



March 30, 2011

Mr. Dan Sage
Gas and Energy Division
Public Service Commission
PO Box 7854
Madison, WI 53707-7854

SUBJECT: 5-CE-136

Dear Mr. Sage:

This letter is in response to the Public Service Commission (PSC) staff request for the Department of Natural Resources (DNR) to provide a written opinion regarding the permissibility of certain segments of the proposed CAPX2020 345 kV transmission line project, specifically due to potential resource impacts to the Van Loon wetland complex, also known as the Black River Bottoms. The PSC docket for this project is 5-CE-136.

While a final decision on any permit for this project is not appropriate at this time, we can reiterate our position to the PSC related to the segments that are proposed to cross the Van Loon /Black River Bottoms Area.

On several occasions since the spring of 2009, and throughout the pre-application process, the DNR has expressed natural resource concerns to Xcel representatives related to construction of new 345 kV transmission line segments through the Van Loon wetlands (also known as the Black River Bottoms) including lands within and adjacent to the Van Loon State Wildlife Area. On more than one occasion, the DNR has indicated that placing a new transmission line through this important natural resource area would not meet the permitting criteria contained in NR 103, Wis. Adm. Code related to practical alternatives that avoid these impacts. While the CAPX 2020 project is a major transmission line project with potential environmental impacts across the study area, DNR concerns during the pre-application review phase have primarily focused on the Van Loon area and more specifically on Segment 8b-- a 3+ mile segment of one of the project route alternatives.

This is not new information. DNR has shared similar concerns with the applicant on the following dates:

- March 20, 2009 -- During a meeting with Xcel, DNR expressed several environmental concerns regarding 345kV corridors within the Van Loon /Black River Bottoms Area.
- May 29, 2009-- DNR sent Xcel a letter (attached) summarizing the March 2009 meeting. The letter provided a detailed description of the high natural resource value of the Van Loon/Black River Bottoms and recommendations to avoid the Van Loon State Wildlife Area. DNR indicated that wetland permitting for construction through the Van Loon complex and the state wildlife area would be "very difficult, at a minimum", and "impact to the resource would be cumulative and significant in nature".
- March 19, 2010-- In an e-mail to Xcel Project Manager, Tom Hillstrom, DNR stated: "The Department has determined that segments of the Q1 route crossing the Van Loon Area will

have significant adverse impacts to the environment and will not be permitted. Your application should not include the crossing of Van Loon, but rather focus on other routing options that avoid Van Loon entirely.”

- August 10, 2010-- At a meeting with Xcel and U.S. Fish and Wildlife Service (USFWS), DNR indicated that wetland permitting would not be approved for any 345 kV route segments through the Van Loon/Black River Bottoms area.

Using information gathered during the agency-applicant pre-application process, Xcel finalized its DNR application materials as part of the Certificate for Public Convenience and Necessity application that was filed in January 2011. Based on our initial review of the application materials, it appears that there are at least two practicable alternatives that avoid significant adverse impacts to the Van Loon wetland complex. Additionally, the DNR believes that the construction and maintenance of a new 345kv transmission line through Van Loon wetlands would result in cumulative and significant adverse impacts. Therefore, the DNR would not be able to issue wetland permits for a route that includes “Segment 8b”, nor for any segment of 345kV line that follows the existing Q1 line through the Black River Bottoms area.

Related to, but also separate from, the wetland permitting, is consideration for an incidental take permit for threatened and endangered species under Wis. Stats. §29.604. The Van Loon wetland complex contains a rich biodiversity with many rare plant and animal species, including the eastern massasauga rattlesnake, Blanding’s and wood turtles, Henslow’s sparrow, cerulean warbler, great egret, and red-shouldered hawk. The eastern massasauga rattlesnake is listed as state endangered and a candidate for federal listing. An incidental take permit would be required for the Q-1 Highway 35 route. Per Wis. Stats. §29.604, projects granted an incidental take permit must minimize and mitigate take and must not appreciably reduce the likelihood of the survival or recovery of the species within the state, the whole plant animal community of which it is a part or the habitat that is critical to its existence. Take of a single individual, especially a gravid female, may have a significant impact on the long term viability of the population of the species at this site. Based on the information we have received to date, there are at least two practicable alternatives (the Q1-Galesville Route and the Arcadia route) that avoid the Black River Bottoms and therefore avoid take of the species.

I hope this letter clarifies our position. If you have any questions, or would like to discuss this further, please contact me at 608-264-6048.

Sincerely,



David Siebert
Director, Office of Energy and Environmental Analysis

Attachment (05/29/2009 letter)

cc:
Tom Hillstrom, Xcel Energy
Craig Thompson- WCR Land Leader



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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May 29, 2009

Tom Hillstrom
Xcel Energy, CAPX2020
414 Nicollet Mall, MP-8A
Minneapolis, MN 55401

Dear Mr. Hillstrom:

The purpose of this letter is to document the Department's environmental concerns that were discussed during the March 20, 2009 meeting. Specifically, this letter will describe natural resources and related uses in the Van Loon Wildlife Area (WA) that may be affected by three alternative routes being considered for the Cap-X 2020 345kv utility line. The Van Loon WA is located in the northwest corner of La Crosse County around 3 and 1/2 miles northwest of the Village of Holmen. Department comments apply to all three alternative routes being considered: 1) widening of the existing 69kV transmission line immediately paralleling Seven Bridges Road (also known as McGilvray Bridges); 2) a new crossing parallel to STH 35; and 3) widening of the existing Q-1 transmission line route in southern portion of Van Loon WA.

Outstanding Natural Resource and Public Interest Values

- Van Loon WA was established in 1957 and now totals 3981 acres. The management goal for the WA is to protect over six miles of the Black River and its side channels, sloughs, backwaters and associated (floodplain) bottomland hardwood wetland complex.
- Van Loon WA contains the third largest block of undisturbed floodplain forest habitat in Wisconsin.
- Two areas within the property have been designated as state natural areas (SNA): the Van Loon Floodplain Forest SNA, which is 317 acres, located on two separate parcels approximately ¼ mile to the north and south of STH 35; and the Van Loon Savanna SNA, which is 1574 acres and includes most of the property located north of Seven Bridges Road.
- The Van Loon WA supports a diverse assemblage of wildlife and warmwater fish species.
- The Van Loon WA has been recently designated as a "Continentially Significant" Large River Corridor within the federally approved Wildlife Action Plan.
- WA is home to important historical resources, including the Seven Bridges Road (National Register of Historical Places) and one known Native American burial mound group. The northernmost alternative route through the WA would be visible from the Seven Bridges Road.
- The Van Loon WA and the Seven (McGilvray) Bridges Road are part of the Great Wisconsin Birding and Nature Trail, which showcases exceptional sites throughout the state.

- The Van Loon WA supports significant year-round and seasonal recreation use for hiking, hunting, trapping, fishing, wilderness camping, canoeing, birdwatching and others.
- An active Friends Group greatly supports DNR management of the WA.
- Local schools and bird clubs use it extensively for environmental education, scientific and recreation purposes.

Waterway and Wetland Permitting Concerns

- Construction through the Black River floodplain may be extremely difficult due to back water sloughs, soft shifting sand bottoms, year round spring/seeps, vegetation removal, compaction, changes in hydrology, and flooding.
- Construction of a new 345 kV utility line through the Van Loon WA would likely result in significant adverse impacts to the function and values of these wetlands.

Threatened and Endangered Resources

- The Natural Heritage Inventory database lists the following occurrences of species that are state or federally listed as threatened, endangered or special concern within approximately two miles of the WA: nine nesting birds, eight natural communities, 17 fish, 14 plants, two snakes, two turtles, three mussels, four dragonflies and three mayflies. Some of these species are associated with the Mississippi River, which is located less than one mile downstream.
- This includes the Bell's vireo (THR), cerulean warbler (THR), red-shouldered hawk (THR), Blanding's turtle (THR), wood turtle (THR), and eastern Massassauga rattlesnake (END and federal candidate). Many other rare and common bird species use the WA as a migratory stopover site in conjunction with the Mississippi Flyway.
- The Van Loon WA is part of the Van Loon Bottoms Important Bird Area (IBA), which is a science-based designation of the Wisconsin Bird Conservation Initiative for a site that provides essential habitat to one or more species of breeding or non-breeding birds.
- In addition to the SC, T and E species this corridor contains a large number of "Species of Greatest Conservation Need" (SGCN's). To read about and see the list of SGCN's for the Western Coulee and Ridges Ecological Landscape see the attached document. For more information on the Wildlife Action Plan go to <http://dnr.wi.gov/org/land/er/wwap/>.
- In the event that any alternative routes through the Van Loon WA and adjacent areas are pursued for the Cap-X 2020 project, Xcel should consult with the Department to ensure that the route can comply with the incidental take provisions of Wisconsin's Endangered Species Law (Wis. Stat. §29.604).

Recommendations

The Department highly recommends that Xcel identify and investigate transmission line routing options that wholly avoid a new crossing of the Van Loon Wildlife Area or widening of the two existing crossings. New alternatives should also include relocation of the existing Q-1 161 kV transmission line and/or the existing 69kV transmission line which runs parallel to Seven Bridges Road. Waterway and wetland permitting for the

crossing associated with Van Loon WA would be very difficult, at a minimum. Impacts to this resource would be cumulative and significant in nature, with the possibility of being un-permittable.

If you have any questions, comments, or would like to further discuss this letter, please contact either Shari Koslowsky or my self.

Regards,

Cheryl Laatsch
Water Management Specialist
608-264-8943

Shari Koslowsky
Conservation Biologist
608-261-4382

Cc: Bill Fannucchi, PSC
Ken Rineer, PSC
David Studenski, ACOE La Crescent MN Office
Chuck Thompson, Dairyland Power
Linda Talbot, DNR-Office of Energy
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