

STATE OF MINNESOTA
COURT OF APPEALS

In the Matter of Xcel Energy's Application
for a Route Permit for the CapX 2020
Hampton-Rochester-LaCross High
Voltage Transmission Line.

**STATEMENT OF THE CASE OF
RESPONDENT MINNESOTA PUBLIC
UTILITIES COMMISSION**

Court of Appeals Number: A12-1607

Oronoco Township,

Relator,

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

vs.

Minnesota Public Utilities Commission,

Respondent.

For its Statement of the Case, Respondent Minnesota Public Utilities Commission
("Commission") states as follows:

1. Court or agency of case origination and name of presiding judge or hearing officer.

Petitioner Oronoco Township ("Oronoco") is appealing the Commission's decision to issue a route permit to Xcel Energy for a 345 Kv transmission line.

2. Jurisdictional statement.

B. Certiorari appeal.

1. Statute, rule or other authority authorizing certiorari appeal.

Minn. Stat. § 14.63 (2010).

2. Authority fixing time limit for obtaining certiorari review.

Minn. Stat. § 14.63 requires that an appeal be filed within 30 days of receipt of a final agency decision. The final agency decision occurred on August 14, 2012.

D. Finality of order.

- 1. Does the order to be reviewed dispose of all claims by and against all parties?**

☒ Yes

☐ No

- 2. Date of orders:** May 30, 2012 and August 14, 2012.

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

Oronoco seeks certiorari review of an agency decision. The statutes at issue are Minn. Stat. § 216E.03 and Minn. Stat. § 14.60-61, § 14.69.

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

On January 19, 2010, Xcel Energy (Xcel) filed an application for a high-voltage transmission line route permit for the CapX 2020 Hampton-Rochester-La Crosse Transmission Line Project (the Project) under Minn. Stat. § 216E.03 and Minnesota Rules, part 7849.0200. Xcel's Modified Preferred Route for Segment 3 of the 345 kV transmission line includes a crossing of the Zumbro River at the County Road 12 bridge, identified in the record as the White Bridge Road Crossing. In addition to the White Bridge Road Crossing, two other Zumbro River crossings were considered: the Zumbro Dam Crossing (a middle crossing) and the North Route Crossing (furthest north). In its permit application, Xcel identified the White Bridge Crossing of the Zumbro River as the preferred route to maximize use of existing linear corridor across the river and to better avoid sensitive resources. Xcel proffered evidence that the Zumbro Dam Crossing by contrast, is in an area of high biodiversity significance and has the highest number of residences within 300 feet. It is located in proximity to several recreational resources, including a campground and two summer camps.

The Administrative Law Judge (ALJ) assigned to the case held evidentiary hearings in St. Paul between June 20 and June 22, and on June 24, 2011. In the contested case Oronoco Township recommended use of an alternative route—the 3A route. The Minnesota Department of Natural Resources ("DNR") supported use of Xcel's preferred route for crossing the Zumbro River, stating that it has fewer impacts on natural resources and is more compatible with the policy of reducing deforestation and using parallel existing highway right-of-way. The DNR raised concerns about the Zumbro Dam Crossing, stating that it is located next to a Site of Biodiversity Significance ranked High by the Minnesota County Board of Biological Survey (compared to the White Bridge Crossing ranking of Moderate). The DNR showed that the area includes two rare plant species: American ginseng and moschatel, a state-listed species of special concern. The Zumbro Dam area also includes the country's largest concentrations of the Blanding's turtle, a state-listed threatened species.

On February 8, 2012, the ALJ assigned to the case submitted her Findings of Fact, Conclusions and Recommendations (the ALJ's Report). The ALJ evaluated Segment 3 using the applicable permitting criteria contained in Minn. Stat. § 216E.03, subd. 7(b) in evaluating the various crossings of the Zumbro River. Based on her analysis, she concluded that several criteria weighed more heavily in favor of the Zumbro Dam Crossing. She stated that slightly fewer homes (24 instead of 26) would be impacted by the Zumbro Dam Crossing, considering the number of homes impacted within 500 feet of the crossing. The ALJ also concluded that the Dam Crossing would follow an existing transmission line at the Dam and would avoid crossing Lake Zumbro, which is located at the White Bridge Road Crossing. She also found that the Dam Crossing is shorter and more direct, as well as less costly. She therefore recommended that Xcel's Project cross the Zumbro River at the Zumbro Dam.

At the Commission meeting Oronoco Township stated that it supported the ALJ's recommendation to use the Zumbro Dam Crossing. The Township recommended avoiding Lake Zumbro, located in the area of the White Bridge Crossing, due to the impact on recreational activities such as fishing, boating, water skiing, tubing, swimming, and snowmobiling. The Township also stated that the Dam Crossing impacts fewer homes, parcels, structures, and archaeological and historic sites and is a shorter crossing by 225 feet of water area. The Township also raised concerns that crossing at the White Bridge Road would impact residential development. North Route Group, NoCapX 2020, and United Citizens Action Network filed exceptions to the ALJ's Report, challenging the ALJ's finding that there is an existing transmission line at the Zumbro Dam Crossing. The intervenors recommended against the Dam Crossing, arguing, *inter alia*, that there is more acreage (86.7) of Sites of Biological Significance along 1P-003 than the acreage (64.4) along the Modified Preferred Route.

Before the Commission, Xcel and the Department of Commerce "(DOC-EFP)" confirmed that there is no aerial transmission line at the river crossing at the Zumbro Dam, although there is a low-voltage transmission line (described by Xcel as equivalent to a distribution line) along the west side of the dam. In comparison to the Dam Crossing, which is somewhat less costly, the White Bridge Road Crossing along County Road 12 more closely adheres to the statutory objective of using existing highway right-of-way. There is no existing high-voltage transmission line route or parallel existing highway right-of-way at the Dam Crossing.

The Commission adopted the route reflected in Xcel's Modified Preferred Route. The Commission credited the argument that the White Bridge Road crossing better met the objective of the use of existing highway right-of-way.

The Commission also reasoned that while there were potential impacts on Lake Zumbro recreation, there are comparable concerns at the Dam Crossing, where some of the same recreation (such as snowmobile trails) and other recreational resources,

including a campground and two summer camps, will be impacted. The Commission determined that, on balance, the White Bridge Road Crossing of the Zumbro River better meets the applicable routing criteria. The Commission credited the DNR's analysis that the Dam Crossing affects rare species and a Site of Biological Significance ranked High, would require more deforestation and clearing, and is less compatible with the objective of using a parallel existing highway right-of-way. And although Oronoco Township raised concerns about the number of archaeological (seven) and historic sites (14) in the area of the preferred route, those numbers are nearly equivalent to the number of archaeological sites (seven) and historic sites (11) affected by the Dam Crossing, which the Township supported. Since there are archaeological and historic sites throughout all the route alternatives, and appropriate mitigation measures, such as line adjustments, must be implemented to minimize and avoid impacts to these resources.

The Commission concluded that the difference between the two alternatives with respect to impacts on homes is slight; 26 homes are impacted within 500 feet of the White Bridge Road Crossing compared to the 24 homes within 500 feet of the Dam Crossing. Within 300 feet, however, there are two more homes near the Dam Crossing than the White Bridge Crossing. And although Oronoco expressed concern that the preferred route would impact a planned residential area, Olmsted County's (where Oronoco Township is located) future land use map does not show the preferred route crossing any area identified as suburban development; it crosses less than one mile of an area identified as potentially suburban.

As detailed above, the Commission's choice among the competing routes was neither arbitrary or capricious and was based on substantial evidence in the record.

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

1. Whether Commission's decision is arbitrary or capricious?
2. Whether the Commission's decision was made based upon substantial evidence in the record.

6. Related appeals.

No. St. Paul's Lutheran School and Church and Cannon Falls Landowners' Appeal No. A12-1632 arose from the same Commission decision, but there are no overlapping issues.

7. Contents of record:

Is a transcript necessary to review the issues on appeal?

☒ Yes

☐ No

If yes, full ☒ or partial ☐ transcript?

Has the transcript already been delivered to the parties and filed with the trial court administrator?

☐ Yes ☒ No

In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04?

☐ Yes ☒ No

8. Is oral argument requested?

☒ Yes ☐ No

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2?

☐ Yes ☒ No

If yes, state where argument is requested:

9. Identify the type of brief to be filed.

☒ Formal brief under Rule 128.02.

☐ Informal brief under Rule 128.01, subd. 1 (must be accompanied by motion to accept unless submitted by claimant for reemployment benefits).

☐ Trial memoranda, supplemented by a short letter argument, under Rule 128.01, subd. 2.

10. Names, addresses, zip codes, telephone numbers and attorney registration license number of attorney for Relator and Respondents

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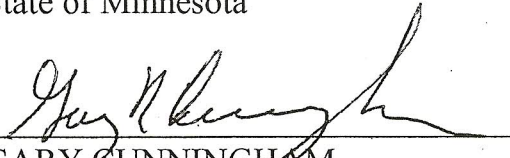
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Dated: September 24, 2012

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

A handwritten signature in black ink, appearing to read "Gary Cunningham", is written over a horizontal line.

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ATTORNEY FOR RESPONDENT
MINNESOTA PUBLIC UTILITIES
COMMISSION

AG: #3084692-v1

AFFIDAVIT OF SERVICE BY U.S. MAIL

Re: *In the Matter of Xcel Energy's Application for a Route Permit for the CapX 2020 Hampton-Rochester-LaCross High Voltage Transmission Line: Oronoco Township, Petitioner vs. Minnesota Public Utilities Commission, Respondent.*
Court of Appeals File No. A12-1607

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Patricia L. Brunelle, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on September 24, 2012, she caused to be served the Statement of the Case of Respondent Minnesota Public Utilities Commission, by depositing the same in the United States mail at said city and state, true and correct copy(ies) thereof, properly enveloped with prepaid first class postage, and addressed to:

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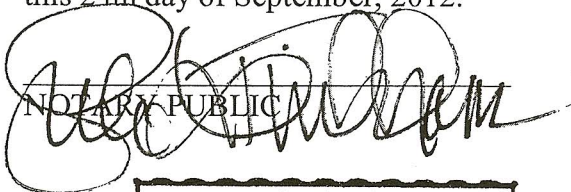
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~~Overland Law Office
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P.O. Box 176
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*Incorrect
Address*

Patricia L. Brunelle
Patricia L. Brunelle

Subscribed and sworn to before me on
this 24th day of September, 2012.


NOTARY PUBLIC

