



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Twin Cities Field Office
4101 American Blvd E.
Bloomington, Minnesota 55425-1665

October 29, 2010

Great River Energy
12300 Elm Creek Boulevard
Maple Grove, MN 55369

Re: CapX 2020 Brookings-Hampton 345 kV Transmission Line
PUC Docket # ET2/TL-08-1474

Dear Mr. Leshner,

Thank you for continuing to work with the United States Fish and Wildlife Service (the Service) regarding potential impacts of the CapX 2020 Brookings-Hampton Line on bald eagles. While it is not always easy to coordinate multiple permitting and route determination actions involving separate agencies, we appreciate the efforts of all involved to give fair treatment to protection of this iconic species. In this spirit, we will provide a courtesy copy of this letter to Judge Luis before the close of the public comment period on Monday, November 1, 2010.

To summarize, new information available to my agency leads us to conclude that we do not currently have sufficient biological evidence to determine conclusively that more bald eagles would be affected by one crossing alternative or the other. **Based upon this new information, our earlier recommendation of June 10, 2010 is suspended.** We propose that a study of eagle winter habitat use and availability in the Minnesota River Valley and Silver Lake area be conducted this winter. As discussed below, we will work with Minnesota DNR and with the applicant to develop and implement a study protocol as expeditiously as possible.

Since the transmission crossing location was remanded back to the Administrative Law Judge, we have had the opportunity to talk with many citizens and local birders of the Minnesota River Valley. We have actively gathered new information, responded to every citizen inquiry we have received, and have posted previous letters and data collection efforts on our website: <http://www.fws.gov/midwest/twincities/cpa/capx/hampton.html>. Through these endeavors, we have received new information on wintering eagle numbers and areas of open water in both the Belle Plaine and Le Sueur areas. We have also received citizen information on eagle concentration areas near Silver Lake, which is outside the Minnesota River Valley, but may still be affected by the Brookings-Hampton transmission line. We have reviewed past and present citizen-scientist data, had meetings with the Minnesota Department of Natural Resources (DNR) and the Minnesota Valley

Wildlife Refuge, extensively reviewed our recommendations, and created additional analyses of the two sites. We have also reviewed public comment letters and the transcripts from the public hearings on this matter; which in large measure reiterate the new information provided directly to our office.

We would like to briefly comment on the next steps involved in route selection and Eagle Act permitting for this project. You will likely need an eagle take permit no matter which crossing site is selected, since the data now available suggests significant eagle use near both sites. Until such time as the Public Utilities Commission (PUC) makes a **final** route selection, an eagle take permit would be available only for the least impacting site; the winter survey discussed below would inform this determination, and might be particularly valuable if completed before the PUC's final route decision. However, we understand that the PUC route permitting process must continue. Unlike the scenario facing us in June, where both crossing sites were still available, PUC may soon be required to select a specific route based upon the many public policy concerns under its jurisdiction. **When PUC selects a route for permitting, we will work with you to develop and process a permit application for whichever route is selected.** In the meantime, however, we will work with you to gather biological information to give us as stronger understanding of eagle use along the Minnesota River. Conducting surveys at both potential sites will help us determine how eagle use of the river valley changes seasonally and how the existence of the new line will affect the local eagle population. Additionally, this information will shape our development of permit conditions and mitigation measures no matter which site is selected. By having a complete picture of the entire river valley (rather than a single site), we will be able to accurately recommend off-site compensatory mitigation measures, if necessary.

As the Service, Great River Energy (GRE), Xcel Energy, and the Office of Energy Security (OES) discussed during our phone conversation of October 14, the Service would like for GRE to perform a study to determine the potential impacts of the route crossing locations on bald eagles. This study should include field surveys in the Minnesota River Valley and Silver Lake area, and at a minimum, examine historic aerial photos and climatology data to determine potential eagle concentrations in past years. We will work collaboratively and expeditiously with the Minnesota DNR, Great River Energy and Xcel Energy to develop a study protocol to procure the necessary data. This proposed study would be conducted this winter. Field surveys should begin in November 2010 (before freeze-up) and ending in spring 2011 (after thaw). Locations for field surveys can come in part from locations identified during the remand hearing process. This study will assist in meeting the requirements of the Bald and Golden Eagle Act permit process, should a permit be requested. In order for an applicant to qualify for a eagle take permit, the potential impacts of the activity need to be identified (Implementation Guidance for Eagle Take Permits Under 50 CFR 22.26 and 50 CFR 22.27). This includes collection and synthesis of biological data, identifying activities that are likely to result in take, avoidance and minimization measures, and quantifying the anticipated take. The Implementation Guidance also states, "the applicant is responsible for providing up-to-date biological information about eagles that breed, feed, shelter, and/or migrate in the vicinity of the [proposed] activity" (p.12). This proposed

study is not intended to interfere with the PUC decision making process, but rather to inform the Service's permit development process no matter which route is selected.

In closing, our sincere hope moving forward is to accomplish our own work in a way that complements rather than hinders other processes. We are working hard to make our new eagle permitting program work for both our citizens and the bald eagle. We sincerely appreciate your willingness to work with us on this endeavor.

Sincerely,

A handwritten signature in black ink that reads "Tony Sullins". The signature is written in a cursive, slightly slanted style.

Tony Sullins
Field Supervisor

Cc: Judge Richard Luis, Minnesota PUC
Charles Blair, MN Valley National Wildlife Refuge
Scott Ek, Office of Energy Security
Deborah Pile, Office of Energy Security