

No. A12-1607
No. A12-1632

STATE OF MINNESOTA
IN COURT OF APPEALS

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

**REPLY BRIEF AND ADDENDUM OF
ST. PAUL'S LUTHERAN SCHOOL AND CHURCH
AND
CANNON FALLS LANDOWNERS**

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SUMMARY OF REPLY ARGUMENT

The Commission argues that the Commission's Selection of the Modified Preferred Route is supported by the record and is reflective of the Commission's reasoned judgment, but on all counts, the Commission relies on information regarding the "Modified Preferred Route" which is not in the hearing record, and selects a route that was not included in the Scoping Decision or the Dept. of Commerce vetting and analysis in the Draft or Final Environmental Impact Statement. To affirm the Commission's Segment 1 Order would mean that the Applicants can disregard the rules and introduce a new route at the eleventh hour, long after the Scoping Decision finalizes the route, segment and alignment alternatives available; and introduce new facts and evidence in "Exceptions" and Oral Argument, not subject to cross-examination. This decision should be remanded to the Commission to adopt the ALJ's Recommendation of 1P-003.

The Commission argues that the "Modified Preferred Route" complies with nonproliferation requirements, but Xcel Energy's exhibit contradicts this, and factors of nonproliferation regarding a "Modified Preferred Route" are not found in the FEIS.

The Commission argues that landowners had adequate notice, but the statute requires "a bona fide attempt" to comply with the statute. Notification to landowners of a new route alignment beyond the proposed corridor that is declared 18 months after the application and one day before the public hearing does not comply with the 15 day notice requirement nor is it a "bona fide attempt" to comply. Applicants delay was not reasonable nor consistent with a "bona fide attempt" to comply with a statute, because through their meetings with DOT before the Application was filed and throughout this

proceeding, and through DOT comments filed in the record, Applicant had notice that the preferred route was in question long before the date the new segment was revealed.

This case turns on whether the Appellate Court will base its ruling on the Hearing Record where facts and evidence were entered, or whether the broader record including the non-hearing record “Amended Itemized List of Documents, Transcripts and Exhibits” will be considered. Minn. Stat. §14.60, Subd. 2; Minn. R. 1400.7400, Subp. 1 (hearing record); but *c.f.* Minn. Stat. §14.61, Subd. 2 (closure of contested case record). The hearing record closed prior the issuance of the ALJ’s Recommendation on February 8, 2012. Minn. R. 1400.8100.

The hearing record is a subset of the contested case record, which includes Exceptions and the Oral Argument before the Commission, and which are based on facts in the record, and the many other “Amended Itemized List of Documents, Transcripts and Exhibits” filed in this appeal. Exceptions are to use facts in the hearing record to make alternate recommendations to the Commission, and Oral Argument regarding a parties recommendations to the Commission. Minn. Stat. §14.61, Subd. 2. Many of the facts and information submitted by Xcel Energy as “Exceptions” and relied on by Commerce and the Commission are not found in the hearing record. There has been no opportunity to cross-examine regarding the new information and no opportunity to enter evidence to counter Xcel Energy’s statements. There is a difference, the hearing record is a subset of the contested case record, and the Commission’s decision must rely on the facts of the hearing record. An agency’s decision that goes beyond the facts of the hearing record, and where there is no opportunity to cross-examine regarding facts asserted but not in the

record, is subject to challenge and should not stand. *Hard Times Café, Inc. v. City of Minneapolis, et al.*, 625 N.W. 2d 165 (Minn. Ct. App. 2001). Appellant cites no law allowing entry of new facts evidence, after the hearing record has closed, in Exceptions or Oral Argument before the commission.

The Commission argues that it relied on evidence in the record, stating that Xcel's Exceptions are legitimately part of the "administrative record," but Exceptions are not part of the Hearing Record. References and citations made in the Commission Order, Comments and Recommendations of Commerce EFP Staff, and the Commission's brief regarding the "Modified Preferred Route," upon which it relied, are taken from documents not in the hearing record, and utilize a different route and alignment than the "Modified Preferred Route" found in the hearing record.

REPLY ARGUMENT

From its framing of the issue to its conclusion, the Commission argues that the "Modified Preferred Route" was properly approved by the Public Utilities Commission: Commission Brief, p. 1-2, Legal Issues; see also p. 12 ("Modified Preferred Route" x 3), 13; 17 (x 3); 19 (x 2); 20 (x 7); 21 (x 4); 22, 23 (x 2); 27. However, the Commission's decision is for a "Modified Preferred Route" that does not exist in the record other than in Hearing Ex. 94 and 95. The documents relied upon by the Commission for its decision misrepresent the cited material, which does not reference "Modified Preferred Route."

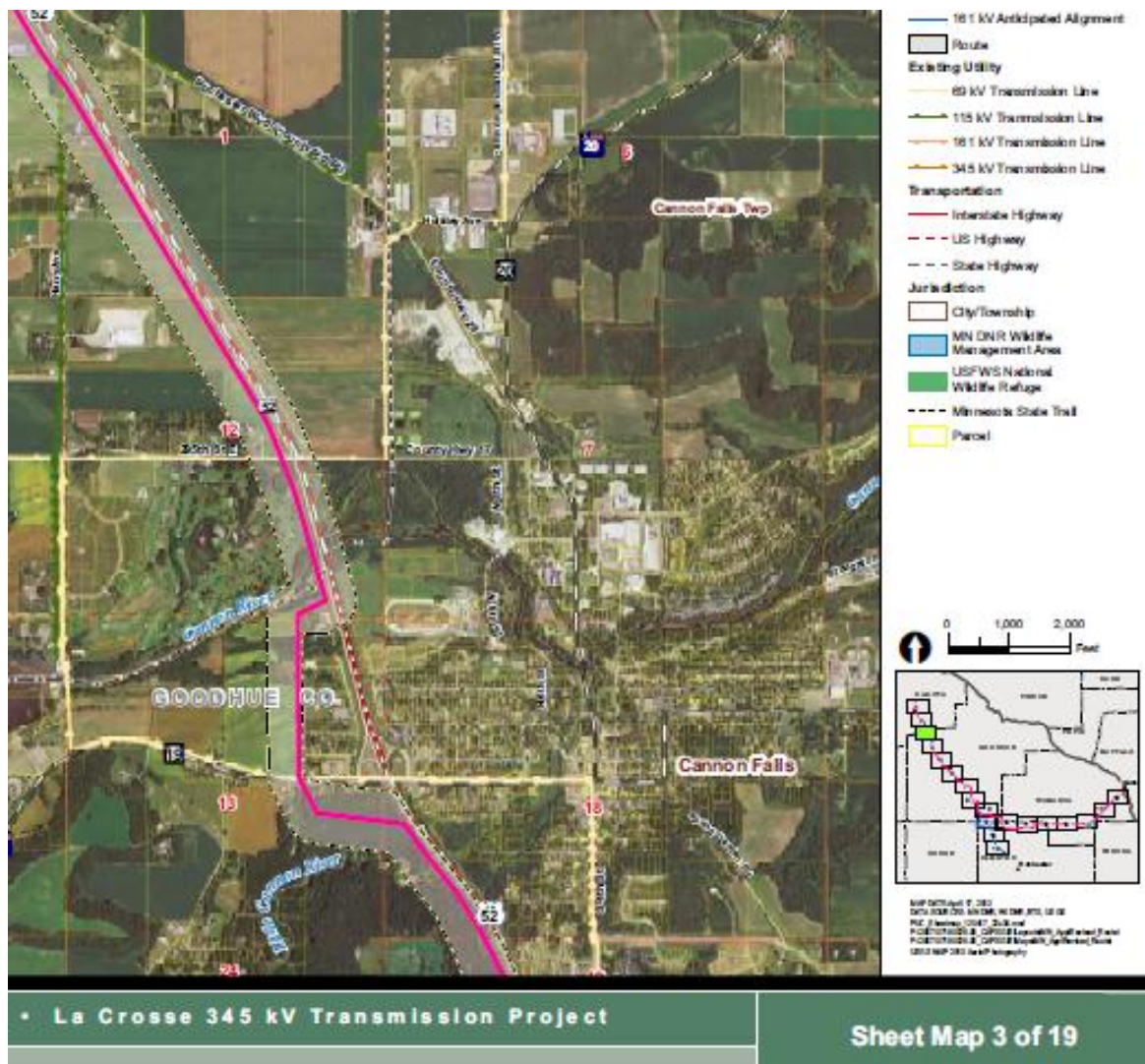
I. THE COMMISSION'S BRIEF MISREPRESENTS THE RECORD REGARDING "MODIFIED PREFERRED ROUTE."

The Commission's Brief describes its view of the evolution of the Modified Preferred Route, and cites Appendix L to the FEIS. Brief, p. 12-13. That map shows:



Cannon Falls Reply App. p. 1-3; Hearing Ex. 113, FEIS, Appendix L. However, the Commission's description of the "Modified Preferred Route" is not correct – it does not

match the “Modified Preferred Route” depicted in the citation provided. The “Modified Preferred Route” is labeled on the map, with an arrow to the alignment, which is colored red and is located immediately west of Highway 52 and the interchange. The map in the Commission’s Order shows the Alternate Route Segment, not the “Modified Preferred Route” as the approved route:



Cannon Falls Reply App. p. 4, Order and Permit, Sheet Map 3 of 19.

The Commission’s brief misrepresents and mischaracterizes the record each time it uses the phrase “Modified Preferred Route” as the Commission’s choice. Commission

Brief, p. 1-2, Legal Issues; see also p. 12 (“Modified Preferred Route” x 3), 13; 17 (x 3); 19 (x 2); 20 (x 7); 21 (x 4); 22, 23 (x 2); 27. The “Modified Preferred Route” in the Order of May 30, 2012 is not found in the record, and each time the Order states “Modified Preferred Route” it misrepresents and mischaracterizes the record:

After careful review of the record, the Commission concurs with Xcel and the DOC-EFP that Xcel’s **Modified Preferred Route**, following the existing corridor of U.S. Highway 52, best meets the route permitting criteria. The ALJ’s Report includes a thorough analysis of Segment 1 using all the applicable routing criteria, and the Commission concurs in much of that analysis. However, the Commission also finds that certain criteria found by the ALJ to weigh in favor of the 1P-003 route, weigh more heavily in favor of the **Modified Preferred Route** option.

Relying on data comparing impacts on homes within 500 feet of the various route options, the ALJ found that fewer homes would be impacted by the 1P-003 route. Xcel’s data, however, shows that there are more homes in closer proximity to the 1P-003 route than to the **Modified Preferred Route**. In addition, 1P-003 would require the line to be constructed cross-country along fields in a residential area and would present adverse impacts to the natural environment and recreation.

Placing the line through a portion of Lake Byllesby Regional Park would fragment previously undivided forest community on both sides of the Cannon River and would impact more native plant communities and Sites of Biological Significance than the **Modified Preferred Route**, as detailed by the DOC-EFP in its comments and the EIS. Furthermore, there is planned activity for a recreation trail in the Park and a planned bridge crossing of the Cannon River, both of which would be impacted by 1P-003.

The Commission also concurs with the DOC-EFP and Xcel that use of the existing corridor along U.S. 52 better corresponds with the industrial land use along the highway and is consistent with the statutory objective to site high-voltage transmission lines along parallel existing highway right-of-way.

For all these reasons, the Commission finds that, on balance, Xcel’s Modified Preferred Route better meets the applicable routing criteria; the Commission will therefore authorize use of Xcel’s **Modified Preferred Route** in Segment 1.

Order, p. 9 (emphasis added), stating “Modified Preferred Route” 6 times, and relying on “Xcel data” and DOC-EFP Comments and EIS.

As supporting background for selection of the “Modified Preferred Route,” the Commission’s Order reviews the positions of the parties, and in setting forth Xcel’s position, it references the “Modified Preferred Route.” Order, p. 7. The Order goes on to repeatedly reference the ALJ’s recommendation of 1P-003 and also references the “Modified Preferred Route.” Id. However, the Commission cites and mischaracterizes the ALJ’s Findings, none of which reference a “Modified Preferred Route” and which do not compare 1P-003 with a “Modified Preferred Route.” See Order, p. 7, fn. 10-13, citing ALJ’s Report, Findings 247, 301 and 306. The ALJ’s Findings cited contain comparisons are exclusively made between 1P-003 and **1P**. See ALJ Findings 247, 306, 301. 1P is **NOT** the “Modified Preferred Route.” Hearing Exhibit 94.

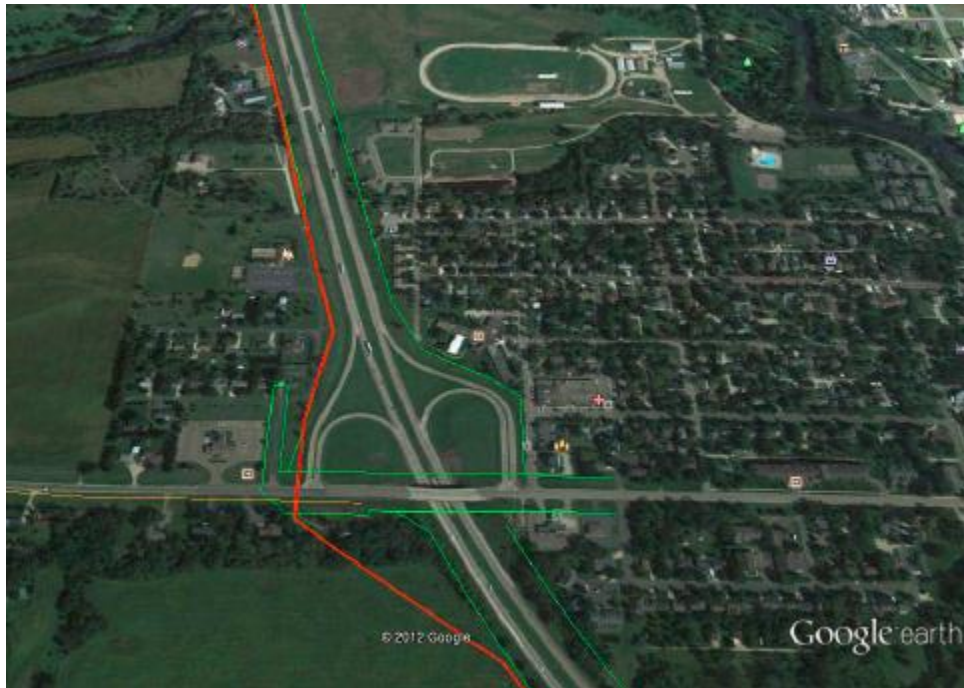
The ALJ’s Recommendation was based on analysis of the route options before her, including the Applicant’s “Preferred Route,” which is designated “1P” in this proceeding. The Applicant proposed two routes as required by statute, its “Preferred” route, route “P” and the “Alternate” route, route “A.” Hearing Exhibit 1, Application, p. ES5-6, Map 2.1-1: Project Sections and Appendix M, Sheet Map 10 (Cannon Falls area). The naming convention designating the Segment 1 Preferred Route as “1P” is explained in the FEIS. Hearing Ex. 113, FEIS p. 3 (P & A Routes); p. 6 (naming conventions). Nowhere in the ALJ’s Report regarding Segment 1 will you find narrative regarding the “Modified Preferred Route” or a map of a “Modified Preferred Route.” A “Modified Preferred Route” was not available for consideration.

Following the section on the ALJ's Recommendation, the Commission's Order goes on to characterize the parties' positions. In the section regarding Xcel's position, in five paragraphs it uses the phrase "Modified Preferred Route" eight times. The Commission summarizes Xcel's Exceptions and uses data compiled by Xcel admittedly after the Recommendation of the ALJ, not within the hearing record. Order, 7-8, fn. 14-15, referencing Final EIS ("Modified Preferred Route" information not contained in FEIS Section 8.1.4.11 and Figure 8.1.4.11-1) and Xcel's Exceptions. The citations are for a section of the EIS and a Figure representing a "Comparison of shared ROW along each route alternative, Segment 1" which provides details for "1P" and not the "Modified Preferred Route."

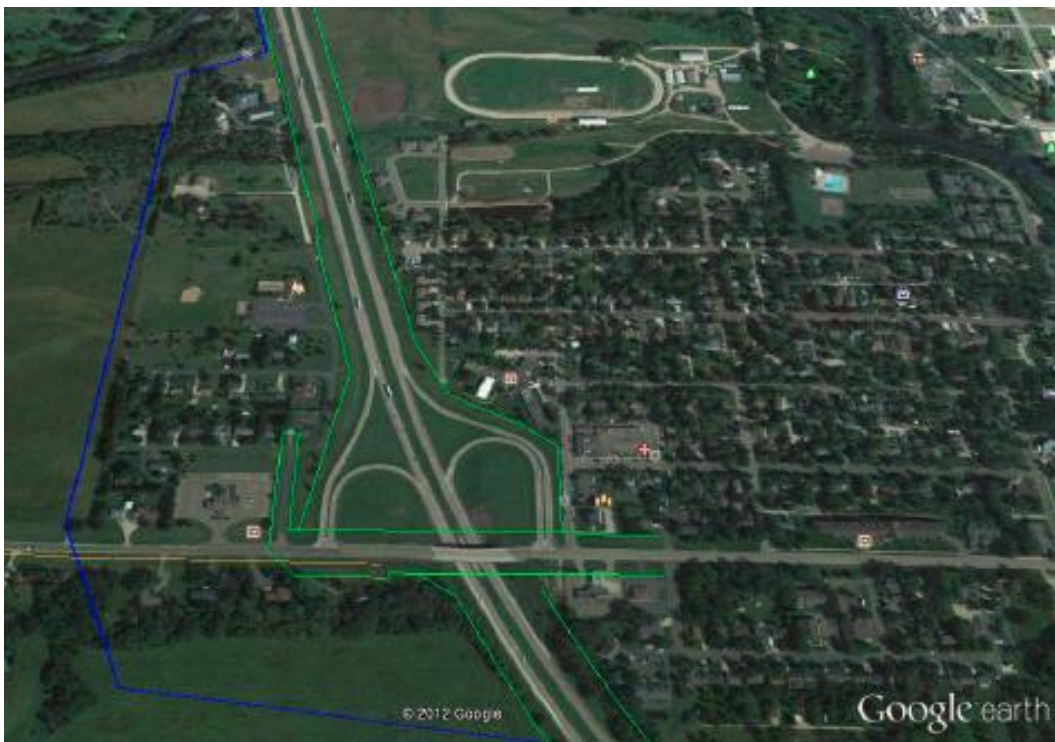
Only Hearing Exhibit 95 provides any details for the "Modified Preferred Route" and the section regarding shared Right of Way for the three options shown reflects:

Resource Category	Modified Preferred Route (US 52) Segment	Alternate Route Segment	Highway 19 Interchange Infield Alternative Segment
Use or Paralleling of existing ROW (transportation, pipeline, and electrical transmission systems) and property lines			
Total length (miles)	0.8 miles	1.0 mile	0.8 miles
Length following Transmission Line (miles)	0.0 miles	0 miles	0 miles
Percentage of route following Transmission Line	0%	0%	0%
Length following road but not Transmission Line (miles)	0.6 miles	0 miles	0.6 miles
Percentage of route following road but not Transmission Line	75%	0%	75%
Length following property line but not transmission line or roads (miles)	0 miles	0 miles	0 miles
Percentage of route following property line but not transmission line or roads	0%	0%	0%
Total length following transmission line, roads, or property lines (miles)	0.6 miles	0 miles	0.6 miles
Percentage of route following transmission line, roads or property lines	75%	0%	75%
Length not following transmission line, roads or property lines (miles)	0.2 miles	1.0 mile	0.2 miles
Percentage of route not following transmission line, roads or property lines	25%	100%	25%

The Modified Preferred Route was added to Applicants' maps on June 10, 2011:



Cannon Falls Reply App. 5, Hearing Ex. 35 (red line), Screen Shot. The Alternate Route Segment (blue) was also added on the June 10, 2011 version of Hearing Exhibit 35:



Cannon Falls Reply App., p. 6 Ex. 35, Alternate Route Segment; Hearing Ex. 94 & 95.

The “Hwy. 19 Interchange Infield Alignment” of Exhibit 94 and 95 was not shown on the June 10, 2011 final version of Hearing Exhibit 35, but it was on Exhibit 94 and 95 offered and entered 12 days later in the hearing with these words:

Well, I believe that we can explore it with the idea of this – the pink line, the Highway 19 interchange infield alternative segment, could be built spanning the entire MnDOT right-of-way. So a pole would be placed outside the MnDOT right-of-way on the north and on the south and then only the wires would overhang. And our intention would be to explore this with MnDOT and determine whether this could be built and engineered in a way that would allow MnDOT to continue to use their right-of-way as they need to. And if that is not possible, then our second choice would be the red line which does not bisect the MnDOT right-of-way, it just kind of infringes on it at the side. And then the fallback position would be the orange line, the third choice.

Hillstrom, Evidentiary Hearing, June 24, 2011, Tr. Vol. 3, p.73, l. 5-19.

There is no “Modified Preferred Route” in the FEIS, no “Modified Preferred Route” was moved forward for analysis in the Scoping Decision, and no “Modified Preferred Route” was part of the Recommendation of the Administrative Law Judge. The route in the Scoping Decision, DEIS, FEIS and ALJ’s Recommendation was Route 1P, the Applicant’s Preferred Route.

II. TO THE EXTENT THAT THE COMMISSION RELIES ON XCEL’S EXCEPTIONS FOR SUPPORT OF A COMPARISON OF “MODIFIED PREFERRED ROUTE” TO 1P-003 IT IS IN ERROR

The Commission’s brief cites Xcel’s Exceptions, Index 315 Attachment 1 as its basis for its claim that “the Modified Preferred Route has less residential impacts than Route 1-003.” Commission Brief, p. 19. However, the Attachment 1 to Xcel’s Exceptions is a map not entered in the hearing record, instead newly disclosed in Exceptions, with no verification, no vetting, no opportunity for cross-examination, and opportunity for reply

to Exceptions. Minn. R. 7829.2700, Subp. 2. Cannon Falls entered Affidavits where landowners demonstrated that Applicant's Exceptions house counts were wrong.

Commission Item 326, Cannon Falls Motion for Reconsideration and Attachments. The "Modified Preferred Route" house count of Attachment 1 conflicts with the data for the same section in Hearing Exhibit 95, claiming fewer homes are affected, even before 15 are eliminated from the opposite side of Hwy 52 (only shown in 0-500 feet line):

House Proximity for the Modified Preferred 345 kV Segment and Segment 1P-003 (Start at common Point North of Highway 19 Interchange and ending at 327th St. Way)

Resource Category	Modified Preferred 345 kV Segment	Segment 1P-003
Residences		
Number of Residences 0-75 feet from route centerline	0	1
Number of Residences 76-150 feet from route centerline	2	6
Number of Residences 151-300 feet from route centerline	18	10
Number of Residences 301-500 feet from route centerline	23	13
Number of Residences 0-500 feet from route centerline	43 ¹	30
Density (residences/linear mile within 300 feet of route centerline)	3.8	2.9
Density (residences/linear mile within 500 feet of route centerline)	8.1	5.1
Length		
Total length of route (miles)	5.3	5.9

¹ 15 homes on Modified Preferred 345 kV Segment located across HWY 52.

And from Exhibit 95 for "Modified Preferred Route":

Resource Category	Modified Preferred Route (US 52) Segment	Alternate Route Segment	Highway 19 Interchange Infield Alternative Segment
Residences			
Number of Residences 0-75 feet from route centerline	0	0	0
Number of Residences 76-150 feet from route centerline	2	0	0
Number of Residences 151-300 feet from route centerline	4	13	3
Number of Residences 301-500 feet from route centerline	23	7	24
Number of Residences 0-300 feet from route centerline	6	13	3
Number of Residences 0-500 feet from route centerline	29	20	27
Revised Density (residences/linear mile within 300 feet of route centerline)	0.1	0.2	0.1
Revised Density (residences/linear mile within 500 feet of route centerline)	0.5	0.4	0.5

III. TO THE EXTENT THE COMMISSION RELIES ON DOC-EFP TO SUPPORT “MODIFIED PREFERRED ROUTE” IT IS IN ERROR.

The Commission’s Brief and the Commission’s Order relies on Department of Commerce Energy Facilities Permitting for support of the choice of the “Modified Preferred Route.” To the extent that it does, it is in error.

The Commission’s Order lists many comparisons between the “Modified Preferred Route” and 1P-003. Order, p. 8-9. This section of the Commission’s Order regarding DOC-EFP Comments and Recommendations contains no citations whatsoever, and does not address the distinction between Route 1P and a “Modified Preferred Route” and/or an Alternate Route Segment. Order, p. 8-10. The Commerce “Comments and Recommendations,” are essentially a Brief and Exceptions, filed over one month after the deadline for Exceptions and to which parties cannot reply. Index 319-322, filed March 30, 2012 (Exceptions due Feb. 23, 2012). Commerce conflates a “Modified Preferred Route” with “1P” at the outset:

Applicant contends that the “Modified Preferred Route for this segment (1P route) is the better route for the section covered by Segment 1p-003 “based on residential impacts, existing land use, and corridor sharing.” Commission Index 319, Commerce Comments p. 7. From that point forward, Commerce utilizes the term “1P” to refer to a “Modified Preferred Route,” and utilizes the record information regarding 1P (not “Modified Preferred Route) to compare with 1P-003. Id., p. 7-10. Commerce cites the FEIS, Appendix H; p. 100; p. 96; Appendix p. A-11; p. 106, misrepresenting the FEIS data

regarding 1P as data regarding a “Modified Preferred Route.” The Commerce EFP

Recommendation states:

Based on all criteria in Minn. Stat. §216E.03, Subds. 7(a) & (b), and Minn. R. 7850.4000 and 7850.4100, and considering the potential impacts associated with Route 1P and 1P-003, EFP staff recommends the Commission issue a permit for the Applicant’s modified preferred route (1P) and adopt the changes to Finding #306 and Conclusion 7 as proposed by the Applicant. EFP believes that on balance, Route 1P shares more existing ROW, has fewer natural resource impacts, is more compatible with existing land uses, and has fewer recreational impacts.

Commission Index 319, p. 9-10. It is gross misrepresentation to represent a “Modified Preferred Route” as 1P and to claim that the FEIS contains information on modifications to 1P because it does not.

IV. TO THE EXTENT THE COMMISSION RELIES ON FEIS TO SUPPORT “MODIFIED PREFERRED ROUTE” IT IS IN ERROR

The Commission Brief claims “The Modified Preferred Route has Less Nonproliferation than Route 1P-003,” and again stating that “The Commission Properly Considered Whether the Siting of the Modified Preferred Route Complies with Nonproliferation Requirements,” and relies exclusively on the FEIS for support. Commission Brief, p. 20; 21-23, citing Index No. 286 Map 8.1-26, p. 104 and 106. The Commission’s reliance on the FEIS to support its choice of a “Modified Preferred Route” is erroneous.

FEIS pages 104 and 106 do not address a “Modified Preferred Route,” nor does Map 8.1-26, which compares Route 1P with the other routes, including 1P-003. A comparison of the “Modified Preferred Route,” from Xcel’s Hearing Exhibit 95, as

above, shows the relative comparisons between the “Modified Preferred Route,” the “Interchange Infield Alignment” and the “Alternate Route Segment.”

Resource Category	Modified Preferred Route (US 52) Segment	Alternate Route Segment	Highway 19 Interchange Infield Alternative Segment
Use or Paralleling of existing ROW (transportation, pipeline, and electrical transmission systems) and property lines			
Total length (miles)	0.8 miles	1.0 mile	0.8 miles
Length following Transmission Line (miles)	0.0 miles	0 miles	0 miles
Percentage of route following Transmission Line	0%	0%	0%
Length following road but not Transmission Line (miles)	0.6 miles	0 miles	0.6 miles
Percentage of route following road but not Transmission Line	75%	0%	75%
Length following property line but not transmission line or roads (miles)	0 miles	0 miles	0 miles
Percentage of route following property line but not transmission line or roads	0%	0%	0%
Total length following transmission line, roads, or property lines (miles)	0.6 miles	0 miles	0.6 miles
Percentage of route following transmission line, roads or property lines	75%	0%	75%
Length not following transmission line, roads or property lines (miles)	0.2 miles	1.0 mile	0.2 miles
Percentage of route not following transmission line, roads or property lines	25%	100%	25%

The Commission claims that the “Modified Preferred Route Has a Lower Potential Impact on Natural Resources.” Commission Brief, p. 20-21, citing FEIS Appendix H, FEIS p. 95, 96, and A-11. FEIS Appendix H compares impacts of “1P” with route alternatives, and does not address a “Modified Preferred Route,” thus all three citations to Appendix H are inaccurate. Further, FEIS p. 95 is a map showing an overview of all routes and does not reflect 1P-003 near the Byllesby Dam. The Commission misrepresents the location of the crossing, stating “it would cross the Cannon River on the eastern portion of Lake Byllesby.” Commission Brief, p. 20. This is a false statement, as the route proposed for 1P-003 would cross east of Lake Byllesby Dam, across the

Cannon River. See FEIS Appendix A – Sheet NR8 and Hearing Ex. 35 (floodplain from east of Byllesby substation to Hwy. 52):



The Commission claims that the “Modified Preferred Route Has Fewer Archeological and Historical Sites than Route 1P-003.” Commission Brief, p. 21. As above, each reference to Index 286, the FEIS, is misrepresenting what is presented in the FEIS. Page 100 cited by the Commission contains no reference to a “Modified Preferred Route” and addresses only data comparing Applicant’s 1P route with other routes.

The Important Bird Area cited by the Commission ends at the eastern end of Lake Byllesby, at the dam, and does not extend east of the dam to route 1P-003. The floodplain forest community cited at A-11 is visible on the above screenshot of Hearing Ex. 35 and FEIS Sheetmap Appendix NR8. This forested floodplain extends from east of

the Byllesby Dam to Highway 52 where 1P crosses the Cannon River. See Hearing Ex. 113, FEIS, Appendix A, Sheet NR8 and Sheet NR7 (floodplain on both sides of Cannon River and Sandstrom's home and business on south side of Cannon River west of 52):



The Commission's use of the FEIS as support of a choice of a "Modified Preferred Route" is misleading at best. The FEIS reviews all the route alternatives and segments available for consideration by the Commission, and sets them out broadly and then individually, and there is no "Modified Preferred Route" in the FEIS or the Scoping Decision. See Hearing Ex. 113, FEIS p. 66 for listing of all route options available for consideration, and p. 74-82; see also Scoping Decision, FEIS App. K, Figure 4, Route Alternatives Map 3 of 10. Specific route variations along the Preferred Route (1P) in the Cannon Falls area are set out in separate inserts of the FEIS and Scoping Decision.

Hearing Ex. FEIS., p. 83 and App. K Figure 4. “Modified Preferred Route” is not a route option available to the Commission.

The consistent use of the FEIS as a basis for any decision for a “Modified Preferred Route” is disingenuous. The FEIS contains nothing about a “Modified Preferred Route” except a copy of Applicant’s Hearing Exhibit 94 and 95 with information not verified or vetted, not analyzed in comparison with other routes, not referenced in the body of the FEIS, maps of the FEIS or in any other way in the FEIS, and it is not formatted in a way allowing comparison. Exhibit 94 and 95 are found attached in Appendix L.

The FEIS information in comparative charts and maps regarding house counts (p. 85-86), human settlement features (p. 87-88), land use compatibility (p. 89-91), rare and unique resources including biodiversity (p. 91-94), flora and fauna (p. 94-97), water resources (p. 97-99), electronic interference (p. 99), cultural resources (p. 99-102), transportation and public services (p. 102-104), recreation (p. 105-107), air quality (p. 107). The FEIS contains appendices with additional information, for example, comparison of route options regarding rare species and communities (Id., App. F, Segment 1); archeological resources (Id., App. G, Segment 1); and in “Segment 1 Summary Tables (Id., Appendix H). The Scoping Decision is Appendix K to the FEIS, and it specifically states:

The following issues will not be considered or evaluated in the EIS:

1. Any route or substation alternatives not specifically identified in this scoping decision.

Id., Appendix K, Scoping Decision, p. 30. The “Modified Preferred Route” alternative near Cannon Falls is not included in the Scoping Decision.

Once the commissioner has determined the scope of the environmental impact statement, the scope must not be changed except upon decision by the commissioner that substantial changes have been made in the project or substantial new information has arisen significantly affecting the potential environmental effects of the project or the availability of reasonable alternatives.

Minn. R. 7850.2500, Subp. 2. The scope was not changed and no additional alternatives were added to the scope of the EIS.

Corridor sharing is reflected in FEIS in a chart and map. Ex. 113, p. 102-103. Map 8.1-26 fails to show the existing transmission line from Hwy 52 southward along Harry Road, instead showing only a county road in blue. Id. As above, the available corridor along Harry Road, with one to 3 transmission lines in the corridor, is visible in green on Commission Order Sheet Map 3 of 9, and reflected in the Findings of Judge Sheehy’s Recommendation:

There are, however, significant problems following US 52 through the Cannon Falls area in the vicinity of Highways 19 and 24, because of the proximity of homes, churches, schools, and businesses. Use of option 1P-003 would bypass this area and would impact fewer total residences; would avoid the church, school, and businesses; would parallel existing transmission lines and use mostly existing road corridors; and would provide the opportunity to avoid potential conflicts with two future road projects (the railroad overpass and the County Road 24 interchange.)

ALJ Recommendation Finding 306 (citing Hearing Ex. 113, FEIS Appendix A at A-11 (Map NR9); Hearing Ex. 36 at Sheetmap 10.

The Commission rejected the ALJ’s recommendation of the 1P-003 route near Cannon Falls, stating that “... the Commission also finds that certain criteria found by the

ALJ to weigh in favor of the 1P-002 route, weigh more heavily in favor of the Modified Preferred Route option. Id. In each description of the route chosen, the Commission refers to the “Modified Preferred Route.” Id., using term “Modified Preferred Route” six times. The stated basis for the decision in the Cannon Falls area is that:

The Commission also concurs with the DOC-EFP and Xcel that use of the existing corridor along U.S. 52 better corresponds with the industrial land use along the highway and is consistent with the statutory objective to site high-voltage transmission lines along parallel existing highway right-of-way.

Id. This is not consistent with the map in the permit showing gross proliferation through use of 100% new corridor around Cannon Falls or the Applicant’s proliferation chart in Exhibit 95, Attachment 1.

V. TO THE EXTENT THAT THE COMMISSION RELIES ON THE ENVIRONMENTAL IMPACT STATEMENT TO SUPPORT ITS DECISION, THE FEIS IS NOT ADEQUATE

At the April 12, 2012 Commission meeting Counsel for the Applicant stated that the Alternate Route Segment was not in the FEIS:

In the FEIS it didn’t include these jogs. It included the original alignment along 52...

Commission Meeting, April 12, 2012, Tr. 36. This was confirmed by Matt Langan, Dept. of Commerce:

Actually, we’re able to append this information, it’s an appendix to the final EIS. But it does represent this alignment and route and then has a table with comparative numbers.

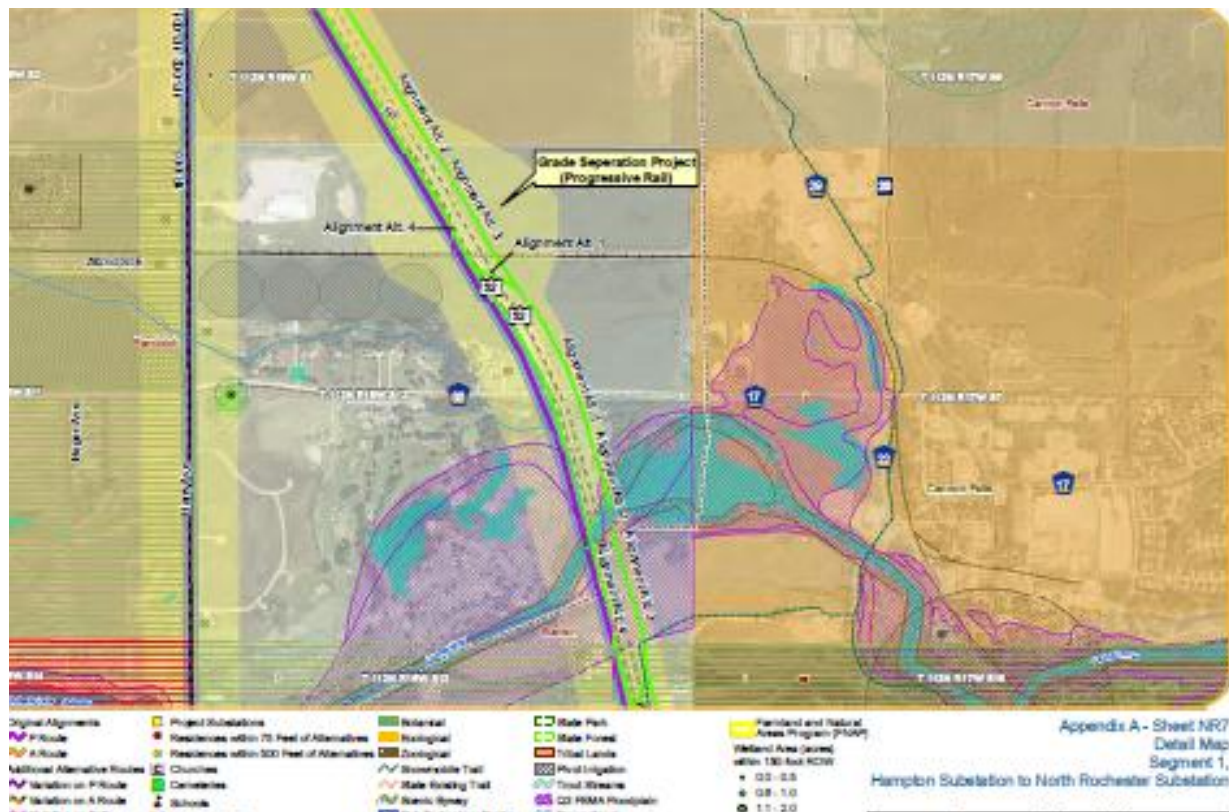
In this case I think the judge used the numbers from a table more in the body of the final EIS, but those numbers are available in the final EIS.

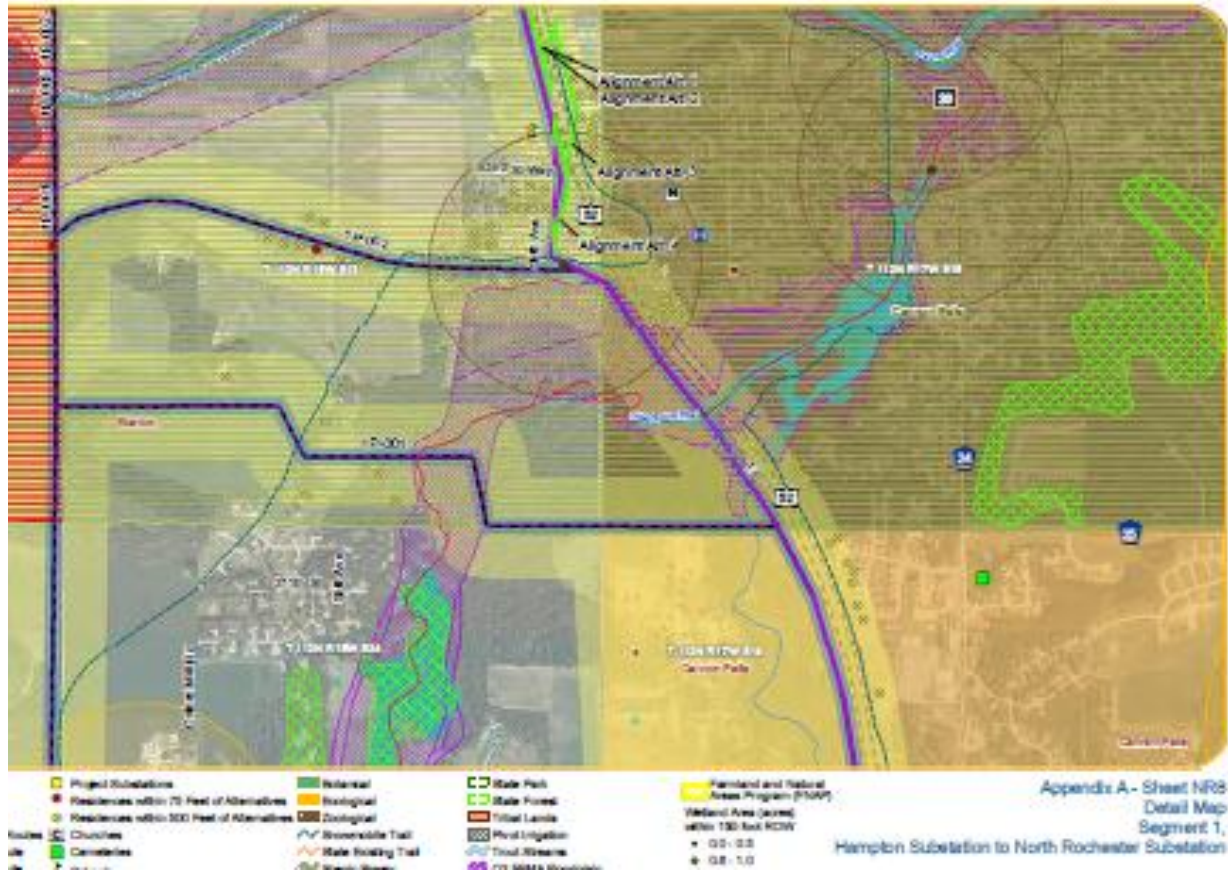
Id. The FEIS was eFiled on August 31, 2011, and the exhibits “appended” to the EIS are the Appendix L, which is labeled:

Appendix L – Analysis of New Routes eFiled by Xcel on June 22, 2011

CF App. 1-3, Hearing Ex. 113, FEIS, App. L Cover Sheet. The only items contained in Appendix L are Xcel’s Exhibit 94, showing the three routes, the “Modified Preferred Route,” the “Highway 19 Interchange Infield Alternative Segment,” and the “Alternate Route Segment.”

The Sheet Maps in the FEIS do not show a “Modified Preferred Route.” Hearing Ex. 113, Appendix A, p. A-9-10, Sheet NR7-NR-8.





Hearing Ex. 113, Appendix A, p. A-9-10 Sheet Maps NR7-NR8.

The citations in the PUC’s Order to the EIS are regarding 1P, and not any “Modified Preferred Route.” The FEIS does not support a decision for the Modified Preferred Route.

VI. THE COMMISSION IMPROPERLY RELIES ON FACTS AND EVIDENCE NOT IN THE HEARING RECORD

The Commission argues that it relied on evidence in the record. Commission Brief, p. 28-29. The Commission states that Xcel’s Exceptions are legitimately part of the “administrative record,” but Exceptions are not part of the Hearing Record. Minn. R. 1400.7400, Subp. 1. References and citations made in the Commission Order, Comments and Recommendations of Commerce EFP Staff, and the Commission’s brief regarding

the “Modified Preferred Route” are taken from documents with a different route and alignment that the “Modified Preferred Route.” The Commission is improperly using apples to address oranges and grapefruit. Further, the Commission’s claim of use of Hearing Exhibit 35, Google maps, for the information relied on contradicts citations in the Order. See Brief, p. 29, Section E-2. Hearing Exhibit 35 is only useful for the visual references, but it is not sufficient to rely on for determination of house counts and impacts.

VII. THE COURT MUST REMAND THE COMMISSION’S ORDER FOR ADOPTION OF 1P-003 OF SEGMENT 1 ROUTE AS RECOMMENDED BY THE ADMINISTRATIVE LAW JUDGE

St. Paul’s Church and School and Cannon Falls Landowners requests that the court find the Commission’s decision an error of law and direct it to reverse its decision of April 12, 2012 and its written Order of May 30, 2012, rejecting the Administrative Law Judge’s 1P-003 route, and instead utilize the ALJ’s Recommendation and Order that the “Alternate Route Segment” around problematic areas in Cannon Falls cannot be used for CapX 2020 transmission. The route chosen that comprises the “Modified Preferred” route near Cannon Falls was improperly added, without adequate notice, without identification in the Scoping Decision, and without environmental review and inclusion in the DEIS or FEIS. Other attempts to propose routes late in the process were rejected, as this attempt by the Applicant should be as well – the rules do apply to Xcel Energy.

The lack of notice and environmental review preclude use of the Applicant’s “Modified Preferred” route in the Cannon Falls area. Because existing transmission lines on Harry Avenue and south to Highway 19 provide a transmission corridor that can

be utilized, Route 1P-003 is more in compliance with Minnesota's policy of non-proliferation and Minn. Stat. §216E.03, Subd. 7(e).



January 10, 2013

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CANNON FALLS REPLY APPENDIX

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Appendix L - Analysis of New Routes eFiled by Xcel on June 22, 2011



EXHIBIT

95

Minnesota 19/Highway 52 Intersection Options

Resource Category	Modified Preferred Route (US 52) Segment	Alternate Route Segment	Highway 19 Interchange Infield Alternative Segment
Residences			
Number of Residences 0-75 feet from route centerline	0	0	0
Number of Residences 76-150 feet from route centerline	2	0	0
Number of Residences 151-300 feet from route centerline	4	13	3
Number of Residences 301-500 feet from route centerline	23	7	24
Number of Residences 0-300 feet from route centerline	6	13	3
Number of Residences 0-500 feet from route centerline	29	20	27
Revised Density (residences/linear mile within 300 feet of route centerline)	0.1	0.2	0.1
Revised Density (residences/linear mile within 500 feet of route centerline)	0.5	0.4	0.5
Use or Paralleling of existing ROW (transportation, pipeline, and electrical transmission systems) and property lines			
Total length (miles)	0.8 miles	1.0 mile	0.8 miles
Length following Transmission Line (miles)	0.0 miles	0 miles	0 miles
Percentage of route following Transmission Line	0%	0%	0%
Length following road but not Transmission Line (miles)	0.6 miles	0 miles	0.6 miles
Percentage of route following road but not Transmission Line	75%	0%	75%
Length following property line but not transmission line or roads (miles)	0 miles	0 miles	0 miles
Percentage of route following property line but not transmission line or roads	0%	0%	0%
Total length following transmission line, roads, or property lines (miles)	0.6 miles	0 miles	0.6 miles
Percentage of route following transmission line, roads or property lines	75%	0%	75%
Length not following transmission line, roads or property lines (miles)	0.2 miles	1.0 mile	0.2 miles
Percentage of route not following transmission line, roads or property lines	25%	100%	25%
Archaeological and Historic Resources Sites Within 1 mile of Route Centerline			

Minnesota 19/Highway 52 Intersection Options

Resource Category	Modified Preferred Route (US 52) Segment	Alternate Route Segment	Highway 19 Interchange Infield Alternative Segment
Archaeological	2	2	2
Architectural			
National Register of Historic Places (NRHP)	8	8	8
Architectural	5	5	5
Natural Environment			
Water Resources			
Permanent Wetlands Impacts	0 acres	0 acres	0 acres
Temporary Wetlands Impacts	0 acres	0 acres	0 acres
Potential Tree Clearing in Wetlands	0 acres	0 acres	0 acres
Stream Crossings	0	0	0
Permanent Impacts to Floodplains	<0.02 acre	<0.02 acre	<0.02 acre
Flora			
Percent Cropland	40.3%	72.1%	38.2%
Percent Grassland	59.3%	17.7%	61.4%
Percent Shrubland	0%	0%	0%
Percent Forested Land	0.4%	10.2%	0.4%
Percent Aquatic	0%	0%	0%
Fauna			
Conservation Reserve Program Lands Crossed	0	0	0
Conservation Reserve Enhancement Program Lands Crossed	0	0	0
Length of Important Bird Areas Crossed	0 miles	0 miles	0 miles
Length of Grassland Bird Conservation Areas Crossed	0 miles	0 miles	0 miles
Number of Federal Rare and Unique Species Known to Occur Within 1 mile of Route Centerline			
Threatened	0	0	0
Endangered	0	0	0
Candidate	0	0	0
Number of State Rare and Unique Species Known to Occur Within 1 mile of Route Centerline			
Threatened	3	3	3
Endangered	0	0	0
Species of Concern	1	1	1
DNR Rare Native Communities	7	10	7
Length of Outstanding Biodiversity Sites Crossed	0 miles	0 miles	0 miles
Length of High Biodiversity Sites Crossed	0 miles	0 miles	0 miles
Length of Moderate Biodiversity Sites Crossed	0 miles	0 miles	0 miles



Legend

Anticipated Alignment

- 345 kV Anticipated Alignment
- 161 kV Anticipated Alignment

Existing Utility

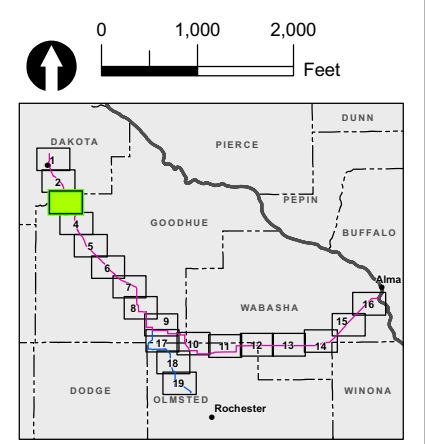
- 69 kV Transmission Line
- 115 kV Transmission Line
- 161 kV Transmission Line
- 345 kV Transmission Line

Transportation

- Interstate Highway
- US Highway
- State Highway

Jurisdiction

- City/Township
- MN DNR Wildlife Management Area
- USFWS National Wildlife Refuge
- Minnesota State Trail
- Parcel

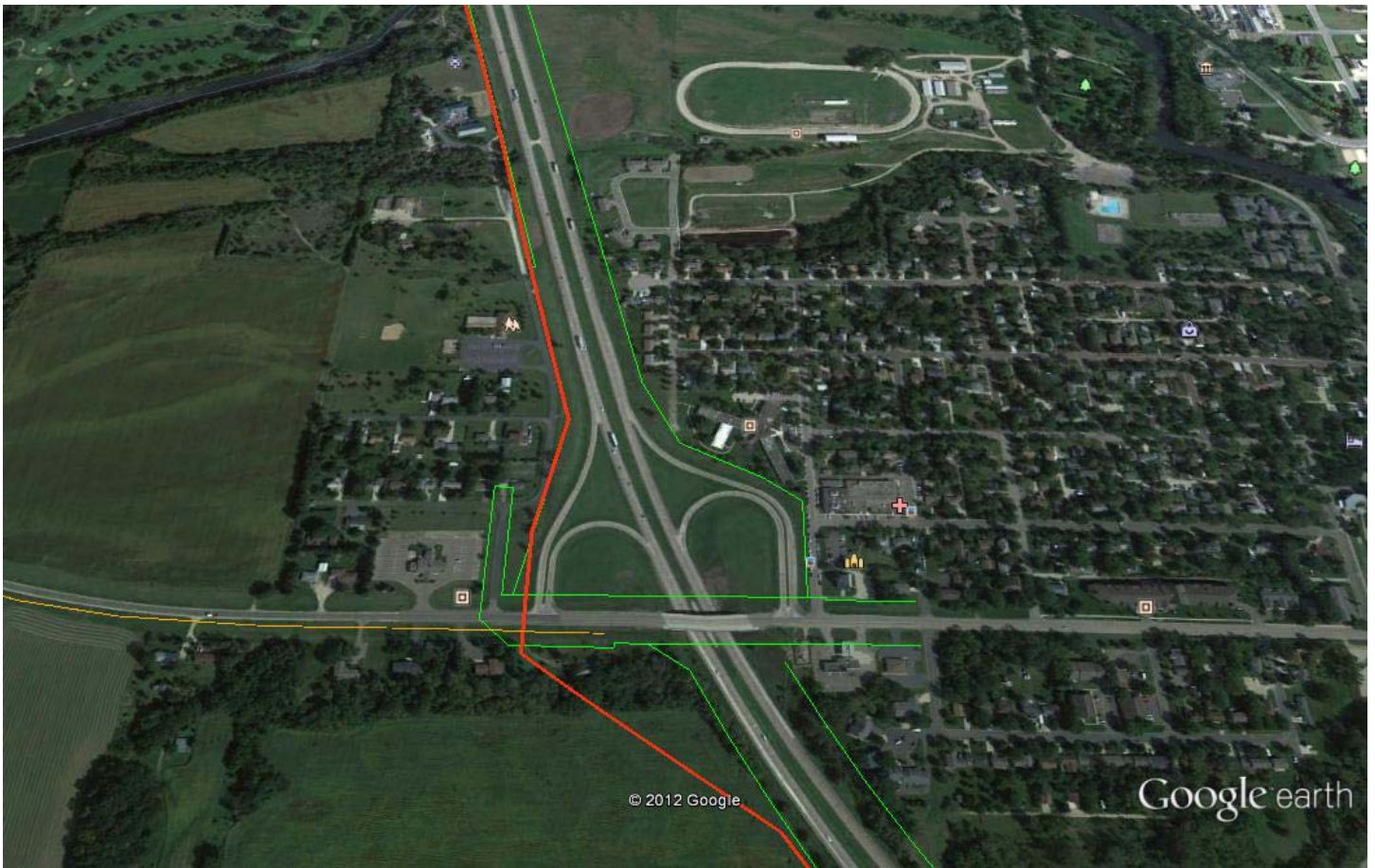


MAP DATE: April 17, 2012
 DATA SOURCES: MN DNR, WI DNR, BTS, USGS
 PUC_Sheetmap_120417_22x34.mxd
 P:\2007\07180025.00_CAPX\GIS\Layouts\MN_App\Revised_Route\ P:\2007\07180025.00_CAPX\GIS\Maps\MN_App\Revised_Route\ USGS NAIP 2010 Aerial Photography

PUC Docket #
 E002/TL-09-1448

Hampton • Rochester • La Crosse 345 kV Transmission Project

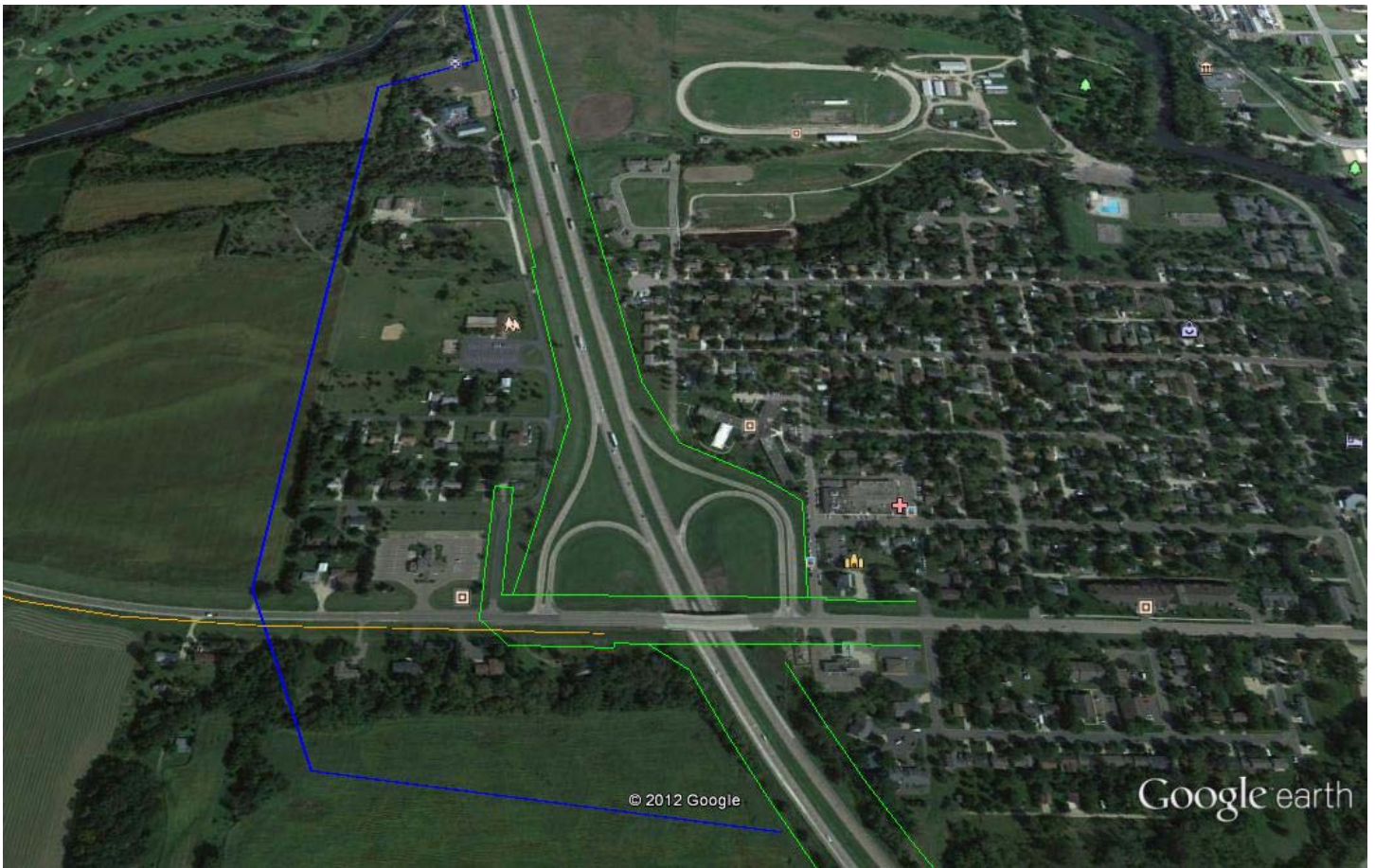
Sheet Map 3 of 19



Google earth

feet
meters





Google earth

feet
meters



