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June 29, 2012

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ELECTRONIC FILING

Dr. Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
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**Re: In the Matter of the Route Permit Application for the CapX2020 Hampton-Rochester-La Crosse 345 kV Transmission Line
MPUC Docket No. E-002/TL-09-1448
OAH Docket No. 3-2500-21181-2**

Dear Dr. Haar:

Enclosed for electronic filing by Northern States Power Company, a Minnesota corporation, in the above-captioned matter is Xcel Energy's Answer to Petitions for Reconsideration.

Please contact me if you have any questions.

Sincerely,

/s/ Lisa M. Agrimonti

Lisa M. Agrimonti

LMA/rlh
Attachment
cc: Service List

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

Phyllis Reha	Vice Chair
David Boyd	Commissioner
J. Dennis O'Brien	Commissioner
Betsy Wergin	Commissioner

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

MPUC Docket No. E-002/TL-09-1448
OAH Docket No. 3-2500-21181-2

**XCEL ENERGY'S ANSWER TO
PETITIONS FOR
RECONSIDERATION**

I. INTRODUCTION

Northern States Power Company, a Minnesota corporation (“Xcel Energy” or the “Company”), respectfully submits the following answer to the petitions for reconsideration filed by (1) Oronoco Township (“Oronoco”) and (2) St. Paul’s Lutheran School and Church and Cannon Falls landowners (“Canon Falls Landowners”). Both petitions fail to identify any new evidence or errors in the Minnesota Public Utilities Commission’s (“Commission”) May 30, 2012 Order Issuing a Route Permit for the Hampton-Rochester-La Crosse 345 kV Transmission Line Project (“Order”) and therefore, Xcel Energy respectfully requests that these petitions be denied.

II. DISCUSSION

A. Legal Standard

In determining whether to grant a petition for reconsideration, the Commission examines whether the petition: (1) raises new issues requiring development, (2) points to new and relevant evidence, (3) exposes errors or ambiguities in the original Order, or (4) raises persuasive arguments that the Commission should rethink its original decision.¹

B. Response to Oronoco Petition

1. *Commission Relied on Record Evidence in Selecting Zumbro River Crossing*

Oronoco asks that Commission reconsider the portion of its Order related to Segment 3 of Project which authorizes the Modified Preferred Route for the 345 kV transmission line using the White Bridge Road Crossing of the Zumbro River. In addition to the White Bridge Road Crossing, the Commission considered two other Zumbro River crossings: the Zumbro Dam Crossing, which the Administrative Law Judge recommended, and the North Route Crossing. Oronoco alleges that the Commission erred by basing its decision on new and inaccurate evidence presented at the Commission hearing by four landowners opposed to the Zumbro Dam Crossing

¹ *In the Matter of the Application for a Route Permit for the Fargo to St. Cloud 345 kV Transmission Line Project*, Docket No. E002, ET-2/TL-09-1056, ORDER DENYING RECONSIDERATION at 1 (Feb. 23, 2012).

(“Power Dam Group”) rather than evidence presented during the lengthy contested case proceeding.²

Selection of a Zumbro River crossing for this Project was a difficult decision as the three crossings under consideration have relatively similar environmental impacts.³ However, the Commission thoroughly analyzed all of the record evidence and exercised its sound judgment in determining that on balance the White Bridge Road Crossing best meets the applicable routing criteria.⁴ Given the Commission’s experience and expertise in routing matters, its judgment is entitled to deference.⁵

The Commission’s Order outlines four grounds for selecting the White Bridge Road Crossing: (1) the White Bridge Road Crossing is more compatible with the objective of paralleling existing highway right-of-way; (2) the White Bridge Road Crossing would require less deforestation and tree clearing; (3) the Zumbro Dam Crossing impacts rare species and a site of high biological significance; and (4) the Zumbro Dam Crossing has impacts to recreational resources, including a campground and two summer camps, not present at the White Bridge Road Crossing.⁶ None of these justifications supporting the White Bridge Road Crossing was presented for the

² Notably, Oronoco admits that the Commission’s Order does not even mention the Power Dam Group. Oronoco Petition at 1. In contrast, Oronoco is mentioned seven times throughout the 18-page Order. *See* Order.

³ Ex. 113 at 164, 166, 168, 170, 173, 176, 180, 182, 183 (FEIS).

⁴ Minn. Stat. § 216E.03, subd. 7(b) and Minn. R. 7849.4100.

⁵ *In re Minnesota Pipe Line Co.*, No. A07-1318, 2008 WL 2344736 at *2 (Minn. Ct. App. June 10, 2008)(“we must adhere to the fundamental concept that decisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies’ expertise and their special knowledge in the field of their technical training, education, and experience.”)

⁶ Order at 12.

first time at the Commission hearing. In fact, Xcel Energy detailed these same reasons in the Route Permit Application as the Company's basis for preferring the White Bridge Road Crossing:

While the [White Bridge Road Crossing] would require some additional tree clearing at the Zumbro River, there are no known high quality resources at this location, and the bridge provides an existing corridor that could be used to minimize impacts to the river. . . . The [Zumbro Dam Crossing] would require new tree clearing on the east bank of the Zumbro River, where the MDNR has identified a forested area of high biodiversity significance. The [Zumbro Dam Crossing] would be located in proximity to several recreational resources, including a campground and two summer camps on the east bank of the Zumbro River.⁷

These same distinctions between these two crossings were also presented throughout the contested case proceeding, including in Xcel Energy's pre-filed testimony, the Draft Environmental Impact Statement, the Final Environmental Impact Statement, and the ALJ Report.⁸ In addition, two of the members of the public opposed to the Zumbro Dam Crossing made comments similar to those made at the Commission hearing at the earlier public hearings, comments which were cited in the ALJ's Report.⁹

⁷ Ex. 1 at 5-18 (Application).

⁸ Ex. 2 at 9-10 (Hillstrom Direct); Ex. 65 at 158-176; (DEIS); Ex. 113 at 164-184 (FEIS); ALJ Report at Findings 396, 434-426, and 483-484.

⁹ ALJ Report at fn. 476.

Oronoco had ample opportunity to present contra evidence in opposition to the White Bridge Road Crossing for the Commission's consideration and did so.¹⁰

The Commission fully considered Oronoco's evidence and arguments in its Order.¹¹

Oronoco's claim that the Commission relied on new evidence presented at the eleventh hour to support its selection of the White Bridge Road Crossing is unfounded.

2. *No Factual Errors Identified*

Oronoco asserts that not only was the Commission decision based on new information but also that this new information is inaccurate. However, the evidence that Oronoco brings forth to correct these alleged inaccuracies is evidence that was already in the record and was considered by the Commission in making its decision. For instance, Oronoco alleges that the Commission's finding that the Zumbro Dam Crossing would require "more deforestation and clearing" is factually inaccurate because Oronoco states that such impacts could be avoided during the design phase through micrositing.¹² However, the Commission took this form of mitigation into consideration in selecting the crossing location:

Commissioner Boyd: Commissioner Wergin is right, that there are going to be opportunities in siting to, probably in

¹⁰ Ex. 68 (Broberg Direct); Ex. 69 (Broberg Surrebuttal); Ex. 66 (Smith Direct); Ex. 67 (Smith Surrebuttal); Orono Post-Hearing Brief, edocket No. 20119-66379-02 (efiled Sept. 15, 2011); Oronoco Post-Hearing Reply Brief, edocket No. 201110-67132-02 (efiled Oct. 7, 2011); Oronoco Findings of Fact and Conclusions of Law, edocket No. 201110-67132-03 (efiled Oct. 7, 2011).

¹¹ Order at 10-11.

¹² Oronoco Petition at 11-12.

both cases, to make this the best that it can be, the least impactful.¹³

Similar, Oronoco claims that the Commission's finding that the White Bridge Road Crossing "along County Road 12 more closely adheres to the statutory objective of using existing highway right-of-way" is factually inaccurate because the route does not share highway right-of-way.¹⁴ Again, this fact was considered by the Commission:

Commissioner Boyd: Well, frankly, I think that you're going to create too many corridors with either crossing. I think it's probably a similar argument on the bridge. Because you're not putting the structures on the bridge, you're not putting wires on the bridge, you're going to span across, I think to the north again, if that's what you choose to do.¹⁵

In the end, the Commission determined that the White Bridge Road Crossing was more compatible with the statutory criterion to share existing right-of-way.¹⁶ Unlike the Zumbro Dam Crossing which does not have an existing transmission line or highway crossing, the bridge along the White Bridge Road Crossing provides an existing infrastructure corridor.

3. *All Persons Had Equal Opportunity to Address Commission*

Oronoco also alleges that Commission erred because those opposed to the Zumbro Dam Crossing were provided a special opportunity, not afforded to

¹³ Commission Hearing Tr. at 184

¹⁴ Oronoco Petition at 16 citing Order at 11.

¹⁵ Commission Hearing Tr. at 183.

¹⁶ Commission Hearing Tr. at 184 (Commissioner Boyd: "And the two reasons I would go to first are first that this bridge is, to my mind an existing corridor that's more substantive than the dam. And second is the issues of biodiversity. Those are the two reasons I would go with.")

Oronoco, to sway the Commission by being allowed to speak at the Commission hearing. However, the Commission hearing provided equal opportunity for all persons, including parties and nonparties to address the Commission. As the Commission's hearing notice outlined, formal parties could present their position through a representative and nonparties could address the Commission individually.¹⁷

In Oronoco's case, their attorney acted as their representative and summarized their position against the White Bridge Road Crossing. Likewise, the individuals opposed to the Zumbro Dam Crossing had the same opportunity to summarize the facts in the record. This allowance for more than just formal party participation at the Commission hearing complies with the Commission's statutory directive to adopt "broad spectrum" public participation in siting high voltage transmission lines.¹⁸

Oronoco further claims that because the individuals opposed to the Zumbro Dam Crossing did not file exceptions to the ALJ Report, that Oronoco could not have anticipated their comments at the Commission hearing. But, as the Commission's Notice issued nearly two weeks prior to the hearing made clear, speakers were not limited to those that filed exceptions to the ALJ Report.¹⁹ In addition, individuals opposed to the Zumbro Dam Crossing did not have the

¹⁷ Notice of Commission Meeting, edocket No. 20123-73137-01 (efiled Mar. 30, 2012).

¹⁸ Minn. Stat. § 216E.08, Subd. 2.

¹⁹ Notice of Commission Meeting, eDocket No. 20123-73137-01 (efiled Mar. 30, 2012); Minn. R. 7829.2700 (providing procedures for "parties" to file exceptions to an ALJ report").

opportunity to file exceptions as this right is afforded only to parties to a proceeding.²⁰

Selection of a Zumbro River crossing was a difficult decision. The Commission properly analyzed the record evidence in reaching its conclusions and nothing in Oronoco's petition provides a basis for the Commission to reconsider its decision.

C. Response to Cannon Falls Landowner Petition

The Cannon Falls Landowners ask the Commission to reconsider its selection of the Modified Preferred Route for Segment 1 of the 345 kV transmission line route. Specifically, the Cannon Falls Landowners object to the segment of the Modified Preferred Route near Cannon Falls at the intersection of U.S. Highway 52 ("US 52") and Highway 19. The section of the Modified Preferred Route near the US 52 and Highway 19 interchange includes two alignment options within the Modified Preferred Route to allow Applicants to work with the Minnesota Department of Transportation ("MnDOT") and the Department of Commerce, Energy Facility Permitting ("EFP") staff to determine the most appropriate and permissible alignment along US 52.²¹ One of these alignment options was added in June 2011 during the contested case proceeding in response to MnDOT's determination that

²⁰ Minn. R. 7829.2700, Subp. 1 ("[P]arties shall file and serve on the other parties any exceptions to an administrative law judge's report within 20 days of its filing."). Oronoco's attorney also spoke at the Commission hearing on behalf of another landowner, not affiliated with Oronoco, that did not file exceptions to the ALJ Report. Commission Hearing Tr. at 137.

²¹ Xcel Energy will need to obtain Utility Permits from MnDOT to occupy state trunk highway right-of-way for crossings, and potentially for longitudinal installations. Minn. R. 8810.330, subp. 1.

permanent overhang of highway right-of-way would not be allowed and therefore the original alignment might not be permissible.²² The Cannon Falls Landowners assert that this new route alignment was added to this portion of the Modified Preferred Route without proper notice to affected landowners and that this alignment was not evaluated in the FEIS. The record does not support these allegations.

1. *Notice to Cannon Falls Landowners Adequate*

The Cannon Falls Landowners²³ allege that notice was inadequate yet seven of the eight petitioners received notice in January 2010 of Xcel Energy's filing of a route permit application which included a preferred route along US 52.²⁴ Moreover, all eight landowner received notice of the scoping decision as part of EFP staff's September 2010 mailing that again included notice of Xcel Energy's preferred route along US 52 and also included notice of a new route alternative along Highway 19.²⁵

After identifying an additional alignment option near US 52 and Highway 19, Xcel Energy called and mailed written notice of this new alignment to the 13 landowners adjacent to the new alignment.²⁶ These landowners had the opportunity to present comments at the public hearing and submit written comments to the ALJ

²² Ex. 15 at 9-12 (Hillstrom Rebuttal).

²³ A map showing the location of the Cannon Falls Landowners is attached as **Attachment 1**.

²⁴ Ex. 29 (Affidavit of Mailing and Notice Dated 01/19/2010). Notice was sent to one of the petitioners, Gail Schlueter, at her mailing address but was addressed the previous owner.

²⁵ Ex. 50 (Certificate of Service of Director's EIS Scoping Decision); *See* **Attachment 1**.

²⁶ Ex. 36 at 1 (Mapbook of 25-foot Alignment Along US-52); Ex. 72 (Affidavit of Mailing for Landowners near US-52 and Highway 19); Ex. 37 (Affidavit of Mailing and Notice to Landowners Along Expanded Route); Ex. 96 (Chart of Landowner Notification).

regarding this alignment option.²⁷ Many of these landowners near the US 52 and Highway 19 interchange, including several of the Cannon Falls Landowners, exercised this right.²⁸

2. *Cannon Falls Alignments Evaluated in the FEIS*

The Cannon Falls Landowners further allege that the alignment adjustments to the Modified Preferred Route near the Highway 19 and US 52 interchange in Cannon Falls were not evaluated in the FEIS. However, Appendix L of the FEIS includes an analysis of all three alignment options based on the routing factors outlined in Minn. R. 7849.4100.

III. CONCLUSION

As both petitions fail to identify any errors or provide any new facts or persuasive reasons warranting reconsideration, Xcel Energy respectfully requests that the Commission deny these petitions.

²⁷ Attachment A to Cannon Falls Petition at para. 6 (Daniel Flotterud Affidavit); Attachment C to Cannon Falls Petition at para. 5 (Tim Langdon Affidavit); Attachment E to Cannon Falls Petition at para. 6 (Michelle Sandstrom Affidavit); Attachment G to Cannon Falls Petition at para. 6 (Dennis Doffing Affidavit).

²⁸ Cannon Falls Public Hearing, 6/16/11 at 6:30 p.m. at pp. 124-129 (Jennifer Langdon); Cannon Falls Public Hearing, 6/16/11 at 6:30 p.m. at pp. 81-88 (Andy Sandstrom); Cannon Falls Public Hearing, 6/16/11 at 1:30 p.m. at pp. 116-117 (Cory McDonald representing St. Paul's Lutheran School and Church); October 1, 2010 Letter from St. Paul's Lutheran School and Church, eDocket No. 201011-56767-01, efiled 11/23/10; Commission Hearing Tr. at 102-105 (Tim Langdon); Commission Hearing Tr. at 121-124 (Michelle Sandstrom); Commission Hearing Tr. at 125-128 (Andy Sandstrom); Commission Hearing Tr. at 128-130 (Richard Busiahn on behalf of St. Paul's Lutheran Church and School); Commission Hearing Tr. at 131-134 (Jennifer Langdon).

Dated: June 29, 2012

Respectfully submitted:

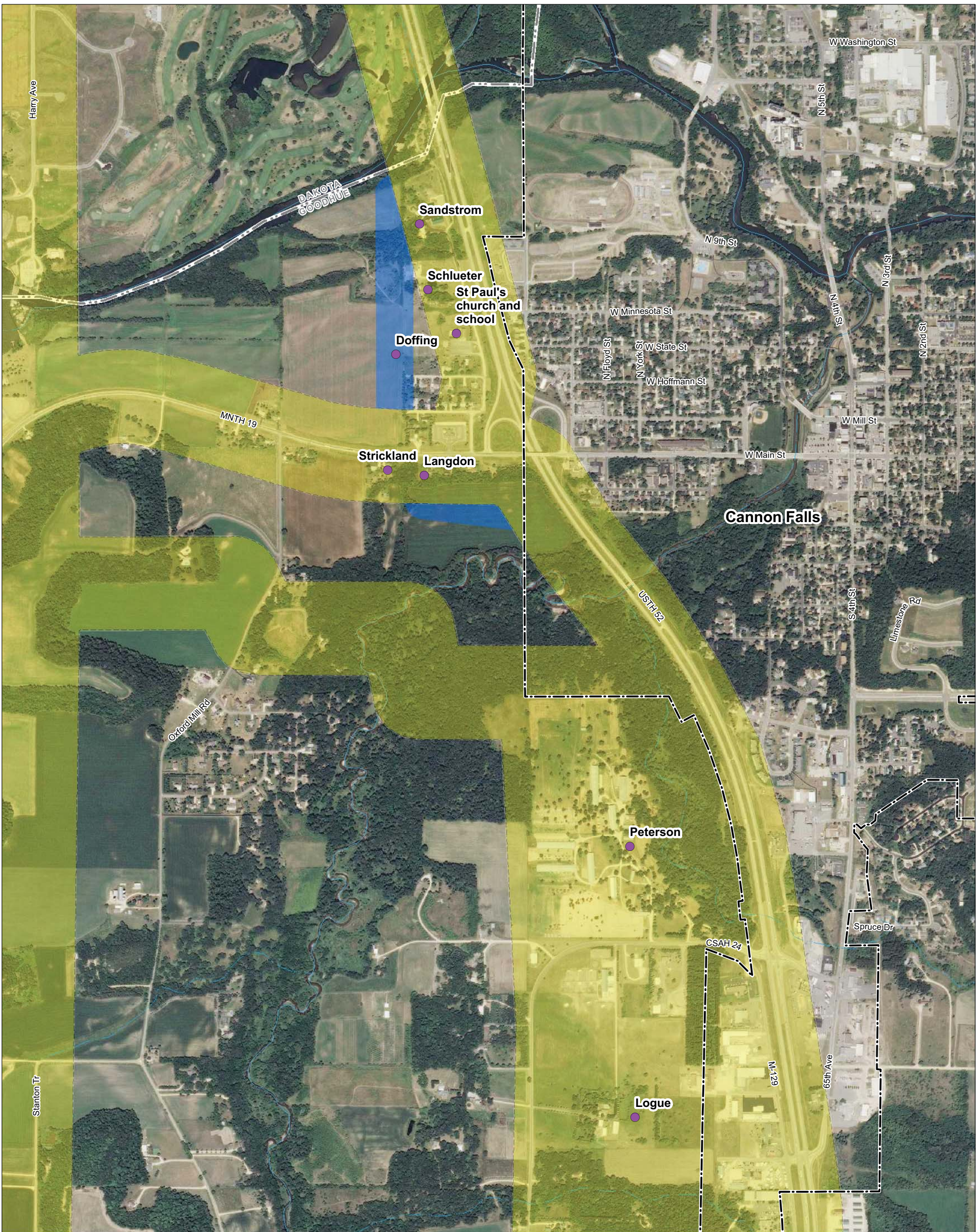
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Map Title to be determined

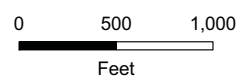
Legend

Project Feature

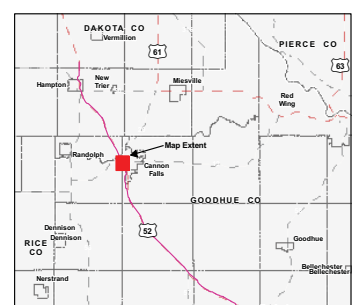
- Cannon Falls Landowner
- Route Addition
- Application and Scoping Route

Jurisdiction

- Municipal Boundary
- County



DATA SOURCES: MNDNR, BTS, LMIC, Barr, MnDOT
 FILENAME: Cannon_Falls
 MXD LOCATION: P:\2007\07180025.00_CAP\GIS\Layouts\MN_App
 PDF LOCATION: P:\2007\07180025.00_CAP\GIS\Maps\MN_App



Hampton • Rochester • La Crosse 345 kV Transmission Project

Xcel Energy • Dairyland Power Cooperative • Rochester Public Utilities • WPPI • Southern Minnesota Municipal Power Agency

**IN THE MATTER OF THE ROUTE PERMIT
APPLICATION FOR THE CAPX2020
HAMPTON-ROCHESTER-LA CROSSE 345 kV
TRANSMISSION LINE**

**CERTIFICATE OF SERVICE
MPUC Docket No. E-002/TL-09-1448
OAH Docket No. 3-2500-21181-2**

Roshelle Herstein certifies that on the 29th day of June, 2012, she filed a true and correct copy of the Applicant's Answer to Petitions for Reconsideration by posting it on www.edockets.state.mn.us. Said document(s) were also served via U.S. Mail or e-mail as designated on the Official Service List on file with the Minnesota Public Utilities Commission.

/s/ Roshelle L. Herstein
Roshelle L. Herstein

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