

No. A12-1607  
No. A12-1632

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**STATE OF MINNESOTA  
IN COURT OF APPEALS**

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

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**RESPONDENT'S BRIEF AND ADDENDUM  
NO CAPX 2020 AND  
LAYMEN FOR CHRIST o/o WOODLAND CAMP**

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## STATEMENT OF THE ISSUES

### **I. Whether the Public Utilities Commission followed the prescribed statutory procedures and administrative rules when it granted a route permit for Segment 3 of a transmission line route.**

The Commission granted a routing permit utilizing a route segment where the application was made January 19, 2010 and notice was properly mailed, and the Commission reviewed the route and made its choice of Applicant's Preferred Route utilizing all process and criteria afforded and required by the state's statutes and rules.

#### **Apposite Authority:**

*People for Environmental Enlightenment & Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council*, 266 N.W.2d, 858, 868 (Minn. 1978)

Power Plant Siting Act, Minn. Stat. Ch. 216E

Minn. Stat. §216E.03, Subd. 4

Minn. Stat. §216E.08, Subd. 2

Minn. R. ch. 7850 – Power Plant Siting Act rules

## **STANDARD OF REVIEW**

The standard of review of an agency decision applicable in this case is set forth in Minn. Stat. §14.69, which states:

### **14.69 SCOPE OF JUDICIAL REVIEW.**

In a judicial review under sections 14.63 to 14.68, the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Minn. Stat. § 14.69. The appellate court may reverse or remand to the agency if the agency decision is arbitrary or capricious or affected by other error of law. Minn. Stat. § 14.69(d),(f) (2004).

The agency's decisions have a presumption of correctness, and deference by the court to the agency's expertise. Relators must prove error on the part of the Commission. *See Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977); *City of Moorhead v. Minnesota Pub. Utilities Comm'n*, 343 N.W.2d 843, 846, 849 (Minn. 1984), *Markwardt v. State Water Resources Board*, 254 N.W. 2d 371, 374 (Minn. 1977). A decision is not arbitrary and capricious if the agency, when presented with opposing points of view, reached a decision that rejects one point of view. *CUB Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 565 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001).

An agency's decision is arbitrary and capricious if it reflects the agency's will and not its judgment. *Blue Cross & Blue Shield*, 624 N.W.2d 264, 278 (Minn. 2001). Questions of law are reviewed de novo. *Id.* "An agency's decision is arbitrary and capricious if the agency ... entirely failed to consider an important aspect of the problem... or if the decision is so implausible that it could not be ascribed to a difference in view or the result of agency expertise." *White v. Minn. Dept. of Natural Resources*, 567 N.W. 2d 724 (Minn. Ct. App. 1997); see also *Pope County Mothers v. Minn. Pollution Control Agency*, 594 N.W. 2d 233, 236 (Minn. Ct. App. 1999) (citing *Trout Unlimited, Inc. V. Minn. Dept. of Agric.*, 528 N.W. 2d 903, 907 (Minn. Ct. App. 1995).



## **STATEMENT OF THE CASE**

No CapX 2020 has been an intervenor in the CapX 2020 Certificate of Need docket and three routing dockets, the Brookings Hampton, Fargo – St. Cloud, and this Hampton-Rochester-LaCrosse routing docket. Laymen for Christ, owner/operators of Woodland Camp (hereinafter “Laymen for Christ”) are “any other person, aggrieved by a decision and order and directly affected by it,” and filed a timely reply to Oronoco Township’s Motion for Reconsideration, in which Oronoco argued to route over the Zumbro Dam and Woodland Camp. Minn. Stat. §216B.27. They are landowners that would be directly affected by a modification of the decision of the Public Utilities Commission if the “Zumbro Dam Crossing” were to be utilized in Segment 3 rather than the chosen Modified Preferred Route through Oronoco Township. Principals of Laymen for Christ participated in the Citizens Advisory Task Force and submitted Scoping and DEIS Comments for the record in this proceeding. If the routing decision were modified to cross over Zumbro Dam, this project would run over their land, through their camp and forest, and their land would be taken by eminent domain. Laymen for Christ, owner/operators of Woodland Camp are landowners that would be aggrieved parties, directly affected by a modification of the decision of the Commission if the “Zumbro Dam Crossing” were to be utilized in Segment 3 rather than the chosen Modified Preferred Route, and have a direct interest in this appeal. Minn. Stat. §216B.52.

The Commission referred this docket to the Office of Administrative Hearings for contested case evidentiary proceedings, after which Administrative Law Judge Sheehy

issued a Recommendation to the PUC. Oronoco Add. 3. The PUC issued its written Order on May 30, 2012, and then denied various Motions and Petitions for Reconsideration on August 14, 2012, triggering Oronoco's appeal of the Commission's Order regarding Segment 3 crossing the Zumbro River. *Id.*, see also Oronoco Add. 1.

Appeals from final Public Utilities Commission decisions are taken pursuant to the Minnesota Administrative Procedures Act and 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. The Oronoco Township appeal was filed within 30 days of the PUC's August 14, 2012 Order. Minn. Stat. §§14.63; 14.64.

The primary case law at issue is *People for Environmental Enlightenment & Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council*, 266 N.W.2d, 858, 868 (Minn. 1978). The specific statutes and rules at issue are Minn. Stat. §§ 14.61; 216E.03, Subd. 7(e); Minn. R. 1405.0800; Minn. R. 7829.0900; Minn. R. 7829.3000; Minn. R. 7850.2500; and Minn. R. 7850.4000.

While the Commission's decision regarding Segment 3 and the Zumbro River crossing complied with laws and rules, the underlying primary matter at issue for this Segment 3 part of the route permit is the fact that there is no transmission at the Zumbro Dam crossing. This fact directed the Commission's decision to utilize the White Bridge Road route. The location, and lack thereof, of transmission and transportation corridors is the basis for the Commission's compliance with Minnesota's "non-proliferation" policy which requires maximum utilization of existing transmission and road 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.

This situation in Segment 3 at the Zumbro River crossing presents a reverse situation of that in Segment 1 of the CapX Hampton-La Crosse line at the Byllesby Dam crossing, where there is a large transmission corridor that was not disclosed in the Environmental Impact Statement. This error in the Draft and Final Environmental Impact Statement regarding Segment 1 was not corrected by the Commission and the Commission improperly chose to use a late and improperly added greenfield route. See A-12-1607. In that case, the Commission did not acknowledge and utilize a three-transmission-line-wide corridor in Segment 1 at the Byllesby Dam as recommended by the Administrative Law Judge. In this Segment 3 case, the Commission properly chose the White Bridge Road route in Segment 3 and correctly acknowledged that the record demonstrates there is no transmission line at the Zumbro Dam crossing where that ALJ mistakenly believed there was one.

The Order of the Commission properly relies on information in the record, found in the Application and Comments to the Draft Environmental Impact Statement (DEIS), the Final Environmental Impact Statement (FEIS) and an Exception pointing out the error in the FEIS with specific citations to the record. Oronoco Township's claim of "new information" is unspecified, unfounded, and its charges of lack of due process misplaced,

as demonstrated in the record. Oronoco Township received the process that was due under both the Administrative Procedure Act and the Power Plant Siting Act. Minn. Stat. §14.60, Subd. 2; Minn. R. 1405.2400; Minn. Stat. ch. 216E.

### **STATEMENT OF FACTS**

No CapX 2020 and Laymen for Christ incorporate Petitioner/Appellant Oronoco Township's Statement of Facts as if full related here with several limited but significant exceptions, specified below in order of appearance in Oronoco Township's brief.

Oronoco combines its "Statement of the Case" and "Statement of Facts" in one lengthy section as a confusing jumble, difficult to parse, and addressed here as best possible.

**Regarding Statement of Facts, Section C:** Laymen for Christ note that Oronoco Township states White Bridge Road was "ultimately designated as Applicant's Preferred Route." Brief, p. 4, citing OA32. However, that designation was made by the Applicants in the initial Application<sup>1</sup> at the outset of this proceeding, not "ultimately," when the Applicant designated the route crossing the Zumbro River at the White Bridge Road its "Preferred Route" stating:

The Applicant selected the Preferred Route (White Bridge Road) because it would maximize use of existing linear corridor across the Zumbro River and better avoid sensitive resources.

OA32; but see e.g. Hearing Exhibit 1, Application, ES-4 et seq., ES-7 regarding White Bridge Road as Preferred Route; 8-55.

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<sup>1</sup> This brief will identify Oronoco's Addendum, as "Oronoco Add." or "O. Add.," and Oronoco's Appendix, as "Oronoco App." or "O.A." NoCapX and Laymen's Appendix will be "Laymen App." The PUC's Amended Itemized List of Documents, Transcripts and Exhibits will be listed as "Commission" followed by the item number.

**Regarding Statement of Facts section E:** Laymen for Christ add to the section regarding Task Forces that invitations were sent to local governments to participate in the Task Force for the area, and Oronoco Township did not participate. PUC Item 24, Solicitation Letter; PUC Item 26, Mailing List (see PUC eDockets<sup>2</sup>). The Commission's charge to the Task Force was that proposed by Commerce:

OES herein charges the ATF members to:

1. Assist in determining specific impacts and issues of local concern that should be assessed in the EIS by adding detail to the draft Scoping Document;
2. Assist in determining potential route alternatives that should be assessed in the EIS.

Hearing Exhibit 45, PUC Order, March 16, 2010, Order, p. 8 of Attachment 2; see also Task Force Report, O.A. 192.

**Regarding the Statement of Facts Section F:** Laymen for Christ add that the Draft Environmental Impact Statement was published March 21, 2011 and Revised March 29, 2011. See PUC's amended Itemized List of Documents, Transcripts and Exhibits.<sup>3</sup> Many parties filed DEIS Comments, including the Applicant. See Hearing Ex. 113 FEIS, Appendix O.

<sup>2</sup>

<a href="#">20103-48299-03</a>	PUBLIC	09-1448	<input type="checkbox"/>	TL	DOC OES	OTHER--MAILING LIST	03/24/2010
<a href="#">20103-48299-02</a>	PUBLIC	09-1448	<input type="checkbox"/>	TL	DOC OES	OTHER--NORTH ROCHESTER TO MISSISSIPPI RIVER TASK FORCE SOLICITATION LETTER	03/24/2010

<sup>3</sup> The PUC's "Amended Itemized List of Documents, Transcripts and Exhibits" dated October 16, 2012, appears not to have identified Evidentiary Hearing Exhibits 1-70. The list shows Public Hearing Exhibits 1-70 and then Hearing Exhibits beginning at 71, however, there are Hearing Exhibits 1-70 that are not identified by the Commission.

The Commission has been directed by the legislature to “adopt a broad spectrum of public participation as a principal of operation.” Minn. Stat. §216E.08. People who wish to participate, but not intervene, may provide testimony, question witnesses, and submit exhibits, and are deemed participants. Minn. R. 1405.0800; see Oronoco Brief, p. 7. The four commenters at the Commission’s April 12, 2012 meeting were unrepresented participants who offered their comments in writing, at Task Force meetings, at DEIS and Public Hearings and at the Commission meeting before the route permit was issued, but most importantly, in furtherance of broad spectrum of public participation, were invited by the Commission to do so. PUC Notice, Oronoco Add. 116-117.

**Regarding Oronoco Township’s Statement of Facts section G:** Laymen for Christ note that the Township misrepresents several of the Findings of Facts in this section. For example, Finding 378, Oronoco states as a “fact” that:

The White Bridge Route interferes with planned residential areas in Oronoco Township and would have a negative impact on the recreational use of Lake Zumbro.

Oronoco Initial Brief, p. 8. Instead, the Finding cited actually states:

378. Olmsted County and Oronoco Township opposed the selection of route 3P on the bases that it would interfere with planned residential areas in Oronoco Township and would have a negative impact on recreational use of Lake Zumbro.

Oronoco Add. 92, FOF 378. Oronoco’s brief misrepresents as fact other assertions:

This route affects more residents and is in an area where Oronoco has gone to considerable effort to zone carefully to protect wildlife and to develop housing in a manner that accommodates the needs of residents.

Oronoco Initial Brief, p. 8. Instead, the Finding cited actually states:

379. In general, person living in Oronoco Township objected to the 3P route because it would affect more residences in an area where the township has gone to considerable effort to zone carefully to protect wildlife and to develop housing in a manner that accommodates the needs of its residents.

Oronoco Add. 92, FoF 379, citing two Oronoco Township Planning Commission members and one member of the Lake Zumbro Improvement Association. Oronoco Township's February, 2011 Zoning Ordinance and its May 2007 Subdivision Ordinance were enacted after the CapX 2020 Certificate of Need application in 2006 (PUC Docket 06-1115), and this CapX 2020 Hampton to La Crosse Transmission Line Routing application in 2009 (PUC Docket 09-1448) predates the Oronoco February 2011 Zoning Ordinance. This project was applied for prior to enactment of the township's Land Use ordinances. Hearing Ex. 66, Smith Direct and Ex. 6 Zoning Ordinance 2008, Updated 2/11/2011, Ex. 7 Subdivision Ordinance 2007; and Ex. 68, Broberg Direct.

The Olmsted Future Land-Use map included in the Subdivision Ordinance for Oronoco Township, attached to Mr. Smith's Direct Testimony as Schedule 8, uses the term "Suburban Development" and "Potential Suburban." The modified Preferred Route does not cross any area identified as Suburban Development and crosses less than a mile of the area identified as Potential Suburban at the White Bridge crossing area. It is unknown whether, or when residential development may occur in the Potential Suburban area.

Hearing Ex. 15, Hillstrom Rebuttal., p. 4, l. 14-20.

Oronoco Township's witnesses materially misrepresented the development status of the parcels in subdivisions that are named in their testimony, claiming that the parcels were developed, built and ready for occupation. Smith testified that when he said "developed" he meant they were "completed, construction is completed, ready for occupancy." After plat maps of several subdivisions were entered into the record, and he

was questioned about specifics of each subdivision plat map entered, he then agreed that, contrary to his prior testimony, that there were many vacant lots in the subdivisions. Hearing Ex. 86, Plat Maps of Landings at Sandy Pointe, Zumbro Haven, and Zumbro Sound.; Testimony of Smith, Hearing Tr. Vol. 2, p. 44-81. Smith testified that in Zumbro Sound subdivision, seven units were constructed, but agreed when questioned, that it was likely that only three homes had been built. Id. Broberg, when questioned about these subdivisions, also agreed there were many vacant lots. Testimony of Broberg, Hearing Tr. Vol. 2, p. 133-134. When questioned about the location of the subdivisions, Mr. Smith that the nearest one, Zumbro Haven, is about a quarter mile away from the proposed alignment, and Sandy Point, about one half mile away. Id., p. 82-84. As stated by Xcel Energy's Hillstrom, none of these subdivisions are directly affected by the transmission line as proposed – the proposed transmission line is too far away.

Oronoco Township claims that the “White Bridge Route will have the greatest impact on recreational users due to the fact that recreation abounds on Lake Zumbro.” Initial Brief, p. 8-9, quoting Oronoco's Broberg. However, recreation is not only motorized boating. The Minnesota DNR has declared the River as a state Water Trail. See Hearing Exhibit 100 “ Zumbro River and Whitewater River: A Water Trail Guide,” O.A. 89 Finding 363, O.A. 90 Finding 366; FEIS p. 183 and FEIS App. O, p. 423. This was reiterated in Schrenzel's testimony, where she stated:

The White Bridge Road crossing, our reviewers found that that had the least impact. The North crossing is a green crossing, which the DNR generally does not recommend. We recommend using existing infrastructure to reduce impacts, in this case forest clearing, impacts to possible avian species by creating new possible collision area.



Schrenzel Testimony, Hearing Tr. Vol. 3, p. 89-90. The DNR’s preference of the White Bridge Road crossing was reiterated in its comment of June 29, 2011. Laymen App. 1.

Broberg, Oronoco’s expert, also testified erroneously, and the error repeated in Oronoco’s Brief, that “Lake Zumbro is the only recreational lake within Olmsted County..” and this is not true – there are 16 recreational lakes in Olmsted County. Hearing Ex. 68, Broberg Direct, p. 11; see also Oronoco Initial Brief, p. 9-10. The Minnesota DNR lists 16 recreational lakes although Lake Shady must be removed since that dam failure and due to future plans to preserve that area as a wetland. Hearing Exhibit 40, Rohlfing/Hackman Surrebuttal Testimony, p. 9.<sup>4</sup>

**Regarding Oronoco Statement of Facts section H:** Laymen for Christ add that both the DNR and Mn/DOT participated after a Subpoena Request was served, which was withdrawn after an agreement regarding testimony was established. Commission 106 NoCapX 2020 Subpoena Request; Commission 111 NoCapX Letter Withdrawing Subpoena Requests. This has been standard operating procedure to secure agency participation for the three CapX 2020 transmission routing dockets.

The DNR’s final comment in this docket was a concise letter expressing its preference for the White Bridge Road route through Oronoco Township. Laymen App..1; Commission 278, p. 15 of Public Comments received before June 30, 2011.<sup>5</sup>

<sup>4</sup> See DNR’s “Lake Finder” for Olmsted County, available at: <http://www.dnr.state.mn.us/lakefind/index.html>

<sup>5</sup> PUC eDockets, 09-1448:

<a href="#">20117-64768-01</a>	PUBLIC	09-1448	<input type="checkbox"/>	TL	OAH	PUBLIC COMMENT--- RECEIVED BEFORE JUNE 30, 2011	07/29/2011
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**Regarding Statement of Facts section I:** The record reflects that NRG, No CapX and U-CAN did object to the FEIS based upon Minn. R. 7850.1200 and Minn. Stat. §116D.04. Commission List 291, NRG, NoCapX & U-CAN Initial Brief, p. 48-50.

Objection to the EIS was also made by Overland in argument before the Commission:

And the bottom line, too, on the FEIS, it's just inadequate because of these problems. It's inadequate because of the significant factual errors, that there is no transmission crossing at the Zumbro River, so it's inaccurate at 174 and 176. And the map, 8.3-39 on page 179 is wrong.

Also, existing transmission on Harry Avenue down to Highway 19 is not shown on it, and so the EIS is inaccurate, it has to be corrected. 74 through 76 of the EIS, and on page 103, the map that is 8.1-26.

Also, the certificate of need for this project included four river crossings. This only included one. Where did they go? They're supposed to be alternate routes. There is no alternate route crossing for the Mississippi River and that's not sufficient.

NoCapX did challenge the environmental impact statement scope and it was denied, but we did challenge that on the spaces. This is something that should be considered, more than one option of crossing, because there were four routes considered. Each of those having a transmission line going across the Mississippi River.

So our bottom line as a group, the Joint Intervenors, we ask that you take a look at this information that is factual and is missing from the record and the record needs to be corrected. We urge you to do that.

Overland, Commission Meeting 4/12/12 Tr. 49:16 – 50:19.

Section I (2) reports that “[u]sing the White Bridge Road would require crossing Lake Zumbro, which is on the impaired waters list. Oronoco Brief p. 11, Finding 439, O. Add. 103. However, that finding notes that the entire Zumbro River is impaired, not just Lake Zumbro.

Oronoco Township later references Finding 394, Oronoco Add. 95.. However, the references cited in the finding are in error, specifically that Map 9.2-4 is a map of the 161kV options contained in Application Section 9, about the 161kV part of this project, and not the Segment 3 part of this project. Further, although referenced Application M Sheet Map 21 does reflect a 69kV line heading west from the dam, this conflicts with the statements of Hillstrom:

Moving to the south now at the – at the Zumbro Dam. There is no aerial transmission crossing at the dam. However, there is a transmission line that comes out at the west side of the dam and you can see the tree clearing where that transmission line follows out to the west. That's a low voltage transmission line, it's 34.5 kilovolts, not by any means a high voltage line, and it is basically comparable to a distribution line...

Hillstrom, Commission Meeting 4/12/12, Tr. 61:11; see also 151:8.

Section I (3) notes that ALJ Sheehy made findings on the criteria for route selection, however, ALJ Sheehy was missing or ignored a significant fact regarding transmission at the Zumbro Dam route crossing – that there is NO transmission at that location.

In Section I (4), Oronoco Township claims that the record as a whole supports the Zumbro Dam Route, but this is not factually correct. The Administrative Law Judge made her Recommendation using incorrect information regarding transmission at the Zumbro Dam route, stating that there was transmission at that site where there is none. The record reflects that there is no corridor at the Zumbro Dam crossing to utilize for this route. The environmental review documents incorrectly reported an overhead crossing

and corridor at the Zumbro Dam “Route Option” crossing. The lack of an aerial crossing was noted by Applicants in the Application:

Because both the Route Option and the Preferred White Bridge Road Route would require some tree clearing in an area characterized by residential and recreational land use, and no existing transmission line crosses the river at these locations, impacts to aesthetics would be similar to both routes.

Xcel Application p. 8-53 & 8-55, Laymen App. 2-3. A comparison of the Zumbro Dam Route Option (on left) and Xcel’s White Bridge Road Preferred Route (on right), reflecting lack of transmission at the Zumbro Dam route, shows a significantly higher percentage of shared corridor for the White Bridge Road Preferred Route:

Use or Paralleling of existing ROW (transportation, pipeline, and electrical transmission systems), and property lines		
Total length of route (miles)	10.1	11.9
Length following Transmission Line (miles)	0.8	0
Percentage of route following Transmission Line	8%	0%
Length following road but not Transmission Line (miles)	0.4	3.9
Percentage of route following road but not Transmission Line	4%	33%
Length following property line but not transmission line or roads (miles)	3.2	5.9
Percentage of route following property line but not transmission line or roads	32%	50%
Total length following transmission line, roads, or property lines (miles)	4.4	9.1
Percentage of route following transmission line, roads or property lines	44%	77%
Length not following transmission line, roads or property lines (miles)	5.7	2.8
Percentage of route not following transmission line, roads or property lines	56%	23%

Xcel Application p. 8-59, Laymen App. 4 Applicant’s DEIS Comments requested a correction of the statement about transmission at the Zumbro Dam Route Option (3P-Zumbro-N and S) and reiterates that White Bridge Road is the Applicant’s Preferred Route:

## **Zumbro River Crossings**

The DEIS, at page 171, states that routes 3P-Zumbro-N and 3P-Zumber-S cross the Zumbro River where there is an existing transmission line crossing. This statement should be corrected to note that there are no existing electrical facilities present at any of the crossings. The north Zumbro River crossing (Alternate Route) crosses the Zumbro River at a location where there is no existing infrastructure. The middle Zumbro River crossing (3P-Zumbro-N and 3P-Zumbro-S) crosses the Zumbro River at an existing dam. The south Zumbro River crossing crosses the Zumbro River at the White Bridge Road bridge.

Page 162, paragraph 4, of the EIS provides a narrative of which routes would cross Lake Zumbro that should be clarified. Lake Zumbro is a reservoir in the Zumbro River formed by water pooled in a former river valley behind a dam. The only routes that would cross Lake Zumbro are those routes that would utilize the southern crossing at White Bridge Road (the Applicant's Preferred Route).

Xcel's DEIS Comments, Laymen App. 10. This error was not corrected in the Final EIS.

Hearing Ex. 113, p. 176. Presence of transmission at the Zumbro Dam crossing was incorrectly noted in the Recommendation of the Administrative Law Judge:

464. Two of the proposed Zumbro river crossings, White Bridge Road and the Zumbro Dam, utilize existing infrastructure crossings of the river, while the north crossing would require creation of a new corridor across the Zumbro River.<sup>548</sup> There is a bridge, but no existing aerial crossing at White Bridge Road; this crossing would be 845 feet in length. There is an existing aerial crossing at the dam, and its length would be 620 feet.<sup>549</sup>

ALJ Recommendation, p. 87, Finding 464, O. Add. 107. Footnote 548 cites the FEIS with the incorrect information, in particular p. 176, which states:

Route alternatives 3PZumbro-N and 3P-Zumbro-S could minimize impacts to the Zumbro River because an existing HVTL already crosses the Zumbro River at this location.

Hearing Exhibit 113, p. 176.

An Exception to the Recommendation again pointed out this error.

464. Two of the proposed Zumbro river crossings, White Bridge Road and the Zumbro Dam, utilize existing infrastructure crossings of the river, while the north crossing would require creation of a new corridor across the Zumbro River. There is a bridge, but no existing aerial crossing at White Bridge Road; this crossing would be 845 feet in length. There is ~~an~~no existing aerial crossing at the dam. Application, p. 8-53, 8.7.1.3: 8-55, 8.7.1.9 paragraph 2, and its The length of the crossing at the dam would be 620 feet.

See O.A. 59. This point came up at Oral Arguments at the Commission and in Public

Comments:

Secondly, it's very important that there is no infrastructure at this Zumbro River crossing. For that reason, we requested a change. We took exception to finding of fact 464. It states that there is an existing aerial crossing at the dam. That's not right. There is no aerial crossing at the dam.

In your handouts, on page 2 is a page of the application, page 55, and that states very clearly, there is no infrastructure. There's no aerial crossing there. Page – the second page of your handout, which is 8-53 of the application, states there is no transmission line crossing at the dam. There isn't. That's the facts of this case.

And this was raised in the DEIS because the DEIS said that as well. That there was a transmission crossing. And Mr. Hillstrom, in his comments to that, which is annexed in your handout, if you look at the comment you will see that in the last page, it would be page 5 of his comment, asked for that to be corrected, and it was not. There is no transmission infrastructure there. That's what the record says. And the ALJ's findings of fact, they were wrong.

And so that means that that 464 is wrong, also finding of fact 436 and 488, which state that there is transmission infrastructure. That's finding of fact 464, 436, 488.

Commission Meeting 4/12/2012 Tr. 45:16 – 46:18. The errors in reporting presence of transmission at the Zumbro Dam route were acknowledged by the Applicant:

One, with respect to the crossing of the Zumbro River, I do think Ms. Overland has identified an error, there isn't an existing transmission line there. But Mr. Hillstrom will talk about what existing infrastructure is located at the dam

Commission Mtg. Tr. 53:18-22. Xcel's project manager Tom Hillstrom agreed:

Moving to the south now at the – at the Zumbro Dam. There is no aerial transmission crossing at the dam. However, there is a transmission line that comes

out at the west side of the dam and you can see the tree clearing where that transmission line follows out to the west. That's a low voltage transmission line, it's 34.5 kilovolts, not by any means a high voltage line, and it is basically comparable to a distribution line...

And as we get to the east, it's an area of woodland. And then this north slope on the east bank of the Zumbro River here is a high quality forest...

I will note here that the land use on the east side is youth camps. The buildings that you see in the center of the screen are a youth camp run by the Normans, who I believe are here to speak, they're here today to speak. And then the youth camp to the north is Victory Camp, which operates this large parcel as a youth camp.

Commission Mtg. Tr. 61:11 – 62:21; see also 151:8.

At the Commission meeting of April 12, 2012, the Commission corrected the Findings of Fact in the ALJ Recommendation to state there was no overhead crossing or corridor east of the Zumbro Dam, resulting in a decision to route part of Segment 3 route through Oronoco Township, crossing the Zumbro River at the White Bridge Road. This decision more accurately reflects the record as a whole.

**Regarding Oronoco Township's Statement of Facts section J and L:** Oronoco places much emphasis regarding the filing or non-filing of written exceptions and misrepresents Exceptions filed. No CapX and Laymen note that a specific exception was filed regarding the crux of the issue in this appeal, one that the Recommendation of the Administrative Law Judge was incorrect regarding her Findings regarding the "transmission corridor" at the proposed Zumbro Dam, and that an aerial crossing does not exist at that site. There were also Exceptions filed expressing support and/or preference for utilization of the Modified Preferred Route at the White Bridge Road crossing, specifically:

and 2C3-004-2. For Segment 3, tThe North Route Group, NoCapX and U-CAN support Applicant's preference of the Modified Preferred Route utilizing segments 3-P and 3P-002, filed testimony advocating against the northern alternative route (3A) in Segment 3 because the Segment 3 Alternate Route 3A has the greatest impacts across the spectrum of criteria, is less suitable for future expansion, with greater fragmentation, proliferation, and non-compensable impacts<sup>2</sup>, and it supports the 3P route up to the point where it intersects with County Road 42. From the intersection with County Road 42re, the Group recommends supports use of the County Road 42 route option (3B-003).<sup>3</sup>

OA 53, Exception to Finding 13. Further, the Exceptions of the Joint Intervenors included a number of Exceptions regarding preference of the White Bridge Road crossing and a correction regarding the claimed transmission corridor that did not exist:

399. The DNR recommended against the 3A crossing of the Zumbro River because it is a greenfield crossing (no existing infrastructure) that could fragment forest and wildlife habitat, and recommended use of the White Bridge Road crossing because it would avoid the state-listed threatened turtle, and impact fewer sites of MCBS and DNR Natural Heritage. DNR jamie Schrenzel Comments, May19, 2011 and July 20, 2011.

OA 56, Exception to Finding 399.

425. More than 70% of the land in this segment is designated as "prime farmland if drained or protected from flooding." The percentage of prime farmland within the right-of-way is slightly higher in route options 3A, 3A-001, 3A-003, 3A-004, 3A-Crossover, 3A-Kellogg, and 2C3-003-3; these same routes tend to affect less land that is designated as "prime farmland if drained or protected from flooding.<sup>510</sup> Prime Farmland at the North crossing is 6%, the Dam crossing 3% and the White Bridge Road 2%.<sup>11</sup>

OA 57, Exception to Finding 425 (Exception filed has "TrackChanges" error. See

Oronoco Add. 101 for original Finding, in the ALJ Recommendation it is all but last sentence, and last sentence was added to Finding as Exception).

464. Two of the proposed Zumbro river crossings, White Bridge Road and the Zumbro Dam, utilize existing infrastructure crossings of the river, while the north crossing would require creation of a new corridor across the Zumbro River. There is a bridge, but no existing aerial crossing at White Bridge Road; this crossing would be 845 feet in length. There is an-no existing aerial crossing at the dam.Application, p. 8-53, 8.7.1.3; 8-55, 8.7.1.9 paragraph 2, and its-The length of the crossing at the dam would be 620 feet.

OA 59, Exception to Finding 464.



**Regarding Oronoco Statement of Facts section K:** Oronoco Township, states that “there is no provision for the PUC to hear oral testimony from the public.” Oronoco Brief, p. 17. However, there is no prohibition, and it is Commission policy and practice to allow “limited public comment” as framed in its Notice when a permit is before the Commission. Oronoco Add., 116-117. Section K is more a statement of governing law, and No CapX and Laymen note that the Commission’s procedures are in accordance with the fundamental tenet of transmission siting:

The commission shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the commission's rules and guidelines as provided for in section [216E.16](#).

Minn. Stat. §216E.08, Subd. 2.

Oronoco Township also omits consideration of Minn. Stat. §14.61, Subd. 1, which states:

In all contested cases the decision of the officials of the agency who are to render the final decision shall not be made until the report of the administrative law judge as required by sections [14.48](#) to [14.56](#), has been made available to parties to the proceeding for at least ten days and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of the officials who are to render the decision.

Minn. Stat. §14.61, Subd. 1. Oronoco also attempts to limit oral presentation to “only” a participant, but the term “only” is not present:

A person may file comments in a proceeding before the commission without requesting or obtaining party status. A participant may also be granted an opportunity for oral presentations.

Minn. R. 7829.0900 PARTICIPANT.

OAH Rules, under which this contested case was held, are also supportive of broad based participation, reflecting the participant options in the Power Plant Siting Act:

At all hearings conducted pursuant to parts [1405.0200](#) to [1405.2800](#), all persons will be allowed and encouraged to participate without the necessity of intervening as parties. Such participation shall include, but not be limited to:

A Offering direct testimony with or without benefit of oath or affirmation and without the necessity of prefiling as required by part [1405.1900](#).

B. Offering direct testimony or other material in written form at or following the hearing. However, testimony which is offered without benefit of oath or affirmation, or written testimony which is not subject to cross-examination, shall be given such weight as the administrative law judge deems appropriate.

C. Questioning all persons testifying. Any person who wishes to cross-examine a witness but who does not want to ask questions orally, may submit questions in writing to the administrative law judge, who will then ask the questions of the witness. Questions may be submitted before or during the hearings.

Minn. R. 1405.0800.

The Commission's rules of practice also acknowledge that it is not only parties that are affected by Commission decisions, and allow **any person** aggrieved and directly affected by a commission decision or order to file a Petition for Reconsideration. Minn. R. 7829.3000. As directly aggrieved persons, Laymen may respond.

**Regarding Oronoco Township's Statement of Facts section M:** In light of the allegations of Oronoco Township, the full short transcript of the "four individuals" who made comments regarding the Zumbro Dam Route Option should be carefully examined, because the words spoken show the brevity of the comments and demonstrate that there are no new material facts disclosed in the brief statements by these "four anti-dam route individuals." For all its complaints about these comments, Oronoco has not included the specific comments or the few pages of the transcript of the Commission meeting to

address their complaints in its filings. See Transcript of Commission Meeting 4/12/12 (selected) Laymen App. 10. Oronoco Township's claims are unfounded.

First to comment was Anna Mae Norman, one of the founders of Woodland Camp:

CHAIR REHA: Thank you. Any questions?

All right. Anna Mae Norman. Is Anna Mae Norman here?

MS. ANNA MAE NORMAN: Yes. I'm right here.

CHAIR REHA: Oh. If you want to pass or don't want to comment, just –

MS. ANNA MAE NORMAN: No, I want to comment.

CHAIR REHA: Okay. Very good. We'd love to hear from you so take a seat.

MS. ANNA MAE NORMAN: (Inaudible).

CHAIR REHA: Welcome to the Commission.

MS. ANNA MAE NORMAN: Thank you. It's still good morning to you, Madam Chairman and the Commissioners, and to your staff.

I am Anna Mae Norman, and I live at 39757 573rd Street, Zumbro Falls. My husband and I are the founders, caretakers and adjacent landowners to Woodland Camp owned and operated by Laymen for Christ, Incorporated. We are a 501(c)(3) tax exempt, our certificate number is 25348. We purchased this rocky farmland with original growth forest area that lies next to the power dam on Lake Zumbro in 1966. We made the downpayment on this property with a small inheritance that I received when my parents' affairs were settled. My mother, age 44, my father, age 48, my two brothers, ages 17 and 15, my sister, 20, and her husband, 22, and their two children, ages two and three, died in a boating accident. This camp facility is a living memorial to my family and a ministry for Merl and I. The camp has no paid employees or staff.

We have 52 acres, which is the forest area of the land. We gave it to Laymen for Christ for the development of Woodland Camp and it has been used by many churches and para church groups. These past 45 years we've been there. And it encourages youth and adults in a serene, quiet, restful wooded setting unique to this part of southeastern part of Minnesota. The camp is located in the Richard J. Dorer Memorial Hardwood State Forest with original growth.

The proposed power dam crossing will cross on a green field as there are no transmission lines on this east side of the power dam as was erroneously

reported in the administrative judge's report. The transmission lines from the west that come to the power dam go south on the west side of Lake Zumbro and the Zumbro River. All the electric power line for Woodland Camp and the Norman property are, since its inception, have been underground. So much will be taken away from this peaceful camp environment if a 150-foot swath takes down trees and brush and these huge 175-foot power poles are erected in its path.

The DNR response is on record in a letter dated June 29th, 2011 that their first preference for the transmission line crossing would be the White Bridge crossing. On most of the maps presented to the public, the White Bridge crossing is labeled the modified preferred route. This site is the only crossing of the three that has the infrastructure in place, a power line corridor, a road, and easy access for construction and maintenance. Olmsted County and Oronoco developments are creating the demand and would benefit most from this transmission line. There is no need in Wabasha County. The Zumbro Township board, Mazeppa Township board and the Wabasha County board have all sent letters asking that the White Bridge modified preferred route be used.

In my conversations with Xcel personnel, I was told that Xcel prefers the White Bridge route. The DNR letter of June 29th, 2011 states their preference for the White Bridge preferred route. And most of the CapX 2020 maps identified the White Bridge route as the modified preferred route.

It's confusing to us why the ALJ is recommending the power dam route.  
Please --

CHAIR REHA: Your time is up, if you're almost finished.

MS. ANNA MAE NORMAN: Yeah, I just want to say, please do not approve the power dam route. Thank you.

CHAIR REHA: All right. Thank you so much. Any questions?

Public comment of Anna Mae Norman, Tr. p. 93-97.

Next was the public comment of Merl Norman, another founder of Woodland Camp and president of Laymen for Christ, Inc.:

CHAIR REHA: ... Okay. Merl Norman. Welcome.

MR. MERL NORMAN: Hi. Merl Norman, related to Anna Mae.

CHAIR REHA: I figured that.

MR. MERL NORMAN: For 54 years, pretty close.

CHAIR REHA: Congratulations.

MR. MERL NORMAN: Hi. I want to thank those of you Commissioners that came down to Mazeppa, I know some of you were there and heard from us then.

Yeah, my name is Merl Norman, and the same address as Anna Mae's. And I'm the president of Laymen for Christ, not just because I was one of the founders, but they elected me. I'm the president of the Laymen for Christ board, owners and operators of Woodland Camp.

The board strived to keep the camp facility rustic. The churches and para church groups from the metro counties, urban areas, bring campers to the quiet, serene, wooded area to be encouraged and refreshed from the usual hassle of our world.

This site was originally chosen because of its isolation from roads and utilities. The uniqueness of the area, which is original growth, and includes eagles nesting and a large variety of wildlife, will be destroyed if the transmission path is the power dam route. The state forestry department helped us plan and advised us as to the best use of and the protection of this original growth forest area. I brought my forest stewardship manual and I was going to bring it up here and show it to you. I've got some excerpts from that I'll leave here.

And also I want to talk briefly about the bluff protection, the woodland -- or the Wabasha County zoning ordinance on bluff protection wouldn't allow us to build structures like this. One of our main goals is to provide a safe environment for the campers. Transmission lines pose many potential problems and liability for the camp. Laymen for Christ plans to protect and guard the woodland and the natural environment for future generations. Transmission lines and the 150-foot swath would be devastating to this area. EIS, environmental impact statement. Birds, snails, turtles, rare species, wildlife, are all important. What about our children? What about our posterity? That's what Woodland Camp's been trying to help with. And we have snails, we have clams that the kids bring up from the river, we have turtles, we have -- I just want to share this with you.

The groves were God's first temples and in the presence of the trees one finds peace, quietude, and inspiration. Although trees benefit us from a multitude of practical ways, providing shade, clothing, shelter, and food, we never lose the feeling that they are the noblest members of the planet world. The majesty of straight column, tall growing trees furnish the inspiration of the gothic cathedrals of Europe. Those impressive churches, those vaulted arches, seem to lose themselves in the very heavens. And so in the presence

of beautiful trees, man realizes his limitations and says what the poet, Joyce Kilmer, says.

I think that I shall never see  
a poem lovely as a tree.  
A tree whose hungry mouth is prest  
against the sweet earth's flowing breast;  
a tree that looks at God all day,  
and lifts her leafy arms to pray;  
a tree that may in summer wear  
a nest of robins in her hair;  
upon whose bosom snow has lain;  
who intimately lives with rain.  
Poems are made by fools like me,  
but only God can make a tree.

Those hardwood forests you saw on that map must stay there. We must keep those for our children and our posterity.

CHAIR REHA: Thank you, Mr. Norman.

MR. MERL NORMAN: I am pleading with you.

CHAIR REHA: Mr. Norman, your time is up.

MR. MERL NORMAN: Do not use the power dam route. I am pleading.

CHAIR REHA: Thank you.

MR. MERL NORMAN: Thank you all.

CHAIR REHA: Thank you very much. Any questions?

Public comment of Merl Norman, Tr. p. 97-100.

Next was the comment of Steve Walker, Supervisor on the Zumbro Town Board, who had also made Scoping Comments and DEIS Comments:

MR. STEVE WALKER: I'm Steve Walker. I live at 5700 Highway 63 North, Zumbro Falls. I'm a supervisor in the township, Zumbro Township. The township would be where the dam crosses and it would come into our township. The hardwood forest he's talking about are very – we need them, we'd like to have them stay. But what they're not showing you is on the other side, the next township over, there's a camp site right there at the dam. And they rent campsites out, there's people fishing, boating, all the time there. Where the other access on the proposed route on White Bridge Road, they're saying they're using that for lake frontage and stuff, it's inundated with mud up there and it's just like a small trickle where the bridge is up there. The dam is where most of the people boat and it's about two and a

half miles that goes to the south where they can boat and have their fun, but where they want to cross up there it isn't.

Secondly, the need for this power is coming from Rochester, also, they're having two 161 lines come in, one at Chester and one at Northern Hills. And they haven't spoke much about the 161 line coming out of Chester, but I'm getting all the information because it's close to my farm. And they will be hooking on. So with taking the White Bridge route it is going to be closer for these two 161 lines to be hooked up. And Olmsted County has kind of washed their hands of taking this route. They said put it in Wabasha. The need is huge in Olmsted County. Wabasha County is 22,000 people, Olmsted County is 142,000 people. Now, they should take some of the burden of this power line through their county to help with what their needs are. We have one stoplight in our county. How many does Olmsted have? They have many of them.

But I'm begging you to take the White Bridge Road. The DNR has stated such. And Wabasha County has proposed to take it, I have the paperwork here, they want that route, and our township board would prefer that route. Seeing that this line goes through my farm on the farm side -- and I know I don't want to bore you with farm stuff -- but I remember when this routing started and they were talking about going through Winona with it. They said there was a truck outfit that was worth \$1.5 million, that would cost too much to move. How do you move a farm that's been in the family for 55 years? How do you take a 250-acre farm and move that? Thank you.  
CHAIR REHA: Thank you very much.

Public comment of Steve Walker, Tr. p. 100-102.

The fourth and final speaker regarding the Zumbro Dam Route Option was the comment of Kevin Kautz, Chair of the Zumbro Town Board:

MR. KEVIN KAUTZ: Kevin Kautz, Zumbro Township Chairman, Zumbro Valley Snowmobile Association Chairman. I'd like to use a map, too, please.

CHAIR REHA: Okay. Would this be Segment 2 then?

MR. KEVIN KAUTZ: Over the power dam, the Zumbro power dam.

CHAIR REHA: There it is.

MR. KEVIN KAUTZ: Way down. Zoom down, please, down to the dam. This is the place -- this is the judge's ruling.

CHAIR REHA: Right.

MR. KEVIN KAUTZ: To put power lines through three camps right here.

UNIDENTIFIED: Is that the preferred route?

UNIDENTIFIED: At the White Bridge.

MR. KEVIN KAUTZ: The preferred route, right through here. Why should Wabasha County be stripped off its beautiful bluff lands to support Olmsted County's electrical infrastructure? The state's largest commercial development is now on the sunrise in Olmsted County. Location, location, location. On record, Wabasha County, Zumbro Township, Mazeppa Township, City of Mazeppa, Mazeppa Valley Snowmobile Club all support the preferred route. Thank you.

CHAIR REHA: Thank you.

Public Comment of Kevin Kautz, Tr. p.130-131.

These comments addressed several areas of routing criteria that the Commission is to consider in its decision, but they did not contain new information that was not in the record, and Oronoco Township has not provided any hints of what it believes is “new information.” Merl Norman, Laymen for Christ testified about Woodland Camp.

Plainview Public Hearing, p. 72. The camps are addressed in the work of the North Rochester-Mississippi Task Force. See Task Force Report, O. App. 196; Laymen App.

14, Homework 1.<sup>6</sup> Xcel’s Tom Hillstrom addressed the presence of the camps on the east side of the Zumbro Dam:

I will note here that the land use on the east side is youth camps. The buildings that you see in the center of the screen are a youth camp run by the Normans, who I believe are here to speak, they’re here today to speak. And then the youth camp to the north is Victory Camp, which operates this large parcel as a youth camp.

Hillstrom, Commission Mtg. 4/12/12, Tr. 62. Oronoco also admits that ALJ Sheehy acknowledges the Zumbro Dam Route is located near a summer camp on the east bank of the Zumbro River. Oronoco Brief p. 15, Finding 483, Oronoco Add. 110.

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<sup>6</sup> Task Force page at Commerce linked in Task Force Report, OA 193, as <http://energyfacilities.puc.state.mn.us/resource.html?Id=26582>, now available at new url at Commerce host site: <http://mn.gov/commerce/energyfacilities/resource.html?Id=26582>



The poor condition of Lake Zumbro due to low water levels and silt is also not new information. The closure of the boat landing at White Bridge Road is noted in the FEIS in the “boat access” chart, showing that there is no boat access, which is clearly visible to anyone crossing White Bridge Road looking south. Hearing Exhibit 113, FEIS, Appendix J, Segment 3. Barr Engineering, contractor for this project’s environmental review, held at least two contracts regarding preparation for dredging in Lake Zumbro. Commission 359, p. 6-10, Complaint of Conflict of Interest Regarding Barr Engineering, 7/31/2012. The Lake Zumbro Improvement Association and Lake Zumbro Improvement District Task Force were formed to address the low water levels. Id.; see also Public Hearing Tr. at 32, Pine Island 6:30, Sheldon King, President of Lake Zumbro Improvement Association. On Xcel’s Google earth exhibit, Hearing Exhibit 35, the sand bar in front of the closed boat ramp is obvious, and also visible is the fence preventing access to the boat ramp:



Hearing Exhibit 35 Google Earth at White Bridge Road (screen shot above); see sandbar also OA 95, Oronoco Township's Motion for Reconsideration, "Testimony" of Broberg, Exhibits 1, 6, 8 and 9.

Information about the trees, the Richard J. Dorer Memorial Hardwood Memorial State Forest, the greenfield crossing with no transmission line east of the Zumbro dam, absence of an aerial crossing of the dam, DNR express preference for a White Bridge crossing of the Zumbro River due to environmental features, infrastructure present at the White Bridge Road crossing, Xcel choice of White Bridge Road as "Preferred," eagles and wildlife, state forestry department and Stewardship program, bluff protection, Wabasha County zoning ordinance, recreational opportunities such as camping, fishing and boating activity, the long-closed boat landing at the White Bridge Road, Wabasha County comment letter, Zumbro Township resolution, Mazeppa Township resolution, City of Mazeppa resolution, Mazeppa Valley Snowmobile Club letter, and of course, Joyce Kilmer's poem "Trees" read by Merl Norman and Dale Rohlfing are all a matter of record in this proceeding and not "new" information.

**Regarding the Statement of Facts in Section N:** Oronoco again misrepresents the DNR's comparative position regarding the Zumbro Dam Route Option and the White Bridge Road. The Zumbro Dam Route Option has a site of High Biodiversity, whereas the White Bridge Road has one site of Moderate Biodiversity and another unranked site. DNR Letter 6/29/2011, Laymen App. 1. Oronoco quotes itself, but stating its opinion does not make its opinion a fact. Oronoco Brief, p. 23, citing Tr. 152-153.

**Regarding the Statement of Facts in Section O:** Oronoco labels the “limited public comment” allowed as “testimony,” but whatever it is labeled, that does not alter the fact that there was no new information presented. Oronoco Brief p. 23-25.

**Regarding the Statement of Facts in Section P:** Oronoco continues to stress that “no exception was filed,” which is contrary to the record of exceptions filed by NRG, NoCapX 2020 and U-CAN. Oronoco Brief, p. 25. Oronoco persists in describing the line to the west of the dam as a “transmission” line when Applicants state it is a 34.5 kV line, a distribution level line. Hillstrom, Tr. 61:11 – 62:21; see also 151:8. This 34.5 kV line is the same voltage as the one crossing the river next to the White Bridge.

**Regarding the Statement of Facts in Section Q:** Although it complains of “four anti-dam individuals” entering new information in the record, Oronoco Township entered new information in the record when it filed a Petition for Reconsideration:

- Five pages of new testimony by Jeffrey Broberg; and
- Exhibit 1 – Map of “year round homes” not previously entered; and
- Exhibit 2 – Map of “Highway Right of Way White Bridge Road not previously entered; and
- Exhibit 3 – Map/Photo of “Power Dam Route” not previously entered; and
- Exhibit 4 – Map/Photo of “Power Dam Route River Crossing” not previously entered; and
- Exhibit 5 – “Biodiversity and Floodplain Map Power Dam Route” not previously entered; and
- Exhibit 6 – “White Bridge Route” showing silt in front of White Bridge Road closed boat landing and large silt/sandbar further south, not previously entered; and
- Exhibit 7 – “White Bridge water picture approaching boat landing,” a grossly misleading photo that does not disclose the sand bar in front of closed boat landing. See Broberg Exhibit 6 above and Hearing Exhibit 35 google earth. Also note the electric distribution line crossing the bridge, the pole visible where bridge connects to land on right of photo.

- Exhibit 8 – “Biodiversity & Floodplain Map White Bridge Route” not previously entered, showing sand bar blocking closed boat landing and sand bar to south; and
- Exhibit 9 – “White Bridge Route” not previously entered, again showing sand bar blocking closed boat landing and large sand bar further south.

O.A. 95, Testimony of Broberg and Exhibits, Petition for Reconsideration. “Oronoco objected to the PUC’s allowance of testimony/commentary offered by four anti-dam individuals outside of and contrary to the administrative process rules and statutes,” yet in its Petition for Reconsideration offers new testimony and new exhibits contrary to administrative process rules and statutes and includes this new information in its Appendix. Id., Oronoco Brief, p. 26; Oronoco App. 95. Applicant’s response to the Oronoco Petition for Reconsideration states it succinctly, that the Commission relied on record evidence, that no factual errors were identified, and that all persons had equal opportunity to address the Commission:

Oronoco had ample opportunity to present contra evidence in opposition to the White Bridge Road Crossing for the Commission’s consideration and did so.<sup>10</sup> The Commission fully considered Oronoco’s evidence and arguments in its Order.<sup>11</sup> 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.

Commission 331, Xcel Response to Oronoco Petition for Reconsideration, p. 2-8.

Oronoco now complains that “Oronoco was penalized because it followed the rules.” Brief, p. 26. Oronoco’s “playing by the rules” includes an attempt to introduce a new route at the Evidentiary Hearing June 21, 2011, ten months after the Scoping Decision was issued that ended submission of new routes. Commission 44, EIS Scoping Decision Document; Commission 245, Oronoco Hearing Exhibit 89 new route. Instead

of legitimately offering a route proposal, Oronoco waited until the last minute, after completing its testimony and case-in-chief:

I neglected to put in a document at the beginning of his testimony that I would like to distribute. I spoke yesterday and indicated to you Oronoco Township's position about how we could adjust this route so that the issues Oronoco is raising could be handled, along with a lot of the issues that you heard last week from property owners, particularly to the west of – to the east of Oronoco.

And I've asked Mr. Broberg to prepare a map that reflects that, and I would like to mark this as 89, if that's acceptable, our Honor, and to ask him to identify it.

Hearing Tr. Vol. 2, p. 158. When questioned, Broberg testified that this proposal was a last minute effort hatched the evening before at a Township Planning Commission meeting. Testimony of Broberg, Hearing Tr. Vol.2, p. 166, l. 18- p. 167 l. 16. He testified that Oronoco Township made this proposal without doing any impact analysis under Minn. R. Ch. 7850. Id., p. 167. Broberg also testified that the residents along the new portion of the "route" had not been notified. Id., p. 163.

Laymen and NoCapX filed a Complaint of Ex Parte Communication against Oronoco Township with the Commission. Commission 328, June 29, 2012. After Oronoco's Response and a Reply, Oronoco and NoCapX/Laymen reached a stipulated Agreement. See Commission 340, July 6, 2012; Commission 343, July 9, 2012; Commission 354, July 27, 2012.

Rather than follow the rules, Oronoco Township has a pattern of flaunting and flaunting the rules, expecting process and opportunity beyond what the rules provide.

**Regarding the Statement of Facts in Section R:** The Commission's rules of practice acknowledge that it is not only parties affected by Commission decisions, and

allow “any person aggrieved and directly affected by a commission decision or order to file for Reconsideration.” Minn. R. 7829.3000. Laymen are, as defined by Commission rules of practice, “any person aggrieved and directly affected by a commission decision or order” and based on Oronoco’s Petition for Reconsideration and appeal, asking that the Commission decision be reversed and the line put over their land, they are precisely the persons to be afforded the broad spectrum of participation through responding to Oronoco’s Petition and appeal. Minn. Stat. §216E.08, Subd. 2.

**Regarding the Statement of Facts in Section R:** Oronoco’s complaint of denial of their petition without hearing or explanation. This response to a Petition for Reconsideration is fully within the procedural rules, there is no additional process due. Minn. R. 7829.3000, Subp. 6.

### **SUMMARY OF ARGUMENT**

The record in this proceeding supports the Commission’s selection of the Modified Preferred Route’s alignment for Segment 3 near the Zumbro River , crossing at White Bridge Road in Oronoco Township. Of the route options, this route more closely adheres to routing criteria and Minnesota’s policy of transmission non-proliferation.

Laymen for Christ, Inc., owner and operator of Woodland Camp, a directly affected landowner, responded to Oronoco Township’s appeal and requests that the Appellate Court reject the Township’s request for reversal and remand of the Public Utilities Commission’s decision of April 12, 2012 and Order of May 30, 2012. The Commission’s Order utilizing the White Bridge Road crossing of the Zumbro River is supported by the record. The Commission correctly chose to utilize the White Bridge

Road crossing of the Zumbro River -- use of the Dam Route crossing would be contrary to Minnesota's policy of non-proliferation of transmission, transmission siting criteria, the Dept. of Natural Resources comments and recommendations, and the record as a whole.

As demonstrated above in great detail, Oronoco Township's claim that allowance of testimony by four anti-dam individuals violated statutory procedures is without basis in law or fact. Further, Oronoco Township's claim that only parties may file exceptions and be heard is contrary to law and practice. Claims that new factual assertions were made are contrary to the record, and Oronoco Township was provided opportunity for rebuttal and took this opportunity prior to the Commission's decision.

Oronoco Township's multiple claims of "new information" with no citations to any new information are false and misleading from even a cursory review of the record. As set forth above, issue by issue, word for word, the "four anti-dam individuals" and each of these issues raised by Oronoco Township as "new" are not, they were raised in the record which contains much information about these impacts at the Zumbro Dam route crossing.

The parties that spoke at the Commission meeting of April 12, 2012 were not represented in this proceeding by counsel, and they spoke independently, passionately, and eloquently, on their own volition and not as a part of a group.<sup>7</sup> This opportunity is routinely offered to the public, to those people not parties in the proceeding, in most

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<sup>7</sup> Oronoco revives the "Power Dam Group" label, but anyone with knowledge of politics in Wabasha County would find it laughable that two adversaries running in a fierce contest for the Wabasha County Board, Merl Norman and Kevin Kautz, would be allies. They are not allies and there is no "Power Dam Group."

every Commission meeting, in the spirit of facilitating public participation. Minn. Stat. §216E.08, Subd. 2. Oronoco is a party, was represented, and participated in Oral Argument with the other parties.

Oronoco Township alleges other unfairness in process. Despite the opportunity, Oronoco was invited but did not participate in the North Rochester-La Crosse Task Force, as Merl Norman of Laymen for Christ did, representing Wabasha County as a County Commissioner. Hearing Ex. 47, Mississippi River Task Force Report. Oronoco Township residents and elected and appointed officials participated vigorously in public hearings. See e.g., footnotes in ALJ Recommendation, Oronoco Add. 92, 93, 94. Oronoco Township did not file exceptions. And despite Oronoco Township's claims that it had no opportunity to rebut the public comments, that is not true. All parties were offered an opportunity to address the Commission regarding public comments. Commission Mtg. Tr. 152. Oronoco Township was offered, and did avail itself, of the opportunity to rebut public comments after the public comments at the Commission meeting of April 12, 2012. Id., Tr. 152:13. Acting Chair Reha twice gave advance notice that parties would have the opportunity to respond to public comments. Id., Tr. 138, 149. The time for rebuttal came after the complained of public comments, after which there was a break, providing Oronoco Township with an additional opportunity to assess public testimony. Id. At 107. Mr. Krass, representing the township, did indeed speak after the public comments when offered time for Rebuttal. Id., Tr. 152-153. Oronoco's process complaints are without merit.

### **ARGUMENT**



**THE PUBLIC UTILITIES COMMISSION FOLLOWED THE PRESCRIBED STATUTORY PROCEDURES AND ADMINISTRATIVE RULES WHEN IT GRANTED A ROUTE PERMIT FOR SEGMENT 3 OF A TRANSMISSION LINE ROUTE.**

**I. ALLOWING “FOUR ANTI-DAM INDIVIDUALS’ TO SPEAK DOES NOT VIOLATE STATUTORY PROCEDURES**

**A. ORONOCO CONFLATES PERMITTED PUBLIC COMMENT WITH TESTIMONY**

Oronoco Township complains that “no parties filed exceptions” and also that “only parties may file exceptions.” Oronoco Township is incorrect on both accounts. As above, exceptions were filed by a party regarding the issues that render the Zumbro Dam route a less favored option when compared with the White Bridge Road route:

and 2C3-004-2. For Segment 3, the North Route Group, NoCapX and U-CAN support Applicant’s preference of the Modified Preferred Route utilizing segments 3-P and 3P-002, filed testimony advocating against the northern alternative route (3A) in Segment 3 because the Segment 3 Alternate Route 3A has the greatest impacts across the spectrum of criteria, is less suitable for future expansion, with greater fragmentation, proliferation, and non-compensable impacts<sup>2</sup>, and it supports the 3P route up to the point where it intersects with County Road 42. From the intersection with County Road 42re, the Group recommends supports use of the County Road 42 route option (3B-003).<sup>3</sup>

OA 53, Exception to Finding 13(relevant portion).

399. The DNR recommended against the 3A crossing of the Zumbro River because it is a greenfield crossing (no existing infrastructure) that could fragment forest and wildlife habitat, and recommended use of the White Bridge Road crossing because it would avoid the state-listed threatened turtle, and impact fewer sites of MCBS and DNR Natural Heritage .DNR jamie Schrenzel Comments, May19, 2011 and July 20, 2011.

OA 56, Exception to Finding 399.

425. More than 70% of the land in this segment is designated as “prime farmland if drained or protected from flooding.” The percentage of prime farmland within the right-of-way is slightly higher in route options 3A, 3A-001, 3A-003, 3A-004, 3A-Crossover, 3A-Kellogg, and 2C3-003-3; these same routes tend to affect less land that is designated as “prime farmland if drained or protected from flooding.<sup>510</sup> Prime Farmland at the North crossing is 6%, the Dam crossing 3% and the White Bridge Road 2%.<sup>11</sup>

OA 57, Exception to Finding 425 (as filed -- see Oronoco Add. 101, Finding in ALJ

Recommendation is all but last sentence, last sentence is added to Finding as Exception).

464. Two of the proposed Zumbro river crossings, White Bridge Road and the Zumbro Dam, utilize existing infrastructure crossings of the river, while the north crossing would require creation of a new corridor across the Zumbro River. There is a bridge, but no existing aerial crossing at White Bridge Road; this crossing would be 845 feet in length. There is ~~an no~~ existing aerial crossing at the dam. Application, p. 8-53, 8.7.1.3: 8-55, 8.7.1.9 paragraph 2, and its The length of the crossing at the dam would be 620 feet.

OA 59, Exception to Finding 464.

## **B. NO NEW FACTUAL ASSERTIONS WERE PRESENTED**

Oronoco complains that “four anti-dam individuals were allowed to present facts,” but nowhere does the township declare with specificity what new facts were presented. There are essentially two issues listed in the brief about which the “four anti-dam individuals” commented, the camps on the east side of the Zumbro Dam, and that Lake Zumbro is no more than a “trickle” on the White Bridge Route and is “inundated with mud.” Oronoco Initial Brief, p. 35. Facts supporting these statements are in the record.

The camps were addressed by Merl Norman, Laymen for Christ, in the North Rochester-Mississippi Task Force Report, the ALJ Recommendation, and by Xcel’s Tom Hillstrom, as detailed above. See Norman, Plainview Public Hearing, p. 72; Task Force Report, O. App. 196; Laymen App. 14, Homework 1<sup>8</sup>, ALJ Recommendation Finding 483, Oronoco Add. 110.

The poor condition of Lake Zumbro due to low water levels and silt is also not new information. The closure of the boat landing at White Bridge Road is noted in the

---

<sup>8</sup> Task Force page at Commerce linked in Task Force Report, OA 193, as <http://energyfacilities.puc.state.mn.us/resource.html?Id=26582>, now available at new url at Commerce host site: <http://mn.gov/commerce/energyfacilities/resource.html?Id=26582>

FEIS in the “boat access” chart, showing that there is no boat access. Hearing Exhibit 113, FEIS, Appendix J, Segment 3. On Xcel’s Google earth exhibit, the sand bar in front of the closed boat ramp is obvious, and also visible is the fence preventing access to the boat ramp:



Hearing Exhibit 35 Google Earth at White Bridge Road (screen shot above); see sandbar also OA 95, Oronoco Township’s Motion for Reconsideration, “Testimony” of Broberg, Exhibits 1, 6, 8 and 9.

Oronoco has provided no specifics identifying “new information” and a review of the comments does not reveal “new” facts. Oronoco’s complaints are without merit.

### **C. and D. ORONOCO TOWNSHIP RECEIVED ALL PROCESS DUE**

Oronoco Township complains that it did not receive the opportunity for rebuttal, but the transcript shows that this is a false statement. Oronoco’s representative and consultant was present, had attended the evidentiary hearings and some public hearings, was familiar with the record, and was presented with notice of an opportunity to address

public comments and then took advantage of that opportunity. Commission Meeting Tr. 151:13 – 153:10. No new information was presented, nothing was said that required an “opportunity to prepare and offer a rebuttal of the assertions just presented.” There was nothing new, and all parties are familiar with the case, facts and law.

Oronoco’s insistence that the short public comments allowed to directly affected and aggrieved persons, the “four anti-dam individuals” and others regarding other aspects of the route was in some way prejudicial to them is against evidence. Oronoco asserts this claim in spite of instances in the record where the township improperly entered a new route with no notice to affected landowners, or where in a Petition for Rehearing submitted new testimony and nine exhibits. See e.g. Hearing Exhibit 89; O.A. 95. As the rules clearly state, the Commission operates on a broad spectrum of public participation, and persons do not need to intervene to participate. Minn. Stat. §216E.08, Subd. 2; Minn. R. 1405.0800; Minn. R. 7829.0900.

As above, Oronoco is wrong when it claims that no exceptions were filed regarding selection of Segment 3 routing. See NRG, No CapX 2020 and U-CAN Exceptions to Findings 13 and 464.

**II. THE COMMISSION’S DECISION IS CONSISTENT WITH MINNESOTA’S POLICY OF NON-PROLIFERATION OF TRANSMISSION CORRIDORS BY UTILIZING AN EXISTING CORRIDOR.**

The elephant in the room in this case that Oronoco Township does not address is that there is no transmission line at the Zumbro Dam crossing. The ALJ made several erroneous findings stating that there was an existing transmission corridor at the Zumbro

Dam crossing when there is not. Findings 436, 464, and 488. Oronoco Add. 103, 107, 111. Recognition of these errors is what led the Commission to correct the findings deviate from the Recommendation of the Administrative Law Judge. See Commission Hearing Transcript, Motion of Boyd, Tr. 187:5 – 190:20. That there is no transmission at that crossing, which renders that Zumbro Dam Route Option inconsistent with Minnesota's policy of non-proliferation because there is another route, the White Bridge Road route, with a corridor that would do less noncompensable damage to the environment, as contemplated by the *PEER* court.

Implicit in the operation of MERA is the principle that environmentally damaging action cannot be taken if there is another, less damaging way to achieve the desired result.

*People for Environmental Enlightenment & Responsibility [PEER], Inc. v.*

*Minnesota Environmental Quality Council*, 266 N.W.2d, 858, 873 (Minn. 1978).

Minnesota's Policy of Non-Proliferation stems from a transmission routing struggle decades ago, and requires that the state make best efforts to site transmission on existing railroad, highway and transmission corridors. *PEER*, 266 N.W. 2d 858 (Minn. 1978); Laymen App. 16. This policy of non-proliferation of transmission corridors was further emphasized in recent legislation that added a section to the statute regarding criteria, focusing on use of existing corridor and requiring the Commission to explain any proliferation of corridors:

The commission must make specific findings that it has considered locating a route for a high-voltage transmission line on an existing high-voltage transmission route and the use of parallel existing highway right-of-way and, to the extent those are not used for the route, the commission must state the reasons.

Minn. Stat. §216E.08, Subd. 7(e).

PEER provides guidance when weighing proliferating routes, such as the Zumbro Dam route, with non-proliferation routes such as the White Bridge Road route:

*As interpreted by this court, the prudent and feasible alternative standard is analogous to the principle of nonproliferation in land use planning. In County of Freeborn v. Bryson, 309 Minn. 178, 188, 243 N.W. 2d 316, 321, we noted that although the state's past encouragement of highway construction resulted in the elimination or impairment of natural resources, "remaining resources will not be destroyed so indiscriminately because the law has been drastically engaged by (MERA)." Similarly, in Reserve Mining Co. v. Herbst, Minn., 256 N.W. 2d 808, 827 (1977), we recognized the state's "strongly held commitment \* \* \* to protecting the air, water, wildlife, and forests from further encroachment," which supported our choice of Mile Post 7 over Mile Post 20 (256 N.W. 2d 823). The court had no trouble deciding that the Department of Natural Resources, which, like the MEQC, had a statutory duty to protect the environment, had failed to comply with this policy of nonproliferation in choosing between the alternative sites. See, also, No Power Line, Inc., v. Minnesota EQC, Minn. 262 N.W. 2d 312, 331 (Yetka, J., concurring specially).*

*This policy of nonproliferation is also supported by legislative enactments. Minn. Reg. MEQC 74(d)(3)(ee), adopted pursuant to authority granted to the MEQC under the PPSA, requires the decisionmaker to consider as one factor in the selection process whether the proposed route will "maximize utilization of existing and proposed rights-of-way." The legislature explicitly expressed its commitment to the principle of nonproliferation in its 1977 revision of the PPSA. The MEQC is now required to consider the utilization of existing railroad and highway rights-of-way and the construction of structures capable of expansion in capacity through multiple circuiting in making its selection from among alternative HVTL routes. L. 1977, c. 439, s 10.*

***We therefore conclude that in order to make the route-selection process comport with Minnesota's commitment to the principle of nonproliferation, the MEQC must, as a matter of law, choose a pre-existing route unless there are extremely strong reasons not to do so. We reach this conclusion partly because the utilization of a new pre-existing route minimizes the impact of the new intrusion by limiting its effects to those who are already accustomed to living with an existing route. More importantly, however,***

*the establishment of a new route today means that in the future, when the principle of nonproliferation is properly applied, residents living along this newly established route may have to suffer the burden of additional powerline easements.*

*PEER* 266 N.W. 2d 858, 872 (Minn. 1978)(*emphasis added*). The court stressed the heightened importance of environmental resources because loss of these resources cannot be compensated, and that in weighing noncompensable impairment of the environment against the compensable damages of number of homes to be condemned, non-proliferation has great weight:

*Although the hearing examiner, the MEQC, and the district court all accepted both their reasoning and their conclusion, condemnation of a number of homes does not, without more, overcome the law's preference for containment of powerlines as expressed in the policy of nonproliferation. Persons who lose their homes can be fully compensated in damages. The destruction of protective environmental resources, however, is noncompensable and injurious to all present and future residents of Minnesota.*

*Id.*, p. 869. Cutting forests is permanent, and a noncompensable impact.

*PEER* and Minn. Stat. §216E.03, Subd. 7(e) both refer to existing high-voltage transmission route and highway right of way, and *PEER* also refers to railroad right-of-way.<sup>9</sup> Nowhere in the *PEER* decision or in the statutes are field lines and property boundaries equated with right-of-way, nor are field lines and property boundaries regarded as “corridor.” In environmental review and in argument, Commerce has analyzed routes using field lines and property boundaries and characterized use of such as

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<sup>9</sup> Minn. Stat. §216E.03, Subd. 7(b)(8) refers to “evaluation of potential routes that would use or parallel existing railroad and highway rights-of-way” and field lines and property boundaries are referenced in Minn. Stat. §216E.03, Subd. 7(b)(9) addresses “evaluation of governmental survey lines and other natural division lines of agricultural land so as to minimize interference with agricultural operations,” and not as non-proliferation. As factors to be considered, Minn. R. 7850.4100, Subp. H. addresses “use of paralleling of existing rights-of-way, survey lines, natural division lines, and agricultural field boundaries” and then separately in Subp. J, “use of existing transportation, pipeline, and electrical transmission systems or rights-of-way.”



“non-proliferation” and consistent with Minnesota’s policy of non-proliferation, but this is a gross misinterpretation of the guidance in PEER and of the statute. A linear feature is not a transmission right-of-way or railroad right-of-way! The environmental review added “linear features paralleled along the routes,” including “other linear features” such as “field lines” and “trail” and counted such “other linear features” as “corridor sharing.” Hearing Ex. 113, FEIS, Table 3.2-2, 3.2-3 and 3.2-4, p. 3-3 to 3-5. This characterization provides a distorted picture of corridor, leaving the impression that all the route options adhere more closely to the state’s policy of non-proliferation when they do not under *PEER*.

The Zumbro Dam Option Route utilizes a lower percentage of corridor than White Bridge Road:

Use or Paralleling of existing ROW (transportation, pipeline, and electrical transmission systems), and property lines		
Total length of route (miles)	10.1	11.9
Length following Transmission Line (miles)	0.8	0
Percentage of route following Transmission Line	8%	0%
Length following road but not Transmission Line (miles)	0.4	3.9
Percentage of route following road but not Transmission Line	4%	33%
Length following property line but not transmission line or roads (miles)	3.2	5.9
Percentage of route following property line but not transmission line or roads	32%	50%
Total length following transmission line, roads, or property lines (miles)	4.4	9.1
Percentage of route following transmission line, roads or property lines	44%	77%
Length not following transmission line, roads or property lines (miles)	5.7	2.8
Percentage of route not following transmission line, roads or property lines	56%	23%

Xcel Application p. 8-59, Laymen App. 4.



The White Bridge Road is the route that more closely adheres to Minnesota's policy of non-proliferation. Xcel correctly noted in its Application that there was no existing aerial transmission at the proposed Zumbro Dam crossing:

The Zumbro Dam Route Option crosses the Zumbro River in a location without existing aerial infrastructure and where impacts to a high quality Maple Basswood forest (Maple Basswood) would occur on the east bank of the river.

Hearing Exhibit 1, Application, p. 8-55; see also Hearing Exhibit 35, Google Earth files.

Second, there is no transmission line crossing the river at the Dam. Xcel requested correction of the EIS in its DEIS Comments:

The DEIS, at page 171, states that routes 3P-Zumbro-N and 3P-Zumbro-S cross the Zumbro River where there is an existing transmission line crossing. This statement should be corrected to note that there are no existing electrical facilities present at any of the crossings. The north Zumbro River crossing (Alternate Route) crosses the Zumbro River at a location where there is no existing infrastructure. The middle Zumbro River crossing (3P-Zumbro-N and 3P-Zumbro-S) crosses the Zumbro River at an existing dam. The south Zumbro River crossing crosses the Zumbro River at the White Bridge Road bridge.

Hearing Exhibit 21, Hillstrom Schedule 18, DEIS Comments April 29, 2011 (same as Hearing Exhibit 113, FEIS, Appendix O, p. O-205-207); see also Hearing Exhibit 35, Google Earth files. The DNR also addressed this lack of infrastructure both in Comments and at the PUC meeting.

Because there is no existing infrastructure, as above, the DNR recommends utilizing the White Bridge Road crossing because it has fewer impacts. Specifically, there are three Zumbro River crossings included in the project record: the north crossing, which is a greenfield crossing, a middle crossing at a dam, and the southernmost crossing at the white bridge. As stated above a crossing with no existing infrastructure such as the northernmost crossing is not encouraged. The northern most crossing also has Natural

Heritage Information System (NHIS) records of a state-listed turtle in the vicinity of the crossing.

There is also a Minnesota County Biological Survey (MCBS) Site of Biodiversity Significance ranked as Moderate near the crossing. The Zumbro River crossing near the dam is located next to an MCBS Site of Biodiversity Significance ranked as High. Rare species in the area include state-listed special concern American ginseng (plant), and state-listed special concern moschatel (plant). The southernmost white bridge crossing would affect an MCBS site of Biodiversity Significance ranked as Moderate and one ranked as Below. To avoid a greenfield crossing, the northernmost route is not recommended. Considering a comparison of rare species, MCBS site presence and ranking, and a general goal of reducing deforestation between the two crossings with existing infrastructure, the DNR recommends utilizing the white bridge crossing in this area rather than the crossing at the dam.

Commission 278, DNR Comment, Public Comments to ALJ, 6/29/2011; Laymen App.1.

At the April 12, 2012 meeting, the Commission recognized that the Findings of Fact and FEIS were incorrect, corrected the Findings of Fact to reflect that there is no aerial crossing at the dam, and that there is no transmission crossing the dam or to the east. However the information on page 174 and 176 of the FEIS remains incorrect. The ALJ relied on these incorrect statements in her selection of the Zumbro Dam crossing, and cited these FEIS pages. Hearing Exhibit 113, FEIS, p. 174 and 176. Under Minnesota's theory of non-proliferation, the Commission properly chose to utilize the White Bridge Road route as directed by PEER and Minn. Stat. §216E.03, Subd. 7(e). The Commission's decision is consistent with Minnesota's policy of non-proliferation of transmission corridors.

**III. THE COMMISSION'S ROUTING DECISION FOLLOWED THE PRESCRIBED STATUTORY PROCEDURES AND ADMINISTRATIVE RULES WHEN IT GRANTED THE ROUTE PERMIT FOR SEGMENT 3 USING THE APPLICANT'S MODIFIED PREFERRED ROUTE AT THE WHITE BRIDGE ROAD CROSSING OF THE ZUMBRO RIVER.**

No CapX 2020 and Laymen for Christ o/o of Woodland Camp request that the court find that Oronoco Township's appeal is without merit and that the Commission's routing decision and order be affirmed.



December 28, 2012

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## **CERTIFICATION OF BRIEF LENGTH**

I hereby certify that the Brief of Respondents No CapX 2020 and Laymen for Christ conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 11,811 words. This brief was prepared using Microsoft Word 2010.



December 28, 2012

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# Minnesota Department of Natural Resources

500 Lafayette Road • St. Paul, MN • 55155-40

June 29, 2011



Judge Kathleen D. Sheehy  
Office of Administrative Hearings  
P.O. Box 64620  
600 North Robert Street  
St. Paul, Minnesota 55164-0620

Re: Hampton-Rochester-La Crosse 345 kV and 161 kV Transmission Line Project  
[PUC Docket Number: E002/TL-09-1448; OAH Docket No. 3-2500-21181-2]

Dear Judge Sheehy:

The Minnesota Department of Natural Resources (DNR) has reviewed the Route Permit Application and Draft Environmental Impact Statement (DEIS) for the Hampton-Rochester-La Crosse Transmission Line Project and has provided testimony during the Office of Administrative Hearings (OAH) evidentiary hearing. The attached comments regarding the DEIS, dated April 29, 2011, are included for analysis and consideration in the administrative record and findings of fact. In addition to these comments, further clarification is provided, as requested by parties in the evidentiary hearing, regarding DNR comments about possible Zumbro River crossings in Segment 3 of the project.

As stated in previous comment letters, the DNR recommends crossings of public waters to generally be located where there is existing infrastructure. For example, the Zumbro River should be crossed where existing infrastructure exists and there is the least impact to resources from clearing or construction activities. The Zumbro River crossing at the white bridge in Segment 3 appears to result in the least impact from clearing, and utilizes an existing river crossing.

Specifically, there are three Zumbro River crossings included in the project record: the north crossing, which is a greenfield crossing, a middle crossing at a dam, and the southernmost crossing at the white bridge. As stated above a crossing with no existing infrastructure such as the northernmost crossing is not encouraged. The northernmost crossing also has Natural Heritage Information System (NHIS) records of a state-listed threatened turtle in the vicinity of the crossing. There is also a Minnesota County Biological Survey (MCBS) Site of Biodiversity Significance ranked as Moderate near the crossing. The Zumbro River crossing near the dam is located next to an MCBS Site of Biodiversity Significance ranked as High. Rare species in the area include state-listed special concern American ginseng (plant), and state-listed special concern moschatel (plant). The southernmost white bridge crossing would affect an MCBS site of Biodiversity Significance ranked as Moderate and one ranked as Below. To avoid a greenfield crossing, the northernmost route is not recommended. Considering a comparison of rare species, MCBS site presence and ranking, and a general goal of reducing deforestation between the two crossings with existing infrastructure, the DNR recommends utilizing the white bridge crossing in this area rather than the crossing at the dam.

Thank you for the opportunity to provide input regarding the Hampton-Rochester-La Crosse Transmission Line Project. Please contact me with any questions regarding the attached comments, evidentiary hearing testimony, or additional information provided in this letter.

Sincerely,

A handwritten signature in black ink that reads 'Jamie Schrenzel'.

Jamie Schrenzel  
Principal Planner  
Environmental Review Unit  
(651) 259-5115

Enclosures: 1

Judge Sheehy 6/29/2011



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Laymen App. 1

Table 8.7-2:

Residences in Proximity to the Preferred Route and Zumbro Dam Route Option Centerlines

Proximity (feet)	Preferred White Bridge Road Route	Zumbro Dam Route Option
0–75 (within ROW) <sup>1</sup>	0	0
75–150	0	0
150–300	2	5
Density (residences/linear mile)	0.2	0.5

<sup>1</sup> The ROW required is 150 feet, or 75 feet on either side of the centerline.

### 8.7.1.3 Aesthetics

The Zumbro Dam Route Option parallels existing transmission lines for 8 percent of its length for approximately 0.8 mile west of the Zumbro Dam. The Zumbro Dam Route Option crosses mostly gently rolling agricultural lands east and west of the Zumbro River, but terrain is hillier with more forested areas near the Zumbro River compared to the Preferred Route, and tree clearing would likely be required on the east and west banks of the river.

Aesthetic values crossing forested areas, including bluffs near the Zumbro River, would be impacted by the Zumbro Dam Route Option where tree removal within the 150-foot ROW would create new or expanded openings and increase the visibility of the transmission line. The 345 kV transmission line would be visible 50 to 95 feet above tree canopies, which is estimated to be an average of 80 feet high. The Zumbro Dam Route Option would likely be visible from campgrounds and residential areas on the shoreline of the Zumbro River, as well as to water-based recreationists in both the Zumbro River downstream and on Lake Zumbro upstream. The transmission line constructed along the Route Option extends over the existing tree canopy, and the expanded ROW would require removal of trees near the Zumbro River. Due to the width of Zumbro Lake, the Zumbro Dam Route Option would be visible to boaters and anglers near the Zumbro Dam, and for over 0.5 mile from the surface and shoreline of Lake Zumbro.

Because both the Route Option and the Preferred White Bridge Road Route would require some tree clearing in an area characterized by residential and recreational land use, and no existing transmission line crosses the river at these locations, impacts to aesthetics would be similar for both routes.

### 8.7.1.4 Recreation and Tourism

Most of the land surrounding both of the routes is private and does not provide for public recreation or tourism opportunities. Recreational resources in proximity to the routes are shown in Figure 8.2-3. Both routes cross and/or parallel snowmobile trails identified on Figure 8.2-3. The Zumbro Dam Route Option



### 8.7.1.9 Natural Resources

The Zumbro Dam Route Option would result in permanent tree clearing in 1.2 acres of forested wetlands, but would not permanently impact other types of wetlands or FEMA floodplains. The Preferred White Bridge Road Route would not result in any permanent impacts to wetlands, forested wetlands, or FEMA floodplains. Wetlands, FEMA Floodplains, and streams crossed by each route option are identified on Figure 8.5-1.

The Zumbro Dam Route Option crosses the Zumbro River in a location without existing aerial infrastructure and where impacts to a high quality Maple Basswood forest (Maple Basswood) would occur on the east bank of the river. Similarly to the Preferred White Bridge Road Route, no NWRs, WPAs, GBCAs, SNAs, or IBAs are located in the vicinity of this crossing. However, the Isaak Walton League WMA is within 1 mile and south of the Zumbro Dam Route Option. This WMA is comprised of an oak forest located on steep terrain and it is managed to promote forest wildlife. When comparing conservation easement lands between the two Zumbro River crossings, the Preferred White Bridge Road Route has 25 more CRP lands than the Zumbro Dam Route Option. Conservation easements are identified on Figure 8.5-2.

Rare and unique species and MDNR rare native plant communities located within 1 mile of the Preferred Route and Route Option are summarized in Tables 8.7-3 and 8.7-4 respectively. A greater number of MDNR rare native plant communities occur within 1 mile of the Zumbro Dam Route Option centerline compared to the Preferred White Bridge Road Route. In addition, more state special concern species occurrences exist within 1 mile of the Zumbro Dam Route Option centerline compared to the Preferred Route. Both route options have an equal number state threatened species occurrences within 1 mile of the route centerline.

Each route crosses areas that have been identified as having biodiversity significance. The Zumbro Dam Route Option crosses an area having high biodiversity significance for 0.6 mile. This area is comprised of Sugar Maple-Basswood Forest and Red Oak-White Oak Forest. MDNR NHIS data document occurrences of three state special concern plant species in this area, as well as a state threatened mussel at the river crossing. The Preferred White Bridge Road Route crosses an area having moderate biodiversity for 0.9 mile. This area is the Red Oak-White Oak Forest described above in the Preferred Route section. Both areas are located adjacent to the Zumbro River on the east side (Figure 8.5-3).

## 8.7.2 Summary of Potential Impacts

Table 8.7-5 provides a summary comparison of the potential resource impacts of the Zumbro Dam Route Option and the Preferred White Bridge Road Route, based on the factors set forth in Minn. R. 7850.4100. Using this comparison, the Applicant concluded that the Preferred White Bridge Road route best conserves natural resources, minimizes potential environmental and human settlement impacts, as well as minimizing other land use conflicts, and would be the most cost-efficient option.

Table 8.7-5:  
Summary Comparison of Impacts for the Preferred White Bridge Road Route and Zumbro Dam Route Option

Resource Category	Zumbro Dam Route Option	Preferred White Bridge Road Route
Number of Federal Rare and Unique Species Known to Occur Within 1 mile of Route Centerline		
Threatened	0	0
Endangered	0	0
Candidate	0	0
Number of State Rare and Unique Species Known to Occur Within 1 mile of Route Centerline		
Threatened	3	3
Endangered	0	0
Species of Concern	7	3
DNR Rare Native Communities	109	21
Length of Outstanding Biodiversity Sites Crossed	0	0
Length of High Biodiversity Sites Crossed	0.6 mile	0
Length of Moderate Biodiversity Sites Crossed	0	0.9 mile
Use or Paralleling of existing ROW (transportation, pipeline, and electrical transmission systems), and property lines		
Total length of route (miles)	10.1	11.9
Length following Transmission Line (miles)	0.8	0
Percentage of route following Transmission Line	8%	0%
Length following road but not Transmission Line (miles)	0.4	3.9
Percentage of route following road but not Transmission Line	4%	33%
Length following property line but not transmission line or roads (miles)	3.2	5.9
Percentage of route following property line but not transmission line or roads	32%	50%
Total length following transmission line, roads, or property lines (miles)	4.4	9.1
Percentage of route following transmission line, roads or property lines	44%	77%
Length not following transmission line, roads or property lines (miles)	5.7	2.8
Percentage of route not following transmission line, roads or property lines	56%	23%

April 29, 2011

**VIA ELECTRONIC FILING**

Matthew Langan  
State Permit Manager  
Minnesota Office of Energy Security  
85 7th Place East, Suite 500  
St. Paul, MN 55101-2198

**Re: Comments Regarding the Draft Environmental Impact Statement**

***In the Matter of the Application for a Route Permit for the Hampton –  
Rochester – La Crosse 345 kV Transmission Line Project***  
**MPUC Docket No.: E002/TL-09-1448**

Dear Mr. Langan:

Northern States Power Company, a Minnesota corporation ("Xcel Energy" or "Company"), submits the following comments regarding the Draft Environmental Impact Statement ("DEIS") issued by the Department of Commerce, Division of Energy Resources ("Department"), on March 21, 2011 for the Hampton – Rochester – La Crosse 345 kV Project ("Project").

The Company believes the DEIS thoroughly addresses the potential human and environmental impacts associated with the routes under consideration. The Company offers the following suggested additions and clarifications for incorporation into the Final EIS ("FEIS").

**Recommended Additions**

North Rochester – Chester 161 kV Transmission Line

The Minnesota Public Utilities Commission granted a certificate of need for the Project as well as a 161 kV transmission line from the North Rochester Substation to the Chester Substation. In the Certificate of Need proceeding, the Company stated that the North Rochester – Chester 161 kV transmission line could be co-located with a portion of the 345 kV transmission line. Certificate of Need Application at p. 2.2, *In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and others for Certificates of Need for the Capx 345 kV Transmission Projects*, Docket No. ET-2, E-002, et al./CN-06-1115. The Company will be applying for a route permit and will propose that the 161

kV line be co-located with the 345 kV line from North Rochester to a point just east of the Zumbro River crossing, regardless of what 345 kV route is selected in this proceeding. As a result, the Company believes it may be appropriate for the FEIS to include a discussion regarding the North Rochester – Chester 161 kV line.

#### Segment 3B-003/Highway 42 Route

The DEIS provides data regarding a route alternative designated as 3B-003 in the DEIS. This route alternative was proposed to avoid impacts to the McCarthy Lake WMA by following State Highway 42 to a point south of Kellogg, Minnesota. The DEIS route width appears to be 1,000 feet. The Company has reviewed this alternative and determined that due to the terrain, an alignment south of the road in one area would be most appropriate. Additional route width would be required to accommodate this alignment. Consequently, the Company requests that the FEIS analyze a wider route width for Segment 3B-003 as shown on the enclosed map which was submitted into the record as Schedule 4 to the Direct Testimony of Tom Hillstrom.

#### Transmission Line Construction

In the discussion of transmission line construction, Section 5, the Company requests that additional information regarding helicopter construction and implosive devices be added. Xcel Energy may use helicopters for conductor installation and some hardware installation to reduce the time of construction and minimize ground disturbing impacts. Implosive connectors may be used to join conductors and deadend hardware rather than hydraulic splices. Implosive connectors use a specific controlled detonation to fuse the conductors and hardware together. The process creates noise equivalent to a clap of thunder or commercial fireworks, which lasts only an instant. The implosive process provides for a specific engineered connection, which improves the strength and quality of the connections that can be a potential failure point in the transmission system. In addition, it takes less time than installing hydraulically-compressed connectors and reduces the number of set up areas required on the ground. This further reduces ground-disturbing activities.

Both of these construction techniques are currently being used to construct the CapX2020 Monticello to St. Cloud 345 kV Transmission Line Project.

### **Recommended Clarifications**

#### Right-of-Way Requirements

The DEIS states in a callout box on page 7 that “about 60 feet” would be needed for right-of-way if the facilities share right-of-way with existing infrastructure such as roads or highways. This statement should be clarified to state that for the 345 kV transmission line, up to 70 feet of right-of-way can be shared and for the 161 kV line, up to 35 feet of right-of-way can

be shared. In both cases, the poles would be located approximately five feet off of the public right-of-way.

The DEIS also references the overall right-of-way requirements in several places. On pages 7 and 16, it states as follows:

A 150-foot-wide ROW is typically required for 345 kV transmission lines, and an 80-foot-wide ROW is typically required for 161 kV transmission lines. In some limited instances, where specialty structures are required for long spans or in environmentally sensitive areas, up to 180 feet of ROW may be needed for the transmission line.

There is also a discussion on page 19 that does not include references regarding when a right-of-way greater than 150 feet in width may be required. The Company recommends that the discussion on page 19 be revised to conform to the discussion on pages 7 and 16.

#### Avian Impacts at Kellogg/Alma Crossing

Both the Modified Preferred 345 kV Route and Alternative 345 kV Route cross the Mississippi River east of Kellogg, Minnesota across the US Fish and Wildlife Service (“USFWS”) managed Upper Mississippi National Wildlife and Fish Refuge, to a location in Alma, Wisconsin. This stretch of the Mississippi River is one of the four primary bird migration routes in North America.

The DEIS discusses potential avian impacts and mitigation at the Kellogg/Alma crossing of the Mississippi River. *See, e.g.*, DEIS pp. 4 and 48. The Company recommends that the FEIS include information regarding the Company’s on-going coordination with the Minnesota Department of Natural Resources, USFWS and Wisconsin Department of Natural Resources on designing river crossing structures to minimize potential avian impacts. Based on coordination to date, five potential structure designs have been produced, as set forth in Section 8.4 of the DEIS. The Company and agencies have arrived at an informal and general consensus that the preferable configuration is one that minimizes structure height and consolidates crossing wires in the fewest number of horizontal planes. It is the Company’s view that the potential for avian interaction with electrical facilities at the Kellogg Mississippi River crossing area will be reduced because of construction of the Project.

Avian impacts will be reduced by consolidating facilities and placing bird diverter markers on shield wires. Currently, there is a double circuit 161/69 kV transmission line that crosses the river at this location. This existing line has three sets of wires stacked vertically in addition to an unmarked shield wire, thus creating four horizontal planes of wires. Depending on which configuration is selected, the Company’s proposed structures would reduce the number of horizontal planes of wires from four to as few as two over the river. Bird diverter markers would

also be placed on the new shield wires. The reduction in the number of horizontal planes of wires and placing bird diverter markers on shield wires would reduce the likelihood of bird collisions with river crossing wires at this location.

#### Design of 161 kV and 345 kV Into North Rochester Substation

The DEIS, p. 6, incorrectly states that the 161 kV and 345 kV lines would be co-located on the same poles at the east end of the route alternatives to the North Rochester Substation. The Applicants propose to construct the two lines on separate structures, parallel to each other.

#### Overhead/Underground Costs

The Company recommends that further clarification be provided for the cost comparisons of overhead and underground design at the Mississippi River crossing. The DEIS provides information about costs on pages 18 and 25. The Company suggests that the following paragraph on page 18 be modified as follows and that conforming changes be made to the related discussion on page 25:

This is approximately \$70 million per mile for underground ~~double~~ single circuit 345 kV compared to approximately ~~\$2-\$12~~ million per mile for an overhead triple circuit river crossing. The river crossing costs more per mile than conventional overhead construction because of the triple circuit design and more difficult construction access. (see Appendices E-F of the Route Permit Application (RPA) or Appendix D of the draft EIS).

Also on page 25, the Company suggests that the description of the underground river crossing note that the underground alternative would result in increasing the existing 100 feet of cleared right-of-way by an additional 235 feet and that this entire right-of-way would require vegetation control.

#### Pole Foundations

The DEIS references foundation diameters and depth in a call-out box on page 19. The call-out box should be revised to list the diameters provided in Table 4.1-1 of the DEIS. For depth, the 161 kV poles may be placed at a depth of 12 feet or more depending on soil conditions. The 345 kV facilities may be placed at a depth of 25 feet or more.

#### La Crosse Area Substation

The DEIS, p. 23, notes that three substation siting areas were considered for the La Crosse area substation. The Certificate of Public Convenience and Necessity application filed

Matt Langan  
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in Wisconsin proposes a single substation site for the Briggs Road Substation in Onalaska, Wisconsin, near US 53 and Briggs Road.

Severe weather collapse, 7.1.6, p. 34

The DEIS discussion of severe weather should be clarified to reflect the fact that pole failures are a rare occurrence. The transmission lines proposed for the Project will be designed to withstand extreme weather events including an extreme summer weather event (103 mph wind) and a severe winter ice and wind event (1.5" radial ice build up on the pole and conductor accompanied by a 50 mph wind).

Zumbro River Crossings

The DEIS, at page 171, states that routes 3P-Zumbro-N and 3P-Zumbro-S cross the Zumbro River where there is an existing transmission line crossing. This statement should be corrected to note that there are no existing electrical facilities present at any of the crossings. The north Zumbro River crossing (Alternate Route) crosses the Zumbro River at a location where there is no existing infrastructure. The middle Zumbro River crossing (3P-Zumbro-N and 3P-Zumbro-S) crosses the Zumbro River at an existing dam. The south Zumbro River crossing crosses the Zumbro River at the White Bridge Road bridge.

Page 162, paragraph 4, of the EIS provides a narrative of which routes would cross Lake Zumbro that should be clarified. Lake Zumbro is a reservoir in the Zumbro River formed by water pooled in a former river valley behind a dam. The only routes that would cross Lake Zumbro are those routes that would utilize the southern crossing at White Bridge Road (the Applicant's Preferred Route).

**Closing**

Thank you for considering these comments. Please contact me at (612) 330-6538 or [thomas.g.hillstrom@xcelenergy.com](mailto:thomas.g.hillstrom@xcelenergy.com) if you have any questions.

Sincerely,

/s/ Tom Hillstrom  
Tom Hillstrom

Xcel Energy  
414 Nicollet Mall, MP-8A  
Minneapolis, MN 55402

Enclosure  
3774960

<p style="text-align: right;">Page 93</p> <p>1 similar amount, but the more direct route will have  2 less construction, I have to assume some less  3 construction cost.  4 And then I guess I finally follow up with  5 saying that we are going to be impacted in Cannon  6 Falls, but let's try to have the impact be as  7 minimal as possible. And it seems to me the way to  8 accomplish that is to follow an existing corridor or  9 right-of-way as close as possible. And in our town,  10 that's Highway 52.  11 I would answer any questions or be around  12 through the afternoon.  13 CHAIR REHA: Thank you. Any questions?  14 All right. Anna Mae Norman. Is Anna Mae  15 Norman here?  16 MS. ANNA MAE NORMAN: Yes. I'm right  17 here.  18 CHAIR REHA: Oh. If you want to pass or  19 don't want to comment, just --  20 MS. ANNA MAE NORMAN: No, I want to  21 comment.  22 CHAIR REHA: Okay. Very good. We'd love  23 to hear from you so take a seat.  24 MS. ANNA MAE NORMAN: (Inaudible).  25 CHAIR REHA: Welcome to the Commission.</p>	<p style="text-align: right;">Page 95</p> <p>1 years we've been there. And it encourages youth and  2 adults in a serene, quiet, restful wooded setting  3 unique to this part of southeastern part of  4 Minnesota.  5 The camp is located in the Richard J.  6 Dorer Memorial Hardwood State Forest with original  7 growth. The proposed power dam crossing will cross  8 on a green field as there are no transmission lines  9 on this east side of the power dam as was  10 erroneously reported in the administrative judge's  11 report. The transmission lines from the west that  12 come to the power dam go south on the west side of  13 Lake Zumbro and the Zumbro River. All the electric  14 power line for Woodland Camp and the Norman property  15 are, since its inception, have been underground.  16 So much will be taken away from this  17 peaceful camp environment if a 150-foot swath takes  18 down trees and brush and these huge 175-foot power  19 poles are erected in its path.  20 The DNR response is on record in a letter  21 dated June 29th, 2011 that their first preference  22 for the transmission line crossing would be the  23 White Bridge crossing. On most of the maps  24 presented to the public, the White Bridge crossing  25 is labeled the modified preferred route. This site</p>
<p style="text-align: right;">Page 94</p> <p>1 MS. ANNA MAE NORMAN: Thank you. It's  2 still good morning to you, Madam Chairman and the  3 Commissioners, and to your staff.  4 I am Anna Mae Norman, and I live at 39757  5 573rd Street, Zumbro Falls. My husband and I are  6 the founders, caretakers and adjacent landowners to  7 Woodland Camp owned and operated by Laymen for  8 Christ, Incorporated. We are a 501(c)(3) tax  9 exempt, our certificate number is 25348.  10 We purchased this rocky farmland with  11 original growth forest area that lies next to the  12 power dam on Lake Zumbro in 1966. We made the  13 downpayment on this property with a small  14 inheritance that I received when my parents' affairs  15 were settled. My mother, age 44, my father, age 48,  16 my two brothers, ages 17 and 15, my sister, 20, and  17 her husband, 22, and their two children, ages two  18 and three, died in a boating accident. This camp  19 facility is a living memorial to my family and a  20 ministry for Merl and I.  21 The camp has no paid employees or staff.  22 We have 52 acres, which is the forest area of the  23 land. We gave it to Laymen for Christ for the  24 development of Woodland Camp and it has been used by  25 many churches and para church groups. These past 45</p>	<p style="text-align: right;">Page 96</p> <p>1 is the only crossing of the three that has the  2 infrastructure in place, a power line corridor, a  3 road, and easy access for construction and  4 maintenance.  5 Olmsted County and Oronoco developments  6 are creating the demand and would benefit most from  7 this transmission line. There is no need in Wabasha  8 County. The Zumbro Township board, Mazeppa Township  9 board and the Wabasha County board have all sent  10 letters asking that the White Bridge modified  11 preferred route be used.  12 In my conversations with Xcel personnel,  13 I was told that Xcel prefers the White Bridge route.  14 The DNR letter of June 29th, 2011 states their  15 preference for the White Bridge preferred route.  16 And most of the CapX 2020 maps identified the White  17 Bridge route as the modified preferred route.  18 It's confusing to us why the ALJ is  19 recommending the power dam route. Please --  20 CHAIR REHA: Your time is up, if you're  21 almost finished.  22 MS. ANNA MAE NORMAN: Yeah, I just want  23 to say, please do not approve the power dam route.  24 Thank you.  25 CHAIR REHA: All right. Thank you so</p>



<p style="text-align: right;">Page 97</p> <p>1 much. Any questions?</p> <p>2 Okay. Merl Norman. Welcome.</p> <p>3 MR. MERL NORMAN: Hi. Merl Norman,</p> <p>4 related to Anna Mae.</p> <p>5 CHAIR REHA: I figured that.</p> <p>6 MR. MERL NORMAN: For 54 years, pretty</p> <p>7 close.</p> <p>8 CHAIR REHA: Congratulations.</p> <p>9 MR. MERL NORMAN: Hi. I want to thank</p> <p>10 those of you Commissioners that came down to</p> <p>11 Mazeppa, I know some of you were there and heard</p> <p>12 from us then.</p> <p>13 Yeah, my name is Merl Norman, and the</p> <p>14 same address as Anna Mae's. And I'm the president</p> <p>15 of Laymen for Christ, not just because I was one of</p> <p>16 the founders, but they elected me.</p> <p>17 I'm the president of the Laymen for</p> <p>18 Christ board, owners and operators of Woodland Camp.</p> <p>19 The board strived to keep the camp facility rustic</p> <p>20 and woodsy, as the name implies, Woodland Camp.</p> <p>21 The churches and para church groups from</p> <p>22 the metro counties, urban areas, bring campers to</p> <p>23 the quiet, serene, wooded area to be encouraged and</p> <p>24 refreshed from the usual hassle of our world.</p> <p>25 This site was originally chosen because</p>	<p style="text-align: right;">Page 99</p> <p>1 our posterity? That's what Woodland Camp's been</p> <p>2 trying to help with. And we have snails, we have</p> <p>3 clams that the kids bring up from the river, we have</p> <p>4 turtles, we have -- I just want to share this with</p> <p>5 you.</p> <p>6 The groves were God's first temples and</p> <p>7 in the presence of the trees one finds peace,</p> <p>8 quietude, and inspiration. Although trees benefit</p> <p>9 us from a multitude of practical ways, providing</p> <p>10 shade, clothing, shelter, and food, we never lose</p> <p>11 the feeling that they are the noblest members of the</p> <p>12 planet world.</p> <p>13 The majesty of straight column, tall</p> <p>14 growing trees furnish the inspiration of the gothic</p> <p>15 cathedrals of Europe. Those impressive churches,</p> <p>16 those vaulted arches, seem to lose themselves in the</p> <p>17 very heavens. And so in the presence of beautiful</p> <p>18 trees, man realizes his limitations and says what</p> <p>19 the poet, Joyce Kilmer, says.</p> <p>20 I think that I shall never see a poem</p> <p>21 lovely as a tree. A tree whose hungry mouth is</p> <p>22 prest against the sweet earth's flowing breast; a</p> <p>23 tree that looks at God all day, and lifts her leafy</p> <p>24 arms to pray; a tree that may in summer wear</p> <p>25 a nest of robins in her hair; upon whose bosom snow</p>
<p style="text-align: right;">Page 98</p> <p>1 of its isolation from roads and utilities. The</p> <p>2 uniqueness of the area, which is original growth,</p> <p>3 and includes eagles nesting and a large variety of</p> <p>4 wildlife, will be destroyed if the transmission path</p> <p>5 is the power dam route.</p> <p>6 The state forestry department helped us</p> <p>7 plan and advised us as to the best use of and the</p> <p>8 protection of this original growth forest area. I</p> <p>9 brought my forest stewardship manual and I was going</p> <p>10 to bring it up here and show it to you. I've got</p> <p>11 some excerpts from that I'll leave here.</p> <p>12 And also I want to talk briefly about the</p> <p>13 bluff protection, the woodland -- or the Wabasha</p> <p>14 County zoning ordinance on bluff protection wouldn't</p> <p>15 allow us to build structures like this.</p> <p>16 One of our main goals is to provide a</p> <p>17 safe environment for the campers. Transmission</p> <p>18 lines pose many potential problems and liability for</p> <p>19 the camp. Laymen for Christ plans to protect and</p> <p>20 guard the woodland and the natural environment for</p> <p>21 future generations. Transmission lines and the</p> <p>22 150-foot swath would be devastating to this area.</p> <p>23 EIS, environmental impact statement.</p> <p>24 Birds, snails, turtles, rare species, wildlife, are</p> <p>25 all important. What about our children? What about</p>	<p style="text-align: right;">Page 100</p> <p>1 has lain; who intimately lives with rain. Poems are</p> <p>2 made by fools like me, but only God can make a tree.</p> <p>3 Those hardwood forests you saw on that</p> <p>4 map must stay there. We must keep those for our</p> <p>5 children and our posterity.</p> <p>6 CHAIR REHA: Thank you, Mr. Norman.</p> <p>7 MR. MERL NORMAN: I am pleading with you.</p> <p>8 CHAIR REHA: Mr. Norman, your time is up.</p> <p>9 MR. MERL NORMAN: Do not use the power</p> <p>10 dam route. I am pleading.</p> <p>11 CHAIR REHA: Thank you.</p> <p>12 MR. MERL NORMAN: Thank you all.</p> <p>13 CHAIR REHA: Thank you very much. Any</p> <p>14 questions?</p> <p>15 Steve Walker.</p> <p>16 MR. STEVE WALKER: Good morning, Madam</p> <p>17 Chair.</p> <p>18 CHAIR REHA: Good morning.</p> <p>19 MR. STEVE WALKER: I'm Steve Walker. I</p> <p>20 live at 5700 Highway 63 North, Zumbro Falls. I'm a</p> <p>21 supervisor in the township, Zumbro Township.</p> <p>22 The township would be where the dam</p> <p>23 crosses and it would come into our township. The</p> <p>24 hardwood forest he's talking about are very -- we</p> <p>25 need them, we'd like to have them stay. But what</p>

<p style="text-align: right;">Page 101</p> <p>1 they're not showing you is on the other side, the</p> <p>2 next township over, there's a camp site right there</p> <p>3 at the dam. And they rent campsites out, there's</p> <p>4 people fishing, boating, all the time there. Where</p> <p>5 the other access on the proposed route on White</p> <p>6 Bridge Road, they're saying they're using that for</p> <p>7 lake frontage and stuff, it's inundated with mud up</p> <p>8 there and it's just like a small trickle where the</p> <p>9 bridge is up there. The dam is where most of the</p> <p>10 people boat and it's about two and a half miles that</p> <p>11 goes to the south where they can boat and have their</p> <p>12 fun, but where they want to cross up there it isn't.</p> <p>13 Secondly, the need for this power is</p> <p>14 coming from Rochester, also, they're having two 161</p> <p>15 lines come in, one at Chester and one at Northern</p> <p>16 Hills. And they haven't spoke much about the 161</p> <p>17 line coming out of Chester, but I'm getting all the</p> <p>18 information because it's close to my farm. And they</p> <p>19 will be hooking on. So with taking the White Bridge</p> <p>20 route it is going to be closer for these two 161</p> <p>21 lines to be hooked up.</p> <p>22 And Olmsted County has kind of washed</p> <p>23 their hands of taking this route. They said put it</p> <p>24 in Wabasha. The need is huge in Olmsted County.</p> <p>25 Wabasha County is 22,000 people, Olmsted County is</p>	<p style="text-align: right;">Page 103</p> <p>1 preferred route in Segment 1 in Cannon Falls.</p> <p>2 And before I start, I just wanted to</p> <p>3 reiterate what Carol Overland said. When they were</p> <p>4 doing this permit we only got about 48 hours' notice</p> <p>5 before the public hearing that that routing was</p> <p>6 going to happen.</p> <p>7 CHAIR REHA: You're talking about the --</p> <p>8 MR. TIM LANGDON: The modified preferred.</p> <p>9 CHAIR REHA: The modified part.</p> <p>10 MR. TIM LANGDON: Yeah, we only got</p> <p>11 about -- we got a telephone call maybe two days</p> <p>12 beforehand. So that's all the notice that we got.</p> <p>13 My comments today is going to be on</p> <p>14 the -- a little bit of the Briggs and Morgan's</p> <p>15 report and also the Department of Commerce.</p> <p>16 On page 5, line 14, of the Briggs and</p> <p>17 Morgan report, I see they're quoting, although there</p> <p>18 are a number of houses within 500 feet of the</p> <p>19 modified preferred route, it is higher than Segment</p> <p>20 3P-003. Segment 3P-003 is about 100 miles away.</p> <p>21 What's the significance of that?</p> <p>22 On page 6 they talk about, in the third</p> <p>23 paragraph they talk about segment 3P-03. There's no</p> <p>24 segment 3P-03 in the whole system. There's a</p> <p>25 mistake there.</p>
<p style="text-align: right;">Page 102</p> <p>1 142,000 people.</p> <p>2 Now, they should take some of the burden</p> <p>3 of this power line through their county to help with</p> <p>4 what their needs are. We have one stoplight in our</p> <p>5 county. How many does Olmsted have? They have many</p> <p>6 of them.</p> <p>7 But I'm begging you to take the White</p> <p>8 Bridge Road. The DNR has stated such. And Wabasha</p> <p>9 County has proposed to take it, I have the paperwork</p> <p>10 here, they want that route, and our township board</p> <p>11 would prefer that route.</p> <p>12 Seeing that this line goes through my</p> <p>13 farm on the farm side -- and I know I don't want to</p> <p>14 bore you with farm stuff -- but I remember when this</p> <p>15 routing started and they were talking about going</p> <p>16 through Winona with it. They said there was a truck</p> <p>17 outfit that was worth \$1.5 million, that would cost</p> <p>18 too much to move. How do you move a farm that's</p> <p>19 been in the family for 55 years? How do you take a</p> <p>20 250-acre farm and move that?</p> <p>21 Thank you.</p> <p>22 CHAIR REHA: Thank you very much.</p> <p>23 Okay. Tim Langdon. Welcome.</p> <p>24 MR. TIM LANGDON: Thank you. Good</p> <p>25 morning. I'd just like to -- I live on the modified</p>	<p style="text-align: right;">Page 104</p> <p>1 With the Department of Commerce finding,</p> <p>2 they are talking about a Minnesota County Biological</p> <p>3 Survey. Here they use it as an argument in</p> <p>4 exception one, but they don't use it as an argument</p> <p>5 in exception two or three. Why is that? Is that</p> <p>6 because the numbers are reversed?</p> <p>7 The numbers they are quoting appear to</p> <p>8 come from the route 1P, but my crude calculations,</p> <p>9 the modified preferred route will cross about -- at</p> <p>10 about 1,000 feet to the west of the 1P route. So</p> <p>11 wouldn't that generate a new EIS or a house count or</p> <p>12 even a public hearing?</p> <p>13 Some of the concerns I have about the</p> <p>14 modified preferred route. Has anybody contacted the</p> <p>15 FAA and found out what the regulations are for the</p> <p>16 helicopter service in the hospital?</p> <p>17 Some of the numbers that I'm going to</p> <p>18 talk about are from the ALJ report and I'm going to</p> <p>19 add my comments.</p> <p>20 Number 120 she quotes noise. This is</p> <p>21 worsened and it's crackly in damp conditions and it</p> <p>22 could impact the school kids and this could be</p> <p>23 significant as the Cannon River is a very short</p> <p>24 distance away.</p> <p>25 Number 130, EMF. What effect will that</p>

<p style="text-align: right;">Page 129</p> <p>1 school. The original plan showed our church and  2 school as a residence, it was a yellow dot. I got  3 that corrected and I worked with the people and it  4 was at my suggestion that the alternate that comes  5 across Lake Byllesby Dam and down Harry Avenue over  6 here was studied.</p> <p>7 You need to know that our school has been  8 here for 25 years, over 25 years. We have over 50  9 students in our school. This area is -- this is our  10 land here. This area contains three soccer fields  11 that the Cannon Falls young children play on three  12 nights a week, there are over 200 young children  13 that play soccer out here and, of course, their  14 families all come and watch so there's a lot of  15 people gathering here.</p> <p>16 Our hope is to grow our school and to  17 expand our school. And all you've proposed is  18 moving the line from one side of our property to the  19 other side of our property.</p> <p>20 We've been working with the planners and  21 with the judge for two years. I would say that the  22 judge has listened to our complaints or our  23 concerns, she's listened to the concerns of everyone  24 else in this room, both in writing -- and other  25 people that aren't in this room -- both in writing</p>	<p style="text-align: right;">Page 131</p> <p>1 route?</p> <p>2 UNIDENTIFIED: At the White Bridge.</p> <p>3 MR. KEVIN KAUTZ: The preferred route,  4 right through here.</p> <p>5 Why should Wabasha County be stripped off  6 its beautiful bluff lands to support Olmsted  7 County's electrical infrastructure? The state's  8 largest commercial development is now on the sunrise  9 in Olmsted County. Location, location, location.  10 On record, Wabasha County, Zumbro Township, Mazeppa  11 Township, City of Mazeppa, Mazeppa Valley Snowmobile  12 Club all support the preferred route.</p> <p>13 Thank you.</p> <p>14 CHAIR REHA: Thank you.</p> <p>15 Jennifer Langdon.</p> <p>16 MS. JENNIFER LANGDON: Yeah, that's  17 great. Can you zoom out? Great. Well, not quite  18 so much. Sorry. Thanks.</p> <p>19 Hi.</p> <p>20 CHAIR REHA: Welcome.</p> <p>21 MS. JENNIFER LANGDON: Thank you. I,  22 first of all, wanted to say thank you for letting  23 us -- giving us the opportunity to talk, since this  24 is obviously such a big deal to many of us.  25 And when I mentioned to several of my</p>
<p style="text-align: right;">Page 130</p> <p>1 and verbally and studied that for two years, made a  2 recommendation. I've heard nothing here today that  3 would cause you not to listen to the judge's  4 recommendation. I haven't seen any revelations that  5 weren't studied previously and considered in the  6 judge's recommendation.</p> <p>7 Thank you for your time.</p> <p>8 CHAIR REHA: Thank you.</p> <p>9 Okay. Kevin Kautz.</p> <p>10 MR. KEVIN KAUTZ: Kevin Kautz, Zumbro  11 Township Chairman, Zumbro Valley Snowmobile  12 Association Chairman. I'd like to use a map, too,  13 please.</p> <p>14 CHAIR REHA: Okay. Would this be  15 Segment 2 then?</p> <p>16 MR. KEVIN KAUTZ: Over the power dam, the  17 Zumbro power dam.</p> <p>18 CHAIR REHA: There it is.</p> <p>19 MR. KEVIN KAUTZ: Way down. Zoom down,  20 please, down to the dam. This is the place -- this  21 is the judge's ruling.</p> <p>22 CHAIR REHA: Right.</p> <p>23 MR. KEVIN KAUTZ: To put power lines  24 through three camps right here.</p> <p>25 UNIDENTIFIED: Is that the preferred</p>	<p style="text-align: right;">Page 132</p> <p>1 work colleagues that I was going to do this, they're  2 like, oh, Jen, you know, the decision is probably  3 already made, it's a waste of your time and your gas  4 money. And I sincerely wanted to say, I have  5 appreciated the insightful questions that you have  6 asked and I feel better about the whole process now,  7 I feel that you're trying to find the big picture.  8 And it's not about individual landowners and people,  9 it's find the big picture, what's going to affect us  10 for generations to come. So I just wanted to say  11 that.</p> <p>12 I've been a nurse for almost 30 years,  13 I'm kind of showing my vintage. And over that time  14 I've had the opportunity to touch many people at  15 some pretty vulnerable times in their lives. You  16 know, whether it's in the emergency room or in a  17 hospital bed. And I've had the opportunity to work  18 with some brilliant physicians and nurses. And some  19 on the other end of the spectrum, too. You know,  20 unfortunately. Fortunately, that's not real often,  21 but nevertheless, it is there.</p> <p>22 And I've learned that it's part of my  23 role to be an advocate for that patient there that's  24 lying and vulnerable. And I kind of see you all as  25 we're kind of the vulnerable patients and you have</p>

## North Rochester to Mississippi River Advisory Task Force April/May 2010

### Specific Route Issues and Impacts (Homework)

- 1) With the knowledge that you currently have about the proposed routes for the Hampton to Rochester to La Crosse 345kV and 161kV transmission lines in your community, what specific land use planning route and/or sub-station issues and impacts need to be evaluated in the environmental impact statement for this project? If the issues are specific to a particular portion of one of the proposed routes, please identify the location.
- 2) To help organize your thoughts and our process, please identify your top four issues below and bring this document to the first meeting of the Advisory Task Force. We will use and collect the information at that meeting.
- 3) Your name: (optional) MERL NORMAN

What is the land use planning Issue?

What is the Impact? (Why is there an issue?)

Where, specifically, is it located? (What part of your township, city, or county? What part of a proposed route?)

#### Example A:

Issue: Wetlands

Impact: Destruction of wetlands during construction and future maintenance.

Where located: Section 16 & 15, T145N, R32W (Farden Twp.)

#### Example B:

Waterfowl flyways. Birds hitting lines or avoiding areas on Route 1: Locations are the north end of Moss Lake to just south of Pike Bay in section 3 of Wilkinson Twp. and between Twin Lake and Camp Lake in section 2 of Wilkinson Twp.

#### Example C:

Issue: Line is too close to houses in our area

Impact: Aesthetics - we don't want to look at transmission lines

Where located: South of Sucker Lake in Cass County, near and around the boat access.

What is the land use planning Issue?

What is the Impact? (Why is there an issue?)

Where, specifically, is it located? (What part of your township, city, or county? What part of a proposed route?)

1. HEAVY FORESTATION (hardwoods) NATURAL ENVIRONMENT, IS NOW VERY CONDUCTIVE TO WILD LIFE, RARE PLANTS & EVEN NESTING EAGLES ETC., MANY ACRES ARE IN FOREST STEWARDSHIP PROGRAMS SEC. 27 MAZEPPA TWP. & SEC. 26 W & 27 W ZUMBRO TWP. WABASHA CO.

What is the land use planning Issue?

What is the Impact? (Why is there an issue?)

Where, specifically, is it located? (What part of your township, city, or county? What part of a proposed route?)

2. COSTS WOULD BE MUCH GREATER FOR CONSTRUCTION & MAINTENANCE BECAUSE OF HEAVY FOREST, STEEP VALLEY SLOPES ETC, WOULD BE ALL PRIVATE PROPERTY SEC. 27 MAZEPPA TWP. & SEC. 26 W & 27 W ZUMBRO TWP, WABASHA CO.

What is the land use planning Issue?

What is the Impact? (Why is there an issue?)

Where, specifically, is it located? (What part of your township, city, or county? What part of a proposed route?)

3. PRESENTLY USED FOR RECREATION YOUTH CAMPS (WOODLAND CAMP SINCE 1967) ENCOURAGING YOUTH & FAMILIES NATURAL TRAILS & RESOURCES SEC. 27 MAZEPPA TWP. & SEC. 26 W & 27 W ZUMBRO TWP, WABASHA CO.

What is the land use planning Issue?

What is the Impact? (Why is there an issue?)

Where, specifically, is it located? (What part of your township, city, or county? What part of a proposed route?)

4. TREE FARM LINES WOULD IMPAIR THE TREE PLANTINGS ETC. SEC. 14 W & 15 W ZUMBRO TWP. WABASHA CO.

266 N.W.2d 858, 11 ERC 1481, 8 Env'tl. L. Rep. 20,630  
(Cite as: 266 N.W.2d 858)

**C**

People for Environmental Enlightenment & Responsibility (PEER), Inc. v. Minnesota Environmental Quality CouncilMinn.,1978.

Supreme Court of Minnesota.

PEOPLE FOR ENVIRONMENTAL  
ENLIGHTENMENT AND RESPONSIBILITY  
(PEER), INC., et al., petitioners, Appellants,  
v.

MINNESOTA ENVIRONMENTAL QUALITY  
COUNCIL, etc., Respondent,  
Northern States Power Company, Respondent.  
**No. 47911.**

April 7, 1978.

Rehearing Denied May 10, 1978.

After the Minnesota Environmental Quality Council issued construction permit for high voltage transmission line, number of individuals and nonprofit corporation, most of whom live on or adjacent to proposed route, appealed to district court challenging segment of proposed route. The District Court, Washington County, Thomas G. Forsberg, J., affirmed decision of the Minnesota Environmental Quality Council, and individuals and corporation appealed. The Supreme Court, Sheran, C. J., held that: (1) Minnesota's commitment to principle of nonproliferation, together with fact that route 3 was prudent and feasible alternative to route 7, whose choice would result in impairment, pollution or destruction of lake and woods, both of which were protectable natural resources within meaning of the Minnesota Environmental Policy Act, ordinarily would compel the Minnesota Environmental Quality Council to choose route 3, an existing high voltage transmission line route, over route 7, however (2) principles of fairness would require remand in case to permit affected homeowners to introduce evidence concerning uniqueness of their residences as located along route 3.

Reversed and remanded.

## West Headnotes

**[1] Electricity 145 ⚡9(5)**

## 145 Electricity

## 145k9 Transmission Facilities

## 145k9(5) k. Environmental Considerations.

## Most Cited Cases

(Formerly 199k25.5(9) Health and Environment)

**Environmental Law 149E ⚡13**

## 149E Environmental Law

## 149EI In General

## 149Ek13 k. Regulation and Protection in

## General. Most Cited Cases

(Formerly 199k25.5(9) Health and Environment)

Administrative decisions on routing of high voltage transmission lines are subject to the provisions of the Minnesota Environmental Rights Act as well as to other applicable environmental legislation. M.S.A. § 116B.01 et seq.

**[2] Electricity 145 ⚡9(2)**

## 145 Electricity

## 145k9 Transmission Facilities

## 145k9(2) k. Permit or Consent by Public

## Authorities. Most Cited Cases

(Formerly 199k25.5(4) Health and Environment)

A high voltage transmission line routing that impairs, pollutes, or destroys protected natural resources cannot be approved if there is a prudent and feasible alternative route available. M.S.A. § 116B.01 et seq.

**[3] Electricity 145 ⚡9(5)**

## 145 Electricity

## 145k9 Transmission Facilities

## 145k9(5) k. Environmental Considerations.

## Most Cited Cases

(Formerly 199k25.5(9) Health and Environment)

**Environmental Law 149E ⚡13**

266 N.W.2d 858, 11 ERC 1481, 8 Env'tl. L. Rep. 20,630  
(Cite as: 266 N.W.2d 858)

#### 149E Environmental Law

##### 149EI In General

149Ek13 k. Regulation and Protection in General. Most Cited Cases

(Formerly 199k25.5(9) Health and Environment)

Minnesota's commitment to principle of nonproliferation, together with the fact that route 3 was a prudent and feasible alternative to route 7, whose choice would result in impairment, pollution, or destruction of lake and woods, both of which are protectable natural resources within meaning of the Minnesota Environmental Policy Act, ordinarily would compel the Minnesota Environmental Quality Council to choose route 3, an existing high voltage transmission line route, over route 7. M.S.A. § 116B.01 et seq.

#### [4] Electricity 145 ⚡9(2)

##### 145 Electricity

##### 145k9 Transmission Facilities

145k9(2) k. Permit or Consent by Public Authorities. Most Cited Cases

(Formerly 199k25.5(4) Health and Environment, 145k9(5))

Fact that utilization of route 3 for high voltage transmission lines would require condemnation of number of homes would not, in and of itself, overcome law's preference for containment of power lines. M.S.A. § 116B.01 et seq.

#### [5] Electricity 145 ⚡8.6

##### 145 Electricity

145k8.6 k. Environmental Considerations in General. Most Cited Cases

(Formerly 145k8.5(1), 145k8.5, 199k25.5(4) Health and Environment)

Balancing process mandated by the Power Plant Siting Act should only be utilized after more than one form of noncompensable intrusion has been identified. M.S.A. §§ 116C.51-116C.69.

#### [6] Electricity 145 ⚡9(5)

##### 145 Electricity

##### 145k9 Transmission Facilities

145k9(5) k. Environmental Considerations. Most Cited Cases

(Formerly 199k25.5(9) Health and Environment)

#### Environmental Law 149E ⚡13

##### 149E Environmental Law

##### 149EI In General

149Ek13 k. Regulation and Protection in General. Most Cited Cases

(Formerly 199k25.5(9) Health and Environment)

If homeowners along a proposed route for high voltage transmission lines could demonstrate that their homes had unique characteristics for which they could not be adequately compensated, then Minnesota Environmental Quality Council could balance proposed route's impact on "human settlement" against the other's impact on protected natural resources in reaching its final decision. M.S.A. §§ 116C.51-116C.69.

#### [7] Environmental Law 149E ⚡604(4)

##### 149E Environmental Law

##### 149EXII Assessments and Impact Statements

149Ek598 Adequacy of Statement, Consideration, or Compliance

##### 149Ek604 Particular Projects

149Ek604(4) k. Electricity, Generation and Transmission; Nuclear. Most Cited Cases

(Formerly 199k25.10(8) Health and Environment)

Environmental impact statement required by the Minnesota Environmental Policy Act must provide detailed information on all high voltage transmission line routes to be evaluated in order for it to play its proper role in the decision-making process. M.S.A. § 116D.01 et seq.

#### [8] Environmental Law 149E ⚡5

##### 149E Environmental Law

##### 149EI In General

149Ek3 Constitutional Provisions, Statutes, and Ordinances in General

##### 149Ek5 k. Purpose. Most Cited Cases

(Formerly 199k25.5(2) Health and Environment)

Aim of environmental legislation enacted to complement the Minnesota Environmental Rights Act was to harmonize need for electric power with equally important goal of environmental protection.

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M.S.A. §§ 116C.01, 116C.51-116C.69, 116C.55,  
116D.01 et seq., 116D.03.

**[9] Statutes 361 ⚡223.2(.5)**

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k223 Construction with Reference to  
Other Statutes

361k223.2 Statutes Relating to the  
Same Subject Matter in General

361k223.2(.5) k. In General. Most  
Cited Cases

(Formerly 361k223.2)

Court will attempt to harmonize statutes dealing  
with same subject matter.

**[10] Statutes 361 ⚡212.1**

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k212 Presumptions to Aid Construction

361k212.1 k. Knowledge of  
Legislature. Most Cited Cases

In enacting a statute, Legislature will be presumed  
to have acted with full knowledge of prior  
legislation on the same subject.

**[11] Environmental Law 149E ⚡650**

149E Environmental Law

149EXIII Judicial Review or Intervention

149Ek649 Persons Entitled to Sue or Seek  
Review; Standing

149Ek650 k. In General. Most Cited Cases  
(Formerly 199k25.15(4.1), 199k25.15(4) Health  
and Environment)

**Environmental Law 149E ⚡20**

149E Environmental Law

149EI In General

149Ek20 k. Private Right of Action and  
Citizen Suits, in General. Most Cited Cases

(Formerly 199k25.15(4.1), 199k25.15(4) Health  
and Environment)

Legislature intended to permit private citizens to

bring or intervene in civil actions to protect state's  
natural resources whenever they thought the  
Minnesota Environmental Quality Council had not  
done so adequately. M.S.A. §§ 116C.01, 116C.51-  
116C.69, 116C.55, 116D.01 et seq., 116D.03.

**[12] Statutes 361 ⚡226**

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k226 k. Construction of Statutes  
Adopted from Other States or Countries. Most  
Cited Cases

A statute adopted from another state is presumed to  
have been taken with the construction there placed  
upon it.

**[13] Environmental Law 149E ⚡691**

149E Environmental Law

149EXIII Judicial Review or Intervention

149Ek691 k. Evidence in General. Most  
Cited Cases

(Formerly 199k25.15(5.1), 199k25.15(1) Health  
and Environment)

Once a person or group has made a prima facie  
showing that an agency's action or inaction will  
materially adversely affect protectible natural  
resources, before it can take that action, agency  
must either rebut plaintiff's prima facie case or  
demonstrate as an affirmative defense that no  
feasible and prudent alternative exists and that its  
conduct will promote the public health, safety, or  
welfare. M.S.A. §§ 116B.01 et seq., 116C.01, 116  
C.51-116C.69, 116D.01 et seq.

**[14] Electricity 145 ⚡9(5)**

145 Electricity

145k9 Transmission Facilities

145k9(5) k. Environmental Considerations.  
Most Cited Cases

(Formerly 199k25.5(9) Health and Environment)

**Environmental Law 149E ⚡13**

149E Environmental Law

149EI In General

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(Cite as: 266 N.W.2d 858)

149Ek13 k. Regulation and Protection in  
General. Most Cited Cases

(Formerly 199k25.5(9) Health and Environment)

In order to make route-selection process comport with Minnesota's commitment to principle of nonproliferation, the Minnesota Environmental Quality Council must, as a matter of law, choose a preexisting route unless there are extremely strong reasons not to do so. M.S.A. § 116C.57.

**[15] Electricity 145 ⚡9(2)**

145 Electricity

145k9 Transmission Facilities

145k9(2) k. Permit or Consent by Public Authorities. Most Cited Cases

(Formerly 199k25.5(4) Health and Environment, 145k9(5))

Regulation which implemented the Power Plant Siting Act and provided guidelines to be followed in the route-selection process did not adequately reflect concern with Minnesota's commitment to principle of nonproliferation. M.S.A. §§ 116C.51-116C.69.

**[16] Electricity 145 ⚡9(5)**

145 Electricity

145k9 Transmission Facilities

145k9(5) k. Environmental Considerations. Most Cited Cases

(Formerly 199k25.5(9) Health and Environment)

**Environmental Law 149E ⚡13**

149E Environmental Law

149EI In General

149Ek13 k. Regulation and Protection in General. Most Cited Cases

(Formerly 199k25.5(9) Health and Environment)

On basis of evidence before the Minnesota Environmental Quality Council, Council erred in choosing route 7 over route 3. M.S.A. §§ 116B.01, 116C.51-116C.69, 1160.55, subd. 1, 1160.02.

**[17] Electricity 145 ⚡8.6**

145 Electricity

145k8.6 k. Environmental Considerations in

General. Most Cited Cases

(Formerly 145k8.5(1), 145k8.5, 145k1, 199k25.5(4) Health and Environment)

The "human impact" discussed in the Power Plant Siting Act refers to noncompensable impairment of human resources. M.S.A. § 116C.55.

**[18] Electricity 145 ⚡9(5)**

145 Electricity

145k9 Transmission Facilities

145k9(5) k. Environmental Considerations. Most Cited Cases

(Formerly 199k25.15(12), 199k25.15(1) Health and Environment)

**Environmental Law 149E ⚡698**

149E Environmental Law

149EXIII Judicial Review or Intervention

149Ek694 Determination, Judgment, and Relief

149Ek698 k. Remand to Administrative Agency. Most Cited Cases

(Formerly 199k25.15(12), 199k25.15(1) Health and Environment)

Although court would be justified in reversing and designating route 3 in that evidence showed that route 7 caused noncompensable damage and route 3 only compensable damage, in view of fact that this might be unfair to residents along route 3 who would then not have opportunity to be heard on question of "human impact" of choosing route 3, court would remand case to the Minnesota Environmental Quality Council to permit affected homeowners to introduce evidence of noncompensable damage to affected property interests. Rules Civ.App.Proc., rule 103.04, 27A M.S.A.; M.S.A. §§ 116B.01 et seq., 116C.51-116C.69.

**[19] Environmental Law 149E ⚡610**

149E Environmental Law

149EXII Assessments and Impact Statements

149Ek610 k. Time Requirements. Most Cited Cases

(Formerly 199k25.10(1) Health and Environment)

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The fact that an environmental impact statement was prepared and was available for guidance of agency prior to selection of specific route would satisfy requirements of the Minnesota Environmental Policy Act. M.S.A. § 116D.01 et seq.

**[20] Administrative Law and Procedure 15A ↩ 486**

15A Administrative Law and Procedure  
15AIV Powers and Proceedings of  
Administrative Agencies, Officers and Agents  
15AIV(D) Hearings and Adjudications  
15Ak484 Findings  
15Ak486 k. Sufficiency. Most Cited

Cases

Judicial review of decision making is only possible if agency states with clarity and completeness the facts and conclusions essential to its decision so that the reviewing court can determine whether the facts support the agency's action.

**[21] Electricity 145 ↩ 9(5)**

145 Electricity  
145k9 Transmission Facilities  
145k9(5) k. Environmental Considerations,  
Most Cited Cases  
(Formerly 199k25.5(9) Health and Environment)

**Environmental Law 149E ↩ 17**

149E Environmental Law  
149EI In General  
149Ek14 Administrative Agencies and  
Proceedings in General  
149Ek17 k. Hearing, Evidence,  
Determination, and Relief. Most Cited Cases  
(Formerly 199k25.5(9) Health and Environment)  
Findings of fact of the hearing examiner and the Minnesota Environmental Quality Council, to be made when acting upon application for construction permit for high voltage transmission line, in order to provide reviewing court with sufficient information, would have to include findings as to kind and character of homes that would be condemned in each route, kind of intrusion on lake that would be caused by utilizing one of proposed routes, specific

impact of high voltage power line on lake on another proposed route so that meaningful comparison between two lakes could be made, and specific characteristics of oak forest, which requires more than merely a statement that it is composed of virgin oak. M.S.A. §§ 116B.01 et seq., 116C.51-116C.69.

**[22] Administrative Law and Procedure 15A ↩ 819**

15A Administrative Law and Procedure  
15AV Judicial Review of Administrative  
Decisions  
15AV(F) Determination  
15Ak817 Remand  
15Ak819 k. Further or Corrected  
Findings, Remand For. Most Cited Cases  
Under most circumstances, proper disposition of an appeal that challenges specificity of agency fact-finding process would be remand to agency for more specific findings of fact.

**[23] Pretrial Procedure 307A ↩ 36.1**

307A Pretrial Procedure  
307AII Depositions and Discovery  
307AII(A) Discovery in General  
307Ak36 Particular Subjects of Disclosure  
307Ak36.1 k. In General. Most Cited  
Cases  
(Formerly 307Ak36)  
While generally it is not proper to permit discovery of mental processes by which an administrative decision is made, persons seeking judicial review of agency decision making may make inquiry through discovery to determine whether agency adhered to statutorily defined procedures or rules and regulations promulgated by agency itself which enter into fundamental decision-making process.

**[24] Appeal and Error 30 ↩ 833(2)**

30 Appeal and Error  
30XV Hearing  
30XV(B) Rehearing  
30k829 Rehearing  
30k833 Application  
30k833(2) k. Parties. Most Cited

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#### Cases

Where petitioners for rehearing were not parties to the proceeding, their petition for rehearing was improper. Rules Civ.App.Proc., rule 140, 27A M.S.A.

#### [25] Appeal and Error 30 ⚡329

##### 30 Appeal and Error

###### 30VI Parties

30k329 k. Intervention or Addition of New Parties. Most Cited Cases

Where judicial review had already been completed, intervention could serve no meaningful purpose and would not be permitted. M.S.A. § 116B.09.

#### [26] Electricity 145 ⚡9(5)

##### 145 Electricity

###### 145k9 Transmission Facilities

145k9(5) k. Environmental Considerations. Most Cited Cases  
(Formerly 199k25.5(9) Health and Environment)

#### Environmental Law 149E ⚡698

##### 149E Environmental Law

###### 149EXIII Judicial Review or Intervention

149Ek694 Determination, Judgment, and Relief

149Ek698 k. Remand to Administrative Agency. Most Cited Cases

(Formerly 199k25.5(9) Health and Environment)

In action challenging segment of proposed route for high voltage transmission line, to extent that individual members of unincorporated association or named petitioner participated in original proceedings, those parties would be free, upon remand, to petition the Minnesota Environmental Quality Council to broaden scope of inquiry to include such relevant issues as whether allegations of environmental damage to oak forest and lake had any factual basis and whether paralleling of lines and existing 230kV line would be inappropriate under circumstances.

#### [27] Electricity 145 ⚡9(5)

##### 145 Electricity

##### 145k9 Transmission Facilities

145k9(5) k. Environmental Considerations. Most Cited Cases  
(Formerly 199k25.5(9) Health and Environment)

#### Environmental Law 149E ⚡17

##### 149E Environmental Law

###### 149EI In General

149Ek14 Administrative Agencies and Proceedings in General

149Ek17 k. Hearing, Evidence, Determination, and Relief. Most Cited Cases

(Formerly 199k25.5(9) Health and Environment)

Although the Minnesota Environmental Quality Council had authority to grant petition to broaden scope of inquiry in case challenging segment of proposed route for high voltage transmission line at request of proper party, in reaching its decision, it should weigh benefits that would accrue from gathering of additional information against detrimental effect of dragging out course of litigation. M.S.A. § 116C.55, subd. 1.

##### \*860 Syllabus by the Court

1. Administrative decisions on the routing of high voltage transmission lines are subject to the provisions of the Minnesota Environmental Rights Act (Minn.St. c. 116B) as well as to other applicable environmental legislation.

\*861 2. Minnesota's commitment to the principle of nonproliferation, together with the fact that Route 3 is a prudent and feasible alternative to Route 7 whose choice would result in impairment, pollution, or destruction of a lake and woods, both of which are protectible natural resources within the meaning of the Minnesota Environmental Policy Act, ordinarily would compel the Minnesota Environmental Quality Council to choose Route 3, an existing high-voltage-transmission-line route, over Route 7.

3. Since the Power Plant Siting Act, Minn.St. 116C.51 to 116C.69, requires the identification of more than one form of noncompensable intrusion before the balancing process can be utilized, only if homeowners along a proposed route can demonstrate that their homes have unique characteristics for which they cannot be adequately

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compensated will the taking of their homes be considered noncompensable loss within the meaning of "human impact" intended by the legislature which will permit the agency to balance one route's impact on "human settlement" against the other's impact on protected natural resources in reaching its final decision.

4. The environmental impact statement required by the Minnesota Environmental Policy Act, Minn.St. c. 116D, must provide detailed information on all routes to be evaluated in order for it to play its proper role in the decisionmaking process.

5. In administrative proceedings to establish a route for a high voltage transmission line, the findings of fact must be specific enough to permit judicial review.

6. Persons seeking judicial review of agency decisionmaking may inquire through discovery whether the agency adhered to statutorily defined proceedings and to the rules and regulations promulgated by the agency that enter into the decisionmaking process.

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Warren Spannaus, Atty. Gen., Richard B. Allyn, Sol. Gen., Stephen Shakman, William E. Dorigan and Donald A. Kannas, Sp. Asst. Attys. Gen., St. Paul, for Mn. Env. Qual. Council.

Ralph S. Towler, Minneapolis, for No. St. Power. Popham, Haik, Schnobrich, Kaufman & Doty, Raymond A. Haik, and Gary R. Macomber, Minneapolis, for NSP & Mn. Power & Light.

Considered and decided by the court en banc.

SHERAN, Chief Justice.

This appeal was taken from a district court judgment affirming the issuance by respondent Minnesota Environmental Quality Council (MEQC) [FN1] of a construction permit for a high voltage transmission line (HVTL) between the Twin Cities' metropolitan area and Forbes, Minnesota, pursuant to its authority under the Power Plant Siting Act (PPSA), Minn.St. 116C.51 to 116C.69, and

rejecting appellants' challenge to a 5 1/2 -mile segment of the proposed route from node 2 to node 8A in Washington County known as Route 7. We remand to the district court to refer the case to the \*862 MEQC for further proceedings consistent with this opinion.

FN1. When created by statute in 1973, the agency was named the Minnesota Environmental Quality Council. L.1973, c. 342, s 3. In 1975 the legislature changed its name to the Minnesota Environmental Quality Board. L.1975, c. 271, s 3(7). The briefs refer to the agency by its original name, its title when the administrative hearings were held, and we will do likewise in this opinion.

The legislature created the MEQC because "problems related to the environment often encompass the responsibilities of several state agencies and \* \* \* solutions to these environmental problems require the interaction of these agencies." Minn.St. 116C.01. Consequently, its membership includes the directors of the State Planning Agency, the Pollution Control Agency, and the Energy Agency; the commissioners of Natural Resources, Agriculture, Transportation and Health; a representative of the governor's office; and four members of the Citizens Advisory Committee. Minn.St. 116C.03.

Appellants are a number of individuals and a nonprofit corporation of approximately 65 members, most of whom live on or adjacent to proposed Route 7. At the time it intervened in the administrative proceeding,[FN2] People for Environmental Enlightenment and Responsibility (PEER) was an unincorporated association of approximately 35 members, all of whom would be affected by the existence of an HVTL on proposed Route 7. Prior to its appeal to the district court, PEER became a nonprofit corporation with a membership of 65 whose purposes included protection of the Washington County environment from the proliferation of powerline routes.

FN2. PEER claimed in its pleading in

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intervention that it was intervening pursuant to Minn.St. 116B.09, which permits natural persons and associations to intervene as a matter of right in a permit proceeding upon the filing of a verified pleading.

Respondents in this action include the MEQC, which issued the construction permit, and Northern States Power Company (NSP) and Minnesota Power & Light Company (MP&L).<sup>[FN3]</sup> two Minnesota corporations. NSP and MP&L are investor-owned utilities. They jointly sought permission from the MEQC to construct this HVTL, and they will share in the ownership and responsibility for it and associated facilities.

FN3. The respondents in the original appeal were only the MEQC and NSP. MP&L sought, and was granted, permission to intervene.

On January 20, 1975, pursuant to s 116C.57, NSP and MP&L jointly applied to the MEQC for a corridor designation and a certificate of corridor compatibility for a single-circuit 500-kV HVTL from just south of Cromwell, in Carlton County, to a proposed substation in Chisago County and for a double-circuit 345-kV HVTL from the Chisago City substation to the Twin Cities' metropolitan area. The entire project planned by the applicants is greater than the requested HVTL and envisions the eventual construction of an HVTL system north to the Canadian border. The purpose of the larger project is to permit the sale of electricity between Manitoba Hydro, a Canadian utility, and NSP and between MP&L and NSP. The MEQC appointed a hearing examiner who held four public hearings on the application, and on July 18, 1975, it accepted his findings of fact, conclusions and recommendations and issued a certificate of corridor compatibility.

On February 10, 1976, pursuant to s 116C.57, subd. 2, the MEQC received an application from NSP and MP&L for the selection of a specific route within the designated corridor and for the issuance of a construction permit. The MEQC then established a

Citizen's Route Evaluation Committee and ordered its Power Plant Siting Staff to prepare a draft environmental impact statement (EIS).

In the southern portion of the corridor in which the 345-kV HVTL was to be constructed, the applicants expressed their preference for Route 3 and also suggested four alternative segments. They favored Route 3 because it contained an existing HVTL, on the theory that it is less environmentally damaging to construct transmission lines in close proximity than to spread them out over the entire landscape.

On the basis of their application, a draft EIS was written sometime prior to April 2, 1976. The review period for this draft was between April 2, 1976, and May 17, 1976, after which the EIS was evaluated in light of whatever citizen input had occurred. On June 10, 1976, the final EIS was sent to the MEQC.

Simultaneously with the drafting and review of the EIS, the Citizen's Route Evaluation Committee held hearings on proposed routes. On April 13, 1976, it reported to the MEQC and recommended the addition of Routes 6 and 7 for consideration at the public hearings to be conducted by the hearing examiner, William Seltzer. The MEQC added Route 7 to the five proposed \*863 by the utilities. The additional route, however, was not evaluated in the draft EIS. <sup>[FN4]</sup>

FN4. Even the final EIS did not provide sufficient information on Route 7 to permit the decisionmaker to make an informed choice. See, s 4, *infra*.

The public hearings on the candidate routes began on April 15, 1976. Six hearings were held in the 4 counties that would be affected by the double-circuit 345-kV HVTL. It quickly became apparent that three routes Route 1, the freeway route; Route 3, the 230-kV route; and Route 7, the airport route were the most viable alternatives, and the majority of the evidence submitted concerned them. Route 3 was the route preferred by the utilities and by PEER, the Siting Staff of the MEQC recommended Route 7, while the Citizen's Route Evaluation Committee made a split

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recommendation in which both Route 1 and Route 7 received 5 first-preference votes. The record of the public hearings was closed on June 23, 1976, and on July 12, 1976, the hearing examiner submitted his findings of fact, conclusions and recommendations. After stressing the subjective nature of the route-evaluation process and the need to balance "the interests of those directly impacted, the interest of the body politic in the protection and preservation of the environment and other natural resources, the efficient use of resources while \* \* \* insuring that electric energy needs are met and fulfilled in an orderly and timely fashion," all of which was adopted verbatim by the MEQC,[FN5] the hearing examiner recommended the selection of Route 7 rather than the existing powerline corridor known as Route 3 or the existing powerline and transportation corridor known as Route 1.

FN5. Except in the section concerning the specifics of the construction permit, to which the MEQC added nine paragraphs, no substantive differences exist between the findings of fact, conclusions and recommendations of the hearing examiner and those of the MEQC. PEER attempted to discover whether the members of the MEQC had read that report or the final EIS. It sent first requests for admission and then interrogatories to MEQC members asking whether they had read the EIS, the other exhibits, or the hearing examiner's transcripts of testimony. MEQC members refused to answer the interrogatories on the grounds that they were not relevant to any issues under consideration, that they sought to discover privileged matters, and that it was contrary to the public interest to probe the deliberative process of members of an administrative agency acting in a quasi-judicial capacity. Since the district court held that the MEQC decision was supported by substantial evidence, it did not find it necessary to discuss PEER's allegation. But see, s 9, *infra*.

On August 4, 1976, PEER served each MEQC member with a pleading in intervention alleging that

construction of the proposed HVTL along Route 7 would impair, pollute, and destroy Long Lake, a 49-acre lake that is used by persons for recreation and by wild ducks and other waterfowl as a natural flyway and brood area, as well as a 130-acre virgin oak woods containing some trees thought to be over 100 years old, both of which are natural resources protected by the Minnesota Environmental Rights Act (MERA), Minn.St. c. 116B. At its meeting of the same date, the MEQC permitted representatives of citizens groups to give limited testimony concerning the routes under consideration. Although Messrs. Herbst, Marzitelli, and Ohman expressed their concern over the proliferation of routes which would result from the MEQC's acceptance of the hearing examiner's recommendation and suggested that such proliferation was inconsistent with long-term land use planning, the MEQC voted 7 to 3 to adopt the hearing examiner's report.

On October 1, 1976, PEER appealed the MEQC decision to district court pursuant to Minn.St. 116B.09, subd. 3, and 116C.65, alleging the same impairment, pollution, and destruction of natural resources that it had delineated in its pleading in intervention. After receiving written briefs and hearing oral arguments, the court affirmed the MEQC decision to permit construction along Route 7 on the following grounds:

(1) That substantial evidence supported the selection of Route 7 over Route 3 and Route 1;

\*864 (2) That the effect of the HVTL on human settlement was not an improper criterion and was not overly weighted;

(3) That the findings of fact were sufficiently specific to permit judicial review;

(4) That the alleged procedural errors were either not demonstrated or not prejudicial;

(5) That it was unnecessary to inquire into the individual mental processes of the members of the MEQC; and

(6) That the balancing of social policies required by

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the PPSA was consistent with both MERA and the Environmental Policy Act (MEPA), Minn.St. c. 116D. It is from this judgment that PEER appeals.

After carefully considering the arguments of counsel and the reasoning advanced by the district court, we are of the opinion that the MEQC erred in its handling of the contested portion of route-selection process. For the reasons delineated below, we reverse in part, modify in part, and remand. Specifically, we hold as follows:

[1] (1) Administrative decisions on the routing of HVTLS are subject to MERA as well as to other applicable environmental legislation.

[2] (2) An HVTL routing that impairs, pollutes, or destroys protected natural resources cannot be approved if there is a prudent and feasible alternative route available.

[3] (a) Constructing the HVTL along Route 7 will impair, pollute, or destroy the lake and the woods which are protected natural resources. Because no detailed findings were made by the hearing officer regarding the degree of impairment, pollution, or destruction, we cannot accurately assess the impact of Route 7 on these protected natural resources. In the absence of such findings, we must assume that the intrusion is substantial.

[4] (b) Route 3 is an available, prudent, and feasible alternative to Route 7. Because Minnesota is committed to the principle of nonproliferation, the existence of a powerline along Route 3 would ordinarily have compelled the MEQC to choose Route 3 over Route 7. The fact that the utilization of Route 3 would require the condemnation of a number of homes is not, in and of itself, sufficient to overcome the law's preference for containment of powerlines.

[5] (3) The balancing process mandated by the PPSA should only be utilized after more than one form of noncompensable intrusion has been identified.

(a) There is no evidence that the taking of some homes will create noncompensable loss within the

meaning of "human impact" intended by the legislature. Nothing in the record before us supports the conclusion that the structures that will be condemned if Route 3 is utilized have unique characteristics which would make it difficult or impossible to assess adequately the damages to be paid for their taking. In the event of condemnation, there is no evidence that the homeowners could not acquire other equivalent accommodations. Many houses in the vicinity of Route 3 were built there after the powerline now in place was constructed which suggests that its presence was not unacceptably offensive to the residents. Therefore, were the case to be decided on the present record, the MEQC would be required, as a matter of law, to select Route 3.

[6] (b) We feel, however, that it would be unfair for us to make this decision on the basis of the present record. We believe that it would be more equitable to give the residents along Route 3 an opportunity to demonstrate the unique characteristics of their homes for which money damages would not be adequate compensation. Therefore, a period of 30 days from the date of the district court's remand to the MEQC will be permitted for testimony of this kind to be presented to the agency. Only if the affected residents are able to sustain their burden of demonstrating the noncompensable nature of their homes will the MEQC have to balance the impact of Route 3 upon "human settlement" against the impact of Route 7 on protected natural resources. Otherwise, the MEQC will be required, as a matter of law, to select Route 3.

[7][4] Under MEPA, an EIS must be available to guide the agency in its selection of a specific route. Although an EIS was prepared in this case, it did not provide the detailed information on all the routes that is necessary for it to serve its proper function in the decisionmaking process. Thus, if the MEQC decides that the evidence introduced on remand requires it to balance Route 3 against Route 7, it will not be able to do so until the EIS is sufficiently revised to permit it to be useful in the selection decision.

(5) As should be clear from the above, we do not believe that the findings of fact of the hearing

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examiner and the agency were sufficiently specific to permit judicial review.

(6) The district court erred in not permitting appellants to discover whether agency members had complied with their statutory duties.

1. The Applicability of MERA. MERA, c. 116B, which was passed by the legislature in 1971, was the first piece of environmental legislation in Minnesota. Its purpose, as stated in s 116B.01, reads as follows:

"The legislature finds and declares that each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state and that each person has the responsibility to contribute to the protection, preservation, and enhancement thereof. The legislature further declares its policy to create and maintain within the state conditions under which man and nature can exist in productive harmony in order that present and future generations may enjoy clean air and water, productive land, and other natural resources with which this state has been endowed. Accordingly, it is in the public interest to provide an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction."

In 1973, the legislature enacted three other pieces of environmental legislation to complement MERA: (1) Section 116C.01, which created the MEQC to provide the interagency interaction necessary for the solution of complex environmental problems; (2) MEPA, c. 116D, which required all state agencies to consider environmental factors before making decisions that potentially have significant environmental effects; and (3) the PPSA, ss 116C.51 to 116C.69, which, according to s 116C.55, subd. 1, would ensure the "sit(ing of) large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources."

[8] Although the focus of each of these statutes is slightly different, together they are part of a coherent legislative policy, one of whose aims is to

harmonize the need for electric power with the equally important goal of environmental protection. Recognizing that the MEQC constituted the best pool of environmentally skilled personnel, the legislature chose it to administer the PPSA. To ensure that the MEQC would not sacrifice environmental protection in its attempt to site power plants and HVTLS as efficiently as possible, it required that "to the fullest extent practicable the policies, regulations and public laws of the state shall be interpreted and administered in accordance with the policies set forth in (MEPA)." Section 116D.03. And, if the MEQC failed to comply with the mandates of MEPA and the PPSA, MERA existed to permit private citizens to bring a civil action to compel the agency to consider environmental factors. Recently, in *No Power Line, Inc. v. Minnesota EQC*, Minn., 262 N.W.2d 312, 323 (1977), we decided that the legislature did not intend the PPSA to preempt MEPA and make it superfluous. Today we reach a similar conclusion regarding MERA. Rather than intending the PPSA to supersede MERA, the legislature passed all these statutes to ensure that administrative agencies would discharge fully their environmental responsibilities.

\*866 [9][10][11][12] This conclusion is consistent with the general policy of statutory construction followed by this court of harmonizing statutes dealing with the same subject matter. *Lenz v. Coon Creek Watershed District*, 278 Minn. 1, 11, 153 N.W.2d 209, 217 (1967); *State ex rel. Carlton v. Weed*, 208 Minn. 342, 344, 294 N.W. 370, 371 (1940). We also presume that, in enacting a statute, the legislature acted with full knowledge of prior legislation on the same subject. *Erickson v. Sunset Memorial Park Assn.*, 259 Minn. 532, 543, 108 N.W.2d 434, 441 (1961); *Minneapolis Eastern Railway Co. v. City of Minneapolis*, 247 Minn. 413, 418, 77 N.W.2d 425, 428 (1956). The legislature, being aware of the existence of MERA when it passed the PPSA, cannot be assumed to have exempted PPSA proceedings from having to comply with MERA without express statutory language to that effect. Since such language is absent, the legislature must have intended to permit private citizens to bring or intervene in civil actions to protect the state's natural resources whenever



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they think the MEQC has not done so adequately.  
[FN6]

FN6. This conclusion is supported by another principle of statutory construction that " 'a statute adopted from another state \* \* \* is presumed to have been taken with the construction there placed upon it.' " Hunt v. Nevada State Bank, 285 Minn. 77, 98, 172 N.W.2d 292, 305 (1969), certiorari denied sub nom. Burke v. Hunt, 397 U.S. 1010, 90 S.Ct. 1239, 25 L.Ed.2d 423 (1970), (quoting Teague v. Damascus, 183 F.Supp. 446, 448 (E.D.Wash.1960)). Professor Sax, author of the first draft of the Michigan act upon which MERA is based, noted that the Michigan act "was designed to reduce the range of discretion traditionally given to regulatory agencies and to enable citizens to challenge standards established by those agencies." Sax & Connor, Michigan's Environmental Protection Act of 1970: A Progress Report, 70 Mich.L.Rev. 1004, 1064. This suggests that MERA, rather than being preempted by the PPSA, was seen by the legislature as an important mechanism which could be used by citizens to force an administrative agency to protect the state's natural resources. See, Haynes, Michigan's Environmental Protection Act in its Sixth Year: Substantive Environmental Law from Citizen Suits, 53 J.Urbn L. 589, 610.

Following the lead of Michigan,[FN7] see, e. g., Michigan State Highway Comm. v. Vanderkloot, 392 Mich. 159, 220 N.W.2d 416 (1974); Ray v. Mason County Drain Commissioner, 393 Mich. 294, 224 N.W.2d 883 (1975), this court has recognized that MERA provides not only a procedural cause of action for protection of the state's natural resources, but also delineates the substantive environmental rights, duties, and functions of those subject to the Act. County of Freeborn v. Bryson, 309 Minn. 178, 243 N.W.2d 316 (1976); Corwine v. Crow Wing County, 309 Minn. 345, 244 N.W.2d 482 (1976); MPIRG v. White Bear Rod & Gun Club, Minn., 257 N.W.2d

762 (1977). Although respondents would limit this substantive cause of action to those situations in which no other environmental legislation exists, [FN8] their reasons for doing so are not persuasive. MERA is clearly broader than the PPSA because MERA recognizes a right in each citizen to bring a civil suit, while under s 116C.65 of the PPSA, only a utility, a party, or a person aggrieved can appeal a decision of the MEQC to the district court. Furthermore, respondents have not demonstrated any reason to so limit MERA in the absence of express legislative direction. The need for citizen vigilance exists whether or not specific environmental legislation applies, and MERA is clearly a proper mechanism to force an administrative agency, even the MEQC, to consider environmental values that it might have overlooked. [FN9]

FN7. Michigan was the first state to enact a statute like MERA, and Minnesota's statute is modeled after it.

FN8. Since the administrative action attacked by PEER was taken pursuant to the PPSA, which not only includes environmental values in its balancing process but also provides an avenue of judicial review pursuant to s 116C.65, respondents contend that MERA has no independent role to play here.

FN9. This interpretation is also consistent with that taken by the Michigan courts. In an unreported decision in which the plaintiff challenged the Michigan Department of Natural Resources' grant of a permit for the construction of a dam under the Dam Act, which had become effective subsequent to its Environmental Protection Act, the court held that a citizen could maintain an action to ensure that regulatory agency decisions were environmentally defensible on their merits. Sax & Connor, Michigan's Environmental Protection Act of 1970: A Progress Report, 70 Mich.L.Rev. 1004, 1061. Since "(l)aws uniform with those of other states

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shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them," *Hunt v. Nevada State Bank*, 285 Minn. 77, 98, 172 N.W.2d 292, 305, certiorari denied sub nom. *Burke v. Hunt*, 397 U.S. 1010, 90 S.Ct. 1239, 25 L.Ed.2d 423 (quoting Minn.St. 645.22), a citizen in Minnesota should be permitted to maintain a civil action against the MEQC under MERA.

\*867 2. The Methodology of MERA. The principal provision of MERA that is of relevance here is s 116B.04,[FN10] which establishes the burdens of proof of the contending parties. It reads in pertinent part as follows:

FN10. PEER also stressed the importance of s 116B.09, which governs intervention in an administrative proceeding. It is unnecessary for us to decide whether the MEQC's refusal to accept PEER's petition in intervention violated MERA because it appears from the transcript of the route-selection hearings that members of PEER participated in those hearings as individuals.

" \* \* \* (W)henver the plaintiff shall have made a prima facie showing that the conduct of the defendant has, or is likely to cause the pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative and the conduct at issue is consistent with and reasonably required for promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not constitute a defense hereunder." (Italics supplied.)

As we interpreted this section in County of

*Freeborn v. Bryson*, 297 Minn. 218, 228, 210 N.W.2d 290, 297 (1973), in order to make "a prima facie showing" the plaintiff must prove the existence of "(1)(a) protectible natural resource, and (2) pollution, impairment or destruction of that resource." PEER alleged that Route 7 would impair, pollute, and destroy both a 130-acre virgin oak woods and Long Lake.[FN11] The virgin oak, whose existence was brought to the attention of the hearing officer, is a protectible natural resource, and all parties conceded that the construction of the HVTL would impair it. [FN12] No mention is made of Long Lake in the administrative proceedings, but its existence was asserted in PEER's complaint and arguments to the district court and was recognized in the MEQC's brief to this court. Because the district court found the provisions of MERA inapplicable to the proceeding and decided the appeal solely under the review provisions of the PPSA, however, it did not permit PEER to introduce evidence to support its allegations of impairment. Therefore, we must assume that the intrusion on Long Lake is substantial and that PEER sustained its initial burden under s 116B.04.

FN11. As delineated in s 116B.02, subd. 4, natural resources include "all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources." In *Corwine v. Crow Wing County*, 309 Minn. 345, 361, note 3, 244 N.W.2d 482, 490 (1976), this court recognized that a lake is a protectible natural resource under c. 116B.

FN12. In its brief, the MEQC conceded that the construction of a HVTL would cause environmental damage wherever it were located. This was also recognized by the drafters of the PPSA. Section 116C.55, subd. 1, states that the MEQC "shall choose sites that minimize adverse human and environmental impact \* \* \*." (Italics supplied.)

[13] Once a person or a group has made a prima facie showing that an agency's action or inaction

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will materially adversely affect protectible natural resources, before it can take that action, the agency must either rebut plaintiff's prima facie case or demonstrate as an affirmative defense that no feasible and prudent alternative exists and that its conduct will promote the public health, safety, or welfare. *MPIRG v. White Bear Rod & Gun Club*, Minn., 257 N.W.2d 762, 769. Since, by definition, the \*868 siting of HVTLS will cause some impairment of the environment, the MEQC's selection of Route 7 would only comply with MERA if no prudent and feasible alternatives to Route 7 existed. [FN13]

FN13. Although the trial court found that MERA and the PPSA were compatible and held that there was substantial evidence to support the MEQC's choice of Route 7, as we stated in *Reserve Mining Company v. Herbst*, Minn., 256 N.W.2d 808, 824 (1977), and reiterated in *No Power Line, Inc. v. Minnesota EQC*, Minn., 262 N.W.2d 312, 320: “ \* \* \* (i)t is our function to make an independent examination of an administrative agency's record and decision and arrive at our own conclusions as to the propriety of that determination without according any special deference to the same review conducted by the trial court.” Thus, it is necessary for the court to itself determine whether the agency's selection of Route 7 is legally supportable.

As interpreted by this court, the prudent and feasible alternative standard is analogous to the principle of nonproliferation in land use planning. In *County of Freeborn v. Bryson*, 309 Minn. 178, 188, 243 N.W.2d 316, 321, we noted that although the state's past encouragement of highway construction resulted in the elimination or impairment of natural resources, “remaining resources will not be destroyed so indiscriminately because the law has been drastically changed by (MERA).” Similarly, in *Reserve Mining Co. v. Herbst*, Minn., 256 N.W.2d 808, 827 (1977), we recognized the state's “strongly held commitment \* \* \* to protecting the air, water, wildlife, and forests

from further impairment and encroachment,” which supported our choice of Mile Post 7 over Mile Post 20, (256 N.W.2d 832). The court had no trouble deciding that the Department of Natural Resources, which, like the MEQC, had a statutory duty to protect the environment, had failed to comply with this policy of nonproliferation in choosing between the alternative sites. See, also, *No Power Line, Inc. v. Minnesota EQC*, Minn., 262 N.W.2d 312, 331 (Yetka, J., concurring specially).

This policy of nonproliferation is also supported by legislative enactments. Minn.Reg. MEQC 74(d)(3)(ee), adopted pursuant to authority granted to the MEQC under the PPSA, requires the decisionmaker to consider as one factor in the selection process whether the proposed route will “maximize utilization of existing and proposed rights-of-way.” The legislature explicitly expressed its commitment to the principle of nonproliferation in its 1977 revision of the PPSA. The MEQC is now required to consider the utilization of existing railroad and highway rights-of-way and the construction of structures capable of expansion in capacity through multiple circuiting in making its selection from among alternative HVTL routes. L.1977, c. 439, s 10.

[14] We therefore conclude that in order to make the route-selection process comport with Minnesota's commitment to the principle of nonproliferation, the MEQC must, as a matter of law, choose a pre-existing route unless there are extremely strong reasons not to do so. We reach this conclusion partly because the utilization of a pre-existing route minimizes the impact of the new intrusion by limiting its effects to those who are already accustomed to living with an existing route. More importantly, however, the establishment of a new route today means that in the future, when the principle of nonproliferation is properly applied, residents living along this newly established route may have to suffer the burden of additional powerline easements.

[15] Minn.Reg. MEQC 74(d),[FN14] the regulation which implements the PPSA and provides\*869 guidelines to be followed in the route-selection process, however, does not adequately reflect this

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concern with the principle of nonproliferation. [FN15] The prudent and feasible alternative standard is applied only to avoidance areas, Minn.Reg. MEQC 74(d)(2), and, by failing to weigh the 12 factors to be balanced when dealing with land that is to be neither excluded nor avoided, Minn.Reg. MEQC 74(d)(3), the MEQC has made it possible for environmental considerations to be balanced out of the equation entirely.

FN14. Minn.Reg. MEQC 74(d) provides for HVTL corridor and route selection as follows: "(d) Criteria for HVTL Corridor Selection. The following criteria and standards shall be used by the Council in the preparation of an inventory of HVTL corridors and to guide the Council in the evaluation and selection of HVTL routes.

"(1) Exclusion Criteria.

"(aa) No HVTL shall be routed in violation of any federal or state agency regulations.

"(bb) No HVTL shall be routed through national wilderness areas, state wilderness areas or through any area designated a HVTL exclusion area by the Council.

"(2) Transmission Line Avoidance Areas. In addition to exclusion areas, the following land use areas shall not be approved for HVTL routes when feasible and prudent alternatives with lesser adverse human and environmental effects exist. Economic considerations alone shall not justify approval of avoidance areas. Any approval of such areas shall include all possible planning to minimize harm to these areas. HVTL avoidance areas are: national parks; national historic sites and districts and natural landmarks; national monuments; national wildlife refuge areas; national wild, scenic, and recreational riverways; state wild, scenic, and recreational rivers and their land use districts; state parks; state registered historic sites; state historic districts; Nature Conservancy preserves; state scientific and natural areas; county parks; metropolitan parks; designated state and federal recreational trails; designated state canoe and boating routes; and any other area designated a transmission line avoidance area by the Council.

"(3) Selection Criteria. The following criteria shall be applied in the selection of corridors:

"(aa) Preferred corridors and routes minimize disruption to existing urbanized land uses and human settlement.

"(bb) Preferred corridors and routes minimize disruption to existing and potential irrigated and non-irrigated agricultural land uses.

"(cc) Preferred corridors and routes minimize disruption to recreational and historical land uses.

"(dd) Preferred corridors and routes minimize disruption to natural systems including vegetation, wildlife, and water.

"(ee) Preferred corridors and routes maximize utilization of existing and proposed rights-of-way.

"(ff) Preferred corridors and routes minimize visual impact on urbanized land, recreational land and water, and transportation corridors.

"(gg) Preferred corridors and routes optimize cost of materials, labor, right-of-way acquisition, project schedules, and maintenance.

"(hh) Preferred corridors and routes minimize disruption to existing and potential forestry land uses.

"(ii) Preferred corridors and routes minimize impact upon projected human settlement.

"(jj) Preferred corridors and routes maximize reliability with respect to climate, soils, geology, and vandalism.

"(kk) Preferred corridors and routes maximize accessibility.

"(ll) Preferred corridors and routes minimize disruption to existing and potential extractive and storage resources."

FN15. Respondents contend that the MEQC has satisfied the requirements of MERA by including the prudent-and-feasible-alternative standard in its regulations adopted pursuant to authority granted it by the legislature under the PPSA, Minn.St. 116C.66. The adoption of this standard, however, is only partial, and, although the district court accepted their argument, it does not accord with the legislative intent.

[16] In fact, this is precisely what appears to have occurred in the proceedings being challenged in this appeal. Residents along Route 3 introduced no evidence that its utilization would impair or destroy

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the environment; rather, they argued that the choice of Route 7 was preferable because it would require the condemnation of fewer homes than would the selection of Route 3. Although the hearing examiner, the MEQC, and the district court all accepted both their reasoning and their conclusion, condemnation of a number of homes does not, without more, overcome the law's preference for containment of powerlines as expressed in the policy of nonproliferation. Persons who lose their homes can be fully compensated in damages. The destruction of protectible environmental resources, however, is noncompensable and injurious to all present and future residents of Minnesota.[FN16]

FN16. In MERA, the legislature stated "its policy to create and maintain within the state conditions under which man and nature can exist in productive harmony in order that present and future generations may enjoy \* \* \* (the) natural resources with which this state has been endowed." Section 116B.01. This philosophy is also reflected in MEPA, s 116D.02, and in the PPSA which was enacted partly to ensure that the siting of HVTLs caused minimal damage to the environment which belongs to all the state's citizens, s 116C.55, subd. 1. The encouragement of citizen suits to protect the environment from impairment or pollution reflects the legislature's conviction that while individuals will be vigilant in their attempts to prevent the destruction of their homes and private property, since the environment belongs to no one, no one will protect it unless private attorneys-general are permitted to sue on behalf of the public interest.

\*870 Any other result would be contrary to *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 411, 91 S.Ct. 814, 821, 28 L.Ed.2d 136, 150 (1971), in which the United States Supreme Court rejected such wide ranging balancing of compensable with noncompensable impairment. In order to protect natural resources to the fullest extent possible, the court required that truly extraordinary disruption be demonstrated before a

prudent and feasible alternative to an environmentally destructive action would be refused. *Ibid.* Since the taking of seven or eight homes is not extraordinary disruption, it cannot be used to justify the proliferation of HVTLs and the destruction of protectible natural resources. Thus, the MEQC erred in choosing Route 7 over Route 3 on the basis of the evidence before it.

[17] 3. The Utilization of Balancing under the PPSA. Section 116C.55 of the PPSA requires the MEQC to balance three separate criteria human impact, environmental impact, and reliability and cost of electric power in making HVTL routing decisions. Although the MEQC has interpreted this section to mandate balancing whenever no exclusion or avoidance areas are involved, Minn.Reg. MEQC 74(d)(3), such a position does not comport with MERA, which permits balancing only when one potential route will cause greater environmental and another greater human noncompensable damage. Therefore, the "human impact" discussed in the PPSA must refer to noncompensable impairment of human resources. [FN17]

FN17. Translated into practical terms, this means that Minn.Reg. MEQC 74(d) can only be sustained if the prudent and feasible alternative standard applies to the entire selection process. Thus, the balancing of the 12 factors delineated in Minn.Reg. MEQC 74(d)(3) only comes into play after the MEQC has found no prudent and feasible alternative to an environmentally damaging route.

Applying this standard to the facts before us, homeowners can argue against HVTL routes that will impair their residence only if they can demonstrate unique irreplaceable characteristics of their homes not reflected in market value which would make their taking noncompensable. Thus, for example, if a home were crafted in an unusual manner or constructed of rare materials, to the extent that such factors are not reflected in market value, its taking could be noncompensable. Similarly, the establishment of some noncorporeal

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aspect of home ownership, such as proximity to a unique school system which could not be reproduced or converted to market value, could make the owner's interest in the property noncompensable. Although the owners along Route 3 introduced a great deal of evidence about the pleasant nature of their neighborhood, no testimony was presented on the possible noncompensable aspects of their residences. Weighing against them, moreover, are the presence of an HVTL along Route 3 and the fact that most persons bought or built their homes after it had been constructed.

[18] An examination of the evidence now in the record compels the conclusion that Route 7 causes noncompensable damage and Route 3 only compensable damage, [FN18] making balancing under Minn.Reg. MEQC 74(d)(3) improper. Thus, we would be justified in reversing and designating Route 3. This, however, might be unfair to the residents along Route 3 who would not then have an opportunity to be heard on the human impact of choosing Route 3 under the standard we now enunciate. For these reasons, we believe that it is more equitable to remand the case to the MEQC to permit the affected homeowners along Route 3 to introduce evidence of noncompensable damage to affected property interests.

FN18. Route 1 was eliminated because it included an avoidance area and Routes 3 and 7 were found to be prudent and feasible alternatives. See, Minn.Reg. MEQC 74(d)(2). Had the agency been acting in compliance with the nonproliferation principle, however, Route 7 would not have even been considered, since both Route 1 and Route 3 were existing rights-of-way. Because Route 1 traversed an avoidance area, however, Route 3 should have been chosen as a prudent and feasible alternative to Route 1.

\*871 4. The Preparation of the EIS. In its appeal to the district court, PEER alleged that the EIS was defective because it did not include an analysis of Route 7. Although PEER did not pursue this allegation of irregularity on appeal to this court, it is

a very serious infraction, if true, and is clearly within the scope of our review as contemplated by Rule 103.04, Rules of Civil Appellate Procedure. See, also, *Witzig v. Philips*, 274 Minn. 406, 410, 144 N.W.2d 266, 269 (1966).

[19] As this court recognized in *No Power Line, Inc. v. Minnesota EQC*, Minn., 262 N.W.2d 312, 325, the fact that "(a)n EIS was prepared and was available for the guidance of the agency prior to the selection of the specific route" satisfies the requirements of MEPA. If, however, the EIS that was prepared did not include Route 7, how could it have guided the agency in its decision of which route to select?

Although respondents contended in oral argument before this court that the EIS covered Route 7, an analysis of the document itself suggests otherwise. Route 7 was not part of the draft EIS because it was added to the list of potential routes after the EIS had already been commissioned, and it was covered only cursorily in the final EIS submitted to the MEQC. Since Route 7 was not analyzed in the same depth as the other routes,[FN19] the EIS, as written, could not have helped the decisionmaker to evaluate the relative damages to the three routes under consideration and to make a meaningful choice among them. [FN20]

FN19. Route 7 was not one of the routes proposed by NSP. Thus, it was not analyzed in the NSP materials presented to the MEQC. This might explain the cursory attention given to Route 7 in the final EIS, since there seems to be an unfortunate tendency by agencies to rely too heavily on the applicant's research when preparing an EIS. See, *No Power Line, Inc. v. Minnesota EQC*, Minn., 262 N.W.2d 312, 327, and cases cited therein.

FN20. In this regard, we should also reiterate that the prudent and feasible alternative standard requires much more specificity in the information included in the EIS than the MEQC appears presently to demand. The overly general nature of

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much of the EIS leaves it open to attack on the ground of inadequacy. See, e. g., *Lathan v. Brinegar*, 506 F.2d 677, 693 (9 Cir. 1974).

On remand, therefore, if Route 7 is still seriously considered, the MEQC will have to prepare a new EIS that treats all the routes comparably. If the MEQC decides that compliance with other parts of this opinion requires it to choose Route 3, then no new EIS need be produced. If, however, after more evidence is received, the MEQC decides that significant noncompensable damage will be caused by utilizing the existing right-of-way, before it can choose between Route 3 and Route 7, it will have to produce an adequate EIS that can play a meaningful role in helping it to reach its ultimate decision.

[20] 5. The Impossibility of Judicial Review. Whenever appellate review is sought, the reviewing court must decide whether the findings of fact below are sufficiently specific to permit it to exercise this function. According to *Bryan v. Community State Bank*, 285 Minn. 226, 233, 172 N.W.2d 771, 775 (1969), judicial review of decisionmaking is only possible if the agency states with clarity and completeness the facts and conclusions essential to its decision so that the reviewing court can determine whether the facts support the agency's action.

In its pleading in intervention and its appeal to the district court, PEER specifically argued that the MEQC failed to recognize the adverse environmental impact that utilization of Route 7 would have on Long Lake and the virgin forest of oaks. The district court disposed of this argument by holding:

" \* \* \* The Findings of Fact were sufficiently specific to adequately apprise this Court of the basis for the agency's decision. They complied with the requirements set out in *Bryan* \* \* \* and therefore no reasons for the decision are necessary."

Contrary to the position taken by the trial court, the MEQC's findings of fact, conclusions and recommendations do not \*872 satisfy the test of *Bryan* outlined above. Finding # 13 states that "

route 7 \* \* \* minimizes disruption to recreational and historical land uses in comparison with proposed route 3 due to the fact that proposed route 3 does contain lakeshore area." In Finding ### 16, another reference is made to the lakeshore area in Route 3. Nowhere, however, is there any reference to Long Lake and whether Route 7 would impact it at all. Thus, it is impossible to claim, as the MEQC does in its brief, that the hearing examiner "balanc(ed) out the relative impacts to Long Lake and Sunnybrook Lake" or that either he or the MEQC "found route 3's impact on Sunnybrook to be more severe than the impact of route 7 on Long Lake." Instead, it is much more plausible to assume from the complete failure to mention Long Lake in the findings of fact that both the hearing examiner and the MEQC never examined Route 7's impact on Long Lake. This conclusion is also supported by the failure of the MEQC to require in the construction permit that the edge of Long Lake be avoided. The hearing examiner's and the MEQC's findings of fact state that the HVTL be constructed around Northport Airport in Washington County but do not include a similar provision regarding Long Lake. Thus, it is impossible to conclude, as the MEQC contends in its brief, that the MEQC intended the HVTL to avoid the shore of Long Lake.

A similar conclusion is suggested with regard to the effect of Route 7 on the oak woodland. In its brief, the MEQC claims that it made a specific finding about the oak woodland, referring to Finding # 14, which states that "proposed routes 3 and 7 are comparable in minimizing disruption to natural systems." Rather than supporting the MEQC's claim, however, Finding # 14 demonstrates that the MEQC was either unaware of or ignored the existence of the oak woodland in Route 7, especially since there is no indication of a similar woodland in Route 3 that would allow the hearing examiner and the MEQC to conclude that both routes are "comparable in minimizing disruption to natural systems."

[21] Since it is impossible to discern from the findings of fact whether the hearing examiner and the MEQC even entered the existence of Long Lake and the oak woodland into their balancing process, a reviewing court cannot possibly decide whether

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substantial evidence exists to support the MEQC's conclusions. In order to satisfy the Bryan test in a case like this, the findings of fact would have to provide at least the following information to the reviewing court:

- (1) the kind and character of the homes that would be condemned in each route;
- (2) the kind of intrusion on Long Lake that would be caused by utilizing Route 7;
- (3) the specific impact of the HVTL on Sunnybrook Lake so that a meaningful comparison between the two lakes could be made; and
- (4) the specific characteristics of the oak forest, which requires more than merely a statement that it is composed of virgin oak. Only if information such as this is included in the findings of fact can a reviewing court properly perform its function.

[22] Under most circumstances, the proper disposition of an appeal that challenges the specificity of the factfinding process would be a remand to the agency for more specific findings of fact. Such a disposition is unnecessary here since we are remanding the case to the agency for additional findings of fact concerning noncompensable damage to the homeowners along Route 3. In making these supplementary findings of fact, however, and in all future proceedings, the agency and hearing examiners should avoid issuing such overly general findings which make judicial review impossible.

6. Interrogatories. In its appeal from the MEQC decision to the district court, PEER alleged that the members of the MEQC were not all familiar with the transcript and other documents pertaining to the public hearings on the route selection. The district court held that it was not necessary to investigate the individual mental processes of the members of the MEQC \*873 because its findings were supported by substantial evidence. Since we have concluded that the findings were not sufficiently specific to permit judicial review, PEER's allegation of administrative impropriety is revived.

When a hearing examiner is utilized by an agency, Minn.St. 15.0418 of the Administrative Procedure Act (APA) requires that all evidence submitted to him be certified to the agency, and s 15.0421 mandates that the parties to the proceedings get an opportunity to file exceptions and present arguments to the agency, and that the final decision then be rendered by the officials of the agency. Any suggestion that route-selection hearings might not be "contested cases" within the meaning of the APA was laid to rest by the legislature in its 1977 revisions of the PPSA, L.1977, c. 439, s 11, which appears to be merely a codification of existing MEQC practices. Thus, MEQC decisionmaking is governed by the APA, and it becomes extremely important for appellants to discover whether the officials themselves actually made the decision as the APA requires or whether they simply rubber-stamped the findings of fact, conclusions, and recommendations submitted to the MEQC by the hearing examiner.

[23] The MEQC members refused to respond either to PEER's requests for admission or to the interrogatories on this issue on the ground that the information was privileged. While it is true that it is generally not proper to permit discovery of the mental processes by which an administrative decision is made, *United States v. Morgan*, 313 U.S. 409, 61 S.Ct. 999, 85 L.Ed. 1429 (1941), in *Mampel v. Eastern Heights State Bank*, Minn., 254 N.W.2d 375, 378 (1977), we allowed persons seeking judicial review of agency decisionmaking to "make inquiry through discovery to determine whether the agency adhered to statutorily defined procedures or the rules and regulations promulgated by the agency itself which enter into the fundamental decision-making process." We reaffirm that holding today.

In order to insure that the statutory scheme is not thwarted and that the validity of administrative decisionmaking does not become suspect, it is necessary to permit limited discovery when a statute requires specified persons to make decisions. See, 50 Wash.L.Rev. 739, 744. Under the APA the agency must review the evidence and findings amassed by a hearing examiner and come to an independent decision. Thus, the legislature clearly



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intended agency members to read the material presented to it prior to reaching their decision. To ensure that agency actions comport with this legislative intent, parties must be permitted to elicit from agency members sufficient information to establish that the problem had been addressed and that agency functions have been performed properly. Thus, the district court erred in failing to require MEQC members to respond to PEER's interrogatories.

We must emphasize, however, that the discovery we sanction is limited to information concerning the procedural steps that may be required by law and does not extend to inquiries into the mental processes of an administrator which, being part of the judgmental process, are not discoverable under *United States v. Morgan*, supra. It should be clear that this rule would similarly protect from discovery the process of judicial decisionmaking which is judgmental rather than procedural in nature.

7. Conclusion. After carefully reviewing Minnesota's statutory scheme for protecting the environment, it is our conclusion that the principles of MERA apply to MEQC decisions made pursuant to the PPSA and that all regulations governing the routing of HVTLs must be consistent with it and other relevant environmental legislation. Implicit in the operation of MERA is the principle that environmentally damaging action cannot be taken if there is another, less damaging way to achieve the desired result. In order to protect Minnesota's noncompensable resources, whose impairment appears to harm no one directly, MERA makes a prima facie showing of environmental damage by any concerned citizen or group sufficient to shift the burden\*874 to the proponents of the action to establish that there is no prudent and feasible alternative which will be less destructive to the environment.

Since PEER made a prima facie showing under MERA that the choice of Route 7 would impair, pollute, or destroy protectible natural resources, before the MEQC could approve the hearing examiner's recommendation, the record would have to demonstrate that there were no prudent and feasible alternatives to proposed Route 7. Route 3,

an existing HVTL right-of-way, would appear from the evidence to be such a prudent and feasible alternative whose choice would be consistent not only with MERA but also with the nonproliferation principles contained in the PPSA and MEPA. Thus, unless there were compelling evidence in the record of noncompensable damages which would result from the choice of Route 3, no basis existed for the MEQC's choice of Route 7. The fact that Route 7 would require the condemnation of fewer homes than Route 3 cannot in and of itself support the MEQC decision. The loss of some homes is not equivalent to the human impact which must be minimized under the PPSA unless it can first be established that the homes to be condemned are, because of their unique characteristics, not replaceable. The burden of demonstrating the noncompensable aspects of the homes to be condemned is on the homeowners themselves, and failure to meet this burden should have resulted in the automatic choice of the existing right-of-way.

Had the MEQC properly carried out its statutory duty to avoid proliferation of rights-of-way, and had it weighed its selection criteria in favor of nonproliferation and the protection of its noncompensable natural resources, the hearing examiner and the agency itself would not have been able to choose Route 7 over Route 3. Although the record clearly mandates the selection of Route 3, principles of fairness require a remand in this case to permit affected homeowners to introduce evidence concerning the uniqueness of their residences.

Therefore, we remand to the district court for remand to the MEQC, with directions to conduct further hearings consistent with this opinion on the issue of noncompensable damages. The district court should direct the MEQC to give notice to affected residents along Route 3 that they will have 30 days within which to present such evidence. If, after receiving this new evidence, the MEQC decides that the homeowners have not sustained their burden of proof, Route 3 should be designated. If, however, they demonstrate that the homes to be condemned are noncompensable resources, the MEQC will then have to balance that damage against the environmental damage that would be

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caused by constructing the HVTL along Route 7. If the MEQC reaches this step, a new EIS will have to be produced which provides sufficient detailed and comparable information on all the routes then under consideration. Such balancing, however, cannot be conducted in a vacuum, and the MEQC decision must be consistent with the strong nonproliferation policy reflected in recent legislative and judicial pronouncements.

Reversed and remanded.

#### ADDENDUM

Petitioners, Environmentally Concerned Citizens Organization (ECCO), an unincorporated association; Charles Josephs; Ken Kurttila; and Wallace Oien, request permission to intervene in the appeal before this court, pursuant to the Minnesota Environmental Rights Act, Minn.St. 116B.09, and seek reconsideration by the court, pursuant to Rule 140, Rules of Appellate Procedure, of certain aspects of its decision in PEER v. MEQC, filed April 7, 1978. For the reasons discussed below, the petition for intervention and for rehearing is denied.

[24] Initially, we deny the petition for rehearing because petitioners are not parties to the proceedings. Petitioners' failure to intervene in the district court action that culminated in this appeal precludes their invocation of the Rules of Civil Appellate Procedure which govern only the parties to an appeal. Thus, their petition for rehearing is improper.

\*875 [25] Petitioners seek to cure this fundamental defect by requesting permission to intervene. Their status as intervenors would then permit them to petition for reargument under Rule 140. Intervention at this late date, however, can serve no meaningful purpose, since the process of judicial review has already been completed. Moreover, we do not believe that the legislature intended s 116B.09 to permit intervention at this point in the litigation. Instead, s 116B.09 sanctions only intervention in the original administrative proceedings themselves or in their review in district

court.

[26] For this same reason intervention by ECCO in the proceedings before the MEQC pursuant to our remand would be improper. To the extent that individual members of ECCO or the named petitioners participated in the original proceedings, however, they are free, upon remand, to petition the MEQC to broaden the scope of inquiry to include such relevant issues as whether PEER's allegations of environmental damage to the oak forest and Long Lake have a factual basis and whether paralleling of the HVTL and the existing 230kV line would be inappropriate under the circumstances presented by this case.[FN1] Because these issues were never before the MEQC or the district court, they would be proper subjects for consideration on remand.

FN1. ECCO raises four issues for consideration on remand on its petition for intervention. The last two of these are adequately covered in our decision and need no additional mention here.

[27] Although the MEQC clearly has the authority to grant such a petition at the request of a proper party, in reaching its decision it must weigh the benefits that will accrue from the gathering of additional information against the detrimental effects of dragging out the course of this litigation. To the extent that, in its judgment, broadening the scope of the inquiry can be done without jeopardizing the public's need for electricity and the policy of the PPSA that "electric energy needs (be) met and fulfilled in an orderly and timely fashion," Minn.St. 116C.55, subd. 1 (1976), such a resolution would be proper. Our previously filed decision in this case merely defines the areas concerning which a hearing is required on remand, and it should not be interpreted as narrowing the MEQC's authority to hear evidence on issues that it determines are necessary to help it choose the route that best complies with the principles of all applicable environmental legislation.

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(Cite as: 266 N.W.2d 858)

Environmental Quality Council  
266 N.W.2d 858, 11 ERC 1481, 8 Env'tl. L. Rep.  
20,630

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## 2012 Minnesota Statutes

### 216E.03 DESIGNATING SITES AND ROUTES.

Subdivision 1. **Site permit.** No person may construct a large electric generating plant without a site permit from the commission. A large electric generating plant may be constructed only on a site approved by the commission. The commission must incorporate into one proceeding the route selection for a high-voltage transmission line that is directly associated with and necessary to interconnect the large electric generating plant to the transmission system and whose need is certified under section [216B.243](#).

Subd. 2. **Route permit.** No person may construct a high-voltage transmission line without a route permit from the commission. A high-voltage transmission line may be constructed only along a route approved by the commission.

Subd. 3. **Application.** Any person seeking to construct a large electric power generating plant or a high-voltage transmission line must apply to the commission for a site or route permit. The application shall contain such information as the commission may require. The applicant shall propose at least two sites for a large electric power generating plant and two routes for a high-voltage transmission line. The commission shall determine whether an application is complete and advise the applicant of any deficiencies within ten days of receipt. An application is not incomplete if information not in the application can be obtained from the applicant during the first phase of the process and that information is not essential for notice and initial public meetings.

Subd. 3a. **Project notice.** At least 90 days before filing an application with the commission, the applicant shall provide notice to each local unit of government within which a route may be proposed. The notice must describe the proposed project and the opportunity for a preapplication consultation meeting with local units of government as provided in subdivision 3b.

Subd. 3b. **Preapplication consultation meetings.** Within 30 days of receiving a project notice, local units of government may request the applicant to hold a consultation meeting with local units of government. Upon receiving notice from a local unit of government requesting a preapplication consultation meeting, the applicant shall arrange the meeting at a location chosen by the local units of government. A single public meeting for which each local government unit requesting a meeting is given notice satisfies the meeting requirement of this subdivision.

Subd. 4. **Application notice.** Within 15 days after submission of an application to the commission, the applicant shall publish notice of the application in a legal newspaper of general circulation in each county in which the site or route is proposed and send a copy of the application by certified mail to any regional development commission, county, incorporated municipality, and town in which any part of the site or route is proposed. Within the same 15 days, the applicant shall also send a notice of the submission of the application and description of the proposed project to each owner whose property is on or adjacent to any of the proposed sites for the power plant or along any of the proposed routes for the transmission line. The notice must identify a location where a copy of the application can be reviewed. For the purpose of giving mailed notice under this subdivision, owners are those shown on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer; but other appropriate records may be used for this purpose. The failure to give mailed notice to a property owner, or defects in the notice, does not invalidate the proceedings, provided a bona fide attempt to comply with this subdivision has been made. Within the same 15 days, the applicant shall also send the same notice of the submission of the application and description of the proposed project to those persons who have requested to be placed on a list maintained by the commission for receiving notice of proposed large electric generating power plants and high voltage transmission lines.

Subd. 5. **Environmental review.** The commissioner of the Department of Commerce shall prepare for the commission an environmental impact statement on each proposed large electric generating plant or high-voltage transmission line for which a complete application has been submitted. The commissioner shall not consider whether or not the project is needed. No other state environmental review documents shall be required. The commissioner shall study and evaluate any site or route proposed by an applicant and any other site or route the commission deems necessary that was proposed in a manner consistent with rules concerning the form, content, and timeliness of proposals for alternate sites or routes.

Subd. 6. **Public hearing.** The commission shall hold a public hearing on an application for a site permit for a large electric power generating plant or a route permit for a high-voltage transmission line. All hearings held for designating a site or route shall be conducted by an administrative law judge from the Office of Administrative Hearings pursuant to the contested case procedures of chapter 14. Notice of the hearing shall be given by the commission at least ten days in advance but no earlier than 45 days prior to the

commencement of the hearing. Notice shall be by publication in a legal newspaper of general circulation in the county in which the public hearing is to be held and by certified mail to chief executives of the regional development commissions, counties, organized towns, townships, and the incorporated municipalities in which a site or route is proposed. Any person may appear at the hearings and offer testimony and exhibits without the necessity of intervening as a formal party to the proceedings. The administrative law judge may allow any person to ask questions of other witnesses. The administrative law judge shall hold a portion of the hearing in the area where the power plant or transmission line is proposed to be located.

**Subd. 7. Considerations in designating sites and routes.** (a) The commission's site and route permit determinations must be guided by the state's goals to conserve resources, minimize environmental impacts, minimize human settlement and other land use conflicts, and ensure the state's electric energy security through efficient, cost-effective power supply and electric transmission infrastructure.

(b) To facilitate the study, research, evaluation, and designation of sites and routes, the commission shall be guided by, but not limited to, the following considerations:

(1) evaluation of research and investigations relating to the effects on land, water and air resources of large electric power generating plants and high-voltage transmission lines and the effects of water and air discharges and electric and magnetic fields resulting from such facilities on public health and welfare, vegetation, animals, materials and aesthetic values, including baseline studies, predictive modeling, and evaluation of new or improved methods for minimizing adverse impacts of water and air discharges and other matters pertaining to the effects of power plants on the water and air environment;

(2) environmental evaluation of sites and routes proposed for future development and expansion and their relationship to the land, water, air and human resources of the state;

(3) evaluation of the effects of new electric power generation and transmission technologies and systems related to power plants designed to minimize adverse environmental effects;

(4) evaluation of the potential for beneficial uses of waste energy from proposed large electric power generating plants;

(5) analysis of the direct and indirect economic impact of proposed sites and routes including, but not limited to, productive agricultural land lost or impaired;

(6) evaluation of adverse direct and indirect environmental effects that cannot be avoided should the proposed site and route be accepted;

(7) evaluation of alternatives to the applicant's proposed site or route proposed pursuant to subdivisions 1 and 2;

(8) evaluation of potential routes that would use or parallel existing railroad and highway rights-of-way;

(9) evaluation of governmental survey lines and other natural division lines of agricultural land so as to minimize interference with agricultural operations;

(10) evaluation of the future needs for additional high-voltage transmission lines in the same general area as any proposed route, and the advisability of ordering the construction of structures capable of expansion in transmission capacity through multiple circuiting or design modifications;

(11) evaluation of irreversible and irretrievable commitments of resources should the proposed site or route be approved; and

(12) when appropriate, consideration of problems raised by other state and federal agencies and local entities.

(c) If the commission's rules are substantially similar to existing regulations of a federal agency to which the utility in the state is subject, the federal regulations must be applied by the commission.

(d) No site or route shall be designated which violates state agency rules.

(e) The commission must make specific findings that it has considered locating a route for a high-voltage transmission line on an existing high-voltage transmission route and the use of parallel existing highway right-of-way and, to the extent those are not used for the route, the commission must state the reasons.

**Subd. 8. Recording of survey points.** The permanent location of monuments or markers found or placed by a utility in a survey of right-of-way for a route shall be placed on record in the office of the county recorder or registrar of titles. No fee shall be charged to the utility for recording this information.

**Subd. 9. Timing.** The commission shall make a final decision on an application within 60 days after

receipt of the report of the administrative law judge. A final decision on the request for a site permit or route permit shall be made within one year after the commission's determination that an application is complete. The commission may extend this time limit for up to three months for just cause or upon agreement of the applicant.

Subd. 10. **Final decision.** (a) No site permit shall be issued in violation of the site selection standards and criteria established in this section and in rules adopted by the commission. When the commission designates a site, it shall issue a site permit to the applicant with any appropriate conditions. The commission shall publish a notice of its decision in the State Register within 30 days of issuance of the site permit.

(b) No route permit shall be issued in violation of the route selection standards and criteria established in this section and in rules adopted by the commission. When the commission designates a route, it shall issue a permit for the construction of a high-voltage transmission line specifying the design, routing, right-of-way preparation, and facility construction it deems necessary, and with any other appropriate conditions. The commission may order the construction of high-voltage transmission line facilities that are capable of expansion in transmission capacity through multiple circuiting or design modifications. The commission shall publish a notice of its decision in the State Register within 30 days of issuance of the permit.

Subd. 11. **Department of Commerce to provide technical expertise and other assistance.** The commissioner of the Department of Commerce shall consult with other state agencies and provide technical expertise and other assistance to the commission or to individual members of the commission for activities and proceedings under this chapter and chapters 216F and 216G. This assistance shall include the sharing of power plant siting and routing staff and other resources as necessary. The commissioner shall periodically report to the commission concerning the Department of Commerce's costs of providing assistance. The report shall conform to the schedule and include the required contents specified by the commission. The commission shall include the costs of the assistance in assessments for activities and proceedings under those sections and reimburse the special revenue fund for those costs. If either the commissioner or the commission deems it necessary, the department and the commission shall enter into an interagency agreement establishing terms and conditions for the provision of assistance and sharing of resources under this subdivision.

**History:** 1973 c 591 s 7; 1975 c 271 s 6; 1977 c 439 s 10; 1986 c 444; 1987 c 384 art 2 s 21; 1989 c 346 s 1; 1994 c 644 s 1; 2000 c 289 s 1; 2001 c 212 art 7 s 5-13; 2005 c 97 art 3 s 4-6,19; 2008 c 296 art 1 s 15-17; 2010 c 288 s 3

## 2012 Minnesota Statutes

### 216E.08 PUBLIC PARTICIPATION.

Subdivision 1. **Advisory task force.** The commission may appoint one or more advisory task forces to assist it in carrying out its duties. Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the commission, but at least one representative from each of the following: Regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is proposed to be located. No officer, agent, or employee of a utility shall serve on an advisory task force. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees. The task forces expire as provided in section [15.059, subdivision 6](#). At the time the task force is appointed, the commission shall specify the charge to the task force. The task force shall expire upon completion of its charge, upon designation by the commission of alternative sites or routes to be included in the environmental impact statement, or upon the specific date identified by the commission in the charge, whichever occurs first.

Subd. 2. **Other public participation.** The commission shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the commission's rules and guidelines as provided for in section [216E.16](#).

Subd. 3. **Public advisor.** The commission shall designate one staff person for the sole purpose of assisting and advising those affected and interested citizens on how to effectively participate in site or route proceedings.

Subd. 4. **Scientific advisory task force.** The commission may appoint one or more advisory task forces composed of technical and scientific experts to conduct research and make recommendations concerning generic issues such as health and safety, underground routes, double circuiting and long-range route and site planning. Reimbursement for expenses incurred shall be made pursuant to the rules governing reimbursement of state employees. The task forces expire as provided in section [15.059, subdivision 6](#). The time allowed for completion of a specific site or route procedure may not be extended to await the outcome of these generic investigations.

**History:** [1973 c 591 s 9](#); [1975 c 271 s 6](#); [1977 c 439 s 12, 13](#); [1985 c 248 s 70](#); [1988 c 629 s 19-21](#); [2001 c 212 art 7 s 18, 19](#); [2005 c 97 art 3 s 19](#)

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

**Beverly Heydinger  
J. Dennis O'Brien  
David C. Boyd  
Phyhs A. Reha  
Betsy Wergin**

**Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner**

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

**MPUC: E002/TL-09-1448**

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**NO CAPX 2020'S COMPLAINT OF CONFLICT OF INTEREST**

**REGARDING**

**BARR ENGINEERING**

**CAPX 2020 HAMPTON-LACROSSE ENVIRONMENTAL IMPACT STATEMENT**

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**(a) Complainant:**

No CapX 2020

**(b) Complainant's Counsel:**

Carol A. Overland  
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1110 West Avenue  
Red Wing, MN 55066

**(c) Respondents (sent via email):**

Barr Engineering  
c/o John Wachtler, V.P.  
Environmental Review  
4700 West 77th Street  
Minneapolis, MN 55435

Energy Facilities Permitting  
c/o Bill Grant  
Minnesota Dept. of Commerce  
85 – 7<sup>th</sup> Place East, Suite 500  
St. Paul, MN 55101



**(d) Respondents' Counsel (via email):**

Barr counsel unknown.

Karen Hammel, Asst. A.G.  
445 Minnesota St., Suite 1400  
St. Paul, MN 55101

**(e) Facts Constituting Allegation:**

Barr Engineering is the contractor hired by the Minnesota Department of Commerce for the Environmental Impact Statement for the CapX 2020 Hampton-Rochester-La Crosse transmission line<sup>1</sup>.

The transmission route is contested in just two locations, at the segment crossing the Cannon River either near the Byllesby Dam or Highway 52 near Cannon Falls, and at the segment crossing the Zumbro River at the Zumbro Dam or at the White Bridge Road.

Barr Engineering worked on prior projects at each of the two contested sites, and at each of the two contested sites, the existence or non-existence of transmission lines and corridors in the area was presented diametrically opposed to easily demonstrable facts. Rather than present the correct information regarding whether a transmission corridor existed or not, Barr Engineering and the FEIS presented incorrect information that benefited prior clients at each of the areas in question. Near the Byllesby Dam, the DEIS and FEIS did not report THREE transmission lines in a corridor extending north from the dam and one line extending south from the dam. At the Zumbro Dam, the DEIS and FEIS reported there was a transmission corridor from west to east, across the dam, where there is none. In both of these cases, the incorrect information in the FEIS supports the interests of both of Barr Engineering's clients at both of these locations to site transmission elsewhere than the area in question.

Whether this misrepresentation was intentional or unintentional, because the non-proliferation policy of the state of Minnesota requires new transmission lines be routed along existing transmission corridors, and recent law requires the Commission explain choice of a route that does not utilize such a corridor, this misrepresentation likely had a consequence. In the case of both the Byllesby Dam and the Zumbro Dam, the two contested locations, Barr's FEIS was wrong regarding transmission infrastructure. The Commission's decisions were likely influenced by these misrepresentations regarding transmission corridors.

In addition, information was presented in the hearings and in Comment periods noting the incorrect statements, but the FEIS was not corrected. Parties representing Barr Engineering's former clients, one a Dakota County Commissioner and one representing the Lake Zumbro Improvement Association, testified at the Public Hearings. A Dakota County Commissioner also testified at the April 12, 2012, Commission meeting against route 1P-003, raising the Byllesby Master Plan, but not Barr Engineering's work in the Master Plan, and not raising the matter of the pre-existing transmission corridor.

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<sup>1</sup> See Barr Engineering site: <https://www.barr.com/projects/2362100900>

Despite this information being raised, full corrections have not been made. The ALJ noted in her Recommendation the transmission lines at the Byllesby Dam but the FEIS has not been corrected. The Byllesby Dam and Zumbro Dam information in the EIS regarding absence and existence of a transmission corridor was corrected in part, but not in its entirety.

### **LAKE BYLLESBY DAM AREA AND TRANSMISSION CORRIDOR**

First, regarding the Byllesby Dam, the FEIS omitted any reference to the transmission corridor from Highway 52 to Highway 19, along Harry Road and south to Highway 19. Barr Engineering was a contractor for Dakota County and Goodhue County regarding the Byllesby Park and Dam:

- 2008 Dakota County Lake Byllesby Regional Park Master Plan<sup>2</sup>.
- 2008 contract with Goodhue County regarding Programmable Logic Controller (PLC) and tailwater sensor<sup>3</sup>.

The Dakota County Master Plan was cited as a reason for not utilizing route 1P-003 on the eastern edge of the park, the eastern edge of which is also where the broad three-line transmission corridor is located:



*Source: Affidavit of Jen Langdon, p. 2 (attached to Cannon Falls Motion for Reconsideration)*

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<sup>2</sup> Available online at:

<http://www.co.dakota.mn.us/LeisureRecreation/Reports/LakeByllesbyregionalParkMasterPlan.htm>

<sup>3</sup> Available online at:

<http://www.co.goodhue.mn.us/countygovernment/commissioners/CountyBoardPackets/2009/June16ClosedSession/Byllesby%20Dam%20update-Closed%20Joint%20Mtg.pdf>

The Commission's Order cites the FEIS which cites the Dakota County Master Plan, discussing routes 1P-001, 1P-002, and 1P-003, states that:

**These route alternatives would run along an existing HVTL and Harry Ave. These route alternatives would also parallel a planned Lake Byllesby Regional Park recreational trail and a bridge crossing the Cannon River that are proposed in the parks 2005 Master Plan and planned for construction in 2013.**

FEIS, p. 106 (bold **added and bold in FEIS**).

In addition, Barr Engineering as the FEIS contractor, and the FEIS as the environmental review document, have failed to present the Dakota County Master Plan, or at the least, information from the Master Plan, that demonstrates that routing transmission near the dam is consistent with the park's electrical themes set out in the Master Plan, not contradictory to its plans.

Several issues have not been fully disclosed in the Byllesby Dam part of the FEIS. First, the route proposed is along Harry Avenue, the eastern border of the park, crossing near the dam, and then south following transmission – it does not go through the park, it borders it. The location of the proposed route in relation to the park has not been clearly disclosed.

Second, the park is located on land donated to Dakota and Goodhue County by Northern States Power<sup>4</sup>.

Third, and more ironically, the Byllesby Park Master Plan sets out interpretive themes that focus on electricity! Of the four “interpretive themes” of the park, two focus on electricity and electric generation<sup>5</sup>, based on the history of the park, named after Henry Marison Byllesby, the

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<sup>4</sup> Dakota Co. Master Plan, p. 4.19. In post-hearing Exceptions, Xcel raises information about the “Land and Water Conservation Act of 1965” which is not in the record, and not verified.

<sup>5</sup> From Dakota Co. Master Plan:

***THEME 3: POWERING MINNESOTA - HENRY BYLLESBY AND THE LAKE BYLLESBY DAM.*** With the increase in the population of Randolph and the subsequent move into the electrical age came the need for power in the homes, businesses, and industries of the Lake Byllesby area. The response to this need was provided by Henry Byllesby, a forerunner in the use of hydroelectric power in America. Byllesby, whose company, Consumers Power Company, was based in Chicago, realized that in directing the power of the rivers of Minnesota, North Dakota, South Dakota, and Wisconsin, he could create the energy needed to sustain the ever-growing populations of these states. One of these rivers was the Cannon River, upon which he had the Ambursen Hydraulic Construction Company construct the Lake Byllesby Dam in 1910. Six years later, he changed the name of his company to Northern States Power Company, recognized today as one of the major providers of power in the midwestern United States.

***THEME 4: THE POWER OF ATTRACTION - LAKE BYLLESBY REGIONAL PARK.*** Though for many years, hydropower was the most economical method of producing power, by the 1960s, larger companies had largely replaced their hydropower plants

first CEO of Northern States Power<sup>6</sup>, and the park's origin through a donation of the land by Northern States Power.<sup>7</sup> The park's interpretive themes extol the wonders of electricity. Barr Engineering and the FEIS did not disclose the electrical interpretive themes of the park.

In the FEIS, Barr Engineering did not disclose in the FEIS corridor descriptions that Harry Road from Hwy. 52 to the Byllesby Dam, and from the Byllesby Dam to Hwy. 19 two out of three times the FEIS failed to disclose that was also a transmission corridor:

Hampton to North Rochester (1P-001)			
Turn by Turn		Distance (miles)	Comments/ROW Type
1	Follow the applicant's preferred route until the intersection of US Hwy 52 and Harry Ave.		
2	Turn south following Harry Ave.	1.90	Cnty or Twp Road
3	Continue south cross-country	0.89	Cross-country
4	Turn east following field line	0.41	Field Line
5	Turn southeast cross-country	0.10	Cross-country
6	Turn east cross-country	0.31	Cross-country
7	Turn southeast cross-country	0.13	Cross-country
8	Turn east cross-country/field lines	0.53	Returns to applicant's preferred route - Cross-country/field lines
Total Length		36.97	

Source: FEIS p. 74, Harry Ave. and Dam to Hwy 19 transmission missing.

Hampton to North Rochester (1P-002)			
Turn by Turn		Distance (miles)	Comments/ROW Type
1	Follow the applicant's preferred route until the intersection of US Hwy 52 and Harry Ave.		
2	Turn south following Harry Ave.	1.90	Cnty or Twp Road
3	Continue south following existing transmission line/cross-country to MN Hwy 19	0.37	Transmission Line
4	Turn east following MN Hwy 19	0.98	Returns to preferred route - Major Hwy
Total Length		36.77	

Source: FEIS p. 75, Harry Ave. transmission missing, but does reflect transmission to Hwy. 19.

with coal or nuclear power plants. In replacing many of their hydropower facilities, Northern States Power Company opted to donate much of its property upon which these facilities were situated to the towns or counties encompassing such property. One of these properties was the location of the Lake Byllesby Dam. After the land was donated to Dakota and Goodhue Counties in 1969, Dakota County created Lake Byllesby Regional Park from portions of the land on the north shore of the lake. Lake Byllesby Park attracted residents and visitors alike to picnic, camp, fish, swim, canoe, and simply enjoy the view. Today, both the park and the dam interact to provide a sense of all facets of the area's history, from natural history, to the history of everyday human interactions, to the engineering history at Lake Byllesby Regional Park.

Byllesby Park Master Plan, p. 4.19 (emphasis added).

<sup>6</sup> For more information on Byllesby, see *The Energy to Make Things Better: NSP, An Illustrated History of Northern States Power Company*, pps. 10-12, 15, 22-23, 24, 26, 53, 54, 55, 57, 58, 59, 60, 64, 76, 83-84, 89, 95, 113, 147, 150-151, 202-204, 205, 244, 401.

<sup>7</sup> Id. Theme 4. "In replacing many of their hydropower facilities, Northern States Power Company opted to donate much of its property upon which these facilities were situated to the towns or counties encompassing such property. One of these properties was the location of the Lake Byllesby Dam. After the land was donated to Dakota and Goodhue Counties in 1969..."

Hampton to North Rochester (1P-003)			
Turn by Turn		Distance (miles)	Comments/ROW Type
1	Follow the applicant's preferred route until the intersection of US Hwy 52 and Harry Ave.		
2	Turn south following Harry Ave.	1.90	Cnty or Twp Road
3	Continue south cross-country to Stanton Trail	1.66	Cross-country
4	Continue south following Stanton Trail	0.50	Cnty or Twp Road
5	Turn east cross-country/field lines	0.92	Cross-country/field lines
6	Continue east on 323rd St.	0.11	Cnty or Twp Road
7	Continue east cross-country/field lines	0.53	Returns to applicant's preferred route - Cross-country/field lines
Total Length		37.23	

Source: FEIS p. 76, Harry Ave. and Dam to Hwy 19 transmission missing.

Whether intentional or unintentional, Barr Engineering's errors and omissions regarding transmission near Byllesby Dam and routes 1P-001, 1P-002 and 1P-003 were in the interests of its prior client, Dakota County, which did not want transmission on routes near Byllesby Park, and Commerce did not sufficiently protect the public interest in assuring information presented was accurate. Barr Engineering, as contractor, should have been supervised by Commerce sufficient to discover and correct the errors and omissions in the FEIS regarding the Byllesby Dam location and routes 1P-001, 1P-002 and 1P-003. Because these were brought to the attention of Commerce during public hearings, Commerce's review was inadequate

### **LACK OF TRANSMISSION AT ZUMBRO DAM LOCATION**

The second area of conflict, where the transmission route is also contested, is near the Zumbro Dam. Barr Engineering was a contractor regarding at least two contracts regarding preparation for dredging in Lake Zumbro<sup>8</sup> for the Olmsted County, Lake Zumbro Forever Inc., subsidiary of Lake Zumbro Improvement Association, and which helped found the Zumbro Watershed Partnership<sup>9</sup>, and City of Rochester/Rochester Public Utilities. Parties to the above agreements testified against use of the White Bridge Road for CapX transmission, including Olmsted County Board member, Judy Ohly<sup>10</sup>, the County Board through a letter, and at Pine Island public hearings a member of the Lake Zumbro Improvement Association. Their interests were that it not be sited on the White Bridge Road. Those interests are furthered when there is a claim in the FEIS of transmission on both sides of the Zumbro Dam where there is none.

<sup>8</sup> Agreement in 2009 also referencing 2007 contract available online:

[http://www.co.olmsted.mn.us/environmentalresources/waterresourcemanagement/Documents/Lake%20Zumbro%20JPB%20Agenda%204\\_16\\_09.pdf](http://www.co.olmsted.mn.us/environmentalresources/waterresourcemanagement/Documents/Lake%20Zumbro%20JPB%20Agenda%204_16_09.pdf)

<sup>9</sup> For more information on the history and relationship between these Lake Zumbro entities see:

[https://www.facebook.com/note.php?note\\_id=331534370267343](https://www.facebook.com/note.php?note_id=331534370267343)

<sup>10</sup> Judy Ohly is an Olmsted County Commissioner, and has also been Board Member of Zumbro Watershed Partnership

(<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CFMOFjAD&url=http%3A%2F%2Fwww.zumbrowatershed.org%2FResources%2FDocuments%2FZWP%2520Minutes%25204-8-10.doc&ei=fywYUM-NGJKG8QSuyYDoAg&usg=AFQjCNH6YFr2eUThcZJpb9Sp72GN0cdFww>), Joint Powers Board

([http://www.co.olmsted.mn.us/environmentalresources/waterresourcemanagement/Documents/Lake%20Zumbro%20JPB%20Agenda6\\_9\\_09.pdf](http://www.co.olmsted.mn.us/environmentalresources/waterresourcemanagement/Documents/Lake%20Zumbro%20JPB%20Agenda6_9_09.pdf)) and chaired the Lake Zumbro Improvement District Task Force

([http://www.co.olmsted.mn.us/environmentalresources/waterresourcemanagement/Documents/Lake%20Zumbro%20JPB%20Minutes%204\\_8\\_2010.pdf](http://www.co.olmsted.mn.us/environmentalresources/waterresourcemanagement/Documents/Lake%20Zumbro%20JPB%20Minutes%204_8_2010.pdf))

Despite comments on the record that there was no aerial crossing of the dam, Barr Engineering and Commerce did not fully correct the FEIS. The record reflects not just absence of aerial crossing, also absence of transmission!

Barr Engineering's EIS claimed there was transmission at the dam and extending on both sides despite Xcel's statements in its Application that there was no existing aerial transmission at the proposed Zumbro Dam crossing:

The Zumbro Dam Route Option crosses the Zumbro River in a location without existing aerial infrastructure and where impacts to a high quality Maple Basswood forest (Maple Basswood) would occur on the east bank of the river

Hearing Exhibit 1, Application, p. 8-55.

There is visibly no transmission line crossing the river at the Dam. Hearing Exhibit 35, Google Earth files. Applicants also stated that in their application.

Because both the Route Option and the Preferred White Bridge Road Route would require some tree clearing in an area characterized by residential and recreational land use, **and no existing transmission line crosses the river at these locations**, impacts to aesthetics would be similar for both routes.

Hearing Exhibit 1, Application, p. 8-53 (emphasis added); see also Hearing Exhibit 35, Google Earth files.

Xcel noted the errors in the DEIS and requested correction of the EIS in its DEIS Comments:

The DEIS, at page 171, states that routes 3P-Zumbro-N and 3P-Zumbro-S cross the Zumbro River where there is an existing transmission line crossing. This statement should be corrected to note that there are no existing electrical facilities present at any of the crossings. The north Zumbro River crossing (Alternate Route) crosses the Zumbro River at a location where there is no existing infrastructure. The middle Zumbro River crossing (3P-Zumbro-N and 3P-Zumbro-S) crosses the Zumbro River at an existing dam. The south Zumbro River crossing crosses the Zumbro River at the White Bridge Road bridge.

Hearing Exhibit 21, Hillstrom Schedule 18, DEIS Comments April 29, 2011 (same as Hearing Exhibit 113, FEIS, Appendix O, p. O-205-207).

Although the DEIS Comment of Xcel requested that the FEIS be corrected, only corrected one part of the FEIS was changed, the section on recreation:

All route alternatives in this segment would cross the Zumbro River. No existing electrical facilities are present at any of the crossings.

Hearing Exhibit 113, FEIS, Section 8.3, p. 184. This error, and the similar one regarding the Byllesby Dam, was brought to the attention of the Commission at the April 12, 2012 meeting, that the record reflected that there was no transmission, but the FEIS and several related Findings of Fact were incorrect regarding transmission at the Zumbro dam:

In your handouts, on page 2 is a page of the application, page 55, and that states very clearly, there is no infrastructure. There's no aerial crossing there. Page -- the second your handout, which is 8-53 of the application, states there is no transmission line crossing at the dam. There isn't. That's the facts of the case.

And this was raised in the DEIS because the DEIS said that as well. That there was a transmission crossing. And Mr. Hillstrom, in his comments to that, which is annexed in your handout, if you look at that comment you will see that in the last page, it would be page 5 of his comment, asked for that to be corrected, and it was not. There is no transmission infrastructure there. That's what the record says. And the ALJ's findings of fact, they were wrong.

And so that means that that 464 is wrong, also finding of fact 436 and 488, which state that there is transmission infrastructure. That's finding of fact 464, 436 and 488.

Overland at Commission Meeting, 4/12/2012, Tr. p. 45-46.

Other incorrect language referencing existing transmission crossing is found in the FEIS, on the pages which the ALJ cited and relied on in her Recommendation FoF 464.

- p. 174: Zumbro Dam Crossing Option – Route alternatives 3P-Zumbro-North and 3P-Zumbro-South would follow the existing crossing of the Zumbro River at the Zumbro Dam and Hydroelectric Generation Facility.
- p. 176: Route alternatives 3P-Zumbro-N and 3P-Zumbro-S could minimize impacts to the Zumbro River because an existing HVTL already crosses the Zumbro River at this location.

Xcel agreed at the PUC Meeting that the Findings of Fact and FEIS was in error and that there is no existing transmission line at the Zumbro Dam:

MS. AGRIMONTI: -- respond to the details you have. One, with respect to the crossing of the Zumbro River, I do think Ms. Overland has identified an error, there isn't an existing transmission line there. But Mr. Hillstrom will talk about what existing infrastructure is located at the dam.

Agrimonti, Counsel for Xcel, at PUC Meeting Tr. p.53. Mr. Hillstrom then stated:

Moving to the south now at the -- at the Zumbro Dam. There is no aerial transmission crossing at the dam. However, there is a transmission line that comes



out at the west side of the dam and you can see the tree clearing where that transmission line follows out to the west. That's a low voltage transmission line, it's 34.5 kilovolts, not by any means a high voltage line, and it is basically comparable to a distribution line. I think that was the original transmission line that carried the power from the dam to the city of Rochester when it was built.

Comments of Xcel's Tom Hillstrom at PUC Meeting, Tr. p.60-61. Hillstrom reiterated this lack of transmission and infrastructure later in the meeting:

MR. HILLSTROM: And like we talked about, there is no existing transmission corridor as you head to the east from the dam. And this is the area of the youth camps. And I think to illustrate that a little bit better I can -- I'll turn the route back on and I have a file on here which shows property boundaries and the route width itself.

Hillstrom, PUC Meeting, Tr. p. 141.

The DNR also addressed this lack of infrastructure both in Comments and at the PUC meeting. Because there is no existing infrastructure, as above, the DNR recommends utilizing the White Bride Road crossing because it has fewer impacts.

Specifically, there are three Zumbro River crossings included in the project record: the north crossing, which is a greenfield crossing, a middle crossing at a dam, and the southernmost crossing at the white bridge. As stated above a crossing with no existing infrastructure such as the northernmost crossing is not encouraged. The northern most crossing also has Natural Heritage Information System (NHIS) records of a state-listed turtle in the vicinity of the crossing. There is also a Minnesota County Biological Survey (MCBS) Site of Biodiversity Significance ranked as Moderate near the crossing. The Zumbro River crossing near the dam is located next to an MCBS Site of Biodiversity Significance ranked as High. Rare species in the area include state-listed special concern American ginseng (plant), and state0listed special concern moschatel (plant). The southernmost white bridge crossing would affect an MCBS site of Biodiversity Significance ranked as Moderate and one ranked as Below. To avoid a greenfield crossing, the northernmost route is not recommended. Considering a comparison of rare species, MCBS site presence and ranking, and a general goal of reducing deforestation between the two crossings with existing infrastructure, the DNR recommends utilizing the white bridge crossing in this area rather than the crossing at the dam.

DNR Comment, Public Comments to ALJ, eFiled<sup>11</sup>.

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<sup>11</sup> eFiled 7/29/11 by OAH in batch of Public Comments, available online at: [20117-64768-01](#) PUBLIC 09-1448 TL OAH PUBLIC COMMENT-- RECEIVED BEFORE JUNE 30, 2011 07/29/2011



At the April 12, 2012 meeting, the Commission recognized that there were errors in the Findings of Fact based in Barr Engineering's FEIS, and the Commission corrected some of the Findings of Fact to reflect that there is no aerial crossing at the dam, and that there is no transmission crossing the dam or to the east. However Barr Engineering's FEIS has yet to be corrected. The information on page 174 and 176 remains incorrect. The ALJ relied on these incorrect statements in her selection of the Zumbro Dam crossing, and cited the FEIS. The FEIS should be corrected, because the record does not support the information on FEIS pages 174 and 176. Hearing Exhibit 113, FEIS, p. 174 and 176.

Whether intentional or unintentional, Barr Engineering's errors and omissions regarding transmission at the Zumbro Dam route was in the interests of its prior clients, Olmsted County, Lake Zumbro Forever Inc., Lake Zumbro Improvement Association, the Zumbro Watershed Partnership, all of which did not want transmission on routes near the White Bridge Road and that part of Lake Zumbro. The Department of Commerce did not sufficiently protect the public interest to assure information presented was accurate and did not act to correct the misinformation when it knew or should have known the information was wrong. Barr Engineering, as contractor, should have been supervised by Commerce sufficient to discover and correct the errors and omissions in the FEIS regarding transmission near the Zumbro Dam route. Because these were brought to the attention of Commerce during public hearings, Commerce's review was inadequate.

**(f) Conclusion and Remedy:**

NoCapX2020 seeks full and public disclosure regarding conflicts of interests of Commerce contractors, and accurate presentation of information in the FEIS regarding transmission corridors, existing or non-existent, in these two contested locations. NoCapX 2020 also seeks to correct the record in the CapX 2020 Hampton-Rochester-LaCrosse routing proceeding and prevent inappropriate, improper or uninformed transmission routing by the Commission, and seeks methods to assure a similar conflict does not occur again with Commerce contractors.

With that aim, NoCapX 2020 specifically requests:

1. Disclosure and correction of errors regarding transmission and lack thereof at the Byllesby and Zumbro dam routes at issue in this proceeding and filed in eDockets.
2. Disclosure of conflicts of interest review performed by Commerce prior to contracting with Barr Engineering for the Hampton-Rochester-LaCrosse EIS and filed in eDockets; and
3. Update of conflicts policy for Commerce contractors; and
4. Commission review of the routing Order in this docket in light of the misinformation regarding transmission near the dams; and
5. Such other sanctions deemed appropriate.

Respectfully submitted,

July 31, 2012



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