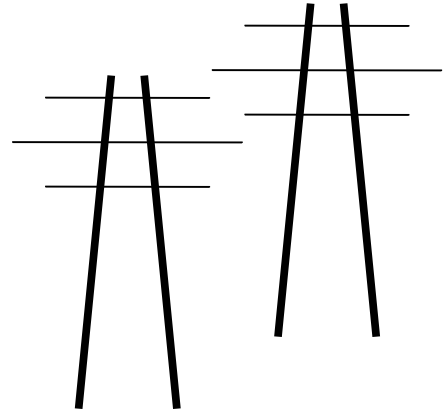


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February 23, 2012

Burl Haar
Executive Secretary
Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101

RE: Exceptions to Recommendation of Administrative Law Judge
CapX 2020 Hampton-Rochester-LaCrosse Transmission Project
PUC Docket TL-09-1448; OAH Docket# 3-2500-21181-2

Dear Dr. Haar:

Enclosed for filing please find Exceptions of North Route Group, NoCapX 2020 and United Citizens Action Network.

If you have any questions or require anything further, please let me know.

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland".

Carol A. Overland
for
North Route Group, NoCapX 2020 and United Citizens Action Network.

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

**J. Dennis O'Brien
David C. Boyd
Phyhs A. Reha
Betsy Wergin**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

**In the Matter of Application for a Route Permit
for the CapX 2020 Hampton-Rochester-LaCrosse
High Voltage Transmission Project**

MPUC: E002/TL-09-1448

**NORTH ROUTE GROUP, NO CAPX 2020 & UNITED CITIZENS ACTION NETWORK
EXCEPTIONS TO ALJ RECOMMENDATION**

The North Route Group, NoCapX 2020, and United Citizens Action Network support the decision not to utilize the North Route for this transmission line in this Recommendation. Our groups have conducted intense analysis of the routes, using the statutory and rule-based criteria, and utilizing information from the Application, testimony, and environmental review, and we believe, as Minnesota law holds, that all routes have an inherently significant impact. While the Recommendation takes into account many of the concerns we have raised, there are criteria that are misstated in the Recommendation. With caution, we raise these issues for your consideration as you deliberate and make a decision regarding the routing of this transmission line.

The Administrative Law Judge also conflated “Land Use” with “Land Based Economics” and devotes a section to “Effects on Land Use.” Recommendation, p. 31-32. “Land Use” was a constant, but improper, theme of this proceeding, from the limited selection of members of the Task Force to the substance of the hearing itself. The criteria is focused on Land Based

Economics -- there is no criteria regarding “Effects on Land Use.” Minn. R. 7850.4000, Subp.

C. To the contrary, the Power Plant Siting Act pre-empts local control:

Site or route permit prevails over local provisions.

*To assure the paramount and controlling effect of the provisions herein over other state agencies, regional, county, and local governments, and special purpose government districts, the issuance of a site permit or route permit and subsequent purchase and use of such site or route locations for large electric power generating plant and high-voltage transmission line purposes shall be the sole site or route approval required to be obtained by the utility. **Such permit shall supersede and preempt all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local and special purpose government.***

Minn. Stat. §216E.10, Subd. 1 (emphasis added). The ALJ’s focus on “Effects on Land Use” was misplaced.

NoCapX 2020 and U-CAN reiterate that there is only one proposed crossing of the Mississippi River. This is not in compliance with the Power Plant Siting Act as there are not two distinct routes proposed. Minn. Stat. §216E.03, Subd. 3. The Certificate of Need addressed FOUR crossings, one at Alma, another at LaCrosse, and two near Winona. Only one, the Alma crossing, was included in this application.

The North Route Group, NoCapX 2020, and United Citizens Action Network ask that the Commission take our Exceptions below into account in making this routing decision,



February 23, 2012

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**STATE OF MINNESOTA
BEFORE THE
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**In the Matter of Application for a Route Permit
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**NORTH ROUTE GROUP, NO CAPX 2020 & UNITED CITIZENS ACTION NETWORK
EXCEPTIONS TO RECOMMENDATION**

The North Route Group, NoCapX 2020 and United Citizens Action Network offer the following Exceptions for the Commission's consideration:

For the record, there are a number of citations of FEIS where page numbers are off, perhaps it's DEIS that the ALJ was looking at, and not the FEIS.

12. 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. ~~generally composed of landowners, farmers, and residents living in the vicinity of the northern alternate route of Segment 3 (3A), running from the northern location of the proposed North Rochester substation to the Mississippi River.~~

¹No party objected to its petition for intervention, which was granted.

13. In Segment 1, ~~the North Route Group NoCapX 2020~~ supports a route option that deviates from the preferred route and crosses the Cannon River at the eastern edge of

¹ North Route Group Reply Brief p. 1.

Lake Byllesby, to avoid impacts to human settlement in the area of Highway 52 and County Road 19 in Cannon Falls. This could be one of several route options, and the Group has not identified its preference by route option number. In Segment 2, the North Route Group, NoCapX 2020 and U-CAN advocated against route options 2C3-003-2 and 2C3-004-2. For Segment 3, tThe North Route Group, NoCapX and U-CAN support Applicant's preference of the Modified Preferred Route utilizing segments 3-P and 3P-002, filed testimony advocating against the northern alternative route (3A) in Segment 3 because the Segment 3 Alternate Route 3A has the greatest impacts across the spectrum of criteria, is less suitable for future expansion, with greater fragmentation, proliferation, and non-compensable impacts², and it supports the 3P route up to the point where it intersects with County Road 42. From the intersection with County Road 42re, the Group recommends-supports use of the County Road 42 route option (3B-003).³

15. Oronoco Township sponsored the testimony of two experts, who advocated in support of the northern alternative route (3A) for the 345 kV line in Segment 3.²³ In the alternative, the Township supports the use of a combination route proposed during the hearing, which follows the 3A route across the Zumbro River and then runs south to rejoin the Modified Preferred Route (3P).²⁴ Oronoco contended that the White Bridge Road crossing would impact a greater number of current and future residents and would hamper future development in this area.²⁵ The Township took no position in testimony with regard had no objections to the route for the 161 kV line in Segment 2.⁴

25. When the Minnesota Department of Transportation made clear its intention to apply freeway standards that require placement of transmission poles 25 feet from the highway right-of-way along Highway 52, it became apparent that absent an exception to those standards, there is insufficient room to build the 1P route at the intersection of Highway 52 and County Road 19 in Cannon Falls without displacing at least one home. The Applicant promptly proposed an alignment using an expanded route width in this area, and it gave notice to the newly affected landowners by telephone and by mail on June 13, 2011, one day before the public hearings began⁵.

37. On August 4, 2010, EFP filed the two ATF Reports and issues of concern.⁴⁷ The Hampton to Northern Hills ATF recommended seven additional routes between Hampton and the Northern Hills Substation to be considered in the EIS.⁴⁸ The North Rochester to Mississippi River ATF recommended eight additional routes between the North Rochester Substation and the Mississippi River to be considered in the EIS.⁴⁹

38. On August 6, 2010, EFP issued its EIS Scoping Decision that set forth the alternatives and issues to be addressed in the EIS. The EIS Scoping Decision

² North Route Group, Initial Brief, p. 53.

³ North Route Group Reply Brief, p. 19-20.

⁴ Oronoco Witness Smith, Tr. Vol. 2, p. 71-72; see also Neil Stolp, Oronoco Town Chair, p. 94, l. 4-7; p. 95, l. 1-7; Public Hearing Pine Island 1:30.

⁵ 20116-63548-01 PUBLIC 09-1448 TL NORTHERN STATES POWER COMPANY LETTER--AFFIDAVIT OF MAILING POTENTIAL ALIGNMENT HWY 19 06/14/2011

included alternatives recommended in the ATF Report and suggested in the public meetings. On August 9, 2010, NoCapX 2020 and U-CAN appealed the Scoping Decision, which was denied.

59. The two segments of 345 kV transmission line are 81 to 89 miles in length total and would traverse parts of Dakota, Goodhue, Olmsted, and Wabasha counties. The 161 kV line is approximately 15 to 18 miles long in Goodhue and Olmsted counties; it would connect the new North Rochester substation with an existing Northern Hills substation north of Rochester. On April 29, 2011, Applicants added the 161kV North Rochester – Chester 161 kV line for consideration in the FEIS and for co-location by the Commission.⁶

68. In this segment there are 14 route alternatives, including the preferred and alternate routes. The public comment here was focused for the most part on the preferred and alternate routes, however, the ATF Final Report recommended sharing right of way and creating a parallel alignment where ever possible⁷. There was relatively little comment regarding the combined routes for Segments 2 and 3.

72. East of the Zumbro River, the three river crossing options merge into two potential routes, 3A over highly sloped terrain, and 3P through relatively flat agricultural land.⁹⁷

fn. 97. Id. at 10;Ex. 39-G,

80. The North Rochester Substation would have to accommodate interconnections with the 345 kV line and the 161 kV line that are part of this Project and the Chester 161 kV line.¹⁰⁷ The North Rochester Substation must also accommodate interconnections with the existing Prairie Island to Byron 345 kV transmission line.¹⁰⁸ To accommodate these interconnections, the new substation will 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.¹⁰⁹

fn 107 Ex. 2 at 32 (Hillstrom Direct); Ex. 14 (Schedule 12 to Hillstrom Direct; FEIS p. 147; Response to Applicant Comments p. O-209.

109. The Applicant initially estimated that the total cost of the project (preferred and alternate routes) would be between \$234 and \$243 million (2009 dollars). It estimated that the preferred 345 kV route in Segment 1 would be \$88 million and in Segment 3 would be \$106 million. It estimated the alternate route in Segment 1 would cost \$101 million, as would the alternate route in Segment 3. The 161 kV route in Segment 2 would cost \$16 million for the preferred route and \$17 million for the alternate route. There is no cost or cost-savings estimate provided for co-locating the Chester 161 kV line. The new North Rochester Substation is estimated to cost \$22 million, and improvements to the Northern Hills Substation would be \$2 million.¹⁶⁴

188. No impacts to floodplains are expected from the project, although counties

⁶ FEIS p. 147; Response to Applicant Comments p. O-209.

⁷ Ex. 47, North Rochester to Mississippi River ATF Report.

or municipalities along the Mississippi River might require the Applicant to obtain floodplain permits. The number of structures in floodplains can be minimized by using taller or stronger structures that can span longer distances.²³⁰ The span of the flood plain at the 3A crossing is 2,000 feet and larger, taller and more costly structures would be required. The FEIS states that construction in flood plains should be avoided.⁸

384. The DNR supported this route because, in its judgment, the White Bridge Road crossing would involve less tree clearing than the Zumbro Dam crossing and was preferred when considering a comparison of rare species and MCBS sites.⁹

396. The 3A route heads south for about one mile then ~~straight~~ east from the northern location of the substation, passing through an area of Mazeppa Township that contains agricultural land, Steeplechase, two tree farms, again mostly on field lines and cross-country where there is no existing highway or transportation corridor. After crossing the Zumbro River (the north crossing), where there is no existing highway or transmission corridor, it and passes through an area with three tree farms and agricultural land, heads southeast and east until it connects to the Q-3 transmission line to cross the Mississippi River. This route is 42.02 miles in length.

397. The north crossing follows a property line ~~across to~~ the Zumbro River at a location where there is no existing ~~linear~~ highway or transmission corridor on either side of the river.⁴⁷⁸ The north crossing would require more clearing of forested areas compared to the White Bridge Road Crossing, would impact more MCBS and DNR Heritage site, and is in a 2,000 foot wide FEMA floodplain.⁴⁷⁹

399. The DNR recommended against the 3A crossing of the Zumbro River because it is a greenfield crossing (no existing infrastructure) that could fragment forest and wildlife habitat, and recommended use of the White Bridge Road crossing because it would avoid the state-listed threatened turtle, and impact fewer sites of MCBS and DNR Natural Heritage. DNR jamie Schrenzel Comments, May 19, 2011 and July 20, 2011.

410. **Proximity to Residences Structures (“Structures” is not criteria).** All of the route options between North Rochester and the Mississippi River impact relatively low numbers of residences, with between 20 and 50 homes within 500 feet of the center line for this approximately 45-mile segment. The following table summarizes the proximity of homes from the center line of each route alternative in Segment 3:⁴⁹³

417. **Displacement.** The criteria of Minn. R. 7850.4000 addresses “displacement.” Displacement would occur where a residence is within the right-of-way. Route

⁸ FEIS p. 54; see also Hillstrom Rebuttal, Schedule 15, p. 4 if 13; Between structures 22 and 23, the span is 1,477 feet, to the middle of the flood plain, and from structures 23 and 24, 1,461 feet, totaling a span of 2,938 feet over the Zumbro River and floodplain. The White Bridge Road route is a total of 1,680 feet span across the Zumbro River and floodplain, and the Dam Route is 1,155 but one or two structures is in the floodplain.

⁹ DNR Comment, July 29, 2011.

alternatives 3P-Kellogg, 3P-006, 3P-009, 3P-010, 3B-003, 3A-Kellogg, 2C3-001-3a, 2C3-001-3b, and 2C3-006-3 all have homes located within the right of way and might result in displacement. Along the 2C3 routes, houses located within the 200-foot right-of-way might also face displacement.⁵⁰¹

418. There is one pinch point on 3B-003, along County Road 84 just east of US 61, where two homes are located on opposite sides of the road directly across from each other; the other is on 3P-006, on White Bridge Road, where the line runs between adjacent residences that are both located close to the road.⁵⁰² There is another pinch point on 3A west of the Zumbro River crossing surrounding structure 18, the “Kennedy Cluster” pinch point, that is not mitigatable by moving the alignment, any alignment would make it worse and could result in a displacement¹⁰,

419. With regard to the 3B-003 route, the Applicant requested a wider route width to avoid displacement of the home that is in the right-of-way; the Applicant also believes that there is sufficient room at the pinch point on 3B-003 when the line is located on the north side of County Road 84.⁵⁰³ The Applicants have not provided any suggestions for potential mitigation of the “Kennedy Cluster” pinch point.

C. Effects on Land UseBased Economies (“Effects on Land Use” is not a criteria).

424. **Agriculture.** The primary land-based economies in this segment are agricultural, including crops (corn and soybeans), livestock (turkeys, pigs, hogs, and cattle), dairy farms, and bee-keeping.⁵⁰⁹

425. More than 70% of the land in this segment is designated as “prime farmland if drained or protected from flooding.” The percentage of prime farmland within the right-of-way is slightly higher in route options 3A, 3A-001, 3A-003, 3A-004, 3A-Crossover, 3A-Kellogg, and 2C3-003-3; these same routes tend to affect less land that is designated as “prime farmland if drained or protected from flooding.⁵¹⁰ Prime Farmland at the North crossing is 6%, the Dam crossing 3% and the White Bridge Road 2%.¹¹

421. The topography in this area is generally flat with a few rolling hills and some steeper slopes along river valleys. All of the 3A route alternatives and 2C3-003-3 experience large changes in topography, with slopes of 12% to 20% near the Zumbro River. All route alternatives except for 3B-003 follow the existing transmission line leading to the Mississippi River; this area has large elevation changes with slopes of more than 12 percent.⁵⁰⁶

fn. 506 Id. at 164; Ex. 39-G, Direct Testimony, Slope Map.

423. In general, the route alternatives in this segment are not inconsistent with city or county ordinances or land use plans. (The Power Plant Siting Act pre-empts city and county ordinances and land use plans. Minn. Stat. s216E.10, Subd. 1.)

¹⁰ FEIS A-114 (Sheet Map MR-28); see FEIS p. 128; DEIS p. 148; Kennedy, Plainview 6:30, Tr. p. 77-83.

¹¹ Applicant Brief, p. 45.

427. **Forestry.** Within the RJD State Forest, there are 53 DNR forest stands located within 500 feet of the route alternatives in this segment; timber plans for these stands are not currently available. There is a small, privately owned tree farm in the RJD State Forest in Township 109, Range 14, Section 15; all the 3A route alternatives and 2C3-003-3 would run through this tree farm. Several other tree farms and woodlots are in the vicinity of the proposed routes. Owners of these farms objected strongly to route options that would impact their property.⁵¹² 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 lost.¹²

E. Effects on Cultural-Archeological and Historic Resources.

432. The Zumbro River cuts through deep, narrow valleys defined by rocky cliffs for much of its length below the Zumbro Dam eastward to Thielman. At that point, the valley widens, with farmland adjacent to the river. Canoeing and fishing are popular activities on the Zumbro River and its branches and forks. The wooded floodplain and steep slopes provide habitat for a number of rare reptiles and amphibians. Bird species ranging from large raptors, including eagles and other threatened and protected birds of prey to uncommon perching birds find foraging, nesting, and cover habitat in the floodplain forests and other habitats along the river.⁵¹⁷

435. All 3A alternatives and 2C3-003-3 would cross the Zumbro River along a property line approximately 2.2 miles north of the Zumbro Dam, -on a greenfield route cross country on both sides.⁵²⁰

439. There are three impaired watercourses within Segment 3: the Zumbro River/Lake Zumbro Reservoir¹³, West Indian Creek, and the Mississippi River. All the route alternatives in this segment would require between two and four crossings of impaired streams.

450. The DNR recommends the use of route 3B-003 to avoid additional impacts to state forest and possible natural resource impacts.¹⁴

455. Mitigation of potential impacts on sensitive wildlife habitats must be addressed in the permitting process and coordinated through the Minnesota EIS process, the federal EIS process, the Wisconsin state permitting process, and the USFWS Special Use Permit process.

463. Unlike Segments 1 and 2, there are fewer existing corridors and fewer opportunities for sharing of right-of-way in Segment 3. All of the routes are roughly comparable in terms of sharing utility lines and roads (30% to 40%); they are also

¹² Ex. 39, NRG Testimony, p. 13.

¹³ Hillstrom, Xcel Energy, DEIS Comments, FEIS ID #87, p. O-209.

¹⁴ Comment, DNR, Jamie Schrenzel, June 29, 2011.

roughly comparable in terms of using field lines (30% to 40% of the route), except for 3P-Zumbro-N, 3A, 3A-001, 3A-003, and 3A-004, and 3A-Crossover, which incorporate fewer field lines and cut more cross-country than the other routes. All of the route alternatives in this segment follow field lines or cut cross-country for 60% to 70% of the total route distance. The White Bridge Road crossing uses the most transmission.¹⁵

464. Two of the proposed Zumbro river crossings, White Bridge Road and the Zumbro Dam, utilize existing infrastructure crossings of the river, while the north crossing would require creation of a new corridor across the Zumbro River. There is a bridge, but no existing aerial crossing at White Bridge Road; this crossing would be 845 feet in length. There is ~~an~~ no existing aerial crossing at the dam; Application, p. 8-53, 8.7.1.3; 8-55, 8.7.1.9 paragraph 2, and its The length of the crossing at the dam would be 620 feet.

479. The RJD State Forest falls within the 1,000-foot route width of all route alternatives in this segment; however, there is significantly higher acreage (about three times more) of the RJD State Forest within the route width of options 3P-Zumbro-N, 3A, 3A-001, 3A-003, 3A-004, 3A-Kellogg, and 2C3-003-3 than other route alternatives. See Ex. 113, p. 181, map 8.3-40.

487. The 3A route options are shorter but more expensive, because the topography is more sloped. These routes would also have significant impacts to the RJD State Forest and businesses, including farms, tree farms, ~~and~~ a resort, and a pinch point of residences for which there is no mitigation.

¹⁵ Applicant Brief, p. 60.