

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

In the Matter of the Application by Xcel  
Energy for a Route Permit for the  
Hampton-Rochester-La Crosse 345-kV  
Transmission Line Project

**FIRST PREHEARING ORDER**

A prehearing conference was held before Kathleen D. Sheehy, Administrative Law Judge, on August 9, 2010, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota.

Lisa M. Agrimonti, Attorney at Law, Briggs and Morgan, P.A., 2200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402, and Jennifer Thulien Smith, Assistant General Counsel, appeared for Xcel Energy (Applicant). Tom Hillstrom, Routing and Permitting Manager for the project, also participated on behalf of the Applicant.

Karen Finstad Hammel, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, appeared for the Department of Commerce, Office of Energy Security, Energy Facility Permitting Staff (Department). Deborah Pile and Matthew Langan also participated on behalf of the Department.

Carol Overland, Attorney at Law, P.O. Box 176, Red Wing, Minnesota 55066, appeared for No CapX 2020 and United Citizens Action Network (U-CAN).

David Seykora, Minnesota Department of Transportation, also attended.

Commission staff members Bob Cupit and Tricia DeBleeckere participated in the prehearing conference.

Based upon the discussions during the prehearing conference, the Administrative Law Judge makes the following Prehearing Order.

**IT IS HEREBY ORDERED:**

**Intervention**

1. Members of the public need not become formal parties to participate in the hearing. They may offer either oral or written testimony; they

may offer exhibits for inclusion in the record; and they may ask questions of persons testifying.<sup>1</sup> Any person may “subscribe” to the E-docket system on the Commission’s website ([www.puc.state.mn.us](http://www.puc.state.mn.us)) for the purpose of receiving electronic notice when documents are filed in this matter. Follow the link called “Subscribe to a Docket,” insert the email address, select docket no. 09-1449, and click “Add to list.” An email message will then be sent to the listed email address, which a subscriber must confirm by responding to the email. Any person desiring to become a formal party, however, must file a petition to intervene.

2. Persons who wish to intervene in this proceeding must file a written petition to intervene with the Administrative Law Judge **no later than May 2, 2011**, as set forth in Minn. R. 1405.0900, subp. 1 (2009). Any objection to a petition shall be filed within seven business days of service of the petition. The petition shall be served upon all parties, pursuant to the E-service list in effect at the time of the petition. A Notice of Appearance shall be filed with the Petition.

3. Service from this date forward shall be limited to persons who are parties to this contested case hearing. Participants and other persons interested in monitoring this docket may do so by subscribing to the E-docket system.

#### **Schedule**

4. The following schedule is adopted:

Applicant’s Direct Testimony	April 18, 2010
Intervention Deadline	May 2, 2011
Direct/Rebuttal Testimony of Intervenors	May 20, 2011
Applicant’s Rebuttal Testimony	May 27, 2011
Surrebuttal Testimony of all parties	June 3, 2011
Public Evidentiary Hearings (in Plainview, Pine Island, and Cannon Falls)	Week of June 13, 2011
Evidentiary Hearing (at the PUC in St. Paul)	Week of June 20, 2011
Deadline for Filing Public Comments	June 30, 2011

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<sup>1</sup> Minn. R. 1405.0800.

5. The Applicant has agreed to the above schedule, which extends the time for completion of this matter beyond the one-year period established by Minn. Stat. 216E.03, subd. 9 (2008).<sup>2</sup> The Applicant has also agreed to further extend the timeframe for a reasonable period of time following the closure of the OAH record, to allow for the Report of the Administrative Law Judge to be filed and the final decision of the Public Utilities Commission to be made.<sup>3</sup>

6. The Department anticipates that the Draft Environmental Impact Statement (EIS) will be available on January 28, 2011; the Draft EIS Public Meetings will be held March 8-10, 2011; and the Draft EIS comment period will end on April 22, 2011.<sup>4</sup> It expects that the Final EIS will be filed in July 2011.<sup>5</sup>

### **Motion to Suspend Proceedings**

7. The CapX 2020 project involves the construction of three new 345-kV transmission lines: a segment from Brookings, South Dakota, to Hampton; a segment from Hampton through Rochester to La Crosse, Wisconsin (the subject of this docket); and a segment from Fargo, North Dakota to Alexandria, St. Cloud, and Monticello. On May 20, 2010, No CapX 2020 and U-CAN filed a Motion to Suspend Proceedings in this and the Brookings to Hampton docket. The motion is based on the Applicant's notice of a delay of approximately one year in the in-service date of the Brookings to Hampton transmission line due to uncertainty regarding the cost allocation methodology to be used by the Midwest Independent Transmission System Operator (MISO). The Applicant filed a response urging denial of the motion on May 24, 2010, contending that MISO cost allocation issues for the Brookings to Hampton segment have no relevance to routing issues in the Hampton to La Crosse segment. In addition, the Applicant contended that the two projects serve distinct needs in distinct geographic areas, and neither is dependent on construction of the other to meet these needs.

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<sup>2</sup> Minn. Stat. 216E.03, subp. 9, provides that a final decision on the request for a route permit shall be made within one year after the commission's determination that an application is complete. In this case, the PUC determined that the application was complete on March 9, 2010.

<sup>3</sup> See Transcript of Prehearing Conference at 8-9 (Aug. 9, 2010).

<sup>4</sup> The Department also anticipates that an EIS being performed by the Rural Utility Service and another being performed by the State of Wisconsin will be completed during May 2011, and the schedule was proposed with this target date in mind. Because these studies are being conducted independently of the route permitting process, however, the deadlines in this contested case hearing are not tied to the completion of either the federal EIS or the Wisconsin EIS.

<sup>5</sup> The Administrative Law Judge has not included a deadline for submission of public comment on the final EIS, as advocated by No CapX 2020 and U-CAN. The EIS process is conducted by the Commissioner of the Department of Commerce, independently of the route permitting process. And although a ten-day comment period is required under 4410.2800, subp. 2, that rule chapter is not applicable to the preparation or consideration of an EIS for a high-voltage transmission line except as provided in Minn. R. 7850.1000 to 7850.5600. See Minn. R. 7850.2500, subp. 12.

8. The Commission has not acted to suspend proceedings in the Brookings to Hampton docket.<sup>6</sup> In addition, Minn. Stat. § 216E.11 provides that if the construction of a transmission line has not commenced within four years after a permit for the route has been issued, then the utility must certify to the commission that the site or route continues to meet the conditions upon which the route permit was based. Thus, the statute appears to allow for some delay, and there is no evidence that this docket will be affected by it. The motion to suspend proceedings is accordingly DENIED.

### **Publication of Schedule and Attendance at Public Hearings**

9. The Department and the Applicant shall jointly develop a notice of hearing specifying the date, time and location of the hearings, for publication no fewer than 10 days and no more than 45 days in advance of the hearing, and shall serve notice as specified in Minn. Stat. § 216E.03, subd. 6 (2008).

10. The Applicant and any other party sponsoring witnesses who have prefiled testimony shall have the witnesses available at all of the public/evidentiary hearings in this matter or shall request an exemption under Minn. R. 1405.2000. A knowledgeable person must be available at the hearing to respond to questions where the particular witness is exempted from attending.

### **Public Comment**

11. The comments provided at the public hearings in this matter will be included in the record of these proceedings. In addition to comments provided in person, written public comments that are filed with the Administrative Law Judge on or before 4:30 p.m. on June 30, 2011, will be included. Comments may be filed by U.S. Mail addressed to the Administrative Law Judge or by email addressed to [capx.oah@state.mn.us](mailto:capx.oah@state.mn.us). Please include the phrase "Hampton-Rochester-La Crosse" in the subject line.

### **Date of Filing, Sending or Receipt**

12. Any document that is filed, or is sent to request or in response to a request for discovery, or for any other purpose, after 4:30 p.m. on a business day, on a weekend day or on a Minnesota state holiday shall be considered filed, sent or received on the next business day.

### **Discovery**

13. A party may serve requests for information on any other party. All requests for information shall be made in writing by email, and the requesting party shall follow the email with a copy of the request sent by regular U.S. mail or

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<sup>6</sup> *In the Matter of the Route Permit Application by Great River Energy and Xcel Energy for a 345 kV Transmission Line from Brookings County, South Dakota to Hampton, Minnesota, Docket No. ET-2/TL-08-1474.*

other delivery service to all parties, unless the party receiving the request agrees to email service only. To the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Chapter 13, an email request is required only between the requesting and responding party. Requests shall be sent to the person(s) designated to receive data requests.

14. The responding party shall provide the requested information to the requesting party within ten business days of receipt of the request. In accordance with Minn. R. 1405.0700, the day that the information request is received shall not be counted in the ten-day period.

15. Responses to information requests shall be submitted by email, and the responding party shall follow the email with a copy of the response sent by regular U.S. mail or other delivery service, unless the party receiving the response agrees to email service only. To the extent that a response includes material designated as Trade Secret or Nonpublic, an email response is required only between the requesting party and the responding party.

16. In the event that due to the volume or nature of information included in a response, the responding party is unable to send the response by email, the responding party shall send the response by facsimile, regular U.S. mail or other delivery service so that the requesting party receives the entire response by the date due, including any material designated as Trade Secret or Nonpublic. Responding parties may utilize CDs to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service.

17. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information shall be supplied to each party that requested it.

18. A party that wishes to receive email copies of requests or responses shall notify the requesting/responding party, who shall provide the information in that format. If the request or response contains material designated as Trade Secret or Nonpublic information, the providing party may seek a Protective Order in this matter before providing the information.

19. In the event the information cannot be supplied within ten business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and agree on a schedule of compliance with the requesting party.

20. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the

Administrative Law Judge upon motion of a party. Hearings on such motions may be conducted by telephone conference call.

### **Prefiled Testimony**

21. Prefiled testimony shall be marked as an exhibit with the case docket number and offered for admission into the record at the hearing. A hard copy shall be provided for that purpose and, if the document has been previously efiled, the offering party shall provide the unique E-docket identifying number. The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered into evidence at the hearing.

22. Prefiled testimony that is amended or not offered into the record shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Except for good cause shown, all revisions or substantive corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three days prior to the commencement of the evidentiary hearing.

### **Order of Testimony**

23. Unless the parties agree otherwise, the order of testimony shall be: the Applicants; intervenors in the order of intervention; and the OES-EFP. Questioning of the witnesses shall proceed in the same order, subject to change by agreement of the parties or further order of the Administrative Law Judge.

### **Examination of Witnesses**

24. Witnesses shall be allowed ten minutes to summarize their prefiled testimony. For good cause shown, witnesses will be permitted to respond to any new matters not addressed in prefiled testimony through direct examination.

25. Parties shall examine and cross-examine witnesses through their attorneys, if the parties are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

26. Except for good cause shown, objections by any party relative to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, and serves a copy of such objections on the parties, no later than **June 10, 2011**.

## **Procedure**

27. The rules of the Office of Administrative Hearings and Minn. R. 7850.3100 *et seq.*, govern the conduct of the hearings, and the Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

### **Filing of Documents (Excluding Information Requests and Responses)**

28. The service list for the contested case proceeding shall be maintained and revised as necessary by the Office of Administrative Hearings.

29. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

30. The parties have agreed to file all documents, including prefiled testimony, using the E-Docket system of the Public Utilities Commission, the Department of Commerce and the Office of Administrative Hearings. Such e-filing constitutes service on those offices and upon any other party that has agreed to accept e-filing as service, as specified on the E-service list.

31. Documents or exhibits that can not be e-filed shall be mailed by U.S. Mail or delivered to the parties.

32. The effective date of filing shall be the date the document is e-filed, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the E-file system must retain the unique document identifier as proof of service through that system. Proof of service shall be filed with each document or within three business days thereafter.

33. The original of each document shall also be mailed or delivered to the Administrative Law Judge.

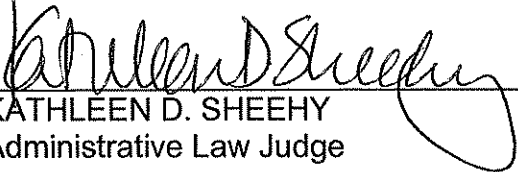
34. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission.

35. If trade secret or nonpublic data is filed with the Administrative Law Judge, it shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures may be viewed at [www.puc.state.mn.us/PUC/consumers/data-practices/index.html](http://www.puc.state.mn.us/PUC/consumers/data-practices/index.html). The party submitting the data may request a Protective Order.

### **Request for Accommodation**

36. No person has requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly if either an accommodation or interpreter is needed.

Dated: September 1, 2010.

  
KATHLEEN D. SHEEHY  
Administrative Law Judge





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September 1, 2010

To All Parties on the Attached Service List

Re: *In the Matter of the Application for a Route Permit for the  
CapX2020 Hampton-Rochester-La Crosse High Voltage Transmission  
Lines*; OAH Docket No. 3-2500-21181-2; PUC No. E-002/TL-09-1448

Dear Parties:

Enclosed herewith and served upon you mail, or by electronic service where indicated, is the Administrative Law Judge's First Prehearing Order in the above-entitled matter.

Sincerely,

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY  
Administrative Law Judge

Telephone: (651) 361-7848

KDS:nh

Encl.

cc: Docket Coordinator

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE LAW SECTION  
600 NORTH ROBERT STREET  
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**CERTIFICATE OF SERVICE**

Case Title: <i>In the Matter of the Application for a Route Permit for the CapX2020 Hampton-Rochester-La Crosse High Voltage Transmission Lines</i>	OAH Docket No. 3-2500-21181-2; PUC No. E-002/TL-09-1448
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Nancy J. Hansen certifies that on the 1st day of September, 2010, she served a true and correct copy of the attached First Prehearing Order by serving it by U S Mail with postage prepaid, or by electronic service where indicated, addressed to the following individuals:

See attached lists

**Service List** for: the Application  
by Xcel Energy for a Route  
Permit for the Hampton-  
Rochester-La Crosse 345-kV  
Transmission Line Project  
OAH 3-2500-21181-2

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