

MPUC Docket No. ET-2, E-002/TL-09-1056
OAH Docket No. 15-2500-20995-2

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

**In the matter of the Application for a Route
Permit for the Fargo to St. Cloud 345 kV
Transmission Line Project**

**INTERVENOR SAINT JOHN'S
ABBAY/UNIVERSITY'S POST-
HEARING BRIEF**

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I. INTRODUCTION

Saint John's Abbey/University ("Saint John's") respectfully submits this Post-Hearing Brief to the Administrative Law Judge for the Fargo-St. Cloud 345 kV transmission line project. Saint John's has confined its testimony and submissions to the Sauk Centre to Saint Cloud portion of the Project. Saint John's takes no position regarding the placement of the transmission lines west of Sauk Centre.

This submission details Saint John's position and its recommendation for the route selection. Saint John's respectfully requests the ALJ refrain from selecting Routes C and D, and conclude that Route G with Option 11 best meets the criteria in Minnesota Statute § 216E.03, subd. 7 and Minnesota Rule 7850.4100. If however, the ALJ finds Route G with Option 11 unacceptable, in the alternative, Saint John's requests the ALJ select Route E with Option 11 (the Applicants' alternative route selection).

This brief is organized into three sections: The first outlines the reasons why Routes C and D should not be selected. The second section details why the Modified Preferred Route is not the best selection under the routing criteria and why Route G with Option 11 is the best selection. The third and final section discusses why, in the alternative, Saint John's supports the selection of Route E with Option 11.

II. PROCEDURAL BACKGROUND

Saint John's incorporates by reference the Procedural Background in Applicants' Post-Hearing Brief at page 2.

III. SELECTED ROUTE SUMMARIES

A. Descriptions of Routes Relevant to Saint John's Position

1. Modified Preferred Route

Saint John's incorporates by reference Applicants' description of the Modified Preferred Route in Applicants' Post-Hearing Brief at page 4.

2. Routes C and D

Routes C and D were originally proposed by the Advisory Task Force. Route C follows Route D until the routes are just southwest of Saint Joseph. At this point Route C follows Interstate 94 for approximately 4 miles and Route D follows a path just north of Interstate 94. Routes C and D join again for a brief distance as Route D proceeds south to return to Interstate 94 and Route C proceeds north to join the Modified Preferred Route.

3. Route E

The Applicants originally proposed Route E as an alternative route segment to the Modified Preferred Route.¹ This segment was then re-labeled as Route E when the Advisory Task Force identified six new alternate route segments between Sauk Centre and St. Cloud.² Route E largely proceeds west out of the Quarry Substation, until it begins to turn north just west of Collegeville Township. Route E then proceeds north until it turns west near Albany, then proceeds into Oak Township, then turns north to join the Modified Preferred Route near Freeport.³

¹ Ex. 18 at p. 13 (EIS Scoping Decision).

² Ex. 18 at pp. 12-14 (EIS Scoping Decision).

³ Ex. 2 at Schedule 2D (Lahr Direct).

4. Route G

The Advisory Task Force originally proposed Route G. Route G follows Route E until just west of Collegeville Township where Route G breaks away from Route E's northern course and proceeds west until it is directly south of Freeport. Once south of Freeport, Route G proceeds north until reconnecting with Route E and continuing north to join the Modified Preferred Route west of Freeport.

5. Option 11

The Advisory Task Force proposed Option 11 and it is approximately 3 miles long just west of the Quarry Substation. Option 11 was suggested to avoid homes along Routes E, G, and H.⁴

B. Saint John's Supported Routes

As noted by Applicants, Saint John's initially supported the selection of Route A as a feasible alternative to Routes C and D. However, in light of the additional research and information which has been brought to Saint John's attention through the administrative process, Saint John's currently supports the selection of Route G with Option 11 as the best selection for the route from Sauk Centre to Saint Cloud. Upon review of the information, Saint John's also finds that in the alternative, Route E with Option 11 would also be an acceptable route.

⁴ Ex. 18 at p. 13 (EIS Scoping Decision).

IV. APPLICATION OF RELEVANT CRITERIA

A. The Statutes and Rules

The relevant criteria under Minnesota Rule 7850.4100, which mirror the criteria and factors established by Minn. Stat. § 216E.03, subd. 7, are as follows:

- A. effects on human settlement, including, but not limited to, displacement, noise, aesthetics, cultural values, recreation, and public services;
- B. effects on public health and safety;
- C. effects on land-based economies, including, but not limited to, agriculture, forestry, tourism, and mining;
- D. effects on archaeological and historic resources;
- E. effects on the natural environment, including effects on air and water quality resources and flora and fauna;
- F. effects on rare and unique natural resources;
- G. application of design options that maximize energy efficiencies, mitigate adverse environmental effects, and could accommodate expansion of transmission or generating capacity;
- H. use or paralleling of existing rights-of-way, survey lines, natural division lines, and agricultural field boundaries;
- I. use of existing large electric power generating plant sites;⁵
- J. use of existing transportation, pipeline, and electrical transmission systems or rights-of-way;
- K. electrical system reliability;
- L. costs of constructing, operating, and maintaining the facility which are dependent on design and route;
- M. adverse human and natural environmental effects which cannot be avoided; and
- N. irreversible and irretrievable commitments of resources.

⁵ Criterion not applicable to the present Project.

Application of the relevant routing factors to the record evidence in this matter demonstrates that Route G with Option 11 and Route E with Option 11 best meet the criteria provided in Rule 7850.4100. However, the record evidence suggests Route G with Option 11 is the superior selection. The record evidence also demonstrates the Modified Preferred Route, Route C, and Route D should not be selected.

B. Application of Relevant Route Criteria to Routes C and D

While there are many criteria to consider, Saint John's would like to discuss some of the most notable factors which demonstrate why Routes C and D are not suitable route selections for the Sauk Centre to St. Cloud portion of the Project.

Effects on Human Settlement

Of all the routes, Routes C and D have the highest number of residential structures within 75 feet of the alignment.⁶ Route D has the highest number of non-residential structures within 150 feet of the alignment.⁷

Saint John's land along Interstate 94 is known for its scenic landscape. The Minnesota Department of Natural Resources (DNR) has also designated the land as the Collegeville Game Refuge since 1933. As described by Saint John's witness, Thomas Kroll, Saint John's land is "one of the few spots along the interstate where you actually have a wooded—large wooded median that preserves that sense of beauty."⁸ Although not an official scenic byway, the Final EIS does recognize Saint John's land for its "scenic quality" and discusses how, in 1976, the State agreed to build a 69 KV line off of

⁶ Ex. 30 at Schedule 8 at p. 9 (Lahr Rebuttal).

⁷ Ex. 30 at Schedule 8 at p. 9 (Lahr Rebuttal).

⁸ Vol. 3 at p. 75 (Kroll).

Interstate 94 in order to “improve the aesthetics’ for the travelling public on Interstate 94.”⁹

In addition to impacting residences and the aesthetics of the area, Routes C and D would also impact recreation on Saint John’s land. According to the Final EIS, Route C would impact recreation in the area where it bisects the Collegeville Game Refuge located on Saint John’s land. The Final EIS also recognizes the thousands of visitors who frequent Saint John’s land annually for hiking and skiing on the Arboretum’s trails.¹⁰

Like Route C, Route D would also have an impact on recreation by paralleling the Wobegon trail and running adjacent to the Collegeville Game Refuge.¹¹ As succinctly explained in the Final EIS:

Only Routes C and D have the potential to impact the state game refuge. While the Route C ROW would include the greatest acreage of the refuge, the Route D ROW would contain approximately 6 acres, and these impacts would be reduced to less than 3 acres if the undergrounding option was implemented.¹²

Given the thousands of visitors who frequent Saint John’s Arboretum annually, there is certain to be an adverse effect on the aesthetics of the Arboretum if the transmission lines were to be placed along Routes C or D.

The Rules specifically require the Commission to consider the cultural values of the area. As described by Saint John’s witnesses Thomas Kroll and Kim Chapman, Saint John’s has demonstrated a commitment to conservation. Saint John’s land was voluntarily included in the Stearns County Conservation Overlay District, which

⁹ Final Environmental Impact Statement (“FEIS”) at p. 3-42.

¹⁰ FEIS at p. 3-40.

¹¹ FEIS at p. 3-41.

¹² FEIS at p. 3-60.

provides a very high level of permanent protection from development.¹³ Saint John's, along with Avon and Collegeville townships, have also been active in the Avon Hills Initiative, an organization committed to preserving the rural and natural character of the area, despite intense pressure to develop and urbanize.¹⁴ Given Saint John's commitment to maintaining the natural beauty of the area, Routes C and D should not be selected because they would directly disrupt Saint John's efforts.

Effects on Land-Based Economies

Saint John's maintains 2,740 acres under its written forest management plan. Saint John's has had a written forest management plan since 1949.¹⁵ Since 2002, the Forest Stewardship Council has certified Saint John's as a "well-managed" area and gave the forests at Saint John's Arboretum "green certification."¹⁶ The Final EIS recognizes that "Routes C or D could impact the forest management plan of St. John's University."¹⁷

As demonstrated by Schedule 3 to the Direct Testimony of Michael Robbins, a significant number of trees would be permanently lost if Route C were selected.¹⁸ This was confirmed by Applicants at the evidentiary hearing when Applicants' witness, Darrin Lahr, described the difficulties of placing the Route east of Avon:

[...][I]f you go further east from the Avon bottleneck, say starting at the exit where St. John's is, that's where the service road's proper starts up. But heading back east there's significant tree clearing that would have to be done as you go through there [Saint John's land] on the interstate.¹⁹

¹³ Ex. 6 at p. 9 and Schedule 4 (Kroll Direct).

¹⁴ Ex. 6 at p. 7.

¹⁵ FEIS at p. 3-44.

¹⁶ Ex. 6 at p. 13 (Kroll Direct).

¹⁷ FEIS at p. 3-45.

¹⁸ Ex. 9 (Robbins Direct).

¹⁹ Vol. 6 at p. 52 (Lahr).

The trees cleared for Route C would include the historical “pine curtain” (a large area of pine trees planted about 75 years ago) described by Saint John’s witness, Thomas Kroll.²⁰

In addition to forestry, Saint John’s also relies on the rural character of the land to attract students to the University. As explained by Saint John’s witness, Jon McGee, the natural setting of the campus is one of Saint John’s most distinctive characteristics and is a major factor in students’ decision to attend Saint John’s University.²¹ As noted in Saint John’s Petition to Intervene, Saint John’s employs over 700 individuals.²² Saint John’s witness, Thomas Kroll, further explained that 140 monks care for the land, about 1,800 students attend the school, and [1,660]** benefit eligible employees work at Saint John’s.²³

When combining the numbers of college students, their visiting parents and friends, the number of employees necessarily on Saint John’s grounds on a daily basis to serve these people, the number of monks who live and work there, the number of visitors to the monastic community, as well as the number of business visitors to the University community, plus the number of tourists, there is no question thousands would be impacted by the construction of a transmission line in the area. Where else along any of the proposed routes which have been under consideration does there involve such an adverse impact on as many people as placement in the vicinity of Saint John’s?

²⁰ Vol. 3 at p. 77 (Kroll).

²¹ Ex.8 at p. 4 (McGee Direct).

²² Saint John’s Abbey/University’s Petition to Intervene.

²³ Vol. 3 at p. 100 (Kroll) **It is unclear whether this number was mistakenly overstated or whether the Court Reporter recorded the incorrect number, but the true employment number is closest to that stated in Saint John’s Petition to Intervene.

In consideration of Saint John's forestry program, Arboretum operation, and University recruiting program and all the jobs and people that are associated with those programs, it is imperative that Routes C and D are not selected.

Effects on Archaeological and Historic Resources

Saint John's University campus is host to seventeen buildings on the National Register of Historic Places.²⁴ Among the buildings on the National Register of Historic Places is the Abbey Church, designed by world famous architect Marcel Breuer.²⁵ As explained by Thomas Fisher, Dean of the College of Design at the University of Minnesota, "the Abbey Church at St. John's has a bell tower banner that stands at the edge of the hill, rising above the trees to be visible from the highway exit and to beckon those who have traveled to see what many consider to be the most important modern church in North America."²⁶ As noted in the Final EIS, these buildings are only "1.2 miles from Route C and therefore any placement of the transmission line [on Route C] would likely be visible from campus."²⁷

Effects on the Natural Environment, Including Flora and Fauna

As the operator of an Arboretum, it is no surprise that Saint John's is host to numerous species which should be given special attention. Both the Minnesota DNR and the Minnesota Audubon Society have identified the Avon Hills area as an "Important Bird Area" which includes all of Saint John's land.²⁸ Saint John's witness, Dr. Marco Restani, provided a detailed account of the importance of Saw-whet owls and

²⁴ Ex. 6 at p. 8 (Kroll Direct).

²⁵ Ex. 6 at p. 8 (Kroll Direct).

²⁶ Thomas Fisher November 26, 2010 Letter to ALJ Heydinger, Public Comment eDocket No. 201012-57310-02 (eFiled Dec. 9, 2010).

²⁷ FEIS at p. 3-44.

²⁸ FEIS at p. 3-48.

Red-shouldered hawks that can be found nesting on Saint John's land.²⁹ Importantly, two Red-shouldered hawks nests are located just a short distance from Interstate 94, an area certain to be disturbed by the placement of transmission lines along Routes C or D.³⁰ According to Dr. Restani, Routes C and D would have the most impact to Red-shouldered hawks and Saw-whet owls.³¹

Effects on Rare and Unique Natural Resources

As explained by Saint John's witness, Thomas Kroll, Saint John's land is host to a number of rare and unique natural resources. Two-hundred forty species of bird have been observed at Saint John's.³² Most notably, Red-shouldered hawks and Cerulean Warblers have been observed on Saint John's land.³³ Both the Red-shouldered hawk and Cerulean Warbler are listed by the Minnesota DNR as species of "Special Concern."³⁴ According to the Final EIS, both Routes C and D include portions of the Avon Hills Important Bird Area.³⁵ Again, the placement of transmission lines along either Route C or D is certain to disturb these very important species.

According to the Minnesota DNR's County Biological Survey, most of Saint John's land is considered to be a site of outstanding biodiversity significance, the highest possible ranking available from the DNR.³⁶ The placement of a transmission line along Route C is certain to disturb the many rare and unique natural resources found on Saint John's land.

²⁹ Ex. 7 at pp. 4-7 (Restani Direct).

³⁰ Ex. 7 at p. 4 and Schedule 2 (Restani Direct).

³¹ Vol. 4 at p. 59-60 (Restani).

³² Ex. 6 at p. 12 (Kroll Direct).

³³ Ex. 6 at p. 12 (Kroll Direct).

³⁴ Ex. 6 at p. 12 (Kroll Direct).

³⁵ FEIS at p. 3-52.

³⁶ Ex. 6 at p. 14 (Kroll Direct).

Mitigation of Adverse Effects

Routes C and D present a variety of problems not only in their adverse effects to the environment and the aesthetic qualities of the area, but also in the actual construction and maintenance of the lines. MnDOT conceded at the evidentiary hearing that Route D through the City of Avon is a “very challenging area.”³⁷ MnDOT also recognized that as Route C passes through Saint John’s land, it faces engineering difficulties at the intersection of Interstate 94 and Highway 75.³⁸ Despite the potential for undergrounding to reduce the impacts to the area, the Applicants have indicated that they “do not support underground design for any segment of the Project because of reliability concerns, environmental impacts, and costs.”³⁹ Given the Applicants’ position on undergrounding, any chance to mitigate some of the impacts through undergrounding has been eliminated and Routes C and D become impractical and unfit for selection.

C. Application of Relevant Route Criteria to the Modified Preferred Route

Applicants have indicated in their Post-Hearing Brief a preference for the Modified Preferred Route, but have also indicated Route E with Option 11 is an alternative route. Saint John’s is unable to support the selection of the Modified Preferred Route given the clear superiority of Routes E and G when Option 11 is utilized.

³⁷ Vol. 4 at p. 77 (Seykora).

³⁸ Vol. 4 at p. 80 (Seykora).

³⁹ Applicants’ Post-Hearing Brief at p. 32.

Modified Preferred Route Not Supportable Considering Routes E & G

In comparison to the Modified Preferred Route, Routes E and G would impact considerably less wooded lands. Applicants' Modified Preferred Route would impact 71 acres of wooded lands, whereas Routes E and G would impact only 40 and 35 acres, respectively.⁴⁰ In addition, the Modified Preferred Route parallels existing ROWs 61%, while Routes E and G parallel existing ROWs for 73 and 75% of the route, respectively.⁴¹ Routes E and G also impact considerably less acres of agricultural land within their ROWs than the Modified Preferred Route.⁴² Finally, the Modified Preferred Route impacts considerably more acres of MCBS sites of biodiversity significance within its ROW than Routes E and G.⁴³ As noted by The Nature Conservancy, "the northern routes (Preferred, Routes A, B, C, D) in the Avon Hills conservation area appear to have a greater impact to sites of biodiversity significance as delineated by the DNR's Minnesota County Biological Survey than the southern routes (E, F, G, H) and the Option 11 alternative."⁴⁴

Considering these differences, it is obvious that Routes E and G are superior to the Modified Preferred Route. Either Route E or G should be selected rather than the Modified Preferred Route given the Modified Preferred Route's higher impact on wooded lands, agricultural land, and sites of biodiversity significance, and the fact that Routes E and G follow a greater percentage of existing ROWs.

⁴⁰ Ex. 30 at Schedule 8 at p. 8 (Lahr Rebuttal).

⁴¹ Ex. 30 at Schedule 8 at p. 8 (Lahr Rebuttal).

⁴² Ex. 30 at Schedule 8 at p. 8 (Lahr Rebuttal) (Modified Preferred Route impacts 813 acres of agricultural land, whereas, Route E impacts 763 acres and Route G impacts 776 acres).

⁴³ Ex. 30 at Schedule 8 at p. 9 (Lahr Rebuttal).

⁴⁴ The Nature Conservancy December 1, 2010 Letter to ALJ Heydinger, Public comment, eDocket No. 201012-57785-01 (eFiled Dec. 22, 2010).

D. Application of the Relevant Route Criteria to Routes E and G

Considering the Modified Preferred Route does not best meet the criteria found in Minnesota Rules and Statute, another route must be considered. Admittedly, when Routes E and G are compared, there are many similarities between the two routes. Both Routes E and G have zero (0) residences within 0 to 75 feet of the alignment.⁴⁵ As noted by the Applicants and St. John's witness, Kim Chapman, both Routes E and G avoid the Stearns County Conservation Area and the Overlay District voluntarily adopted by Saint John's, as well as Avon and Collegetown Townships, when Option 11 is incorporated.⁴⁶ Option 11 is important because it serves to avoid environmentally important areas. As noted in the Final EIS, while Option 11 does include a portion of the Avon Hills Important Bird Area, "Option 11 does not impact any other sensitive resources [...], whereas the alternate Route E impacts two Minnesota County Biological Survey (MCBS) Sites of Biodiversity Significance and four Native Plant Communities in the same location."⁴⁷

Despite their similarities, Route G with Option 11 is a better selection than Route E with Option 11 when the two are compared considering all of the factors provided in Minnesota Statutes and Rules. Saint John's understands that Route G with Option 11 is also supported by the other intervenors in this proceeding, Avon Township and NoRCA.

Notably, Route G with Option 11 is also supported by the Minnesota DNR as the best possible route selection.⁴⁸ The Minnesota DNR concluded Route G with Option 11 best serves to "avoid effects to habitat and wildlife associated with MCBS [Minnesota

⁴⁵ FEIS at p. 3-34.

⁴⁶ Applicants' Post-Hearing Brief at p. 31 & Ex. 38 at Schedule 7 (St. John's Chapman Rebuttal).

⁴⁷ FEIS at p. 3-53.

⁴⁸ Minnesota Department of Natural Resources January 5, 2011 Letter to ALJ Heydinger, Public Comment, eDocket Document No. 20111-58417-01 (eFiled Jan. 11, 2011).

County Biological Survey] sites of biodiversity significance and public waters.”⁴⁹ For these same reasons, Saint John’s urges the ALJ to select Route G with Option 11.

Route G with Option 11 would impact 13 fewer acres of wetlands within its ROW than Route E with Option 11.⁵⁰ Similarly, Route G would impact 5 less acres of wooded lands within its ROW than Route E.⁵¹

Finally, and significantly, Route G parallels a greater percentage of existing ROWs.⁵² Route G is aligned with higher-traveled county roads and highways, whereas Route E aligns with infrequently traveled country roads and streets.⁵³ Route G entirely follows county roads and highways, whereas Route E travels along several streets and roads where traffic data is not even available.⁵⁴ In addition to the less traveled roads Route E follows, Route E also encounters areas where it must weave around a number of lakes.⁵⁵ Sheet 84 to Appendix C of the Final EIS shows just one portion of Route E which presents considerable difficulty and dangers in navigating around the lakes of Fifth, Sand, Mud, Henry, Jopp and Koop.⁵⁶

Considering all of the potential impacts of Routes E and G with Option 11, Route G with Option 11 is the best selection for avoiding impacts to wetland areas and wooded lands.

⁴⁹ Minnesota Department of Natural Resources January 5, 2011 Letter to ALJ Heydinger, Public Comment, eDocket Document No. 20111-58417-01 (eFiled Jan. 11, 2011).

⁵⁰ Ex. 30 at Schedule 8 at p. 7 (Lahr Rebuttal) (Route E impacts 97 acres of NWI Wetlands and Route G impacts 84 acres of NWI Wetlands).

⁵¹ Ex. 30 at Schedule 8 at p. 8 (Lahr Rebuttal) (Route E impacts 40 acres of Wooded Lands and Route G impacts 35 acres).

⁵² Ex. 30 at Schedule 8 at p. 8 (Lahr Rebuttal).

⁵³ Draft Environmental Impact Statement (“DEIS”) at p. 7-55 & p. 7-57.

⁵⁴ DEIS at p. 7-55 & p. 7-57.

⁵⁵ FEIS at Appendix C at Sheet 84.

⁵⁶ FEIS at Appendix C at Sheet 84.

V. CONCLUSION

As requested by the ALJ at the close of the evidentiary hearing, Saint John's will not present proposed Findings of Fact, Conclusions of Law and Recommendation to the ALJ. Applicants have submitted Findings of Fact, Conclusions of Law and Recommendation to the ALJ. Saint John's agrees with all of Applicants' proposed Findings of Fact ¶¶ 1-214 with the exception of ¶ 165. Saint John's urges the ALJ to instead replace ¶ 165 of Applicants' proposed Findings with the following language: "On balance, Route G with Option 11 for the Sauk Centre to St. Cloud segment best satisfies the state routing criteria."

In addition, Saint John's requests the ALJ replace Applicants' Proposed Conclusions ¶¶ 7-9 with the following Conclusions:

7. The evidence on the record demonstrates that Route G with Option 11 satisfies the route permit criteria set forth in Minnesota Statutes Section 216E.03, subdivision 7(a) and Minnesota Rule 7850.4100 based on the factors in Minnesota Statutes Section 216E.03, subdivision 7(b) and Minnesota Rule 7850.4000.

8. The evidence on the record demonstrates that Route G with Option 11 does not present a potential for significant adverse environmental effects pursuant to the Minnesota Environmental Rights Act, Minnesota Statutes Sections 116B.01-116B.13, and Minnesota Environmental Policy Act, Minnesota Statutes Sections 116D.01-116D.11.

9. The evidence on the record demonstrates that Route G with Option 11 is the best alternative for the Project.

As explained before, Saint John's conclusions are limited to the Sauk Centre to Saint Cloud portion of the Project and Saint John's does not offer any opinions as to the other segments of the Project west of Sauk Centre.

The evidence on record demonstrates that Routes C and D are not the best selection under the routing criteria and should not be selected. In addition, the record evidence proves the Modified Preferred Route will have a greater negative impact under the criteria when compared to the better alternatives of Routes E and G, both with Option 11. Further comparison of Routes E and G, each with Option 11, shows Route G with Option 11 is the best alternative to the Project.

For these reasons, Saint John's respectfully requests the ALJ recommend approval of Route G with Option 11 for the Sauk Centre to Saint Cloud portion of the Project. In the alternative, Saint John's respectfully requests the ALJ recommend approval of Route E with Option 11 for the Sauk Centre to Saint Cloud portion of the Project.

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