

**STATE OF MINNESOTA
IN COURT OF APPEALS
Court File Nos. A12-1607, A12-1632**

In the Matter of Xcel Energy's Application for
a Route Permit for the CapX2020 Hampton-
Rochester-La Crosse High Voltage
Transmission Line

Oronoco Township (Appellate Court File No.
A12-1607),

St. Paul Lutheran School and Church and
Cannon Falls Landowners (Appellate Court
File No. A12-1632),

Relators/Petitioners,

v.

Minnesota Public Utilities Commission,

Respondent,

Northern States Power Company, a Minnesota
corporation,

Respondent/Permittee.

**RESPONDENT/PERMITTEE
NORTHERN STATES POWER
COMPANY'S STATEMENT OF THE
CASE**

MPUC Docket Number: E002/TL-09-1448

OAH Docket Number: 3-2500-21181-2

Northern States Power Company, doing business as Xcel Energy, ("Respondent/Permittee") respectfully submits this Statement of the Case. Respondent/Permittee applied to the Respondent Minnesota Public Utilities Commission ("Commission") for a Route Permit for the Hampton – Rochester – La Crosse 345 kilovolt ("kV") Transmission Project¹ (the "La Crosse Project") in accordance with Minn. Stat. § 216E.03, subd. 2. The Commission granted the requested Route Permit in its May 30, 2012 *Order Issuing Route Permit as Amended*

¹ The Minnesota portion of the La Crosse Project consists of approximately 80 miles of new 345 kV transmission line between the Hampton Substation south of the Twin Cities and a new North Rochester Substation to be located between Zumbrota and Pine Island, Minnesota, and then between the North Rochester Substation and the Minnesota border near Kellogg, Minnesota. The La Crosse Project also includes approximately 15 miles of new 161 kV transmission line between the new North Rochester Substation and the existing Northern Hills Substation, located in northwest Rochester, Minnesota.

("Commission Order"). Two separate appeals of the Commission Order were filed: (i) by Oronoco Township ("Oronoco") (Appellate Court File No. A12-1607), and (ii) by St. Paul Lutheran School and Church and Cannon Falls Landowners ("Cannon Falls Landowners") (Appellate Court File No. A12-1632). On September 20, 2012, the Minnesota Court of Appeals issued an order consolidating these two appeals. Accordingly, Respondent/Permittee is providing this single Statement of the Case in response to these two appeals.

1. **Court of Case Origination and Name of Presiding Judge:**

This case originated with the Commission:

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

2. **Jurisdictional Statement:**

(A) **Certiorari Appeal.**

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

Minnesota Statutes §§ 14.63, 216B.27, 216E.15.

2. **Authority fixing time limit for obtaining certiorari review.**

Minnesota Statutes §§ 14.63, 216B.27, and 216E.15 set the jurisdictional and timing requirements for an appeal from an Order from the Commission.

(B) **Finality of Order.**

Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees? Yes No

3. **State Type of Litigation and Designate Any Statutes at Issue.**

This is an appeal from the Commission Order issuing a Route Permit for the La Crosse Project. Minnesota Statutes Chapter 14, Minnesota Statutes Chapter 216E, and Minnesota Rules Chapter 7850 are at issue in this appeal.

4. **Brief Description of Claims, Defenses, Issues Litigated and Result Below.**

The La Crosse Project consists of 345 kV transmission line facilities and substation connections between the Hampton Substation and a new substation in the La Crosse, Wisconsin area, as well as a 161 kV transmission line between the proposed North Rochester Substation and the existing Northern Hills Substation. On January 19, 2010, Respondent/Permittee filed an application for a Route Permit for the Minnesota portion of the La Crosse Project. The Minnesota portion of the La Crosse Project consists of three distinct geographic segments: (1) the section of 345 kV transmission line between Hampton Substation to the North Rochester Substation; (2) the section of 161 kV transmission line between North Rochester Substation and the Northern Hills Substation; and (3) the section of 345 kV transmission line between the North Rochester Substation and Minnesota border.

The Commission referred the Route Permit application to an administrative law judge (“ALJ”) for a contested case evidentiary hearing. During the hearing process, the ALJ held six public hearings, four days of evidentiary hearings, and considered nearly 170 exhibits.

The appeal by the Cannon Falls Landowners, who were not parties in the proceeding before the Commission, relates to the route selected for Segment 1 (Hampton Substation to North Rochester Substation) of the 345 kV transmission line. Specifically, the Cannon Falls Landowners object to the segment near Cannon Falls at the intersection of U.S. Highway 52 (“US 52”) and Highway 19. This portion of the route includes two alignment modifications within the route to allow Respondent/Permittee 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 52.² One of

² Respondent/Permittee will need to obtain Utility Permits from MnDOT to occupy state trunk highway right-of-way for crossings, and any longitudinal installations. Minn. R. 8810.330, subp. 1.

these alignment modifications was added in June 2011 during the contested case proceeding in response to MnDOT's determination that the original alignment might not be permittable.

After identifying this additional alignment modification, Respondent/Permittee called and mailed written notice of this new alignment to the 13 adjacent landowners, including the Cannon Falls Landowners. However, this was not the first notice given to the Cannon Falls Landowners regarding the La Crosse Project. After filing the Route Permit application in January 2010, Respondent/Permittee sent notice to the Cannon Falls Landowners, which included identification of a preferred route along US 52. The Cannon Falls Landowners were also sent notice of the environmental scoping decision as part of EFP staff's September 2010 mailing that again included notice of Respondent/Permittee's preferred route along US 52 and also included notice of a new route alternative along Highway 19. These landowners had ample opportunity to comment on the La Crosse Project prior to the close of the record. Many of these landowners near the US 52 and Highway 19 interchange, including several of the Cannon Falls Landowners, provided comments on the record. In addition, all of alignment modifications proposed by the Respondent/Permittee near Highway 19 and US 52 were evaluated in the Final Environmental Impact Statement issued by EFP for the La Crosse Project. The Cannon Falls Landowners' assertions that the route alignment near US 52 and Highway 19 was added without proper notice to affected landowners and that the Commission decision relied on evidence not in the record are unsupported.

Oronoco's appeal concerns the most contested portion of the proceeding, the Zumbro River Crossing in Segment 3 (the North Rochester Substation to Minnesota border section). In the Route Permit application, Respondent/Permittee identified three potential Zumbro River Crossings: (1) a northern crossing of the Zumbro River which does not follow any existing

infrastructure (“North Crossing”); (2) a central crossing at the Zumbro Dam (“Zumbro Dam Crossing”), and (3) the southern alternative which crosses the Zumbro River at the County Road 12 bridge (“White Bridge Road Crossing”).

On February 8, 2012, the ALJ issued the Findings of Fact, Recommendations, and Conclusion (“ALJ Report”). The ALJ evaluated all three Zumbro River crossings using the applicable permitting criteria contained in Minn. Stat. § 216E.03, subd. 7(b) and based on her analysis concluded that several criteria weighed more heavily in favor of the Zumbro Dam Crossing. The ALJ noted that slightly fewer homes would be impacted by the Zumbro Dam Crossing, considering the number of homes within 500 feet of the crossing. The ALJ also concluded that the Zumbro Dam Crossing would follow an existing transmission line at the Zumbro Dam and would avoid crossing Lake Zumbro, which is located at the White Bridge Road Crossing. The ALJ also found that the Zumbro Dam Crossing is shorter and more direct, as well as less costly.

On April 12, 2012, the Commission met to consider the matter, heard arguments from the parties as well as public comment, and the record closed under Minn. Stat. § 14.61, subd. 2. On May 30, 2012, the Commission issued its Order granting a Route Permit for the La Crosse Project. In its Order, the Commission selected the White Bridge Road Crossing of the Zumbro River. In making this selection, 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. 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.

While selection of a Zumbro River crossing was a difficult decision, as the three crossings under consideration have relatively similar environmental impacts, the Commission's decision was based on substantial evidence provided in the record. Given the Commission's experience and expertise in routing matters, Minnesota law provides that the Commission's judgment in selecting the White Bridge Road Crossing is entitled to deference.

Both the Cannon Falls Landowners and Oronoco Township filed petitions for rehearing with the Commission. The Commission denied these petitions in an order issued on August 14, 2012.

5. List Specific Issues Proposed to Be Raised on Appeal.

(1) Whether the Commission acted in an arbitrary and capricious manner or contrary to law in granting a Route Permit for the La Crosse Project based on the record developed in the proceeding.

(2) Whether the Commission's Order granting a Route Permit for the La Crosse Project is supported by substantial evidence.

(3) Whether the notice provided to the Cannon Falls Landowners complied with the Power Plant Siting Act and afforded adequate procedural due process.

6. Related Appeals.

List all prior or pending appeals arising from the same action as this appeal. If none, so state.

Petitioner Oronoco filed an appeal after the Commission issued its May 30, 2012 Order while its petition for reconsideration was pending before the Commission. *See* Appeal No. A12-

1138. Petitioner Oronoco and the Commission agreed that this appeal was premature pursuant to Minn. Stat. § 216B.27 and the appeal was dismissed without prejudice by stipulation that Petitioner Oronoco could file an appeal after the Commission acted on its petition for reconsideration.

List any known pending appeals in separate actions raising similar issues to this appeal. If none are known, so state.

None.

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

9. Identify the Type of Brief to Be Filed.

Formal brief under Minn. R. Civ. App. P. 128.02.

10. Names, Addresses, Zip Codes and Telephone Numbers of Attorney for Appellant and Respondent.

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STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Court File No. A12-1607
Court File No. A12-1632

Theresa A. Senart, being first duly sworn, deposes and states that on the 21st day of September, 2012, she served the attached

STATEMENT OF THE CASE OF RESPONDENT NORTHERN STATES POWER COMPANY

upon:

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Theresa A. Senart

Theresa A. Senart

Subscribed and sworn to before me this
21st day of September, 2012

Diane Bailey Andersen
Notary Public

