for the CapX 345kV
Transmission Projects**

**MPUC: E002/CN-06-1115
(and dockets 06-857; 06-979)**

MOTION FOR RECONSIDERATION -- SIGNIFICANT NEW INFORMATION

MOTION FOR RECONSIDERATION – ENVIRONMENTAL REPORT INADEQUATE

I. INTRODUCTION

NoCapX 2020 and United Citizens Action Network request that the Public Utilities Commission reconsider the Order of May 22, 2009, granting the CapX 2020 transmission project a Certificate of Need.

On November 23, 2008, NoCapX submitted an Offer of Proof with significant new information regarding decreased energy use has been disclosed by Xcel that has a direct impact on the need for CapX 2020. Significant new information was also submitted with NoCapX's Motion to Reopen on April 9, 2009, after announcement of several new transmission projects coordinated with and in conjunction with CapX 2020 transmission already applied for and/or disclosed.

The Commission must address this new information that shows both the significant decrease in demand and the extensive phased and connected actions revealed.

11. DECREASE IN ELECTRIC DEMAND MUST BE CONSIDERED BY PUC

The new information, demonstrating a decrease in electric demand, not a short term blip, but a long term decrease over two years, beginning in 2007, long before the economic implosion. This demonstration of decreased electric demand was attached to the November 23, 2008, Offer of Proof, filed with the ALJ as Ordered and referred to the Commission prior to its deliberation.

The CapX 2020 Certificate of Need docket is all about need, different types of need, and whether there is sufficient need to justify a large investment in infrastructure. Significant new information regarding decreased energy use has been disclosed by Xcel that has a direct impact on the need for CapX 2020. That information is that electric demand has decreased significantly, to such an extent that utility CEOs publicly disclosed the decrease and are questioning infrastructure investments. If the decrease is that significant, if utility CEOs are questioning infrastructure investments, then it would behoove the Commission to take the time and make the effort to secure updated forecasts based on these new developments. As a basis for need for the line, CapX 2020 claims that many thousands of megawatts of increased capacity are needed by the year 2020 in the region studied by CapX 2020, and decreased consumption will alter the timeline and perhaps completely obviate the need for increased capacity.

An article in the Wall Street Journal, “Surprise Drop in Power Use Delivers Jolt to Utilities” was published, reporting on a significant drop in overall energy use, and in residential, ranging from 3% to 9%, rather than typical increases of from 1-2%. Exhibit A, “Surprise Drop in Power Use Delivers Jolt to Utilities,” November 21, 2008.¹

Dick Kelly, chief executive of Xcel Energy Inc., Minneapolis, says his company, which has utilities in Colorado and Minnesota, saw home-energy use drop 3% in the period from August through September, “the first time in 40 years I’ve seen a decline in sales” to homes.

Id. A 3% drop, rather than a 1-2% increase is a change of 4-5%.

¹ Attached as Exhibit A, and available online: <http://online.wsj.com/article/SB122722654497346099.html>

Other documents released since the end of the CapX 2020 hearing substantiate this decrease in demand and therefore lessening of “need” for CapX 2020.

The data are early and incomplete, but if the trend persists, it could ripple through companies' earnings and compel major changes in the way utilities run their businesses. Utilities are expected to invest \$1.5 trillion to \$2 trillion by 2030 to modernize their electric systems and meet future needs, according to an industry-funded study by the Brattle Group. However, if electricity demand is flat or even declining, utilities must either make significant adjustments to their investment plans or run the risk of building too much capacity. That could end up burdening customers and shareholders with needless expenses.

...

Michael Morris, the chief executive of AEP, one of the country's largest utilities, says he thinks the industry should to be wary about breaking ground on expensive new projects. "The message is: be cautious about what you build because you may not have the demand" to justify the expense, he says.

Id.

Without inquiry, it is impossible to know the full extent of the drop in power use, but Xcel's Investor Relations Earnings Release 2008 Year End Summary², issued January 29, 2009 and unavailable at the time of the CapX 2020 hearing, clearly discloses the drop on demand:

During 2008, we experienced flat electric residential sales, primarily driven by a decline in the NSP-Minnesota region. We believe the flat sales growth is a reflection of a recent shift in customer behavior, in part, attributable to the overall economic conditions as well as conservation efforts.

Exhibit B, Xcel 2008 Year End Summary, p. 5 (emphasis added). Electric residential sales, actual, were at -2% for 2008, normalized to 0.0%. Id. A flat rate would alter the size, type and timing of any forecasted need.

Like Xcel, Otter Tail Power is not needing its generation for service of local load, and instead has greatly increased its wholesale sales. Otter Tail Powers Year End Report, not available at the time of the CapX 2020 hearing, reflects increased reliance on whole market transactions:

Wholesale electric energy kilowatt-hour (kWh) sales were 38.7% of total kWh sales for 2008 and 28.6% for 2007. Wholesale electric energy kWh sales increased by 62.7% between the years while revenue per kWh increased by 3.0%. Activity in the short-term

² Attached as Exhibit B is Xcel's Investor Relations Earnings Release 2008 Year End Summary ; available on line at http://library.corporate-ir.net/library/89/894/89458/items/321993/B011C9EA-D7B1-4723-8326-4595336D24B6_Q408-Release_0209.pdf

energy market is subject to change based on a number of factors and it is difficult to predict the quantity of wholesale power sales or prices for wholesale power in the future.

Exhibit C, Otter Tail Corporation 4th Quarter 2009 10K, p. 4³. Transmission and wholesale sales now are 35% of electric revenues. Id. p. 9.

Across the board, demand for electricity is down significantly. At the time of the hearing, reports were not yet available that documented this trend. According to the most recent report of the Office of Energy Information, Electric Power Monthly, issued February 13, 2009, covering through November, 2008, showing that retail sales of electricity, measured in millions of kilowatthours, for November 2008 was at 279,623, down from 286,299 in 2007.⁴

Generation: Net generation in the United States dropped by 0.9 percent from November 2007 to November 2008. This was the fourth consecutive month that net generation was down compared to the same calendar month in 2007. The Commerce Department reported that real gross domestic product decreased from the third quarter to the fourth quarter of 2008, and reflecting this decline, total industrial production in November 2008 as reported by the Federal Reserve was 5.5 percent lower than it had been in November 2007, the fifth consecutive month that same-month industrial production in 2008 declined from 2007. Weather conditions were consistent with the lower generation level as well.

Ex. D, Electric Power Monthly, February 13, 2009., p. 1.

Additional examples of decreased need, not available at the time of the hearing, of decreasing or flat demand, increased wholesale transactions, and ample supply of electricity are reflected in the reserve margins shown in the latest North American Electric Reliability Council's Reliability Assessment, released in October, 2008, and unavailable at the time of the CapX 2020 hearing.⁵ Exhibit E, p. 68-73, NERC 2008 Reliability Assessment. The reserve margins for the Midwest's MRO region, which includes Minnesota and the rest of the CapX 2020 study region, are

³ Exhibit C, Otter Tail Corporation 4th Quarter 2009 10K, p. 4; available online at

<http://www.ottertail.com/investors/sec.cfm>

⁴ Exhibit D, Electric Power Monthly, Chapter 5. Retail Sales, Revenue, and Average Retail Price of Electricity 

5.1 Retail Sales of Electricity to Ultimate Customers: Total by End-Use Sector [html](#) . Online at:

http://www.eia.doe.gov/cneaf/electricity/epm/epm_sum.html ; see also

http://www.eia.doe.gov/emeu/steo/pub/dec08_tables.pdf

⁵ Exhibit E, NERC 2008 Reliability Assessment, released October 2008 (selected pages), available online at

<http://www.nerc.com/files/LTRA2008.pdf>

sufficient, and in fact double or triple what is necessary -- there is no electrical shortage predicted.

This is contrary to the “need” claims of the CapX 2020 applicants. Id, p. 68-73.

MRO Reserve Margin (NERC reference level)	Table p. 73-38	Total Potential Resources Margin
13%	13a – 2008 Summer Margins	14.7%
13%	13b – 2008-09 Winter Margins	25.4%
13%	13c – 2012 Summer Margins	26.6%
13%	13d – 2012-13 Winter Margins	37.6%
13%	13e – 2017 Summer Margins	25.6%
13%	13f – 2017/18 Winter Margins	37.3%

Rather than an electric shortage, as forecasted by CapX 2020 in its application and throughout the hearing, the NERC Reliability Assessment predicts a surplus of generation, two to three times the reserve margin required by NERC.

The need for CapX 2020, as presented by the Applicants, is dependent on an increase in energy use, which is not manifesting as forecasted. What has become apparent in many documents since the hearing is that there is a significant decline in energy use, which has an impact on the need for the CapX projects. Where energy use departs so dramatically from that forecasted, such that industry CEOs are shocked and puzzled, more information is necessary for a sufficient record on which a decision can be made on a \$1.7 billion dollar project. The fact of this decrease in energy use renders the current record inadequate to support a decision.

The need for CapX 2020, as presented by the Applicants, is dependent on an increase in energy use, and a decline in energy use as significant as that reported has an impact on the need for the CapX projects. Where energy use departs so significantly from that forecasted, more information is necessary for a sufficient record on which a decision can be made on a \$1.7 billion dollar project. The fact of this disclosure would render the current record inadequate.

NoCapX 2020 requests that the Commission reconsider its Order of May 22, 2009, and address utilities' significantly decreased energy use trends and the impact of the decrease in energy use on the need for CapX 2020.

III. CAPX 2020 IS PART OF IMMENSE PHASED AND CONNECT TRANSMISSION EXPANSION THAT MUST BE CONSIDERED BY THE COMMISSION

On the eve of the Commission deliberations, significant new material information was disclosed by the applicants that inherently makes admissions regarding the purpose of CapX 2020 and which has a direct impact on the need for CapX 2020 Phase. This must be considered by the Commission.

We know CapX 2020 is a part of something larger, and as a result of recent press releases and publicity, we are learning just how big – and it is a material issue in this docket. The Order of May 22, 2009, must be reconsidered, and take into account evidence regarding the larger transmission plans of the utilities, of which the part of CapX 2020 that is before the Commission is but a small part.

Several documents trace the disclosure of material information over the last two months. In reverse chronological order, beginning with the Xcel and GRE Press Release in April:

- April 3, 2009 – Mary Sandok, Xcel & GRE joint Press Release. NoCapX Exhibit F.
- March 31, 2009 – Southwest Twin Cities – Granite Falls Transmission Upgrade Study & Minnesota RES Update Study. NoCapX & U-CAN Exhibit G.
- March 26, 2009 – Testimony of Paul A. DeCotis, Deputy Secretary of Energy, on Behalf of the State of New York, to the United States Senate Committee on Energy and Natural Resources. NoCapX & U-CAN Exhibit H.
- February 8, 2009 – Joint Coordinated System Plan 2008. NoCapX & U-CAN Exhibit I.
- February 4, 2009 – NYISO and ISO-NE letter withdrawing from pending announcement of JCSP 2008. NoCapX & U-CAN Exhibit J.

NoCapX 2020 and United Citizens Action Network make this Motion urging the Commission to look at the material and relevant information recently released, gather evidence and accept testimony regarding the plans of the CapX 2020 applicants and Midwest transmission owners, and information regarding their target market and market analysis relating to need for transmission infrastructure.

216B.25 FURTHER ACTION ON PREVIOUS ORDER.

The commission may at any time, on its own motion or upon motion of an interested party, and upon notice to the public utility and after opportunity to be heard, rescind, alter, or amend any order fixing rates, tolls, charges, or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order therein, for the taking of further evidence or for any other reason. Any order rescinding, altering, amending, or reopening a prior order shall have the same effect as an original order.

Minn. Stat. 216B.25.

The information recently released by the Applicants reflects the purpose and intent of the CapX 2020 project, and information recently released from the Midwest transmission target markets rejecting the Midwest's transmission plans should be given due consideration by the Commission.

The standard for review is whether newly discovered evidence would be admissible in the original hearing and whether it would be likely to have an effect on the decision. See Blake v. Denelsbeck, 170 N.W. 2d 337, 340 (Minn. 1969); Turner v. Suggs, 653 N.W. 2d 458, 467 (Minn. App. 2002); Disch v. Helary, 382 N.W. 2d 916, 918 (Minn. App. 1986). If the intense market drive for transmission is not matched by an intense market need, the investment in CapX 2020 would not be reasonable and prudent, and evidence showing lack of market need would likely have an effect on the Commission's decision. If the Commission would consider this

information, and review forecasting and demand specifics from the applicants, it would have an effect on the Commission's decision.

II. FACTS AND DISCUSSION

At 9:50 a.m. on Friday, April 3, 2009, Mary Sandok of Xcel issued a joint Xcel and Great River Energy press release announcing large transmission infrastructure additions that build on CapX 2020. NoCapX & U-CAN Exhibit G, Sandok-Xcel Press Release, April 3, 2009⁶. The press release announces the “Final Report – Southwest Twin Cities – Granite Falls Transmission Upgrade Study & Minnesota ERS Update Study” and another Exhibit B, Final Report – Southwest Twin Cities – Granite Falls Transmission Upgrade Study & Minnesota ERS Update Study⁷, March 31, 2009. As supporting documentation, there are two large Appendices⁸. The press release states:

The studies also found that further upgrades in Minnesota and the Dakotas (beyond the 230-kilovolt line upgrade) will not provide significant benefit prior to installation of a high-voltage transmission line between the La Crosse, Wis., area and the Madison, Wis., area. Without a line to the east of Minnesota, the transmission system will reach a “tipping point” where reliability is compromised, according to the studies. The studies found that the combination of the new 345-kilovolt double circuit line between Granite Falls and Shakopee and a new Wisconsin line would increase the transmission system transfer capability by 1,600 megawatts for a total increase -- with the 2,000 megawatts from the new 345-kilovolt line in Minnesota -- of approximately 3,600 megawatts.

See also Ex. G, Final Report, p. 9-10, “Tipping Point in Transmission System.”

Building on CapX, the additions now proposed as of last Friday, April 3, 2009, are:

⁶ Exhibit F Press Release also available online at Xcel Energy's website: <http://www.xcelenergy.com/Company/Newsroom/Pages/NewsRelease2009-04-03UpperMidwestUtilitiesIdentifyElectricTransmissionUpgrades.aspx>

⁷ Exhibit G, Final Report – Southwest Twin Cities – Granite Falls Transmission Upgrade Study & Minnesota ERS Update Study, March 31, 2009, online at <http://www.minnelectrans.com/MTO-Study-Reports.pdf>.

⁸ MN RES Study Update Appendices, online at <http://www.minnelectrans.com/MNRESUpdateStudy-Appendices.pdf>; Study Report of Electric Transmission Corridor Upgrade <http://www.minnelectrans.com/CorridorStudyReport-Appendices.pdf>

- LaCrosse – Madison Project
- Ashley – Hankinson Project
- Brookings – Split Rock Project
- Lakefield – Adams Project
- Adams – North LaCrosse Project

Figure 1 - Map of Corridor Upgrade and RES Update Projects



Exhibit G, Final Report – Southwest Twin Cities – Granite Falls Transmission Upgrade Study & Minnesota RES Update Study. P. 17.

What this study is saying, in its “tipping point” analysis, is that we don’t need and are not able to use all the electricity generated and sunk into the metro area, and so it must be sent east, there must be an outlet, it must be exported. Id. p. 9-10. This claim of lack of need in Minnesota

paired with an admission that a large increase in export is necessary to stabilize the system should concern the Commission on the eve of a decision on need for CapX 2020.

These recent transmission proposals come on the heels of the Joint Coordinated System Plan announced in February, which laid out massive transmission infrastructure development plans from the Midwest to the East Coast. But just before that JCSP transmission plan was released, New York ISO and ISO-New England, two Independent Service Operators targeted as the recipients of energy transmitted by the JCSP transmission plan, withdrew their support from the plan. New York ISO and ISO-New England wrote a letter, dated February 4, 2009, giving several specific reasons for their withdrawal:

- Primary concern -- **Local resource development must be addressed in JCSP, and as yet, have not been incorporated**, therefore release of JCSP is premature and cannot be presented as a solution.
- Inclusion of cost allocation by JCSP is inappropriate as JCSP is not a policy making body.
- New York and New England have significant development and plans for renewable energy. **New York has over 1,000MW of wind and 8,000MW in queue, 4,800MW in the New England queue**, and both areas have a significant commitment to conservation.
- Given these activities, **it is reasonable to assume that these resources being developed in the Northeast may be deliverable to customers in our region sooner and more cost-effectively than Midwest wind resources**. Given the renewable development, energy efficiency, and likelihood of new ties to Canada, **the need to construct long transmission lines to the Midwest would likely be reduced** and in turn overall transmission costs may be lower.
- **“We note that the report also assumes the development of new coal-fired generation in the Midwest without recognition of current and future restrictions on carbon emissions and their associated costs... In addition, we believe it is likely that the transmission and wind project capital cost estimates contained in the initial JCSP are understated and suggest that modifications to the estimates and estimating process would help to develop a better understanding of the true costs of the expansion scenarios.”**

Exhibit H, NYISO and ISO New England letter withdrawing from publication of JCSP, February 4, 2009⁹(emphasis added). Illinois would likely have similar concerns, given over 7,000MW of wind in queue.

The JCSP plan was released in early February, 2009, without participation of NYISO and ISO-NE. Exhibit I, Executive Summary, Joint Coordinated System Plan 2008¹⁰. The plan echoes and builds on the CapX 2020 footprint and grid, and stretches east to the target market:

The types and approximate locations for the new transmission are shown in Figure 1-2.

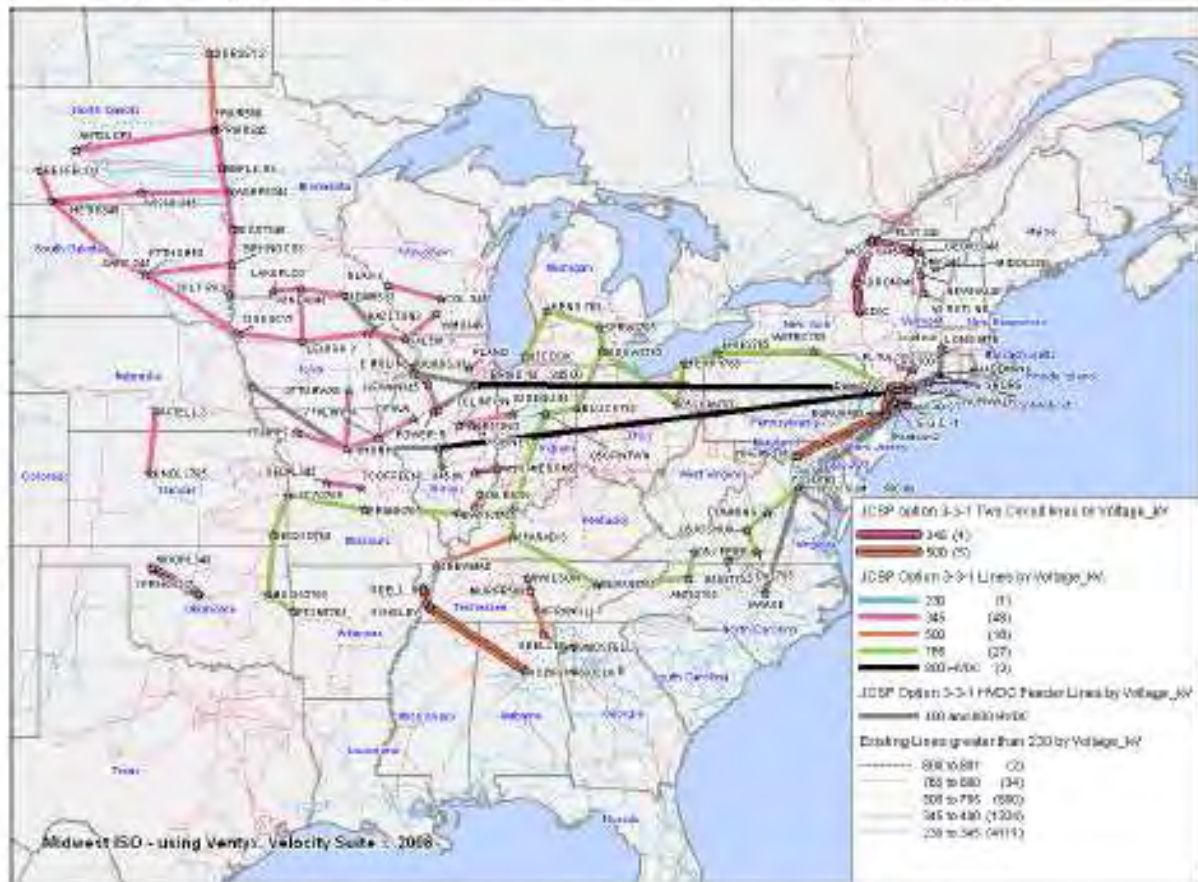


Figure 1-2: Reference Scenario Conceptual Transmission Overlay

The black DC lines of JCSP form an arrow to the target market – New York and New England.

⁹ Exhibit H, NYISO and ISO New England letter withdrawing from publication of JCSP, February 4, 2009, online at http://legalelectric.org/f/2009/02/2009_2_4_jcsp_letter_final.pdf

¹⁰ Exhibit I, Executive Summary, Joint Coordinated system Plan 2008, available online [JCSP'08 Volume 1 - Executive Summary \(PDF\)](http://www.jcspstudy.org/) ; for full report click on “Report” at <http://www.jcspstudy.org/>

In testimony last week before the U.S. Senate Committee on Energy and Natural Resources, New York again showed its concerns, wanting a focus on local generation and acknowledgement of its own renewable efforts:

New York stands ready to work with Congress and the President to transform the electricity industry. However, current proposals being discussed have the potential to undermine New York's efforts to further develop renewable electricity resources in the northeast. Transformation of the electricity system must be undertaken with a sound and well-defined purpose and a commitment to optimizing local and regional cost-effective renewable resources first. **The construction of significant amounts of renewable resources in geographic regions of the country requiring long transmission lines from remote load centers is unlikely to be the most cost-effective or practical approach to meeting the nation's renewable resource goals, should, therefore, be a last resort** for developing indigenous renewable resources, improving energy diversity and security, and achieving reductions in carbon emissions.

Exhibit J, Testimony of DeCotis, Deputy Secretary for Energy, on behalf of the State of New York¹¹ (emphasis added). DeCotis continued:

The most cost-effective way to reduce dependence on imported and fossil energy and to reduce carbon emission is to first optimize local resources available. For example, **construction of a transmission line to bring lower-cost Canadian hydropower to New York might be the most cost-effective solution for reducing carbon emissions in New York, rather than building an exceptionally long electric transmission line from areas west of New York to bring both renewable, and potentially high fossil fuel-based energy to the State.** The consequences of designating a renewable energy zone must be carefully evaluated for both the zone itself and for areas not so designated.

Id (emphasis added). Continuing to raise the high probability of coal generation using new transmission:

FERC must also consider the physical operation of the electric transmission system and other resources that might use the new transmission facilities. **For example, carbon emissions might increase nationally as a result of coal plants using the transmission facility during periods when renewable resources are not operating. These reasonably likely scenarios should also be factored into the analysis of the benefits and costs provided by a project.**

¹¹ Available online: http://legalelectric.org/f/2009/04/ny-final_testimony-renewable_siting_ny-state_03262009.pdf

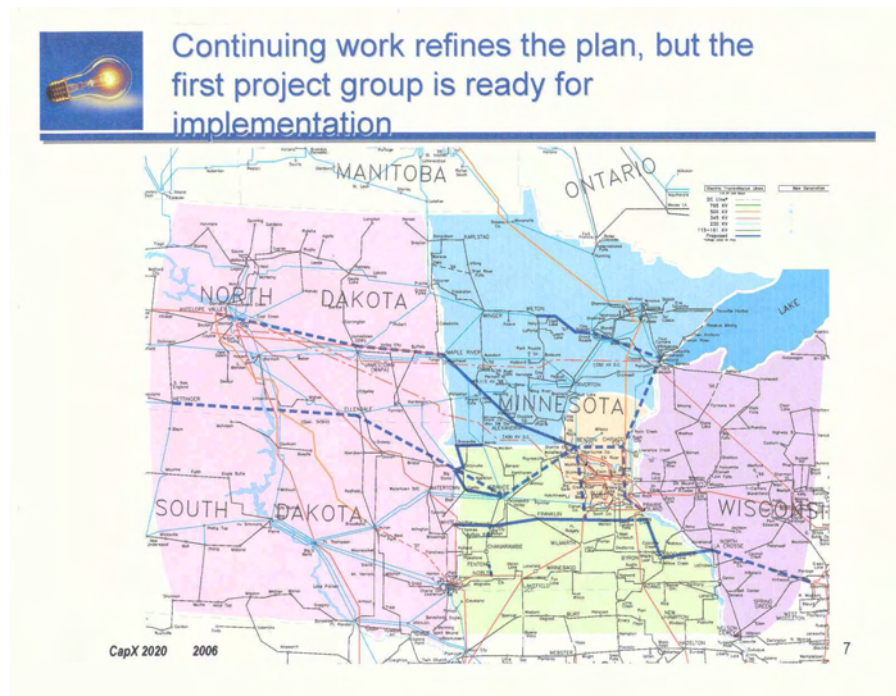
Id. (emphasis added).

The Commission should have a more complete record to address these concerns, concerns that call into question the fundamental premise, the “vision,” of CapX 2020.

III. THE CAPX 2020 VISION

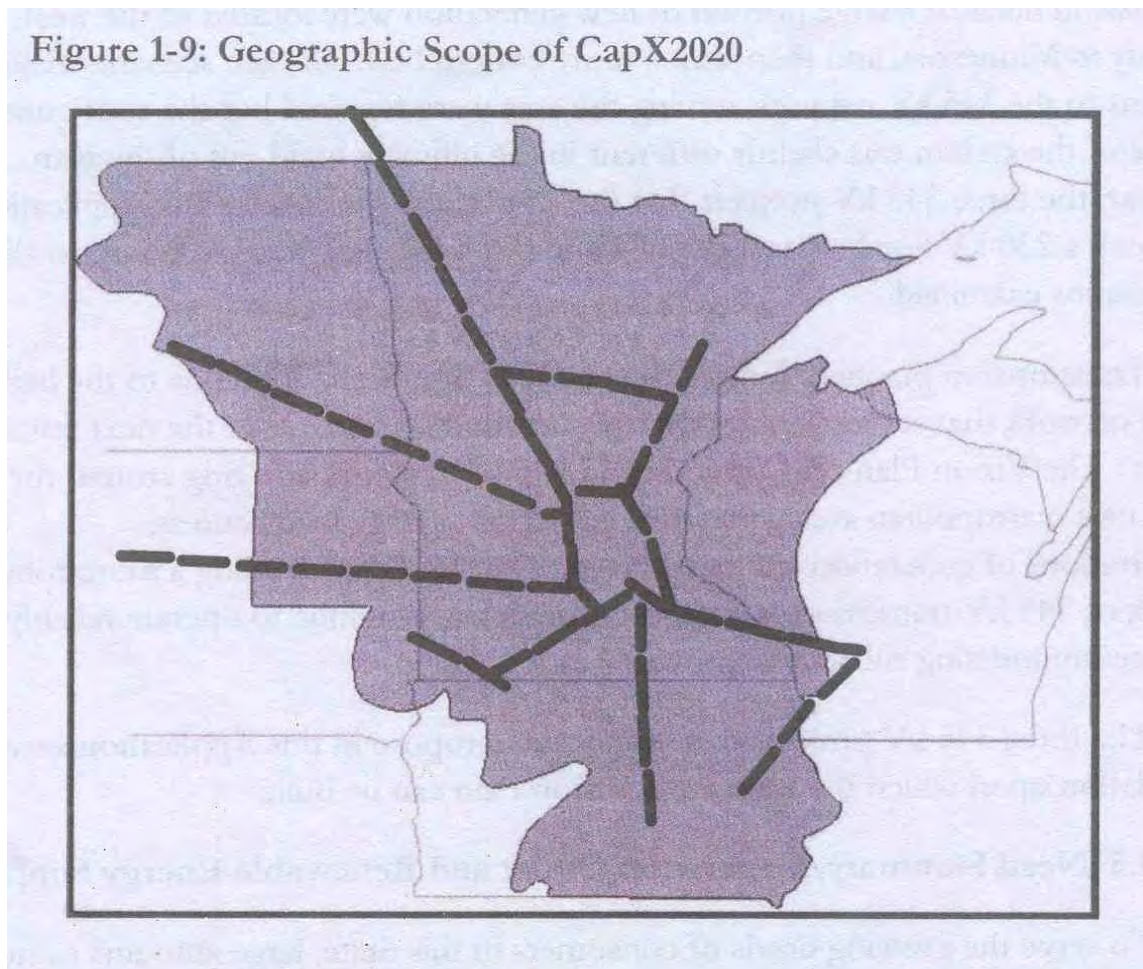
The CapX 2020 vision is found in the CapX 2020 Technical Report, from 2005, where the lines clearly begin in the coal fields of the Dakotas and extend to mid-Wisconsin. CapX Docket 06-1115, Hearing Exhibit, Ex. 1, Application, Appendix A-1. This CapX 2020 transmission plan and those other transmission plans CapX 2020 opened the door for, must be examined by the Commission in their totality, as they are all interdependent, building on the foundation and purpose of CapX 2020. NYISO and ISO-New England clearly identify the fundamental problems.

CapX 2020 stretches from the coal fields of the Dakotas, through Minnesota, to central Wisconsin:



Hearing Exhibit 13¹², Slide 7 to Hearing Exhibit 12, CapX 2020 Update, June 12, 2006¹³. The CapX' extensions out of Minnesota in the Dakotas and Wisconsin are well documented in the Application and were the subject of extensive cross-examination during the hearing.

When CapX overlays its geographic area with its transmission “vision,” this is its result:



Hearing Exhibit 1, Application, Figure 1-9, p. 1.13.

This application at hand is for three transmission lines in Phase I of at least three phases. Hearing Ex. 12, Slide 16, CapX 2020 Update, June 14, 2006. However, the application and appendices clearly lays out specific plans for at least three Phases of transmission infrastructure

¹² Available online: <https://www.edockets.state.mn.us/Efiling/ShowFile.do?DocNumber=5465628>

¹³ Ex. 12 available online: <https://www.edockets.state.mn.us/Efiling/ShowFile.do?DocNumber=5465627>

additions. The lines chosen for the immediate Phase I are from a list of common facilities from various scenarios, on the belief that these will need to be built no matter which scenario is presumed¹⁴. In table form, these “common elements” are:

Table 4. Summary of Vision Plan

¹⁴ See Common Recommended Facilities, Hearing Exhibit 1, Application, Appendix A-1, p. 38; Common Recommended Facilities, Rogelstad, Direct p. 17; Rogelstad Testimony, Tr. Vol. 2A, pps. 59-76; Exhibit 17, 2005 Biennial Report Filed by Transmission Utilities (selected); Rogelstad Testimony, Tr. Vol. 2A, p. 71-78.

Hearing Exhibit 17, Portion of the 2005 Biennial Report Filed by Transmission Utilities, p. 36; Hearing Ex. 1, Application, App. A-1, Technical Update October 2005; see also Hearing Exhibit 12, CapX 2020 Update, June 14, 2006; Hearing Testimony Rogelstad, Vol. 2A, p. 69-74;

Facility Name				
From	To	V olt (kV)	Miles	Cost (\$M)
Alexandria, MN	Benton County (St. Cloud, MN)	345	80	60
Alexandria, MN	Maple River (Fargo, ND)	345	126	94.5
Antelope Valley (Beulah, ND)	Jamestown, ND	345	185	138.75
Arrowhead (Duluth, MN)	Chisago County (Chisago City, MN)	345	120	90
Arrowhead (Duluth, MN)	Forbes (Northwest Duluth, MN)	345	60	45
Benton County (St.Cloud, MN)	Chisago County (Chisago City, MN)	345	59	44.25
Benton County (St. Cloud, MN)	Granite Falls, MN	345	110	82.5
Benton County (St. Cloud, MN)	St. Bonifacius, MN	345	62	45.5
Blue Lake (Southwest Twin Cities, MN)	Ellendale, ND	345	200	150
Chisago County (Chisago City, MN)	Prairie Island (Red Wing, MN)	345	82	61.5
Columbia, WI	North LaCrosse, WI	345	80	60
Ellendale, ND	Hettinger, ND	345	231	173.25
Rochester, MN	North LaCrosse, WI	345	60	45
Jamestown, ND	Maple River (Fargo, ND)	345	107	80.25
Prairie Island (Red Wing, MN)	Rochester, MN	345	58	43.5
TOTAL			1620	\$1,215 (\$M)

Hearing Testimony Rogelstad, Direct p. 17; Hearing Testimony Rogelstad, Tr. Vol 2A, p. 39.

Common elements in the CapX 2020 Vision Study appear in the Joint Coordinated System Plan, all focused on transmission of electricity through Minnesota, toward the east. The high probability that the CapX 2020 lines, and the JCSP lines, would be used for coal generation has been recognized by NYISO and ISO-NE, and rejected. This high probability of transmission

for coal is also reflected in MTEP 07, which states that there are 7,945MW of generation projects in the MISO queue, and of those, “the expected capacity are dominated by 4,511 megawatts of coal projects.” Hearing Exhibit 58-59, MTEP 07, p. 37; see also Hearing Testimony Webb, Tr. 5A, p. 37-38; Webb, Tr. 5B p. 17 l.17-25 . The probability of coal generation using transmission is also evident in the proportion of coal capacity of projects in queue with signed MISO Interconnection Agreements, showing that a project is further along towards interconnection.

In MTEP 07, when the various types of projected likely generation are considered, and put into graph form, it shows the predominance of coal. Also, non-coal resources are not increasing as a proportion of generation, but instead remain essentially level, moving up on the graph only in relation to coal’s movement – there is no significant gain by gas, hydro or wind:

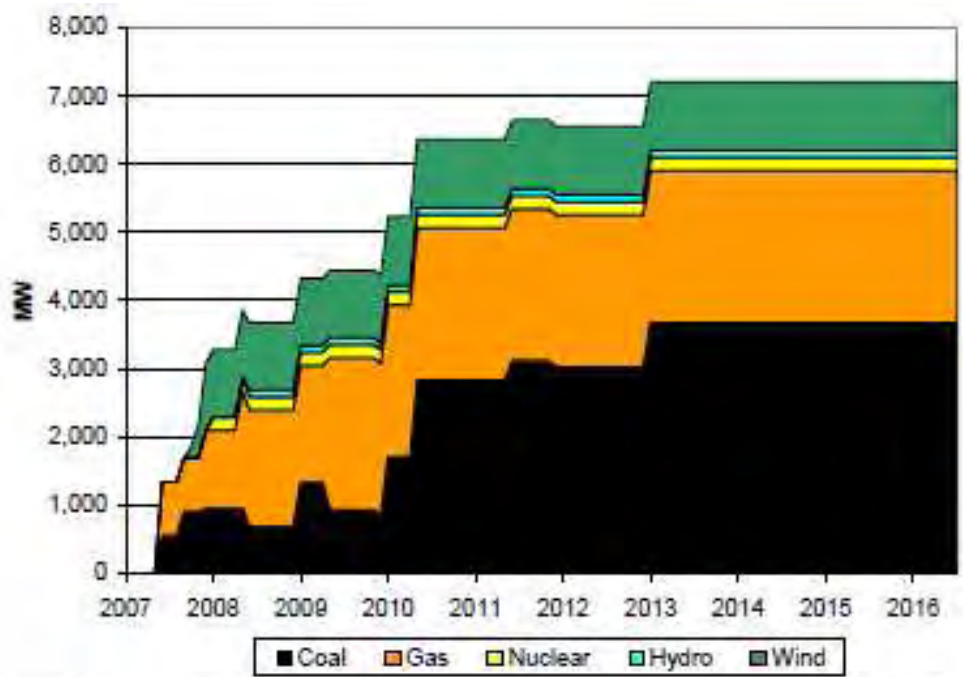


Figure 3.2-6: Capacity of Signed IA Queue Entries and Known Retirements by Fuel Type

Ex. 58-59, MTEP 07 p. 38, Figure 3.2-5; Webb, Tr. 5A p. 38.

IV. MOES ENVIRONMENTAL REVIEW WAS WHOLLY INADEQUATE

Environmental review for this project was insufficient and inadequate because the information presented by the applicants was not independently verified by the Department of Commerce, alternatives under review were falsely limited by Commerce acceptance of applicants' statements that individual alternatives could not meet the entire "need" claimed, and the "no build" alternative was improperly rejected out of hand without consideration. Impacts on land-based economies were not adequately considered, particularly considering that the land this projects invades is primarily agricultural or scenic river byways or protected wildlife areas. This environmental review was not conducted jointly with federal environmental review, and worse, the scope falsely stated that there was no anticipation of any federal environmental review of this project.

a. Information from Applicants was not independently verified.

The information in the environmental report was provided by applicants. Minn. R. 7849.7040. However, this was not independently verified by MOES staff. Birkholz, Tr. at

7849.7030 ENVIRONMENTAL REPORT.

The commissioner of the Department of Commerce shall prepare an environmental report on a proposed high voltage transmission line or a proposed large electric power generating plant at the need stage. The environmental report must contain information on **the human and environmental impacts of the proposed project associated with the size, type, and timing of the project, system configurations, and voltage.** The environmental report must also contain information on alternatives to the proposed project and **shall address mitigating measures for anticipated adverse impacts.** The commissioner shall be responsible for the completeness and accuracy of all information in the environmental report.

Minn. R. 7849.7030, Environmental Report (emphasis added)

b. Alternatives, particularly the "no build" option, received falsely restricted review and were rejected because CapX claims no alternatives provide the entire benefits of CapX

The rule is clear about what alternatives SHALL be analyzed:

Alternatives shall include the no-build alternative, demand side management, purchased power, facilities of a different size or using a different energy source than the source proposed by the applicant, upgrading of existing facilities, generation rather than transmission if a high voltage transmission line is proposed, transmission rather than generation if a large electric power generating plant is proposed, use of renewable energy sources, and those alternatives identified by the commissioner of the Department of Commerce.

Minn. R. 7849.7060, Subp. 1(B). However, the Environmental Report Scoping Decision limited alternatives to the project to be considered, contrary to the rule, and eliminated many. The rule allows for additional alternatives to be identified by the Commissioner, but those specified SHALL be included, and they were not.

The Scoping decision eliminated from consideration “impacts of specific energy sources in addressing the project, such as carbon outputs from coal-generated facilities...” but the rules require analysis of use of a different energy source. *Id.* Nowhere in the Environmental Report is the source of energy for these transmission lines addressed. Ex. 5, Environmental Report. MISO admits that there are 3,441MW of coal generation in the MISO queue for interconnection, including 728MW in Minnesota, 600MW in South Dakota, and 1255.8 in North Dakota. Ex. 60, MISO Response to NoCapX IR 3-8. Applicants admit that the Big Stone II coal plant transmission will connect with the CapX 2020 Brookings line where the line juts northward to Granite Falls into the Hazel and/or Minnesota Valley substations. Exhibit 23, CapX 2020 Twin Cities Brookings County 345kV Project, Depicting Application Proposal and Upsizing Proposal (showing line connecting Brookings line to Granite Falls – Hazel & MN Valley substations); Exhibit 28, Map of the Porposed Big Stone Plan and the Associated Alternatives with the Big

Stone Plan (showing line connecting Big Stone to Granite Falls – Hazel & MN Valley substations); Webb, Tr. Vol. 5A, p. 69-70. CapX 2020 proudly announced the “CapX West” projects, with Big Stone II transmission project as “the first element” of CapX. Public Comments, Muller, July 2, 2008, Sept. 6, 2006 letter from William Kaul, GRE¹⁵.

Alternatives such as conservation and DSM were rejected because they would not independently meet the entire 4,000-6,000MW of claimed need. Birkholz, Tr. Vol. 17B, p. 8-9. Rejection on this basis also is contrary to the state policy of use of renewable resource. Minn. Stat. 216B.243, Subd. 3a. The alternative of purchased power was similarly rejected because “the purchased power does not offset the need, that they need to accommodate 4,000 to 6,000 megawatts.” Birkholz, Tr. Vol. 17B, p. 11.

Q In your testimony yesterday, too, you were talking about overlaying maps in C-BED. You were talking about overlaying maps of wind resource transmission substations. Do you recall that?

A Yes, I do.

Q As a part of that, did you also include in your overlaid maps locations of gas peaking plants on the map?

A I don't recall that we did.

Q Did you consider the use of gas transmission infrastructure and reservations as a way of incorporating more wind into the system?

A Specifically to the C-BED study?

Q In the C-BED study.

A No, we did not.

...

Q Okay. And so is it correct that in the C-BED study you didn't address use of gas peaking to combine with wind to make a dispatchable?

A The level of study that we did didn't go down to that level of detail. It was much broader, higher level study.

Rogelstad, Vol. 2A, p. 34, l. 1 – p. 36, l.8.

Options that result in dispatchable power that could be locally sited were not considered.

c. Necessary analysis of impacts omitted or insufficient

¹⁵ PUC eFile: <https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5554860>

Under the rule, many specific issues are to be analyzed in the Environmental Report, and the Scope further specifies the contents of the ER. Minn. R. 7849, 7060; Exhibit 5, Environmental Report, Appendix A, p. 103-106, Commissioner’s Scoping Decision. The environmental review, in this case, specifically rejected consideration of impacts associated with specific routes, and therefore did not address adequately the two Minnesota River crossings and one Mississippi River crossing. In addition, impacts to land based economies, human settlement, and socioeconomics are to be addressed, yet impacts on land based economies, human settlement and socioeconomics were not defined or quantified in any way. Minn. R. 7849.7060; Birkholz, Tr. Vol. 17B, p. 20-21; Exhibit 5, Environmental Report.

Despite this deficiency, the ER summarizes socioeconomic impacts stating:

Socioeconomic impacts resulting from construction of the Project would be primarily positive with an influx of wags and expenditures made at local businesses during the Project construction.

Exhibit 5, Environmental Report, p. 14. There is no basis for this statement.

“The environmental report must contain information on the human and environmental impacts of the proposed project associated with the size, type, and timing of the project, system configurations, and voltage.” Minn. R. 7849.7030. The Environmental Report did not address impacts associated with the size, type, and timing of the project, system configurations, and voltage. The Environmental Report has not addressed the “upsizing” request to double circuit the CapX lines. Exhibit 5, Environmental Report.

The many river crossings received insufficient consideration. Although the ER declares that the river crossings “may be among the primary issues associated with each alternative,” and notes that “The primary means of mitigating these potential impacts is to avoid them in routing...” Hearing Ex. 5, ER, p. 14; 39. Yet if CapX were to be built, the inherent number of

river crossings is unprecedented. In the ER, river crossings are treated as visual issues, and there is no mention of impacts on land-based economies or socioeconomic impacts. See e.g., Hearing Ex. 5, ER, p. 44, in the “Land-based Economics” section, but addressing it as a “location of high visual sensitivity” and is silent as to economic impacts – there is no description of economic impacts or quantification.

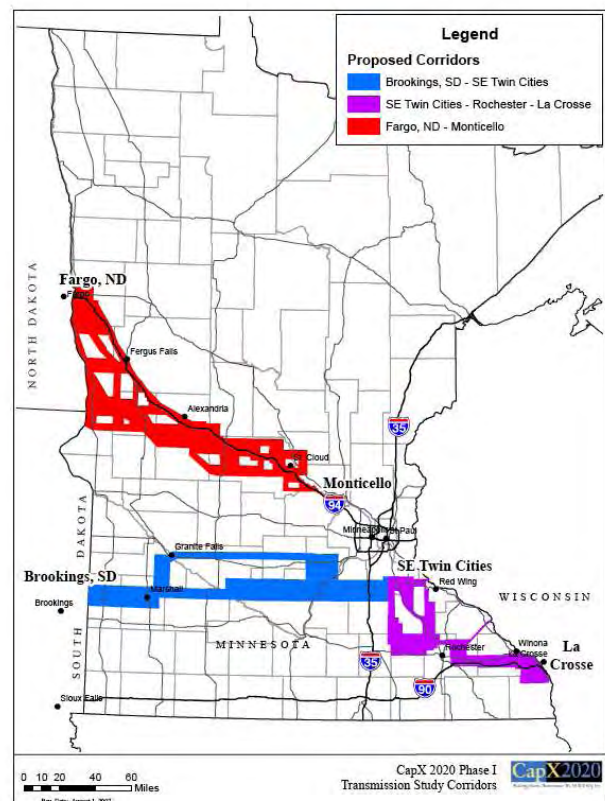
The Environmental Report lists eight potential river crossing maps, four of the Mississippi River and four of the Minnesota River:

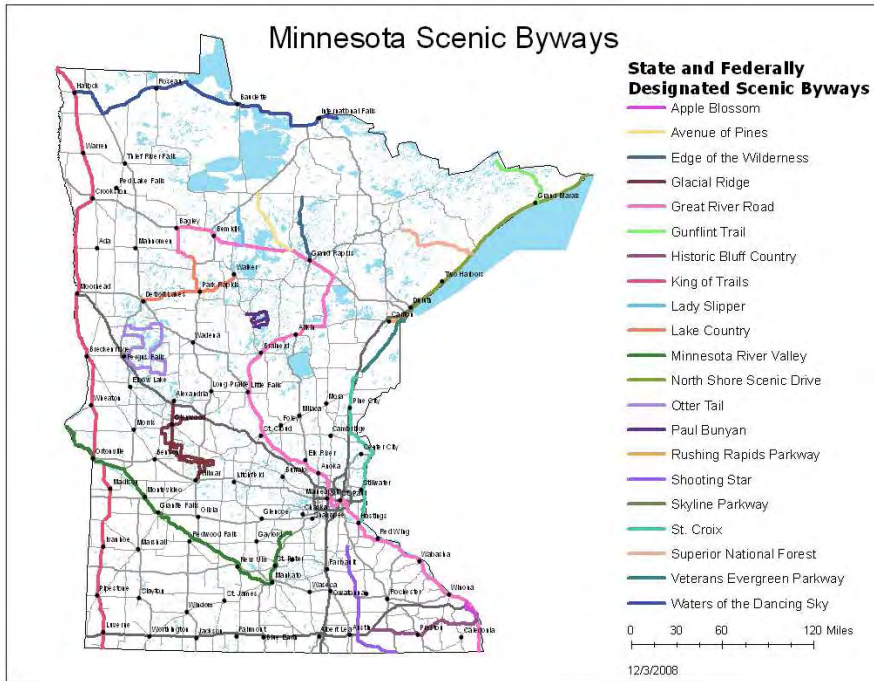
- Map 5 Alma Crossing of Mississippi River
- Map 6 Winona Crossing of Mississippi River
- Map 7 Trempealeau Crossing of Mississippi River
- Map 16 Minnesota Valley Crossing of Minnesota River
- Map 17 Franklin Crossing of Minnesota River
- Map 18 Helena Crossing of Minnesota River
- Map 19 West Waconia Crossing of Minnesota River

Hearing Ex. 5, ER, Appendix B: Environmental Review Maps.

Not featured in maps are crossings of the Cannon River, White Water River by the Hampton to LaCrosse line. There is no featured map showing a Red River crossing by the Fargo to Benton County line.

Compare the map of proposed CapX 2020 corridors with a map of the Minnesota Scenic Byways, not included in the Environmental Report. → → →





The National Scenic Byways and Explore Minnesota have both developed programs around the Scenic Byways of Minnesota that will be affected by the CapX 2020 transmission project.¹⁶

Why are the Scenic Byways important, and why should the Environmental Report address the impacts of CapX 2020 on the Scenic byways? As above, it's apparent that the project could intrude on the scenic byways at many points, directly and indirectly.

The State of Minnesota has designated twenty-two (22) select roadways as scenic byways. Together they encompass more than 2,800 miles of statewide scenic routes ranging in length from a short 9-mile scenic byway to the Great River Road covering 575 miles. Six (6) of the Minnesota byways are also federally designated as National Scenic Byways, but all 22 byways fall under the National Scenic Byways Program, which is part of the U.S. Department of Transportation, Federal Highway Administration. A comparison of CapX maps with the Minnesota Scenic Byways map, as above, demonstrates that multiple scenic byways will be

¹⁶ National Scenic Byways Program <http://www.byways.org/>
 Explore Minnesota Tourism Scenic Byways Page One
<http://exploreminnesota.com/experiences/byways/index.aspx?gclid=CKfD9ZPaqZcCFQ8QagodL1nKjw>
 Explore Minnesota Tourism Scenic Byways Page Two
<http://exploreminnesota.com/experiences/byways/drives.aspx>

impacted by the project and yet the MOES and Applicants have ignored assessment of environmental harm to the byways. See Public Hearing Transcript, Tab 19, Rochester, 7:00 p.m. July 2, 2008.

The Minnesota Scenic Byways Commission, comprised of four Minnesota agencies — the Minnesota Office of Tourism, the Minnesota Historical Society, the Minnesota Department of Natural Resources and the Minnesota Department of Transportation — provides management assistance and promotion of the 22 Minnesota scenic byways. The Minnesota Scenic Byways Program, and each individual scenic byway, is an integral part of the more than \$12 billion annual tourism business in the state. The importance of scenic byways to local economies cannot be overstated and scenic intrusions that are visible from those byways can cause irreparable harm to communities that depend mostly on visitors and tourism income.

The National and Minnesota Scenic Byways programs are established to recognize, preserve and enhance selected road corridors that are unique, based on the recognized existence of six (6) intrinsic qualities, including archaeological, cultural, historic, natural, recreational and scenic qualities along the scenic byway route.

Each Minnesota scenic byway is managed to promote public uses, recreation and tourism opportunities and to promote community economic development. Economic development along byway routes increasingly depends on whether communities are successful in maintaining scenic integrity of the byway route and can protect byway viewsheds from unwarranted scenic intrusions that quickly erode income from visitors. Given the wide range of choices of locations travelers can choose for travel, recreation and to spend leisure dollars, they simply will not return to an area that has lost its natural and scenic character.

Visible overhead transmission lines have been assumed to cause environmental harm wherever they are located. (See *People for Envl. Enlightenment and Responsibility (PEER), Inc. v. Minn. Envl. Quality Council*, 266 N.W.2d 858 (Minn. 1978). Visible transmission lines along and crossing scenic byways, (in this case multiple byways, will cause explicit environmental harm. Scenic intrusions into scenic byway viewsheds from high voltage transmission lines will certainly cost communities income that cannot be replaced in local economies that rely almost solely on tourism. The CapX Environmental Assessment fails to account for any environmental harm to Minnesota's scenic byways. The Environmental Assessment is inadequate and has failed to assess environmental, scenic and economic impacts to byway communities and to scenic byways that comprise the Minnesota Scenic Byways Program.

d. Scope of environmental review expressly and falsely stated there would be no federal environmental review, which has now been noticed and begun.

The Scoping document stated:

It is not possible to associate this environmental review with any federal review at this time. Minnesota rule 4410.3900 anticipates coordinating state and federal review where possible. However, the association is not possible in this case due to timing and relevance. First, completion of this ER is required for the contested case hearing prior to when any application initiating potential federal review would be filed.

Additionally, no application for a permit or funds from the Rural Utility Service is anticipated by any of the applicants. No action requiring a federal EIS is anticipated. If that situation were to change when any route applications are filed, the Department would pursue all opportunities to coordinate the EIS reviews in those proceedings with any relevant federal agency reviews.

Scoping Decision, p. 3, ISSUES OUTSIDE OF THE ENVIRONMENTAL REPORT.

The federal environmental review by the US Department of Agriculture for Rural Utility Service has begun, and was noticed last month, as anticipated by intervenors, but inexplicably denied by

the Commissioner of Commerce. See USDA Notice of EIS, May 28, 2009, fn. 17.

For these reasons, NoCapX 2020 and U-CAN request that the Commission reconsider its acceptance of the environmental review for this project, and declare that it was inadequate.

V. CONCLUSION

The Public Utilities Commission should reconsider the CapX 2020 Order of May 22, 2009. There are many reasons, primary that there is evidence of significant decrease in electric demand, such that it is not reasonable and prudent to grant a Certificate of Need without review of updated forecasts. Secondly, the foundation of this project, that it is necessary to export power, has been demonstrated to be an incorrect assumption because markets in the east are declaring that they do not want transmission from the Midwest. The grandiose Joint Coordinated System Plan and CapX 2020 applicants' transmission plans, now revealed, and the withdrawal of the potential "markets" of NYISO and ISO-NE from participation in Midwestern transmission plans, bears careful examination and formal administrative notice by the Commission prior to a determination regarding the CapX 2020 Certificate of Need. The Commission has the authority to reconsider the record, and in this case, a thorough examination big picture transmission prior to significant ratepayer investment of irretrievable resources is the Commissions responsibility and obligation.

In addition, the environmental review for this project, the largest project in the state's history, is unreasonably limited by false assumptions in the scope, does not address scenarios that can be reasonably expected to occur, and does not provide any mitigation for stated impacts. The environmental review must be reconsidered and declared inadequate.

¹⁷ USDA Notice of Intent to Prepare an EIS
<http://www.usda.gov/rus/water/eis/pdf/Dairyland%20NOI%20FedReg%20052809.pdf>

NoCapX 2020 and U-CAN respectfully requests that the Commission reconsider the order of May 22, 2009



June 11, 2009

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EXHIBIT A

<http://online.wsj.com/article/SB122722654497346099.html>

Surprise Drop in Power Use Delivers Jolt to Utilities

November 21, 2008

By [REBECCA SMITH](#)

An unexpected drop in U.S. electricity consumption has utility companies worried that the trend isn't a byproduct of the economic downturn, and could reflect a permanent shift in consumption that will require sweeping change in their industry.

Numbers are trickling in from several large utilities that show shrinking power use by households and businesses in pockets across the country. Utilities have long counted on sales growth of 1% to 2% annually in the U.S., and they created complex operating and expansion plans to meet the needs of a growing population.

"We're in a period where growth is going to be challenged," says Jim Rogers, chief executive of [Duke Energy](#) Corp. in Charlotte, N.C.

The data are early and incomplete, but if the trend persists, it could ripple through companies' earnings and compel major changes in the way utilities run their businesses. Utilities are expected to invest \$1.5 trillion to \$2 trillion by 2030 to modernize their electric systems and meet future needs, according to an industry-funded study by the Brattle Group. However, if electricity demand is flat or even declining, utilities must either make significant adjustments to their investment plans or run the risk of building too much capacity. That could end up burdening customers and shareholders with needless expenses.

To be sure, electricity use fluctuates with the economy and population trends. But what has executives stumped is that recent shifts appear larger than others seen previously, and they can't easily be explained by weather fluctuations. They have also penetrated the most stable group of consumers -- households.

Dick Kelly, chief executive of [Xcel Energy](#) Inc., Minneapolis, says his company, which has utilities in Colorado and Minnesota, saw home-energy use drop 3% in the period from August through September, "the first time in 40 years I've seen a decline in sales" to homes. He doesn't think foreclosures are responsible for the trend.

[Duke Energy](#) Corp.'s third-quarter electricity sales were down 5.9% in the Midwest from the year earlier, including a 9% drop among residential customers. At its utilities operating in the Carolinas, sales were down 4.3% for the three-month period ending Sept. 30 from a year earlier.

[American Electric Power](#) Co., which owns utilities operating in 11 states, saw total electricity consumption drop 3.3% in the same period from the prior year. Among residential customers, the drop was 7.2%. However, milder weather played a role.

Utility executives question whether the recent declines are primarily a function of the broader economic downturn. If that's the case, says Xcel's Mr. Kelly, then utilities should continue to build power plants, "because when we come out of the recession, demand could pick up sharply" as consumers begin to splurge again on items like big-screen televisions and other gadgets.

Some feel that the drop heralds a broader change for the industry. Mr. Rogers of Duke Energy says that even in places "where prices were flat to declining," his company still saw lower consumption. "Something fundamental is going on," he says.

Michael Morris, the chief executive of AEP, one of the country's largest utilities, says he thinks the industry should be wary about breaking ground on expensive new projects. "The message is: be cautious about what you build because you may not have the demand" to justify the expense, he says.

Utilities are taking steps to get a better understanding of the cause. Some are asking customers who reduced usage to explain what is influencing them. Xcel and other utilities, for example, have been running environmentally focused campaigns to urge consumers to use less energy recently, a message that might be taking hold.

Power companies are also questioning the reliability of the weather-adjustment models they use to harmonize fluctuating sales from quarter to quarter. "It's more art than science," says Bill Johnson, Chief Executive of [Progress Energy](#) Inc., Raleigh, N.C.

If the sector is entering a period of lower demand -- which could accelerate further if the automotive sector collapses -- many utilities will have to change the way they cover their costs.

Utilities are taking a hard look at the way they set rates and generate profits. Many companies are embracing a new rate design based on "decoupling," in which they set prices aimed at covering the basic costs of delivery, with sales above that level being gravy. Regulators have resisted the change in some places, because it typically means that consumers using little energy pay somewhat higher rates.

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