

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE
OFFICE OF ENERGY SECURITY

In the Matter of the Xcel Energy Route
Permit Application for the Lake Yankton to
Marshall Transmission Line Project in
Lyon County

**SUMMARY OF
PUBLIC COMMENTS**

Procedural Background

A public hearing in this matter was held June 12, 2008, by Administrative Law Judge Steve M. Mihalchick at the Lyon County Government Center, 607 West Main Street, Marshall, Minnesota. The hearing was held pursuant to a Revised Notice of Public hearing issued on June 5, 2008, and published in the Marshall Independent on June 12, 2008.¹

Lisa Agrimonti and Valerie T. Herring, Attorneys at Law, Briggs and Morgan, 2200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402, appeared for and on behalf of Xcel Energy, the Applicant. Adam Sokolski, Project Manager, 85 7th Place East, Suite 500, St. Paul, MN 55101, appeared for and on behalf of the Energy Facility Permitting Staff, Office of Energy Security, Department of Commerce (OES or Department).

Approximately 25 members of the public attended the hearing. They were advised that, in addition to any comments at the hearing, they could also submit written comments to the Administrative Law Judge by July 11, 2008, as stated in the Revised Notice of Public Hearing.² Ultimately, twenty-six public comments were submitted to the Administrative Law Judge.³

At the hearing, Michael Kaluzniak, an Analyst for the Public Utilities Commission, described the Commission's role and process in this docket.⁴

Mr. Sokolski described his role in the process and that of the Energy Permitting Unit. He described the Environmental Assessment he had prepared.⁵ He offered Exhibits 1 through 19, which included several exhibits that had been filed by Xcel

¹ Exhibits 16 and 19.

² Transcript at 3-4.

³ Exhibits (Public Comments) A-Z.

⁴ Transcript at 4-5.

⁵ Exhibit 15.

Energy.⁶ Xcel Energy subsequently filed a file-size copy of two photos showing a pole with braced insulators and one with unbraced insulators.⁷ They also filed a letter regarding ditch characteristics.⁸ Both exhibits involved issues mentioned at the hearing and discussed below.

Ms. Agrimonti introduced Timothy G. Rogers and several other Xcel Energy representatives that were at the hearing and available to respond to questions. Mr. Rogers is a Permitting Analyst for Xcel Energy’s service company and its “routing lead” for this project. He prepared written Direct Testimony filed in this matter on June 25, 2008.⁹ At the hearing, Mr. Rogers summarized the issues that he addressed in his Direct Testimony. There were then several comments and questions from the public.

New Pole Structure

Mr. Rogers described an engineering change that Xcel Energy is making to the height of the poles it will use. Exhibit 20 shows a picture of a steel pole with horizontal post insulators of the type that were originally proposed. They were 75 feet tall. Xcel Energy now proposes to use a 90-foot steel pole with horizontally braced post insulators, also shown in Exhibit 20. This change of 15 feet in height allows the span between structures to go from 400 feet to 700 feet and reduces the number of structures from 150 to 100. Xcel Energy expects the increase in height to have minimal aesthetic impact and the increase in span length to reduce impacts, particularly on agricultural land.¹⁰ There were no public comments as to this change.

Routing at the North End

All of the controversy raised at the hearing involves the detailed routing of the northerly three miles of the line through Sections 18 and 17 of Lake Marshall Township, which is just south of the City of Marshall. State Highway 23 comes up from the southwest and turns east for about two and one-half miles along the southwestern edge of the developed portion of the City of Marshall. It appears that Marshall is developing to the southwest. That development is approaching and, at some points, crossing Highway 23. Sections 18 and 17 of Lake Marshall Township lie along the south side of the east-west portion of Highway 23. They are bounded on their south sides by 250th Street. County State Aid Highway 7 (CSAH 7 or County Road 7), also know as 240th Avenue, runs north-south between Sections 17 and 18. Section 18 is to the west and Section 17 is to the east. The Proposed Route comes up from the south to the southwest corner of Section 18, which is the intersection of 230th Avenue and 250th Street. The Southwest Marshall Substation is located at the north end of the east half of

⁶ Transcript at 10.

⁷ Exhibit 20.

⁸ Exhibit 21.

⁹ Transcript at 17-18; Exhibit 17.

¹⁰ Transcript at 21; Exhibits 17 at 3-4 and 20.

Section 17, adjacent to Highway 23.¹¹ The primary issue is where best to build the line between the two points.

The public comments at the hearing and written comments to the Administrative Law Judge follow and expand upon the comments made by affected citizens earlier both to the Department and to Xcel Energy.

As Mr. Sokolski stated in describing his prior communications:

We talked about route alternatives and particularly route alternatives in Lake Marshall Township, particularly Sections 17 and 18, where there has been a number of comments from people about avoiding one area or another and how to bring the transmission line into the Southwest Marshall Substation in a way that has the least number of impacts on agriculture, residents and residential areas, as well as the environment generally.¹²

Mr. Sokolski also addressed the issue at some length in Section 4.0 of the Environmental Assessment.¹³

At the hearing, Mr. Rogers stated:

Now we have this last three miles which is—was very challenging from a routing perspective—and I am going to switch here so we can actually see what we are talking about.

So here is that fence line. We are back on 230th and we are getting to this—it's a field access road and we go along north until we hit this public drainage ditch. We are going to follow the south side of this public drainage ditch. Until the ditch meanders out, we stay inline and we cross agricultural land until we hit this drainage ditch again.

We follow the drainage ditch to the east to County Road 7. We will cross County Road 7 and go back south about 600 feet until we hit this M.M.U. utility easement area. We will route along this easement, which has a ditch next to it, into the south end of the Marshall Substation.

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¹¹ See Exhibit 3 (Application), App. B.5-2 and B.12-4, and Exhibit 17 (Rogers Direct Testimony), Sched. 4.

¹² Transcript at 13-14.

¹³ Exhibit 15 at 30-34.

It is still the public drainage ditch. So this last three miles is a real transitional area. We heard from lots of interested—interested parties. We heard from homeowners that were concerned with the line being routed next to their homes. We heard from landowners concerned that the line would impact their future land developments. We heard from farmers that were concerned that the structures would impact their farming practices and crop yields. So we had a lot to balance here.

As you can see from the diagram, we evaluated seven different alternatives. Several of these alternatives are very reasonable, viable, constructible and if the Commission picks them, we would be happy to build it.

Specifically, there is an A-1 route and an A-2 alternate route and I would like to describe that.

The A-1 and A-2 alternative route would still use this easement area, head out west—I will reverse this—but those alternatives, A-1 and A-2, would travel along County Road 7 to the south. A-1 would then turn on 250th Street to the west for one mile and connect to our Proposed Route. A-2, same idea: County Road 7 but going down further two miles and then one mile to the west and, again, hooking up with our Proposed Route.

Because these two alternative routes are along existing roads, they have less impact on future land development and minimal impact on farming operations. Structures would still be on the edges of fields but there is no cross country here. There is no impacts to future land development.

But on the downside of these two routes, they impact more homes. A-1 would impact 20 homes. We would have 20 homes within 100 to 200 feet of that line. A-2 would have 22 homes within 100 to 200 feet of this line.

Our Proposed Route has zero homes within 100 to 200 feet and for that reason, that's why we support our Proposed Route. We are weighing all these options out and we think minimizing impacts of residences is the way to go in this area. Thank you.¹⁴

¹⁴ Transcript at 22-25.

Mr. Rogers also addressed the alternatives at length in his written Direct Testimony.¹⁵

The Klein Addition

The Klein Addition is a housing development located in the northern portion of what appears to be the west half of Section 18. It is the largest residential development near the Proposed Route. It contains of 43 homes and one commercial site. It has access to Highway 23. Xcel Energy's Proposed Route passes diagonally to the southeast of the Klein Addition. The proposed transmission line route and alignment is approximately 600 feet from the nearest homes in the Klein Addition and about one half mile from those in the farthest corner.¹⁶

Homeowners in the Klein Addition oppose the Proposed Route, as well as Alternative B which follows the same path off their southeastern corner. They proposed several alternatives in this proceeding that do not pass as close to the Klein Addition. At the hearing, Jeffrey Modica appeared for himself as a homeowner in the Klein Addition and on behalf of the Klein Homeowners Association. He stated that:

The Klein Addition represents approximately \$15 million of taxable real estate value.

The Proposed Route will reduce their property values.

The Proposed Route would restrict future development and taxable growth in the area.

The Propose Routed could present health and safety issues to the people residing in the Klein Addition.

The Klein Addition has been developed to high aesthetic standards controlled by covenants that require all utilities to be under ground.

The high probability of additional residential and commercial development abutting the Klein Addition along Highway 23 is why an alternative that avoids that area should be selected.

They do not understand why the Proposed Route primarily follows existing roads and easements until it reaches 250th Street and then goes across land and avoids the use of existing roads and easements near CSAH 7.¹⁷

There have been discussions of plans to build an interchange at CSAH 7 and Highway 23 that will likely spur

¹⁵ Exhibit 17 at 6-12.

¹⁶ Exhibit 15 (Environmental Assessment) at 31.

¹⁷ Xcel Energy's technique of following ditches and existing utility easements as far as possible through that area is discussed below.

commercial development in the area of the Proposed Route; another reason for selecting an alternative route.

The Proposed Route goes “right through a highly populated area” when there are other less invasive and sparsely populated alternatives available immediately to the south and to the east.

The Klein Homeowners Association alternative D-1 is the shortest total distance and affects only one more residence within 100 feet.

Current farming and agricultural practices and equipment, and Xcel Energy’s reduced number of structures and increased distances between structures, all help to mitigate any adverse impact to our farmers from building the lines across agricultural land.

As to limiting impact on future development options, relocating their existing homes is not an option, but deciding not to build near power lines will be a choice future homeowners will be able to make.

Mr. Modica also stated that it was likely that either Xcel Energy’s recently offered Alternatives A-1 or A-2, would be acceptable to the Klein Homeowners Association.¹⁸ On July 10, 2008, Mr. Modica informed the Administrative Law Judge that he could confirm that the Klein Homeowners Association would not object to either Alternative A-1 or A-2.¹⁹

The Stattelmann Development Property

Scott Stattelmann owns the north 1,000 feet of the east half of Section 18. It is the property to the east of the Klein Addition and adjoins Highway 23 to the north, County Road 7 (240th Avenue) to the east, and 257th Street to the south. (257th St extends westerly from CSAH 7 into Section 18 for perhaps 900 feet.) There is also a temporary road on the property that extends westerly from CSAH 7 about midway between 257th St and Highway 23. A small stream that is often dry runs across the Stattelmann Property between the temporary road and 257th St. It then turns north near CSAH 7 a short distance, then goes east across Section 17, again a short distance, where it connects into County Ditch 70.²⁰

The Proposed Route crosses the Stattelmann Property starting at approximately the west end of 250th St, then runs northeast to the area of Meadow Creek along the temporary road, east to CSAH 7, south along the west side of CSAH 7 to 257th St, then

¹⁸ Transcript at 38-42; Exhibits F and G.

¹⁹ Exhibit Y.

²⁰ Exhibit J.

east across CSAH 7 and across Section 17 a short distance along an existing utility easement to the front of the Southwest Marshall Substation.

The small stream flows into Section 18 from the southwest. It is this stream that Xcel Energy generally followed in choosing the Proposed Route across Section 18. Xcel Energy originally believed that it was a public ditch.²¹ Mr. Stattelman stated that it was a private waterway that belonged to him.²² That matter was clarified by John Biren, Lyon County Planning and Zoning Administrator, and by information Xcel Energy subsequently obtained from a staff hydrologist with the DNR. It appears that Mr. Stattelman is correct. The stream is named Meadow Creek and is classified by the DNR as an intermittent stream. It is not a public ditch subject to Minnesota Statutes, Chap. 103E, and is not subject to DNR jurisdiction. County Ditch 70, which starts in Section 17 near the Southwest Marshall Substation and runs to the southeast, is a public ditch.²³

Because Meadow Creek is not a public ditch in section 18, Xcel Energy's use of it for routing through Section 18 should be re-examined. This would affect the Proposed Route and Alternatives B, D-1, and D-2.²⁴

Scott's son Dan Stattelman is building a home on the Stattelman Property and using the temporary road for access. Scott Stattelman intends to develop his property and objects to the portion of Xcel Energy's Proposed Route that runs through it. They purchased the land three years ago for future development because of its location along Highway 23. The Proposed Route runs across their fields and splits their land, preventing them from the future development they envisioned. The County has zoned the area for future growth for urban expansion. The Stattelmans state that they did not invest in the property to have it broken up with a high line through it, and that if Xcel Energy proceeds with the Proposed Route, they would choose to have Xcel Energy purchase the entire parcel because they will not have any use for it. Moreover, when they built a new house last year, they did not plan on having power lines in front of the house.²⁵

Alternative Routes

Xcel Energy has proposed two alternative routes that avoid the Klein Addition and Stattelman Development Property. Both start at the intersection of 230th Ave and 240th St, at the southwest corner of Section 19. Alternative A-1 goes north along 230th Ave, then east along 250th St to the northeast corner of Section 19 at CSAH 7. Alternative A-2 goes east along 240th St, then north along CSAH 7 (240th Ave) to the same point. Both alternatives then proceed north along CSAH 7, then east along the existing utility easement a short distance to the substation.

²¹ Transcript at 35.

²² Transcript at 32.

²³ Exhibit 21.

²⁴ Exhibit 17, scheduled for

²⁵ Transcript at 31-33; Exhibits A, B, H., I, and W.

As Mr. Rogers stated at the hearing, Alternative A-1 would have 20 homes within 100 to 200 feet of the power line and A-2 would have 22 homes within 100 to 200 feet. Most of the homes are along the west side of CSAH 7 between 250th St and 257th St. Except for the Stattelmans and others on 257th St, all of the homeowners there oppose Alternatives A-1 and A-2 because the lines would pass in front of their homes.

For example, Mr. and Mrs. Raymond Madrigal opposed electrical lines running down County Road 7 because their home is less than 50 feet from the road.²⁶ Duane and Dianne Van Overbeke stated that they did not attend the hearing because they assumed that the transmission line would follow the Proposed Route. They subsequently learned that Xcel Energy was proposing the new alternatives because of strong objections from the Klein Addition. They strongly oppose the alternatives because of the number of homes that would be impacted by the change, their property value would drop substantially, they're concerned about the health risks of a high-voltage line so close to their home, and the impact on the Klein Addition residents would be far less because they would be much farther from the line. Similar comments were received from the Kaufmans, Greenfields, Stewarts, Winters, Millers, Mary Hansen, the Williams, Patrick Buysse, the Spoelstras, and the Gawareckis.²⁷ Merle Barron (sp?) Left a voice message with the Administrative Law Judge stating that he has concerns about the line running in front of his property because of its effect on property values and health issues. He lives on 240th St, so would be affected by Alternative A-2.²⁸ Scott Stattelmann responded to some of these concerns stating that wooden poles already exist along CSAH 7 and that the new poles would be farther apart and "no change" for them.²⁹

Jean Goslar and others who lived along 257th St opposed both the Proposed Route and Alternative B because of its proximity to their homes.³⁰

Corey Prins manages the farm property owned by the Violet Johnson Trust in Section 17 between CSAH 7 and the substation. He wanted to make sure that the proposed line stays to the south of the existing drainage ditch in Section 17 (Co. Ditch 70). He state that if the power line crossed the drainage ditch, it would create trouble in that drainage ditch and any of the future development of properties.³¹

Don De Langhe also farms in Section 17. He would prefer to have the line there on the north side of Co. Ditch 70, but thought the south side would be acceptable. He was adamantly opposed to having it go kitty-corner across Section 17, as the Klein Addition Homeowners had proposed in Alternates D-1 and C-2. He explained that with today's machinery, it is far worse than it was years ago. Now you stick out 100 feet instead of 12 feet or six feet. So it is a much bigger issue today going across

²⁶ Exhibit K.

²⁷ Exhibits L, M, N, P, Q, R, S, T, U, V, and X.

²⁸ Exhibit Z.

²⁹ Exhibit W.

³⁰ Transcript at 53; Exhibits C, D, and E.

³¹ Transcript at 44-46.

agricultural land rather than less of an issue. Therefore, he was opposed to Alternatives C-1, C-2, D-1, and D-2.³²

The Lyon County Board of Commissioners submitted a comment noting that the Proposed Route and Alternatives A-1 and A-2 all impact homes, businesses, road rights of way, and agricultural land. They concur with Mr. Rogers explanations given at the public hearing. They requested the opportunity to review construction plans for poll and line placement prior to construction to determine any conflicts that might exist with the road authority.³³

Dated: July 30, 2008

s/Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Shaddix and Associates
Jolene Carrow, Ct Reporter
Transcript Prepared.

³² Transcript at 46-48.

³³ Exhibit O.