



**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

**COMMENTS AND RECOMMENDATIONS OF THE MINNESOTA OFFICE OF ENERGY SECURITY ENERGY FACILITY PERMITTING STAFF**

**DOCKET NO. ET2/TL-08-1474**

**Meeting Date:** July 13 and 15, 2010.....Agenda Item #2

**Company:** Great River Energy and Xcel Energy

**Docket No:** ET2/TL-08-1474

**In the Matter of the Route Permit Application for a 345 kV Transmission Line from Brookings County, South Dakota to Hampton, Minnesota.**

**Issue(s):** Should the Minnesota Public Utilities Commission find that the environmental impact statement and the record adequately address the issues identified in the scoping decision? Should the Minnesota Public Utilities Commission issue a route permit identifying a specific route and permit conditions for the proposed Brookings to Hampton 345 kV transmission line project?

Energy Facility Permitting Staff..... Scott E. Ek

**RELEVANT DOCUMENTS**

- Route Permit Application ..... December 29, 2008
- Scoping Decision Document..... June 30, 2009
- Draft Environmental Impact Statement .....October 20, 2009
- Final Environmental Impact Statement ..... January 26, 2010
- Administrative Law Judge, Findings of Fact, Conclusion, and Recommendation.... April 22, 2010
- Exceptions of NO CAPX2020 and United Citizens Action Network ..... May 7, 2010
- Theresa Ruhland letter ..... May 5, 2010

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Mark Katzenmeyer letter .....	May 7, 2010
Bimeda, Inc. letter.....	May 6, 2010
U.S. Fish and Wildlife Service letter .....	June 10, 2010

## DOCUMENTS ATTACHED

Findings of Fact, Conclusions of Law, and Order  
High-Voltage Transmission Line Route Permit  
Overview Map – Applicants’ Preferred and Alternate Route  
Overview Map – Applicants’ Modified Preferred and Crossover Routes  
Overview Map – Permitted Route  
Brookings-Hampton Route Maps  
Table 1 – Alternative Crossover/Crossover and North-South Connector Summary  
Figure - Crossover Routes  
Figure - North/South Connectors

*Note:* Relevant documents and additional information can be found on eDockets (Docket No. 08-1474) <https://www.edockets.state.mn.us/EFiling/search.jsp> or the Commission’s Energy Facilities Siting and Routing website at: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=19860>.

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## I. STATEMENT OF THE ISSUES

Should the Commission find that the environmental impact statement is adequate? Minn. R. 7850.1500, subp. 10, requires that an EIS must: A) address the issues and alternatives raised in scoping to a reasonable extent considering the availability of information and the time limitations for considering the permit application; B) provide responses to the timely substantive comments received during the draft environmental impact statement review process; and C) was prepared in compliance with the procedures in parts 7850.1000 to 7850.5600. Should the Commission issue a route permit identifying a specific route and permit conditions for the proposed Brookings to Hampton 345 kV transmission line project?

Route options include:

- The Modified Preferred Route, with an aerial crossing of the Minnesota River at Le Sueur, modified further by Alternative 6P-06 between Lake Marion and Hampton (the administrative law judge's (ALJ) first choice)
- The Modified Preferred Route, modified further by Alternative 6P-06, and modified further by the Crossover/Alternative Route between Sibley County and the Helena Substation, with an aerial crossing of the Minnesota River at Belle Plaine (the ALJ's second choice)

- The Modified Preferred Route, modified further by Alternative 6P-06, and modified further by the North-South Connector Example 2/Alternative Route between Sibley County and the Helena Substation, with an aerial crossing of the Minnesota River at Belle Plaine (EFP Alternative Crossover Route)

## II. INTRODUCTION

Great River Energy and Xcel Energy (applicants) filed a route permit application under the full permitting process on December 29, 2008, for approximately 237 miles of new 345 kV transmission line and associated facilities between the existing Brookings County Substation near White, South Dakota, and a newly proposed substation near Hampton, Minnesota.<sup>1</sup>

### A. Project Description

The applicants identified a preferred and an alternate route in their route permit application. The two routes would both begin in Minnesota at the state's western border near Hendricks, Minnesota and cross a portion of the following counties: Lincoln, Lyon, Yellow Medicine, Chippewa, Redwood, Brown, Renville, Sibley, Le Sueur, Scott, and Dakota.

### B. Applicants Preferred and Alternate Routes

The preferred and alternate routes are approximately 237 and 262 miles in length, respectively, and would be constructed between (1) the existing Brookings County Substation near White, South Dakota, and a new Hampton Substation near Hampton, Minnesota, and (2) the Lyon County Substation near Marshall, Minnesota; and the Minnesota Valley Substation near Granite Falls, Minnesota.

The applicants' proposed and alternate routes can each be divided into six segments as described below and depicted in the attached figure *Applicants' Preferred and Alternate Routes*.

#### 1. Brookings County Substation to Lyon County Substation

The transmission line would originate at the Brookings County Substation, near White, South Dakota, and extend approximately four to eight miles to the Minnesota border. Minnesota permitting authority would begin as this segment crosses the Minnesota border passing through Lincoln and Lyon counties for approximately 50 miles to the existing Lyon County Substation near Marshall, Minnesota. This segment would be constructed and operated as a 345 kV single-circuit on double-circuit structures.

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<sup>1</sup> Ex. 2 (Application)

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2. Lyon County Substation to Hazel Creek Substation to Minnesota Valley Substation

This segment is approximately 29 to 34 miles long and would pass through Lyon, Yellow Medicine, and Chippewa counties, and would replace the existing Lyon County to Minnesota Valley 115 kV transmission line. This segment would also be constructed and operated as a 345 kV single-circuit on double-circuit structures, with the exception of the segment of transmission line running from the newly proposed Hazel Creek Substation to the existing Minnesota Valley Substation, which would initially be operated at 230 kV.

3. Lyon County Substation to Cedar Mountain Substation

This segment is approximately 51 to 53 miles long and would pass through Lyon, Redwood, Brown, and Renville counties. This segment would be constructed and operated as a double-circuit 345 kV, that is, two 345 kV circuits strung on one double-circuit structure.

4. Cedar Mountain Substation to Helena Substation

This segment is approximately 62 to 74 miles long and would pass through Renville, Sibley, Le Sueur, and Scott counties. This segment would also be constructed and operated as a double-circuit 345 kV.

5. Helena Substation to Lake Marion Substation

Passing through Le Sueur, Rice, and Scott counties, this section is approximately 26 to 31 miles in length. Similar to the first two segments this stretch of the route would also be constructed and operated as a 345 kV single-circuit on double-circuit structures.

6. Lake Marion Substation to Hampton Substation

This segment would connect the Lake Marion Substation to the final termination point, the newly proposed Hampton Substation. This segment is approximately 18 to 24 miles in length and would pass through Scott and Dakota counties. This route segment would be constructed and operated as a 345 kV single-circuit on double-circuit structures.

**C. Substations**

The proposal also includes the construction of four new substations and the expansion of three existing substations. New substations include a Hazel Creek Substation near Granite Falls, Minnesota; a Helena Substation near New Prague, Minnesota; a Cedar Mountain Substation near Franklin, Minnesota; and a Hampton Substation near Hampton, Minnesota. Existing substations include the Lyon County Substation near Marshall; the Minnesota Valley Substation in Granite Falls, and Lake Marion Substation just north of Elko/New Market.

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## **D. Transmission System Interconnections**

As part of the proposed project, transmission system interconnections would be constructed between the proposed Cedar Mountain Substation and the existing Minnesota Valley – Franklin – New Ulm 115 kV transmission line; the proposed Helena Substation and the existing Wilmarth – Blue Lake 345 kV transmission line; and the proposed Hampton Substation and the existing Prairie Island – Blue Lake 345 kV transmission line.

## **E. Route Width**

As indicated in the route permit application, the applicants are requesting a 1,000 foot wide route width for the majority of the project. In areas where new and existing substations are proposed, along with five other route locations, the applicants are requesting a 1.25-mile wide route width to facilitate system interconnection and/or address river crossing areas and environmental and land use concerns.

## **F. Right-of-Way Width**

The applicants propose using single structure steel poles which would require a 150-foot right-of-way for the majority of the route. A 100-foot right-of-way would be required for the route segment connecting to the Cedar Mountain substation near Franklin, Minnesota. There may be some limited situations along the route where specialty structures (H-frames or triple-circuit structures) may be needed, and a right-of-way up to 180 feet would be required in these instances.

## **III. REGULATORY PROCESS AND PROCEDURES**

In Minnesota, no person may construct a high-voltage transmission line without a route permit from the Commission Minn. Stat. § 216E.03, subd. 2. A high-voltage transmission line is defined as a conductor of electric energy designed for and capable of operation at a voltage of 100 kV or more and is greater than 1,500 feet in length Minn. Stat. § 216E.01, subd. 4. The project as proposed would consist of between 237 to 262 miles of new 345 kV transmission line thereby requiring a high-voltage transmission line route permit from the Commission.

In addition, because the proposed transmission line capacity would be greater than 200 kV and more than 1,500 feet in length, a certificate of need is required under Minn. Stat. § 216B.2421. A certificate of need application for this project was filed separately by Great River Energy and Xcel Energy on August 16, 2007, and the Commission issued an order granting a certificate of need for the project on May 22, 2009 (Docket No. ET-2, E-002, et al./CN-06-1115).

## **A. Route Permit Application and Acceptance**

Route permit applications must provide specific information about the proposed project including, but not limited to, applicant information, route description, environmental impacts, alternatives, and mitigation measures. Minn. R. 7850.1900.

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The Commission may accept an application as complete, reject an application and require additional information to be submitted, or accept an application as complete upon filing of supplemental information. Minn. R. 7850.2000.

On January 29, 2009, the Commission issued an Order accepting the Brookings to Hampton route permit application as complete and authorized the OES staff to:

- process the application under the full permitting process in Minnesota Rules 7850.1700 to 7850.2700;
- name a public advisor in this case; and
- establish an advisory task force or task forces and develop a structure and charge for them.

### **B. Advisory Task Forces**

The Commission authorized Energy Facility Permitting (EFP) staff to establish an advisory task force (ATF) or task forces and develop a structure and charge for them.

EFP staff, in accordance with Minnesota Statute 216E.08, subdivision 1, established a total of two geographically-based ATFs, the Lake Marion to Hampton ATF and the Minnesota River Crossings to New Prague ATF. Staff also sent letters to 75 local governmental units west of the Minnesota River at Henderson/Belle Plaine requesting assistance in assessing the need for an ATF in their respective communities. Of the 75 letters sent out, only 12 local government units (LGU) responded; eight of the LGUs declined an ATF; two LGUs requested an ATF and one LGU thought an ATF might help. Due to the lack of response EFP staff determined there was insufficient interest in establishing an ATF(s) in areas west of the Minnesota River.

The two established ATFs were each charged with: (1) identifying local site or route specific impacts and issues of local concern, and (2) identifying alternative transmission line routes or substation locations in their respective area of concern that may maximize positive impacts and minimize or avoid negative impacts of the project. The ATFs each met three times between March and April 2009. ATF meetings were open to the public with a designated comment period during each meeting. A final report summarizing their activities and their conclusions and recommendations was issued for each ATF and the ATF reports were incorporated by reference into the scoping decision document. The final ATF reports along with meeting notes and supporting materials for all meetings were also made publicly available on the Commission's Energy Facilities website. The environmental impact statement (EIS) scoping decision document included recommendations of the ATFs.

### **C. Public Information/EIS Scoping Meetings**

Twelve public information/EIS scoping meetings were conducted by EFP staff between March 30 to April 9, 2009, at nine different locations that included the cities of Marshall, Hendricks, Granite Falls, Redwood Falls, Gaylord, Henderson, New Prague, Lakeville, and Cannon Falls. Approximately 1,065 people attended the 12 public meetings, according to the meeting sign-in sheets.

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The scoping meetings provided the public an opportunity to learn about the proposed project and the route permitting process, review the route permit application, ask questions and submit comments. A court reporter was present at each of the public meetings to transcribe questions asked and comments made by the public as well as responses from EFP staff and the applicants.

A public comment period, ending on April 30, 2009, provided the public an additional opportunity to submit comments and alternative routes to be considered for the scope of the EIS. A total of 999 comments were received by the close of the comment period which included 801 written or emailed comments and 198 oral comments from the public scoping meetings. There was also approximately 827 form letter/postcards from the Watt Munisotaram Temple indicating opposition to the line near their Temple.

EFP staff reviewed all comments received and determined that it was reasonable to evaluate 47 alternative route segments and 26 alignment alternatives. The Director of the OES issued the scoping decision on June 30, 2009. Upon further refinement while preparing the DEIS, four additional alternative route segments were identified, increasing the number of alternative route segments to 51 and five of the alignment alternatives were found to be duplicates, thus reducing the alignment alternatives to 21.

#### **D. Draft EIS Public Meetings**

On October 20, 2009, EFP staff released the draft EIS (DEIS). EFP staff conducted ten public meetings in six different locations along the length of the proposed project in order to provide an opportunity for the public to comment on the DEIS. A public comment period beginning on October 20, 2009, and ending on November 30, 2009, provided the public an additional opportunity to submit comments on the DEIS.

A total of 272 written and oral comments were received during the meetings and comment period. EFP staff considered and responded to all comments. Responses to comments received are included in the final EIS (FEIS) that was issued on January 26, 2010.

#### **E. Public Hearings**

Applications for high-voltage transmission line route permits under the full permitting process require a public contested-case hearing upon completion of the DEIS pursuant to Minnesota Rule 7850.2600. In its February 5, 2009 Order, the Commission referred the docket to the Office of Administrative Hearings (OAH) for a contested case hearing.

A total of 17 public hearings in eight different locations along the proposed project were held in November and December 2009. Evidentiary hearings were held between December 15 to 18, 2009, at the Commission's Large Hearing Room in St. Paul, Minnesota. All of the public hearings and evidentiary hearings were presided over by Judge Richard Luis, an administrative law judge (ALJ) with the OAH. The hearings provided members of the public an opportunity to speak at the hearings, present evidence, ask questions, and submit comments to the ALJ. Judge Luis accepted written and emailed comments starting on the first day of the public hearings and ending on February 8, 2010.

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## **F. Standards for Permit Issuance**

The Power Plant Siting Act sets standards and criteria and outlines the factors to be considered in determining whether to issue a permit for a high-voltage transmission line. Minn. Stat. §§ 216E.03 and 216E.04. See also Minn. R. 7850.4000. Minnesota Statute § 216E.03 also allows the Commission to place conditions on high-voltage transmission line permits. *See also* Minn. R. 7850.4600.

One of the considerations noted in Minn. Stat. 216E.03, subd. 7 (b) (12), is that the Commission's designation of routes shall be guided by "when appropriate, consideration of problems raised by other state and federal agencies and local entities."

In addition, Minn. Stat. 216E.10, subd. 3 (a), requires that state agencies with authority to issue permits for high voltage transmission lines must participate in the Commission's and must clearly state whether a route being considered for designation will be in compliance with state agency standards, rules, or policies.

State and federal agencies raised several issues and concerns in this docket for Commission consideration. These include Minnesota Department of Transportation's concerns with route segments along I-35 and Highways 169 and 52, and U.S. Fish and Wildlife Service's (USFWS) indication that granting an incidental take permit under the federal Bald and Golden Eagle Protection Act for a aerial crossing of the Minnesota River at Le Sueur is unlikely.

## **IV. ADMINISTRATIVE LAW JUDGE'S REPORT**

The ALJ released his Findings of Fact, Conclusions, and Recommendation (ALJ Report) on April 22, 2010.<sup>2</sup> The ALJ Report addresses transmission line siting for the applicants' high-voltage transmission line route permit for the proposed Brookings to Hampton 345 kV transmission line project, and makes recommendations regarding the adequacy of the FEIS. The ALJ's report consists of three recommendations, 565 findings of fact, and 16 conclusions.

### **A. ALJ Recommendations**

The ALJ made the following recommendations:

1. That the Commission determine that all relevant statutory and rule criteria necessary to obtain a Route Permit have been satisfied and that there are no statutory or other requirements that preclude granting a Route Permit based on the record.
2. That the Commission grant a Route Permit to Applicants on behalf of themselves and the participating CapX2020 utilities for the facilities described below, to the effect of authorizing:

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<sup>2</sup> Administrative Law Judge. *Findings of Fact, Conclusions, and Recommendation* ("ALJ Report") at 50, filed 04/22/10, Doc. Id. 20104-49478-01 and 20104-49902-01.

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- A. For the 345 kV transmission line between Brookings to Hampton and Associated Facilities,
- (1) The Modified Preferred Route, with an aerial crossing of the Minnesota River at Le Sueur, modified further by Alternative 6P-06 between Lake Marion and Hampton;
  - (1a) If the Modified Preferred Route adjusted by Alternative 6P-06 is not granted a Permit, the ALJ recommends granting of a Route Permit for the Modified Preferred Route, modified further by Alternative 6P-06, and modified further by the Crossover/Alternate Route between Sibley County and the Helena Substation, with an aerial crossing of the Minnesota River at Belle Plaine;
  - (2) A route width of 600 feet except for those locations identified in Applicants' Proposed Findings where Applicants are requesting a route width of 1,000 feet or up to 1.25 miles;
  - (3) Construction of four new substations (Hazel Creek Substation, Cedar Mountain Substation, Helena Substation, and Hampton Substation) at the substation sites identified in the Application;
  - (4) Modifications and additions to four existing substations (Brookings County Substation, Lyon County Substation, Minnesota Valley Substation, and Lake Marion Substation) to accommodate the new transmission line facilities;
  - (5) A short transmission line connector between the existing Wilmarth – Blue Lake 345 kV line and the new Helena Substation; and
  - (6) A short transmission line connector between the existing Prairie Island – Blue Lake 345 kV line and the new Hampton Substation.
- B. For the 115 kV transmission line between Cedar Mountain Substation and Franklin Substation,
- (1) The Revised Cedar Mountain 115 kV Route as shown on Attachment 7;
  - (2) A route width of 4,225 feet; and
  - (3) Expansion of and modifications to the Franklin Substation to accommodate the new 115 kV transmission line facilities.
3. That Applicants be required to take those actions necessary to implement the Commission's Orders in this proceeding.

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The ALJ Report includes Attachment 1, which accurately summarizes the comments made at the public hearings and the written comments that are a part of the record, and indicates that the permitting process has been conducted in accordance with Minnesota Statutes Chapter 216E and Minnesota Rules Chapter 7850, identifies route impacts and mitigation measures, and draws conclusions based on the record.

The ALJ Report also presents findings of fact for each of the decision criteria under Minn. Rules 7850.4100. The Commission may accept or reject the ALJ recommendations. The ALJ recommendations have no legal effect unless expressly adopted by the Commission in its final order. If the Commission wishes to adopt findings that are not consistent with the ALJ findings, it must explain its reasons for so doing.

EFP staff addresses the ALJ's recommendations in Section V. below, specifically making alternative recommendations to the ALJ's recommendations 2.A(1), (1a), and (2).

## **B. Description of Modified Preferred Route**

Applicants filed Direct Testimony and Schedules of Mr. Craig Poorker prior to the start of the public hearings, which identified Applicants' modifications to the Preferred Route.<sup>3</sup> Applicants' Modified Preferred Route is the result of their evaluation of the various route and segment alternatives included in the DEIS. Based upon their review and analysis of the various route and segment alternatives proposed in the DEIS,<sup>4</sup> Applicants identified four route modifications acceptable to them and incorporated such into the initially proposed Preferred Route to develop the Modified Preferred Route.<sup>5</sup>

Thus, the Modified Preferred Route is the Preferred Route<sup>6</sup> as modified by the following<sup>7</sup>:

- DEIS Alternative Route Segment 3P-06 in Underwood Township, Redwood County. The Modified Preferred Route leaves the Preferred Route and heads south between sections 35 and 36 until it comes to the north side of State Highway 19. The Modified Preferred Route continues east for one mile until it joins the Preferred Route at the junction of County Highway 5 and County Highway 12.<sup>8</sup>
- DEIS Alternative Route Segment 3P-04 in Eden Township in Brown County is approximately 0.5 mile north of 320th Street, where the Modified Preferred Route heads east along the half section line of Section 7 for one mile.
- The Modified Preferred Route turns north on 330th Avenue for approximately one mile and turns east on the half section line of Section 5. The Modified Preferred Route then turns north on 327th Avenue for 0.5 mile where it rejoins the Preferred Route.<sup>9</sup>

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<sup>3</sup> Ex. 102 at p. 15 (Poorker Direct).

<sup>4</sup> Ex. 23 (DEIS)

<sup>5</sup> Ex. 102 at p. 15 (Poorker Direct).

<sup>6</sup> ALJ Report at pp. 56-64.

<sup>7</sup> See attached figure *Applicants Modified Preferred and Crossover Routes*.

<sup>8</sup> ALJ Report at 57.

<sup>9</sup> ALJ Report at 58.

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- DEIS Alternative Route Segment 5P-02<sup>10</sup> is located between the Helena Substation and the Lake Marion Substation at the intersection of Aberdeen Avenue and 270th Street. The Modified Preferred Route continues east for one mile to Delmar Avenue. At Delmar Avenue, the Modified Preferred Route continues north one mile until it joins the Preferred Route at 260th Street.<sup>11</sup>
  - The fourth modification is along the South Dakota border south of Hendricks, Minnesota, along 290<sup>th</sup> Street in Hendricks Township. The Modified Preferred Route includes an approximately 2.15-mile route segment along 290<sup>th</sup> Street just south of Highway 19, where it crosses into South Dakota. The route segment includes 290<sup>th</sup> Street where it turns south for approximately 600 feet on the Minnesota border (this road becomes 201<sup>st</sup> Street in South Dakota). The route width in this area is proposed to be 1.1 miles.<sup>12</sup>

The applicants also developed two alignment modifications and a route width modification, which were incorporated into the Modified Preferred Route.<sup>13</sup>

- The alignment of the Preferred Route centerline at the Le Sueur Minnesota River crossing was changed to parallel U.S. Highway 169. Applicants made this modification to avoid crossing Buck's Lake, which the Minnesota Department of Natural Resources (MnDNR) identified as a habitat to "substantial numbers of bald eagles, great egrets, and other waterfowl." The MnDNR did not support a crossing of Buck's Lake "due to the high concentration of species using the area for resting, roosting, feeding and nesting."<sup>14</sup>
- The Preferred Route width and proposed alignment were changed to avoid the RES Specialty Pyrotechnics, Inc., facilities near Belle Plaine. The Institute of Makers of Explosives has detailed guidance regarding proximity of transmission line facilities to pyrotechnic facilities. This guidance recommends that transmission lines be located no nearer to the pyrotechnic facility than the width between poles in the line (in this case, 1,000 feet).<sup>15</sup>
- The Preferred Route width was expanded to 3,000 feet for a certain narrow area north of Marshall, Minnesota.<sup>16</sup>

### **C. NoCapX/UCAN's Exceptions to the ALJ Report**

As provided for on page 101 of the ALJ report, "Under the Commission's Rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.3200, exceptions to this report, if any, by any party adversely affected must be filed within 15 days of the mailing date hereof with the Executive Secretary of the Public Utilities Commission...."

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<sup>10</sup> Ex. 23 at 7-129 (DEIS).

<sup>11</sup> ALJ Report at 59.

<sup>12</sup> ALJ Report at 60.

<sup>13</sup> ALJ Report at 61.

<sup>14</sup> ALJ Report at 62.

<sup>15</sup> ALJ Report at 63.

<sup>16</sup> ALJ Report at 64.

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NO CAPX 2020 and United Citizens Action Network (NoCapX2020/UCAN),<sup>17</sup> parties to this proceeding, filed exceptions to the ALJ Report.

[Note: The findings and conclusions included in the discussion in the following sections retain the same numbering used in the ALJ's report. Amendments, changes, deletions and additions to the ALJ findings are shown by strikethrough and underlining. Please note that the ALJ footnotes have been omitted for formatting reasons.]

NoCapX2020/UCAN filed as exceptions a redlined version of the ALJ Report. NoCapX2020/UCAN provided few citations to the record for its proposed changes and essentially no discussion as to why it believes the proposed changes should be made. As noted in the ALJ Report, exceptions "must be specific, relevant to the matters at issue in this proceeding, and stated and numbered separately." Since NoCapX2020/UCAN's exceptions are in substantial part not consistent with this directive, the Commission could reasonably require NoCapX2020/UCAN to provide further explanation and support for its exceptions or determine to not take them into account in making its decision regarding the ALJ Report.

The OES EFP staff does not suggest that NoCapX2020/UCAN's exceptions be excluded from consideration; however, it would be excessively burdensome to address each proposed change individually, particularly where NoCapX2020/UCAN has included no discussion as to the separate modifications, deletions and additions that it proposes. Thus, OES EFP staff has grouped the numerous exceptions into issue categories separately numbered in the discussion below:

**Exception [Category] 1.** NoCapX2020/UCAN takes exception to the overlap of portions of the alternate and preferred routes in the Application, claiming that the Applicants are required to identify two completely separate routes. *See, e.g.*, NoCapX2020/UCAN proposed Findings 48, 508.<sup>18</sup>

**EFP Staff Analysis:** This is not the first time that NoCapX2020/UCAN has raised this issue. The Commission recently addressed NoCapX2020/UCAN's similar claim in another CapX proceeding, *In the Matter of the Application for a Route Permit for the CapX2020 Hampton-Rochester-Lacrosse High Voltage Transmission Lines*, Docket No. E-002/TL-09-1448. In the *Hampton-Rochester-Lacrosse Docket*, NoCapX2020/UCAN argued that the application was not complete and should not be accepted as such by the Commission because the Applicants did not identify and propose two distinct and entirely separate routes as required by Minn. Stat. § 216E.03, Subd. 3. The Commission declined to accept NoCapX2020/UCAN's interpretation of the rule for completeness. ORDER ACCEPTING APPLICATION AS COMPLETE AND REQUESTING PROPOSAL FOR TASK FORCES, at pp. 3-4.

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<sup>17</sup> NO CAPX 2020 & United Citizens Action Network, Exceptions to Recommendation of ALJ, filed 05/07/10, Doc. Id. 20105-50259-01 and 20105-50262-01.

<sup>18</sup> Citations to NoCapX2020/UCAN's exceptions are examples for reference, and are not intended to be all-inclusive.

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**Recommendation:** OES EFP staff recommend that the Commission reject this exception, consistent with its decision in the *Hampton-Rochester-Lacrosse* proceeding which found the application complete despite the fact that the two proposed routes share an eight-mile segment.

**Exception 2.** NoCapX2020/UCAN takes exception to the failure to include in the ALJ Report that certain documents were not available on eDockets or introduced into the record until the time of the hearing. *See, e.g.*, Findings of Fact 113-118 (USFWS letters); Findings of Fact 102-105 (Mn/DOT letters). With regard to Findings 113-116, and 118, NoCapX2020/UCAN recommends the following language be included in each finding:

This letter did not become part of the public or evidentiary record until during the public hearing, when it was introduced by a member of the public, and then later in Applicant’s Supplemental Testimony.

**EFP Staff Analysis:** NoCapX2020/UCAN refers to several letters from the United States Fish and Wildlife Service (USFWS), the Minnesota Department of Natural Resources (MNDNR) and the Minnesota Department of Transportation (Mn/DOT) which relate to the OES’s process in developing the DEIS. *See* Ex. 140, Schedules 42-49 (Poorker Supplemental Testimony); Ex. 40 (OES); Ex. 41 (OES). Much was made of the fact that such letters, ATF reports, and other comments received during the DEIS scoping process and the subsequent DEIS comment process, were allegedly not made available prior to the hearings. NoCapX2020/UCAN considered this to be error, and inferred that the OES EFP staff intentionally failed to file them prior to the hearings in order to keep them from being viewed by the public.<sup>19</sup>

NoCapX2020/UCAN statements throughout the contested case proceeding and now in its proposed findings reflect a general misunderstanding of the process involved in developing a draft environmental impact statement, and the separate but related procedure involved in processing a route permit application. As the Commission is well aware, the DEIS is developed by the OES for the Commission in a separate process that is under the authority of the Commissioner of the Department of Commerce. Once the Final EIS is issued, the Commission has authority to determine whether the EIS is “adequate” pursuant to Minn. R. 7850.1500, subp. 10. Since the EIS process is a Department of Commerce function (handled by the Energy Facility Permitting unit of the Office of Energy Security), comments related to EIS development are directed to and handled by the OES. There is no requirement or expectation that comments on scoping and the DEIS in this separate OES process be e-filed when received.

EFP staff bundles comments at the end of environmental document scoping process for posting on the Commission’s Energy Facilities Permitting website location and eDockets. The Final EIS includes the comments received on the DEIS and is likewise posted on the website location and eDockets.

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<sup>19</sup> EFP staff notes that the documents received by OES were available on the Commission’s Energy Facility Permitting webpage.

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The letters from Mn/DOT, MnDNR and USFWS were comment letters related to EIS scoping and the DEIS, an OES EFP process that results in EIS documents (both draft and final) which become exhibits submitted during the evidentiary hearing in the route permit application process. In this matter, specifically, the OES received 999 comments on scoping and 272 comments on the DEIS. There also is no reason to amend the findings as suggested by NoCapX2020/UCAN since the hearing transcript reflects when the documents were submitted into the record, as well as the circumstances surrounding their submission. Furthermore, the procedural steps that NoCapX2020/UCAN would require are not necessary to support a determination on granting a route permit. Significantly, comments received by OES on the draft EIS are relevant to a determination of adequacy of the FEIS, and they are included in the FEIS and appropriately addressed there.

**Recommendation:** OES EFP staff recommend no change to any findings related to the timing of document filings suggested by NoCapX2020/UCAN.

**Exception 3:** NoCapX2020/UCAN takes exception to the Advisory Task Force (ATF) process, claiming that the OES's failure to establish a third task force in the area west of the Minnesota River to the South Dakota border detrimentally affected citizen participation. NoCapX2020/UCAN argues that a procedural irregularity requires that the public participation and environmental review be revisited. *See, e.g.,* NoCapX2020/UCAN Proposed Findings 16-17, 509.

**EFP Staff Analysis:** NoCapX2020/UCAN raised procedural issues regarding the ATF process, claiming that the OES had improperly chosen not to form a task force despite requests for one in the Marshall area. As explained by the OES in its response to such arguments during the hearing, the responses received from governmental units to the OES EFP staff's task force solicitation letters were insufficient to form a task force pursuant to Minn. Stat. § 216E.08. *See* Ex. 43 (OES Memorandum Responding to Claims Concerning Citizen Advisory Task Force Requests). As the ALJ's Finding 509 states, the OES "has established that the applications for formation of advisory task forces from Townships in Lyon County were deficient."

**Recommendation:** The OES EFP staff recommends rejecting NoCapX2020/UCAN's proposed findings relating to ATF requests and procedures.

**Exception 4:** NoCapX2020/UCAN asserts in proposed findings 512, 515, and 565 that the FEIS is inadequate and proposes the following changes to the ALJ's Findings and Conclusions:

[NoCapX2020/UCAN Proposed Finding] 565. The record demonstrates that the FEIS is *inadequate* because it failed to encourage public participation and engage the public in the spirit and letter of the law, that it failed to address the issues and alternatives raised in the Scoping Decision, failed to provide substantive and veted (sic) responses to the substantive comments received during the DEIS review process, and was prepared in compliance with Minnesota Rules 7850.1000 to 7850.5600. (Emphasis added, as explained below.)

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[NoCapX2020/UCAN Proposed Conclusion] 9. The environmental review was not prepared in compliance with the procedures in Minn. R. 7850-1000 and under Minn. R. 7850.2500, Subp. 10.

**EFP Staff Analysis:** The ALJ addressed the adequacy of the FEIS, noting an FEIS is appropriately found to be adequate by the Commission if it: “(A) addresses the issues and alternatives raised in scoping to a reasonable extent considering the availability of information and the time limitations for considering the permit application; (B) provides responses to the timely substantive comments received during the DEIS review process; and (C) was prepared in compliance with the procedures in Minnesota Rules 7850.1000 to 7850.5600.”

The argument that the FEIS “failed to encourage public participation and engage the public in the spirit and letter of the law” is not one of the three standards for adequacy of an FEIS. The other suggested failures are unexplained by NoCapX2020/UCAN, but the proposed finding appears to stem from NoCapX2020/UCAN’s other arguments relating to the ATF and from public notice arguments that were made previously, but are not included in the exceptions. NoCapX2020/UCAN’s proposed finding is troublesome in another respect; i.e., while NoCapX2020/UCAN has used strikethrough and underlining appropriately to suggest additional language and associated grammatical changes, the proposed finding also includes another substantial change that is not so noted and is not identified as a change. The emphasized word “inadequate” in NoCapX2020/UCAN’s proposed finding does not appear in the ALJ’s Finding No. 565, which is accurately quoted below, emphasizing the word that has been replaced by NoCapX2020/UCAN:

565. The record demonstrates that the FEIS is *adequate* because it addresses the issues and alternatives raised in the Scoping Decision, provides responses to the substantive comments received during the DEIS review process, and was prepared in compliance with Minnesota Rules 7850.1000 to 7850.5600.  
(Emphasis added.)

EFP staff’s review of the NoCapX2020/UCAN exceptions also indicated other such changes that were not identified by NoCapX2020/UCAN and which may also reflect substantial changes to the ALJ’s findings.

**Recommendation:** The OES EFP staff suggests that the ALJ appropriately found that the FEIS in this proceeding is “adequate,” and that ALJ Finding of Fact 565 should be accepted by the Commission with no modification.

**Exception 5:** NoCapX2020/UCAN takes exception to the ALJ’s choice of the Myrick Street Alternative in order to cross the Minnesota River at Le Sueur, and the associated recommendation for an aerial crossing of the Minnesota River at Le Sueur. *See, e.g.,* NoCapX2020/UCAN proposed findings 104-07, 113, 418.

**EFP Staff Analysis:** The EFP staff addressed the “Myrick Alternative” in its post-hearing comments to the ALJ, noting that a small portion of the route necessary to permitting this alternative had not been included in the DEIS.

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NoCapX2020/UCAN notes its agreement with the OES comments. [cite] However, the elimination of the Le Sueur river crossing as a viable alternative renders this exception moot.

**Exception 6:** NoCapX2020/UCAN also takes exception to the ALJ's findings that relate to property owned by two landowners, each of whom have filed exceptions to the ALJ's Report. The landowners have also participated in this proceeding at public hearings and by filing written comments.

**EFP Staff Analysis:** Counsel for NoCapX2020/UCAN does not represent either of the landowners. One of them is Bimeda, a veterinary pharmaceutical manufacturing company. *See, e.g.,* NoCapX2020/UCAN proposed findings 493-96. Bimeda owns and operates its business on property that is affected by the Myrick Alternative. Bimeda is represented by counsel, who filed exceptions on behalf of Bimeda, which are addressed separately below. The second landowner is Theresa Ruhland, who has participated throughout the entire process, and whose land stands to be substantially affected by a decision in this proceeding. *See, e.g.,* NoCapX2020/UCAN proposed findings 419-30. Like Bimeda, Ms. Ruhland filed exceptions on her own behalf, which are also addressed separately below.

#### **D. Landowner letters citing exceptions to ALJ Report.**

Three landowner participants, all of whom could be adversely affected by a Commission decision designating a route in this proceeding, also filed letters concerning the ALJ Report: Bimeda, Inc. (Bimeda),<sup>20</sup> Theresa Ruhland,<sup>21</sup> and Mark Katzenmeyer.<sup>22</sup>

All three relate to issues associated with the Modified Preferred Route and ALJ Recommendation 2 A (1) at and immediately east of the Le Sueur crossing of the Minnesota River.

EFP staff proposes the Belle Plaine river crossing, as discussed in Section V.A., thus is in agreement with the conclusion of Mr. Katzenmeyer's letter of exception. In addition, if the Commission selects a route crossing the Minnesota River at Belle Plaine (ALJ Recommendation 2 A (1a) or Alternative Crossover Route, *See* Section V.C.), neither the Myrick Alternative nor the Bimeda Adjustment would be required. The ALJ Recommendation 2 A (1a) and the Alternative Crossover Route as recommended by EFP staff would also alleviate concerns expressed in the exception letter from Ms. Ruhland.

#### ***Theresa Ruhland***

**Exception:** Theresa Ruhland takes exception to the ALJ's findings that support the Recommendation 2. A. (1) which recommends the Applicants' Modified Preferred Route as further modified by Alternative 6P-06. Her letter addresses many of the findings in the ALJ Report, essentially arguing that Conclusion 9 should not be accepted by the Commission.

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<sup>20</sup> Bimeda, Inc., Exceptions to Recommendation of ALJ, filed 05/07/10, Doc. Id. 20105-50185-01.

<sup>21</sup> Theresa Ruhland, Letter, filed 05/07/10, Doc. Id. 20105-50297-01.

<sup>22</sup> Mark Katzenmeyer, Letter, filed 05/07/10, Doc. Id. 20105-50252-01.

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Ms. Ruhland disagrees that the ALJ's preferred route is the best alternative for the transmission line. Conclusion 9 states:

9. The record demonstrates that the Modified Preferred Route, as further revised by Alternative 6P-06 in the Hampton area, is the best alternative for the 345 kV transmission line between Brookings County Substation and Hampton Substation.

Ms. Ruhland states that her "farm business will be severely impacted with CapX poles in the middle of most of our farm fields with the Route width and alignment adjustments for RES [Specialty Pyrotechnics] as detailed on page 72 and 73" of the ALJ Report. She states that the farm infrastructure (tile lines and soil till) will be severely compromised with invasive construction and subsequent monitoring/maintenance of the line. Ms. Ruhland describes the adverse impacts of existing 345 kV lines on her property, and states that the farming business would suffer far greater impacts with "dangerous obstacles" in the middle of the fields when using today's and future farm equipment, interference with GPS systems on equipment, the proven detrimental effects power lines have on honeybees which are vital to crop pollination and honey production, stray voltage impact on cattle, and the "extreme destruction of our land and fields as there is no way to get to poles in the middle of all our fields which will run the entire length and almost entire width of our farm."

Ms. Ruhland further details her extensive participation in this proceeding, noting that she had raised the issue of the RES pyrotechnics business as early as March of 2008 during the ATF process, but it was not until Applicants' filed the Rebuttal Testimony of Craig Poorker on November 20, 2009, that options were submitted to address the concerns of RES. She notes that the only options presented by Applicants both would place the line directly through her fields; she also questions the impacts as stated by Mr. Poorker.

Ms. Ruhland strongly urges the Commission to choose a line configuration that would eliminate the north-south corridor around RES Pyrotechnics and through the Ruhland farm in Derrynane Township. She believes that Judge Luis' alternate recommendation 2.A.(1a) would do this as it crosses the Minnesota River at Belle Plaine and then follows the Applicants' Alternate Route until it joins the preferred route at the north Helena substation. Ms. Ruhland also emphasizes the Belle Plaine river crossing--where there is an existing transmission line--would also eliminate conflicts associated with the Le Sueur river crossing that have been detailed by the USFWS and Mn/DOT, the resulting Myrick Street Alternative, and all Buck's Lake issues.

**EFP Staff Analysis:** The ALJ Report contains the following finding relating to the Ruhland property:

428. A significant portion of those permanent pole impacts will be borne by Theresa Ruhland. Mrs. Ruhland explained the placement of transmission poles on her farm fields would make farming more difficult as well as impact the landowner to the south.<sup>545</sup> She testified that "[a]s proposed, I would have the CapX line about 800 feet to the south, 400 feet to the west, 5,000 feet to the north and the existing Xcel 345 line 5,200 feet to the east. We will be totally encompassed by either a double 345 or single 345 lines."

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The ALJ Report also includes details relating to some of Ms. Ruhland's and her son Steve Ruhland's participation and comments in Attachment 1 to the ALJ Report.<sup>23</sup>

As Ms. Ruhland stated in her letter, she has been actively involved in this proceeding since the beginning, and has provided input in developing the DEIS as well, even serving on one of the task forces. The Ruhland property is affected by all the alignment alternatives on the initial Preferred Route, the Alternate Route, and the Modified Preferred Route. EFP staff agrees with most of her comments. Ms. Ruhland correctly notes that her property could be avoided by choosing the ALJ's alternate Recommendation 2.A.(1a). Further, if the Commission accepts the EFP staff's recommended Alternate Crossover Route, the Ruhland property and the RES Pyrotechnics property will both be avoided, thereby alleviating all the Ruhlands' concerns, as well as the concerns addressed in the ALJ Report with respect to RES Pyrotechnics that relate to their respective properties.

***Bimeda, Inc.***

**Exception:** Bimeda's suggestions reflect a change in the Myrick Alignment that would move the route from the northern part of Bimeda's property, where a tank farm storing flammable materials is located, to the southern part of Bimeda's property which it refers to as the "Bimeda Adjustment."<sup>24</sup> Bimeda proposes the following changes to the ALJ's findings, conclusions, and recommendations:

[Finding] 496. If the Modified Preferred Route is selected, Applicants will design the line to ensure that the tanks are outside the right-of-way and will work with Bimeda on the final alignment of the line. By exceptions filed by Bimeda, Inc. on May 6, 2010, it has been represented to the Administrative Law Judge and to the Public Utilities Commission as follows: Bimeda has presented Applicant with the drawing affixed as Attachment 3, which generally depicts the Bimeda Adjustment. Business and legal representatives of Bimeda and Applicant have discussed the Bimeda Adjustment and a business representative of Applicant has visited Bimeda's property on May 5, 2010 regarding the Bimeda Adjustment. Applicant has suggested to Bimeda that the Bimeda Adjustment as generally depicted is constructible, conceptually acceptable, and would involve comparable project costs for the Applicant.

505. It is appropriate to select the Applicants' Myrick Alternative Route as modified by the Bimeda Adjustment within the Modified Preferred Route Segment in the Le Sueur area.

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<sup>23</sup> The ALJ summarized Ms. Ruhland's comments at the Lakeville afternoon hearing on December 12, 2009, and December 28, 2009, on pages 130-131, 139, 141, 144 and 151-152.

<sup>24</sup> Bimeda Exceptions at 2 (May 6, 2010 letter and attached modifications to findings.)

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[Conclusion] 7. The record demonstrates that the Modified Preferred Route, as modified by adoption of Alternative 6P-06 between Lake Marion and Hampton Substations, and its Associated Facilities and as further modified by the Bimeda Adjustment, satisfies the route permit criteria set forth in Minnesota Statute § 216E.03, subd. 7 and Minnesota Rule 7850.4100.

9. The record demonstrates that the Modified Preferred Route, as further revised by Alternative 6P-06 in the Hampton area and as further revised by the Bimeda Adjustment, is the best alternative for the 345 kV transmission line between Brookings County Substation and Hampton Substation.

10. The record demonstrates that it is appropriate to grant a Route Permit for the 345 kV transmission line and Associated Facilities along the Modified Preferred Route, modified by Alternative 6P-06, and as further modified by the Bimeda Adjustment.

[Recommendation] 2A(1): The Modified Preferred Route, with an aerial crossing of the Minnesota River at Le Sueur, modified further by Alternative 6P-06 between Lake Marion and Hampton; and further modified by an adjustment of that portion of the Myrick Alternative Alignment affecting the Bimeda, Inc. facility as graphically depicted on Attachment 3 affixed hereto as the approximate route (the “Bimeda Adjustment”). the Bimeda Adjustment modifies the Myrick Alternative Alignment so that (i) the route affecting Bimeda, Inc.’s property will be moved from the north side of Bimeda, Inc.’s property to the south side of Bimeda, Inc.’s property; and (ii) Mayo Park will not be impacted or only minimally impacted by the Myrick Alternative Alignment which incorporates the Bimeda Adjustment;

**EFP Staff Analysis:** Bimeda’s property is affected only if the Le Sueur river crossing is part of the permitted route. Thus, if the Commission accepts the ALJ’s recommended route choice, Bimeda’s property is affected. However, as discussed herein, the Le Sueur crossing of the Minnesota River is no longer a viable alternative. Therefore, any concerns about the Bimeda property become moot.

The Alternative Crossover Route recommended by EFP staff would avoid entirely the river crossing at Le Sueur, and, therefore, the Bimeda property as well, and replace it with the alternative river crossing at Belle Plaine, which has been vetted through the full contested case process.

***Mark Katzenmeyer***

**Exception:** Mark Katzenmeyer of Le Sueur, Minnesota, filed an exceptions letter, stating that Tyrone Township in Le Sueur County, where his farm is located, has migratory waterfowl and swans that fly through and land year-round. He has between 2500-5000 on his farms alone, and he noted that his property includes wetlands and is an important resource for waterfowl and wildlife.

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Like Ms. Ruhland, Mr. Katzenmeyer raises an exception to Recommendation 2.A.(1), which the ALJ found was the best alternative. Mr. Katzenmeyer believes that the river crossing at Belle Plaine would be a better alternative because of the existing transmission line, other problems associated with the Le Sueur river crossing, the USFWS recommendations, the scenic highway, and input from Mn/DOT.

**EFP Staff Analysis:** EFP staff agrees and further notes that in addition to ALJ recommendation (1a), the Alternative Crossover Route recommended by EFP staff will also alleviate Mr. Katzenmeyer's concerns, as it avoids crossing the Minnesota River at Le Sueur.

#### **E. Clarification of Route Application process and minor changes.**

The following proposed Findings of Fact and Conclusions are intended to address what EFP staff believe are important corrections, additions, and changes necessary to support the referenced Findings of Fact and Conclusions in the ALJ Report, but do not change the substance of the finding or conclusion. All changes to the numbered paragraphs in the ALJ Report are shown by strikethrough and underlining. Internal footnotes have been omitted; only those footnotes which are required to support the change are included.

**Finding of Fact 38:** The following change is suggested to clarify that the FEIS was *not* published in the EQB Monitor; only the notice of such was so published:

38. On February 8, 2010, notice of the FEIS availability was published in the EQB Monitor the FEIS was published in the EQB Monitor.<sup>25</sup>

**Finding of Fact 59:** The Scoping Decision identified Route Alternative 5P-02 as P-SCT-002. Route P-SCT-002 subsequently was renumbered for the DEIS. The following correction is suggested to correctly state that Alternative 5P-02 is how this route is numbered in the DEIS:

59. The third route modification, identified as ~~P-SCT-002~~ 5P-02 in the DEIS (~~also renumbered~~ as 5P-02 on maps used at the Hearings), is located between the Helena Substation and the Lake Marion Substation at the intersection of Aberdeen Avenue and 270th Street.<sup>26</sup> The Modified Preferred Route continues east for one mile to Delmar Avenue. At Delmar Avenue, the Modified Preferred Route continues north one mile until it joins the Preferred Route at 260th Street.

**Finding of Fact 83:** The following addition is suggested to add new information available concerning the Applicants' delay of construction as contained in Xcel Energy's recent filing in the related CapX 2020 Certificate of Need proceeding (Docket No. ET-2/CN-08-1115):

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<sup>25</sup> Notice of Availability of FEIS - EQB Monitor, filed 02/25/10, Doc. Id. 20102-47454-02.

<sup>26</sup> Ex. 102 at pp. 15-17 (Poorker Direct).

83. Applicants expect to begin construction of the Project in the fourth quarter of 2010 and estimate that the Project will be completed by the third quarter of 2013. Applicants filed a letter in Docket No. ET-2/CN-08-1115 on May 18, 2010, requesting a change in the originally proposed project start date to the second quarter of 2015.<sup>27</sup>

**Finding of Fact 131:** is amended to clarify that the number of additional route segments and alignment alternatives was further refined during preparation of the DEIS, and is thus not the same as was stated in the Scoping Decision:

131. On June 30, 2009, OES issued its Scoping Decision for the EIS. The Scoping Decision identified the topics to be covered in the Project EIS: Regulatory Framework; Project engineering and design; Project construction; and Human and environmental resources impacted by the project and each proposed route alternative. The Scoping Decision also determined that the EIS would address 47 of the proposed route alternatives. Upon further refinement while preparing the DEIS, four additional alternative route segments were identified, increasing the number of alternative route segments to 51 and five of the alignment alternatives were found to be duplicates, thus reducing the alignment alternatives to 21.<sup>28</sup>

**Finding of Fact 153:** OES EFP staff suggests that the following changes and supplemental findings be accepted to support the ALJ's conclusions concerning displacement of homes, and permit conditions to minimized effects on human settlement:

153. For purposes of this proceeding, displacement of a residence or business was defined to occur when a structure is located within the 150 foot right-of-way or 75 feet on each side of the proposed transmission centerline.

**Findings of Fact 282:** OES EFP staff suggests that the following supplemental findings and changes to the ALJ's findings 282 be adopted to support the ALJ's conclusions and EFP staff's suggested permit conditions concerning design options that maximize energy efficiencies, mitigate adverse environmental effects, and could accommodate expansion of transmission or generation capacity:

282. For the proposed new substation sites, Applicants will acquire approximately 40 acres to allow for future transmission line interconnections. For the proposed new substation sites, the record supports the following new substation locations, which were outlined by the Applicants' witness, Mr. Craig Poorker:<sup>29</sup>

<sup>27</sup> Applicants. May 17, 2010 Letter to Commission Requesting a Change in Proposed Construction Date, filed May 18, 2010, Docket ET-2, E-002, et al./CN-06-1115, Doc. Id. 20105-50557-02.

<sup>28</sup> Ex. 23 (DEIS).

<sup>29</sup> Ex. 102 at pp. 21-25 (Poorker Direct).

- The new Hazel Creek substation will be located at the southeast corner of the intersection of 520<sup>th</sup> Street (County Road B3) and 260<sup>th</sup> Avenue in section 18 of Minnesota Falls Township<sup>30</sup>
- The new Cedar Mountain Substation will be located at the northwest corner of the intersection of County Road 3 and 640<sup>th</sup> Avenue in Camp Township.<sup>31</sup>
- The new Helena Substation will be located at the southeast corner of the intersection of 231<sup>st</sup> Avenue and 320<sup>th</sup> Street (County Road 28) in Derrynane Township.<sup>32</sup>
- The proposed Hampton Substation North site will be located on the west side of Highway 52 near 215<sup>th</sup> Street on the north side of 215<sup>th</sup> Street<sup>33</sup> or the proposed Hampton South site would be located on the south side of 215<sup>th</sup> Street. The record demonstrates that the Hampton North Substation site would be better located for any route chosen, as it would minimize the distance when connecting to the Prairie Island – Blue Lake 345 kV line.<sup>34</sup>

## V. EFP ANALYSIS AND COMMENTS ON ROUTE DESIGNATION

The ALJ Report documents that the procedural requirements of Minn. Stat. Ch. 216E and Minn. R. Ch. 7850 were followed, and presents findings of each of the decision criteria under Minn. Rules 7850.4100. The Applicants' Modified Preferred Route, the ALJ's first choice with one modification (route segment 6P-06), addresses several issues raised throughout this proceeding, including Mn/DOT concerns with I-35 and Highway 52.

However, subsequent information concerning the lower Minnesota River crossing at Le Sueur has become available which directly affects the ALJ's recommendation. In his report, the ALJ recommends:

[2. A.]

- (1) The Modified Preferred Route, with an aerial crossing of the Minnesota River at Le Sueur, modified further by Alternative 6P-06 between Lake Marion and Hampton;

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<sup>30</sup> *Id.* at Schedule 8 (Poorker Direct).

<sup>31</sup> *Id.* at Schedule 9 (Poorker Direct).

<sup>32</sup> Ex. 102 at Schedule 11 (Poorker Direct).

<sup>33</sup> *Id.* at Schedule 13 at p. 1 (Poorker Direct).

<sup>34</sup> Ex. 23 (DEIS).

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- (1a) If the Modified Preferred Route adjusted by Alternative 6P-06 is not granted a Permit, the ALJ recommends granting of a Route Permit for the Modified Preferred Route, modified further by Alternative 6P-06, and modified further by the Crossover/Alternate Route between Sibley County and the Helena Substation, with an aerial crossing of the Minnesota River at Belle Plaine;

EFP staff notes that the ALJ's Recommendation 2.A.(1a), with the exception of the further modification of Alternative 6P-06 is the same as Applicants' "Crossover Route" discussed in Mr. Poorker's Supplemental Testimony as Applicants' preferred route if the Belle Plaine river crossing is chosen. The Alternative 6P-6 is not relevant to the discussion below, as it is a part of both the ALJ's Recommendation 2.A.(1a) and EFP staff's alternative recommendation.

Under state law, a permit could be issued for either the Belle Plaine or the Le Sueur river crossing; however, in reviewing the record and information which became available after the ALJ Report was issued, it appears that the river crossing at Le Sueur is fatally flawed. The ALJ's first choice (Applicant's Modified Preferred Route, modified by 6P-06), addresses several issues, including Mn/DOT's concerns with I-35 and Highway 52. Applicant's Modified Preferred Route has several flaws, however including a possible fatal flaw that only fully came to light after the hearing record closed: the USFWS likely denial of an incidental eagle take permit for Le Sueur Minnesota River crossing. Other flaws and concerns include:

- Mn/DOT issues with the Highway 169 crossing area, including the rest stop and scenic easement areas;
- Bimeda issues along Myrick Street; and
- RES Pyrotechnics, Inc./Ruhland issues.

EFP staff believes that the ALJ's alternative recommendation [2.A.(1a)], which includes an aerial crossing of the lower Minnesota River at Belle Plaine, is a viable alternative. The ALJ's second choice, which uses a portion of the Applicants' Alternate Route between the Cedar Mountain and Hampton North Substations, and then crosses the Minnesota River at Belle Plaine, addresses all of these flaws/concerns. This alternative uses the USFWS/MnDNR North-South Connector segment to cross from the Modified preferred route to the Alternate Route.

EFP staff also believes that an alternative connector segment presented and analyzed in the DEIS, but not addressed in the ALJ Report, is preferable to the ALJ's alternative recommendation using the USFWS/MnDNR North-South Connector segment in Recommendation 2.A.(1a). The DEIS and the Applicants' route permit application evaluated three other connector segments that could be used to cross from the Modified Preferred Route to the alternate route that also address all of these flaws/concerns. One of these, the connector segment labeled "Example 2" in the EIS, has fewer overall impacts.

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## A. Lower Minnesota River Crossing

The USFWS has provided input throughout this proceeding. In meetings with the USFWS, EFP staff was advised that the area of the proposed project that would cross the Minnesota River at Le Sueur is identified as an important eagle-use area providing year-round nesting, foraging and communal roost sites.<sup>35</sup> In addition, MnDNR provided information that this area experiences high concentrations of waterfowl during migratory periods and confirms other evidence in the record that the area is home to a heron rookery.<sup>36</sup> The primary concern expressed by USFWS with an aerial transmission line crossing at Le Sueur is the potential for birds of these various species to strike the line during flight. There is additional concern over eagle disturbance during construction and maintenance of the line in this area.

In a letter dated June 10, 2010, accompanied by a document summarizing available studies dated June 7, 2010,<sup>37</sup> the USFWS provided supplemental information regarding potential implications of the federal Bald and Golden Eagle Protection Act (BGEPA) with regard to the two proposed lower Minnesota River crossings (Le Sueur and Belle Plaine).<sup>38</sup> The USFWS letter provides the following additional information:

- A transmission line crossing of the Minnesota River at Le Sueur is likely to result in incidental take of bald eagles.
- Because a non-aerial crossing of the river at either river crossing location has been determined non-practicable by the applicants, the USFWS focused on other alternatives to avoid or minimize impacts to bald eagles.
- The Belle Plaine river crossing would be the less harmful of the two river crossing sites with regard to bald eagles.
- When compared to the Le Sueur river crossing, a river crossing at Belle Plaine is a practicable alternative which would avoid and minimize potential impacts to bald eagles.
- The existence of the Belle Plaine alternative river crossing makes it unlikely that an incidental take permit under the BGEPA would be issued for an aerial crossing at the Le Sueur location.<sup>39</sup>

The Belle Plaine crossing exhibits some of the same characteristics as the Le Sueur crossing, pertaining generally to avian species. However, there is an existing 69 kV transmission line at the Belle Plaine Crossing; there is no existing electric utility crossing in the Le Sueur area.

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<sup>35</sup> USFWS February 8, 2010 Letter, filed 2/9/10, Doc. Id. 20102-46903-01.

<sup>36</sup> DNR Letter (4/30/09), filed 6/10/09, Doc. Id. 20096-38376-05

<sup>37</sup> *Id.*, Attached Summary Review of Available Studies

<sup>38</sup> *Id.*

<sup>39</sup> In addition, the USFWS recommends the applicants develop a project-specific avian protection plan with advanced conservation practices which would become the basis of a programmatic BGEPA incidental take permit, if deemed necessary. Also recommended is extensive line monitoring that includes the use of Bird Strike Indicators and Bird Activity Monitors to evaluate the efficacy of avian line markers and flight diverters, in consultation with the USFWS.

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The MnDNR has also stated that a river crossing at Belle Plaine would appear to be the most protective of the Minnesota River when compared to a Le Sueur crossing.<sup>40</sup>

EFP staff concurs with USFWS recommendations as outlined in the June 10, 2010 letter and its attached summary document and recommends that the transmission line cross the lower Minnesota River at the Belle Plaine location. EFP staff also recommends a permit condition for the Belle Plaine river crossing relating to the configuration of the existing and new transmission structures. *See* proposed route permit section H.J.3. The applicants have evaluated a number of options for crossing at the Belle Plaine location.<sup>41</sup> EFP staff believes that a side-by-side H-frame configuration that would keep the conductors on a similar horizontal plane and near or below the existing vegetative canopy in the area would mitigate concerns regarding avian collisions. If this recommendation is accepted by the Commission, EFP staff suggests further evaluation of transmission structures that may be proposed for this crossing during final design and prior to construction.

## **B. North-South Connector Segment Examples<sup>42</sup>**

The ALJ Report discusses the USFWS/MnDNR connector segment, which is one of four north-south connector segments that were analyzed in the DEIS. These connectors provide the Commission with a means to choose either the preferred or alternate route, or several combinations thereof, and they allow the Commission to approve a particular river crossing by choice, not by default. The Applicants' routes, as presented in the route permit application, do not allow for a choice of river crossings among the four crossing locations (Redwood Falls, Franklin, Belle Plaine, and Le Sueur). For example, if the initial preferred route were to be permitted, the Commission would be limited to choosing the Redwood Falls and the Le Sueur river crossings only. If the alternate route were to be chosen, the Commission would be limited to the Franklin and Belle Plaine river crossings. Thus, with the new information about the Le Sueur river crossing, the only available option would be the complete Alternate Route. The addition of a north-south connector allows the Commission to choose river crossings that are not route-dependant, and in this case, allows the Commission to accept the ALJ's recommendation 2.A.(1a) in full or in part.

Four north-south connectors were evaluated in the DEIS (Example 1, Example 2, Example 3, and USFWS/MnDNR Route ).<sup>43</sup> Data on all segments of the north-south connectors was also provided in Appendix C (Route Segments Evaluated) and Appendix E (Impacts Tables) of Applicants' route permit application.<sup>44</sup> Applicants ultimately rejected all four connectors and did not include them as segments of either the Preferred or Alternate Route presented in the application. However, in later testimony, Applicants discussed one of these connector segments with regard to the "Crossover Route," which is addressed in the ALJ Report. The ALJ's alternate recommendation 2.A.(1a) uses the USFWS/MnDNR connector to further modify the Modified Preferred Route, thus allowing for a river crossing at Belle Plaine.

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<sup>40</sup> ALJ Report, Finding 119.

<sup>41</sup> *Id.*, Finding 300.

<sup>42</sup> Ex. 23 at Appendix G (DEIS).

<sup>43</sup> Ex. 23 at Appendix G (DEIS).

<sup>44</sup> Ex. 2 (Application).

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Although the DEIS contains analysis of these connectors, no party suggested using any of the other three north-south connector segments, and no comments were received either for or against Connector Examples 1 and 2. Thus, the ALJ Report does not address any routes using combinations of the north-south connectors 1, 2, or 3.<sup>45</sup> Perhaps because no party argued for or against Examples 1 and 2, the ALJ Report did not discuss them. Thus, there is no comparison in the record regarding the relative merits of using either North-South Connector Example 1 or North-South Connector Example 2. The ALJ Report also does not compare the USFWS/MnDNR North-South Connector segment to Example 1 and Example 2. However, any of the four north-south connectors could be permitted and would allow the Commission the ability to choose between the proposed crossings of the upper and lower Minnesota River.

In comparing the data of these four connector segments, EFP staff considers North-South Connector Example 2 to be the superior choice among the four north-south connectors.<sup>46</sup> The EFP staff's recommended route alternative is referred to as the Alternative Crossover Route and is discussed in the next section

### **C. Alternative Crossover Route**

Applicants' witness Craig Poorker testified that if the Le Sueur river crossing is not permitted by the Commission, the Minnesota River crossing at Belle Plaine is a "reasonable alternative."<sup>47</sup> He further testified that if the Commission chooses the Belle Plaine river crossing option, Applicants prefer a hybrid route using the "USFWS/MnDNR" crossover or connector segment as the most appropriate route. He did not testify about the reasons for preferring this connector segment.<sup>48</sup> Applicants referred to this hybrid route as the "Crossover Route," as does the ALJ Report.<sup>49</sup> As noted above, the Crossover Route is the same as the ALJ's Recommendation 2.A.(1a), absent Alternative 6P-06, which is not relevant to this discussion as it is common to both alternatives under consideration. EFP staff analyzed four connector examples in the DEIS, including the "USFWS/MnDNR" connector segment, based on comments received from the USFWS and MnDNR during the scoping process.<sup>50</sup>

After reviewing the complete contested case record, the ALJ Report, exceptions, and USFWS/MnDNR recommendations, EFP staff further analyzed all connector segments and developed an alternative crossover route, which is a hybrid of the Crossover Route discussed in the ALJ Report, using the North-South Connector 2 instead of the USFWS/MnDNR Connector which is part of the Crossover Route.

EFP staff used data developed for the DEIS and the applicant's route permit application in developing this hybrid of the Modified Preferred Route using North-South Connector Example 2.

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<sup>45</sup> Example 3 was discussed during hearings and less favored than the similar USFWS/MnDNR Connector Route which avoids the wetland complex northwest of the City of Arlington.

<sup>46</sup> Ex. 23 at Appendix G (DEIS).

<sup>47</sup> Ex. 140 at 7.

<sup>48</sup> Ex. 140 (Poorker Supplemental Testimony).

<sup>49</sup> Ex. 140 at 7, and Sch. 48 (map of crossover route).

<sup>50</sup> DNR Letter (4/30/09), filed 6/10/09, Doc. Id. 20096-38376-05 and USFWS Letter (4/30/09), filed 6/10/09, Doc. Id. 20096-38376-05.

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EFP staff refers to this hybrid route herein as the “Alternative Crossover Route.”<sup>51</sup> Like the ALJ’s Recommendation 2.A.(1a), the Alternative Crossover Route crosses the Minnesota River at Belle Plaine. The analysis provided below compares the ALJ’s Crossover Route using the Belle Plaine crossing and the USFWS/MnDNR Connector Segment with EFP staff’s recommended “Alternative Crossover Route” using the North-South Connector 2 Example.

The Alternative Crossover Route would be approximately 240 miles long as compared to the approximate 247-mile length of the ALJ’s Crossover Route. This route alternative follows the Modified Preferred Route until it turns north on County Highway 3 in Bismarck Township, Sibley County, and continues north along North-South Connector Example 2 until it connects with the Alternative Route at County Highway 10. From there, the Alternative Crossover Route continues to follow the Alternative Route until it connects with the Crossover Route at 220<sup>th</sup> Street at the north corner of the Northwest Section of the Northwest Quarter Section of Section 5 of Arlington Township. From its beginning off County Highway 19, the North-South Connector Example 2 between the Preferred Route and Alternate Route is approximately three miles long.

#### ***Application of Statutory and Rule Criteria to the Alternative Crossover Route***

EFP staff analyzed comparable sections of the Crossover Route and the Alternative Crossover Route within Route Segment 4 as identified and evaluated in Section 7.4 of the Draft EIS. The difference in these two sections is the segment used to connect from the Applicants’ Modified Preferred Route to the Applicants’ Alternate Route, thereby allowing for a crossing of the Minnesota River at Belle Plaine (see figure *Crossover Route and Alternative Crossover Route within Segment 4* and figure *North/South Connector Comparison*). Table 1 summarizes the differences between these two segments using the same parameters as the DEIS.

It appears from the comparison that the two routes would mostly have similar impacts. The differences, albeit close, within the comparable sections are as follows:

- The Alternative Crossover segment (71 miles) is approximately seven miles shorter than the Crossover segment (78 miles). Therefore the route area and right-of-way area of the Alternative Crossover Segment would also be less.
- The Alternative Crossover segment would impact seven less houses from 0-500 feet than the Crossover segment.
- The Alternative Crossover segment would cross three fewer wetlands than the Crossover segment.
- The Alternative Crossover segment would cross one fewer streams/rivers than the Crossover segment and cross four more Public Water Inventory (PWI) streams than the Crossover Segment.

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<sup>51</sup> See attached figure *Overview Map Permitted Route*.

- The Alternative Crossover segment has no known occurrences of threatened and endangered species and no occurrences of unique threatened endangered species within the proposed route, whereas the Crossover segment crosses two areas of recorded endangered species and two occurrences of unique threatened endangered species.
- The Alternative Crossover segment anticipated right-of-way would cross 132 fewer acres of prime farmland/prime farmland if drained/farmland of statewide importance than the Crossover segment.

Because the potential impacts identified for these two segments are relatively close, EFP staff focused on the differences in the specific connectors used by each segment. The Alternative Crossover Route uses the North-South Connector Example #2 and the Crossover Route uses the USFWS/MnDNR Connector; both were identified and evaluated in Appendix G of the DEIS.

When comparing just the north-south connectors identified above and in the DEIS, the differences are more apparent, as is summarized in the table below.<sup>52</sup>

Parameter	North-South Connector Example #2	USFWS/MnDNR Connector
Route Length	3 miles	11 miles
Corridor Sharing	100 % (road right-of-way)	88.2% (road right-of-way) including 1.2 miles of no sharing
Homes in Route	1	8
MCBS sites crossed by route	0	2

While these differences are not great when compared to the complete project, it nonetheless provides a number of factors for making a choice between the Alternative Crossover Route over the Crossover Route.

The EFP staff not only looked at the numerical data, but the anticipated right-of-way or centerline location of the two routes. In looking at the map of the USFWS/MnDNR Connector provided in Appendix G of the DEIS, it appears that the portion of the route that would run north-south between State Highway 5 and 220<sup>th</sup> Street is problematic.<sup>53</sup> The route in this area does not appear to follow any existing feature and would, depending upon final right-of-way placement, cross over one home and/or through three homesteads' front or back yards. The North-South Connector Example #2 would follow along County Highway 3 right-of-way for its entirety, potentially impacting no homesteads, depending upon final alignment.

<sup>52</sup> Ex. 23 at Appendix G (DEIS).

<sup>53</sup> Ex. 23 Appendix G at p. G-3 (DEIS).

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The USFWS/MnDNR Connector would follow along State Highway 5 for approximately two and one-half miles. During the route permit review process and public hearings Mn/DOT provided testimony on portions of the proposed routes that would either parallel or cross state highway and interstate rights-of-way, identifying the feasibility and/or difficulties with issuing a Utility Permit for those highways.<sup>54</sup> The potential of a route that would parallel and cross over State Highway 5 was not discussed during the hearings or comments received, and, therefore, there is no information regarding the permitability of a high-voltage transmission line within or along this stretch of State Highway 5. Mn/DOT has not weighed in on the permitability of this segment.

Other impacts are similar for both the North-South Connector 2 and USFWS/MnDNR segments. With regard to recreational impacts, both routes segments will have similar impacts to WMAs, SNAs, WPAs, and state parks. As with the Crossover Route, there is no evidence that the Alternative Crossover Route will impact tourism, and flora and fauna.<sup>55</sup>

In addition to data supplied in the DEIS and Mn/DOT testimony, there were also members of the public who participated in the public hearing portion of the process through comments and testimony who oppose the USFWS/MnDNR Connector. Mr. Alvin R. Mueller, a landowner along that segment, provided extensive commentary opposing this connector segment. Mr. Mueller provided comment and testimony arguing against the USFWS/MnDNR Connector and the inability of landowners such as himself, who live along the USFWS/MnDNR Connector segment, to participate in this proceeding as an intervenor. Mr. Mueller is among the group of landowners whose property is affected by additional route alternatives identified in the Scoping Decision and addressed in the DEIS, who were notified by letter dated September 15, 2009 and mailed on September 18, 2009. Mr. Mueller stated that his ability to address issues involved with what would become the DEIS or to consider the benefit of intervention was unfairly precluded.<sup>56</sup>

Mr. Mueller also provided oral testimony at the Henderson Public Hearing, and follow up written comments to the ALJ in a letter dated February 5, 2010. Mr. Mueller criticized the terminology used for the “USFWS/Mn/DOT” Connector as unfairly biasing or preferential to a decision in favor of that Connector example over the other three, and as implying that this segment was being advocated by these agencies. Mr. Mueller, the owner of a family farm located in Section 5 of Arlington Township, expressed his concerns about the negative impacts of the USFWS/Mn/DOT connector route on his property and associated farming operations, as well on the area’s overall environment including conservation lands, designated wetlands, the natural tree cover that forms a portion of the North boundary of the SW ¼ of Section 5, and the High Island Creek riverine system located in the S ½ of Section 5 and beyond.<sup>57</sup>

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<sup>54</sup> ALJ Finding 329-347

<sup>55</sup> ALJ Report, at Finding 225.

<sup>56</sup> FEIS at 116, filed 1/26/10, Doc. Id. 20101-46444-03, 20101-46444-02, 20101-46444-01, 20101-46444-04, 20101-46444-05

<sup>57</sup> Id. at 117; Henderson Tr. at 50-69. Comment letter.

EFP staff believes that Mr. Mueller's concerns provide additional support for choosing an alternative connector segment and recommends the Alternative Crossover Route not only because it has fewer impacts than the Crossover Route, but also because the North-South Connector segment of the Alternative Crossover Route appears to have fewer impacts than the comparable North-South Connector segment of the Crossover Route, included in ALJ Recommendation 2.A.(1a).

### ***Supplemental Findings of Fact for the Alternative Crossover Route***

Additional findings of fact and conclusions are necessary for consideration of EFP staff's Alternative Crossover Route. EFP staff evaluated equal segments of the Crossover Route and the Alternative Crossover Route using data developed and utilized in the DEIS.<sup>58,59</sup> EFP staff considered all statutory and rule criteria as applied to the Alternative Crossover Route. The following new and amended findings reflect the EFP analysis comparing the Alternative Crossover Route to the Crossover Route:

**[Supplemental Finding] 1.** Four North-South Connector Examples were evaluated in the DEIS.<sup>60</sup> The OES EFP staff used North-South Connector Example 2, analyzed in the DEIS, to develop a hybrid of the Crossover Route (the "Alternative Crossover Route").

**2.** The EFP staff-proposed Alternative Crossover Route is approximately 240 miles long, which is approximately seven miles shorter than the Crossover Route. This route alternative follows the Crossover Route until it turns north on County Highway 3 in Bismarck Township, Sibley County, and then continues north along North-South Connector Route 2 until it connects with the Applicant's proposed Alternative Route at County Highway 10. From there, the Alternative Crossover Route continues to follow the Alternative Route until it connects with the Crossover Route at 220<sup>th</sup> Street at the North Corner of the Northwest Section of the NW ¼ of Section 5 of Arlington Township. From its beginning off County Highway 19, the North-South Connector 2 between the Preferred Route and Alternate Route is approximately three miles long.<sup>61</sup>

### **Segment 4 Sections of the Alternative Crossover Route and the Crossover Route**

**3.** The Alternative Crossover Segment (71 miles) is approximately seven miles shorter than the Crossover Segment (78 miles). The total Route Area and right-of-way area required for the Alternative Crossover Segment are also less, with a corresponding decrease in the cost of construction for the Alternative Crossover Route as compared to the Crossover Route.

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<sup>58</sup> Ex. 23 (DEIS)

<sup>59</sup> EFP Comments and Recommendations at IV.D. and appended Table 1.

<sup>60</sup> Ex. 23 at Appendix G (DEIS)

<sup>61</sup> EFP Comments and Recommendations at IV.E.

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4. The Segment 4 of Alternative Crossover Route would impact seven fewer houses within 0-500 feet of the route centerline than Segment 4 of the Crossover Route.
  5. The Alternative Crossover Segment would cross three fewer wetlands than the Crossover Segment.
  6. The Alternative Crossover Segment has no known occurrences of threatened and endangered species and no occurrences of unique threatened endangered species within the proposed route, whereas the Crossover Segment crosses two areas of recorded endangered species and two occurrences of unique threatened endangered species.
  7. The Alternative Crossover Segment anticipated right-of-way would cross 132 fewer acres of prime farmland/prime farmland if drained/farmland of statewide importance than the Crossover Segment.
  8. The Alternative Crossover Segment and the Crossover Segment are similar in their impact on water quality and resources. The Alternative Crossover Segment would cross one more forested wetland than the Crossover Segment. While the Crossover Segment would cross 54 wetlands and 53 streams; the Alternative Crossover Segment would cross 53 wetlands and 52 streams.
  9. Mn/DOT testimony and comments of Mr. Alvin Mueller, a landowner along the USFWS/MnDNR Connector route segment support the choice of the Alternative Crossover Route using North-South Connector Example #2.
  10. Analysis of criteria demonstrate that other impacts are similar for both the Alternative Crossover Route Segment 4 and the Crossover Route Segment 4. With regard to recreational impacts, both route segments will have similar impacts to WMAs, SNAs, WPAs, and state parks as the Crossover Route. There is no evidence in the record that the Alternative Crossover Segment will impact tourism, and flora and fauna.<sup>62</sup>
  11. The Alternative Crossover Segment and the Crossover Segment are nearly equal in their use or paralleling of existing rights-of-way. Both segments also nearly equally use or parallel existing transportation, pipeline and electrical transmission system rights-of-way.<sup>63</sup>

#### **North-South Connector Segments**

12. The North-South Connector Example 2 (3 miles) is approximately eight miles shorter than the Crossover Segment (11 miles).

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<sup>62</sup> ALJ Report, at Finding 225.

<sup>63</sup> Ex. 23, App. G (DEIS).

**13.** The North-South Connector Example 2 segment parallels existing road rights-of-way approximately 100 percent of its length. The USFWS/MnDNR Connector uses or parallels approximately 88 percent of existing road right-of-way. The USFWS/MnDNR Connector segment would follow no features for approximately 1.2 miles.

**14.** The USFWS/MnDNR Connector crosses two MCBS Biodiversity sites, whereas the North-South Connector crosses no MCBS Biodiversity sites.

### **The Alternative Crossover Route and the Crossover Route**

**15.** Because the Crossover Route and the Alternative Crossover Route share common segments of the Modified and Alternate Routes with the exception of DEIS Segment 4, the differences realized can be found in the comparison between the Alternative Crossover Segment and Crossover Route Segment and the North-South Connector 2 and the USFWS/MnDNR Connector.

**16.** The record establishes that the Alternative Crossover Route, a hybrid of the Modified Preferred Route using the North Connector Route Example 2 instead of the USFWS/DNR Crossover Route,<sup>64</sup> and its associated facilities, satisfies the route permit criteria set forth in Minn. Stat. § 216E.03, subd. 7, and Minn. R. 7850.4100.

### **D. Recommended Route Widths**

Applicants initially requested a route width of 1,000 feet for the 345 kV transmission line, and where necessary, flexibility to increase the width up to 1.25 miles, centered on an anticipated alignment for the proposed route's centerline. The ALJ recommended a route width of 600 feet except for those locations identified in Applicants' Proposed Findings where Applicants are requesting a width of 1,000 feet up to 1.25 miles.<sup>65</sup>

EFP staff does not agree with the ALJ's finding 536 that the Applicants' proposed route width is consistent with prior route permits issued by the Commission.<sup>66</sup> The ALJ Report cites to just one other permit for this finding, and the specific route referenced is distinguishable from the circumstances present in this proceeding. In fact, the recommendation of a route width of 1,000 feet up to 1.25 miles is not consistent with other Route Permits issued by the Commission and does not allow the predictability required to minimize adverse human and environmental impacts when siting a high-voltage transmission line.

As the ALJ Report notes, the PPSA specifically directs the Commission to locate transmission lines in a manner that "minimize[s] adverse human and environmental impact while ensuring continuing electric power system reliability and integrity and ensuring that electric energy needs are met and fulfilled in an orderly and timely fashion."<sup>67,68</sup>

<sup>64</sup> Figure *Brookings-Hampton Permit Maps*.

<sup>65</sup> ALJ Report, Recommendation 2.A.(2).

<sup>66</sup> ALJ Finding 536.

<sup>67</sup> Minn. Stat. § 216E.02, subd. 1.

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Although the Power Plant Siting Act (PPSA) allows for a variable route width of up to 1.25 miles, EFP staff believes that route widths nearing the maximum are excessive except in the rarest of cases, and that such route widths do not provide a reasonable degree of predictability for landowners when developing an appropriate route. One such instance where a route width approaches the maximum allowable width in this proceeding is the expanded route width of approximately 1.1 miles for the Modified Preferred Route at the Minnesota-South Dakota border where the transmission line would cross into Minnesota. A wider route designation in that area will enable Applicants' to work with the South Dakota permitting authorities to site the transmission line in an area that is permissible by both state agencies.

While the Applicants' reasonably claim that some flexibility is necessary during the construction phase of the project, the need for flexibility must be balanced with the reasonable degree of predictability that landowners deserve. To balance these competing needs, EFP staff recommends the following permit condition that provides predictability and also accommodates Applicants' desire for flexibility:

The designated route identifies an alignment that minimizes the overall potential impacts relating to the factors identified in Minnesota Rule 7850.4100 and which was evaluated in the environmental review and permitting processes.

As such, this permit anticipates that the actual right-of-way will generally conform to this proposed alignment unless changes are requested by individual landowners or unforeseen conditions are encountered, or are otherwise provided for by this permit.

Route width variations outside the designated route may be allowed for the Permittee to overcome potential site specific constraints. These constraints may arise from any of the following:

1. Unforeseen circumstances encountered during the detailed engineering and design process.
2. Federal or state agency requirements.
3. Existing infrastructure within the transmission line route, including but not limited to roadways, railroads, natural gas and liquid pipelines, high voltage electric transmission lines, or sewer and water lines.
4. Planned infrastructure improvements identified by state agencies and local government units and made part of the evidentiary record during the contested case proceeding for this permit.

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<sup>68</sup> ALJ Finding 532

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Any alignment modifications arising from these site specific constraints that would result in right-of-way placement outside the designated route shall be located to have comparable overall impacts relative to the factors in Minnesota Rule 7850.4100 as does the alignment identified in this permit and also shall be specifically identified in and approved as part of the Plan and Profile submitted pursuant to Part IV.A. of this permit.

EFP staff believes that a reduced route width of 600 feet in many locations will allow the Applicants adequate space to coordinate with landowners and state and federal agencies when developing a final alignment and design for any of the routes under consideration. These areas are where the Applicants have indicated in the route permit application and throughout the proceedings that the new transmission line would be following or sharing an existing feature, such as a road, utility corridor or section line.

EFP staff relayed these concerns to the Applicants, agreeing that some flexibility is necessary for locating the route during the construction phase of the project, but advising them such flexibility must be balanced with the landowners' and other permitting agencies' needs for predictability.<sup>69</sup> In response to these concerns, Applicants subsequently modified their requested route width for the Modified Preferred Route and Alternate Route to a width of 600 feet in those areas depicted on the 17 tile maps attached to Applicants' February 8, 2010 Letter to the ALJ.<sup>70</sup>

For the Modified Preferred Route, EFP staff agrees in large part with Applicants' revised route widths as depicted in the tile maps that Applicants provided to address EFP staff's concerns.<sup>71</sup> The one further narrowing that EFP staff recommends which is applicable to route alternatives before the Commission for consideration relates to Tile Map 9, described as follows:

The portion of the Modified Preferred Route that would cross the Redwood River at Franklin (Lower Redwood Crossing), specifically the area between 340<sup>th</sup> Street and 630<sup>th</sup> Avenue in Camp Township, Redwood County.

EFP staff recommends a route width of 1,000 feet in this area rather than the approximately 1.2 miles feet requested by Applicants and recommended by the ALJ.

Based on the foregoing discussion and analysis, EFP staff recommends the following changes to the ALJ's findings and conclusions concerning designation of a route width:

**[Finding of Fact] 542.** Applicants' request for a route width of 1,000 feet and where necessary up to 1.25 miles is ~~consistent with~~ allowable under the PPSA, but is not entirely ~~and~~ appropriate given the circumstances of this Project ~~to allow coordination with landowners and state and federal agencies to develop a final alignment and design.~~

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<sup>69</sup> ALJ Finding 541.

<sup>70</sup> See Applicant's February 8, 2010 Letter, filed 02/08/10, Doc. Id. 20102-46898-05.

<sup>71</sup> The large route width area north of the city of Lynd on the Alternate Route, and the large route width area that would cross the Minnesota River at Le Sueur on the Modified Preferred Route need not be addressed.

**[Finding of Fact] 543.** Applicants' amended request for a 600 foot-wide route width, except for those areas where they continue to request a width of 1,000 feet to 1.25 miles, for the Modified Preferred Route, whether or not modified by Alternate 6P-06, also is ~~consistent with~~ allowable under the PPSA. With the exception of the increased route width requested by Applicants for crossing the Redwood River in Camp Township in Redwood County, the route widths depicted on Applicants' 17 Tile Maps represent a reasonable balancing of the Applicants' request for flexibility and a reasonable degree of predictability for landowners. For the Redwood River crossing depicted on Tile Map 9, Applicants' need for flexibility can be accommodated within a 1000 foot-wide route width designation.

**[Conclusion] 11.** The record demonstrates that it is appropriate for the Route Permit to provide the requested route width of 600 feet, except for those locations where Applicants are requesting a route width of 1,000 feet or up to ~~1.25~~ 1.1 miles, as shown on ~~Attachment 2 to Applicants' Proposed Findings of Fact, Conclusions and Recommendations~~ Tile Maps 1-17, with the further exception of the Redwood River crossing depicted on Tile Map 9, which should be limited to 1,000 feet.

EFP Staff also recommends rejecting the following findings:

**[Finding of Fact] 536.** The proposed route width is consistent with prior Route Permits issued by the Commission.

In addition, EFP staff agrees with the ALJ Finding No. 80, that should the Commission designate another route for the 345 kV transmission line, Applicants should be required to work with OES to narrow the route in a timely manner after the Commission approves a route.<sup>72</sup>

## **VI. EFP Staff Recommendations**

EFP staff has reviewed the record in this case relative to the standards, criteria and factors to be considered in determining whether to issue a permit for a high-voltage transmission line set forth in the Power Plant Siting Act and applicable Commission rules. Minn. Stat. § 216E.03 and 216E.04.; Minn. R. 7850.4000. It has also taken into account the input of state and federal agencies related to the permitability of various portions of the alternative routes under consideration, pursuant to Minn. Stat. § 216E.10, subd. 3 (a) and Minn. Stat. § 216E.03, subd. 7 (b) (12).

In weighing the impacts of the alternative routes, staff was guided by the state's policy of choosing locations that minimize adverse human and environmental impacts while insuring continuing electric power system reliability and integrity (Power Plant Siting Act).

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<sup>72</sup> ALJ Report at 80.

Based on this review, staff believes that the Modified Preferred Route, with an aerial crossing of the Minnesota River at Le Sueur is fatally flawed (ALJ recommendation 2.A. (1)). Staff also believes that the Alternative Crossover Route described in this briefing paper has fewer impacts than the Crossover Route (ALJ recommendation 2. A.(1a)).

Based on this review, EFP staff believes that the amended and supplemental findings of fact and conclusions recommended by staff in this briefing paper are warranted. Staff has prepared Findings of Fact, Conclusions of Law and Order that incorporate the ALJ report with supplemental findings addressing the Alternative Crossover Route, as well as corrections and clarifications.

EFP staff also has prepared a Route Permit with conditions, in accordance with Minn. Stat. § 216E.03 and Minn. Rule 7850.4600. The permit and conditions are based on the record and conditions of past permits issued by the Commission.

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## COMMISSION DECISION OPTIONS

### A. Environmental impact statement adequacy determination

1. Find that the EIS meets the requirements of Minn. R. 7850.1500, subp. 10, in that it:
  - A. Addresses the issues and alternatives raised in scoping to a reasonable extent considering the availability of information and the time limitations for considering the permit application;
  - B. Provides responses to the timely substantive comments received during the draft environmental impact statement review process; and
  - C. Was prepared in compliance with the procedures in parts 7850.1000 to 7850.5600.
2. Determine that the EIS is not adequate.

**EFP staff recommendation:** Option 1 A-C.

### B. Exceptions to the ALJ's Report

1. Party Exceptions (NoCapX2020/UCAN)
  - A. Adopt one or more of the NoCapX2020/UCAN recommended changes to the ALJ Report.
  - B. Adopt none of the NoCapX2020/UCAN recommended changes to the ALJ Report.
  - C. Take other action deemed more appropriate.
2. Theresa Ruhland Recommendations
  - A. Adopt Ms. Ruhland's recommendation to accept the ALJ's alternative recommendation 2.A.(1a) as written.
  - B. Find that Ms. Ruhland's recommendation is more appropriately addressed by adopting the EFP staff's recommended Alternative Crossover Route.
  - C. Take other action deemed more appropriate.
3. Bimeda Recommendations
  - A. Adopt one or more of the changes recommended by Bimeda, Inc.
  - B. Find that there is no need to address the Bimeda recommendations since the ALJ's Recommendation 2.A.(1a) with the Minnesota River crossing at Le Sueur is no longer a viable alternative.
  - C. Take other action deemed more appropriate.

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4. Mark Katzenmeyer recommendations.

- A. Adopt Mr. Katzenmeyer's recommendation to choose the river crossing at Belle Plaine as the better alternative because of the existing transmission line, other problems associated with the Le Sueur river crossing, the USFWS recommendations, the scenic highway, and input from Mn/DOT.
- B. Find that there is no need to address Mr. Katzenmeyer's recommendations since the ALJ's Recommendation 2.A.(1a) with the Minnesota River crossing at Le Sueur is no longer a viable alternative.
- C. Take other action deemed more appropriate

**EFP staff recommendation:** Option 1B, 2B, 3B and 4B

**C. Adoption of Findings of Fact, Conclusions of Law and Order**

1. Approve and adopt the attached EFP staff recommended Findings of Fact, Conclusions of Law and Recommendations for the Great River Energy and Xcel Energy 345 kV Transmission Line from Brookings County, South Dakota to Hampton, Minnesota, and issue an Order granting a permit for Administration Law Judge's recommended route 2. A. (1) described as:

The Modified Preferred Route, with an aerial crossing of the Minnesota River at Le Sueur, modified further by Alternative 6P-06 between Lake Marion and Hampton

2. Approve and adopt the attached EFP staff recommended Findings of Fact, Conclusions of Law and Recommendations for the Great River Energy and Xcel Energy 345 kV Transmission Line from Brookings County, South Dakota to Hampton, Minnesota, and issue an Order granting a permit for Administration Law Judge's recommended route 2. A. (1a) described as:

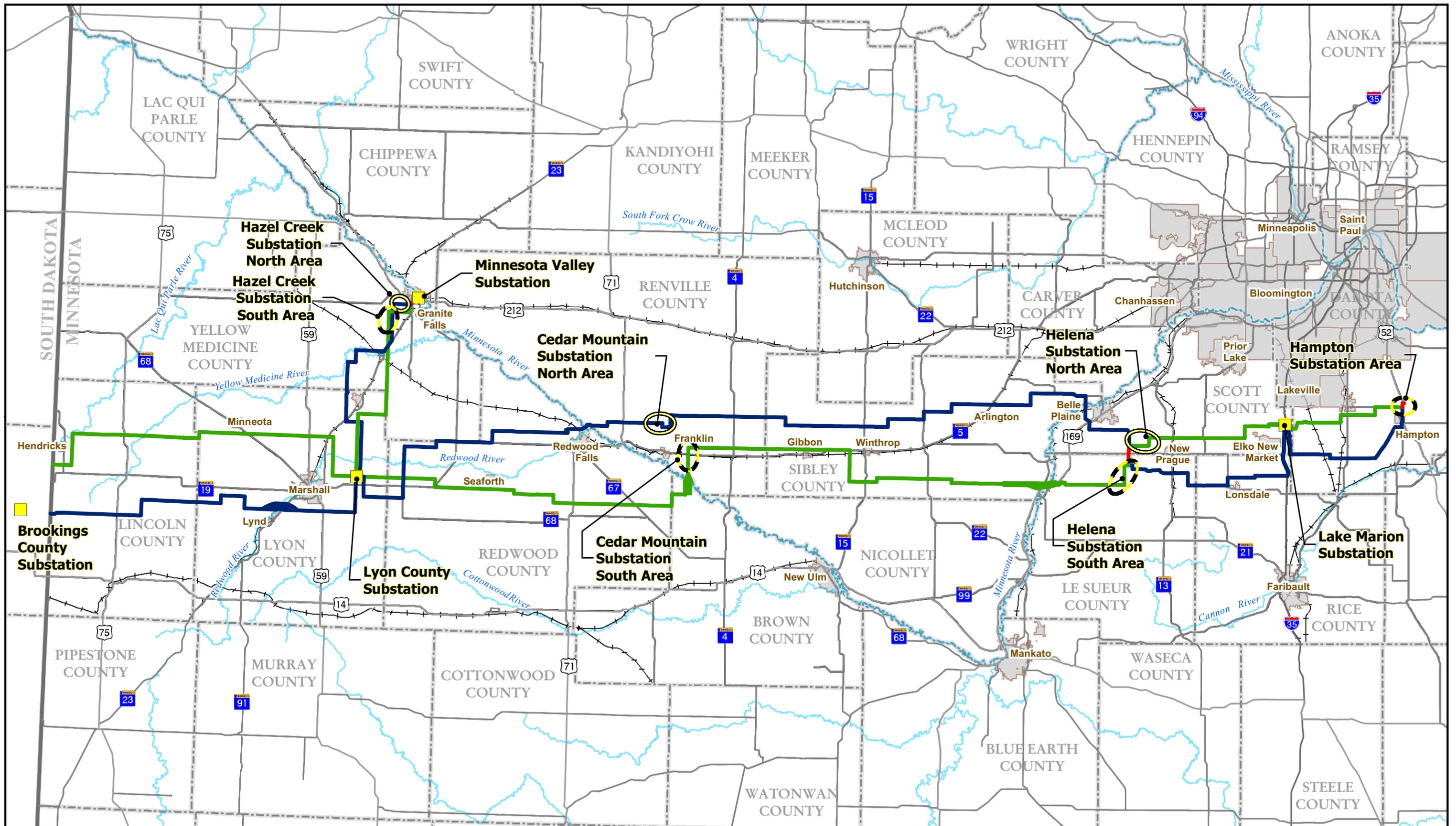
The Modified Preferred Route, modified further by Alternative 6P-06, and modified further by the Crossover/Alternative Route between Sibley County and the Helena Substation, with an aerial crossing of the Minnesota River at Belle Plaine

3. Approve and adopt the attached EFP staff recommended Findings of Fact and Conclusions of Law for the Great River Energy and Xcel Energy 345 kV Transmission Line from Brookings County, South Dakota to Hampton, Minnesota, and issue an Order granting a route permit for the Alternative Crossover Route described as:

The Modified Preferred Route, modified further by Alternative 6P-06, and modified further by the North-South Connector Example 2/Alternative Route between Sibley County and the Helena Substation, with an aerial crossing of the Minnesota River at Belle Plaine

4. Make some other decision deemed more appropriate.

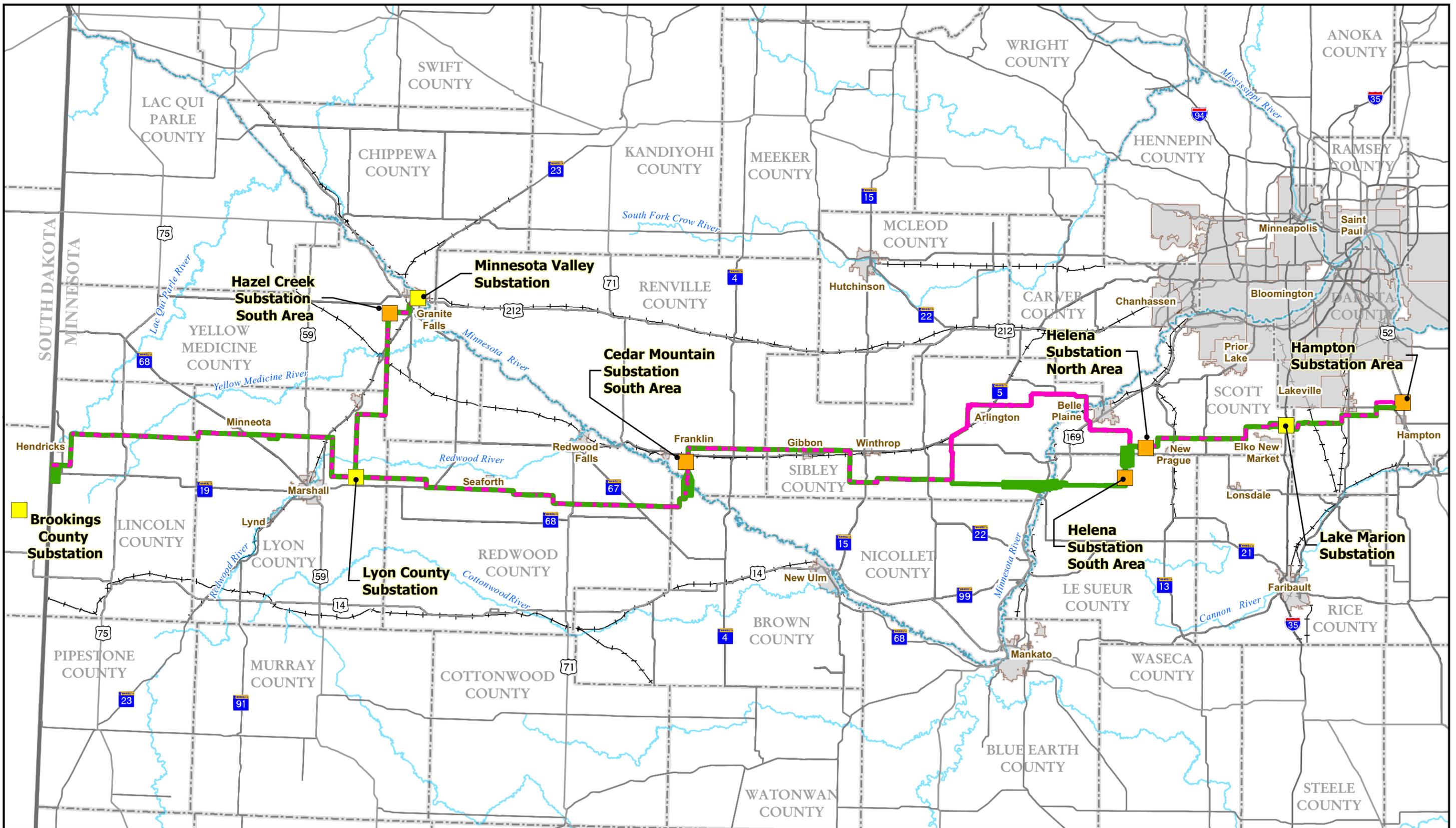
**EFP staff recommendation:** Option 3



Brookings-Hampton Route Maps  
PUC Docket Number ET2/TL-08-1474

	<ul style="list-style-type: none"> <li> Project Substations</li> <li> Preferred Substation Area</li> <li> Alternate Substation Area</li> </ul>	<p><b>Routes</b></p> <ul style="list-style-type: none"> <li> Preferred</li> <li> Alternate</li> <li> Both Preferred &amp; Alternate</li> </ul>
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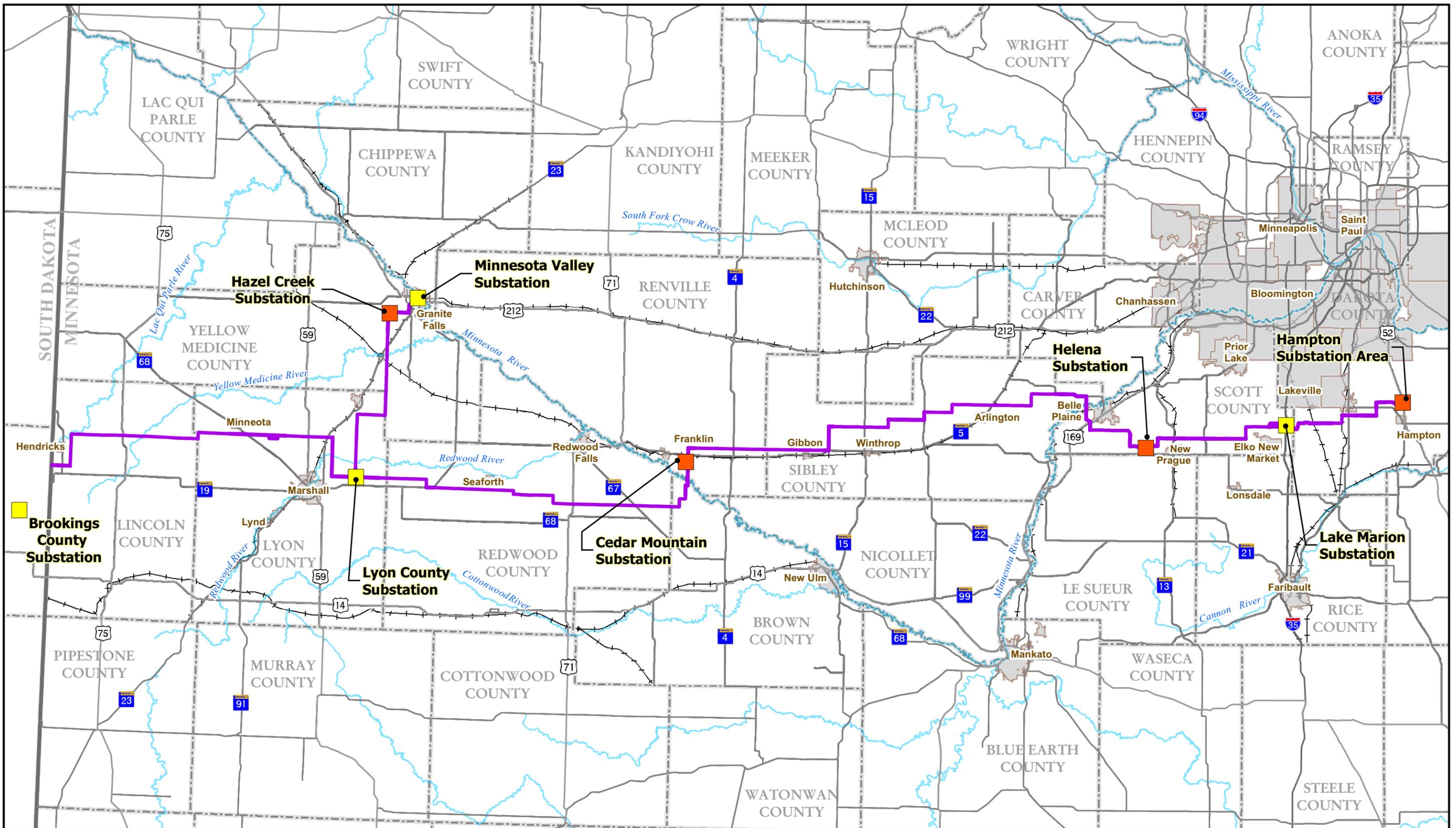
Overview Map  
Applicants' Preferred and Alternate Routes



Brookings-Hampton Route Maps  
 PUC Docket Number ET2/TL-08-1474



Overview Map  
 Applicants' Modified Preferred and Crossover Routes



Brookings-Hampton Route Maps  
 PUC Docket Number ET2/TL-08-1474

- Existing Substation
- Permitted Substation
- Permitted Route



Overview Map  
 Permitted Route

**TABLE 1  
ROUTE SEGMENT 4  
ALTERNATIVE CROSSOVER/CROSSOVER AND NORTH-SOUTH CONNECTOR SUMMARY**

Parameter	Units	Route Segment 4 - Cedar Mountain Substation to Helena North Substation		North-South Connector Segments	
		Alternative Crossover Route	Crossover Route	North-South Connector #2	USFWS/MnDNR Connector
Route Length	Miles	71.0	78.4	23.7	31.1
Route Area <sup>1</sup>	Acres	8,608	9,503	2787	3757
Right-of-way Area <sup>2</sup>	Acres	1,291	1,425	432	566
CORRIDOR SHARING					
Corridor Sharing (Road)	Miles	46.5	51.8	---	---
Corridor Sharing (Transmission Line)	Miles	2.8	2.8	---	---
Corridor Sharing (Railroad)	Miles	0.0	1.9	---	---
Corridor Sharing (Pipeline)	Miles	0.0	0.0	---	---
Corridor Sharing (Field Lines)	Miles	19.8	20.0	---	---
No Corridor Sharing	Miles	2.0	1.9	---	---
Total Corridor Sharing	Miles	69.1	76.5	---	---
HOMES					
0-75 ft from Route Centerline	Count	1	1	0	0
76 - 150 ft from Route Centerline	Count	9	9	1	1
151 - 300 ft from Route Centerline	Count	27	32	2	7
301 - 500 ft from Route Centerline	Count	33	35	8	10
Total	Count	70	77	11	18
WETLANDS					
Number of Wetlands Crossed	Count	43	46	6	9
Number of Forested Wetlands Crossed	Count	9	8	1	0

**TABLE 1**  
**ROUTE SEGMENT 4**  
**ALTERNATIVE CROSSOVER/CROSSOVER AND NORTH-SOUTH CONNECTOR SUMMARY**

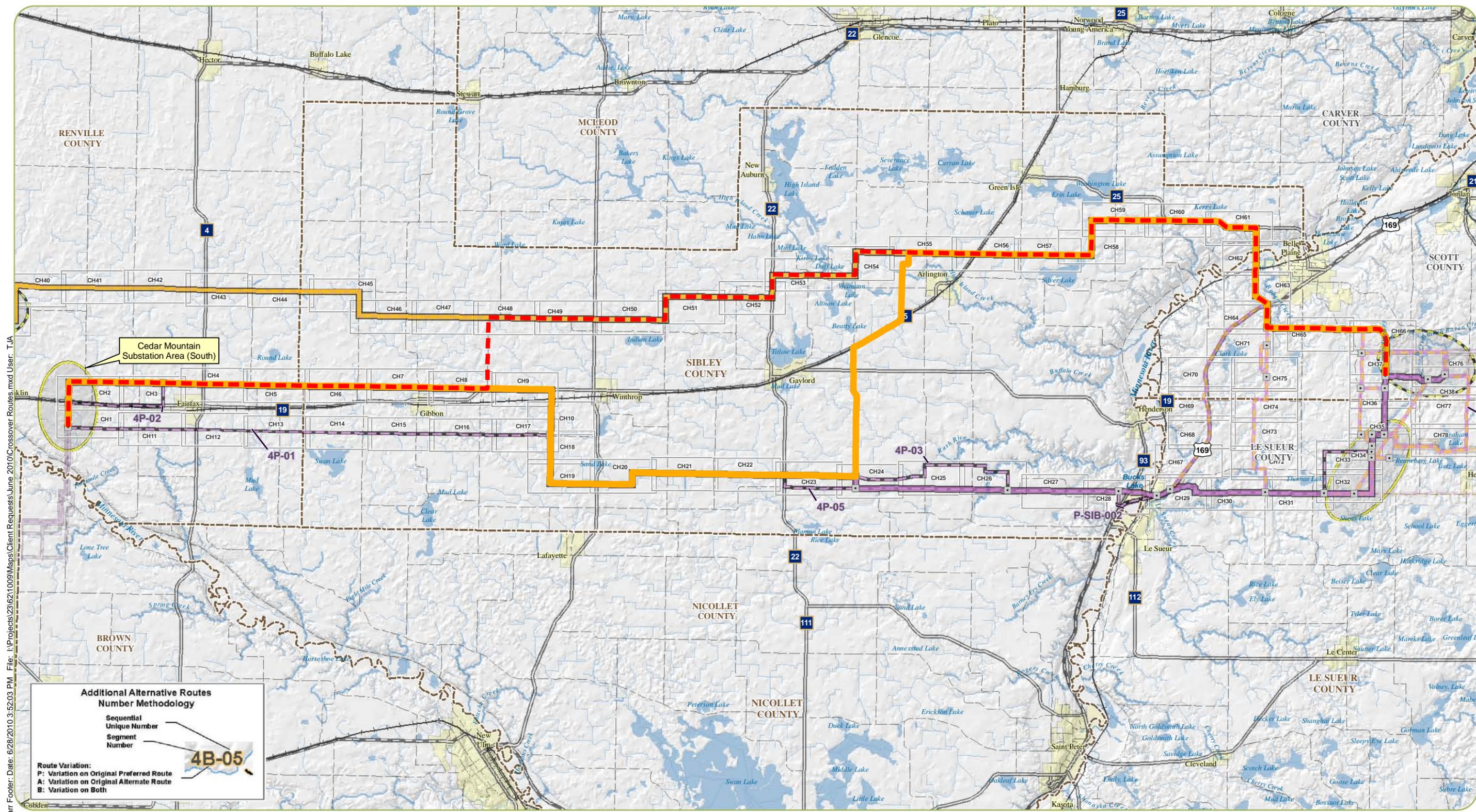
Parameter	Units	Route Segment 4 - Cedar Mountain Substation to Helena North Substation		North-South Connector Segments	
		Alternative Crossover Route	Crossover Route	North-South Connector #2	USFWS/MnDNR Connector
<b>STREAMS/RIVERS</b>					
Number of Streams/Rivers Crossed by Route Centerline	Count	52	53	19	20
Number of PWI Streams Crossed by Route CL	Count	22	18	11	7
<b>ENVIRONMENTAL</b>					
Number of MCBS Biodiversity Sites Crossed (right-of-way)	Count	2	4	0	2
Number of MCBS Biodiversity Sites Crossed (Route)	Count	2	4	0	2
Number of WMAs in Route	Count	2	2	0	0
USFWS Lands and Easements within 1 Mile	Count	4	4	0	0
T & E Species within Route (occurrences)	Count	1	3	0	2
Unique T & E Species within Route	Count	1	3	0	2
Number of Archaeological Sites within 1 Mile	Count	11	14	2	5
Number of Historical Sites within 1 Mile	Count	36	37	7	8
<b>PRIME FARMLAND</b>					
Prime Farmland within Right-of-way	Acres	401	397	123	119
Prime Farmland if Drained within the Right-of-way	Acres	735	855	297	416
Farmland of Statewide Importance within the Right-of-way	Acres	102	119	11	28
Prime Farmland, Prime Farmland if Drained, Farmland of Statewide Importance	Acres	1,238	1,371	431	563

**Notes:**

Data compiled for the DEIS was used for route segment comparison.

<sup>1</sup>Assumed route width 1000 ft.

<sup>2</sup>Assumed right-of-way Width 150 ft.



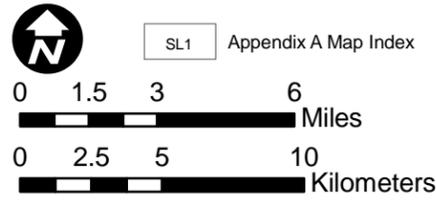
Barr Footer: Date: 6/28/2010 3:52:03 PM, File: I:\Projects\231621009\Maps\Client Requests\June 2010\Crossover Routes.mxd User: TJA

**Additional Alternative Routes Number Methodology**

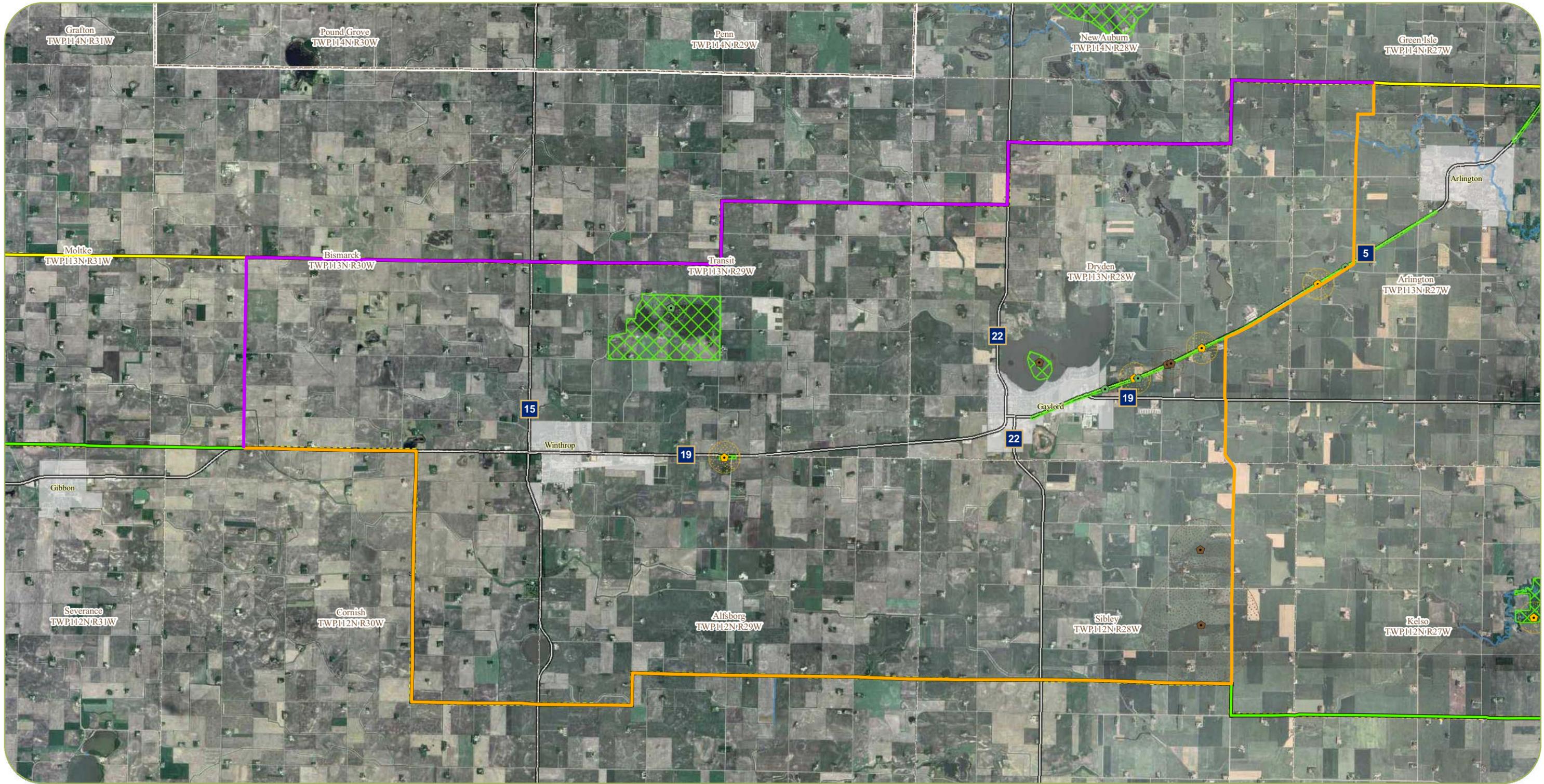
Sequential Unique Number  
Segment Number

**Route Variation:**  
 P: Variation on Original Preferred Route  
 A: Variation on Original Alternate Route  
 B: Variation on Both

**4B-05**



- Alternative Crossover Route
- Crossover Route
- Original Alignments
- Preferred Route
- Alternate Route
- Additional Alternative Routes**
- Variation on Preferred Route
- Variation on Alternate Route
- Variation on Both
- Project Substations
- Proposed Substation Areas**
- Preferred
- Alternate
- County Boundaries
- Tribal Land



— Preferred Route  
— Alternate Route

— Alternative Crossover Route  
— Crossover Route  
--- Public Land Survey Township  
--- County Boundaries  
■ Municipality Boundaries

**MCBS Biodiversity Significance**  
 [Green Hatched] Moderate Significance  
 [Orange Hatched] High Significance  
 [Red Hatched] Outstanding Significance

**MN DNR Natural Heritage**  
 [Green Diamond] Botanical  
 [Orange Diamond] Ecological  
 [Brown Diamond] Zoological  
 [Green Stippled] Botanical  
 [Orange Stippled] Ecological  
 [Brown Stippled] Zoological

Comparison of North/South Connector Routes



0 0.75 1.5 3 Miles

0 1.5 3 6 Kilometers

