

Legalelectric, Inc.

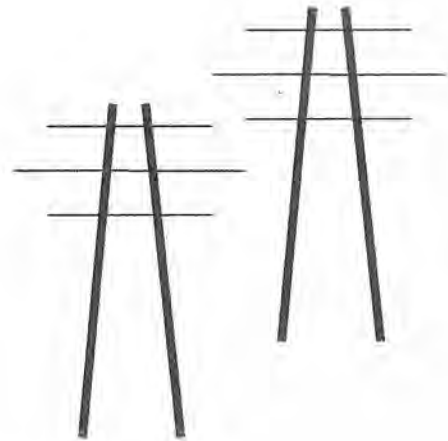
Carol Overland

Attorney at Law, MN #254617

Energy Consultant—Transmission, Power Plants, Nuclear Waste
overland@legalelectric.org

1110 West Avenue
Red Wing, Minnesota 55066
612.227.8638

P.O. Box 69
Port Penn, Delaware 19731
302.834.3466



September 12, 2012

Clerk of Appellate Court
Minnesota Court of Appeals
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

RE: In the Matter of the Application for a Route Permit for the CapX 2020 Hampton-Rochester-La Crosse High Voltage Transmission Project
MPUC Docket: E002/TL-09-1448
OAH Docket: 3-2500-21181-2
Appeals Court No. A12-_____

Dear Clerk of Appellate Court:

Enclosed for filing on behalf of Relator St. Paul's Lutheran School and Church and Cannon Falls Landowners, please find:

1. Filing Fee of \$550.00;
2. Petition for Writ, proposed Writ;
3. Two copies of the Statement of the Case and Public Utilities Commission Order from which this appeal emanates;
4. Waiver of Cost Bond.

The Affidavit of Service by CERTIFIED MAIL will follow under separate cover.

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

Very truly yours

Carol A. Overland
Attorney at Law

cc: Parties of Record – Attached Service List, Affidavit of Service to follow.

AFFIDAVIT OF SERVICE

Carol A. Overland, after being duly sworn, states that on this date, by **CERTIFIED MAIL** depositing in envelopes with postage paid, I have served a true and correct copy of the filing cover letter, Petition for Writ, Writ, Waiver of Cost Bond, Statement of the Case, and Public Utilities Commission Order to all parties of record in the above-entitled matter:

Attorney General and Asst. A.G. for Minnesota Public Utilities Commission: +Burt Haav/PUC

Lori Swanson
Minnesota Attorney General
445 Minnesota St., 1400 Bremer Tower
St. Paul, MN 55101

Gary Cunningham/Jeanne Cochran
Assistant Attorneys General
445 Minnesota St., 1100 Bremer Tower
St. Paul, MN 55101

Attorney for Applicant Xcel Energy:

Lisa Agrimonti/Valerie Herring
Briggs & Morgan
2200 IDS Center
80 So. 8th St.
Mpls., MN 55402

Attorney for Dept. of Commerce:

Karen F. Hammel
Assistant Attorney General
Bremmer Tower, Suite 1400
445 Minnesota Street
St. Paul, MN 55101-2131

Attorney for Oronoco Township

Rod Krass
Malkerson Gunn Martin
1900 US Bank Plaza South Tower
220 South 6th St.
Mpls., MN 55402

Attorney for American Transmission Co.

Brian Meloy
Leonard, Street & Deinard
150 So. 5th St., Suite 2300
Mpls., MN 55402

Attorney for NoCapX 2020, United Citizens Action Network, North Route Group


Carol A. Overland – personally served!

September 12, 2012



Carol A. Overland #254617
Attorney at Law
OVERLAND LAW OFFICE
1110 West Avenue
Red Wing, MN 55066
(612) 227-8638 www.overlandlaw.com

Signed and sworn to before me this
12th day of September, 2012.


Notary Public

**STATE OF MINNESOTA
IN COURT OF APPEALS**

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

**PETITION FOR
WRIT OF CERTIORARI**

Court of Appeals No. _____

**AGENCY DOCKET NUMBER:
E002/TL-09-1448**

**OAH DOCKET NUMBER:
3-2500-21181-2**

TO: THE COURT OF APPEALS OF THE STATE OF MINNESOTA:

ST. PAUL'S LUTHERAN SCHOOL AND CHURCH AND CANNON FALLS
LANDOWNERS ("Relator") hereby Petitions the Court of Appeals for a Writ of
Certiorari to review the attached May 30, 2012 decision of the Minnesota Public Utilities
Commission ("PUC") granting a routing permit for CapX 2020 Rochester-Hampton-
LaCrosse transmission line over the land of St. Paul's Lutheran School and Church and
Cannon Falls Landowners. On August 14, 2012, the PUC issued its Order and denied
various parties' Motions for Reconsideration and Reopening.

The PUC's decisions were erroneous under statutory routing criteria, Minn. Stat.
§216E.03, Minn. R. 7850, 2400, Subp. 3; 7850.2500, Subp. 2, 4 and 4; 7850, 4000, Subp.
I and J and §14.60, Subd. 2. The Order erroneously and improperly based on omissions
and misstatements of the issue before Commission; Applicant's failure to provide route
for consideration as provided by rules; Xcel Energy and Dept. of Commerce's advocacy

for and Commission's selection of a route not reviewed in Environmental Impact Statement; and reliance on information not in the record.

St. Paul's Lutheran School and Church and Cannon Falls Landowners are directly and specifically aggrieved parties affected by the Order, landowners whose land would be taken for the transmission line route chosen by the Public Utilities Commission. Appeals from final Public Utilities Commission decisions are taken pursuant to the Minnesota Administrative Procedures Act, Minn. Stat. §§216B.52 and 216E.05. The Administrative Procedures Act authorizes review in the Court of Appeals by Writ of Certiorari. Minn. Stat. §14.63; see also Minn. R. Civ. App. P. 103.03(g) and 115.01.

September 12, 2012



Carol A. Overland #254617
Attorney at Law
OVERLAND LAW OFFICE
1110 West Avenue
Red Wing, MN 55066
(612) 227-8638
overland@legalelectric.org

**ATTORNEY FOR RELATOR
ST. PAUL'S LUTHERAN SCHOOL
AND CHURCH AND CANNON
FALLS LANDOWNERS**

STATE OF MINNESOTA
IN COURT OF APPEALS

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

WRIT OF CERTIORARI

Court of Appeals No. _____

**AGENCY DOCKET NUMBER:
E002/TL-09-1448**

**OAH DOCKET NUMBER:
3-2500-21181-2**

TO: PUBLIC UTILITIES COMMISSION:

You are hereby ordered to return to the Court of Appeals within 10 days after the date Relator's brief is due the record, exhibits and proceedings in the above-entitled matter (PUC Docket E002/TL-09-1448; OAH Docket 3-2500-21181-2) so that this court may review the decision of the agency issued on the date noted above.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the respondent Minnesota Public Utilities Commission, its counsel listed below, and upon the official parties in the above-captioned case.

Gary Cunningham, Asst. Attorney General
Jeanne Cochran, Asst. Attorney General
ATTORNEY FOR RESPONDENT PUBLIC UTILITIES COMMISSION
445 Minnesota Street
Bremer Tower, Suite 1100
St. Paul, MN 55101

Proof of service shall be filed with the Clerk of the Appellate Courts.

DATED: _____

Clerk of Appellate Courts

By: _____
Assistant Clerk

(Clerk's File Stamp)

SEP 12 2012

STATE OF MINNESOTA
IN COURT OF APPEALS

FILED H

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

WRIT OF CERTIORARI

Court of Appeals No. _____

AGENCY DOCKET NUMBER:
E002/TL-09-1448

OAH DOCKET NUMBER:
3-2500-21181-2

TO: PUBLIC UTILITIES COMMISSION:

You are hereby ordered to return to the Court of Appeals within 10 days after the date Relator's brief is due the record, exhibits and proceedings in the above-entitled matter (PUC Docket E002/TL-09-1448; OAH Docket 3-2500-21181-2) so that this court may review the decision of the agency issued on the date noted above.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the respondent Minnesota Public Utilities Commission, its counsel listed below, and upon the official parties in the above-captioned case.

Gary Cunningham, Asst. Attorney General
Jeanne Cochran, Asst. Attorney General
ATTORNEY FOR RESPONDENT PUBLIC UTILITIES COMMISSION
445 Minnesota Street
Bremer Tower, Suite 1100
St. Paul, MN 55101

Proof of service shall be filed with the Clerk of the Appellate Courts.

DATED: 9-12-12

Clerk of Appellate Courts

By: 
Assistant Clerk

(Clerk's File Stamp)

STATE OF MINNESOTA
COURT OF APPEALS

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

WAIVER OF COST BOND

COURT OF APPEALS NO.: _____

MINNESOTA PUBLIC UTILITIES
COMMISSION DOCKET NO.:
E-002/TL-09-1448

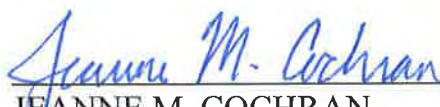
Date of Decision: August 14, 2012
May 30, 2012

TO: CLERK OF APPELLATE COURTS

The Minnesota Public Utilities Commission ("Commission") hereby waives for St. Paul's Lutheran School and Church and Cannon Falls Landowners the cost bond required by Rule 107 of the Rules of Civil Appellate Procedure, or any analogous cost bond requirement of the Commission, with respect to the Relator's Petition for Writ of Certiorari in the above-entitled matter.

Dated: September 11, 2012

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota



JEANNE M. COCHRAN
Assistant Attorney General
Atty. Reg. No. 0246116
445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2128
(651) 757-1217 (Voice)

ATTORNEY FOR MINNESOTA PUBLIC
UTILITIES COMMISSION

**STATE OF MINNESOTA
IN COURT OF APPEALS**

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

STATEMENT OF THE CASE

Court of Appeals No. _____

**AGENCY DOCKET NUMBER:
E002/TL-09-1448**

**OAH DOCKET NUMBER:
3-2500-21181-2**

Relator St. Paul's Lutheran School and Church and Cannon Falls Landowners, for its Statement of the Case, states as follows:

1. Agency of case origination:

This case originated with the Minnesota Public Utilities Commission (hereinafter "PUC") and the Application for the CapX 2020 Hampton-Rochester-LaCrosse project, a roughly 90 mile three Segment transmission line in Minnesota. The Commission referred this docket to the Office of Administrative Hearings for contested case evidentiary proceedings, presided over by Administrative Law Judge Kathleen Sheehy, after which ALJ Sheehy issued a Recommendation to the PUC. The PUC issued its written Order on May 30, 2012, and then denied various Motions and Petitions for Reconsideration on August 14, 2012, triggering this appeal of the Commission's Order regarding a portion of Segment 1 near Cannon Falls.

2. Jurisdictional statement

Appeals from final Public Utilities Commission decisions are taken pursuant to the Minnesota Administrative Procedures Act, Minn. Stat. §216B.52 and §216E.15. The Administrative Procedures Act authorizes review in the Court of Appeals by writ of certiorari. Minn. Stat. §14.63; Minn. R. Civ. App. P. 103.03(g) and 115.01.

Relator St. Paul's Lutheran School and Church and Cannon Falls Landowners are specifically aggrieved by the Commission's decision and order regarding Segment 1 near Cannon Falls and are directly affected by it because the transmission project would run over their land and their land would be taken by eminent domain. Minn. Stat. §216B.52. Relators appeal the PUC's May 30, 2012 Order granting a Routing Permit for Segment 1 of the CapX 2020 Hampton-Rochester-LaCrosse Transmission Project and the August 14, 2012 denial of the St. Paul's Lutheran School and Church and Cannon Falls Landowner's Motion for Reconsideration. This appeal is timely filed within 30 days of the PUC's August 14, 2012 Order (Minn. Stat. §§14.63; 14.64).

3. State type of litigation and designate any statutes at issue.

This is an appeal of a Minnesota Public Utilities Commission routing decision and order, a state agency action, that followed an OAH facilitated Public Hearing and a Contested Case Hearing under the Minnesota Administrative Procedures Act, Minn. Stat. Ch. 14. The specific statutes and rules at issue are Minn. Stat. §§ 14.60, Subd. 2; 216E.02, Subd. 1; 216E.03, Subd. 4, 5, 7(b)(7), 7(b)(8), 7(e), 10(b); Minn. R. 1405.2400; 7850. 2400, Subp. 3; 7850.2500, Subp. 2, 3, 4; 7850.4000, Subp. I, J. While there are several legally significant flaws with the Commission's decision, the primary matter at

issue is Minnesota's "non-proliferation" statute requiring maximum utilization of existing transmission rights of way, *People for Environmental Enlightenment & Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council*, 266 N.W.2d, 858, 868 (Minn. 1978), and Minn. Stat. §216E.03, Subd. 7(e). The statutory requirement of compliance with Minnesota's policy of non-proliferation of transmission corridors under Minn. Stat. §216E.03, Subd. 7(e) is a matter of first impression.

The Order of the Commission relies on information not in the record, with citations to statements made by Applicants in Exceptions to ALJ's Recommendation, long after record closed. Minn. Stat. 14.60, Subd. 2; Minn. R. 1405.2400. Also at issue is determination of adequacy of the Environmental Impact Statement because environmental review did not include or analyze the route chosen near Cannon Falls. Minn. Stat. §116D.04, Subd. 2a(a) and (h).

4. Brief description of claims, defenses, issues litigated and result below.

The Public Utilities Commission rejected the Recommendation of the Administrative Law Judge of 1P-003 in Segment 1, and, utilizing information not in the record, chose to route the transmission line on an improperly proposed greenfield route that had not received the necessary environmental review. This appeal will address whether the Court should reverse the Commission's decision and affirm the Administrative Law Judge's selection and recommendation of route 1P-003 in the Cannon Falls area of Segment 1 of this project, and whether the Court should prohibit routing over Relator's land because the Applicants proposed it contrary to transmission

routing statutes and rules and it was not legitimately available to the Commission as a route option.

5. List specific issues proposed to be raised on appeal.

I. Notice to the Cannon Falls landowners was inadequate.

The Commission's selection of the Cannon Falls route in Segment 1 is an error of law because the Power Plant Siting Act requires notice be given to landowners within 15 days of submission of the route permit application. The statute requires a bona fide attempt to comply be made to notify landowners within 15 days. The application was filed on January 19, 2010, and the notice provided to affected Cannon Falls landowners was not mailed until June 13, 2011. The Applicants did not enter the Cannon Falls route as a route proposal into the record until the evidentiary hearing had begun. Applicants did not make a bona fide effort to give notice within 15 days of the filing of the Application, because notice was not provided until roughly a year and a half after the application was filed. Relators did not receive the process due under the Power Plant Siting Act. Minn. Stat. §216E.03, Subd. 4.

II. Only routes identified in the Scoping Decision are legitimate candidates for route selection.

The Commission's selection of the Cannon Falls route in Segment 1 is an error of law because the route selected was not identified as a route option in the Scoping Decision, and was not proposed as a route option until well beyond the deadline to add routes for consideration, and is thus unavailable to the Commission for routing. Minn. Stat. §216E.03, Subd. 5, 10(b); Minn. R. 7850.2500, Subp. 2.

III. Routes are identified through a specific process of public comment, Applicant or agency proposal, or Task Force proposal, culminating in the Scoping Decision. The Route chosen is not available to the Commission because Applicants did not follow proper procedure in proposing this route.

The Commission's selection of the Cannon Falls route in Segment 1 is an error of law because the Applicants did not follow procedure for addition of a route for consideration. The Cannon Falls routes were added improperly – in a manner contrary to rules concerning the form, content, and timeliness of proposals for alternate routes. The Cannon Falls modifications to the Preferred Route were added at the last minute and were not included in the Scoping Decision of August 10, 2010, after which no new routes could be added. It was also not reviewed and analyzed in the Draft Environmental Impact Statement or the Final Environmental Impact Statement. During the public and

evidentiary hearings, in the days before the Cannon Falls route was proposed, there were two attempts to add routes for consideration, and both of those attempts were rejected as improper because it was too late. It was also too late to add the Cannon Falls route – the rules regarding proposals of routes apply to the Applicants. Improper proffer of this route deprived Relators of process due under the Power Plant Siting Act. Minn. Stat. §216E.03, Subd. 5, 10(b); Minn. R. 7850.2400, Subp. 3; 7850.2500, Subp. 3, 4.

IV. The Cannon Falls Route is contrary to Minnesota’s policy of non-proliferation of transmission corridors.

The Commission’s selection of the Cannon Falls route in Segment 1 is an error of law because it violates Minnesota’s policy of non-proliferation and Minn. Stat. §216E.03, Subd. 7(e). The route chosen by the Commission is a greenfield route with no shared transmission or highway corridor. Route Segment 1P-003, along Harry Avenue, was recommended by the Administrative Law Judge, specifically because there is a pre-existing transmission corridor which more closely adheres to Minnesota’s policy of non-proliferation, and specifically because the three existing transmission lines along 1P-003 on Harry Avenue between Hwy. 52 and the Byllesby Dam and then south mitigate the impacts of using this route. The route segments at issue near Cannon Falls added by the Applicants and chosen by the Commission are entirely within greenfield territory, with no shared transmission, road, pipeline or railroad right of way, and these additions are not verified or analyzed in the FEIS. The Commission did not comply with statutory requirements to utilize an existing corridor, and did not state sufficient reasons an existing corridor was not used because it relied on information not in the record and demonstrably false. *People for Environmental Enlightenment & Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council*, 266 N.W.2d, 858, 868 (Minn. 1978); Minn.Stat. §216E.03, Subd. 7(b)(7), 7(b)(8), 7(e), 10(b).

V. Decision improperly relies on information not in the record

The Commission’s selection of the Cannon Falls route in Segment 1 is an error of law and fact because in two ways it improperly relies on information not in the record. First, the Commission based its rejection of the ALJ’s Recommendation of 1P-003 and its decision to utilize the improper Cannon Falls route based on information not in the record -- Xcel Energy’s Exceptions to the ALJ’s Recommendation and the Dept. of Commerce quoting Xcel’s Exceptions in “Briefing Papers” and additional “Findings of Fact, Conclusions of Law and Order,” to which the parties have no opportunity to file objections or comments. Xcel Energy’s Exceptions were filed over seven months after the record closed and included information on impacts that was not verified, vetted or subject to cross examination. Commerce filed proposed Findings two weeks prior to the Commission’s decision, using Xcel’s data, and there is no opportunity for parties to file comment or objections. The Commission then made a decision relying on “Xcel’s data” that was not in the record.

Secondly, the Commission, despite receiving specific notice that the Environmental Impact Statement was incorrect, that substantive material information was missing or false regarding transmission at two dam crossings, in Segment 1 near Cannon Falls, and Segment 3 near Oronoco, the Commission failed to correct the EIS and Findings of Fact. Based upon information not on the record, and false and missing information regarding transmission corridors, the Commission rejected the ALJ's Recommendation of route 1P-003 near Cannon Falls. The Exceptions information utilized by the Commission, such as house counts, road corridor sharing, land use, fragmentation of floodplain, "LAWCON" park funding, and all statements regarding comparative impacts was information not in the record, not verified, subject to public review and comment, and not part of environmental review. Information not in the record contained in Xcel's Exceptions, adopted by Dept. of Commerce, and relied upon by the Commission in its Order, repeatedly using "Xcel's data" as the basis for its decision, deprives Relators of the process due under the Power Plant Siting Act and is impermissible use of information not in the record to support its decision.¹ Minn. Stat. ch. 216E; Minn. Stat. §14.60, Subd. 2, Minn. R. 1405.2400.

6. Related appeals.

No other appeals related to this area or route in Segment 1 are contemplated or known to have been filed at this time.

An appeal of the Segment 3 routing decision by the Commission in this docket has been filed by Oronoco Township regarding the Zumbro River crossing, within the southeastern most section of this project. See Court of Appeals Case No. A12-1607.

Relator St. Paul's Lutheran School and Church and Cannon Falls Landowners are focused on Segment 1 of the CapX Hampton-Rochester-LaCrosse transmission line, and request that because the Oronoco Township appeal is focused on the Zumbro River crossing at White Bridge Road in Segment 3, that the township appeal be kept separate

¹ A Conflict of Interest Complaint has been filed against Barr Engineering, the EIS contractor, regarding Barr contracts in the areas of both dams where existence of transmission was not reported in one case, and in the other, claimed to be present where it was not, to the benefit of Barr's clients that do not want transmission routed through those areas. This Complaint is on the Commission's agenda for its September 13, 2012 meeting.

and not consolidated with this appeal because they are not related -- they address distinct issues at different places along the Applicant segmented route.

7. Contents of record.

There is an extensive record of the PUC proceeding. For the purposes of Rules 115.04, subd. 1 and 110.02, subd. 1(c), Relator provides notice that a transcript is not necessary to review the issues on appeal because the transcript has been prepared of the prehearing conference, public and evidentiary hearings and agency decisional hearings in this matter, and the original transcript is part of the record and is on file with the PUC. These transcripts, and the record, will be transmitted to the Court of Appeals under Rule 111.01. Trout Unlimited, Inc. v. Minn. Dep't of Agriculture, 528 N.W. 2d 903, 908 (Minn. App. 1995) (all documents "available and in the possession of" the agency are part of the record.).

8. Is oral argument requested? Yes. At another location? No.

9. Identify the type of brief to be filed. Formal brief under Rule 128.02.

10. Names, addresses, zip codes and telephone numbers of attorneys:

Counsel for St. Paul's Lutheran School and Church and Cannon Falls Landowners

(also counsel for Intervenors NoCapX 2020, United Citizens Action Network (U-CAN) and North Route Group (NRG))

Carol Overland #254617
Overland Law Office - Legalectric
1110 West Avenue
Red Wing, MN 55066
(612) 227-8638
overland@legalectric.org

Attorney General

Lori Swanson
Minnesota Attorney General
445 Minnesota St., 1400 Bremer Tower
St. Paul, MN 55101
(651) 296-6196

Respondent Public Utilities Commission

Gary Cunningham/Jeanne Cochran
Assistant Attorney General
445 Minnesota St., 1100 Bremer Tower
St. Paul, MN 55101
(651)757-1450/(651) 757-1217
gary.cunningham@ag.state.mn.us
jeanne.cochran@ag.state.mn.us

Attorney for Applicant Xcel Energy:

Lisa Agrimonti/Valerie Herring
Briggs & Morgan
2200 IDS Center
80 So. 8th St.
Mpls., MN 55402
(612) 977-8400
lagrimonti@briggs.com

Attorney for Dept. of Commerce:

Karen F. Hammel
Assistant Attorney General
Bremmer Tower, Suite 1400
445 Minnesota Street
St. Paul, MN 55101-2131
(651) 757-1248
karen.hammel@ag.state.mn.us

Attorney for Oronoco Township

Rod Krass
Malkerson Gunn Martin
1900 US Bank Plaza South Tower
220 South 6th St.
Mpls., MN 55402
(612) 344-1111
rod.krass@mgmllp.com

Attorney for American Transmission

Brian Meloy
Leonard, Street & Deinard
150 So. 5th St., Suite 2300
Mpls., MN 55402
(612) 335-1451
brian.meloy@leonard.com

September 12, 2011



Carol A. Overland #254617
Attorney at Law
OVERLAND LAW OFFICE
1110 West Avenue
Red Wing, MN 55066
(612) 227-8638
overland@legalectric.org

ATTORNEY FOR ST. PAUL'S
LUTHERAN SCHOOL AND CHURCH
AND CANNON FALLS LANDOWNERS