STATE OF MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application by Xcel Energy for a Route Permit for the Hampton-Rochester-La Crosse 345-kV Transmission Line Project FIRST PREHEARING ORDER

A prehearing conference was held before Kathleen D. Sheehy, Administrative Law Judge, on August 9, 2010, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota.

Lisa M. Agrimonti, Attorney at Law, Briggs and Morgan, P.A., 2200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402, and Jennifer Thulien Smith, Assistant General Counsel, appeared for Xcel Energy (Applicant). Tom Hillstrom, Routing and Permitting Manager for the project, also participated on behalf of the Applicant.

Karen Finstad Hammel, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, appeared for the Department of Commerce, Office of Energy Security, Energy Facility Permitting Staff (Department). Deborah Pile and Matthew Langan also participated on behalf of the Department.

Carol Overland, Attorney at Law, P.O. Box 176, Red Wing, Minnesota 55066, appeared for No CapX 2020 and United Citizens Action Network (U-CAN).

David Seykora, Minnesota Department of Transportation, also attended.

Commission staff members Bob Cupit and Tricia DeBleeckere participated in the prehearing conference.

Based upon the discussions during the prehearing conference, the Administrative Law Judge makes the following Prehearing Order.

IT IS HEREBY ORDERED:

Intervention

1. Members of the public need not become formal parties to participate in the hearing. They may offer either oral or written testimony; they

may offer exhibits for inclusion in the record; and they may ask questions of persons testifying. 1 Any person may "subscribe" to the E-docket system on the Commission's website (www.puc.state.mn.us) for the purpose of receiving electronic notice when documents are filed in this matter. Follow the link called "Subscribe to a Docket," insert the email address, select docket no. 09-1449, and click "Add to list." An email message will then be sent to the listed email address, which a subscriber must confirm by responding to the email. Any person desiring to become a formal party, however, must file a petition to intervene.

- 2. Persons who wish to intervene in this proceeding must file a written petition to intervene with the Administrative Law Judge no later than May 2, 2011, as set forth in Minn. R. 1405.0900, subp. 1 (2009). Any objection to a petition shall be filed within seven business days of service of the petition. The petition shall be served upon all parties, pursuant to the E-service list in effect at the time of the petition. A Notice of Appearance shall be filed with the Petition.
- Service from this date forward shall be limited to persons who are 3. parties to this contested case hearing. Participants and other persons interested in monitoring this docket may do so by subscribing to the E-docket system.

Schedule

4. The following schedule is adopted:

Applicant's Direct Testimony	April 18, 2010
Intervention Deadline	May 2, 2011
Direct/Rebuttal Testimony of Intervenors	May 20, 2011
Applicant's Rebuttal Testimony	May 27, 2011
Surrebuttal Testimony of all parties	June 3, 2011
Public Evidentiary Hearings (in Plainview, Pine Island, and Cannon Falls)	Week of June 13, 2011
Evidentiary Hearing (at the PUC in St. Paul)	Week of June 20, 2011
Deadline for Filing Public Comments	June 30, 2011

¹ Minn, R. 1405,0800.

- 5. The Applicant has agreed to the above schedule, which extends the time for completion of this matter beyond the one-year period established by Minn. Stat. 216E.03, subd. 9 (2008).² The Applicant has also agreed to further extend the timeframe for a reasonable period of time following the closure of the OAH record, to allow for the Report of the Administrative Law Judge to be filed and the final decision of the Public Utilities Commission to be made.³
- 6. The Department anticipates that the Draft Environmental Impact Statement (EIS) will be available on January 28, 2011; the Draft EIS Public Meetings will be held March 8-10, 2011; and the Draft EIS comment period will end on April 22, 2011.⁴ It expects that the Final EIS will be filed in July 2011.⁵

Motion to Suspend Proceedings

The CapX 2020 project involves the construction of three new 345kV transmission lines: a segment from Brookings, South Dakota, to Hampton; a segment from Hampton through Rochester to La Crosse, Wisconsin (the subject of this docket); and a segment from Fargo, North Dakota to Alexandria, St. Cloud, and Monticello. On May 20, 2010, No CapX 2020 and U-CAN filed a Motion to Suspend Proceedings in this and the Brookings to Hampton docket. The motion is based on the Applicant's notice of a delay of approximately one vear in the in-service date of the Brookings to Hampton transmission line due to uncertainty regarding the cost allocation methodology to be used by the Midwest Independent Transmission System Operator (MISO). The Applicant filed a response urging denial of the motion on May 24, 2010, contending that MISO cost allocation issues for the Brookings to Hampton segment have no relevance to routing issues in the Hampton to La Crosse segment. In addition, the Applicant contended that the two projects serve distinct needs in distinct geographic areas, and neither is dependent on construction of the other to meet these needs.

² Minn. Stat. 216E.03, subp. 9, provides that a final decision on the request for a route permit shall be made within one year after the commission's determination that an application is complete. In this case, the PUC determined that the application was complete on March 9, 2010. ³ See Transcript of Prehearing Conference at 8-9 (Aug. 9, 2010).

⁴ The Department also anticipates that an EIS being performed by the Rural Utility Service and another being performed by the State of Wisconsin will be completed during May 2011, and the schedule was proposed with this target date in mind. Because these studies are being conducted independently of the route permitting process, however, the deadlines in this contested case hearing are not tied to the completion of either the federal EIS or the Wisconsin EIS.

⁵ The Administrative Law Judge has not included a deadline for submission of public comment on the final EIS, as advocated by No CapX 2020 and U-CAN. The EIS process is conducted by the Commissioner of the Department of Commerce, independently of the route permitting process. And although a ten-day comment period is required under 4410.2800, subp. 2, that rule chapter is not applicable to the preparation or consideration of an EIS for a high-voltage transmission line except as provided in Minn. R. 7850.1000 to 7850.5600. See Minn. R. 7850.2500, subp. 12.

8. The Commission has not acted to suspend proceedings in the Brookings to Hampton docket. In addition, Minn. Stat. § 216E.11 provides that if the construction of a transmission line has not commenced within four years after a permit for the route has been issued, then the utility must certify to the commission that the site or route continues to meet the conditions upon which the route permit was based. Thus, the statute appears to allow for some delay, and there is no evidence that this docket will be affected by it. The motion to suspend proceedings is accordingly DENIED.

Publication of Schedule and Attendance at Public Hearings

- 9. The Department and the Applicant shall jointly develop a notice of hearing specifying the date, time and location of the hearings, for publication no fewer than 10 days and no more than 45 days in advance of the hearing, and shall serve notice as specified in Minn. Stat. § 216E.03, subd. 6 (2008).
- 10. The Applicant and any other party sponsoring witnesses who have prefiled testimony shall have the witnesses available at all of the public/evidentiary hearings in this matter or shall request an exemption under Minn. R. 1405.2000. A knowledgeable person must be available at the hearing to respond to questions where the particular witness is exempted from attending.

Public Comment

11. The comments provided at the public hearings in this matter will be included in the record of these proceedings. In addition to comments provided in person, written public comments that are filed with the Administrative Law Judge on or before 4:30 p.m. on June 30, 2011, will be included. Comments may be filed by U.S. Mail addressed to the Administrative Law Judge or by email addressed to capx.oah@state.mn.us. Please include the phrase "Hampton-Rochester-La Crosse" in the subject line.

Date of Filing, Sending or Receipt

12. Any document that is filed, or is sent to request or in response to a request for discovery, or for any other purpose, after 4:30 p.m. on a business day, on a weekend day or on a Minnesota state holiday shall be considered filed, sent or received on the next business day.

Discovery

13. A party may serve requests for information on any other party. All requests for information shall be made in writing by email, and the requesting party shall follow the email with a copy of the request sent by regular U.S. mail or

⁶ In the Matter of the Route Permit Application by Great River Energy and Xcel Energy for a 345 kV Transmission Line from Brookings County, South Dakota to Hampton, Minnesota, Docket No. ET-2/TL-08-1474.

other delivery service to all parties, unless the party receiving the request agrees to email service only. To the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Chapter 13, an email request is required only between the requesting and responding party. Requests shall be sent to the person(s) designated to receive data requests.

- 14. The responding party shall provide the requested information to the requesting party within ten business days of receipt of the request. In accordance with Minn. R. 1405.0700, the day that the information request is received shall not be counted in the ten-day period.
- 15. Responses to information requests shall be submitted by email, and the responding party shall follow the email with a copy of the response sent by regular U.S. mail or other delivery service, unless the party receiving the response agrees to email service only. To the extent that a response includes material designated as Trade Secret or Nonpublic, an email response is required only between the requesting party and the responding party.
- 16. In the event that due to the volume or nature of information included in a response, the responding party is unable to send the response by email, the responding party shall send the response by facsimile, regular U.S. mail or other delivery service so that the requesting party receives the entire response by the date due, including any material designated as Trade Secret or Nonpublic. Responding parties may utilize CDs to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service.
- 17. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information shall be supplied to each party that requested it.
- 18. A party that wishes to receive email copies of requests or responses shall notify the requesting/responding party, who shall provide the information in that format. If the request or response contains material designated as Trade Secret or Nonpublic information, the providing party may seek a Protective Order in this matter before providing the information.
- 19. In the event the information cannot be supplied within ten business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and agree on a schedule of compliance with the requesting party.
- 20. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the

Administrative Law Judge upon motion of a party. Hearings on such motions may be conducted by telephone conference call.

Prefiled Testimony

- 21. Prefiled testimony shall be marked as an exhibit with the case docket number and offered for admission into the record at the hearing. A hard copy shall be provided for that purpose and, if the document has been previously efiled, the offering party shall provide the unique E-docket identifying number. The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered into evidence at the hearing.
- 22. Prefiled testimony that is amended or not offered into the record shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Except for good cause shown, all revisions or substantive corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three days prior to the commencement of the evidentiary hearing.

Order of Testimony

23. Unless the parties agree otherwise, the order of testimony shall be: the Applicants; intervenors in the order of intervention; and the OES-EFP. Questioning of the witnesses shall proceed in the same order, subject to change by agreement of the parties or further order of the Administrative Law Judge.

Examination of Witnesses

- 24. Witnesses shall be allowed ten minutes to summarize their prefiled testimony. For good cause shown, witnesses will be permitted to respond to any new matters not addressed in prefiled testimony through direct examination.
- 25. Parties shall examine and cross-examine witnesses through their attorneys, if the parties are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.
- 26. Except for good cause shown, objections by any party relative to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, and serves a copy of such objections on the parties, no later than **June 10, 2011.**

Procedure

27. The rules of the Office of Administrative Hearings and Minn. R. 7850.3100 *et seq.*, govern the conduct of the hearings, and the Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

Filing of Documents (Excluding Information Requests and Responses)

- 28. The service list for the contested case proceeding shall be maintained and revised as necessary by the Office of Administrative Hearings.
- 29. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.
- 30. The parties have agreed to file all documents, including prefiled testimony, using the E-Docket system of the Public Utilities Commission, the Department of Commerce and the Office of Administrative Hearings. Such e-filing constitutes service on those offices and upon any other party that has agreed to accept e-filing as service, as specified on the E-service list.
- 31. Documents or exhibits that can not be e-filed shall be mailed by U.S. Mail or delivered to the parties.
- 32. The effective date of filing shall be the date the document is e-filed, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the E-file system must retain the unique document identifier as proof of service through that system. Proof of service shall be filed with each document or within three business days thereafter.
- 33. The original of each document shall also be mailed or delivered to the Administrative Law Judge.
- 34. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission.
- Judge, it shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures may be viewed at www.puc.state.mn.us/PUC/consumers/data-practices/index.html. The party submitting the data may request a Protective Order.

Request for Accommodation

36. No person has requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly if either an accommodation or interpreter is needed.

Dated: September 1, 2010.

KÁTHLĚEN Ď. SHEEHY

Administrative Law Judge



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street Saint Paul, Minnesota 55101

Mailing Address: P.O. Box 64620 St. Paul, Minnesota 55164-0620 Voice: (651) 361-7900 TTY: (651) 361-7878 Fax: (651) 361-7936

September 1, 2010

To All Parties on the Attached Service List

Re: In the Matter of the Application for a Route Permit for the CapX2020 Hampton-Rochester-La Crosse High Voltage Transmission Lines; OAH Docket No. 3-2500-21181-2; PUC No. E-002/TL-09-1448

Dear Parties:

Enclosed herewith and served upon you mail, or by electronic service where indicated, is the Administrative Law Judge's First Prehearing Order in the above-entitled matter.

Sincerely,

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY Administrative Law Judge

Telephone: (651) 361-7848

KDS:nh

Encl.

cc: Docket Coordinator

STATE OF MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS ADMINISTRATIVE LAW SECTION 600 NORTH ROBERT STREET ST. PAUL, MN 55101

CERTIFICATE OF SERVICE

Case Title: In the Matter of the Application for a Route Permit for the CapX2020 Hampton-Rochester-La Crosse High Voltage Transmission Lines

OAH Docket No. 3-2500-21181-2; PUC No. E-002/TL-09-1448

Nancy J. Hansen certifies that on the 1st day of September, 2010, she served a true and correct copy of the attached First Prehearing Order by serving it by U S Mail with postage prepaid, or by electronic service where indicated, addressed to the following individuals:

See attached lists

Service List for: the Application by Xcel Energy for a Route Permit for the Hampton-Rochester-La Crosse 345-kV Transmission Line Project OAH 3-2500-21181-2 Patrick Anderson

Winona Daily News 900 E. 7th St. Apt. 4 Winona, MN 55987

Randall Baartman 6425 85th Street NW Pine Island, MN 55963

Kathy Barnes 4705 7th St. NW Rochester, MN 55901

Joe Bell 57991 190th Avenue Kellogg, MN 55945

Glen Betchee 20011 480th Street Zumbrota, MN 55992

Norris and Eileen Bjorngaard 14710 County 12 Blvd. Zumbrota, MN 55992

Dan Boykin 29918 Heather Lane Cannon Falls, MN 55009

Richard Brubaker 601 Memorial Pkwy. SW Rochester, MN 55902

Richard Busiahn 6695 Cedar Hills Drive Cannon Falls, MN 55009 Craig Affeldt **PCA** 520 Lafayette Road Box 10 St. Paul, MN 55101

David Arndt 21196 510th St Pine Island, MN 55963

Bruce Baker 62739 145th Avenue Kellogg, MN 55945

Floyd Baumler 4138 32nd St SE Rochester, MN 55904

Vivian Benard 22810 Lewiston Blvd. Hampton, MN 55031

William Betcher 1016 Park Street West Cannon Falls, MN 55009

Ricky and Connie Bodeker 6842 338th Street Way Cannon Falls, MN 55009

Rodney Braatz 28389 Henderson Way Randolph, MN 55065

Leo and Deb Buchardt 37465 90th Avenue Cannon Falls, MN 55009

Ken Caseltine 6566 Eldorado Way Cannon Falls, MN 55009 Nathaniel Anderson PO Box 157 12239 County Road 31 NW Pine Island, MN 55963

Marvin Arndt 1106 Frontage Rd. E Pine Island, MN 55963

Ernest Bakke 3694 White Bridge Rd NW Oronoco, MN 55960

Wand and Mark Becker 4914 57th Street NW Rochester, MN 55901

Douglas Benson Minnesota Department of Health 625 North Robert Street St. Paul, MN 55155

Karen and Bret Biorngaard 42380 Highway 52 Blvd. Zambrota, MN 55992

Steven Boss 12033 11th Ave NE Rochester, MN 55906

Art Brooks 8720 75th Avenue NW Oronoco, MN 55960

Bill Budensiek 15065 Sherwood Trail Zumbrota, MN 55992

Mark and Shari Chamberlain 18243 490th Street Pine Island, MN 55963

Virgil Chilson 9599 55th Avenue NW Oronoco, MN 55960 Kermit Christenson 11812 New Haven Road NW Pine Island, MN 55963 Alan Chrysler 33481 57th Street Cannon Falls, MN 55009

Nick Fisher and Cindy Broin 45291 County 1 Blvd. Wanamingo, MN 55983 Becky Coates Professional Service Industries Inc. 2401 Pilot Knob Road Suite 138 Mendota Heights, MN 55120

Mike Collins 12036 11th Avenue NE Rochester, MN 55906

Jen Cullen 2760 North Service Drive Red Wing, MN 55066 Carl Darling La Crescent area property owner 432 Shela Blvd Wheelersburg, OH 45694 Tricia DeBleeckere MN Public Utilities Commission 121 7th Place East Suite 350 St. Paul, MN 55101

Jelle and Marlene Deboef 48689 150th Avenue Pine Island, MN 55963 Kimberly DeFrang 26210 570th St Plainview, MN 55964 Tom DePottey 28630 Dickman Ave Randolph, MN 55065

Julie Devick 11884 14th Avenue NW Oronoco, MN 55960 Kate DeVinny PMDKT 9143 11th Ave NE Rochester, MN 55906

Charles DeWitz 57161 351st. Ave Rochester, MN 55906

Josh DeWitz 12498 980th Street Wanamingo, MN 55983 Douglas Dick 65348 186th Ave Wabasha, MN 55981

Douglas Dick 65348 186th Avenue Wabasha, MN 55981

Mairi Doerr 6863 County 12 Blvd. Kenyon, MN 55946 James Dolan 59611 County Rd. 71 Mazeppa, MN 55956 Karen Doll Pine Island EDA Bos 727 Pine Island, MN 55963

Randall Doneen Minnesota Department of Natural Resources 500 Lafayette Road St. Paul, MN 55155

Marvin Donkers 1165 430th St Nerstrand, MN 55053 Melissa Driscoll 46544 70th Avenue Kenyon, MN 55946

Wade DuMond Nature Energies 52557 265th Avenue Pine Island, MN 55963

Mike Dunlap 1000 24th Avenue N.W. Austin, MN 55912 Helen Durgin 2094 555th Street Plainview, MN 55564

James Edlund 34230 Serendipity Road Cannon Falls, MN 55009 David Egger 890 Balsam Court Pine Island, MN 55963 Gerald Ellefour 11333 65th Avenue NW Oronoco, MN 55960 Nancy Ellison 15775 Hwy 60 Blvd. Zumbrota, MN 55992 Greg Endres 6256 256th St Hampton, MN 55031 Tom and Sharon Endres 6228 250th St. E Hampton, MN 55031

Pat Endus 5981 222nd Street East Hampton, MN 55031 Robert Enedy 23076 Lewiston Blvd Hampton, MN 55031 Jim Esser 46633 170th Avenue Zumbrota, MN 55992

Thomas Feils 57242 198th Ave Kellogg, MN 55945 Laurie Felton PO Box 278 Cannon Falls, MN 55009 Quin Feuerstin 13426 Power Dam Road NW Oronoco, MN 55960

David Fick 1008 Harvest Way Lake City, MN 55964 Joel Flemhe 49058 180th Avenue Pine Island, MN 55963 Jeff Freeman Employee and Economic Development 1st National Bank Building 332 Minnesota Street St. Paul, MN 55101

Bob-Freund 520 19th Street NW Rochester, MN 55901 Daniel and Annette Fritz 922 7th Avenue Wanamingo, MN 55983 Steve Gan 59178 411th Avenue Mazeppa, MN 55956

Travis Germundson BWSR 520 Lafayette Road St. Paul, MN 55155

Charles Goplen 17289 490th Street Zumbrota, MN 55992 Kelvin Grabau 12015 County Road 31 NW Pine Island, MN 55963

Mary Greening Dodge County Environmental Services 22 6 St E Dept 123 Mantorville, MN 55955

Brad Grimes 325 N. 2nd Street Cannon Falls, MN 55009 Zachary Grove 16016 445th Street Zumbrota, MN 55992

Brad Grover 47504 195th Avenue Zumbrota, MN 55992 Floyd Guajardo PennWell Corporation 1455 West Loop South Suite 400 Houston, TX 77027

Tanya Gytri – mail returned Dirk Niles – email n/a

Stephen Hackman 39919 430th Avenue Mazeppa, MN 55956 Steve and Val Rae Haggstrom 36915 Hwy 52 Blvd. Cannon Falls, MN 55009 Karen Hammell Attorney General's Office 445 Minnesota Street Suite 900 St. Paul, MN 55101

Sheila Hanson PO Box 9018 Grand Forks, ND 58202 Richard Hareldson 11073 14th Avenue NW Oronoco, MN 55960 Regina Harris 3639 310th Street Cannon Falls, MN 55009 Jim Hedlund 9451 105th Street NW Pine Island, MN 55963 Don Heller 9019 60th Avenue NW Pine Island, MN 55963 Michele Hemphill 22980 Lewiston Blvd. Hampton, MN 55031

Gerald and Ann Hesley 8601 County Rd 3 NW Oronoco, MN 55960 Carolyn Hiller 8125 75th Avenue NW Oronoco, MN 55960 Victoria Hirschboeck USFWS Trempealeau NWR W28488 Refuge Rd Trempealeau, WI 54661

Donna and Ned Hochberger 8048 75th Avenue N.W. Oronoco, MN 55960 Jacalyn Hoey 26360 Goodwin Ave. Randolph, MN 55065 Kenneth Hoey 26360 Goodwin Avenue East Randolph, MN 55065

Paul and Mary Honermann 58976 415th Avenue Mazeppa, MN 55956 Gale Hoven 49500 130th Avenue Wanamingo, MN 55983 Rick Howden Rep. Tim Walz 227 E Main Street Suite 220 Mankato, MN 56001

Ronald Hunt 15873 440th St Zumbrota, MN 55992 Robert Hutton Minnesota Dept of Transportation District 6 2900 48th Street NW Rochester, MN 55901

Bob Hutton 2900 48th Street NW Rochester, MN 55901

Robin Hvidston 6562 Alpha Road Princeton, MN 55371 Jeremy Irrthum 7954 260th Street East Randolph, MN 55065 Darrell Ista 24500 Rochester Blvd. Hampton, MN 55031

John Ista 1512 320th Street Northfield, MN 55057 Marc Jackson 5728 100th Street NW Oronoco, MN 5555960 Neil Jonas PO Box 6151 Rochester, MN 55903

Dustin Kass Winona Daily News 902 E. Second St. Suite 110 Winona, MN 55987

Kevin Kastler Steeplechase Ski Area 59225 County Road 71 Mazeppa, MN 55956

Marilyn Kastler 59206 423rd Avenue Mazeppa, MN 55956

Beau Kennedy PO Box 132 Goodhue, MN 55027 Daniel King City of Zumbrota 175 West Avenue Zumbrota, MN 55992

Jenny King 19344 480th Street Zumbrota, MN 55992

Dennis Kinsley 11243 Hwy 63 NE Rochester, MN 55906 Lorry Kispert 50669 20th Ave. Kenyon, MN 55946 David Klingsporn 51350 230th Ave. Pine Island, MN 55963 John Koepsell County Road 27 Plainview, MN 55964 Kevin Kolbe 9340 Starting Gate Court Wilton, CA 95693 Stacy Kotch Minnesota Department of Transportation 395 John Ireland Blvd Mailstop 678 St. Paul, MN 55155

Harley and Diane Krause 49684 180th Ave Pine Island, MN 55963 Laura and Dennis Kreofsky 58691 185th Ave Kellogg, MN 55945 Jim and Bonnie Kronenberger 7623 360th St Way Cannon Falls, MN 55009

Carol Krueger 17979 490th Street Pine Island, MN 55963 Brenda Kukson 12883 New Haven Rd. Pine Island, MN 55963 Brian and Brenda Lamonica 55223 310th Ave Elgin, MN 55932

James Larson 8625 Upper 209th St. W. Lakeville, MN 55044 James Li 2397 Transit Court SW Rochester, MN 55902 Dean Lindeman 30596 Oxford Mill Road Cannon Falls, MN 55009

Gerald Liotta 5075 260th Street East Randolph, MN 55065 Scott and Erin Logan 17004 420th Street Zumbrota, MN 55992 Richard Loken 601 2nd Avenue Wanamingo, MN 55983

Jose Lopez 5908 303rd Street Way Cannon Falls, MN 55009 Sherry Lorenz Village of Cochrane PO Box 222 102 E 5th St Cochrane, MN 54622

Gary Luebke 3450 Cromwell Trail Rosemount, MN 55068

Wayne Lystrom 476728 135th Avenue Zumbrota, MN 55992 Tim Mack 46070 County 10 Blvd Zumbrota, MN 55002 Brenda and Eldon Malwitz 10852 40th Ave NE Elgin, MN 55932

Carl Mancilman 12408 County Road 31 Pine Island, MN 55963 David and June McCann 55743 299th Avenue Millville, MN 55957 Jim McNamara 50464 195 Ave Pine Island, MN 55963

Paul Melhouse 35860 75th Avenue Way Cannon Falls, MN 55009 Dean Michel 56501 Hwy 63 Zumbro Falls, MN 55991 Allen Mickou 4035 Baffin Lane NE Rochester, MN 55906

Howard Midje 36885 County 24 Blvd. Dennison, MN 55018 John Miller 31090 55th Avenue Cannon Falls, MN 55009 Norman Miller 22339 510th St Pine Island, MN 55963 Rebecca Miller 22339 510th Street Pine Island, MN 55963 Lynette Miller 22199 520th Street Pine Island, MN 55963 Chris Miller Mississippi River Parkway Commission of MN 300 33rd Avenue South Suite 101 Waite Park, MN 56387

Andrea Moffatt

Donald Millering 6130 100th ST NW Pine Island, MN 55963 Thomas Millering PO Box 116 Pine Island, MN 55963 WSB 701 Xenia Ave Suite 300 Golden Valley, MN 55416

Juanita Morris 20581 490th Street Pine Island, MN 55963 John Navratil 10010 125th St NW Pine Island, MN 55963 Laurence Nielsen 21112 Blaine Avenue East Farmington, MN 55024

Therese Zink 48490 195th Avenue Zumbrota, MN 55992 Rochelle Nygaard 12110-355th Street Goodhue, MN 55027 John O"Brien 8484 60 Ave. NW Oronoco, MN 55960

Nels Oberg 50655 220th Avenue Pine Island, MN 55963 Jason Ohman 1485 White Bridge Road NE Rochester, MN 55906 Larry and Pauline Olson 9300 County 9 Blvd. Cannon Falls, MN 55009

Ken Olson 24614 530th Street Pine Island, MN 55963 Jason Ottman 1485 White Bridge Road Rochester, MN 55906 Donna Otto 25625 Hogan Hampton, MN 55031

Carol Overland Overland Law Office P.O. Box 176 Red Wing, MN 55066

Christopher Owens 5418 Weatherstone Dr NW Rochester, MN 55901 Vernetta and Harlen Pahl 206 NE 1st Avenue Pine Island, MN 55963

Bob Patton Minnesota Department of Agriculture 625 Robert St. N. St. Paul, MN 55155

Phil and Colleen Pawlenty 33034 58th Avenue Path Cannon Falls, MN 55009 Leon Plantz 7615 60th Avenue N.W. Oronoco, MN 55960

Steve Pleschourt 9324 50th Avenue NW Pine Island, MN 55963 Roger Poole 23637 510th St Pine Island, MN 55963 Barbara Prigge 6021 100th Street NW Pine Island, MN 55963

Duane Prinzing PO Box 86 Randolph, MN 55065 Harold Radtke PO Box 218 Pine Island, MN 55963 Dean Regnier CETF 59363 Cty Rd 71 Mazeppa, MN 55956 Suzanne Rohlfing 2310 15th Ave NW Rochester, MN 55901

Dale Rohlfing 2310 15th Ave NW Rochester, MN 55901 Lisa Romball 36693 Old Horner Road Winona, MN 55987

Jeff Rosburg 4700 130th Street NW Mazeppa, MN 55956 Jennie Ross Department of Transportation 395 John Ireland Blvd Mail Stop 620 St. Paul, MN 55155

Connie and Dan Rude 44781 165th Avenue Zumbrota, MN 55992

Ray Salvo 8745 75th Avenue NW Oronoco, MN 55960 Andy and Michelle Sandstrom 30127 59th Ave Way Cannon Falls, MN 55009 Lowell Scheffler 49862 240th Ave Way Mazeppa, MN 55956

Jack Schlichting 32207 County 24 Blvd. Cannon Falls, MN 55009 Debra Schliep 48383 Hwy 52 Blvd. Zumbrota, MN 55992 Mark Schluther 1731 West Center Street Oronoco, MN 55960

Steve Schneider 420 6th Avenue NE Plainview, MN 55964 Leah Schoenfelder 7645 Aldrich Avenue South Richfield, MN 55423 James Schreader 48325 240th Avenue Mazeppa, MN 55956

Jamie Schrenzel MDNR 500 Lafayette Road Box 25 St. Paul, MN 55155

Dawn Schultz PO Box 8 Eau Claire, WI 54702 Charles Schwartzhoff 1350 S Frontage Rd. Hastings, MN 55033

Karen Carnel Schwengels Trustee of the Robert J Carnel Trust PR of the estate of Irene Carnel N 8244 Ashberry Avenue Fond du Lac, WI 54937

Barb Scott 13018 County Road 31 NW Pine Island, MN 55963 Louise Segroves Barr Engineering 4700 W. 77th St Minneapolis, MN 55435

Heidi Sems 9585 55th Ave NW Oronoco, MN 55960 Richard Siem 3038 125th Street NE Rochester, MN 55906 Dick and Heidi Smith 1340 Slalom Ball Lane SW Pine Island, MN 55963

Rod Sommerfield 48718 240th Avenue Mazeppa, MN 55956 Greg Soule 2915 345th Street Dennison, MN 55018 Jon Steberg 44510 140th Avenue Way Zumbrota, MN 55992

Mike Steffes 35044 568th Street Rochester, MN 55906 Rod Steggerda 7611 60th Avenue NW Oronoco, MN 55960 Rob Steggerna 764 60th Avenue NW Oronoco, MN 55960 David and Carol Steichen 6052 Werk Rd. Cincinnati, OH 45248 Eric Strop 9200 Cty Rd 3 NW Oronoco, MN 55960 Tony Sullins USFWS 4101 American Blvd. E Bloomington, MN 55425

Roy Terry 57174 205 AV Plainview, MN 55964 Ed Terry 57174 205th Avenue Plainview, MN 55964 Mike Thedens 4313 Hwy 247 NE Elgin, MN 55932

David Theel 10852 40th Avenue NE Millville, MN 55957 Duane Tiede 6s521 Sussex Rd. Naperville, IL 60540 John Tiedeman 11048 25th Avenue NW Oronoco, MN 55960

Rita Tollefsrud 2847 Viola Heights N.E. Rochester, MN 55906 Arnold Tri 235 East 12th Street Zumbrota, MN 55992 Todd Underdahl 23118 Lewiston Blvd Hampton, MN 55031

Sue Vance 10283 280th Street Cannon Falls, MN 55009 Mary and Dennis Veiseth Mary Loken Veiseth LLC 43703 165th Avenue Zumbrota, MN 55992

Sara Walch 9525 40th Avenue NE Elgin, MN 55932

Pat Walter 312 County 11 Blvd. NW Pne Island, MN 55963 Stephen Walters 11637 County Road 31 NW Oronoco, MN 55960 Rob Weber 15788 Sherwood Trail Zumbrota, MN 55992

George and Geri Weinhandl 6315 250th Street East Hampton, MN 55031 Bob Wernimont Syngenta Seeds 317 330th Street Stanton, MN 55018

Chris Wheatly 39270 590th Zumbro Falls, MN 55991

Sheronne Whipple 12005 Hwy 63 North Rochester, MN 55906 Angela Wieland 22544 Lewiston Blvd Hampton, MN 55031 Roland Wood 22060 County Road 27 Plainview, MN 55964

Herb Wurst 615 7th Avenue NW Plainview, MN 55964 Kraig Wurst 27547 County Road 29 Plainview, MN 55964 Thomas Wytaske 810 - 5th Street SW Pine Island, MN 55963

Bruce Yotten 49997 Hwy 52 Blvd. Pine Island, MN 55963 Trina Zieman MN DNR 1200 Warner Road St. Paul, MN 55106

Diana Zimmerman 9485 85th Street NW Pine Island, MN 55963 Lisa M. Agrimonti Attorney at Law Briggs and Morgan, PA 2200 IDS Center 80 South Eighth Street Minneapolis, MN 55402

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Last Name	Flist Name	Email	Company Name	Delivery Method	View Trade Secret
Anderson	Julia	Julia.Anderson@state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
DeBleeckere	Patricia Patricia	tricia.debleeckere@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	Yes
Haar had	Burl W.	burl haar@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Hammel	Karen Finstad	Karen.Hammel@state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Langan	Matthew	matthew.langan@state.mn.us	Office of Energy Security	Electronic Service	Yes
Lindell	John	agorud.ecf@state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
Schlatter	Laura	Laura.Schlatter@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes
Seykora	David	dave.seykora@state.mn.us	MN Department of Transportation	Electronic Service	Yes
Shaddix Elling	Janet	jshaddix@janetshaddix.com	Shaddix And Associates	Electronic Service	Yes

Paper Service Member(s)

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