



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS AND RECOMMENDATIONS OF THE
DEPARTMENT OF COMMERCE
ENERGY FACILITY PERMITTING STAFF**

DOCKET NO. E002, ET2/TL-09-1056

Meeting Date: June 10, 2011

Agenda Item # 3

Company: Northern States Power Company (dba Xcel Energy) and Great River Energy

Docket No. E002, ET2/TL-09-1056

In the Matter of the Application for a Route Permit for the Fargo to St. Cloud 345 kV Transmission Line Project

Issues: Should the Commission find that the Environmental Impact Statement (EIS) adequately addresses the issues raised in Scoping?
Should the Commission issue a Route Permit identifying a route and permit conditions for the Fargo to St. Cloud 345 kV Transmission Line?

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Relevant Document(s)

Route Permit ApplicationOctober 1, 2009
Draft EIS August 31, 2010
Final EIS January 7, 2011
Exhibit List..... January 31, 2011
ALJ “Findings of Fact, Conclusions and Recommendation” April 25, 2011

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The enclosed materials are the work papers of the Department of Commerce Energy Facility Permitting Staff (EFP). They are intended for use by the Public Utilities Commission and are based on information already in the record unless otherwise noted.

Attached Document(s)

Proposed HVTL Route Project Overview
Proposed Findings of Fact, Conclusions of Law and Order
Proposed HVTL Route Permit
Proposed HVTL Route Permit Map Set (Available on eDockets)

(Relevant documents and additional information can be found on eDockets (09-1056) or the PUC Energy Facilities website: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=25053>)

Statement of the Issues

Should the Commission find that the Environmental Impact Statement (EIS) and the record adequately address the issues identified in the Scoping Decision? Should the Commission issue a Route Permit identifying a route and permit conditions for the Fargo to St. Cloud 345 kV Transmission Line?

Introduction and Background

October 1, 2009, Xcel Energy and Great River Energy (Applicants) filed a route permit application under the full review process for the Fargo to St. Cloud 345 kV transmission line project (Project).

Project Area

The Project runs between the North Dakota border south of Fargo, through Alexandria and continuing through to the Quarry Substation in St. Joseph Township. A map that identifies an overview of the Project location is attached to these comments.

Project Description

Applicants are proposing to construct a project comprising a transmission line and substation upgrades as summarized below (using segments from the Final Environmental Impact Statement):

1. From the North Dakota border south of Fargo to Alexandria, following the Modified Preferred Route, using Option 2B;
2. From Alexandria to Sauk Center, following the Modified Preferred Route to Option 6 and then following Route A to the point where it rejoins the Modified Preferred Route;
3. From Sauk Center to Saint Joseph, following route G, including Option 11 and the E-5 segment of Option 12; and

4. Including the modifications to the Alexandria Substation, and updates required to connect to the Quarry Substation described in the Route Permit Application.

Regulatory Process and Procedures

The Project is over 200 kV and requires a Certificate of Need (CN). An Order from the Commission on May 22, 2009, granted a CN for the CapX2020 Phase I project, of which this line segment application is a part.

High voltage transmission lines with a voltage above 200 kV are required to undergo the Full Review Process under Minnesota Rule 7850.1700-2700 and Minnesota Statute 216E.04. Under the Full Review Process, an applicant is required to present a proposed and an alternative route. The application must provide specific information about the proposed project, applicant, environmental impacts, alternatives and mitigation measures (Minn. Rule 7850.1900). The Commission accepted the application as complete in its November 13, 2009, Order.

Under this process (Minn. Rule 7850.2300), the Department of Commerce Energy Facility Permitting (EFP) staff conducted 12 public information and scoping meetings in Barnesville, Fergus Falls, Elbow Lake, Alexandria, Melrose and St. Joseph between January 19 and 28, 2010. EFP prepared a Draft Environmental Impact Statement (EIS) released on August 31, 2010, and held eight Draft EIS information meetings in Barnesville, Fergus Falls, Elbow Lake, Alexandria, Melrose, Albany and St. Joseph between September 27 and 30, 2010. The Final EIS (Minn. Rule 7850.2500) was released on January 7, 2011.

A contested case hearing (Minn. Rule 7850.2600 and Minn. Rule 1405) was conducted by Administrative Law Judge (ALJ) Beverly J. Heydinger in Barnesville, Fergus Falls, Breckenridge, Elbow Lake, Alexandria, Sauk Centre, Melrose, Albany, Cold Spring, St. Joseph and St. Cloud between November 16 and December 2, 2010, with the evidentiary portion being held in St. Paul on December 6-10 and December 15, 2010. The ALJ report and recommendation was released on April 25, 2011. The ALJ recommended that the Commission issue a route permit to the Applicants along a route defined in her Conclusions.¹

EFP Staff Analysis and Comments

The HVTL in question is part of the larger CapX 2020 Phase 1 group of major transmission proposals. The Commission has previously issued a Certificate of Need to these projects in its May 22, 2009 Order and its August 10, 2009 modifying Order in docket no. E002, ET2/CN-06-1115. The only question to be determined in this docket is the selection of a final route.

Findings of Fact, Conclusions of Law, and Order

The ALJ released her Findings of Fact, Conclusions, and Recommendation (ALJ Report) on April 25, 2011. The ALJ Report addresses transmission line siting for the applicants' high-voltage transmission line route permit for the proposed Fargo to St. Cloud 345 kV transmission line project, and makes recommendations regarding the adequacy of the FEIS. The ALJ's report consists of two recommendations, 497 findings of fact, and 22 conclusions.

¹ "Findings of Fact, Conclusions and Recommendation," April 25, 2011, pp. 87-89.

ALJ Recommendations. The ALJ made the following recommendations:

1. That the Commission issue Applicants a Route Permit for the Modified Preferred Route from North Dakota to Sauk Centre, with Option 13 and 2B, and for Route G with Option 11 and the E-5 segment of Option 12 from Sauk Centre to St. Cloud, subject to the conditions as more fully set forth in the conclusions.
2. The Route Permit shall include the Applicants' requested modifications to the Quarry Substation and expansion of the Alexandria Switching Station.

The ALJ Report includes Appendix A, which summarizes the comments made at the public hearings and the written comments that are a part of 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 Analysis of Exceptions to the ALJ Report. As provided for on page 90 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, 2350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota 55101-2147. Exceptions must be specific, relevant to the matters at issue in this proceeding, and stated and numbered separately. Proposed Findings of Fact, Conclusions, and Order should be included, and copies thereof served upon all parties." The Commission's May 2, 2011, Notice described "Next Steps in Commission Process" and emphasized that Parties' exceptions "must cite the specific finding(s) of the ALJ that are allegedly in error and cite to specific facts in the official record to support your argument and must be received" by May 10, 2011.

The following parties filed exceptions: 1) Applicants; 2) Avon Township; 3) and No CapX 2020, United Citizens Action Network, and North Route Citizens' Alliance (collectively referred to herein as "NoRCA"). In addition, DNR filed exceptions to four specific findings, and a group of landowners, the Route E-5 Impacted Residents, filed a letter stating seven exceptions to the ALJ Report.

The findings and conclusions included in the following discussion 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.

1. Applicants' Exceptions

Exception No. 1: Route Widths. The ALJ Report notes that Applicants requested generally a route width of 1,000 feet, with expanded widths in some areas and narrowed widths in other areas to accommodate specific concerns. However, the ALJ states in Finding No. 95 and Conclusion 15 that the record is unclear as to which of the route width deviations Applicants

are still seeking. Conclusion 15 states that the Applicants should provide clarifying information to the Commission.

Applicants state in their exceptions that they “do generally request a 1,000 foot route width, except in areas where flexibility is needed to develop an alignment to avoid certain constraints (e.g., interstate connections, residences, or United States Fish and Wildlife (USFWS) areas) or in areas where USFWS Wildlife Production Areas (WPAs) must be avoided.”² Applicants note that the locations of expanded route widths were set forth in the route permit application³ and depicted in their Tile Maps.⁴ For the portion of the Project from North Dakota to Sauk Centre, Applicants continue to request wider route segments that are identified in the Application as Widened Area Numbers 1, 4-10, and 12-27. Applicants further request widened segments pertaining to Route G between Sauk Centre and the Quarry Substation at St. Cloud, which include Widened Area Numbers 31-33 and 35.. The Modified Preferred Route also contains widened areas not originally included in the Application, but which were developed through the record and which the ALJ recommended as part of the Modified Preferred Route: 1) Option 13, a site-specific consideration to accommodate an existing personal use airstrip;⁵ 2) the Minnesota-North Dakota border at a point approximately three miles south of the Applicants’ initial Preferred Route and running 17 miles easterly, which was an amended scope request to modify the preferred route to avoid future Red River flood mitigation construction; 3) an amended scope request to add 4.3 acres at the Alexandria Switching Station.

Areas where Applicants seek a narrowed route width are set forth in Table 1.5-2 in the DEIS.⁶ Applicants included a reproduced Table 1.5-2 in their exceptions that includes only portions of the DEIS’ table that remain relevant in light of the ALJ’s overall recommendation, with minor modifications and comments from the record in redline. The narrowed route widths are also depicted in the Tile Maps.⁷ Applicants request that the Commission approve the route widths identified above.

EFP Staff Analysis: The purpose of this exception is to address a request by the ALJ for the Applicants to clarify the locations along the recommended route where they are requesting a route width wider or narrower than the 1,000 feet generally requested in their Application. The ALJ requested that Applicants provide this information to the Commission. Applicants have provided clarification with cites to the record for these locations. EFP staff believes that the Applicants’ comments provide a complete explanation in response to the ALJ’s request.

Recommendation: Consistent with the ALJ’s request for additional clarification, the Commission may wish to adopt the following additional findings of fact:

[New Finding] Applicants generally request a 1,000 foot route width, except in areas where they believe flexibility is needed to develop an alignment to avoid certain constraints (e.g., interstate connections, residences, or United States Fish and Wildlife (USFWS) areas) or in areas where USFWS Wildlife Production

² Applicants’ Exceptions to the ALJ Report at 3.

³ Exhibit 1A at pages 2-12 to 2-13, Figure 2-4 (Applicants’ Route Permit Application).

⁴ Exhibit 4 (Tile Maps).

⁵ ALJ Report at ¶ 256 and Conclusion 8.

⁶ Exhibit 22 at 1-34, Table 1.5-2 (DEIS “Areas with Decreased Route Width”).

⁷ Hearing Ex. 4.

Areas (WPAs) must be avoided.”⁸ For the portion of the route from the North Dakota border to Sauk Centre, Applicants request wider route segments identified as Widened Area Numbers 1, 4-10, and 12-27. For Route Segment G between Sauk Centre and the Quarry Substation at St. Cloud, Applicants request Widened Area Numbers 31-33 and 35.⁹

[New Finding] The Applicants also request the following widened areas which were developed through the record as part of the Modified Preferred Route and recommended by the ALJ: 1) Option 13, a site-specific consideration to accommodate an existing personal use airstrip;¹⁰ 2) the Minnesota-North Dakota border at a point approximately three miles south of the Applicants’ initial Preferred Route and running 17 miles easterly, which was an amended scope request to modify the preferred route to avoid future Red River flood mitigation construction; and 3) an amended scope request to add 4.3 acres at the Alexandria Switching Station.¹¹

[New Finding] Areas where Applicants seek a narrowed route width were set forth in Table 1.5-2 in the DEIS.¹² The narrowed route widths are also depicted in the Applicants’ Tile Maps.¹³ The table produced by the Applicants is a reproduction of Table 1.5-2 in the DEIS which includes only portions of the DEIS’ table that remain relevant in light of the ALJ’s overall recommendation, with minor modifications and comments from the record in redline.¹⁴

Exception 2: Sauk Centre Alignment. The Sauk Centre Municipal Airport (the airport), located on the south side of Interstate 94, is a significant routing constraint within the Alexandria-Sauk Centre segment of the Project. Applicants requested flexibility during the Route Permit proceeding to work with Mn/DOT, FAA, and the city of Sauk Centre to develop an alignment within the Modified Preferred Route on the north side of Interstate 94. The ALJ Report recommends either the northern alignment along Interstate 94 that is contained within the Modified Preferred Route, or a southern alignment comprising portions of Alternate Route A and Option 6 (Southern Route Segment).¹⁵ The airport operates a paved north/south main runway and a grass west/east crosswind runway, each of which has its own departure slopes and land use safety zones that restrict structure locations and heights on surrounding properties.¹⁶ The airport’s most recent approved Airport Layout Plan (2000) calls for upgrading and expanding both runways, but the plans are subject to revision and there is no timeframe for implementation.¹⁷

Applicants stated that they have further reviewed the potential alignments on the north and south sides of Interstate 94, the ALJ’s recommendation that the line avoid downtown Sauk Centre, and the uncertainty surrounding future airport plans. The Applicants have also evaluated the Sauk

⁸ Applicants’ Exceptions to the ALJ Report at 3.

⁹ Applicants’ Exceptions to the ALJ Report at 3-4.

¹⁰ ALJ Report at ¶ 256 and Conclusion 8.

¹¹ Applicants’ Exceptions to the ALJ Report at 3-4.

¹² Exhibit 22 at 1-34, Table 1.5-2 (DEIS “Areas with Decreased Route Width”).

¹³ Hearing Ex. 4.

¹⁴ Applicants’ Exceptions to the ALJ Report at 4.

¹⁵ ALJ Report, Conclusions. 10-11.

¹⁶ ALJ Report, ¶¶ 299-301.

¹⁷ ALJ Report, ¶¶ 299-300.

Centre wildlife management area (WMA) that the transmission line would cross on the Southern Route Segment. As the ALJ recognized, the Project would avoid the Sauk Centre area and the airport if the transmission line were constructed along the Southern Route Segment.¹⁸ In addition, the Minnesota DNR has not identified any impediment to crossing the WMA, and none is anticipated. On balance, the Applicants believe that the Southern Route Segment should be authorized for the Project. To authorize the Southern Route Segment, Applicants recommend the following modifications to the ALJ's Report:

Finding No. 306: ~~In the event that the Modified Preferred Route cannot be aligned~~ A more reasonable alternative to comply with federal and state aviation standards and address the City's objections to alignment along 12th Street, ~~an alternative~~ is to follow the Modified Preferred Route to Option 6, then follow Option 6 and Route A to the point where Route A rejoins the Modified Preferred Route at the end of this segment. This would add about 3.5 miles to the length of the Modified Preferred Route, at an estimated cost of \$1.7 million per mile. With certain limitations on the height of one or two transmission line structures, Option 6 and Route A around the City could be constructed to comply with the airport safety clearances.

Finding No. 347: ~~If MnDOT, the FAA and the City cannot find an acceptable alignment for the Modified Preferred Route, the~~ The transmission line should follow the Modified Preferred Route south from Alexandria to Option 6, along Option 6 to Route A, and follow Route A to the point of reconnection with the Modified Preferred Route south of Sauk Centre. This selection would avoid the airport, the developed part of the City and significantly reduce the number of freeway crossings. ~~If this alternative is selected, the~~ The Route Permit should require the Applicants to coordinate with the DNR to mitigate the alignment's impact.

Conclusion 10: For the Alexandria to Sauk Centre segment of the Route, the Modified Preferred Route from Alexandria to Option 6, to Route A until it rejoins the Modified Preferred Route, satisfies the route permit criteria set forth in Minn. Stat. § 216E.03, subd. 7 (a), 7(b), and Minn. R. 7850.4000, and 7850.4100. For this segment, the Modified Preferred Route with Option 6 and the Route A segment proceeding south of Sauk Centre presents a potential for significant adverse environmental effects, but there is no feasible and prudent alternative. The Modified Preferred Route is the best alternative on the record for the 345 kV transmission line from Alexandria to Sauk Centre.

Conclusion 11: ~~In the event that the Modified Preferred Route cannot be aligned to meet MnDOT airport clearance requirements and avoid 12th Street in Sauk Centre, the Modified Preferred Route should be followed from Alexandria to Option 6 and then follow Route A to the point where it rejoins the Modified Preferred Route.~~

¹⁸ ALJ Report, ¶ 270.

EFP Staff Analysis: EFP agrees with the Applicants' argument and revised findings for this segment. The ALJ Report discusses the issues raised regarding the Sauk Centre Airport at Findings 296 to 308. Throughout the proceeding, the city of Sauk Centre, Applicants, and Mn/DOT tried to find a resolution to the issues presented by placing a transmission line near the Sauk Centre Airport, and at the close of the evidentiary hearing, these parties were still attempting to find a resolution. They met with FAA officials to review possible design modifications that would address concerns about interference with runway clearance and the city's objection to locating the transmission line north of I-94 along 12th Street in Sauk Centre.¹⁹

The parties concluded that, although an alignment could be identified that would address the current configuration of runways at the Sauk Centre airport, the upgrading and expanding of both runways called for in the most recent approved Airport Layout Plan (2000) is subject to revision and there is no timeframe for implementation. If the transmission line is constructed along I-94, the 2000 Airport Layout Plan is significantly affected regarding the clearance needed for each runway and changes would need to be made to the Plan, with the potential of costs so high as to be infeasible. As the letters from Mn/DOT and the FAA--filed as post-hearing exhibits--clearly indicate, the possibility of meeting safety clearance zones for the airport is improbable and could lead to significant delays to the project and significant expense to the city of Sauk Centre if moving the airstrip were required in the future.²⁰

Recommendation: EFP staff believes that the Modified Preferred Route from Alexandria to Option 6, then to Route A until it rejoins the Modified Preferred Route, is the preferable route. EFP staff supports the Applicants' changes to the findings. The EFP staff recognizes that DNR prefers the route north of I-94²¹ along 12th Street and presented information to support its preference. The ALJ recognized the environmental constraints along Option 6 and the segment of Route A, and reasonably concluded that if this alternative is selected, the Route Permit should require the Applicants to coordinate with the DNR to mitigate the alignment's impact.²²

Exception 3: Finding 245, Option 2B. The ALJ Report recommends adoption of Option 2B as an 8.6-mile modification to the Modified Preferred Route in Erdahl and Evansville Townships.²³ Applicants do not take exception to the ALJ's recommendation to adopt Option 2B in lieu of the comparable segment of the Modified Preferred Route. However, Applicants have identified an error in Finding No. 245, which cites the FEIS at 3-2, Table 3.2-1, and suggests the following correction:

Finding No. 245. Option 2A will add approximately \$15.7 million to the cost of the Modified Preferred Route; Option 2B will add about ~~\$14.6~~\$1.0 million to the cost.

The costs reflected in this finding and set forth in FEIS Table 3.2-1 are the total costs of Options 2A and 2B, respectively (calculated by multiplying the lengths of the options by \$1.7 million per mile), rather than the incremental cost of replacing a portion of the Modified Preferred Route

¹⁹ ALJ Report, ¶ 303.

²⁰ Exhibits 55-58 (Jan. 5, 2011).

²¹ DNR Letter to the ALJ dated January 5, 2011.

²² ALJ Report, ¶ 347.

²³ ALJ Report, ¶ 255, referencing Ex. 22 at Figure 1-5 (DEIS).

with either Option 2A or Option 2B.²⁴ Given that Option 2B is about 8.6 miles but replaces approximately 8 miles of the Modified Preferred Route,²⁵ the correct incremental cost of Option 2B would be approximately \$1.0 million.

EFP Staff Analysis and Recommendation: EFP staff agrees with the Applicants' assessment and recommends that the Applicants' exception to Finding No. 245 be accepted to correct the record.

Exception 4: Conditions. Conclusion 21 of the Report recommends development of a variety of plans, the retention of an environmental monitor, and further consultation with the DNR to mitigate potential impacts of construction and operation of the transmission line. The Company generally supports the recommendation, but believes that the most appropriate reports are the CapX2020 Agricultural Impact Mitigation Plan, an avian mitigation plan, a re-vegetation plan, and a Stormwater Pollution Prevention Plan. The Company requests that the proposed condition, if adopted, be revised as follows:

Conclusion 21: As a condition of the Route Permit, the Applicants should develop a Construction Environmental Control Plan, which shall include an Agricultural Impact Mitigation Plan, Avian ~~Protection Mitigation Plan,~~ ~~Environmental Management Plan,~~ Re-vegetation and Restoration Plans, and a Stormwater Pollution Prevention Plan, ~~Environmental Mitigation Plan and all policies, permits, plans, and protocols,~~ to minimize and mitigate the potential impact associated with the construction and operation of the transmission line. ~~The control plan shall require the Applicants~~ shall ~~to~~ consult with the DNR concerning right-of-way management, use of bird diverters, and construction near water bodies, wetlands, native plant communities and breeding areas. The Applicants ~~should also be required to~~ shall retain and/or fund an environmental monitor to oversee implementation and compliance with the Construction Environmental Control Plan.

EFP Staff Analysis: With regard to the Applicants' objections to a conclusion by the ALJ as to preparing environmental protection plans,²⁶ EFP agrees with the Applicants' commitment to environmental planning laid out in its comments.²⁷ Applicants' consultation with DNR will require a variety of protocols throughout the line that may well be met more efficiently in specific instances; and the required permits are already laid out in the EIS.²⁸ However, whether the "control plan" does or does not require consultation with the DNR or require funding an environmental monitor is immaterial, as that consultation and funding are required by Route Permit condition.²⁹

Recommendation: The EFP staff recommends the ALJ conclusion for mitigation plans be adopted as amended. Staff also recommends that Permittees' consult with DNR where the mitigation impacts areas under DNR jurisdiction. Staff further recommends the retention of an

²⁴ See FEIS at 3-2, Table 3.2-1.

²⁵ Ex. 30 at Schedule 8, p. 1 of 9 (Lahr Rebuttal).

²⁶ ALJ Report, Conclusion 21.

²⁷ Applicants' Exceptions to the ALJ Report at 8.

²⁸ Exhibit 22a, Section 8 (DEIS).

²⁹ See Route Permit, Special Condition IV.K.4.

environmental monitor as the most effective way to assure the details of the Environmental Control Plan are fully implemented.

2. Avon Township Exceptions

Avon Township is not adversely affected by the ALJ's recommendations, and proposes additional findings and conclusions in the event Route G is not confirmed. Avon Township filed exceptions offering additional findings and conclusions relating to non-proliferation, stating, however, that, "[i]n the event that Route selection G is confirmed, the exceptions would then not be material to the outcome of the case and in that event, Avon Township does not seek procedures which would result in delay of Route G selection merely to correct findings which are not outcome determinative." Avon Township states that the ALJ's decision "is plainly correct and supported by overwhelming evidence," and that its purpose in filing exceptions is "merely to advance findings which we believe were compelled by the evidence, which if adopted would make the selection of Route G even more compelling."

Avon Township's express concern is the application of the *PEER* decision³⁰ regarding non-proliferation to the facts of this proceeding. Avon Township asserts that by including "linear features," such as property lines and field boundaries, in tables relating to proliferation suggests that running a power line on a farmer's property line is equivalent to running a power line on an existing highway or power line right of way. Avon Township acknowledges that the ALJ appreciated the distinction, yet the Township believes that the ALJ's findings could more forcefully have made this distinction transparent, and thus, the following additional findings of fact should have been included in the ALJ Report:

1. All parties have accepted that the principles articulated in *People For Environmental Enlightenment and Responsibility (PEER), Inc v. Northern States Power*, 266 N.W.2d 858 (Minn. 1978) are applicable to this case. Under the PEER decision in order to make the route-selection process comport with Minnesota's commitment to the principle of nonproliferation, the Commission must, as a matter of law, utilize pre-existing rights-of-way unless there are extremely strong reasons not to do so. In addition, where a route significantly impairs the environment, the Commission must avoid that impairment if a feasible and suitable alternative exists.
2. G exhibits significantly less proliferation than the northerly Preferred Route option. Moreover, the Preferred Route proliferates in areas of significantly greater environmental significance.
3. The applicant's Preferred Route imposes significant environmental impact on important environmental resources which must be avoided if a suitable and feasible alternative route exists. Route G provide such suitable and feasible alternatives.

In addition, Avon Township asserts that the ALJ Report should contain the following conclusions:

³⁰ *People for Env'tl. Enlightenment and Responsibility ("PEER"), Inc. v. Minnesota Environmental Quality Council, et al.*, 266 N.W.2d 858 (Minn. 1978)

1. The evidence on the record demonstrates that the Modified Preferred Route with Option 13 present a potential for significant adverse environmental effects pursuant to the Minnesota Environmental Rights Act, Minnesota Statutes Sections 116B.01-116B.13, and Minnesota Environmental Policy Act, Minnesota Statutes Sections 116D.01-116D.11. Based on the testimony as well as the comments of the Department of Natural Resources, the Modified Preferred Route clearly causes significant adverse environmental effects, and those effects can be avoided by a suitable and feasible alternative.

2. The evidence on the record demonstrates that the Modified Preferred Route, with Option 13 does not satisfy the route permit criteria set forth in Minnesota Statutes Section 216E.03, subdivision 7(a) and Minnesota Rule 7850.4100 based on the factors in Minnesota Statutes Section 216E.03, subdivision 7(b) and Minnesota Rule 7850.4000.

EFP Staff Analysis: EFP staff notes that Avon Township’s proposed additional findings and conclusions relate only to the Sauk Centre to St. Cloud segment of the route, not the entire length of the route. Therefore, if the Commission chooses to adopt Avon Township’s additional findings of fact and conclusions, they would need to be modified to clarify that they apply only to the Sauk Centre to St. Cloud segment. However, Avon Township states that the ALJ’s decision is supported by “overwhelming” evidence. Therefore, if the Commission agrees that the ALJ’s recommendation is supported by the evidence in the record and adopts the ALJ’s findings and recommendations, EFP staff believes that no purpose is served by adopting Avon Township’s proposed findings and conclusions. If the Commission chooses another route segment rather than Route G as recommended by the ALJ, the proposed findings and conclusions may be irrelevant. EFP staff does not address the legal merits of Avon Township’s discussion and interpretation of the *PEER* decision.

Recommendation: EFP staff recommends that the Commission not adopt the findings and conclusions proposed by Avon Township. Avon Township’s proposed additional findings are unnecessary if the Commission grants a permit for Route G, and they may be irrelevant if the Commission grants a permit for an alternative route segment between Sauk Centre and St. Cloud.

3. NoCapX2020/UCAN and NoRCA Exceptions

NoRCA supports the ALJ’s recommendation of Route G with Option 11 and the E-5 segment of Option 12 for the route segment from Sauk Centre to St. Cloud. NoRCA filed two exceptions to the ALJ Report, the first relating to findings concerning non-proliferation and the second to her findings on the adequacy of the EIS.³¹ Like Avon Township, NoRCA is not adversely affected by the ALJ’s recommendations.

Exception 1. NoRCA takes exception to the ALJ’s findings relating to non-proliferation and the *PEER* decision. NoRCA states that the ALJ and the Department have “misconstrued and conflated the criteria regarding non-proliferation, resulting in significant misrepresentation of comparative proliferation of route alternatives.” NoRCA argues that the “criteria for consideration of proliferation by the Administrative Law Judge in the Recommendation, and by

³¹ The North Route Citizens’ Alliance did not join in the second exception.

[the Department] in environmental review is clear” and that the ALJ and the Department have conflated the following criteria in statute and rule:

Minn. Stat. § 216E.03: DESIGNATING SITES AND ROUTES.

Subd.7. Considerations in designating sites and routes.

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

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

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

Minn. R. 7850.4100. FACTORS CONSIDERED. In determining whether to issue a permit for a large electric power generating plant or a high voltage transmission line, the commission shall consider the following:

H. use or paralleling of existing rights-of-way, survey lines, natural division lines, and agricultural field boundaries;

J. use of existing transportation, pipeline, and electrical transmission systems or rights-of-way;

NoRCA argues that the factors relating to non-proliferation are separate and distinct from the factors addressing other linear features that are related to the State’s policy of preservation and conservation of agricultural land, and not a measure of non-proliferation. NoRCA proposes the following changes to the ALJ’s findings to be more consistent with the routing rules:

239. PEER established the weight of proliferation in comparison with impacts on those living along corridors and contemplated that those along corridors would suffer impacts resulting from a policy of non-proliferation. It is likely that homes will be affected by running transmission lines along highway rights-of-way because homes are typically placed close to roads. ~~Thus, it is necessary to balance the desirability of following existing rights-of-way, the number of homes in proximity to the alternatives, the impact on the environment, cost, and the other routing factors to determine which route best meets the routing criteria.~~

241. The Modified Preferred Route parallels less existing right-of-way ~~and linear features~~ than the Preferred Route Applicants initially proposed, but the Applicants prefer the Modified Preferred Route because it allows for a river crossing that is farther south of the Fargo area, which addresses the concerns raised by local officials.

~~73. The Modified Preferred Route Preferred Route and Route G have the most miles, 4.6 and 7.7, respectively, that do not follow any right of way or linear feature.~~

~~475. Option 11 follows more field lines than the comparable section of Route E, which follows more roads than the comparable section of Option 11. The Route B segments of Option 12 follow roads and the E-5 segment follows a rail line.~~

EFP Staff Analysis: EFP staff notes first that NoRCA’s argument for this exception relies on Minn. Stat. § 216E.03, subd. 7(e) (2010), a section enacted by the Minnesota Legislature in 2010 and which does not apply to this proceeding. It is unclear to what extent NoRCA’s argument for the proposed changes to findings 239, 242, 473, and 471 relies on this newly-enacted section. However, the ALJ clearly addressed the *PEER* decision in her findings, noting in Paragraph 235 that the principle established in *PEER* applies to this proceeding, even though Minn. Stat § 216E.03, subd. 7(e) does not apply because the route permit application was filed prior to the statute taking effect.

EFP staff also believes that the ALJ properly balanced the routing criteria and the *PEER* principle, giving the non-proliferation factor the appropriate weight, as she discussed in Finding No. 238:

238. Because of the desirability of non-proliferation, this factor is given greater weight than the factor which includes not only rights-of-way, but also survey lines, natural division lines and agricultural field boundaries. Although such features are helpful for siting the proposed line, following such lines and boundaries does not avoid proliferation.

Recommendation: EFP staff recommends that the Commission reject NoRCA’s exceptions to Paragraphs 239, 242, 473, and 471, because the argument made by NoRCA does not recognize that the ALJ thoroughly considered both the *PEER* decision and its effect on this route, properly weighing the *PEER* principle and the routing criteria, and that she correctly concluded that Minn. Stat. § 216E.03, subd. 7(e) does not apply to this route permit application.

Exception 2. NoCapX2020/UCAN takes exception to Finding No. 496 and Finding No. 497, regarding the adequacy of the FEIS. NoRCA does not join in this exception. NoCapX2020/UCAN contends that the ALJ misstated the standard by which adequacy of review is determined, using the phrase “issues and alternatives raised in the Scoping Decision” instead of “issues and alternatives raised in scoping” as Minn. R. 7850.2500, subp. 10 states:

- 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.

NoCapX2020/UCAN takes exception and recommends the following changes be accepted by the Commission and used in the Commission's Order:

496. The Commission is required to determine the adequacy of the FEIS. To be adequate, the FEIS must, among other things, “address the issues and alternatives identified in ~~the Scoping Decision~~ scoping “to a reasonable extent considering the availability of information and the time limitations for considering the permit application.”

497. The evidence on the record demonstrates that the FEIS is adequate because it addresses the issues and alternatives raised in ~~the Scoping Decision~~, ~~scoping-as-amended~~, provides responses to the substantive comments received during the DEIS review process, and was prepared in compliance with the Minnesota Rules 7850.1000 to 7850.5600.

EFP Staff Analysis: The change recommended by NoCapX2020/UCAN to Finding No. 496 may be acceptable, since it moves the quotation mark to include more words in the quoted language which is then an accurate quote from Minn. R. 7850.2500, subp. 10A. However, it appears that the ALJ knew what she was doing by inserting the quotation mark after the word “scoping” and that she intended to specify the “Scoping Decision.” EFP staff fails to understand the reason behind NoCapX2020/UCAN's proposed changes, however, since the Scoping Decision, as amended, contained all the alternatives that would be addressed in the draft EIS and the FEIS. There are typically some options raised in scoping that are not addressed in the DEIS for the reasons explained by the Commissioner in the Scoping Decision. It is unclear in NoCapX2020/UCAN's argument whether NoCapX2020/UCAN is arguing that the issues raised in scoping but not addressed in the DEIS should be considered in the adequacy determination. If so, it would make the Commissioner's Scoping Decision moot since every alternative would need to be addressed in every route's EIS. EFP staff believes that this would be an absurd reading of the rule.

Recommendation: EFP staff recommends the Commission reject NoCapX2020/UCAN's proposed changes to Findings 496 and 497.

4. DNR Exceptions and Comments

Exception 1: DNR states that the last two sentences of Finding No. 18 appear to reference an outdated DNR comment letter and state incorrect DNR recommendations. DNR enclosed a letter dated January 5, 2011, with attached maps, and a memo dated January 7, 2011 for accurate information about its recommendations. DNR's letter was filed by the comment deadline established by the ALJ for public comment following the contested case hearing. DNR recommends the following changes:

18. The Minnesota Department of Natural Resources (DNR) offered comments addressing the impact of the route alternatives on lands it owns and manages, the impact of the route alternatives on the environment, and mitigation. It requested that the Applicants avoid identified high bird-use areas and migration corridors, state managed resources and federally owned or managed resources, and the placement of lines between these areas. Recognizing that the route selection must take into account several criteria, the DNR recommended selection

of Route A for the North Dakota to Alexandria segment. ~~For, and the Modified Preferred Route from~~ the Alexandria to Sauk Centre segment, the DNR recommends following Route A east to Option 6, and then following Option 6 to the Preferred Route. On the expanded portion of the Preferred Route near the city of Sauk Centre, the DNR generally concurs with the alignment shown on sheets 50 and 51 (DEIS Appendix H), but encourages avoidance of the McCormick Lake WPA by changing alignment near the WPA. It recommended selection of ~~Route D or~~ Route G with Option 11 from Sauk Centre to St. Cloud.³²

Recommendation: The EFP staff recommends accepting the DNR's proposed changes to Finding No. 18 to accurately state the DNR's recommendations.

Exception/Comment 2: DNR notes that Finding No. 228 states that the Applicant has developed an Avian Protection Plan. The DNR requests a copy of the Avian Protection Plan and an opportunity to provide input regarding how to mitigate for possible avian impacts resulting from project construction. The DNR further states that planning mitigation for avian impacts is recommended prior to issuance of the route permit to the extent possible.

Recommendation: The EFP staff considers it reasonable that the Applicant provide DNR a copy of its general Avian Protection Plan and consider DNR's input on a specific plan for mitigating possible avian impacts in this project. Staff does not consider it practical that the specific mitigation plan be in place prior to permit issuance. The permit does require a specific avian mitigation plan before filing a Plan and Profile.³³

Exception 3: DNR notes that for the Alexandria to Sauk Centre Segment, under the title *Effects on Rare and Unique Natural Resources*, Finding No. 338 states that the DNR and the Department coordinated and that the Department did not identify any areas of concern with this segment. DNR states that it has no record in its project notes to indicate any coordination between the Department and DNR resulting in a determination of no concerns within this segment. The DNR provided comments regarding the Alexandria to Sauk Centre segment suggesting avoidance of sites of biodiversity significance and rare features. However, without further clarification or a reference, the first sentence of Finding No. 338 should be considered an incorrect summary from DNR's perspective.

338. In preparing the DEIS, OES coordinated with the USFWS and DNR and did not identify any areas of concern within this segment. The impact on habitat was also evaluated. Although both alternatives have relatively little impact, Route A impacts a WMA (220 acres within the Route, 12 within the right-of-way), and MCBS Site designated as Moderate (56 acres within the Route, 10 within the right-of-way), and five native plant communities (32 acres with the Route, 5 within the right-of-way). There are none within the Modified Preferred Route.

Recommendation: EFP staff agrees with DNR's characterization of the first sentence and recommends the finding be amended as follows:

³² DNR Comment Letter dated January 5, 2011

³³ See Route Permit, Special Condition IV.K.6.

338. In preparing the DEIS, OES ~~coordinated~~ consulted with the USFWS and DNR ~~and did not identify any areas of concern within~~ with regard to this segment. The impact on habitat was also evaluated. Although both alternatives have relatively little impact, Route A impacts a WMA (220 acres within the Route, 12 within the right-of-way), and MCBS Site designated as Moderate (56 acres within the Route, 10 within the right-of-way), and five native plant communities (32 acres with the Route, 5 within the right-of-way). There are none within the Modified Preferred Route.

Exception 4: DNR states that the last sentence of Finding No. 346 appears to reference DNR input, but it is unclear if the sentence reflects the DNR recommendation for this area. Thus, DNR recommends the following changes to clarify Finding No. 346:

346. The DNR would prefer to follow Route A to Option 6, then to avoid Minnesota County Biological Survey (MCBS) sites of biodiversity significance, rare features, and public lands, it is recommended to use Option 6 and then follow the Preferred Route east to the beginning of the Sauk Centre to St. Cloud segment. On the expanded portion of the Preferred Route near the city of Sauk Centre, the DNR concurs with the alignment shown on sheets 50 and 51 (DEIS Appendix H) to avoid the McCormick Lake Waterfowl Production Area (WPA) is recommended by changing alignment within the expanded right-of-way to reduce possible effects to waterfowl, and then go north to the Modified Preferred Route along 12th Street in Sauk Centre for the rest of the segment to avoid environmentally sensitive areas. South of Option 6, Route A does not follow existing roads, trails or transmission lines. Route A will cross Hoboken Creek, Sauk River WMA and Native Plant communities, but would not appear to have a greater impact on the environment and residences than moving the Modified Preferred Route alignment closer to I-94 south of Sauk Centre.

Recommendation: The EFP staff recommends accepting DNR's clarification of its position.

5. Route E-5 Impacted Residents letter of exception.

The Commission has received a number of comment letters from individual landowners, mostly reiterating comments previously made either orally at public meetings or in written comments to the ALJ. For the most part, such letters address the personal concerns of the individual landowner affected by the ALJ Report and do not identify specific findings to which they wish to take exception. The EFP does not generally address such letters. A group of residents along Old Highway Road (representing 11 addresses), filed a letter concerning the ALJ Report and stating seven specific findings in the ALJ Report that they claim are in error.³⁴ This group of

³⁴ The seven exceptions are:

1. Route E-4 runs immediately adjacent to over 100 acres of residentially zoned land. The FFCR only looks at residences within 500 feet. Towers up to 170 feet high have a visual impact far exceeding 500 feet in this area.
2. The Table in paragraph 390 of the FFCR is misleading. There are 13 residences visually impacted by Route E-5. Two are in the right of way, and five more are just over 500 feet from the route center.
3. Route E-5 was not evaluated separately in paragraphs 383 and 384 of the FFCR, and, therefore, inadequately evaluated, despite appearances and written comments opposing Route E-5 by 17 residences at two public hearings.

landowners owns properties along Route Segment E-5, which is recommended by the ALJ to connect Route G to the Quarry substation at St. Cloud.

In summary, the Route Segment E-5 residents challenge Paragraphs 383-384, 390 (table is misleading), 446-449 (flora and fauna section), and other unspecified paragraphs, asserting that Route Segment E-5 was inadequately evaluated by the ALJ in her Report because Segments E-5 and AS-5 were not considered separately, and instead Route Segment E-5 was lumped together with Route G and Option 11. They further assert that Route Segment AS-5, with a very small connector added, would be shorter, more direct, and less costly than Route E-5.

EFP Staff Analysis: EFP staff notes that some of the issues raised by the Route Segment E-5 Residents are matters that can be resolved during planning and construction phases after a permit is granted. These include avoidance of trees, a toboggan hill, pole placement, and avian concerns. The E-5 Residents claim that the ALJ's logic is flawed because it places too much importance on statistics and on input from formal parties, and too little on input from residents who spoke, made appearances and submitted written comments.

EFP staff believes that the ALJ thoroughly considered the input from all persons who commented orally or in writing, and from those who participated as formal parties, as evidenced by her extensive fact-finding. However, the E-5 residents do not consider that public input is but one of the factors that must be addressed, and that the ALJ must take into account the entire record, and that the statistics developed in the DEIS and FEIS and supplemented throughout the contested case proceeding present information, much in statistical format, which provides the information necessary for the ALJ to address the statute and rule criteria and make a recommendation to the Commission that is consistent with the law. Route Segment E-5 was considered along with Route G and Option 11, according to the evidence in the record, to best meet all the criteria that must be considered. Numerous route segments and options were evaluated in the EIS, which the ALJ considered, but it would be unreasonable to consider every permutation separately. The FEIS provides pertinent and non-misleading information about Route Segment E-5, and appropriately considers the number of residences within 500 feet of the center line. Route Segment E-5 is 1.2 miles long, and a key feature of Route Segment E-5 is that it parallels the BNSF railroad for 1 mile, terminating at the Quarry Substation, while Route Segment AS-5 is approximately 2 miles long, parallels State Highway 138 and also terminates at the Quarry Substation.

4. Route E-5 was inadequately evaluated under the flora and fauna section, paragraphs 446-469. Preliminary pole placement would require removal of a stand of old cottonwood trees, (one exceeding 15 feet in circumference) and are home to red-tail hawks and constant visits from bald eagles.

5. Route AS-5, also labeled as Applicant's Proposed New Route, was inadequately evaluated anywhere in the FFCR. THE RESIDENTS ALONG ROUTE E-5 RECOMMEND ROUTE AS-5, with a very small connector added, would be shorter, more direct, and less costly than Route E-5.

6. The FFCR does not recognize a significant recreation area, a toboggan hill, visible on satellite imagery, used by many residents along Route E-5. Preliminary pole placement shows a pole located immediately adjacent, and directly in line with the toboggan run.

7. The logic used in the FFCR is flawed because it places too much importance on statistics, too much on input from formal parties (represented by attorneys) and too little on input from residents who spoke, made appearances and submitted written comments. The FFCR's logic also assumes opposition equally from all parties. In fact, some are opposed, some are ambivalent, and some prefer the HVTL on their land for financial compensation. The signers of this letter are opposed to Route E-5. There are only 6 residences along Route AS-5, including two within the right of way. None of them attended either of the two public hearings in this area.

Recommendation: The EFP staff supports the ALJ's Findings and Conclusions concerning the inclusion of the E-5 segment in her Recommendation.

C. Clarification of Route Application process and minor changes.

The following proposed Findings of Fact and Conclusions are intended to address what EFP staff believes 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 85: Footnote 66 to Finding No. 85 provides a citation to the rule that provides that the Commission must consider the effect on electrical system reliability. Rather than Minn. R. 7800.4100 K, the correct reference should be to Minn. R. 7850.4100 K.

66. Minn. R. ~~7800~~7850.4100 K.

Finding 144: The Amended Scoping Decision identified Route Option Amended Scope Area 1 or AS-1. The following correction is suggested to correctly identify the segment alternative according to the way this route segment alternative is numbered in the DEIS:

144. After Applicants filed the Application, they incorporated two changes to the Preferred Route. The **Modified Preferred Route** is approximately 101 miles long. It includes a 17-mile east/west segment alternative near Barnesville and just north of 150th Street North, traveling from I-94 to 70th Street South (identified in the DEIS as "~~Alternate Amended Scope Area 1~~" or **AS-1**). Public officials in the Fargo area urged the Applicants to consider routing the transmission line south of the original Preferred Route crossing of the Red River at Clay County Highway 8 because of expected growth to the south of Fargo, and to co-locate transmission lines with the United States Army Corps of Engineers' planned flood-control project (Diversion Project) to the extent possible.

Finding 174: The following correction is suggested to correctly identify the trail as follows.

174. The Modified Preferred Route includes two scenic byway crossings in the North Dakota to Alexandria segment -- the crossing of the King of Trails Byway and the Glacial Ridge Trail. Route A includes one scenic byway crossing in this segment -- the King of Trails Byway. The Modified Preferred Route, Option 2A and Option 2B each parallel the ~~King of Trails Byway~~Glacial Ridge Trail for one mile.

Conclusion 20: EFP staff suggests that the Commission reject Conclusion 20, which suggests a condition in the Route Permit requiring Applicants to seek Commission approval if undergrounding a portion of the transmission line is necessary to comply with DNR or USFWS

restrictions. Such a condition is not needed, since the Route Permit includes a condition that addresses how such matters are handled.³⁵ Conclusion 20 should be deleted:

~~20. As a condition of the Route Permit the Applicants should seek approval from the Commission to place a portion of the transmission line underground if necessary to comply with restrictions imposed by the DNR or USFWS, consistent with Minn. R. 6135.1100 and 6135.1200.~~

Environmental Impact Statement

The ALJ concluded EFP conducted an appropriate environmental analysis of the project.³⁶ The ALJ found, “The evidence on the record demonstrates that the FEIS is adequate because it addresses the issues and alternatives raised in the Scoping Decision, as amended, 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.”³⁷

Permit Conditions

EFP staff agrees in general with the ALJ recommendation to issue a permit as described in her conclusions. However, staff is recommending a number of refinements to and conditions for the route. In particular, staff has evaluated the need for a 1000 foot route width, has made recommendations where the ALJ had left indefinite conclusions, and reviewed the ALJ’s conclusions concerning permit conditions.

Route Width. Through discussions among the Applicants, staff and Mn/DOT, an anticipated alignment was established maximizing occupancy within existing rights-of-way within the parameters of Mn/DOT Policies and Procedures. For example, along Interstate 94, the alignment would occupy existing ROW without having structures overhang into Mn/DOT ROW. In these areas, as along other proposed route segments, the EIS analysis focused on an “anticipated alignment” within the routes reviewed in order to best evaluate the comparative impacts of alternatives.

Applicants had originally requested a 1000 foot route (up to 1.25 mile in certain circumstances) to adjust for environmental variability. Having gone through the process of verifying an anticipated alignment, the necessary range for variability with the route is lessened. Applicants’ and staff have negotiated an agreement to narrow to a 600 foot route width where possible (final widths are represented on the attached permit maps). This process has precedent in the final route widths permitted in the Brookings and the Monticello CapX 2020 projects. The EFP staff recommends the following additional finding be adopted:

[New Finding]. Applicants revised route permit maps showing locations which narrow the route from 1,000 feet to a 600 foot-wide route width, except for those areas where they continue to request a specified width of 400 feet or 1,000 feet to 1.25 miles, for the ALJ’s Recommended Route, are allowable under the PPSA. The route widths depicted on Applicants’ revised maps represent a reasonable balancing of the Applicants’ request for flexibility and a reasonable degree of predictability of impacts on the environment and landowners.

³⁵ See Route Permit Section III.A.

³⁶ ALJ Report Conclusion 3.

³⁷ ALJ Report ¶ 497.

The permit also specifies a requirement that within the route, changes from the anticipated alignment must have similar environmental impacts as to the original alignment.³⁸

The general adherence to an anticipated alignment and the diminished variability resultant of the narrowed route width achieve a positive balance between the flexibility necessary for the Applicants and the predictability anticipated by affected landowners; and offers a fair expectation of the actual environmental impacts of the route decision.

Route Width Expansions. The Applicants' noted in a number of areas in their Application and Testimony where wider route widths were necessary to accommodate environmental conditions or to retain flexibility to work around development issues. Most of these areas were developed to accommodate highway interchanges. The other areas were discussed throughout the record. For a number of cases where wider widths remain after the record has been reviewed, staff offers explanation here.

1. Along the North Dakota border, a 1.25 mile route width is included to allow flexibility in working with the North Dakota Public Commission, especially as it pertains to possible impacts to a planned flood diversion project. A wider area at Option 13 is explained below.
2. Along Kunz WPA, Applicants want the additional width in the permit to continue to evaluate an option to align directly along I-94.
3. South of Fergus Falls, an expanded width remains where the alignment runs east of the River Oaks development (see further explanation below).
4. The route width north of I-94 across from the Iverson Lake Rest Area remains part of the permitted route. In the event an option to cross the rest area would not be allowed as expected, this would allow Applicants to return to their original proposal to run the alignment along CSAH 82.
5. South of the rest area, the route expands to an anticipated alignment along CSAH 82. Applicants seek to retain a wider route width in this area to pursue options to align directly along I-94.
6. In Erdahl Township, Applicants are requesting additional width to continue pursuing an option to align directly along I-94.
7. In Evansville Township, Applicants are requesting flexibility to move the alignment to Abercrombie Trail if they are unable to manage wetlands crossings along I-94.
8. Southwest of Melrose, Mr. Neal Klaphake has requested on the record to use Option 8, crossing his property on the east and avoiding his buildings. This change would not affect any other landowners. The route width has been expanded in that area to include the possibility of adjusting the alignment as per Route Permit Section III.A.
9. East of Melrose, Applicants have requested the additional route width to address issues dealing with wells along the I-94 alignment.
10. In Farming Township in Stearns County, Applicants originally included a wider width at the landowners request to evaluate aligning along an existing 69 kV transmission line. This also would allow alignment adjustment as per Route Permit Section III.A.

³⁸ See Route Permit Section III.A.

Route Modifications. EFP is making recommendations on four short route segments where the ALJ debated alternative solutions in her findings:

Option 13 – The ALJ recommended using Option 13³⁹ east of the North Dakota border to mitigate for a personal use airstrip used for local crop dusting. This option alleviates any impact on the airstrip, but adds two additional miles (at \$1.7 million/mile) to the project. EFP recommends leaving an expanded route width in this area of 1.25 miles to allow the Applicants to negotiate an easement across this property that would alleviate impact to the airstrip without jutting out the alignment unnecessarily to the south. The area is part of a route area already reviewed in the EIS. The Option 13 segment would remain within this route width in case another solution is not discovered. This widened route area has been included in the proposed Route Permit map book.

River Oaks/Scenic Easement - The ALJ recommended crossing the scenic easement on the south side of I-94 south of Fergus Falls to “increase the distance of the alignment from the River Oaks residential subdivision.”⁴⁰ Applicants have requested exceptions to cross the scenic easement in order to accommodate the recommendation. Mn/DOT has informed EFP that release of that scenic easement is unlikely at this time. Currently, no homes in the development are within 500 feet of the “Modified Preferred” alignment. EFP has included the Applicants’ original alignment in the proposed Route Permit map book. The expanded width that includes I-94 would remain as part of the route.

Iverson Lake Rest Stop Area – The ALJ recommended the Applicants work with Mn/DOT to seek approval to cross this area, putting the line closer to I-94.⁴¹ The rest area has been flooded and closed for several months. Mn/DOT has indicated that the area is no longer a practical location for a rest stop. The intention would be to raze the rest stop and move the I-94 right-of-way fence in line with the existing fence line above and below the area. The area would remain Mn/DOT property, so an exception would be required to cross the area. Mn/DOT has expressed such an exception may well be possible. This would also avoid any impact to the Hi-View WMA. EFP has included this alignment in the proposed Route Permit map book.

Sauk Centre Bypass - As per the discussion above in Findings of Fact and Exceptions, Using Option 6 and Route A in this area avoids the impacts on the city and the potentially insurmountable difficulties of mitigating impacts to the municipal airport. EFP recommends this is the logical route choice. However, the Applicants should be required to consult with DNR to help alleviate some of the concerns that caused them to recommend against using this option. This alignment is included in the proposed Route Permit map book.

Crossing Structures. At I-94 crossings and interchanges, Applicants propose to install six conductors to facilitate the addition of a second circuit if the Commission would permit an additional transmission circuit at some point in the future. Installation of all six conductors during the initial construction mitigates conflicts and disruptions to highway facilities when the second circuit is added. The ALJ concluded that this configuration should be permitted.⁴² In

³⁹ ALJ Conclusion 8

⁴⁰ ALJ Conclusion 9

⁴¹ ALJ Conclusion 9

⁴² ALJ Conclusion 16

addition, the Commission approved this same condition in the Monticello to St. Cloud project (Route Permit Section IV.K.2).

Other Comments

A number of residents have contacted staff requesting a change at the onset of Route G. The request is generally to cross from Ridgecrest Road to County 11 at a point north of where the currently designed alignment intersects. The residents had not offered a detailed plan at the time these comments were filed, and the area of crossing was not discussed on the record or evaluated in the EIS. However, such a route alteration appears feasible. If a detailed plan were worked out at a later date, verifying equal or lesser impacts than those of the proposed route, the citizens could work with the Permittees to offer a permit amendment with proper notice at that time.

EFP recommends that the Commission should:

1. Issue a Route Permit along the ALJ’s recommended route, with specificity as described above in areas where she allowed alternative options, and with limitations on route width as per the discussion above; and
2. Authorize modifications to the Alexandria Switching Station and the Quarry Substation.⁴³

Commission Decision Options:

- A. Approve and adopt the attached Findings of Fact, Conclusions of Law, and Order for the Fargo to St. Cloud 345 kV Transmission Line Project, thereby:
 1. Determining the Environmental Impact Statement is adequate; and
 2. Issuing the high voltage transmission line Route Permit as attached, with appropriate conditions, to Northern States Power Company, dba Xcel Energy, and Great River Energy.
- B. Approve and adopt the Findings of Fact, Conclusions of Law, and Order as above while imposing any further permit conditions as deemed appropriate.
- C. Amend the Findings of Fact, Conclusions of Law, and Order and Route Permit as deemed appropriate.
- D. Make some other decision deemed more appropriate.

EFP Recommendation: Option A.

⁴³ ALJ Conclusion 14

Project Vicinity Map



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