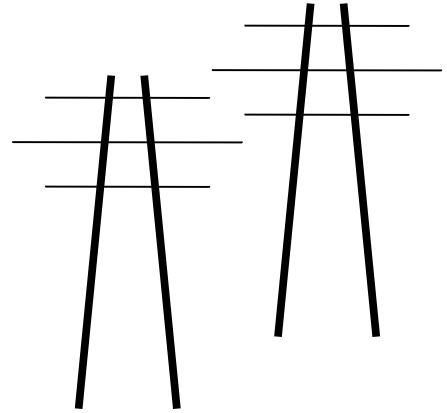


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May 10, 2011

Burl Haar, Executive Secretary  
Public Utilities Commission  
121 – 7<sup>th</sup> Place E, Suite 350  
St. Paul, MN 55101

RE: NoCapX 2020, U-CAN and North Route Citizens Alliance Exceptions to  
Recommendation of Administrative Law Judge  
CapX 2020 Fargo-St. Cloud transmission route  
OAH Docket No. 15-2500-20995-2  
PUC Docket No. ET-2, E002/TL-09-1056

Dear Dr. Haar:

Enclosed for filing please find NoCapX 2020, United Citizens Action Network and North Route Citizens Alliance's Notice of Appearance and Petition for Intervention.

This letter and Exceptions are being eFiled and/or served via US Mail to all parties of record.

Very truly yours,

Carol A. Overland  
Attorney at Law

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

**CERTIFICATE OF SERVICE**

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

Carol A. Overland certifies that on the 10th day of May, 2011, she filed a true and correct copy of NoCapX 2020, United Citizens Action Network, and North Route Citizens Alliance Exceptions to ALJ Report, by filing on [www.edockets.state.mn.us](http://www.edockets.state.mn.us) and served via US Mail and e-mail as designated on the Official Service List on file with the Minnesota Public Utilities Commission.

May 10, 2011



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Heydinger	Beverly	Office of Administrative Hearings	PO Box 64620, St. Paul, MN-551640620	Paper Service	Yes

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**STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION**

**Ellen Anderson  
David C. Boyd  
J. Dennis O'Brien  
Phyllis A. Reha  
Betsy Wergin**

**Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner**

In the Matter of the Route Permit Application  
by Great River Energy and Xcel Energy for a  
345 kV Transmission Line from Fargo, ND  
to St. Cloud, MN

OAH DOCKET NO. 15-2500-20995-2  
PUC DOCKET NO. E002/TL-09-1056

**SUPPORT OF RECOMMENDATION OF ALJ  
AND  
EXCEPTIONS TO RECOMMENDATION OF ALJ**

**NO CAPX 2020, UNITED CITIZENS ACTION NETWORK  
and  
NORTH ROUTE CITIZENS ALLIANCE**

NoCapX 2020, United Citizens Action Network, and North Route Citizens Alliance are intervenors with full party status in this docket. With minimal exceptions, these intervenors support the Recommendation of the Administrative Law Judge for the Sauk Centre to St. Cloud segment utilizing Route G with Option 11 and the E-5 segment of Option 12, and in the alternative, Route E with AS-4 and Option 11, and request that Route G with Option 11 and the E-5 segment of Option 12 in the Recommendation be adopted.

Upon this analysis of the routes, using the statutory and rule-based criteria, and utilizing information from the Application, testimony, and environmental review, NoRCA has found that all routes have an inherently significant impact. We support the Finding that, for the Sauk

Centre to St. Cloud segment, the Modified Preferred Route presents a potential for significant adverse environmental impacts, and we support the selection of Route G with Option 11 and the E-5 segment of Option 12, and in the alternative, Route E with AS-4 and Option 11, because these options have more limited impacts than the Modified Preferred route and other options presented as alternatives for consideration. However, the Findings regarding proliferation must be corrected, using statutory criteria and policy of non-proliferation as set forth in PEER<sup>1</sup>, and not conflating proliferation criteria with other criteria. In addition, the determination of adequacy of the EIS should be made using the statutory language and not the incorrect language in Findings 496 and 497.

#### **I. EXCEPTION TO FINDINGS RELATED TO PROLIFERATION**

The Minnesota Office of Energy Security and the Administrative Law Judge have misconstrued and conflated the criteria regarding non-proliferation, resulting in significant misrepresentation of comparative proliferation of route alternatives.

The legal basis for consideration of proliferation is found in the Minnesota statutes, rules and case law, and is focused on use of existing corridors, and does not include “field lines” or “property boundaries” or “linear features.” MOES included the non-conforming criteria in the DEIS and FEIS in its analysis of proliferation of the various alternatives. This is not correct under the non-proliferation policy of the State of Minnesota, and must be corrected.

The PEER decision set out the Minnesota transmission routing policy of “nonproliferation,” to maximize utilization of existing and proposed railroad and highway rights-of-way. In a clear statement of intent, acknowledging the burden of the impact of establishment of nonproliferation on those near existing corridors, the court held:

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<sup>1</sup> People for Environmental Enlightenment & Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council, 266 N.W.2d, 858, 868 (Minn. 1978).

*We therefore concluded that in order to make the route-selection process comport with Minnesota's commitment to the principle of nonproliferation, the MEQC must, as a matter of law, choose a pre-existing route unless there are extremely strong reasons not to do so. We reach this conclusion partly because the utilization of a pre-existing route minimizes the impact of new intrusion by limiting its effects to those who are already accustomed to living with an existing route. More importantly, however, the establishment of a new route today means that in the future, when the principle of nonproliferation is properly applied residents living along this newly established route may have to suffer the burden of additional powerline easements.*

People for Environmental Enlightenment & Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council, 266 N.W.2d, 858, 868 (Minn. 1978). The court compared proliferation with the MEQC's balance of noncompensable impairment of the environment against the impacts on landowners and compensable damages of the number of homes to be condemned, and noted that:

*Although the hearing examiner, the MEQC, and the district court all accepted both their reasoning and their conclusion, condemnation of a number of homes does not, without more, overcome the law's preference for containment of powerlines as expressed in the policy of nonproliferation. Persons who lose their homes can be fully compensated in damages. The destruction of protective environmental resources, however, is noncompensable and injurious to all present and future residents of Minnesota.*

Id., p. 869. The PEER-based non-proliferation routing policy was recently emphasized by the addition of Minn. Stat. §216E.03, Subd. 7(e) requiring specific findings by the Commission:

The commission must make specific findings that it has considered locating a route for a high-voltage transmission line on an existing high-voltage transmission route and the use of parallel existing highway right-of-way and, to the extent those are not used for the route, the commission must state the reasons.

The criteria for consideration of proliferation by the Administrative Law Judge in the Recommendation, and by MOES in environmental review is clear:

**Minn. Stat. § 216E.03 DESIGNATING SITES AND ROUTES**

**Subd. 7. Considerations in designating sites and routes (selected).**

(8) evaluation of potential routes that would use or parallel existing railroad and highway rights-of-way;

(12) (e) The commission must make specific findings that it has considered locating a route for a high-voltage transmission line on an existing high-voltage transmission route and the use of parallel existing highway right-of-way and, to the extent those are not used for the route, the commission must state the reasons.

This is reinforced in rule:

**7850.4100 FACTORS CONSIDERED** (selected).

In determining whether to issue a permit for a large electric power generating plant or a high voltage transmission line, the commission shall consider the following:

J. use of existing transportation, pipeline, and electrical transmission systems or rights-of-way;

Likewise, property lines, field lines and “linear features” are not a measure of proliferation or non-proliferation. Instead, the statutory criteria regarding property lines and lineal features applies to agricultural land, relating to and in conformity with the state’s policy of preservation and conservation of agricultural land, and not proliferation. Minn. Stat. §17.80.

**Minn. Stat. §216E.03 DESIGNATING SITES AND ROUTES** (selected)

**Subd. 7. Considerations in designating sites and routes**

(9) evaluation of governmental survey lines and other natural division lines of agricultural land so as to minimize interference with agricultural operations...

And this agricultural preservation focus is also reflected in rule:

**7850.4100 FACTORS CONSIDERED** (selected).

In determining whether to issue a permit for a large electric power generating plant or a high voltage transmission line, the commission shall consider the following:

H. use or paralleling of existing rights-of-way, survey lines, natural division lines, and agricultural field boundaries;

These factors are separate and distinct, and should not be conflated in either the ALJ’s

Recommendation or MOES’ environmental review.

Below are the specific numbered Findings and “Track Changes” corrections urged by NoRCA, NoCapX and United Citizens Action Network, conforming with PEER and removing references to linear features:

239. PEER established the weight of proliferation in comparison with impacts on those living along corridors and contemplated that those along corridors would suffer impacts resulting from a policy of non-proliferation. It is likely that homes will be affected by running transmission lines along highway rights-of-way because homes are typically placed close to roads. ~~Thus, it is necessary to balance the desirability of following existing rights-of-way, the number of homes in proximity to the alternatives, the impact on the environment, cost, and the other routing factors to determine which route best meets the routing criteria.~~

241. The Modified Preferred Route parallels less existing right-of-way ~~and linear features~~ than the Preferred Route applicants initially proposed, but the Applicants...

~~473. The Modified Preferred Route Preferred Route and Route G have the most miles, 4.6 and 7.7, respectively, that do not follow any right-of-way or linear feature.~~

475. ~~Option 11 follows more field lines than the comparable section of~~ Route E, ~~which follows more roads~~ than the comparable section of Option 11. The Route B segments of Option 12 follow roads and the E-5 segment follows a rail line.

If these corrections are made, the Recommendation is more consistent with the criteria specified in the routing rules.

## II. THE STANDARD FOR ADEQUACY OF THE ENVIRONMENTAL IMPACT STATEMENT IS INCORRECT IN THE ALJ’S RECOMMENDATION

The Commission is charged with making an adequacy determination regarding the project’s environmental review. NoCapx2020 and United Citizens Action Network urge that the Commission review the Environmental Impact Statement for adequacy using the correct standard, and not that proffered by the ALJ in the Recommendation. The necessity of and basis for the Commission’s adequacy determination is in the siting rules:

**7850.2500 EIS PREPARATION** (selected)  
Subp. 10. Adequacy determination.



The Public Utilities Commission shall determine the adequacy of the final environmental impact statement. The commission shall not decide the adequacy for at least ten days after the availability of the final environmental impact statement is announced in the EQB Monitor. The final environmental impact statement is adequate if it:

A. **addresses the issues and alternatives raised in scoping** to a reasonable extent considering the availability of information and the time limitations for considering the permit application;

B. provides responses to the timely substantive comments received during the draft environmental impact statement review process; and

C. was prepared in compliance with the procedures in parts 7850.1000 to 7850.5600.

If the commission finds that the environmental impact statement is not adequate, the commission shall direct the staff to respond to the deficiencies and resubmit the revised environmental impact statement to the commission as soon as possible.

In the Recommendation, the ALJ misstated the standard by which adequacy of review is determined, using the phrase “issues and alternatives raised in the Scoping Decision” rather than “issues and alternatives raised in scoping” as stated in the rule.

Below are the numbered Findings in the Recommendation with the “Track Changes” exceptions of NoCapX and U-CAN:

### **Adequacy of the FEIS**

496. The Commission is required to determine the adequacy of the FEIS. To be adequate, the FEIS must, among other things, “address the issues and alternatives identified in ~~the Scoping Decision~~” to a reasonable extent considering the availability of information and the time limitations for considering the permit application.”

497. The evidence on the record demonstrates that the FEIS is adequate because it addresses the issues and alternatives raised in ~~the Scoping Decision, as amended~~, provides responses to the substantive comments received during the DEIS review process, and was prepared in compliance with the Minnesota Rules 7850.1000 to 7850.5600.

NoCapX 2020 and U-CAN urge these specific findings regarding environmental review be corrected, noting that the measure of adequacy is whether it “addresses the issues and

alternatives raised in scoping” as required by the rule. We also request that the Commission make its adequacy determination using the language of the rule.

### III. CONCLUSION

NoCapX 2020, United Citizens Action Network, and the North Route Citizens Alliance support the result of the Recommendation of the ALJ, using Route G with Option 11 and the E-5 segment of Option 12, as it has been found to be the route alternative most in compliance with Minnesota routing criteria, and in the alternative, Route E with AS-4 and Option 11, as it has been found to be essentially equivalent to Route G as the route alternative most in compliance with Minnesota routing criteria.

May 10, 2011



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