

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

In the Matter of the Route Permit Application
by Great River Energy and Xcel Energy for a
345 kV Transmission Line from Hampton to
LaCrosse, Wisconsin

OAH DOCKET NO. 3-2500-21181-2
PUC DOCKET NO. ET002/TL-09-1448

**NOCAPX 2020 AND UNITED CITIZENS ACTION NETWORK’S
MOTION FOR INCLUSION OF FINAL ENVIRONMENTAL IMPACT STATEMENT
AND ESTABLISHMENT OF COMMENT DEADLINE ON FEIS
and
MOTION TO INTEGRATE USDA’S RUS EIS INTO RECORD**

NoCapX 2020 (hereinafter “NoCapX”) and United Citizens Action Network (hereinafter “U-CAN”) bring this Motion for Inclusion of Final Environmental Impact Statement and Extension of Comment Deadline; and Motion to Integrate the in-progress USDA Rural Utilities Service Environmental Impact Statement into the Record of this siting proceeding. Rather than “accompanying” this transmission proposal through the administrative review process, important pieces of environmental review are consistently being left out of the CapX 2020 routing proceedings and record, and necessary opportunities for public comment are being denied. Significant changes in the project have been made since the initial Notice Plan and Certificate of Need, changes, additions and deletions that alter the impacts of the project and which have circumvented environmental review and thwarted public scrutiny of these changes and impacts.

NoCapX and U-CAN ask that the MOES Final Environmental Impact Statement in this routing docket be included in this record and that the record remain open for public comment to adequately inform the routing record and to meet the requirements for environmental review

under the Minnesota Environmental Policy Act. Because there is a federal Environmental Impact Statement being prepared for this Hampton-Rochester-LaCrosse part of CapX 2020 Phase I, the state agencies must coordinate with the federal agency and the federal environmental review information must be included in this record and available for consideration by the Commission.

At this point, environmental review of the CapX 2020 project does not comply with the mandates of the Minnesota Environmental Policy Act or Minnesota environmental review and procedural rules. These legal and procedural problems should be corrected before this routing docket is deliberated by the Commission.

I. BACKGROUND INFORMATION

As background for this environmental review Motion, it's important to provide some information about routing issues, specifically the elimination of three of four proposed river crossings and addition of the North Route, to shed light on why the Intervenors are requesting certain environmental review information be included in this docket. Adequacy of environmental review and cooperation between federal and state agencies has been at issue since the Certificate of Need proceeding. The CapX 2020 Certificate of Need Application proposed transmission corridors covering much of Minnesota, and over 72,000 landowners received notice of this Certificate of Need application. CapX 2020 applicant Dairyland Power has requested federal funding for its share of this transmission line proposal, which necessitates a federal Environmental Impact Statement. Ex. A, RUS Notice of Intent.

A. Development of Corridors

The route corridors in the application were large to assure that corridors would provide viable routing options, and the Power Plant Siting Act mandated Notice Plan was developed to

assure that potentially affected landowners in those corridors would receive notice. In the Notice Plan, the proposed route corridors for the Hampton-Rochester-LaCrosse line looked like this, with a more southerly flow and four (4) Mississippi River crossings proposed (purple circles):

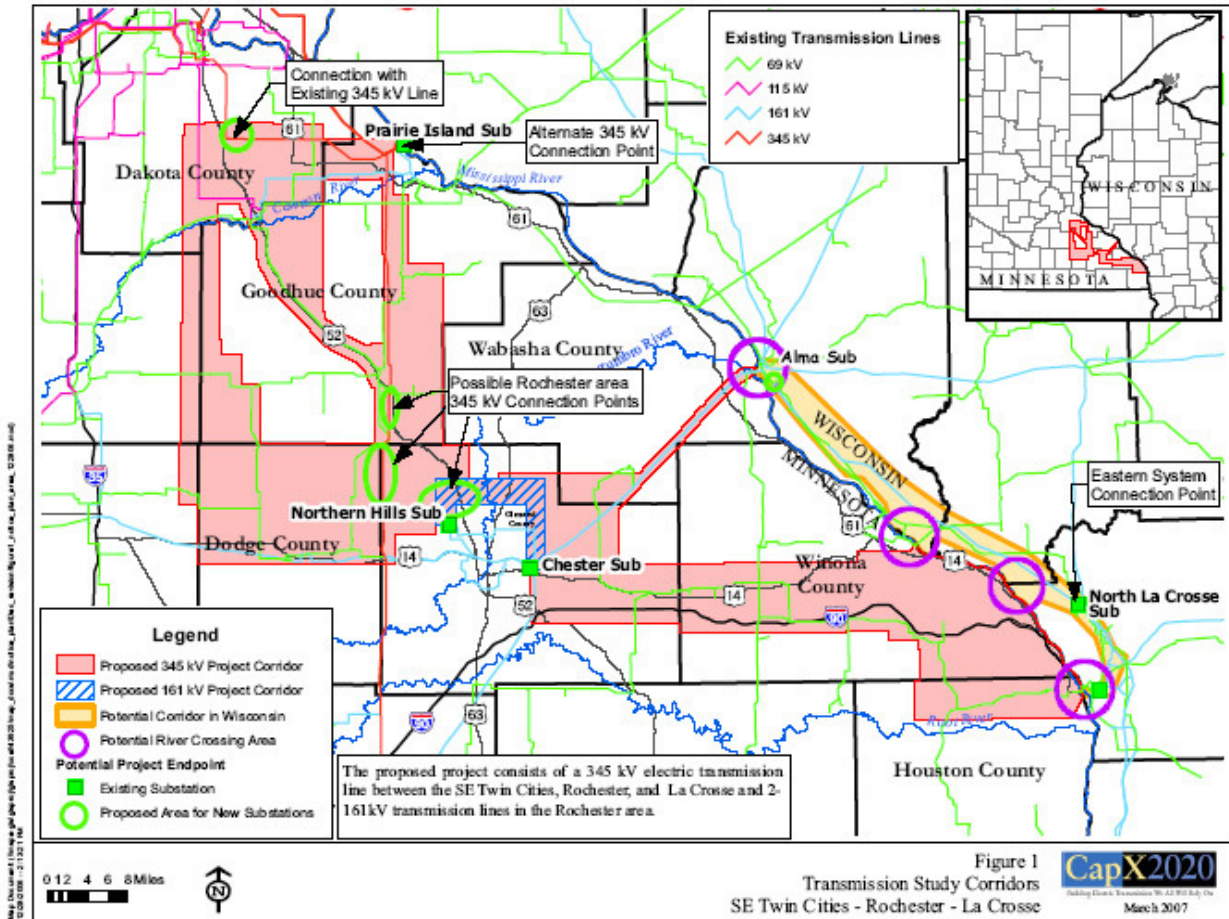
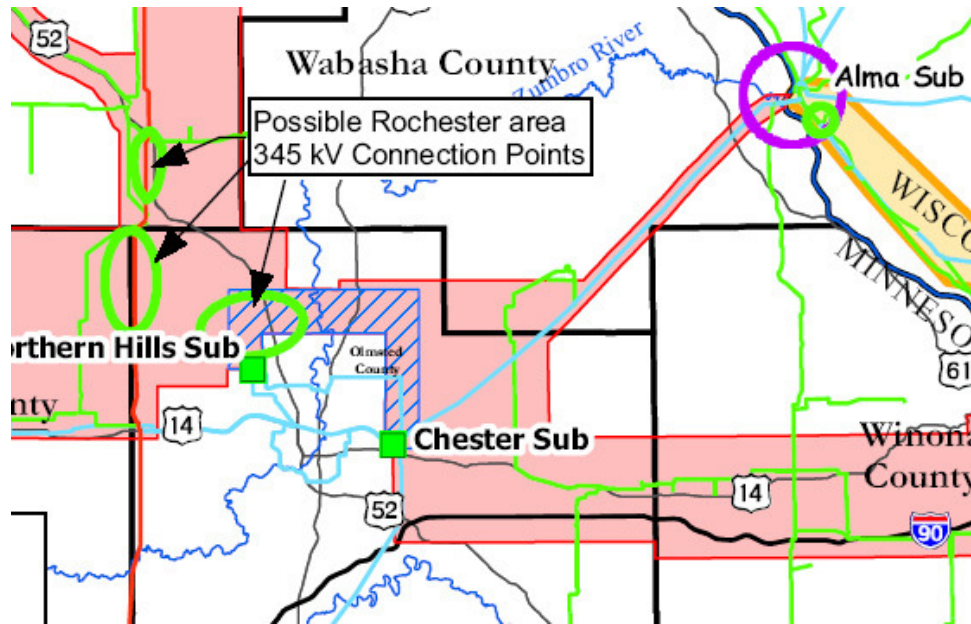


Figure 1, Revised Notice Plan, CapX 2020 Certificate of Need (06-1115)¹.

The map of what is now referred to as “Segment 3” of the Hampton-Rochester-LaCrosse” line included these four Mississippi River crossings, and the corridor looked like this in the Certificate of Need application:

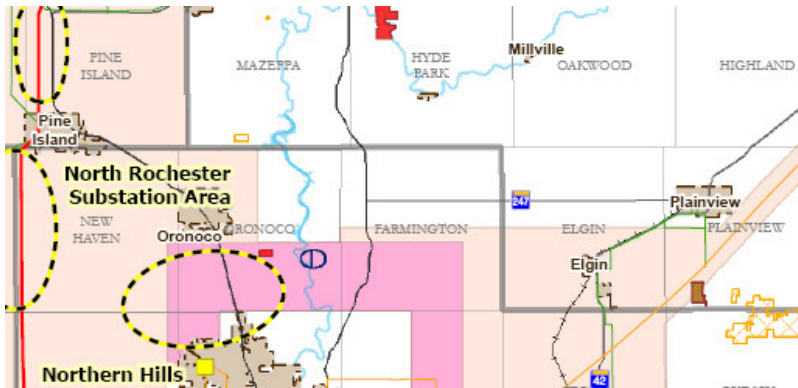
¹ Certificate of Need (06-1115) Revised Notice Plan online at: [3945787 PUBLIC 06-1115 CN XCEL ENERGY OTHER--REVISED NOTICE PLAN 03/20/2007, https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=eDocketsResult&userType=public#16CFF001F-2CC2-46F9-9BF5-6BD327F63F8D](https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=eDocketsResult&userType=public#16CFF001F-2CC2-46F9-9BF5-6BD327F63F8D)



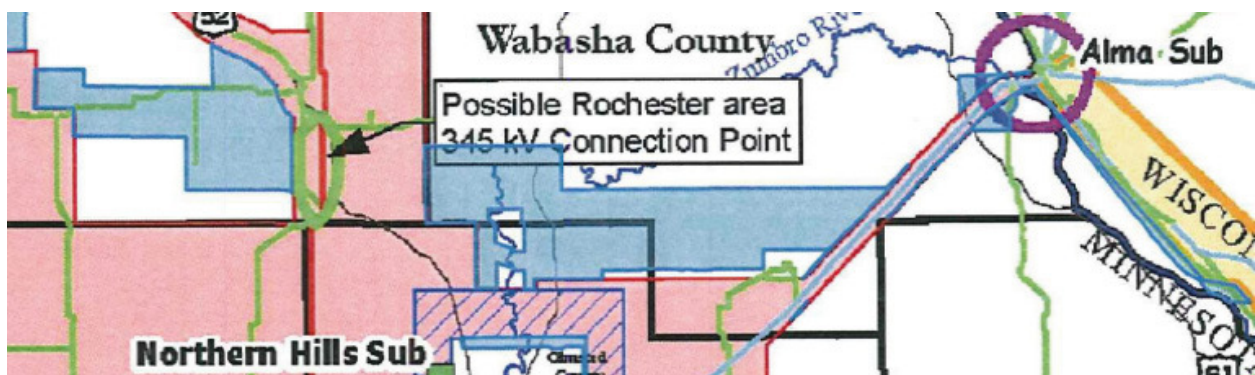
Expanded Notice Plan map, above, see also Certificate of Need application (06-1115). Neither the Certificate of Need Notice Plan nor Application map reflects the area of the North Route as proposed in this Hampton-Rochester-LaCrosse routing docket.

The CapX 2020 Certificate of Need Environmental Report² showed the “Segment 3” corridor east of Highway 52 as only south of Highway 247, and there was nothing proposed north of Highway 247. No other corridor was reviewed than that reflected in shades of pink on this Environmental Report “Map 3” in the Map Appendices – and the “North Route” was not part of the Environmental Report:

² Certificate of Need (06-1115) Environmental Report may be found online at: [5046228 PUBLIC 06-1115 CN OES OTHER--ENVIRONMENTAL REPORT 03/31/2008, https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=eDocketsResult&userType=public#{E2EDBC72-9EAA-4FFF-B5A6-0CC1C1B922FD}](https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=eDocketsResult&userType=public#{E2EDBC72-9EAA-4FFF-B5A6-0CC1C1B922FD}) ; and [5046229 PUBLIC 06-1115 CN OES OTHER--ENVIRONMENTAL REPORT MAPS 03/31/2008, https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=eDocketsResult&userType=public#{C14E96B9-7D92-4951-9928-18031018F1E0}](https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=eDocketsResult&userType=public#{C14E96B9-7D92-4951-9928-18031018F1E0}) .



However, there were subsequent changes to the Certificate of Need corridors:



Landowners within the blue additional corridor, which includes the “North Route,” did not receive this map, and did not receive notice in the Certificate of Need proceeding of the changes shown on this map labeled March 2007, until May 13, 2008, if then. Ex. B, May 13, 2008 Expanded Corridor Notice. This Notice and landowner mailing lists were not filed in the PUC Certificate of Need record docket until July 30, 2008³, after the public hearings were over, after most of the Applicant’s witnesses had testified, and long after the deadline for Intervention had occurred. Parties in the Certificate of Need proceeding were unaware of these corridor changes until this filing.

Similarly, the USDA’s Rural Utilities Service EIS did not include the “North Route” until after important steps in environmental review had already been taken, in this case, not until the

³ Notice and mailing list available online: [5395828](#) PUBLIC 06-1115 CN XCEL ENERGY NOTICE--EXPANDED CORRIDOR NOTICE 07/30/2008

fourth quarter of 2010. The RUS environmental review began with Notice in March of 2009, and since then, the Macro Corridor Study⁴, Alternative Evaluation Study⁵, and Scoping Report⁶ have all been completed and released. The “North Route” was not part of the USDA’s RUS EIS maps when notice was given of the EIS in May, 2009; it was not in the RUS Macro Corridor Study or Alternative Evaluation Study released May 2009; it was not on the maps for the scoping meetings held June 16-25, 2009; and it was not part of the Scoping Report issued in February, 2010. It was not until October 2010 that the RUS incorporated the Hampton-Rochester-LaCrosse changes embodied in the Minnesota Hampton-Rochester-LaCrosse routing docket in the map above on page 4. The RUS Comment Period was reopened, but only for those directly affected -- no general notice was provided, there is no record on the RUS EIS page of any notices being sent to landowners, and no members of the North Route Group can recall receiving notice.

B. Mississippi River Crossings reduced from FOUR to only ONE!

Mirroring the four river crossings in the Certificate of Need application, the CapX Environmental Report⁷ also included four Mississippi River crossings. These four potential river crossings are represented on Maps 5, 6, 7 and 8, for the Hampton-Rochester-LaCrosse route:

Map 5	Alma Crossing of Mississippi River
Map 6	Winona Crossing of Mississippi River
Map 7	Trempealeau Crossing of Mississippi River
Map 8	LaCrescent/LaCrosse Crossing of Mississippi River

⁴ RUS’ Macro Corridor Study (VERY LAEGE) online at:
<http://www.usda.gov/rus/water/ees/pdf/Dairyland%20CapX%202020%20MCS%200509.pdf>

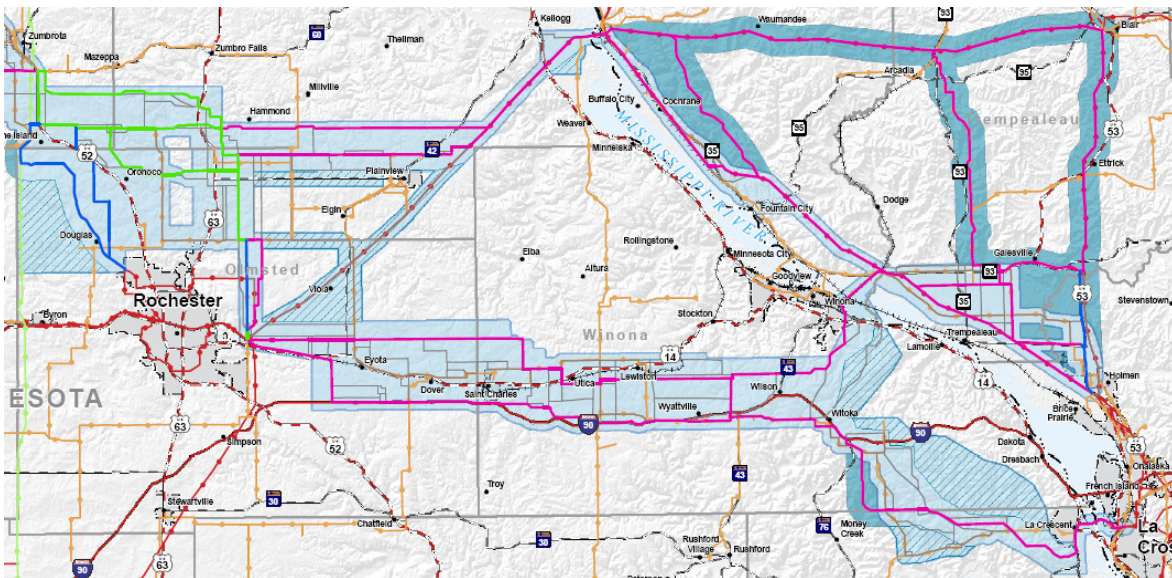
⁵ RUS’ Alternative Evaluation Study online at:
<http://www.usda.gov/rus/water/ees/pdf/Dairyland%20CapX2020%20345%20AES%200509.pdf>

⁶ The RUS Scoping Report is online at the RUS EIS Site: <http://www.rurdev.usda.gov/UWP-CapX2020-Hampton-Rochester-LaCrosse.html>

⁷ The Certificate of Need (06-1115) Environmental Report may be found online at:
[5046228](#) PUBLIC 06-1115 CN OES OTHER--ENVIRONMENTAL REPORT 03/31/2008; and
[5046229](#) PUBLIC 06-1115 CN OES OTHER--ENVIRONMENTAL REPORT MAPS 03/31/2008

Ex. C, Maps 5-8, Environmental Report, Appendix B: Environmental Review Maps, Certificate of Need Docket 06-1115.

As above, the USDA’s Rural Utilities Service issued a Notice of Intent for an Environmental Impact Statement on May 28, 2009, based on Dairyland’s proposal for RUS finding of its share of the Capx 2020 project. Ex. A., RUS Notice of Intent. A Macro Corridor Study was completed with the following “refined corridors” that included three crossings of the Mississippi River, one less river crossing than proposed in the Certificate of Need – one of the four river crossings disappeared:



Then, in the Hampton-Rochester-LaCrosse routing application, two more Mississippi River crossings disappeared, and now only the Alma Mississippi River Crossing is proposed.

II. MOTION FOR INCLUSION OF MOES FINAL ENVIRONMENTAL IMPACT STATEMENT IN THE ROUTING RECORD AND FOR ESTABLISHMENT OF COMMENT PERIOD FOR MOES FEIS

Environmental review of the CapX 2020 project does not comply with the mandates of the Minnesota Environmental Policy Act. This docket is a transmission routing proceeding under the Power Plant Siting Act, Minn. Stat. Ch. 216E. The Minnesota Environmental Policy

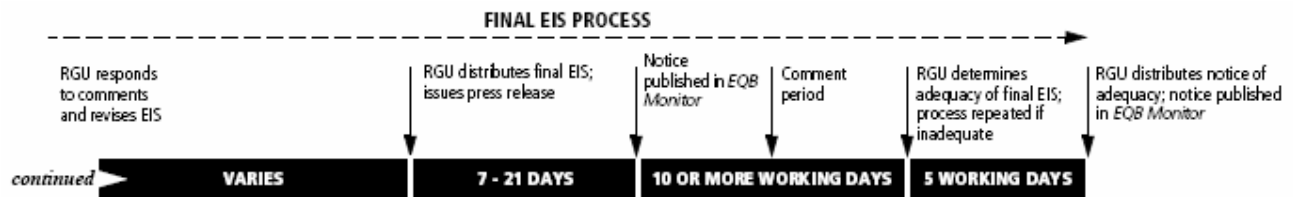
Act (MEPA) specifies that the “final detailed environmental impact statement... shall accompany the proposal through an administrative review process.”

*Prior to the preparation of a final environmental impact statement, the governmental unit responsible for the statement shall consult with and request the comments of every governmental office which has jurisdiction by law or special expertise with respect to any environmental effect involved. Copies of the drafts of such statements and the comments and views of the appropriate offices shall be made available to the public. **The final detailed environmental impact statement and the comments received thereon shall precede final decisions on the proposed action and shall accompany the proposal through an administrative review process.***

Minn. Stat. §116D.04, Subd. 6a. Comments (emphasis added).

Environmental review under the Power Plant Siting Act must meet the requirements of MEPA.

Generally, when a Final Environmental Impact Statement is issued, there is notice and a comment period prior to a determination of adequacy:



Ex. D, p. 11, Guide to Minnesota Environmental Review (selected); see also Minn. R. 4410.2800. The PPSA rules are silent on this step in the process, neither permissive nor prohibitive. See e.g., Minn. R. 7849.1800, Environmental Report to Accompany Project (mirroring MEPA language) but c.f. Minn. R. 7850.1200. MEPA, on the other hand, is clear in its statement that “[t]he final detailed environmental impact statement and the comments received thereon shall ... accompany the proposal through an administrative review process.”

The coordination of environmental review with the permitting review has not been occurring in the CapX 2020 routing dockets, the FIES has not accompanied the proposal through an administrative review process. This MEPA mandated accompaniment cannot and does not occur

when the Environmental Impact Statement is released after the public and evidentiary hearings have been completed and after public comment closes. NoCapX and U-CAN have repeatedly raised this in the CapX routing dockets, including this one, where the Prehearing Order stated:

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-CSN. 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.

Fn. 5, p. 3, First Prehearing Order. However, Minn. R. 7850.2500, subp. 12 does not relieve us of the

mandate of MEPA:

The final detailed environmental impact statement and the comments received thereon shall precede final decisions on the proposed action and shall accompany the proposal through an administrative review process.

The purpose of environmental review is to inform the routing record, and to inform the record, it must accompany the proposal through the process, not drop in after the process is over.

NoCapX 2020 and U-CAN request that the MOES Final Environmental Impact Statement be entered into the routing record and that Public Comments regarding the Final Environmental Impact Statement be accepted for at least 10 days, and preferably 30 days, after the release of the Final EIS.

III. MOTION TO INTEGRATE USDA'S RUS EIS INTO RECORD

Environmental review of the CapX 2020 project does not comply with the mandates of the Minnesota Environmental Policy Act and Minnesota Rules. There is an expectation that state and federal review will be completed as a joint effort.

If a federal EIS will be or has been prepared for a project, the RGU shall utilize the draft or final federal EIS as the draft state EIS for the project if

the federal EIS addresses the scoped issues and satisfies the standards set forth in part [4410.2300](#).

Minn. R. 4410.3900, subp. 3.

Although the CapX 2020 Certificate of Need Scoping Decision acknowledged this expectation of joint environmental review, it then stated, against evidence:

It is not possible to associate this environmental review with any federal review at this time. Minnesota rule 4410.3900 anticipates coordinating state and federal review where possible. However, the association is not possible in this case due to timing and relevance. First, completion of this ER is required for the contested case hearing prior to when any application initiating potential federal review would be filed.

Additionally, no application for a permit or funds from the Rural Utility Service is anticipated by any of the applicants. No action requiring a federal EIS is anticipated. If that situation were to change when any route applications are filed, the Department would pursue all opportunities to coordinate the EIS reviews in those proceedings with any relevant federal agency reviews.

Ex. E, Certificate of Need Scoping Decision, p. 3, ISSUES OUTSIDE OF THE ENVIRONMENTAL REPORT.

The Rural Utilities Service environmental impact statement process began long ago – according to this Hampton-Rochester-LaCrosse routing application (09-1448), meetings with RUS began on March 19, 2008, and the Notice of Intent was issued in May, 2009, as anticipated by intervenors. Application, p. 12-2, §12.1.1; see also Ex. A, USDA Notice of EIS, May 28, 2009, fn. 8. However, this coordinated state and federal review was inexplicably denied by the Commissioner of Commerce, and in this CapX docket, the Department began separate state environmental review without the Rural Utilities Service.

Failure to utilize the pending federal EIS was raised by NoCapX and U-CAN in the appeal of the Certificate of Need, and the court held:

The relators' final argument with regard to the environmental report is that, when there is going to be federal environmental review, including an

⁸ App. R, USDA Notice of Intent to Prepare an EIS
<http://www.usda.gov/rus/water/ees/pdf/Dairyland%20NOI%20FedReg%20052809.pdf>

environmental impact statement (EIS), there is an expectation that state and federal review will be done as a joint effort, and that was not done here. The relators rely on the rule, which states that “[i]f a federal EIS will be or has been prepared for a project,” the state shall use such draft if “the federal EIS addresses the scoped issues and satisfies the standards.” Minn. R. 4410.3900, subp. 3 (2009). However, no federal report has yet been prepared, and the rule also indicates that “[g]overnmental units shall cooperate with federal agencies to the fullest extent possible to reduce duplication” between Minnesota statutes and the National Environmental Policy Act. Id., subp. 1.

The department considered this rule, but ultimately determined that it was not possible to associate the state environmental review with the federal environmental review due to timing and relevance. Further, the department acknowledges that if the circumstances were to change, “when any route applications are filed, the [d]epartment would pursue all opportunities to coordinate the EIS reviews in those proceedings with any relevant federal agency reviews.” It appears that federal agency coordination occurs most appropriately at the permit stage. The department’s efforts were adequate under this rule.

In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for Certificates of Need for the CapX 345kV Transmission Projects, ___ N.W. 3d, ___, June 10, 2010 (attached).

According to the Appellate Court, now is the appropriate time for federal agency coordination. This expectation of joint state and federal environmental review was addressed in the February 5, 2010 Scoping Decision for the CapX 2020 Certificate of Need proceeding for the Bemidji to Grand Rapids line, where MOES entered into a Memorandum of Understanding to prepare an EIS that would meet both federal and state requirements. Ex. F, p. 3, CapX 2020 Bemidji-Grand Rapids Scoping Decision, February 5, 2010.

However, just six months later, the CapX Hampton-LaCrosse scoping decision did not even mention the USDA’s RUS and its ongoing EIS! Ex. G, CapX 2020 Hampton-Rochester-LaCrosse Scoping Decision, August 6, 2010. This scoping decision was appealed by NoCapX and U-CAN, and that appeal was denied. Ex. H, NoCapX and U-CAN Appeal of CapX 2020 Hampton-Rochester-LaCrosse Scoping Decision, August 9, 2010.

Given that failure to integrate the state and federal environmental review, the issue was again raised in this docket in Schedule Comments and in the Prehearing Conference for this Hampton-Rochester-LaCrosse routing docket, precisely because this is the arena the appellate court held that this joint federal and state environmental review should occur. Our request for coordination of federal and state environmental review, as anticipated by rule, and as done in the CapX Bemidji-Grand Rapids docket, was not directly addressed in the First Prehearing Order, which only stated:

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.

First Prehearing Order, Order Point 6, footnote 4.

It is now June. The RUS Draft EIS has not been released and may be released in late summer. The Wisconsin EIS process has not yet begun as the CapX 2020 Hampton-LaCrosse application was rejected by Wisconsin PSC staff, has been resubmitted, and another completeness decision is expected soon⁹. To date, there has been no coordination between the USDA's RUS and MOES, and there is no Memorandum of Understanding, as there was in the CapX 2020 Bemidji-Grand Rapids routing docket, and the already completed RUS Macro Corridor Study (May 2009), the Alternative Evaluation Study (May 2009), the Scoping Report and Appendices (February 2010) and the Expanded Corridor Maps (December 2010) are not part of this Minnesota routing record.

⁹ The entire Wisconsin docket, including the PSC's Incompleteness letter is available online at <http://www.psc.wi.gov/> and search docket 05-CE-136. Direct link to the February 1, 2011 PSC Incompleteness letter: <http://nocapx2020.info/wp-content/uploads/2011/02/psc-incomplete-2-1-11.pdf>

NoCapX 2020 and U-CAN again request that the Dept. of Commerce work with the Rural Utilities Service and that the Rural Utilities Service environmental review of the CapX 2020 Hampton-Alma (LaCrosse) transmission line be incorporated into the routing docket and into the MOES environmental review in this routing docket. Specifically, at this time, we request that the RUS Macro Corridor Study (May 2009), the Alternative Evaluation Study (May 2009), the Scoping Report and Appendices (February 2010) and the Expanded Corridor Maps (December 2010) be incorporated into the routing docket record at this time, and that the Draft and Final Environmental Impact Statements be incorporated into this docket and into the MOES environmental review as they are completed and published.

III. CONCLUSION

Environmental review of the CapX 2020 project does not comply with the mandates of the Minnesota Environmental Policy Act. NoCapX 2020 and United Citizens Action Network ask that the Administrative Law Judge Order:

1. That the MOES Final Environmental Impact Statement be entered into the routing record and that Public Comments regarding the Final Environmental Impact Statement be accepted for at least 10 days after the release of the EIS; and
2. That the USDA's Rural Utility Service Alternative Evaluation Study, the Macro Corridor Study and the Scoping Report text and appendices be entered into the record in this routing docket; and
3. That the Dept. of Commerce's MOES work with the Rural Utilities Service and incorporate the Rural Utilities Service environmental review of the CapX 2020 Hampton-Alma (LaCrosse) transmission line into the MOES environmental review in this routing docket.

4. Such further relief as equity requires.

Respectfully submitted,

June 9, 2011



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