

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the application for a  
Route Permit for the Bemidji-Grand  
Rapids 230kV Transmission Project

AFFIDAVIT OF  
CAROL A. OVERLAND  
IN SUPPORT OF MOTION

—

STATE OF MINNESOTA            )  
                                                          ) ss.  
COUNTY OF GOODHUE         )

Carol A. Overland, after being sworn on oath, states and deposes as follows:

1. I am an attorney licensed in good standing to practice in the state of Minnesota, Attorney License Number 254617.
2. I routinely represent clients at the PUC, district and appellate courts and before local governments regarding utility infrastructure and siting and land-use issues.
3. I represent NoCapX 2020 and United Citizen Action Network in several interventions, including the CapX 2020 Certificate of Need and appeal, the Brookings-Hampton routing docket and the Hampton-LaCrosse/Alma.
4. In the CapX 2020 Certificate of Need appeal, the PUC argued that joint environmental review with the Rural Utility Service wasn't appropriate at the Certificate of Need stage, and that instead, environmental review with the RUS would occur in routing. While that is occurring in this docket, it is not occurring in the CapX Hampton-LaCrosse docket given the scoping decision just issued by Commerce.
5. Environmental review is an iterative process, the purpose of the Environmental Impact Statement is to inform the routing process. When the FEIS comes out so late, long after the state's administrative record has closed, and where agency comments are not part of the routing record until the FEIS is released, there is a set up for incomplete consideration of the comments of agency staff with particular knowledge of aspects of impacts that should be considered in routing. This happened in the CapX Brookings docket, and the déjà vu upon reviewing this Bemidji-Grand Rapids docket is very disturbing.
6. After having experienced the CapX 2020 Brookings "Environmental Review," and in anticipation of the upcoming Prehearing Conference for the CapX 2020 Hampton-LaCrosse

(Alma) routing docket, I was reviewing the RUS environmental review of the Bemidji-Grand Rapids project thus far, mindful of the refusal of MOES to conduct joint environmental review with RUS in the Hampton-LaX docket. The RUS review has proceeded on its own, and MOES environmental review has just begun, with not a mention of the RUS in the just-released scoping document.

7. I learned in my review that RUS and MOES were conducting joint NEPA compliant environmental review in the Bemidji-Grand Rapids docket, and that the Final EIS had not yet been released. Then I learned that when it is released, there would be no opportunity for comment. The FEIS is where agency comments are revealed, and many agency comments have a direct impact on routing.
8. I have reason to believe that agency Comments have been made regarding this Bemidji-Grand Rapids DEIS that at the very least have an impact on routing, and which could well be determinative of certain route options.
9. Attached as Exhibit A is a true and correct copy of the US Environmental Protection Agency's Comments regarding MOES DEIS the Bemidji-Grand Rapids CapX 2020 transmission line.
10. The EPA Comments are 9 pages of specific critical substantive comments, giving the DEIS an EC-2 rating, requiring more information and pointing out fundamentally deficient areas in the DEIS:
  - Failure to identify a “preferred alternative.”
  - Failure to identify whether or not the Preferred Alternative is likely to be that identified by the US Army Corps of Engineers least environmentally damaging practicable alternative.
  - Failure to identify compensation mitigation measures that will be undertaken if project moves forward.
    - a. Failure to clarify compensation for long-term loss of 439-813 acres of forested wetland due to tree clearing; and
    - b. Permanent loss of 439-813 acres of upland forest including CNF and LLR forest land; and
    - c. Potential loss of cultural and traditional resources important to the Leech Lake Band of Ojibway.
  - Failure to identify the 404 permitting mechanism and whether or not USACE will require compensation mitigation.
  - Failure to clearly explain process and underlying rationale for route and alternatives selection.
  - Failure to include a draft wetland compensation mitigation plan for substantial forested wetland loss.

- Failure to identify “General Permit for Storm Water Discharges Associated with Construction Activity” as NPDES permit.
  - Failure to utilize current EPA Final Effluent Limitation Guidelines regarding turbidity.
  - Failure to identify EPA as party with jurisdiction over NPDES permits on Indian Country, and not State of Minnesota.
  - Failure to identify all federal permit requirements for traversing St. Regis Company Superfund Site.
  - Failure to acknowledge necessity of prior approval from EPA for work on SCRCLA Superfund sites on National Priorities List.
  - Failure to provide correct information regarding St. Regis Superfund (see Exhibit A) regarding Segment F potentially within Superfund Site, dioxin contaminated soil, area within BNSF Right of Way’s elevated levels of dioxin, pentachlorophenol and PAHs and contaminated ground water plume of St. Regis Site, potential for increased health concerns and interference with ongoing remediation, and that outline of Superfund Site is changing.
  - Failure to address whether compensation mitigation for loss of upland forest will be required by CNF and/or LLDRM, to identify compensation mitigation opportunities, and whether project proponents propose to undertake voluntary compensation mitigation measures in consultation with all landowners.
  - Failure to include description of how tribal concerns were considered, and plans for additional consultation including mitigation commitments.
  - Failure to include a copy of the signed Programmatic Agreement with Leech Lake Band.
11. The comments of the EPA are relevant to routing of the Bemidji-Grand Rapids route and should be taken into consideration, particularly those regarding the need for the FEIS to state a specific preferred route, issues associated with the St. Regis Superfund Site, and impacts on the Leech Lake Band.
12. Based on the excruciatingly detailed Comments of the EPA, other agency comments are likely to reveal route specific information as well, and yet these comments on the DEIS are not yet available for consideration in routing until far too late in the process.
13. Scoping comments of agencies made in 2008 were not made part of the Bemidji-Grand Rapids routing docket until April 20, 2010, the day before the hearing began and two years after the comments were filed!

**The CapX Brookings-Hampton experience with agency comments on environmental review**

14. A similar situation regarding determinative agency Comments occurred in the CapX Brookings-Hampton docket, which was recently remanded for additional hearings on the

- proposed Minnesota River Crossings. The “Preferred Route” was not feasible based on comments of the Minnesota DOT, DNR and the US Fish & Wildlife Service.
15. Environmental review is an iterative process, the Environmental Impact Statement to inform the routing process. This compartmentalization and late entry of highly relevant routing Comments was a problem in the Brookings docket leading to a remand to OAH due to an infeasible route promoted as the “Preferred Route” and a river crossing traversing MnDOT scenic easements and traversing aerially through eagle and migratory bird habitat – agency comments had been compartmentalized within MOES and not brought into the routing docket resulting in “too little too late” to properly inform the routing process of important, even determinative, environmental considerations.
  16. For example, in the Brookings-Hampton routing docket, comments made by US Fish and Wildlife, Minnesota’s Department of Natural Resources and Department of Transportation were submitted to MOES but were not made part of the evidentiary routing record. Comments directly applicable to routing were not known to the parties until they surfaced at the public hearings.
  17. Attached as Exhibit B is a true and correct copy of the US Fish and Wildlife comment letter of April 30, 2009 regarding the scope of the MOES EIS.
  18. Attached as Exhibit C is a true and correct copy of the US Fish and Wildlife Comment letter of November 30, 2009, on the MOES Draft EIS.
  19. Exhibits B and C were entered into the record by members of the public at a public hearing, one an eagle activist and the other a retired attorney who became a directly affected landowner as a result of EIS scoping. These USFWS letters noted problems with any aerial route, deficiencies in the EIS and that the “Preferred Route” was infeasible. These comments were not entered into the routing hearing record by MOES, but by members of the public.
  20. Attached as Exhibit D is a true and correct copy of the November 30, 2009 comment letter of the Minnesota Department of Natural Resources on the MOES Draft EIS. This letter stated that sufficient information had not been provided to analyze the alternatives. Attached as Exhibit E is a true and correct copy of a February 8, 2010 comment letter of the Minnesota Department of Natural Resources at the end of the public comment period, regarding continued inability to properly evaluate the project due to failure to provide necessary information in the environmental review. Although many specific comments were made, this project did not have the benefit of a reasonable overall review by the DNR because, as stated emphatically by the DNR, there was insufficient information contained in the EIS and what was there was not presented in a meaningful way to facilitate analysis. These comments were not entered into the public hearing record by MOES until entered as an Appendix to the FEIS.
  21. Attached as Exhibit F is a true and correct copy of the November 30, 2009 comments of the Minnesota Department of Transportation on the MOES Draft EIS. These comments addressed scenic easements and right of way encroachment that rendered the “Preferred Route” unfeasible. In the public hearing, DOT personnel attended and testified, entering evidence including a copy of a typical scenic easement to graphically illustrate that the route could not use this land. The DOT’s letter noted deficiencies in the EIS and that the “Preferred Route” was infeasible through the following comments, and was entered by the agency. These comments were not entered into the public hearing record by MOES, but were

entered into the record by the DOT, which also supplied additional testimony regarding the infeasibility of the "Preferred Route" due to scenic easements.

22. The record in the CapX Brookings docket remained open for comments on the FEIS until at least one week after the FEIS was released based upon the important information that came out at the tail-end of the routing administrative process.
23. Given the high level of concern demonstrated in the EPA comments, other agency comments may be as enlightening. The public should have the opportunity to review all agency comments, as well as members of the public, as presented in the FEIS, and should have the opportunity to respond.

Further your affiant sayeth naught.

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

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Signed and sworn to before me this  
9<sup>th</sup> day of August, 2010.

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Notary Public