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October 28, 2013

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
127 7th Place East, Suite 350
St. Paul, MN 55101-2147

RE: HVTL Application Completeness Review
Minnesota Power's Canisteo HVTL Project
Docket No. E015/TL-13-805

Dear Dr. Haar:

The Minnesota Department of Commerce (DOC) Energy Environmental Review and Analysis (EERA) staff is providing the Commission with Comments and Recommendations on the completeness of the route permit application, possible contested issues of fact and appointment of an advisory task force for the above referenced docket.

EFP staff is available to answer any questions the Commission may have.

Sincerely,

William Cole Storm, DOC EFP Staff

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS AND RECOMMENDATIONS OF THE MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NO. E015/TL-13-805

EERA Staff: William Cole Storm…….. (651) 539-1844
DATE:…….. October 28, 2013

In the Matter of the Application of Minnesota Power for a Route Permit for the Canisteo HVTL Project

Issues Addressed: Completeness of the route permit application, possible contested issues of fact and appointment of an advisory task force.

Documents Attached:
1. Route Permit General Vicinity Map
2. Route Permit Aerial Map

Additional documents and information can be found on http://mn.gov/commerce/energyfacilities or on eDockets http://www.edockets.state.mn.us/EFilin/search.jsp (13-805).

This document can be made available in alternative formats; i.e., large print or audio tape by calling 651-539-1530.

Introduction and Background

On October 9, 2013, Minnesota Power (MP) submitted a high voltage transmission line (HVTL) Route Permit Application[1] (RPA) under the alternative permitting process to the Commission for the proposed Canisteo transmission line and substation project.

The proposed project was designed to meet the power needs of the planned Magnetation plant. The Magnetation plant will be designed to produce iron ore concentrate by recovering weakly magnetic iron oxide particles from low-grade natural ore tailings basins, already-mined iron formation stockpiles, and newly-mined iron formation. Magnetation's initial focus is on exploitation of the hematite and magnetite contained in natural ore waste tailings basins created over the last 100 years of mining operations on the Mesabi Iron Range of Minnesota.

Since the late 1800s, iron mines in the Iron Range of northern Minnesota have been discarding fine, particle-sized minerals that are a waste product of mining operations. These tailings were pumped in a water-slurry form into impoundment dikes that formed tailings basins covering large areas. These waste tailings basins

[1] Route Permit Application (RPA), eDockets Document ID 201310-92275-01

represent ore bodies to Magnetation. Magnetation's project is a significant economic development opportunity for the area.

Project Location
The proposed project is located in Itasca County, Minnesota, near the cities of Coleraine and Bovey. The proposed route and the proposed Substation location are shown in the attached figures. Detailed overview maps of the project area are contained in Appendix B of the RPA.

Project Description
Minnesota Power proposes to construct two, approximately five-mile, 115 kV HVTLs and a substation near Coleraine, Minnesota. The two transmission lines, each 5.2 miles in length, would be constructed parallel to one another with an overlapping ROW of 160 feet. The key components of the proposed project include:

- The proposed HVTLs would connect to Minnesota Power's existing 28 Line west of Scenic Highway 7, traverse south across Reilly Beach Road to the Canisteo Pit, and then turn southwest where they would terminate at the proposed Canisteo Substation.

- The new Canisteo Substation would be constructed north of County Highway 61 and east of County Road 325 near the western edge of the Canisteo Pit.[2]

State Regulatory Process and Procedures

Minnesota Statute 216E.03, subd. 2 provides that no person may construct a high voltage transmission line without a Route Permit from the Commission. An HVTL is defined as a transmission line of 100 kV or more and greater than 1,500 feet in length in Minnesota Statute 216E.01, subd. 4. The proposed transmission lines are HVTLs and therefore a Route Permit is required prior to construction. The Application was submitted pursuant to the provisions of the Alternative Permitting Process outlined in Minn. Rules7850.2800-3900.

The Canisteo HVTL project qualifies for review under the alternative permitting process authorized by Minnesota Statute 216E.04, subd. 2(3), and Minn. Rule 7850.2800, subp. 1(C), because the proposed HVTLs are between 100 and 200 kV. According to that same rule, since the project qualifies for the alternative permitting process, the Applicant can choose to follow the procedures under Minn. Rule 7850.2800-3900 rather than the procedures for a full process under 7850.1700-2700. Minnesota Power has chosen to follow the alternative permitting process.

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. Rule 7850.3100). 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. Rule 7850.3200).

The review process begins with the determination by the Commission that the application is complete. The Commission has six months to reach a final decision on the route permit application from the date the application is determined to be complete. The Commission may extend this limit for up to three months for just cause or upon agreement of the applicant (Minn. Rule 7850.3900).

[2] RPA at 3-1

A Certificate of Need is required for any HVTL with a capacity of 100 kV or more with more than 10 miles of its length in Minnesota (Minnesota Statute 216B.2421, subdivision 2(3). The Applicant has stated that the Canisteo HVTL project is exemption from the certificate of need requirements under Minnesota Statutes Section 216B.243, which exempts HVTLs of 115 kV that are less than 10 miles in length. The Applicant acknowledges that the project is a HVTL with a capacity of 100 kV or more, however, they consider the Canisteo HVTL to be one transmission line project of 5.2 miles in length, thus it is below the greater than 10 miles threshold found in 216B.2421, subdivision 2(3).[3]

Additionally, the Applicant has stated that the Canisteo HVTL project would be built to primarily distribute electricity to serve the demand of a single customer at a single location[4] and therefore meets an exemption from the certificate of need requirements under Minnesota Statutes Sections 216B.243, subdivision 8 (2).

Environmental Review

Applications for high voltage transmission line route permits under the alternative permitting process are subject to environmental review, which is conducted by Department of Commerce Energy Environmental Review and Analysis (EERA) staff under Minn. Rule 7850.3700. EERA staff will provide notice and conduct scoping meetings to solicit public comments on the scope of the environmental assessment (EA). The Deputy Commissioner of the Department of Commerce will determine the scope of the EA.

An EA is a written document that describes the human and environmental impacts of a proposed project (and selected alternative routes) and methods to mitigate such impacts. The EA will be completed and made available prior to the public hearing.

Public Hearing

Applications for high voltage transmission line route permits under the alternative permitting process require a public hearing upon completion of the EA pursuant to Minn. Rule 7850.3800.

The hearing must be conducted in the following manner, as per Minn. Rule 7850.3800, although the hearing examiner may vary the order in which the hearing proceeds:

- The staff shall make a brief presentation to describe the project, explain the process to be followed, and introduce documents to be included in the record, including the application, the environmental assessment, and various procedural documents;
- the applicant shall introduce its evidence by way of testimony and exhibits;
- the public must be afforded an opportunity to make an oral presentation, present documentary evidence, and ask questions of the applicant and staff;
- the hearing examiner shall provide a period of not less than 10 days for the submission of written comments into the record after the close of the hearing; and
- the hearing examiner shall transmit the complete record created at the hearing, including all written comments, within five days of the close of the record, unless the hearing examiner is asked to prepare a report (Findings of Fact, Conclusions of Law, and Recommendation).

[3] RPA at p.8.
[4] Email communication, David Moeller (MP) to Bill Storm (EERA) October 22, 2013.

Public Advisor
Upon acceptance of an application for a route permit, the Commission must designate a staff person to act as the public advisor on the project (Minnesota Rule 7850.3400). The public advisor is available to answer questions from the public about the permitting process. In this role, the public advisor may not act as an advocate on behalf of any person.

Advisory Task Force
The Commission may appoint an advisory task force (Minnesota Statute 216E.08). An advisory task force must include representatives of local governmental units in the affected area. A task force can be charged with identifying additional routes or specific impacts to be evaluated in the EA and terminates when the Commerce Deputy Commissioner issues an EA scoping decision.

The Commission is not required to assign an advisory task force for every project. However, in the event that the Commission does not name a task force, the rules allow a citizen to request appointment of a task force (Minn. Rule 7850.3600). The Commission would then need to determine at its next meeting if a task force should be appointed or not.

The decision whether to appoint an advisory task force does not need to be made at the time of accepting the application; however, it should be made as soon as practicable to ensure its charge can be completed prior to the EA scoping decision by the Commerce Deputy Commissioner.

EERA Staff Analysis and Comments

EERA staff worked with the Applicant to review drafts of the application. Subsequently, it has conducted a completeness review of the Canisteo HVTL Route Permit application. EERA staff believes that its comments on the draft application have been addressed and that the application meets the content requirements. The required contents of an application for a HVTL Route Permit are outlined in Minn. Rule 7850.3100 and the inclusion of these required items is documented in a summary table (Table 1 Completeness Checklist) in the Applicant's application.[5]

EERA concludes that the application meets the content requirements of Minn. Rule 7850.3100 and is substantially complete. Application acceptance allows initiation of the public participation and environmental review processes.

Advisory Task Force
In analyzing the merits of establishing an Advisory Task Force for the project, EERA staff considered four project characteristics: size, complexity, known or anticipated controversy and sensitive resources. The proposed design information and preliminary environmental data contained in the HVTL route permit application was used to complete the following evaluation:

> **Project Size.** At approximately 5 miles, the Canisteo HVTL project is a small length transmission line when compared to the majority of the HVTL applications that come before the Commission. At 115 kV, it is the minimum size voltage to trigger state permitting.
>
> Minnesota Power's two parallel 5.2 miles of 115 kV HVTL will be constructed with both monopole and H-Frame direct embedded wood structures. The monopole structures will range in height from 60 to 110

[5] RPA at 1-2

feet above ground, and the spans between to these structures will be in the 300 foot range. H-Frame structures will range in height from 60 to 75 feet above ground, and the spans between these structures will be in the range of 600 feet. The project will require a right-of-way of 160 feet wide.

Given the project's short distance and voltage, it is a relatively minor project in size.

Complexity. The proposed route is located north and west of the Canisteo Pit, near the cities of Coleraine and Bovey in central Itasca County. It crosses areas zoned for mining and rural residential purposes. No displacement of residences or businesses is anticipated. Based on the Applicant's review of recent aerial photography, there are three dwellings within 1,250 feet of the proposed alignment (ROW centerline). The first is north of County Road 353 (S19, T56, R24) and lies 1,250 feet north of the proposed centerline. The second is south of an unnamed water body (S17 and 20, T56, R24) and lies approximately 900 feet northwest of the proposed centerline. The third is north of Reilly Beach Road (S16, T56, R24) and lies approximately 700 feet west of the proposed centerline.

All three dwellings are in heavily forested areas which should reduce any visible impacts of the HVTLs from these properties.

Several specific factors contribute to minimizing the complexity of the proposed project, they include: the small number of local governmental units involved; the fact that the area has been significantly altered by mining activities, the limited number of residential properties potentially impacted, and the compatibility with local land use and zoning regulation within the proposed project area.

Known/Anticipated Controversy. On September 26, 2013, Minnesota Power held a public meeting on the proposed project; two members of the public attended the open house. The Applicant also solicited input from interested stakeholders and landowners, including local, state and federal agencies.

EERA anticipates that the discussion of the proposed route will continue through scoping and assumes potential alternatives may be developed during the scoping process. EERA has not received comment from the public on any other potential alternatives or issue at this time, although different alternatives may come up through the scoping process.

Given the Applicant's preliminary community efforts and the relatively strong support of iron mining activities in the area, EERA staff believes that any controversy involving this project to be localized around specific alignment issues/alternatives within the proposed route.

Sensitive Resources. The area surrounding the proposed route has been significantly disturbed by human activity. The project area is bounded by the Mesabi Iron Range, a vast deposit of iron ore and the largest of three major iron ranges in Minnesota. The new HVTL will be adjacent to current and future mine activity. The project area does include sensitive resources, which are typically addressed in HVTL routing dockets.

There are approximately 48 acres of wetlands within the proposed 115 kV HVTL route; this represents approximately 37 percent of the route. Hardwood swamps (29 percent), alder thicket/shrub-carr (22 percent), and shallow open water (22 percent) are the dominant wetland types within the route, followed by excavated ponds (16 percent), wet/sedge meadow (6 percent), and conifer swamp (5 percent).[6]

[6] RPA at 6-5-2.

There are approximately 15.9 acres of wetland, including hardwood, conifer, and shrub swamps within the proposed 115 kV HVTLs ROW; this represents approximately 23 percent of the ROW. The proposed alignment of the 115 kV HVTLs would require 13 wetland crossings ranging in length from 33 feet to 333 feet.[7] Given that the maximum span length for the HVTL is 600 feet (H-frame structures), the wetland crossings should be able to be spanned.

The Minnesota Natural Heritage Inventory System (NHIS) database for state-listed threatened, endangered, and special concern species notes that three vascular plant species (*Botrychium pallidum, Botrychium minganense, and Botrychium simplex*) have been documented within one mile of the proposed route. Potential impacts are expected to be addresses through implementation of Best Management Practices. The Applicant will submit a Survey Work Plan to the MnDNR for review and comment, and conduct a survey for rare plant species in work zones prior to construction activities.[8]

According to the USFWS list of federally threatened, endangered, proposed, and candidate species, Itasca County, where the proposed project is located, is within the overall range of the Canada Lynx (*Lynx Canadensis*).[9] The project is not located within designated Critical Habitat of the Canada lynx; however, the project area could be populated with Canada lynx at the time of construction based on distribution within the county. The potential impacts (noise and/or physical disturbance) are expected to be minor and temporary.

Based on the analysis above, EERA staff concludes that an advisory task force is not warranted at this time.

EERA staff believes that the alternative permitting process should provide adequate opportunities for the public to identify issues and route alternatives to be addressed in the environmental assessment. EERA staff believes that the standard alternative review procedures (scoping process, environmental review document and public hearing) will provide ample opportunities for concerned individuals or entities to raise and evaluate any issues associated with the proximity of the transmission line to structures or points of interest along the proposed route. Staff can also assist local landowners and governmental units in understanding the siting and routing process and identifying opportunities for participating in further development of alternative routes or permit conditions.

Contested Issues

EERA staff is not aware, at this time, of any contested issues of fact with respect to the representations in the Route Permit Application. However, issues may be identified during the Environmental Assessment scoping process.

Related to these possible issues, EERA staff notes that the Commission has identified three different public hearing scenarios for site and route permit cases:

- Site and route permit cases involving contested material facts are referred to the Office of Administrative Hearings (OAH) for public hearings and evidentiary development through contested case proceedings. In these instances, comment period(s) are established by the Administrative Law Judge.

[7] Ibid.
[8] RPA at 6-6 and Appendix D.
[9] RPA at 6-6.

- Site and route permit cases that do not involve contested material facts are referred to OAH for public hearings and evidentiary development using less formal procedures than contested case proceedings. In these instances, comment period(s) are established by the Administrative Law Judge.

- In appropriate site and route permit cases, the cases are referred to OAH only for public hearings and the record is developed in conjunction with the staff of the Commission and Department. In these instances, comment period(s) are established by the Commission.

The alternative permitting process under the Power Plant Siting Act is directed to projects that are relatively smaller in nature – and, though not explicitly stated, likely to be less controversial and to involve a relatively smaller number of landowners.[10] Accordingly, the public hearing process is designed to accommodate projects of this nature. For example, the hearing is not contested[11] and the hearing examiner need not be an ALJ.[12]

EERA staff notes that in the Certificate of Need (CN) process, when no person has alleged that there are contested material issues of fact at the application acceptance step, the Commission follows an informal notice and comment process, and requests the Office of Administrative Hearings to hold at least one public hearing. If contested issues are identified through the informal notice and comment process, the Commission can later modify the hearing request.

As with the CN process, EERA believes that the Commission need not decide which public hearing process best fits a particular alternative permitting process project at application acceptance. EERA staff believes that the Environmental Assessment scoping process provides further opportunity for identifying any contested issues of fact with respect to the representations made in the route permit application, akin to the Certificate of Need comment and reply process on merit.

Because the Commission reviews route alternatives proposed during the scoping process, the Commission could defer a decision on the appropriate public hearing process until after scoping and take it up during its review of route alternatives. This deferral would give the Commission more information as to the nature of the project, with such information guiding the Commission's decision on the public hearing process.

EERA Staff Recommendation

EERA staff recommends that the Commission accept the route permit application for the Canisteo HVTL project as substantially complete. Additionally, EERA staff recommends that the Commission take no action on an advisory task force at this time. EERA staff makes no recommendation on the public hearing process that is most appropriate for the project.

* * * * *

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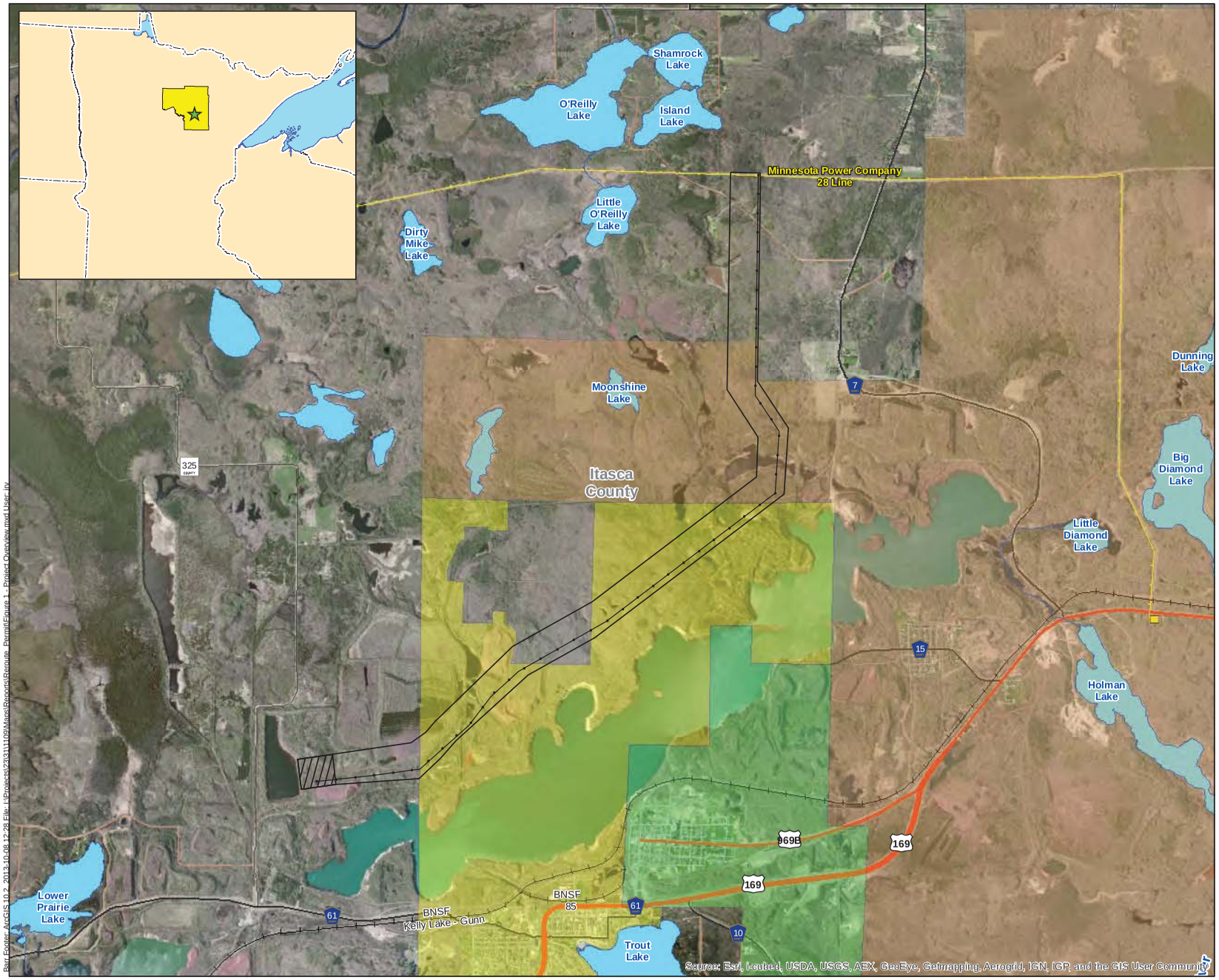
[10] Minnesota Statute 216E.04, Subd. 2. The statute limits the alternative permitting process to projects with relatively lower voltages, shorter lengths, and combinations of these factors.
[11] Minnesota Statute 216E.04, Subd. 6.
[12] Minnesota Rule 7850.3800. In practice, the Commission and EFP staff use an ALJ as the hearing examiner.



- Proposed Alignment
- Proposed Route
- Proposed Substation Area
- PWI Basin
- PWI Watercourse
- Existing Transmission Line
- Existing Substation

Municipal Boundary

- Bovey
- Coleraine
- Taconite

N

Feet

0 3,000 6,000

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Figure 1

PROJECT OVERVIEW
Proposed Canisteo 115 kV
HVTL and Substation
Minnesota Power
Itasca County, MN

Barr Footer: ArcGIS 10.2, 2013-10-08 12:28 File: L:\Projects\23811\100\Maps\Reports\Permit\Figure 1 - Project Overview.mxd User: jrv

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Proposed Alignment
Proposed Route
Proposed Substation Area
PLS Section Within 1 Mile
Existing Substation

N

Feet
0 2,500 5,000

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Figure 2

PROJECT DETAILED MAP
Proposed Canisteo 115 kV
HVTL and Substation
Minnesota Power
Itasca County, MN

Barr Footer: ArcGIS 10.2, 2013-10-08 12:21 File: k:\Projects\23811100\Maps\Reports\Route_Permit\Figure 2-3 Project Detailed Map.mxd User: ly