

# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

September 14, 2011

SUITE 1400  
445 MINNESOTA STREET  
ST. PAUL, MN 55101-2131  
TELEPHONE: (651) 296-7575

The Honorable Kathleen Sheehy  
Administrative Law Judge  
Office of Administrative Hearings  
PO Box 64620  
St. Paul, MN 55164-0620

**Re: In the Matter of the Application for a Route Permit for the CapX2020 Hampton-Rochester-LaCrosse High Voltage Transmission Lines**  
**MPUC Docket No. E-002/TL-09-1448**  
**OAH Docket No. 7-2500-20283-2**

Dear Judge Sheehy:

Enclosed for filing in the above matter, please find the Minnesota Department Of Commerce's EFP Staff Comments To The Administrative Law Judge.

Sincerely,

A handwritten signature in blue ink, appearing to read "Karen Finstad Hammel".

Karen Finstad Hammel #0253029  
Attorney for Energy Facility  
Permitting Staff of the  
Department of Commerce  
445 Minnesota Street, Suite 1400  
St. Paul, MN 55101-2131  
Telephone: (651) 757-1248  
Fax: (651) 297-1138

Enclosure

AG:2882061

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF RAMSEY     )

I state that at the City of St. Paul, County of Ramsey, State of Minnesota, on the 14th day of September 2011, I efiled and served: Minnesota Department Of Commerce EFP Staff Comments To The Administrative Law Judge upon all parties by depositing in the United States Mail, at said city, a true and correct copy thereof, properly enveloped, with prepaid first class postage, addressed to:

All persons on attached paper service list

/s/ Pat Silberbauer

Subscribed and sworn to before me  
this 14th day of September 2011.

/s/ Deborah A. Bastyr

Notary Public

My Commission Expires January 31, 2015

## List Member Information

## Electronic Member(s)

Last Name	First Name	Email	Company Name	Delivery Method	View TS
Agrimonti	Lisa	lagrimonti@briggs.com	Briggs And Morgan, P.A.	Electronic	No
Anderson	Julia	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	Electronic	Yes
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic	Yes
Haar	Burl W.	burl.haar@state.mn.us	Public Utilities Commission	Electronic	Yes
Hammel	Karen Finstad	Karen.Hammel@ag.state.mn.us	Office of the Attorney General-DOC	Electronic	Yes
Herring	Valerie	vherring@briggs.com	Briggs and Morgan, P.A.	Electronic	No
Keane	Timothy	tjk@mgmllp.com	Malkerson Gunn Martin LLP	Electronic	No
Krass	Phillip	prk@mgmllp.com	Malkerson Gunn Martin LLP	Electronic	No
Lindell	John	agorud.ecf@state.mn.us	Office of the Attorney General-RUD	Electronic	Yes
Meloy	Brian	brian.meloy@leonard.com	Leonard, Street & Deinard	Electronic	No
Myers	Rachel	rrm@mgmllp.com	Malkerson Gunn Martin LLP	Electronic	No
Rohlfing	Suzanne	caraway57@aol.com	North Route Group	Electronic	No
Seykora	David	dave.seykora@state.mn.us	MN Department of Transportation	Electronic	No
Shaddix Elling	Janet	jshaddix@janetshaddix.com	Shaddix And Associates	Electronic	Yes
Sheehy	Kathleen D.	kathleen.sheehy@state.mn.us	Office of Administrative Hearings	Electronic	No
Thompson	SaGonna	Regulatory.Records@xcelenergy.com	Xcel Energy	Electronic	No

## Paper Member(s)

Last Name	First Name	Company Name	Address	Delivery Method	View TS
Hackman	Stephen	North Route Group	59919 430th Avenue, Mazeppa, MN-55956	Paper	No
Hillstrom	Tom	Xcel Energy	7th Floor, 414 Nicollet Mall, Minneapolis, MN-554011993	Paper	No
Maccabee	Paula	Just Change Law Offices	1961 Selby Avenue, St. Paul, MN-55104	Paper	No
Overland	Carol A.	Legaletric - Overland Law Office	1110 West Avenue, Red Wing, MN-55066	Paper	No
Seratt	Bill	Mississippi River Parkway Commission	222 State Street, Suite 400, Madison, We-53703	Paper	No

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS**  
**600 NORTH ROBERT STREET**  
**ST. PAUL, MINNESOTA 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**  
**SUITE 350**  
**121 SEVENTH PLACE EAST**  
**ST. PAUL, MINNESOTA 55101-2147**

**In the Matter of the Application for a Route**  
**Permit for the CapX2020 Hampton -**  
**Rochester- La Crosse 345 kV Transmission**  
**Line Project**

**MINNESOTA DEPARTMENT OF COMMERCE**  
**ENERGY FACILITY PERMITTING STAFF COMMENTS**

**INTRODUCTION**

The Minnesota Department of Commerce Energy Facility Permitting staff (“EFP”) appreciates this opportunity to provide input for the Administrative Law Judge’s (“ALJ”) findings, conclusions, and recommendation to the Minnesota Public Utilities Commission in this proceeding. EFP staff also respectfully suggests that additional findings are appropriate regarding the matters discussed below, given the record that has been developed in this matter.

**DISCUSSION**

**I. ROUTE WIDTH**

Applicants initially requested a route width of 1,000 feet for the 161 kV and 345 kV transmission lines, and where necessary, flexibility to increase the width up to 1.25 miles,



centered on an anticipated alignment for the proposed route's centerline.<sup>1</sup> While the Applicants reasonably claim that some flexibility is necessary during the construction phase of the project, EFP staff believes the need for flexibility must be balanced with the reasonable degree of predictability that landowners deserve and that will minimize adverse human and environmental impacts when siting and subsequently constructing the high-voltage transmission line.

The Power Plant Siting Act specifically directs the Commission to locate transmission lines in a manner that "minimize[s] adverse human and environmental impact while ensuring continuing electric power system reliability and integrity and ensuring that electric energy needs are met and fulfilled in an orderly and timely fashion."<sup>2</sup> Although the PPSA allows for a variable route width of up to 1.25 miles, EFP staff believes that route widths nearing the maximum are excessive except in the rarest of cases, and that such route widths do not provide a reasonable degree of predictability for landowners when developing an appropriate route.

Each route evaluated in the Draft and Final Environmental Impact Statements ("EIS") has an identified alignment that minimizes the overall potential impacts relating to the factors identified in Minnesota Rule 7850.4100. EFP staff believes that a reduced route width of 600 feet in many locations will allow the Applicants adequate space to coordinate with landowners and with state and federal agencies when developing a final alignment and design for any of the routes under consideration. These areas are where the Applicants have indicated in the route permit application and throughout this proceeding that the new transmission line would be following or sharing an existing feature, such as a road, utility corridor or section line. In these areas, as well as along route segments that were proposed by other parties, the EIS analysis

---

<sup>1</sup> See Ex. 2 at 15 (Hillstrom Direct).

<sup>2</sup> Minn. Stat. § 216E.02, subd. 1.

focused on an “anticipated alignment” within the routes reviewed in order to best evaluate the comparative impacts of alternatives.

In prior CapX proceedings, Applicants agreed to narrow the route width to 600 feet where possible and submitted the final widths to the Department to submit to the Commission with briefing papers.<sup>3</sup> During the evidentiary hearing in this proceeding, Mr. Tom Hillstrom, testifying on behalf of Applicants, stated that Applicants are amenable to the same process in this matter. Mr. Hillstrom stated that the Applicants would continue to work with EFP staff on narrowing the route and would submit revised materials after the Administrative Law Judge issues her report recommending a specific route to the Commission.<sup>4</sup>

The general adherence to an anticipated alignment and the diminished variability that results from narrowing the route width should achieve a positive balance between the flexibility necessary for the Applicants and the predictability anticipated by affected landowners. Further; such narrowing of the route width offers a fair expectation of the actual environmental impacts of the route decision.

EFP staff suggests that findings and conclusions approved by the Commission regarding route widths for other CapX projects may also be appropriate in this proceeding.

---

<sup>3</sup> See *In the Matter of the Application for a Route Permit for an HVTL from Fargo to St. Cloud*, Findings of Fact, Conclusions of Law, and Order Issuing an HVTL Route Permit to Xcel Energy and Great River Energy, PUC Docket No. E002, ET2/TL-09-1056 (June 24, 2011); *In the Matter of the Application for a Route Permit for an HVTL from St. Cloud to Monticello*, Findings of Fact, Conclusions of Law, and Order Issuing an HVTL Route Permit to Xcel Energy and Great River Energy, PUC Docket No. E002, ET2/TL-09-276 (July 12, 2010); and *In the Matter of the Application for a Route Permit for an HVTL from Brookings to Hampton*, Order Granting Route Permit, PUC Docket No. ET2/TL-08-1474 (Sept. 14, 2010), and Order Granting Route Permit for Remanded Segment of Route (Mar. 1, 2011)

<sup>4</sup> Tr. Vol. 1 at 147-48 (Hillstrom testimony).

## II. SUBSTATION REQUIREMENTS --NORTH ROCHESTER SUBSTATION

The Application states that approximately eight acres of fenced area would be required for the substation construction; however, the Applicants desire to acquire approximately 40 acres to provide a buffer and to allow for transmission lines to connect to the substation.<sup>5</sup> The new substation would include six 345 kV circuit breakers, a 345 kV/161 kV transformer, three 161 kV circuit breakers, a control house and associated line termination structures, switches, buswork, controls, and associated equipment.<sup>6</sup> The substation siting area for the proposed North Rochester Substation would accommodate either the Applicants' preferred or alternate routes.<sup>7</sup> The substation would be designed to connect with the existing Prairie Island – Byron 345 kV transmission line.<sup>8</sup> The Application further states that detailed plans for the proposed North Rochester Substation depend on the final route and final substation site permitted by the Commission.<sup>9</sup>

During the course of this proceeding, EFP staff learned that Applicants were attempting to obtain land for the new Hampton substation to be constructed in the Brookings to Hampton proceeding, and that the affected landowner objected to the number of acres requested by the Applicants. As a result of the complaint, EFP staff believes that there may be an ambiguity in other permits relating to the number of acres necessary for substation construction, and, thus, the number of acres subject to a taking pursuant to the eminent domain statutes.

---

<sup>5</sup> Ex. 1 at ES-7, and 3-10 (Application).

<sup>6</sup> Ex. 2 at 32-33 (Hillstrom Direct Testimony)

<sup>7</sup> *Id.* at 32.

<sup>8</sup> *Id.*

<sup>9</sup> Ex. 1 at 3-10, § 3.2.2 (Application).

Mr. Grant Stevenson's testimony during the evidentiary hearing clarified that 40 acres was not necessary for the North Rochester Substation.<sup>10</sup> He stated that the Applicants generally attempt to acquire more acreage than is required for a substation, in most cases by voluntary agreement with the landowner.<sup>11</sup> Mr. Stevenson also testified that the eight acres for the substation as stated in the application was the acreage needed for the substation only and did not include any of the required area outside the substation fence for such things as access to the substation, equipment, buffer, and a storm water retention pond.<sup>12</sup> Mr. Stevenson stated that a maximum of 20 acres would be required to construct and operate the North Rochester substation, and the actual acreage would be refined as the process moves forward.<sup>13</sup> Finally, Mr. Stevenson testified that 40 acres is typically sought to accommodate for future expansion possibilities.<sup>14</sup>

The Final EIS has been changed to correctly state that Applicants will seek to acquire 40 acres for the North Rochester Substation, not that they actually require 40 acres for the substation.<sup>15</sup>

The EFP staff is concerned that the findings in this proceeding accurately state that the maximum acreage *required* for the North Rochester Substation as a result of the CapX 2020 projects is 20 acres, and that any additional acreage *desired* may only be acquired by voluntary purchase and may not be included in the capital costs of this project. Therefore, the EFP staff suggests that the Administrative Law Judge recommend that no more than 20 acres is required

---

<sup>10</sup> Tr. Vol. 3 at 48-49 (Stevenson Testimony). *See also* Ex. 1 at ES-7 (Applicant "desires to acquire approximately 40 acres to provide a buffer area and to locate where the substation lines will connect to the substation").

<sup>11</sup> *Id.* at 45.

<sup>12</sup> *Id.* at 38-45.

<sup>13</sup> *Id.* at 10-11.

<sup>14</sup> *Id.* at 48.

<sup>15</sup> Final EIS at 6.



for the new North Rochester Substation as part of this permit. If Xcel Energy wishes to acquire more than 20 acres at this substation site, it can either seek a voluntary easement with the landowner for the additional 20 acres to accommodate future expansion possibilities, or seek the additional 20 acres in a separate permitting project, when the future development need requires a permit application.

### **III. NORTH ROCHESTER -- CHESTER 161kV HVTL**

As part of the application for the related certificate of need for all the CapX 2020 transmission lines, Northern States Power Company (Xcel Energy) sought and received a certificate of need for a 161 kV transmission line that would be co-located along whichever of the routes is permitted for the Hampton-Rochester-LaCrosse project from the new North Rochester Substation to a point east of the Zumbro River crossing, and which will then leave the co-location and continue southerly to the Chester Substation.<sup>16</sup> This line will require a separate environmental review and permitting process through the state of Minnesota. The applicant has indicated that it plans to file a route permit application in Sept. 2011.

### **SUMMARY**

EFP staff appreciates the opportunity to file post-hearing comments in this proceeding. EFP staff suggests that the Administrative Law Judge recommend that the acreage required for the new Rochester North Substation is no more than 20 acres, and that the findings acknowledge that there will be further information provided by the Applicants regarding narrowing the route

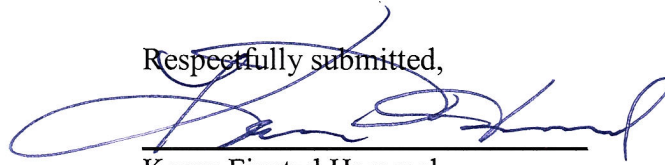
---

<sup>16</sup> See Final EIS at 147.

to 600 feet after the Commission receives the Administrative Law Judge's report in this proceeding.

Dated: September 14, 2011

Respectfully submitted,



Karen Finstad Hammel  
Assistant Attorney General  
Atty. Reg. No. 0253029  
445 Minnesota Street, Suite 1400  
St. Paul, MN 55101-2131  
Telephone: (651) 757-1248  
Fax: (651) 297-1138  
karen.hammel@state.mn.us

Attorney for Minnesota  
Department of Commerce

AG: #2734527-v1