

**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

**NORTH ROUTE GROUP
NOCAPX 2020 and UNITED CITIZENS ACTION NETWORK's
REPLY BRIEF**

I. INTRODUCTION

North Route Group, NoCapX 2020, and United Citizens Action Network are intervenors with full party status in this docket. The North Route Group, (hereinafter “NRG”), has joined NoCapX 2020 and United Citizens Action to assure its distinct interests are represented in this docket. The North Route Group has participated at every opportunity, ranging from pre-application meetings, to participation in the Citizens Advisory Task Force, to EIS Scoping and DEIS Comments, and as formal Intervenors.

The North Route Group is comprised of landowners in existing farms and residences, and members are concentrated near the northern alternate Zumbro River Crossing, in Mazeppa Township and Pine Island Township to the west, and in Zumbro Township to the east. NRG's primary interests are in this portion of what has been identified as “Segment 3” in the Draft Environmental Impact Statement in this proceeding, specifically those parts of the North Alternate Route from the Alternate North Rochester Substation, east to the Alternate North

Route crossing of the Zumbro River, and then east to the designated crossover that heads south toward the Modified Preferred Route.

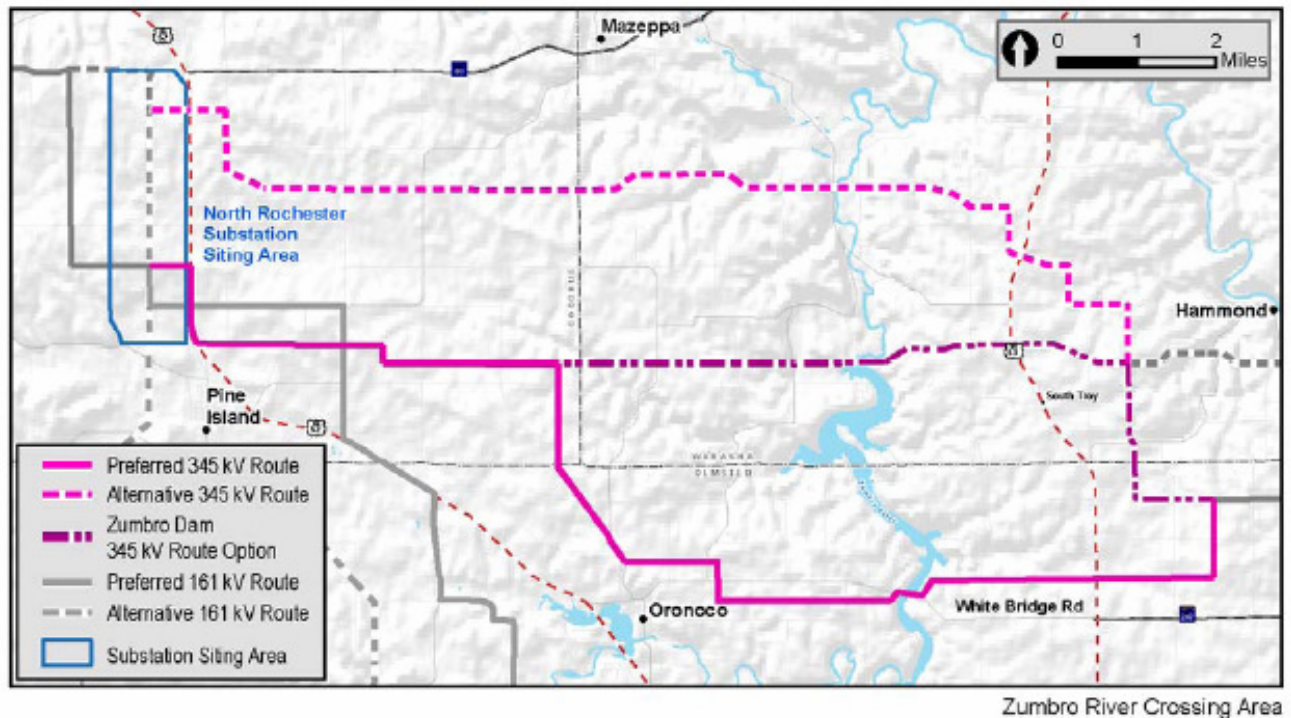


Figure 5.1-8: Zumbro River Crossing

The North Route crossing of the Zumbro River is the one proposed crossing that has no infrastructure whatsoever, a material fact noted by the Applicant, Dept. of Commerce, the Minnesota Department of Natural Resources, local governments within this segment, and in testimony from the many landowners along this route.. A north crossing of the Zumbro River is not a viable route option and it is contrary to Minnesota's transmission siting policy.

On the other hand, the Applicant has met its burden of proof and provides a solid basis for its route preference:

The evidence demonstrates that the Modified Preferred 345kV Route for the North Rochester to Mississippi River section of the Project best satisfies the applicable criteria. This route follows a greater length of transmission lines, property lines, and roads when compared with the Alternate 345 kV Route (84 percent versus 55 percent).¹ The

¹ Ex. 19 at 1 (Schedule 16A to Hillstrom Rebuttal).

Modified Preferred 345 kV Route follows an existing 69 kV transmission line for approximately 3.5 miles near Plainview, and the existing Q-3 line for 11 miles to the Alma Crossing.² Where the Modified Preferred 345 kV Route does not follow an existing infrastructure corridor, it follows a higher percentage of property boundaries (40 percent versus 29 percent) and has less impact to forested land than the Alternate 345kV Route (11 percent versus 16 percent).³ The Alternate 345 kV Route follows fewer property lines, resulting in more impacts to open agricultural fields.⁴ The Alternate 345 kV Route also crosses a higher number of forested ravines that offer wildlife habitat than the Modified Preferred 345 kV Route.⁵

In their Initial Brief, and throughout the proceeding, the applicants have requested that the Commission permit the Modified Preferred Route. As the applicants point out in their brief, for Segment 3, the crossing of the Zumbro River is **THE** issue. The North Route Group, NoCapX and U-CAN support the Applicant's request for their Modified Preferred Route at the White Bridge Road.

II. RESPONSE TO APPLICANT'S INITIAL BRIEF

The Applicants have brought out much strong evidence supporting its request for approval of its Modified Preferred route. Walking through their Initial Brief, the Joint Intervenors have several comments and take issue with a few points.

A. Minnesota's Policy of Non-Proliferation

First, Applicants aptly address each of the factors in Minnesota Rules, including use of pre-existing corridors, be they transportation, utility or pipeline, but nowhere in Applicant's brief is Minnesota's policy of non-proliferation of transmission corridors addressed. Minnesota has a longstanding policy of non-proliferation established by People for Environmental Enlightenment & Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council, 266 N.W. 2d 858 (Minn. 1978). This policy of non-proliferation of transmission corridors was further emphasized

² Ex. 1 at 5-20 (Application).

³ Ex. 19 at 102 (Schedule 16A to Hillstrom Rebuttal).

⁴ Ex. 19 at 1 (Schedule A to Hillstrom Rebuttal).

⁵ Ex. 1 at 5-21 (Application).

in recently passed Minn. Stat. §216E.03, Subd. 7(e)⁶, acknowledged by Applicants, which directs the Commission to explain any proliferation of corridors. Minnesota’s policy of non-proliferation overarches the transmission siting criteria to assure environmental issues are not shuttled aside.

The PEER court also considered and took into account the potential for impacts on those landowners along the pre-existing corridors:

*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) (emphasis added).

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. In this case, use of the pre-existing corridor does not displace residents, no homeowners will be displaced along the White Bridge Road Route, impacts to those near the transmission alignment can be mitigated, and landowners who want to get away from the line have the option of forcing condemnation of their entire parcel through “Buy the Farm.” Minn.

⁶ Applicant’s Initial Brief, p. 28. Applicants note that the application was filed prior to enactment of this statute, which requires that “[t]he 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.”

Stat. §216E.12, Subd. 4. As defined by *PEER*, on the North Route, there are impacts that cannot be mitigated and also noncompensable environmental impacts, whereas on the White Bridge Road route, impacts can be mitigated and there are no non-compensable impacts.

As addressed below, Applicants in large part based preference for the Modified Preferred Route on the lack of existing infrastructure at the North Route Zumbro River crossing, which is in alignment with the policy of non-proliferation and use of a crossing of the Zumbro River where there is pre-existing corridor. Minnesota's policy of non-proliferation strengthens the rationale for selection of the Modified Preferred route.

B. The Zumbro River Crossing is THE issue for Segment 3

As applicants point out in their brief, the Zumbro River crossing is THE issue in Segment 3:

While the three Zumbro River crossings have relatively similar environmental impacts, Applicant's analysis of the routing criteria favors selection of the White Bridge Road Crossing. The White Bridge Road crossing requires less tree clearing and avoids a forested area of high biodiversity significance near the Zumbro Dam.⁷ The White Bridge Road crossing also uses an existing infrastructure crossing.⁸

This quotation well summarizes Applicant's preference and rationale.

Regarding the river crossing in its application, Xcel notes in its own testimony that "The northern alternative for crossing the Zumbro River along the alternative 345kV route does not use existing infrastructure corridor." Hillstrom p. 9, l. 18-20. In response to an Information Request, Hillstrom stated, regarding this reference to existing infrastructure corridor:

This reference is to a portion of my testimony discussing the Zumbro crossing locations, specifically comparing the existing setting at each crossing. I noted that the North Crossing does not follow an existing infrastructure corridor; whereas the Zumbro Dam Crossing crosses at a dam and the White Bridge Road crossing crosses at a road. In this context, I was referring to the fact that the North Crossing does not have an existing road, railroad corridor, transmission corridor,

⁷ Applicant's Initial Brief, p. 6, citing Ex. 1 at 5-18.

⁸ Id.

dam or other existing infrastructure.

Exhibit 79, Xcel Energy response to NoCapX IR 6.

The lack of pre-existing infrastructure at the Zumbro River crossing was identified by the Dept. of Natural Resources as the reason it did not consider the North Route as an option and instead evaluated only a choice between the “Dam Crossing” and the “White Bridge Road” crossing.⁹ The DNR has also reviewed proliferation and impacts and Commented that “the Zumbro River Crossing at White Bridge Road,” also known as the “Modified Preferred Route,” appears to result in the least impact from clearing and utilizes an existing river crossing.”¹⁰

In general, crossing public waters should be located where there is existing infrastructure. For example, the Zumbro River should be crossed where existing infrastructure exists, and there is the least impact from clearing or construction activities.¹¹

Ms. Schrenzel specified in her testimony at the hearing, and again in a July 29, 2011 Comment:

As state in previous comment letters, the DNR recommends crossings of public waters to generally be located where there is existing infrastructure. For example, the Zumbro River should be crossed where existing infrastructure exists and there is the least impact to resources from clearing or construction activities. The Zumbro River crossing at the white bridge in Segment 3 appears to result in the least impact from clearing, and utilizes an existing river crossing.¹²

However, in its discussion of the Zumbro River crossing, one point that was missed by the Applicant was concern for the Zumbro Dam crossing. Applicant argues in their Initial Brief that “[n]obody advocated for or against the Zumbro Dam Crossing.”¹³ This is not correct. Wabasha County, Mazeppa Township, Mazeppa City, and Zumbro Township, and also Pine Island Twp in

⁹ Testimony of Schrenzel, Tr. Vol. 3 p. 89-90, 131, et seq.

¹⁰ Ex. 39, Testimony of NRG, Ex. 39, DNR Comment on the DEIS of April 29, 2011, and the DNR Comment for Scoping dated May 20, 2010.

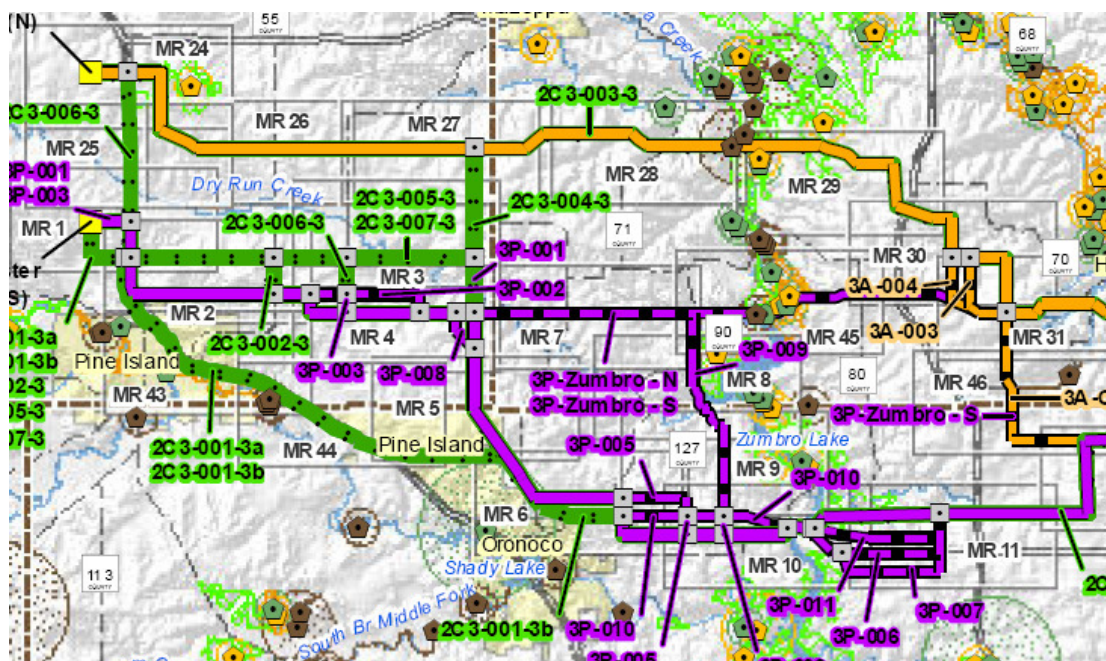
¹¹ See Ex. 39, NRG Testimony, Attachments, DNR Comment letters, April 29, 2010 and May 20 2010.

¹² See “Public Comment” DNR Letter 6/29/11, available online at [20117-64768-01](#) PUBLIC 09-1448 TL OAH PUBLIC COMMENT--- RECEIVED BEFORE JUNE 30, 2011 07/29/2011

¹³ Applicant’s Initial Brief, p. 5.

a Public Comment letter, which advocated against the North Route crossing of the Zumbro River and the Zumbro Dam crossing and supported the Applicant's Modified Preferred Route.¹⁴

The North Route crossing and the Zumbro Dam crossing are similar, in that both areas are in Wabasha County, both are in the R.J. Dorer Memorial Hardwood State Forest, both are in the FEMA flood zone to be avoided, and both have a higher level of biodiversity significance and heritage than the Modified Preferred crossing on both sides of the Zumbro River. In addition, there are more Minnesota DNR Natural Heritage locations, which are absent on the Modified Preferred Route. This distinction between the North Route and the Modified Preferred Route is found in the DEIS, which graphically demonstrates the multiple and diverse environmental features in the area of the North Route crossing, and the dearth of such features along the route proposed for the Modified Preferred Route:



Ex. 35, DEIS, map 8.3-35, DNR Natural Heritage locations.

¹⁴ See Comments: Wabasha County, ATF Scoping, FEIS ID 180 at p.O-434, DEIS Comments FEIS ID 5 and 6, O-21-22; Zumbro Twp. FEIS ID 15 at p. O-46, OAH Public Exhibit 9; Mazeppa Twp. FEIS ID 180 at p. O-433, OAH Public Exhibit 17; Mazeppa City FEIS 180 at p. O-432, OAH Public Exhibit 6; Pine Island Twp Letter FEIS ID 180, p. O-432.

Preference for the White Bridge Road crossing is best summarized by Jamie Schrenzel of the DNR:

Specifically, there are three Zumbro River crossings included in the project record: the north crossing, which is a Greenfield crossing, a middle crossing at a dam, and the southernmost crossing at the white bridge. As stated above, a crossing with no existing infrastructure such as the northernmost crossing is not encouraged. The northernmost crossing also has Natural Heritage Information System (NHIS) records of a state-listed threatened turtle in the vicinity of the crossing. There is also a Minnesota County Biological Survey (MCVS) Site of Biodiversity Significance ranked as Moderate near the crossing. The Zumbro River crossing near the dam is located next to an MCBS Site of Biodiversity Significance ranked as High. Rare species in the area include the state-listed special concern American ginseng (plant), and state-listed special concern moschatel (plant). The southernmost white bridge crossing would affect an MCBS site of Biodiversity Significance ranked as Moderate and one ranked as Below. To avoid a Greenfield crossing, the northernmost route is not recommended. Considering a comparison of rare species, MCBS site presence and ranking, and a general goal of reducing deforestation between the two crossings with existing infrastructure, the DNR recommends utilizing the white bridge crossing in this area rather than the crossing at the dam.¹⁵

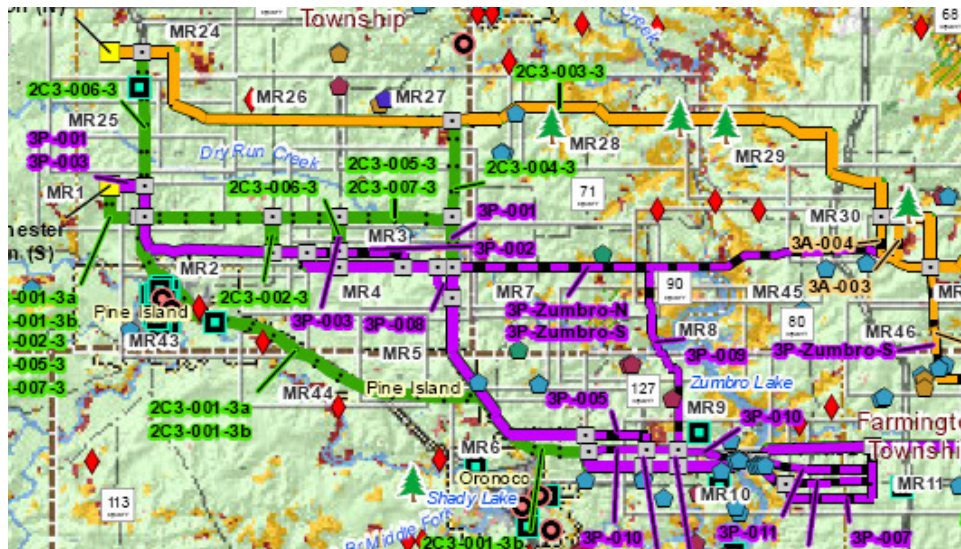
Habitat loss and fragmentation is identified as the number one problem in both the Minnesota Forestry Strategy and Assessment¹⁶ and Minnesota's Habitat for the Wild and Rare.¹⁷ The crossing at White Bridge Road has existing infrastructure and is an existing corridor, and fragmentation of the forest has already occurred at that location. In some segments, the impacts on forests along the Modified Preferred Route can be mitigated to avoid forested areas all together. The North Route would result in a higher percentage of forest clearing and fragmentation. In accordance with the Minnesota Forestry Assessment, the land owners along the North Route are voluntary and active participants in the State of Minnesota's mission to restore and protect these forests and habitats as witnessed by their numerous public and written

¹⁵ "Public Comment" Jamie Schrenzel, DNR, Comment 6/29/2011, online at [20117-64768-01](#) PUBLIC 09-1448 TL OAH PUBLIC COMMENT--- RECEIVED BEFORE JUNE 30, 2011 07/29/2011

¹⁶ Ex. 99.

¹⁷ Ex. 99, Tomorrow's Habitat for the Wild and Rare.

testimonies, DNR stewardship plans, DNR property evaluations, American Tree Farm System registrations and certifications submitted for the record.



Ex. 113, FEIS Map8.3-34 (one tree farm, the Hofschulte's, is still not on map)¹⁸

The DNR's Schrenzel, in testimony and in filed DNR Comments also noted concern about fragmentation that would result, damaging "large block habitat, interior habitat, fragmentation that area would be the North crossing area."¹⁹

If the HVTL is routed through a tree farm, no trees could grow or be replanted within the 150 foot ROW and potentially the area adjacent to the ROW. Tree crop would be permanently lost²⁰.

The FEIS reports that fewer acres of forest would be permanently lost due to right of way clearing and maintenance for the Modified Preferred Route, and more acres of forest would be permanently lost on the Alternate North Route²¹.

Impacts may include both temporary and permanent effects. The impacts include localized physical disturbance caused by construction equipment during site

¹⁸ See Public Comment of Dean Hofschulte: [20117-64766-01](#) PUBLIC 09-1448 TL OAH PUBLIC COMMENT--PUBLIC COMMENTS RECEIVED BEFORE JUNE 30, 2011 07/29/2011; see DoC acknowledgement that Hofschulte farm is missing, Comment filed 10/7/2011. Commerce acknowledges "[t]he Hofschulte property is adjacent to the Zumbro river in T-109, R-14, Section 15, and another tree farm is in the adjacent Section 14. See also Ex. 113, Appendix O.

¹⁹ Testimony of Schrenzel, Tr., Vol. 3, p. 120; see also Ex. 39, NRG Testimony, Schedules DNR Comment May 20, 2010.

²⁰ Ex. 39, NRG Testimony, p. 13.

²¹ Ex. 113, FEIS, p. 17.1.

preparation, such as grading, excavation, and soil stockpiling. There may be clearing of local vegetation for access roads. In forested areas, trees or shrubs that interfere with safety and equipment operation would be removed. Permanent vegetative changes would take place at each new pole footprint (55 square feet) and within the ROW that occurs in the forested communities.²²

The right-of-way would need to be recleared and cannot be reforested.²³

The Modified Preferred Route crosses 14.6 miles of private and DNR owned and managed R.J. Dorer Memorial Hardwood Forest. The Alternate North Route crosses 29.4 miles of private and DNR owned and managed R.J. Dorer Memorial Hardwood Forest. The miles of forest crossed by the route options favor selection of the White Bridge Road crossing.

C. Effects on Human Settlement and Displacement

In its Initial Brief, Applicant addresses the primary claim of Oronoco Township that there is a disparate impact on its residents, and that that claim is misplaced:

All of the potential route options between North Rochester and the Mississippi River have relatively low house numbers with approximately 20 to 30 homes within 500 feet for this approximately 45-mile segment.²⁴

No displacements would occur in the “Route Segment” including the Zumbro River crossing, whichever crossing would be selected. This is reflected in Applicant’s Initial Brief where information from the Final Environmental Impact Statement is summarized:

Route Segment	0-75 ft	76-150 ft.	151-300 ft	301-500 ft	0-300 ft.	0-500 ft.
White Bridge Road (Modified Preferred Route)	0	1	5	20	6	26
Zumbro Dam to Modified Preferred Route	0	2	7	15	9	24
North Crossing to Modified Preferred Route	0	0	5	16	5	21

Applicant’s Initial Brief, p. 32, quoting Ex. 113, FEIS at 164.

²² Ex. 113, FEIS, p. 171.

²³ Ex. 113, FEIS ID 179, P. O-424.

²⁴ Applicant’s Initial Brief, p. 33.

D. Impacts on Forestry, Agriculture and Natural Resources

The applicant demonstrates that although relatively equal percentages of the “Route Segment” are in cropland, the percentages of Prime Farmland are higher for the Alternate Route and the “North Crossing to Modified Preferred Route.”²⁵ End to end of the entire Hampton-LaCrosse route, the Modified Preferred Route is 55 percent Prime Farmland and the Alternate Route (going south towards Kenyon and then east) is 62 percent. For the “Route Segment,” the White Bridge Road is 2 percent Prime Farmland, and the North Crossing to Modified Preferred Route is 6 percent Prime Farmland. Selection of the Modified Preferred Route with the White Bridge Road crossing is consistent with the siting factors and Minnesota’s policy of Agricultural Preservation.²⁶ This policy mandates preservation of agricultural land by:

*Guiding the orderly construction and development of energy generation and transmission systems and enhancing the development of alternative energy to meet the needs of rural and urban communities and preserve agricultural land to the greatest possible extent by reducing energy costs and minimizing the use of agricultural land for energy production facilities.*²⁷

In the Applicant’s brief, they discuss “forestry” and impacts on “forestry” but “forestry” is a word too limited in scope²⁸. The Applicant’s discussion focuses on Timber Harvest Plans and notes that there are no townships in the alignment that have Timber Harvest Plans. It’s not just the lumber, it’s not about harvesting timber. Forests are agriculture in Wabasha County under its Comprehensive Plan.²⁹ What is at issue here is “forest,” not only forestry, that is, forests from an agricultural and natural environment standpoint as cited by Jamie Schrenzel,

²⁵ Applicant’s Initial Brief, p. 45.

²⁶ Minn. Stat. §17.80.

²⁷ Minn. Stat. §17.80, Subd. 2(h).

²⁸ Applicant’s Initial Brief, p. 5, p. 46-48.

²⁹ Ex. 40, NRG Rebuttal Testimony, Wabasha County Comprehensive Plan.

Applicant, and Nature Conservancy, and as protected through the Minnesota Forest Assessment and Strategies.³⁰

In its Initial Brief, Applicants attempt to alleviate concerns of the North Route Group regarding use of chemicals for right-of-way maintenance, expressed by NRG in its Testimony:

As stated in the Applicant's Route Application, there are two approaches to clearing and maintenance of rights-of-way, "mechanical" and "chemical" using herbicides. Chemical, along with the toxic nature of it and how it would affect water and fish, flora and fauna, it would eliminate native species, allowing more invasive species, which wreaks havoc on forests, what is left of them, and prairies and prairie restoration projects. There are at least three prairie restoration projects, some of which include prairie remnant, and oak savannah remnant. These preservation projects would be destroyed by chemical maintenance. Impacts of clearing practices have not been sufficiently evaluated.

In addition to greater maintenance costs, there is also a resultant substantial increase in invasive species once forested and sensitive environments are temporarily or permanently disturbed. We are concerned with the methods of right-of-way clearance and maintenance, particularly regarding whether "mechanical" clearing or "chemical" clearing is used. Applicants have a preference for "chemical" clearing, which although less costly, has detrimental and long term impacts to the right-of-way and land beyond. Forested and sensitive land would need more specific maintenance.³¹

In response, Applicants discussed use of herbicides in its Brief:

During the hearing, the North Route Group expressed concerns about the impacts of Applicant's method of vegetation clearing and management on the native flora. For initial construction, the forested areas of the right-of-way will be clear cut to remove trees. To prevent regrowth, the right-of-way may be treated with an Environmental Protection Agency approved herbicide. The herbicides used are selective, promoting grasses and forbs for wildlife and holding the soil on steep slopes. Applicant's contract crews applying the products are trained and licensed professionals. Applicant's experience has been that the application of herbicides is less impactful to the environment in areas where there are steep slopes because these areas are more prone to erosion with cutting and mowing activities.³²

An example of the negative impacts of right-of-way maintenance and vegetation control were documented by the DNR in a site visit to Kia and Steve Hackman's land:

³⁰ Ex. 99, Minnesota Forest Strategies and Assessment.

³¹ Ex. 39, p. 19-20 (citations omitted), Testimony of NRG.

³² Applicant's Initial Brief, p. 54-55.

*Only one buckthorn was observed on the property. This buckthorn occurred on the edge of an area maintained for a powerline. Other invasive species are starting to occur in this area, most likely due to importation with maintenance equipment for maintaining the powerline right-of-way*³³.

North Route Group's concerns about impacts of chemical use, and potential for chemicals to harm the land of easements and adjacent landowners has been supported by a recent Appellate decision which recognized that the impacts of errant drift of pesticides from one area to another may be trespass.³⁴ The court was very clear:

We first address the district court's conclusion that chemical pesticide drift cannot constitute a trespass. No Minnesota case has addressed whether unwanted pesticide drift from a targeted field to an adjacent otherwise organic farming operation can constitute a trespass. We hold that it can.³⁵

The North Route Group requests a condition in the permit and in the Agricultural Mitigation Plan limiting use to those areas where landowners have provided express consent, requiring notification to landowners prior to each application, and that chemical application be limited to the easement not encroach on the land of others.

Applicants address slopes and the impacts of steep slopes on construction of a transmission line, for example, "along areas with more than a 10 percent slope, working areas would have to be graded level or fill would be brought in to create working pads."³⁶

Steep slopes also have an impact on route selection because existing corridors are less frequently found on existing slopes due to the inherent difficulty in traversing and constructing

³³ Public Comment, p. 6. Property Evaluation for Wildlife Habitat, Kia and Steve Hackman property. Online at [20117-64768-01](#) PUBLIC 09-1448 TL OAH PUBLIC COMMENT--- RECEIVED BEFORE JUNE 30, 2011 07/29/2011

³⁴ Olaf Johnson, et al. V. Paynesville Farmers Union Cooperative Oil Company, A10-1596 & A10-2135; available online at <http://www.lawlibrary.state.mn.us/archive/ctappub/1107/opa101596-0725.pdf>

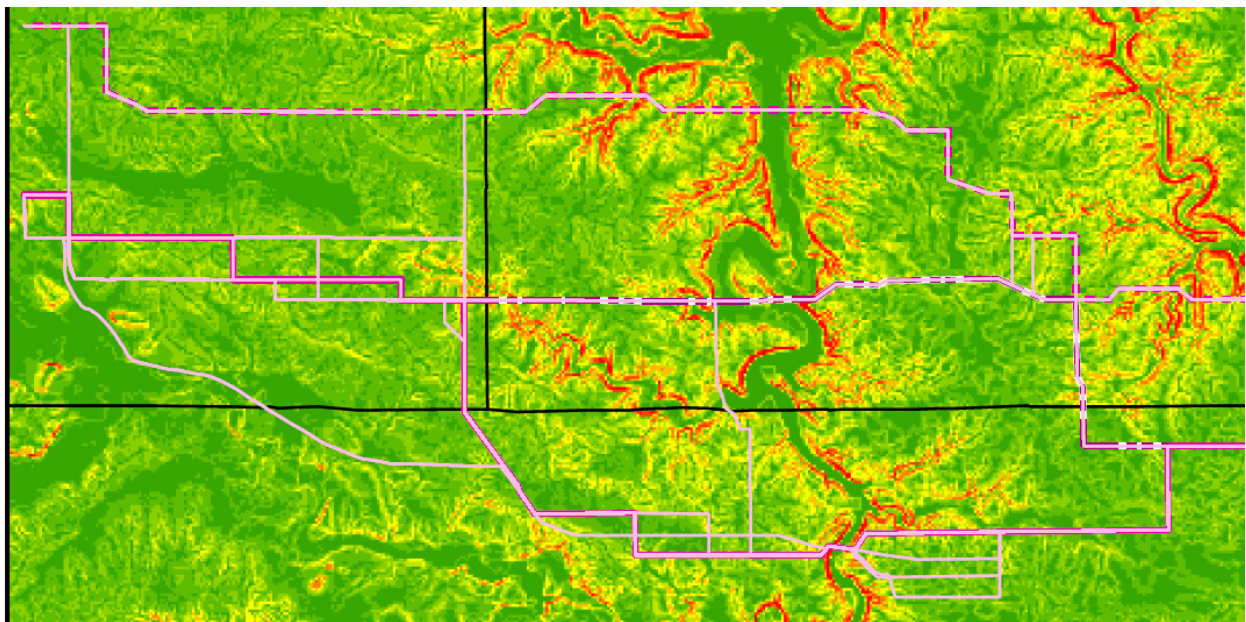
³⁵ Id., p. 6.

³⁶ Ex. 56, DEIS p. 19.

on steep slopes and the increased cost in challenging areas. There are also fewer “non-corridor” linear features on steep slopes.

But I think, you know, the steep slopes – the primary routing issue with slopes is that as land develops around steep slopes, it doesn’t necessarily develop in straight lines, whereas in a flat agricultural area, you get more of a checkerboard farmland development that lends itself to more straight property lines, more linear features. In steep slopes you do not normally find such linear features. So that’s one aspect of routing through steep slopes. And construction can be more difficult if you have steep slope areas that you need to access.

Testimony of Hillstrom, Tr. Vol 1, p. 64.



The distinction in slope between the Alternate North Route and the Modified Preferred Route are as graphically portrayed in the Google Earth flyover.³⁷

The Applicant addresses costs for the 345 kV line separately from the 161 kV line,³⁸ but it should be clarified that the choice of route for the 345 kV has an embedded cost impact, that selection of the North Route would necessitate an additional cost of \$1,600,000 to run the 161

³⁷ Ex. 35, Google Earth flyover.

³⁸ Applicant’s Initial Brief, p. 62, Costs.

kV line south to its presumed beginning point.³⁹ Essentially, the costs are the same for the full Modified Preferred route for each Zumbro River Crossing, North, Zumbro Dam, and White Bridge Road. However, the revised costs for Segment 3 from North Rochester to the Mississippi River, the comparative costs reflect that the Modified Preferred Route costs significantly less than the North Route.⁴⁰

The applicant's Modified Preferred route is the least costly route. Using the cost data provided by the Applicants, a comparison of costs shows that there is a cost savings of \$23 million with the Modified Preferred Route. The cost estimate for the Modified Preferred Route is \$88 million, and for the North Alternate Route 3A the cost is estimated at \$101 million. Ex. 15, Hillstrom, Revised Sched. 3.

For all of the reasons above, the North Route Group, NoCapX and U-CAN support the Applicant's request for their "Segment 3" Modified Preferred Route, crossing the Zumbro River at the White Bridge Road.

III. REPLY TO ORONOCO TOWNSHIP'S INITIAL BRIEF

Oronoco Township has missed the boat in this proceeding. The Township filed its Initial Brief late – the document properties show time stamps of modification and saving of the file at 4:59:25 PM and 5:58:44 PM, September 14, 2011, both after the 4:30 PM deadline for filing. The Commission's site has dated it as received September 15, 2011, which reflects that it was an untimely filing.

Oronoco Township has been late to enter this process. The Township was invited by the Dept. of Commerce to participate in the Advisory Task Force, but it did not.⁴¹ The township

³⁹ Ex. 71, Oronoco IR7 to Xcel, Attachment 4/5-1, Page 1 of 2.

⁴⁰ Ex. 5, Hillstrom Direct Schedule 3.

⁴¹ Testimony of Broberg, Tr. Vol 2, 144-148; Ex. 42, Notice of Commission Meeting on Advisory Task Force Structure and Charge; Ex. 47, North Rochester to Mississippi River Advisory Task Force Report.

didn't participate, and when they did, it was a mockery of the process, from its false claim that the lots in the subdivisions had homes that were constructed, "completed, construction is completed, ready for occupancy" when the parcels are bare, to its assertion, contrary to any notion of Environmental Justice, that the North Route should be selected because the Township's land was worth more, to its complaint of impacts when the alignment was approximately ½ mile from the nearest subdivision, that Lake Zumbro is the "only" recreational lake in Olmsted County, to its misrepresentation of house counts with numbers unrelated to the Application, DEIS or FEIS; adoption of "parcels" as a criteria, to its "bogus" entry of Exhibit 89, a new and unvetted route..⁴² The Township didn't revamp its Subdivision and Zoning Ordinance until after the CapX 2020 Certificate of Need application, and its most recent changes to the Zoning Ordinance were not until February 2011. Both Certificate of Need and Routing Applications were filed prior to the township's ordinances it's using as a defense.⁴³

In its brief, Oronoco Township attempts to claim that an "Oronoco Preferred Route" depicted on Exhibit 90 was one of "three primary routes... under consideration."⁴⁴ There are three primary routes under consideration, the Preferred Route, now Modified Preferred Route, the Alternate North Route and the Dam Option. The Application does not list the route represented on Exhibit 90 as a primary route under consideration.⁴⁵ The Dept. of Commerce correctly notes that mischaracterization and misstatement:

⁴² Applicant's Brief, p. 31-34, chart on p. 32; Ex. 15, Hillstrom Rebuttal, p. 506; Exhibit 86, Plat Maps of Landings at Sandy Pointe, Zumbro Haven, and Zumbro Sound; Testimony of Smith, Tr. Vol. 2, p. 44-81; Testimony of Broberg, Tr. Vol. 2, p. 133-134; Id., p. 82-84; See Ex. 40, NRG Surrebuttal, p. 6, fn. 1: DNR's "Lake Finder" for Olmsted County, available at: <http://www.dnr.state.mn.us/lakefind/index.html>; Ex. 1 Application ; Exhibit 56 DEIS, Exhibit 113 FEIS; Exhibit 89, New route proposed at the last minute, without notice to landowners or environmental review; Testimony of Broberg, Tr. Vol 2, p. 158-167.

⁴³ Ex. 66, Smith Direct, and Ex. 68, Broberg Direct.

⁴⁴ Oronoco Twp. Initial Brief, p. 1.

⁴⁵ Ex. 1, Application.

The entirety of the Oronoco Preferred Route, however, was not identified in the Scoping Decision or in the Draft EIS as a primary route under consideration, although there is an analysis of the 3A Crossover connector route segment that has been identified by Oronoco Township as part of the Oronoco Preferred Route. Thus, the comparisons of impacts addressed in the Draft and Final EIS documents compare the impacts of two primary routes – the Modified Preferred Route and the Alternate Route (North Route), but they do not specifically compare the full length of the Oronoco Preferred Route with the 3A and 3P routes.⁴⁶

The bottom line is one of conflicting policies and priorities, that Oronoco Township promotes development whereas Wabasha County promotes preservation.⁴⁷ Further, the development Oronoco Township is so concerned about is not complete or does not presently exist, the subdivisions are filled with vacant lots, permits and their valuation are at all time lows, and the Township's claim of future development is too speculative for the purposes of this permit.⁴⁸

The Olmsted Future Land-Use map included in the Subdivision Ordinance for Oronoco Township, attached to Mr. Smith's Direct Testimony as Schedule 8, uses the term "Suburban Development" and "Potential Suburban." The modified Preferred Route does not cross any area identified as Suburban Development and crosses less than a mile of the area identified as Potential Suburban at the White Bridge crossing area. It is unknown whether, or when residential development may occur in the Potential Suburban area.⁴⁹

The North Route Group, as laypersons directly affected by this transmission project proposal, has worked hard to learn this administrative process, without assistance of counsel until Intervention in May, 2011, and have utilized all participation avenues available from beginning to end in good faith, on their own time and dime, using the nominal resources of a private citizens group. Despite its significant expenditures of public funds, Oronoco Township has not met its burden of proof to deflect Applicant's preference of the Modified Preferred Route for "Segment 3" and the Zumbro River crossing.

⁴⁶ Reply Comments, Dept. of Commerce, online at [201110-67110-01](#) PUBLIC 09-1448 TL DOC REPLY COMMENTS 10/07/2011

⁴⁷ Ex. 66, Smith Direct, and Ex. 68, Broberg Direct, Zoning Ordinances and Comprehensive Plans.

⁴⁸ Ex. 87, Olmsted County Planning Dept. Building Permit Chart; Smith Testimony, Tr. Vol 2, p. 90-91;

⁴⁹ Ex. 15, Hillstrom Rebuttal., p. 4, l. 14-20.

IV. FEIS IS INADEQUATE BECAUES IT DOES NOT COMPLY WITH MEPA.

NoCapX 2020 and U-CAN challenge the adequacy of environmental review. The North Route Group does not take a position on this issue⁵⁰. The environmental review of the CapX 2020 Hampton-LaCrosse project does not comply with the mandates of the Minnesota Environmental Policy Act (“MEPA”). The Minnesota Environmental Policy Act (MEPA) specifies that the “final detailed environmental impact statement... shall accompany the proposal through an administrative review process.” In addition, this project Application and subsequent DEIS and FEIS does not include at least two distinct Mississippi River crossings for evaluation..

*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).

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. 12⁵¹.*

⁵⁰ Reply Comments of Commerce incorrectly identify this as an issue raised by NRG, and it is not. In this docket, as in others, this is an issue raised by NoCapX 2020 and United Citizens Action Network.

⁵¹ Fn. 5, p. 3, First Prehearing Order (emphasis added).

This compartmentalized view of the process of Environmental Review 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 – **the final EIS and comments on it must accompany the proposal through the process.** That has not happened in this docket.

V. CONCLUSION – JOINT INTERVENORS SUPPORT APPLICANT’S MODIFIED PREFERRED ROUTE.

The North Route Group, NoCapX and U-CAN support the Applicant’s request for their Modified Preferred Route. For Segment 3 of this project, the crossing of the Zumbro River is **THE** issue. The area traversed by the Alternate North Route and its Zumbro River is an aesthetic and environmental treasure for the State of Minnesota.

For the reasons detailed above, upon this analysis of the routes, using the statutory and rule-based criteria, North Route Group, NoCapX and U-CAN recommend:

- For Segment 1, NoCapX recommends the routes that begin at Hampton, proceeding along the Preferred Route and then head southward through Dakota County’s Lake Byllesby Park, over the Byllesby Dam, existing electrical generation and transmission infrastructure, a fitting tribute to Henry Marison Byllesby, the first CEO of Northern States Power, and then south on the most westerly option and then east back to the Preferred Route, avoiding the Church and homes along Highway 52 and Highway 19.
- For Segment 2, NoCapX, U-CAN and NRG wish to avoid utilization of 2C3-003 and 2C3-004

- For Segment 3, the North Route Group, NoCapX, and U-CAN support Applicant's preference of the Modified Preferred Route utilizing segments 3-P and 3P-002. NRG has found that although all routes inherently have a significant impact, the Segment 3 Alternate Route 3A has the greatest impacts across the spectrum of criteria. NoCapX, U-CAN and NRG support selection of a route utilizing the Modified Preferred Route and its "scoping alternative" routes because they have more limited impacts than the other options presented for consideration. Specifically, of the Modified Preferred Route and its "scoping alternative" routes, NRG recommends, beginning with DEIS Sheet MR1:

- Sheet MR1: Using the Modified Preferred Route from the Preferred North Rochester Substation, heading east on 3P across Hwy. 52, and running south along Hwy. 52 on the east side, utilizing corridor, to avoid the wetlands on the west side; and then consolidating the Preferred 345kV and 161kV in one corridor, heading east from Hwy. 52 along the Modified Preferred on 500th Street. Ex. 2, Hillstrom Direct p. 11, Schedule 2 and Schedule 15. NRG requests avoidance of the Alternate substation, to the north of the Preferred substation.
- Sheet MR2: Continuing east, at Co. Rd. 11, the Modified Route continues as it turns south for one half mile. This consolidation would place the 345kV and 161kV structures adjacent to each other along 500th Street and one half mile south on County Road 11." Ex. 2, Hillstrom Direct, p. 11.
- Sheet Map MR4: One half mile south on County Road 11, the 161kV continues south and the 345kV heads east cross country through the middle of Section 27, incorporating Route Alternative 3P-0002 following half section lines, through Section 26. Ex. 2, Hillstrom Direct, p. 12. Turning south, following 230th Avenue for approximately ¼ mile, then turning east, joining the original Preferred Route, approximately ¾ mile then south following field/lines and cross country to Ash Road. Id., DEIS p. 142.
- Sheet Map MR5: Follow Modified Preferred Route south and then southeast on Ash Road;
- Sheet Map MR6: Following the Modified Preferred Route to the southeast then on the southwest side of County Road 18, then heading due east cross-country going past County Road 27/Power Dam Road NW and then south paralleling County Road 27/Power Dam Road NW for ½ mile, then east, avoiding populations and the dairy farm along White Bridge Road, following field lines/cross country for 2.2 miles;

- Sheet Map MR 10: Then jogging northeast crossing White Bridge Road and then east crossing the Zumbro River for for .32 miles and then northeast cross country for .22 miles then due east following field lines/cross-country for 3.7 miles.
- Sheet Map MR11, 12, 13, 14, 15, 16... In section 12, a breakpoint provides a nearly straight-south routing opportunity for the Chester 161kV line. Any northern route would be longer, less direct, and more costly.
- Parallel Hwy. 42 Ex. 2, Hillstrom Direct, p. 13, l. 14-21, see also Ex. 4, Schedule 2. These route segment options have been identified as having the least impacts.

NoCapX 2020 and U-CAN requests that the Commission declare the environmental review inadequate.

The North Route Group, NoCapX 2020 and U-CAN request that whichever route is selected, that there be permit conditions and the Agricultural Mitigation Plan require:

- Preservation and protection of Century Farms and prime agricultural land;
- Forest preservation as directed in the Minnesota Forest Assessment and Strategies;
- Prairie preservation and restoration; and
- Limiting use of chemicals to those areas where landowners have provided express consent, requiring notification to landowners prior to each application, and that chemical application be limited to the easement not encroach on the land of others.

October 7, 2011



Carol A. Overland #254617
 Attorney for NORTH ROUTE GROUP,
 NoCapX 2020 and U-CAN
 OVERLAND LAW OFFICE
 1110 West Avenue
 Red Wing, MN 55066
 (612) 227-8638 overland@legalelectric.org