

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: A12-1632

St. Paul Lutheran School and Church and
Cannon Falls Landowners,

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

Relators,

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.

Relators St. Paul Lutheran School and Church and Cannon Falls Landowners ("Cannon Falls Landowners") are 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), 216B.27, 216.E15.

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. Minn. Stat. § 216E.15 also prescribes a 30 day limitations period. 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.**

Cannon Falls Landowners seek certiorari review of an agency decision. The statutes at issue are Minn. Stat. § 216E.03 and Minn. Stat. § 14.60-61, § 14.69, Chapter 216E.

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 Minn. R. 7849.0200. Xcel's preferred route for segment 1 of the 345 kV transmission line follows U.S. Highway 52 from the Hampton Substation to a proposed North Rochester Substation. Xcel subsequently made two alignment adjustments to the preferred route (the Modified Preferred Route) to address concerns raised by the Minnesota Department of Transportation (DOT) over freeway setbacks.

Xcel revised its proposed alignment and route width in the area directly west of Cannon Falls at the Highway 19 and U.S. 52 interchange. Further south, at the intersection with County Road 24, Xcel altered the alignment to follow a planned access road running behind businesses abutting the highway. These revisions were developed in consultation with the DOT.

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. Cannon Falls Landowners were not a party to the contested case proceeding. After an analysis of the factors established by Minn. Stat. § 216.E03, subd. 7 and Minn. R. 7850.4000 and 7840.4100, the ALJ selected a variant of the Modified Preferred Route, designated in the record as IP-003. The ALJ concluded, *inter alia*, that IP-003, compared with the Preferred Route, would affect fewer homes and avoid St. Paul Lutheran Church and School while using existing road corridors.

In its exceptions to the ALJ report, Xcel opposed the IP-003 route and supported its Modified Preferred Route. The Minnesota Department of Commerce-Energy Facility Permitting (DOC-EFP) also supported the use of the Modified Preferred Route for this segment, explaining that the Modified Preferred Route has less negative effects on natural resources and recreation. The DOC-EFP analysis also showed that the Modified Preferred Route better followed existing rights of way and had fewer effects on land uses in the area.

The Commission modified the ALJ's findings to select the Modified Preferred Route for segment 1 of the transmission line. The Commission determined that the Modified Preferred Route's use of the existing U.S. 52 corridor was more compatible with the corridor's industrial use and conforms to the objective of using existing highway rights of way where feasible. The

Commission determined that, contrary to the ALJ's findings, more homes are affected by the IP-003 route than the Modified Preferred Route. The IP-003 route also conflicted with future planned land use activity.

Cannon Falls Landowners filed a Motion for Reconsideration with respect to the Commission's decision selecting the Modified Preferred Route for segment 1 of the transmission line. In particular, Cannon Falls Landowners object to a segment near Cannon Falls at the intersection of U.S. Highway 52 and Highway 19. This particular section was the result of two modifications made in consultation with the DOT and DOC-EFP. One of the alignments was added during the contested case proceeding in response to an objection by the DOT.

Cannon Falls Landowners objects that Xcel failed to give the notice to landowners required by Minn. Stat. § 216E.03, subd. 4 and failed to identify parts of the route in its application as required by Minn. Stat. § 216E.03, subd. 3. Xcel responded to the Cannon Falls Landowners Motion for Reconsideration by showing that affected landowners were provided the required notice of transmission line at all stages of the proceeding. Cannon Falls Landowners did not claim that any landowners were unable to participate in the proceedings because of lack of notice or that they were otherwise injured.

Cannon Falls Landowners also argue that the route was not evaluated in the environmental review process and that the Commission relied on extra-record evidence allegedly proffered by Xcel in its Response to Exceptions. The record shows that the route modification being challenged was evaluated in the Environmental Impact Statement ("EIS"). Final Environmental Impact Statement, at Appendix L. Finally, Xcel did not proffer extra-record evidence. Rather, the analysis in Xcel's Response was wholly based upon a map of the area contained in the record.

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 Xcel provided adequate notice to landowners.
2. Whether the Commission's decision was made based upon substantial evidence in the record.

6. Related appeals.

No. Oronoco Townships Appeal No. A12-1607 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 Relators and Respondents

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