

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

*In the Matter of the Route Permit Application by Great River Energy and Xcel
Energy for a 345 kV Transmission Line from Brookings County, South Dakota to
Hampton, Minnesota*

OAH Docket No. 7-2500-20283-2
MPUC Docket No. ET-2/TL-08-1474

**FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION ON REMAND**

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Dakota to Hampton, Minnesota.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION ON
REMAND**

A Public Hearing was held before Richard C. Luis, Administrative Law Judge (“ALJ”), commencing on October 4, 2010, in Le Sueur, Minnesota and continuing at dates and places more specifically set forth below. The Evidentiary portion of the Hearing was held on October 6, 2010, in St. Paul, Minnesota.

Lisa M. Agrimonti and Valerie Herring, Briggs and Morgan, appeared for Great River Energy, a Minnesota cooperative corporation, and on behalf of itself and its co-applicant, Northern States Power Company, a Minnesota corporation (“Xcel Energy”).

Karen Finstad Hammel, Assistant Attorney General, appeared on behalf of the Department of Commerce, Office of Energy Security (“OES”).

Carol Overland, Overland Law Office, appeared on behalf of NoCapX2020 and United Citizens Action Network (“U-CAN”).

Michael Kaluzniak, Planning Director, Minnesota Public Utilities Commission (“Commission,” “PUC,” or “MPUC”), 121 Seventh Place East, Suite 350, St. Paul, MN 55101 appeared on behalf of the Commission.

STATEMENT OF ISSUE

In consideration of the criteria set forth in Minnesota Statute § 216E.03¹ and Minnesota Rules Chapter 7850 as applied to facts developed in this remand proceeding, is there any reason to modify the ALJ Findings of Fact, Conclusions of Law, and Recommendations issued in this proceeding for a Route Permit for the Brookings to Hampton 345 kV transmission line project, including necessary system connections, and, if so, what route complies best with applicable statutes and rules?

Based on the Findings of Fact and Conclusions that follow, the Administrative Law Judge makes the following:

¹ Unless otherwise noted, the statutes and rules are cited to the 2009 edition.

RECOMMENDATIONS

1. That the Commission determine that all relevant statutory and rule criteria necessary to obtain a Route Permit have been satisfied and that there are no statutory or other requirements that preclude granting a Route Permit based on the record.
2. That the Commission grant a Route Permit to Applicants on behalf of themselves and the participating CapX2020 utilities for the facilities described below:
 - A. For the segment between Cedar Mountain Substation and Helena Substation of the 345 kV transmission line between Brookings, South Dakota, and Hampton, Minnesota, and associated Facilities:
 - (1) The Modified Preferred Route, with an aerial crossing of the Minnesota River at Le Sueur; or
 - (1a) If the Modified Preferred Route is not granted a Permit, the ALJ recommends granting a Route Permit for the Alternate Route utilizing the Gibbon Crossover Route, with an aerial crossing of the Minnesota River at Belle Plaine; and
 - (2) A route width of 600 feet except for those locations identified by Applicants where Applicants are requesting a route width of 1,000 feet or up to 1.25 miles;²
3. That Applicants be required to take those actions necessary to implement the Commission's Orders in this proceeding.

Based on the Hearing record, including the proceedings conducted on remand from the Commission, the ALJ makes the following Findings of Fact and Conclusions:

FINDINGS OF FACT

A. Applicants

1. The Applicants in this proceeding are Great River Energy and Xcel Energy. Great River Energy is a Minnesota cooperative corporation that owns and operates high voltage transmission lines in Minnesota and provides wholesale electric service to 28 distribution cooperatives serving nearly 1.5 million customers in Minnesota and Wisconsin.³ Xcel Energy is a Minnesota corporation headquartered in Minneapolis, Minnesota.⁴

² Attachment 2 to Applicants' Proposed Findings of Fact, Conclusions and Recommendation shows the portions of the Modified Preferred Route where Applicants are requesting a route width of up to 1.25 miles.

³ Ex. 2 at p. 1-1 (Application).

⁴ *Id.*

2. Applicants jointly applied for a Route Permit to construct a 345 kV transmission line project from the South Dakota/Minnesota border to Hampton, Minnesota. Applicants maintained that the proposed project will improve regional transmission system reliability, enhance local community service, and increase the generation outlet capability of the electrical system.⁵

B. Procedural Summary⁶

3. On December 29, 2008, Applicants submitted an Application for Route Permit (“Application”) for the Minnesota portion of a 345 kV transmission line between Brookings County, South Dakota, and Hampton, Minnesota and associated facilities, and for a new 115 kV transmission line between Cedar Mountain Substation and the Minnesota Valley – Franklin 115 kV transmission line (collectively “the Brookings Project” or the “Project”).⁷

4. On January 29, 2009, the Commission accepted the Application as complete and authorized the OES Energy Facility Permitting staff to process the Application under the full permitting process in Minnesota Rules 7850.1700 to 7850.2800.⁸ The Commission also authorized the OES Energy Facility Permitting staff to name a public advisor and to establish an advisory task force or task forces and develop a structure and charge for them.⁹

5. On February 5, 2009, the Commission assigned this matter to ALJ Richard C. Luis of the Office of Administrative Hearings (“OAH”).¹⁰

6. After significant notices and other proceedings, OES issued the Draft Environmental Impact Statement (“DEIS”) on October 21, 2009.¹¹

7. From November 30 to December 28, 2009, 17 public hearings were held in 8 different Minnesota communities along the Modified Preferred Route and the Alternate Routes of the Project. Public hearings were held in: Granite Falls, Marshall, Redwood Falls, Winthrop, Henderson, Lonsdale, New Prague, and Lakeville.¹²

⁵ Ex. 2 (Application).

⁶ Additional motions concerning discovery, intervention and other matters were filed and additional orders were issued. All of these documents are included in the record.

⁷ Ex. 2 (Application).

⁸ *In the Matter of the Route Permit Application for a 345 kV Transmission Line from Brookings County, South Dakota to Hampton, Minnesota*, Docket No.: ET-2/TL-08-1474, (Commission Order issued Jan. 29, 2009).

⁹ *Id.*

¹⁰ *In the Matter of the Route Permit Application for a 345 kV Transmission Line from Brookings County, South Dakota to Hampton, Minnesota*, Docket No.: ET-2/TL-08-1474, (Commission Order issued Feb. 5, 2009).

¹¹ Ex. 23 (DEIS).

¹² Ex. 30 (OES November 6, 2009 Notice of Public Hearings); Ex. 160 (Applicants’ Notice of Rescheduled New Prague Public Hearing).

8. From December 15 to December 18, 2009, the Evidentiary Hearing was held in the Commission's large hearing room in St. Paul.¹³

9. On January 26, 2010, OES issued the Final Environmental Impact Statement ("FEIS"), published in the EQB Monitor on February 8, 2010.¹⁴

10. Public comments on the proposed Project were accepted by the ALJ until February 8, 2010.

11. The Hearing record closed for all purposes on March 22, 2010. On April 22, 2010, ALJ issued Findings of Fact, Conclusions of Law and Recommendation for the Route Permit Application for the Project. The ALJ recommended that the Commission approve the Modified Preferred Route with a Lower Minnesota River crossing at Le Sueur. The ALJ also determined that Applicants' Alternate Route, which crossed at Belle Plaine, satisfied the routing criteria.¹⁵

12. On June 10, 2010, the U.S. Fish and Wildlife Service (USFWS) issued a letter to Applicants ("June 10 USFWS Letter") stating its preference for the Belle Plaine crossing and stating it was unlikely a Bald and Golden Eagle Protection Act ("BGEPA") permit could be issued for a Le Sueur crossing.¹⁶

13. In response to the June 10 USFWS Letter, on July 27, 2010, the Commission issued an Order remanding this proceeding to the ALJ. The Commission described the scope of the remand proceeding as follows:

Since the USFWS's letter bears directly on the river crossing issue, since the ALJ and the parties had no opportunity to address the letter in the contested case process, and since there appears to be adequate time to examine the letter by the ALJ in a tightly-focused contested case proceeding, the Commission will remand the ALJ's recommendation regarding whether the crossing at Le Sueur or Belle Plaine is preferable.

Further, in anticipation of the Commission's possible ultimate selection of the river crossing at Belle Plaine, the Commission will also request that the ALJ consider which of the crossover routes to the river crossing at Belle Plaine is preferable, and to alter his April 22, 2010 findings of fact, conclusions of law and recommendation, if necessary, accordingly. The Commission clarifies that the objective of this request is simply to have complete the set of ALJ recommendations regarding the options before the Commission and in no way indicates a prejudgment that the river crossing at Belle Plaine is preferable.

¹³ Ex. 30 (OES November 6, 2009 Notice of Public Hearings).

¹⁴ EQB Monitor Vol. 34 No. 3 (February 8, 2010) at p. 5.

¹⁵ On April 30, 2010, ALJ Luis issued Amendments to the ALJ Findings for the Project to correct clerical errors pursuant to Minnesota Rule 1400.8300 (2009).

¹⁶ USFWS Letter, June 10, 2010 (eDocket No. 20106-51560-01).

On remand, the ALJ is requested to schedule a hearing on the USFWS's letter and give the parties adequate opportunity to develop the record with respect to that letter. The ALJ will then consider and report to the Commission whether and to what extent, in light of the USFWS's letter and the record developed with respect to it, he wishes to modify or augment his findings of fact, conclusions of law, and recommendations with respect to both the river crossings and the crossover routes to the river crossing at Belle Plaine.¹⁷

14. On August 18, 2010, the ALJ issued the First Prehearing Order on Remand for the Project. The Order set forth that all parties to the remand proceeding remain as those who were admitted during the matter in chief and established a schedule for proceedings on remand.

15. On September 14, 2010, the Commission issued its Order Granting Route Permit for the Project from the South Dakota/Minnesota state line to Cedar Mountain Substation and from the Helena Substation North site to the Hampton Substation.¹⁸

16. On October 4 and 5, 2010, the Public Hearings on Remand were conducted in Le Sueur, Arlington and Belle Plaine. On October 6, 2010, the Evidentiary Hearing on Remand was conducted in the Commission's Large Hearing Room in St. Paul, Minnesota.

17. Public Comment was received on the Remand Proceeding until November 1, 2010. The record on the Remand Proceeding closed on November 24, 2010.

C. Description of the Cedar Mountain Substation – Helena Substation Section of the Brookings Project

18. This Project consists of 345 kV and 115 kV transmission line facilities.¹⁹ The portion of the Project that is the subject of the Remand Proceeding is the 345 kV transmission line facilities and substation connections between the Cedar Mountain Substation and Helena Substation, to be constructed with double-circuit 345 kV facilities.²⁰ Applicants indicated that the crossing of the Minnesota River could be accomplished using either double-circuit 345 kV facilities on a single H-frame structure or side-by-side structures using single circuit 345 kV facilities.²¹

¹⁷ Commission Order Remanding to Office of Administrative Hearings issued July 27, 2010 (eDocket No. 20107-52970-01).

¹⁸ Commission Order Granting Route Permit issued September 14, 2010 (eDocket No. 20109-54429-01).

¹⁹ Ex. 2 at §§ 2.2 and 2.4 (Application).

²⁰ *Id.*

²¹ Remand Ex. 164, at 3-4 (Lennon Remand Direct).

19. The Commission issued a Certificate of Need for the 345 kV facilities, including the segment being considered in the Remand Proceeding, on May 22, 2009.²²

D. Routes Proposed for Segment 4

20. In the Application, Applicants identified a Preferred Route and an Alternative Route for the 345 kV transmission line.²³ The portion of the Preferred Route considered in this proceeding (Route Segment 4) runs from west to east, beginning between Franklin, Minnesota, and Fairfax, Minnesota, at the Cedar Mountain Substation. The proposed line runs eastward, north of Fairfax and Gibbon, Minnesota, turning south before reaching Winthrop, Minnesota, then running eastward south of Winthrop to Le Sueur. After crossing the Minnesota River at Le Sueur, the Preferred Route then heads eastward toward Heidelberg, turning north to the Helena Substation located southeast of Belle Plaine.²⁴ As later modified, Route Segment 4 along the Preferred Route would run approximately 67 miles. Over that distance, the route would share existing roads, railroad and transmission line rights-of-way for approximately 48 miles (72 percent).²⁵

21. Applicants also proposed an Alternate Route for Route Segment 4 in their Application. The Alternate Route, running from west to east, follows the same line as the Preferred Route to the east of Gibbon, where the Alternate Route turns north to run eastward along the north of Arlington, Minnesota (the crossover having been referred to as the “Arlington Crossover” or “the Crossover Route”).²⁶ From that location, the Alternate Route runs eastward and further north to a point to the west of Belle Plaine. From that location, the line runs south, crossing the Minnesota River, then traveling south and turning east to the Helena Substation.²⁷ The Arlington Crossover Route runs for approximately 76 miles, following existing rights-of-way for approximately 54 miles (71 percent).²⁸

22. Applicants selected these two routes at the end of a 15-month route development process that was driven by extensive public participation and agency coordination.²⁹ During this process, Applicants gathered environmental data, held open houses and work group meetings, collected public comments, and analyzed the statutory and rule factors set forth in the Power Plant Siting Act (“PPSA”), Minnesota

²² *In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and others for Certificates of Need for the CapX 345-kV Transmission Project*, Docket No. ET-2, E-002, et al./CN-06-1115 (PUC Order Granting Certificates of Need with Conditions, issued May 22, 2009 as modified August 9, 2009) (“Certificate of Need Order”).

²³ Ex. 2 at § 5 (Application); Ex. 102 at p. 11 (Poorker Direct).

²⁴ Remand Ex. 161; see also Ex. 2 at § 5.1 (Application); Ex. 102 at p. 12 (Poorker Direct).

²⁵ Remand Ex. 163, at 14 (Leshner Remand Direct).

²⁶ Remand Ex. 163, at 3 (Leshner Remand Direct).

²⁷ Remand Ex. 161; see also Ex. 2 at § 5.2 (Application); Ex. 102 at p. 13 (Poorker Direct).

²⁸ Remand Ex. 163, at 15 (Leshner Remand Direct).

²⁹ Ex. 2 at § 4.0 (Application); Ex. 102 at p. 11 (Poorker Direct).

Statutes Chapter 216E and Minnesota Rules Chapter 7850 to develop the Preferred Route and the Alternate Route for the Project.³⁰

23. The ALJ Recommendation identified the Preferred Route, with modifications at the crossing point of the Minnesota River, as the better route for the 345 kV HVTL. The ALJ also noted that the Belle Plaine crossing was suitable.³¹ After the ALJ Recommendation was issued, Applicants developed another alternative to cross from the Preferred Route to the Alternate Route, in consultation with OES, running from near Gibbon (known as the “the Gibbon Crossover Route” or “Alternate Crossover Route”).³² The Gibbon Crossover Route runs for approximately 69 miles. That route follows existing roads, railroad and transmission line rights of-way for approximately 47 miles (68 percent).³³

24. In the Remand Proceeding, Applicants identified three differences between the Le Sueur crossing and the Belle Plaine crossing as: 1) alignment flexibility and associated engineering constraints; 2) agency input; and 3) use of existing corridors. Applicants expressed their preference for crossing the Lower Minnesota River as follows:

During the initial contested case proceeding Applicants supported either the Modified Preferred Route, which utilizes the Le Sueur crossing, or the Arlington Crossover Route, which crosses at Belle Plaine. Applicants continue to believe that both crossings are constructible and satisfy the State’s routing criteria. However, Applicants also recognize the USFWS’s [34]and OES’s preference for the Belle Plaine crossing. Additionally, there are a number of other differentiating circumstances supporting the Belle Plaine crossing, that although not largely significant by themselves, when combined, lead Applicants to slightly prefer the Belle Plaine crossing.³⁵

E. Modified Preferred Route

25. Following a thorough review and analysis of the various route and segment alternatives proposed in the EIS Scoping Decision, Applicants reevaluated the Preferred Route.³⁶ From this analysis, Applicants identified several modifications to the

³⁰ *Id.*

³¹ ALJ Findings of Fact, Conclusions and Recommendation, at 99, issued April 22, 2010 (eDocket No. 20104-49478-01).

³² Remand Ex. 163, at 3-4 (Leshner Remand Direct).

³³ Remand Ex. 163, at 15 (Leshner Remand Direct).

³⁴ It is noted that the USFWS, after examination of the record developed on remand, no longer favors either crossing. See Finding 68, *infra*.

³⁵ Remand Ex. 163, at 12 (Leshner Remand Direct).

³⁶ Ex. 102 at p. 15 (Poorker Direct).

Preferred Route that were incorporated to develop the Modified Preferred Route.³⁷ Two of these route modifications are applicable to Route Segment 4.

26. The first of these two modifications alters the alignment of the Preferred Route centerline at the Le Sueur Minnesota River Crossing to parallel U.S. Highway 169. Applicants made this modification to avoid crossing Buck's Lake, which the Minnesota Department of Natural Resources ("MnDNR") identified as a habitat to "substantial numbers of bald eagles, great egrets, and other waterfowl."³⁸ The MnDNR did not support a crossing of Buck's Lake "due to the high concentration of species using the area for resting, roosting, feeding and nesting."³⁹

27. The second of these two modifications changed the Preferred Route width and proposed alignment to avoid the RES Specialty Pyrotechnics, Inc. ("RES"), facilities near Belle Plaine. The Institute of Makers of Explosives has detailed guidance regarding proximity of transmission line facilities to pyrotechnic facilities. This guidance recommends that transmission lines be located no nearer to the pyrotechnic facility than the width between poles in the line (in this case, 1,000 feet).⁴⁰

F. Route Widths

28. The ALJ Recommendation specifically addressed the Applicants' request for flexibility in the width of the routes to assist in working around problem sites.⁴¹ Applicants initially requested a route width of 1,000 feet along most of the proposed routes for the 345 kV transmission line and, where necessary, up to 1.25 miles.⁴² The route widths designated by the Commission for Segments 1-3, 5, and 6 reflect Applicants' later agreement to reduce the requested route width to 600 feet in most areas with some flexibility. With one exception for the area of the Redwood River crossing, the narrower route widths are reflected in the 17 Tile Maps included in the Applicants' letter to the ALJ dated February 8, 2010.⁴³

29. Applicants subsequently modified their requested route width for the Modified Preferred Route to a route width of 600 feet in those areas depicted on the 17 tile maps attached to Applicants' February 8, 2010 Letter to the ALJ.⁴⁴

30. Applicants' amended request is for a 600 foot route width and, where necessary, the flexibility to increase the route width up to 1,900 feet, centered on the proposed alignment for the majority of the Gibbon Crossover route. The route widths for

³⁷ *Id.*

³⁸ Ex. 140 at Schedule 49 at p. 2 (Poorker Supplemental).

³⁹ *Id.*

⁴⁰ Ex. 103 at pp. 16-19 (Poorker Rebuttal); Ex. 105 at pp. 1-3 (Lennon Rebuttal).

⁴¹ ALJ Recommendation, at 92-94.

⁴² Arlington Hearing Tr. at 107-121 (Just).

⁴³ Applicants February 8, 2010 Letter at Tile Maps, filed February 8, 2010 (eDockets No. 20102-46898-05).

⁴⁴ See Applicant's February 8, 2010 Letter, filed 02/08/10, Doc. Id. 20102-46898-05.

the Gibbon Route are shown in the maps provided with the OES EFP Staff Briefing Papers.⁴⁵

31. Applicants indicate that while a narrowed route may be workable in some areas, wide route widths will also be necessary in specific locations. In particular, if the Modified Preferred Route is approved for Segment 4, a wide corridor will be necessary for a crossing of the Minnesota River at Le Sueur. Applicants request a 1.25 mile-wide route width for the Le Sueur crossing. OES EFP Briefing Papers show the areas where Applicants are seeking a route width up to 1.25 miles for the Modified Preferred Route.⁴⁶

32. Applicants' request for a route width of 600 feet and where necessary up to 1.25 miles for the Modified Preferred Route is allowable under the PPSA and appropriate given the circumstances of this Project to allow coordination with landowners and state and federal agencies to develop a final alignment and design.⁴⁷

G. Right-of-Way

33. A 150-foot wide right-of-way will be required for the majority of 345 kV line. In some limited instances, where specialty structures are required for long spans or in environmentally sensitive areas, a larger right-of-way width may be required.⁴⁸

H. Project Schedule

34. Applicants expected to begin construction of the Project in the fourth quarter of 2010 and estimated that the Project would be completed by the third quarter of 2013.⁴⁹ The Remand Proceeding has caused a modest delay in the start of this process, but the delay is not an impediment to the Project going forward.

I. Route Segment 4 Project Costs

35. Applicants identified the total cost of the Project, including the survey, engineering, materials, construction, right-of-way, and project management associated with the transmission line and substations as dependent, in significant part, on the length of the transmission line.⁵⁰ The total cost is estimated to be between \$700 million and \$755 million in 2007 dollars.⁵¹

36. Applicants provided specific estimates for the Modified Preferred Route (including the Myrick Alternative), Arlington Crossover Route and Gibbon Crossover Route for Route Segment 4. Applicants estimated that the Modified Preferred Route

⁴⁵ Ex. 44 at CH Segment Maps (OES EFP Comments and Recommendations).

⁴⁶ Ex. 2 at Appendix B.5, Sheets CH10 and CH11 (Application).

⁴⁷ Minn. Stat. § 216E.02, subd. 1.

⁴⁸ Ex. 2 at § 3.1.1.2 (Application).

⁴⁹ Ex. 104 at p. 7 (Lennon Direct).

⁵⁰ Ex. 104 at p. 8 (Lennon Direct).

⁵¹ Ex. 104 at p. 8 (Lennon Direct); Ex. 141 at p. 8 (Lennon Supplemental).

(including the Myrick Alternative) would cost \$165 million.⁵² Applicants estimated that the Arlington Crossover Route would cost \$186 million. The estimate for the Gibbon Crossover Route was \$168 million.⁵³ These estimates assume an aerial crossing of the Lower Minnesota River. These estimates are subject to change based on the effect of several variables such as the timing of construction, availability of construction crews and components, and the final route selected by the Commission.⁵⁴

J. Substations

37. This Project includes the construction of four new substations and modifications to four existing substations. Both of the substations serving Route Segment 4 are new substations (Cedar Mountain and Helena).⁵⁵

38. Applicants' proposed site for the Cedar Mountain Substation for the Modified Preferred Route is located in Camp Township, Renville County at the northwest corner of the intersection of County Road 3 and 640th Avenue.⁵⁶ The new Cedar Mountain Substation will require five to eight acres of fenced and graded area depending on the final route selection and final substation design.⁵⁷

39. Applicants' proposed site for the Helena Substation for the Modified Preferred Route is located on the southeast corner of the intersection of 231st Avenue and 320th Street (County Road 28) in Derrynane Township in Le Sueur County.⁵⁸ The new Helena Substation will require approximately five to eight acres of fenced and graded area depending on final route selection and final substation design.⁵⁹

40. The Commission approved the Modified Preferred Route, including the Cedar Mountain and Helena substations, but omitting Route Segment 4. The permit for the approved portions of the Project was issued by the Commission on September 14, 2010.⁶⁰ There are no issues regarding the Cedar Mountain or Helena Substations to be addressed in this Remand Proceeding.

K. Federal and State Agency Participation

41. In this Remand Proceeding, Applicants have been in consultation with the USFWS, MnDNR, and Minnesota Department of Transportation ("Mn/DOT"). These agencies have submitted comments or provided staff to testify at the hearings held pursuant to the Commission's Remand Order.

⁵² Remand Ex. 164, at 7 (Lennon Remand Direct).

⁵³ *Id.*; see also Remand Ex. 163, at 18 (Leshner Remand Direct)(amended by errata filing on September 21, 2010)..

⁵⁴ Ex. 104 at p. 8 (Lennon Direct).

⁵⁵ Ex. 2 at § 2.4 (Application); Ex. 102 at p. 20 (Poorker Direct).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Ex. 102 at p. 22 (Poorker Direct).

⁶⁰ Commission Order Granting Route Permit issued September 14, 2010.

1. Minnesota Department of Transportation

42. The Minnesota Department of Transportation (Mn/DOT) owns or otherwise controls all state trunk highways, including freeways/interstate highways.⁶¹ Mn/DOT shares oversight over a right-of-way with the Federal Highway Administration to the extent the right-of-way has been acquired by Mn/DOT with federal funding.⁶²

43. Mn/DOT's rules governing use of trunk highway rights-of-way are included in Minnesota Rules 8810.3100-.3600.⁶³

44. Minnesota Rule 8810.3300, subp. 1 requires Applicants to obtain a permit from Mn/DOT to occupy state highway right-of-way, including interstate roads (also called freeways), and for crossings and longitudinal installations ("Utility Permit").⁶⁴

45. Mn/DOT follows the standards published in the *Mn/DOT Procedures for Accommodation of Utilities on Highway Right-of-Way, Mn/DOT Position Statement – Highways No. 6.4*, July 27, 1990, revised November 8, 2005 ("Accommodation Policy") when issuing Utility Permits.⁶⁵ The Accommodation Policy notes that it is in the public interest for utility facilities to be accommodated on any highway right-of-way when such use or occupancy does not conflict with provisions of federal, state, or local laws or regulations.⁶⁶

46. In Route Segment 4, the Modified Preferred Route parallel to U.S. Highway 169 does not require a Utility Permit because the affected section of U.S. Highway 169 is not a freeway.⁶⁷

47. On November 30, 2009, Mn/DOT filed a comment letter on the DEIS.⁶⁸ In this letter, Mn/DOT advised that it would be unable to issue a Utility Permit for the proposed alignment in a segment of the Applicants' Modified Preferred Route at Le Sueur.⁶⁹ Mn/DOT observed that the Modified Preferred Route would "run through a scenic easement area located near the rest area adjacent to U.S. Highway 169."⁷⁰ Mn/DOT stated "that removal of significant mature woodland vegetation would be required to construct the HVTL along the proposed route" and therefore was prohibited by federal requirements.⁷¹ While there are exceptions to these prohibitions, Mn/DOT concluded that it "has not seen a route that would not require extensive tree removal or

⁶¹ Ex. 102 at p. 29 (Poorker Direct).

⁶² *Id.*

⁶³ Ex. 102 at pp. 29-30 (Poorker Direct).

⁶⁴ Ex. 102 at p. 27 (Poorker Direct).

⁶⁵ Ex. 102 at p. 30 (Poorker Direct).

⁶⁶ Ex. 102 at p. 30 (Poorker Direct); Ex. 102 at Schedule 19 (Poorker Direct).

⁶⁷ Ex. 102 at p. 31 and Schedule 20 (Poorker Direct); Seykora Vol. 3 at pp. 183-184.

⁶⁸ Ex. 309 (Mn/DOT November 30, 2009 Comment Letter); Ex. 140 at Schedule 47 (Poorker Supplemental).

⁶⁹ Ex. 309 at p. 12 (Mn/DOT November 30, 2009 Comment Letter); Seykora Vol. 3 at p. 175.

⁷⁰ Ex. 309 at p. 12 (Mn/DOT November 30, 2009 Comment Letter).

⁷¹ Ex. 309 at p. 12 (Mn/DOT November 30, 2009 Comment Letter).

alteration of trees in the scenic area. Therefore, it believes it would be unable to issue a permit in this location.”⁷²

48. Based on Mn/DOT’s November 30, 2009 letter, Applicants reevaluated the alignment of the Modified Preferred Route in the vicinity of the Minnesota River Valley Safety Rest Area to determine if there were any modifications that could alleviate Mn/DOT’s concerns.⁷³ On December 14, 2009, Applicants developed a new alignment generally within the 4,700-foot wide route that avoided Mn/DOT’s scenic easements (“Myrick Alternative”).⁷⁴

49. The Myrick Alternative follows the north side of the U.S. Highway 169 corridor across the Minnesota River.⁷⁵ Approximately 900 feet west of the State Highway 112 exit ramp the centerline heads southeast, crossing U.S. Highway 169.⁷⁶ After crossing U.S. Highway 169, the route turns slightly, but remains in the southeast direction for 0.2 miles (approximately 1,250 feet), crossing State Highway 112 and into Mayo Park in the City of Le Sueur.⁷⁷ The route continues through Mayo Park, turning east at Forest Prairie Road (County Road 28) paralleling the north side of road, a distance of approximately 0.27 miles (approximately 1,425 feet).⁷⁸ The route then crosses Forest Prairie Road, turning in the southeast direction for 1,250 feet, crossing through a woodland bluff area and farm field line for approximately 4,300 feet.⁷⁹ The route then follows Myrick Street for 0.4 miles (approximately 2,080 feet), where it heads directly east for 0.3 miles (approximately 1,900 feet) along a field line and narrow woodland, crossing a Minnesota County Biological Survey (MCBS) moderate biodiversity area, connecting with the Applicants’ Modified Preferred Route on 320th Street.⁸⁰

50. Bimeda, Inc., a small pharmaceutical manufacturer located near the Myrick Route in Le Sueur, filed a routing proposal to adjust the Myrick Route to run south of its facility, rather than north of it, to avoid an area where it stores tanks of highly flammable material.⁸¹

51. Applicants will need a route width of approximately 4,700 feet for the Modified Preferred Route in the vicinity of the Minnesota River Valley Safety Rest Area to utilize the Myrick Alternative.⁸²

⁷² *Id.*

⁷³ Ex. 140 at p. 11 (Poorker Supplemental).

⁷⁴ *Id.*

⁷⁵ Ex. 140 at p. 12 (Poorker Supplemental).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Ex. 140 at p. 12 (Poorker Supplemental).

⁸¹ Bimeda Exceptions to ALJ Report, filed 5/7/10, Doc. Id. 20105-50185-01.

⁸² Ex. 140 at p. 11 (Poorker Supplemental).

52. On February 8, 2010, Mn/DOT sent a letter to the ALJ to provide additional comments regarding the Project.⁸³ In its letter, Mn/DOT reiterated that the Utility Accommodation Policy seeks to allow utilities to occupy portions of the highway rights-of-way where such occupation does not put the safety of the traveling public or highway workers at risk or unduly impair the public's investment in the transportation system.⁸⁴

53. During the hearings on remand Mn/DOT indicated that there are no Mn/DOT scenic easements located along Route Segment 4 of the Project in Belle Plaine or Le Sueur (using the Myrick Alternative).⁸⁵

54. Mn/DOT has not identified any impediments to permitting the Arlington Crossover Route or the Gibbon Crossover Route if one of those routes is selected by the Commission.⁸⁶

2. United States Fish and Wildlife Service and Minnesota Department of Natural Resources

55. Beginning in December 2008, USFWS began providing comments to Applicants regarding the Project.⁸⁷

56. USFWS submitted written comments to Applicants on December 3, 2008.⁸⁸

57. In its December 3, 2008 letter, USFWS provided some comments regarding the impacts of aerial obstructions on migratory birds and USFWS's plans to develop future wildlife habitat resources. USFWS stated that aerial obstructions, such as transmission lines, can adversely affect migratory birds, especially when located in migration corridors, if the lines are not sited or designed to minimize collisions ("bird strikes") and electrocution.⁸⁹ USFWS informed Applicants of its plans to acquire lands and develop habitat resources in the Project corridor.⁹⁰

58. In its December 3, 2008 letter, USFWS also expressed a preference for the Project to cross the Minnesota River at Le Sueur instead of Belle Plaine.⁹¹ USFWS stated that Belle Plaine has more continuous native flood plain habitat than Le Sueur.⁹²

⁸³ Mn/DOT February 8, 2010 Letter at p. 1, filed 02/08/10, Doc. Id. 20102-46900-07.

⁸⁴ *Id.*

⁸⁵ Belle Plaine Evening Remand Public Hearing, Tr. at 98; Remand Evidentiary Hearing, Tr. at 35-38 (Seykora). Mn/DOT does hold an easement along Highway 169, east of CSAH 53, but the easement is not affected by the Alternative Route. *Id.*

⁸⁶ Remand Evidentiary Hearing, Tr. at 39-40 (Seykora).

⁸⁷ Ex. 140 at Schedule 42 (Poorker Supplemental).

⁸⁸ *Id.*

⁸⁹ Ex. 140 at Schedule 42 at p. 1 (Poorker Supplemental).

⁹⁰ *Id.*

⁹¹ Ex. 140 at Schedule 42 at p. 2 (Poorker Supplemental).

⁹² *Id.*

Also, the Belle Plaine crossing location has an existing transmission line, so adding a new transmission line in the same location would result in obstructions occupying a larger 3-dimensional area and would increase the likelihood of bird strikes.⁹³ USFWS noted that there are records of bald eagles at the Belle Plaine crossing.⁹⁴

59. On March 5, 2009, USFWS provided comments to OES in which it stated that additional research was being conducted on the environmental impacts resulting from crossing the Minnesota River at Le Sueur and Belle Plaine.⁹⁵

60. On April 30, 2009, USFWS submitted additional comments to the Commission. USFWS identified a large year-round bald eagle population, high concentrations of waterfowl during migratory periods and a heron rookery within the proposed Le Sueur crossing corridor.⁹⁶ Due to the presence of these species, USFWS supported the Le Sueur crossing only if a non-aerial construction method were used.⁹⁷ If a non-aerial crossing were not feasible, USFWS recommended the Lower Minnesota River crossing be at Belle Plaine utilizing either a non-aerial method or an aerial method which combined the existing 69 kV line and the Project on the same structures.⁹⁸ USFWS proposed “the Preferred Route be followed to a point southwest of the City of Arlington where the transmission line would then be routed north to the Alternate Route...[o]nce the transmission line has been routed to the Alternate Route the line should proceed east and cross the Minnesota River within the existing 69 kV transmission line right-of-way in the vicinity of Belle Plaine.”⁹⁹ After the Minnesota River is crossed, USFWS suggested the transmission line follow the Alternate Route to the Helena Substation North Area.¹⁰⁰

61. On November 30, 2009, USFWS provided written comments to OES regarding items in the DEIS that required further clarification.¹⁰¹ In particular, USFWS sought additional information regarding non-aerial river crossings at Le Sueur and Belle Plaine.¹⁰²

62. In response to USFWS, Applicants also evaluated several non-aerial construction methods: connecting the new transmission line to the U.S. Highway 169 bridge, attaching the new transmission line to a stand alone pier that would be constructed next to the U.S. Highway 169 bridge, and undergrounding the new 345 kV transmission line.¹⁰³

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Ex. 140 at Schedule 43 (Poorker Supplemental).

⁹⁶ Ex. 140 at Schedule 44 at p. 1 (Poorker Supplemental).

⁹⁷ *Id.*

⁹⁸ Ex. 140 at Schedule 44 at pp. 1-2 (Poorker Supplemental).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Ex. 140 at Schedule 46 at pp. 1-3 (Poorker Supplemental).

¹⁰² Ex. 140 at Schedule 46 at pp. 1-2 (Poorker Supplemental).

¹⁰³ Ex. 140 at pp. 4-5 (Poorker Supplemental).

63. MnDNR also provided written comments to OES on November 30, 2009.¹⁰⁴ In its November 30, 2009 letter, MnDNR opined that a Belle Plaine crossing by way of the USFWS/MnDNR Alternative “appears to be the most protective of the Minnesota River.”¹⁰⁵ If the Lower Minnesota River crossing occurs at Le Sueur, MnDNR requested the Modified Preferred Route avoid Buck’s Lake.¹⁰⁶ MnDNR did not state any preferences for the crossing of the Minnesota River between Le Sueur or Belle Plaine.¹⁰⁷

64. On February 8, 2010, USFWS sent a letter to Applicants regarding the Minnesota River crossings near Le Sueur and Belle Plaine and how the proposed transmission lines could affect bald and golden eagles populations in these areas.¹⁰⁸ In its letter, USFWS concludes that “both the proposed Le Sueur and Belle Plaine crossings will likely disturb nesting, foraging, and winter roosting eagles. Both Bald Eagles and Golden Eagles are present in the Minnesota River Valley. The placement of the power line crossing in an area of such high eagle concentration and in a major movement corridor (the Minnesota River) can reasonably be expected to cause eagle mortality through both line collisions and electrocution.”¹⁰⁹ The letter further states that “erecting structures in this high eagle concentration area will encourage eagles to nest on poles and transmission lines, causing electrocution of the eagles and damage to the power lines (electrical shorts, fires, power outages).”¹¹⁰

65. In its letter, USFWS urged Applicants to further analyze both the economic and technological feasibility of a non-aerial line at any Minnesota River crossing.¹¹¹

66. On February 8, 2010, the MnDNR filed comments regarding the FEIS.¹¹² In these comments MnDNR encouraged the Applicants to coordinate directly with MnDNR “through a pre-application meeting(s) concerning impacts to DNR administered lands, public waters, public water wetlands, and state-listed species prior to application for water permits and utility licenses to cross public lands and public waters. The applicant is encouraged to further develop mitigation plans for impacts related to these resources and review these with the DNR prior to applying for any DNR permits.”¹¹³

67. OES expressed concern that the Applicants have not been sufficiently specific regarding technical aspects of the proposed HVTL, particularly regarding the

¹⁰⁴ Ex. 140 at Schedule 49 (Poorker Supplemental).

¹⁰⁵ Ex. 140 at Schedule 49 at p. 3 (Poorker Supplemental).

¹⁰⁶ Ex. 140 at Schedule 49 at p. 2 (Poorker Supplemental).

¹⁰⁷ Ex. 140 at Schedule 49 at p. 3 (Poorker Supplemental).

¹⁰⁸ USFWS February 8, 2010 Letter at p. 1, filed 2/9/10, Doc. Id. 20102-46903-01.

¹⁰⁹ USFWS February 8, 2010 Letter at p. 1, filed 2/9/10, Doc. Id. 20102-46903-01.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² MnDNR February 8, 2010 Letter at p. 1, filed 2/10/10, Doc. Id. 20102-46952-01.

¹¹³ *Id.*

Minnesota River crossing. The Applicants responded with a recitation of the anticipated impacts of the HVTL, particularly with respect to the Myrick Street Alternative.¹¹⁴

68. In the Remand Proceeding, the MnDNR indicated that its concerns regarding adequacy of information (similar to those identified by OES) had been addressed by the Applicants, including information needed regarding potential crossing points of the Minnesota River. The MnDNR, relying on currently available information, does not favor either proposed crossing point over the other. The MnDNR analysis of the impacts at the proposed crossing points shows "that the two locations ... have roughly similar environmental affects."¹¹⁵ On October 18, 2010, the MnDNR submitted a comment stating its position as follows:

As explained in testimony on October 5, 2010, the DNR previously expressed concern regarding the location of the route alignment at Bucks Lake near the proposed Le Sueur Minnesota River crossing. After this concern was communicated in environmental review comments, the applicant included a specific route alignment to avoid crossing Bucks Lake. However, if the route were to be permitted crossing the Minnesota River in the Le Sueur area, the proposed full route width included in current maps for this area would allow for changes to specific route alignment including a possible crossing of Bucks Lake. The DNR requests that, if the Le Sueur crossing is permitted, to ensure avoidance of this sensitive area for avian use, the permitted route width be narrowed to an area immediately adjacent to the currently proposed alignment avoiding Bucks Lake.

The DNR also will require additional information as part of the DNR permitting process for the License to Cross Public Lands and Waters for this project, as described in testimony October 5, 2010. Additional coordination is also needed regarding possible impacts to habitats such as native prairie to determine if surveys for endangered or threatened species are needed and whether a Takings Permit is needed. Previous DNR comment letters discussed mitigation for potential impacts to Species of Special Concern and rare native plant communities. The DNR encourages the applicant to coordinate regarding possible adjustments in route alignment to address these potential impacts to natural resources.¹¹⁶

69. On October 29, 2010, USFWS sent Applicants a letter for inclusion in the record of the Remand Proceeding (USFWS Remand Comment). The USFWS Remand Comment addressed the Bald and Golden Eagle Protection Act (BGEPA) permit issues which triggered this proceeding and stated in pertinent part:

¹¹⁴ Applicants' Reply Brief, at 11-13.

¹¹⁵ October 5, 2010 Afternoon Tr., at 77 (Schrenzel).

¹¹⁶ MnDNR October 18, 2010 Comment (eDocket No. 201010-55731-01); see also October 5, 2010 Afternoon Tr., at 106-119 (Gelvin-Innaver).

To summarize, new information available to my agency leads us to conclude that we do not currently have sufficient biological evidence to determine conclusively that more bald eagles would be affected by one crossing alternative or the other. **Based upon this new information, our earlier recommendation of June 10, 2010 is suspended.** We propose that a study of eagle winter habitat use and availability in the Minnesota River Valley and Silver Lake area be conducted this winter. As discussed below, we will work with Minnesota DNR and with the applicant to develop and implement a study protocol as expeditiously as possible.

Since the transmission crossing location was remanded back to the Administrative Law Judge, we have had the opportunity to talk with many citizens and local birders of the Minnesota River Valley. We have actively gathered new information, responded to every citizen inquiry we have received, and have posted previous letters and data collection efforts on our website: <http://www.fws.gov/rmidwest/twincities/cpa/capxihampton.html>. Through these endeavors, we have received new information on wintering eagle numbers and areas of open water in both the Belle Plaine and Le Sueur areas. We have also received citizen information on eagle concentration areas near Silver Lake, which is outside the Minnesota River Valley, but may still be affected by the Brookings-Hampton transmission line. We have reviewed past and present citizen-scientist data, had meetings with the Minnesota Department of Natural Resources (DNR) and the Minnesota Valley Wildlife Refuge, extensively reviewed our recommendations, and created additional analyses of the two sites. We have also reviewed public comment letters and the transcripts from the public hearings on this matter; which in large measure reiterate the new information provided directly to our office.

We would like to briefly comment on the next steps involved in route selection and Eagle Act permitting for this project. You will likely need an eagle take permit no matter which crossing site is selected, since the data now available suggests significant eagle use near both sites. Until such time as the Public Utilities Commission (PUC) makes a **final** route selection, an eagle take permit would be available only for the least impacting site; the winter survey discussed below would inform this determination, and might be particularly valuable if completed before the PUC's final route decision. However, we understand that the PUC route permitting process must continue. Unlike the scenario facing us in June, where both crossing sites were still available, PUC may soon be required to select a specific route based upon the many public policy concerns under its jurisdiction. **When PUC selects a route for permitting, we will work with you to develop and process a permit application for whichever route is selected.** In the meantime, however, we will work with you to gather biological information to give us as [sic] stronger understanding of eagle use along the Minnesota River. Conducting surveys at both potential sites will help us determine how eagle use of the river valley changes

seasonally and how the existence of the new line will affect the local eagle population. Additionally, this information will shape our development of permit conditions and mitigation measures no matter which site is selected. By having a complete picture of the entire river valley (rather than a single site), we will be able to accurately recommend offsite compensatory mitigation measures, if necessary

As the Service, Great River Energy (GRE), Xcel Energy, and the Office of Energy Security (OES) discussed during our phone conversation of October 14, the Service would like for GRE to perform a study to determine the potential impacts of the route crossing locations on bald eagles. This study should include field surveys in the Minnesota River Valley and Silver Lake area, and at a minimum, examine historic aerial photos and climatology data to determine potential eagle concentrations in past years. We will work collaboratively and expeditiously with the Minnesota DNR, Great River Energy and Xcel Energy to develop a study protocol to procure the necessary data. This proposed study would be conducted this winter. Field surveys should begin in November 2010 (before freeze-up) and ending in spring 2011 (after thaw). Locations for field surveys can come in part from locations identified during the remand hearing process. This study will assist in meeting the requirements of the Bald and Golden Eagle Act permit process, should a permit be requested. In order for an applicant to qualify for a eagle take permit, the potential impacts of the activity need to be identified (Implementation Guidance for Eagle Take Permits Under 50 CFR 22.26 and 50 CFR 22.27). This includes collection and synthesis of biological data, identifying activities that are likely to result in take, avoidance and minimization measures, and quantifying the anticipated take. The Implementation Guidance also states, "the applicant is responsible for providing up-to-date biological information about eagles that breed, feed, shelter, and/or migrate in the vicinity of the [proposed] activity" (p.12). This proposed study is not intended to interfere with the PUC decision making process, but rather to inform the Service's permit development process no matter which route is selected.¹¹⁷

3. OES Environmental Review

70. Minnesota statutes and rules require OES to prepare an EIS for the Project.¹¹⁸ As detailed in the ALJ Recommendation, OES engaged in the full process for thorough assessment of the potential environmental impacts that could result from the Project. On January 26, 2010, OES published the Final EIS (FEIS).¹¹⁹ The Modified Preferred Route, and the segments comprising the Arlington Crossover Route

¹¹⁷ USFWS Remand Comment, eDockets Document No. 201011-56096-01 (emphasis in original).

¹¹⁸ Minn. R. 7850.2500, subp. 1.

¹¹⁹ FEIS (eFiled Jan. 26, 2010), eDocket Document No. 20101-46444-03.

and the Gibbon Crossover Route were all considered in the FEIS.¹²⁰ OES has chosen to not issue a supplement to the FEIS. No supplement is required for the purposes of the Remand Proceeding.

L. Summary of Party Testimony

1. Lower Minnesota River Crossing

71. The pre-filed testimony of Daniel Leshar and Kevin Lennon provided information regarding Applicants' preferred Lower Minnesota River crossing location. Leshar testified that Applicants believe that both the Le Sueur and Belle Plaine crossings are constructible and satisfy the State's routing criteria.¹²¹ Leshar further stated that Applicants have a slight preference for a Belle Plaine crossing when alignment flexibility, engineering considerations, and use of existing corridors are taken into account.¹²²

72. With regard to the Le Sueur crossing, Kevin Lennon testified that the severe slope and ravines along the Myrick Alternative limit possible locations where structures can be placed.¹²³ He stated that this constraint may result in longer spans, wider easements, more tree clearing, and taller poles which may create greater aesthetic impacts.¹²⁴ If spans were shortened to accommodate a level workspace, more poles would be required.¹²⁵ Lennon testified that a crossing at Belle Plaine does not present similar alignment or pole placement limitations.¹²⁶

73. Lennon also testified that the topography at the Belle Plaine crossing area presents fewer engineering and design challenges than a Le Sueur crossing.¹²⁷ The primary engineering challenges at Le Sueur relate to the steep terrain and the retention ponds at the Le Sueur crossing.¹²⁸ Access for repairs and maintenance is also a consideration.¹²⁹ Because of the steeper terrain near Le Sueur, an access road to each structure location may have to be built to accommodate construction and maintenance equipment.¹³⁰

74. Lennon testified that while retention ponds are an issue at both the Le Sueur and Belle Plaine crossings, the constraints are more significant at Le Sueur.¹³¹

¹²⁰ See FEIS and DEIS at Appendix G (the Arlington Crossover Route was referred to as "the USFWS/MnDNR Alternative" in the EIS and the Gibbon Crossover Route was referred to as "Crossover Area Example 2" in the EIS).

¹²¹ Ex. 163 at p. 12 (Leshar Remand Direct).

¹²² Ex. 163 at pp. 12-15 (Leshar Remand Direct).

¹²³ Ex. 164 at p. 5 (Lennon Remand Direct).

¹²⁴ Ex. 164 at p. 5 (Lennon Remand Direct).

¹²⁵ Ex. 164 at p. 5 (Lennon Remand Direct).

¹²⁶ Ex. 164 at p. 6 (Lennon Remand Direct).

¹²⁷ Ex. 164 at p. 6 (Lennon Remand Direct).

¹²⁸ Ex. 164 at p. 5 (Lennon Remand Direct).

¹²⁹ Ex. 164 at p. 5 (Lennon Remand Direct).

¹³⁰ Ex. 164 at p. 6 (Lennon Remand Direct).

¹³¹ Ex. 164 at p. 6 (Lennon Remand Direct).

The Myrick Alignment Alternative requires that the line be moved away from the retention ponds to the east side of US 169.¹³² This area is more flood prone and has unstable soils.¹³³ At the Belle Plaine crossing, the elevation is higher, less flood prone and has relatively firmer soils.¹³⁴

75. Leshar noted that the Belle Plaine crossing also uses an existing 69 kV transmission corridor across the Minnesota River while the Myrick Alignment Alternative follows some roads, but also goes cross country across a forested area.¹³⁵

76. The testimony filed by Mr. Lennon and Mr. Leshar regarding engineering challenges in the Le Sueur/Myrick Alternative Route Area is summary/conclusory in nature and lacks references to detailed support such as cost studies or engineering data. For example, Mr. Lennon's contention, at Finding 74 above, that the line along the Myrick Route needs to be moved to the east side of Highway 169 to stay away from the retention ponds stands alone, without an illustrative map or any reference to or factual showing of flood history or soil studies. It is noted also that any of the challenges to construction at Le Sueur relied upon by the Applicants to result in a "slight preference" for a Belle Plaine Crossing existed at the close of the record in the original CAPX 2020 case, when the Applicants preferred the Le Sueur Crossing.

M. Public Comments

77. Public comment was received orally at the public hearings in the Remand Proceeding and in writing. The Findings in this report make reference to a very few comments that are particularly appropriate to the issue being discussed. More detailed summaries of the oral and written comment received are attached to this Report.¹³⁶

CRITERIA FOR A ROUTE PERMIT

78. The PPSA requires that route permit determinations "be guided by the state's goals to conserve resources, minimize environmental impacts, minimize human settlement and other land use conflicts, and ensure the state's electric energy security through efficient, cost-effective power supply and electric transmission infrastructure."¹³⁷

79. In the ALJ Recommendation issued on April 22, 2010, all of the responsibilities, procedures and considerations that the Commission must follow under the PPSA were identified and analyzed. There are no issues related to those standards that were raised regarding the overall route analysis. Consistent with the Commission's direction to conduct a "tightly focused proceeding" on remand, the only portions of the

¹³² Ex. 164 at p. 6 (Lennon Remand Direct).

¹³³ Ex. 164 at p. 6 (Lennon Remand Direct).

¹³⁴ Ex. 164 at p. 6 (Lennon Remand Direct).

¹³⁵ Ex. 163 at pp. 14-15 (Leshar Remand Direct).

¹³⁶ See Attachment 1.

¹³⁷ Minn. Stat. § 216E.03, subd. 7.

PPSA that will be addressed are those newly raised and specific to Route Segment 4. In all other respects the Findings of the ALJ Recommendation remain unchanged.

80. The following criteria were addressed by specific testimony and comments to require further analysis:

(1) evaluation of research and investigations relating to the effects on land, water and air resources of large electric power generating plants and high voltage transmission lines and the effects of water and air discharges and electric and magnetic fields resulting from such facilities on public health and welfare, vegetation, animals, materials and aesthetic values, including baseline studies, predictive modeling, and evaluation of new or improved methods for minimizing adverse impacts of water and air discharges and other matters pertaining to the effects of power plants on the water and air environment;

(2) environmental evaluation of sites and routes proposed for future development and expansion and their relationship to the land, water, air and human resources of the state;

* * *

(5) analysis of the direct and indirect economic impact of proposed sites and routes including, but not limited to, productive agricultural land lost or impaired;

(6) evaluation of adverse direct and indirect environmental effects that cannot be avoided should the proposed site and route be accepted;

* * *

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

* * *

(11) evaluation of irreversible and irretrievable commitments of resources should the proposed site or route be approved; and

(12) when appropriate, consideration of problems raised by other state and federal agencies and local entities.¹³⁸

81. In addition to the PPSA, Minn. R. 7850.4000 provides that no route permit may be issued in violation of site selection criteria and standards found in Minnesota Statutes or Public Utilities Commission Rules. Power line permits must be consistent with state goals to minimize environmental impacts and conflicts with human settlement and other land use. Minn. R. 7850.4100, sets out the factors factors to be considered

¹³⁸ Minn. Stat. § 216E.03, subd. 7.

when determining whether to issue a route permit for a high voltage transmission line. As with the PPSA analysis, only the issues separate from those analyzed will be addressed to meet the Commission's direction regarding the scope of the Remand Proceeding. In all other respects, the ALJ Recommendation remains unchanged. The factors to be addressed in this proceeding are:

A. effects on human settlement, including, but not limited to, displacement, noise, aesthetics, cultural values, recreation, and public services;

* * *

C. effects on land-based economies, including, but not limited to, agriculture, forestry, tourism, and mining;

D. effects on archaeological and historic resources;

E. effects on the natural environment, including effects on air and water quality resources and flora and fauna;

* * *

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

* * *

L. costs of constructing, operating, and maintaining the facility which are dependent on design and route;

M. adverse human and natural environmental effects which cannot be avoided; and

N. irreversible and irretrievable commitments of resources.

82. There is sufficient evidence in the record for the Commission to assess the proposed routes and alternatives of Route Segment 4 using the criteria set out above.

APPLICATION OF STATUTORY AND RULE CRITERIA

I. Application of Routing Factors to the 345 kV Transmission Line

A. Effects on Human Settlement

83. Minnesota statutory and rule routing criteria for high voltage transmission lines require consideration of the proposed transmission line route's effect on human settlement, including displacement of residences and businesses; noise created during

construction and by operation of the Project; and impacts to aesthetics, cultural values, recreation and public services.¹³⁹

1. Displacement

84. For purposes of this proceeding, displacement of a residence or business was defined to occur when a structure is located within the 150 foot right-of-way or 75 feet on either side of the proposed transmission centerline.¹⁴⁰

85. Applicants do not anticipate that construction of the 345 kV line in Route Segment 4 along the Modified Preferred Route or Alternate Route using either the Arlington or Gibbon Crossover Routes would result in any displacement of residences or businesses.¹⁴¹ Using any of the routes results in 6 homes being within 75 to 150 feet of the route centerline.¹⁴² The Gibbon Crossover Route has 10 fewer homes within 500 feet of the proposed centerline and a lower resulting concentration of occupied homes per mile.¹⁴³

2. Aesthetics

86. Construction of the facilities along the Modified Preferred Route, Arlington Crossover Route, or Gibbon Crossover Route will likely affect visual quality and area aesthetics within close proximity of the transmission line.¹⁴⁴ Such effects are most dramatic where the Modified Preferred Route, Arlington Crossover Route, or Gibbon Crossover Route cross the Minnesota River, are located near recreational resources, and placed near residences within 0-500 feet from the route centerline.¹⁴⁵

87. Applicants recognize the transmission lines will be a contrast to the surrounding land. Applicants pledged to continue working with landowners and public agencies to identify concerns related to the transmission line and aesthetics. Several potential mitigative measures have been identified.¹⁴⁶ Examples of the mitigative measures were set out in the ALJ Recommendation.

88. The aesthetic impacts differ among the Modified Preferred Route, Alternate Route, and Crossover Route. The Modified Preferred Route will cause the least amount of aesthetic impacts. The Modified Preferred Route is shorter in distance than the Alternate Route or Crossover Route.¹⁴⁷ As a result, the Modified Preferred Route will use fewer poles. In comparison to the Alternate Route and Crossover Route,

¹³⁹ Minn. Stat. § 216E.03, subd. 7(b); Minn. R. 7850.4100(A).

¹⁴⁰ Ex. 2 at p. 6-11 (Application).

¹⁴¹ Remand Ex. 163, Schedule 10 (Lesher); see also Ex. 2 at p. 4-10, p. 6-11 (Application); Ex. 102 at p. 17 (Poorker Direct).

¹⁴² Remand Ex. 163, Schedule 10 (Lesher).

¹⁴³ Remand Ex. 163, at 17 and Schedule 10 (Lesher).

¹⁴⁴ Ex. 2 at § 6.2.5 (Application).

¹⁴⁵ Ex. 2 at pp. 6-16-17 (Application).

¹⁴⁶ Ex. 2 at § 6.2.5.2 (Application).

¹⁴⁷ Ex. 102 at p. 9 (Poorker Direct); Ex. 2 at 5-6 (Application); Ex. 140 at p. 7 (Poorker Supplemental).

there are fewer residences within 500 feet of the Modified Preferred Route at or near the Minnesota River.¹⁴⁸ Also, the Alternate Route and Crossover Routes (Belle Plaine Crossing) cross the Minnesota River where it is designated “scenic” whereas the Modified Preferred Route (Le Sueur Crossing) does not cross the Minnesota River where it is designated “scenic”.¹⁴⁹

89. In light of the factors noted in the preceding Finding, the record, including the proceedings on Remand, confirms that the Modified Preferred Route has fewer aesthetic impacts in Section 4, compared to the Arlington Crossover Route and the Gibbon Crossover Route.

3. Public Services

90. Public services and facilities are generally defined as services provided by government entities, including hospitals, fire and police departments, schools, public parks, and water supply or wastewater disposal systems.¹⁵⁰

91. Applicants did not anticipate that construction of the Project along the Modified Preferred Route, Arlington Crossover Route, or Gibbon Crossover would directly or indirectly affect the operation of any existing public services.¹⁵¹ Similarly, Applicants did not expect that any direct long-term impacts to public buildings or infrastructure would occur.¹⁵²

92. Superintendent Kelly Smith of the Belle Plaine Schools (Independent School District No. 716) noted that there is a new elementary school located in the far southwest corner of Belle Plaine. ISD 716 owns additional land in that area for a future new high school. These school sites are approximately .4 miles from the Alternative Route for the power line. Superintendent Smith expressed concern about this proximity.¹⁵³

93. Superintendent Smith also noted that the ISD 716 property was surrounded by a residential development area. Some of the land set aside for residences is located less than .4 miles to the the Alternative Route. Superintendent Smith indicated that the community of Belle Plaine has experienced significant population growth over the previous decade and that the permitting of the Alternate Route could adversely affect that growth.¹⁵⁴

¹⁴⁸ Ex. 102 at p. 17-18 (Poorker Direct); Ex. 2 at 4-10 (Application); Applicants January 19, 2010 Letter to the ALJ at Route Impact Table, filed 01/19/10, Doc. Id. 20101-46155-01.

¹⁴⁹ Ex. 2 at p. 4-10 (Application).

¹⁵⁰ Ex. 2 at p. 6-28 (Application).

¹⁵¹ Ex. 2 at pp. 6-30, 8-16 (Application).

¹⁵² *Id.*

¹⁵³ Remand Ex. 421.

¹⁵⁴ *Id.*

94. During construction, Applicants will make efforts to minimize any disruption to public services or public utilities.¹⁵⁵ To the extent disruptions to public services occur, these would be temporary and the Applicants will work to restore service promptly.¹⁵⁶ Where any impacts to utilities have the potential to occur, Applicants will work with both landowners and local agencies to determine the most appropriate pole placement.¹⁵⁷

95. In light of the factors noted in the preceding Findings, the record, including the proceedings on Remand, indicates that the Modified Preferred Route will have fewer impacts on public services compared to the Arlington Crossover Route and the Gibbon Crossover Route.

B. Effects on Land Based Economies

96. Minnesota high voltage transmission line routing criteria require consideration of the proposed route's impacts to land based economies, specifically agriculture, forestry, tourism, and mining.¹⁵⁸

97. The Project will result in permanent and temporary impacts to farmland.¹⁵⁹ Permanent impacts will occur as a result of structure placement along the route centerline. Applicants estimated that the permanent impacts in agricultural fields will be 1,000 square feet per pole.¹⁶⁰ Temporary impacts, such as soil compaction and crop damage, are likely to occur during construction.¹⁶¹ Applicants estimated temporary impacts in agricultural fields to be one acre per pole for construction.¹⁶²

98. The Modified Preferred Route has 325.2 acres of prime farmland within the right-of-way, compared to 383 acres for the Arlington Crossover Route and 389 for the Gibbon Crossover Route.¹⁶³

99. There is no evidence that any expansion of residential areas in Le Sueur is anticipated in the area of the proposed Myrick Alternative to the Modified Preferred Route. By contrast, significant expansion of residential areas west of Belle Plaine, enabled in part by an Orderly Annexation Agreement between the City of Belle Plaine and Blakeley Township, would be impacted by the Alternate Route crossing the Minnesota River at Belle Plaine. Superintendent Smith cited figures from the

¹⁵⁵ Ex. 2 at pp. 6-30, 8-16 (Application).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Minn. Stat. § 216E.03, subd. 7(b)(5); Minn. R. 7850.4100(C).

¹⁵⁹ Ex. 2 at p. 6-44 (Application).

¹⁶⁰ Ex. 2 at p. 6-44 (Application).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Remand Ex. 163, at 17 and Schedule 10 (Leshner).

Metropolitan Council showing Belle Plaine's population growing from 6,500 in 2010 to 10,800 by 2030.¹⁶⁴

100. The record demonstrates that the Modified Preferred Route will have marginally less of an impact to existing land-based economies than the Arlington Crossover Route or the Gibbon Crossover Route. The Modified Preferred Route will have significantly less impact on the capacity for expansion of existing development to the west of Belle Plaine than the Arlington Crossover Route or the Gibbon Crossover Route.

C. Effects on Archaeological and Historic Resources

101. Minnesota high voltage transmission line routing criteria require consideration of the proposed route's effect on archaeological and historic resources.¹⁶⁵

102. Archaeological and historic resources are those places that represent the visible or otherwise tangible record of human occupation.¹⁶⁶ When identifying the archaeological and historic resources along the proposed routes, Applicants included "[i]dentified locations that have special meaning for specific communities along the Project."¹⁶⁷

103. For Route Segment 4, 15 archaeological sites lie within one mile of the Modified Preferred Route and 50 historical sites within one mile of the Modified Preferred Route.¹⁶⁸

104. The Arlington Crossover Route has 16 archaeological sites within one mile of the route and 38 historical sites within one mile of the right-of-way.¹⁶⁹

105. The Gibbon Crossover Route has 13 archaeological sites within one mile of the route and 37 historical sites within one mile of the right-of-way.¹⁷⁰

106. Applicants proposed to mitigate impacts to these resources and those methods are set out in the ALJ Recommendation. The record demonstrates that there are fewer archaeological and historic sites within the Gibbon Crossover Route and thereby lesser impact on those resources than either the Modified Preferred Route or the Arlington Crossover Route.

¹⁶⁴ Belle Plaine Evening Tr. at 162-163.

¹⁶⁵ Minn. Stat. § 216E.03, subd. 7(b)(1); Minn. R. 7850.4100(D).

¹⁶⁶ Ex. 2 at p. 6-48 (Application).

¹⁶⁷ *Id.*

¹⁶⁸ Remand Ex. 163, Schedules 10 and 11 (Leshner).

¹⁶⁹ Remand Ex. 163, Schedules 10 and 11 (Leshner).

¹⁷⁰ Remand Ex. 163, Schedules 10 and 11 (Leshner).

D. Effects on Natural Environment

107. Minnesota high voltage transmission line routing criteria require consideration of the proposed route's effect on the natural environment, including effects on air and water quality resources and flora and fauna.¹⁷¹

1. Water Quality and Resources

108. The Project crosses two major hydrologic units ("HUs") within the Upper Mississippi Drainage Region.¹⁷²

109. Several rivers, including the Minnesota River, streams, and ditches will be crossed by the Project or will be within the right-of-way of the Project.¹⁷³

110. Applicants will not place any structures within these features and do not anticipate any direct impacts to these features.¹⁷⁴ Indirect impacts are expected and will be avoided and minimized using the appropriate construction practices.¹⁷⁵

111. Because wetland impacts will be minimized and mitigated, disturbed soil will be restored to previous conditions or better, and the amount of land area converted to an impervious surface will be small, there will be no significant impact on surface water quality once the Project is completed.¹⁷⁶

112. Wetlands and floodplains will be crossed by the Project or will be situated within the right-of-way of the Project.¹⁷⁷

113. Applicants will avoid major disturbance of individual wetlands and drainage systems during construction.¹⁷⁸ This will be done by spanning wetlands and drainage systems, where possible.¹⁷⁹ When it is not possible to span such areas, Applicants have proposed other options that will minimize impacts.¹⁸⁰

114. Permanent impacts to wetlands would take place where structures must be located within wetland boundaries.¹⁸¹

115. The Modified Preferred Route has 18.3 total acres of wetlands within the right-of-way with 2.2 of those acres being forested wetlands.¹⁸² The Modified Preferred

¹⁷¹ Minn. Stat. §§ 216E.03, subd. 7(b)(1) and (2); Minn. R. 7850.4100(E).

¹⁷² *Id.*

¹⁷³ Ex. 2 at pp. 6-54-55 (Application).

¹⁷⁴ Ex. 2 at pp. 6-54-55 (Application).

¹⁷⁵ Ex. 2 at p. 6-59 (Application).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Ex. 2 at p. 6-60 (Application).

¹⁸² Ex. 2 at p. 6-60 and 8-30 (Application).

Route will cross 47 streams and rivers, 28 wetlands, 6 forested wetlands and 18 Public Waters Inventory (PWI) streams. All of the wetlands crossed by the Modified Preferred route are less than 1,000 feet across, and Applicants committed to placing no poles in wetlands.¹⁸³

116. The Arlington Crossover Route has 53.0 total acres of wetlands within the right-of-way with 3.8 of those acres being forested wetlands. The Arlington Crossover Route will cross 53 streams and rivers, 71 wetlands, 9 forested wetlands and 18 PWI streams.¹⁸⁴ The Arlington Crossover Route would require seven poles to be located in wetlands.¹⁸⁵

117. The Gibbon Crossover Route has 51.8 total acres of wetlands within the right-of-way with 4 of those acres being forested wetlands. The Gibbon Crossover Route crosses 52 streams and rivers, 75 wetlands, 9 forested wetlands and 23 PWI streams.¹⁸⁶ The Gibbon Crossover Route would require seven poles to be located in wetlands.¹⁸⁷

118. The record demonstrates that there are fewer water resources within the Modified Preferred Route than within either the Arlington Crossover Route or the Gibbon Crossover Route.

2. Fauna

119. The ALJ Recommendation sets out detailed findings regarding fauna potentially affected by the Project. The only fauna to be addressed on remand is the potential impact on eagles. In all other respects, the ALJ Recommendation Findings regarding fauna are not modified.

120. In response to the USFWS position regarding the potential impact on eagles in the Minnesota River Valley, Applicants conducted pedestrian and aerial surveys of avian species in that area.¹⁸⁸ These surveys sought to locate eagle nests, concentration sites, foraging areas, and winter roost nest areas that may be subject to disturbance and/or displacement effects from proposed facility expansion at Minnesota River crossings at Le Sueur and Belle Plaine.¹⁸⁹

121. The Applicants' survey identified two locations near each of the proposed Minnesota River crossing points where "historical" eagle nest sites had been located. Each of these sites (four in total) had been active eagle nests at one time and all of the sites were located within one mile of the proposed HVTL crossing points at Le Sueur

¹⁸³ Ex. 163 at Schedules 10 and 11 (Leshler Remand Direct).

¹⁸⁴ Ex. 163 at Schedules 10 and 11 (Leshler Remand Direct).

¹⁸⁵ Ex. 163 at Schedule 10 (Leshler Remand Direct).

¹⁸⁶ Ex. 163 at Schedules 10 and 11 (Leshler Remand Direct).

¹⁸⁷ Ex. 163 at Schedule 10 (Leshler Remand Direct).

¹⁸⁸ Ex. 163 at Schedule 3, at 8 and Attachment 14 (Leshler Remand Direct).

¹⁸⁹ *Id.* Attachment 14, at 4.

and Belle Plaine. A total of ten eagles (six adult and four juvenile) were observed during the survey.¹⁹⁰

122. Five eagle nests were identified in the Minnesota River Valley with the southernmost being north of the proposed Le Sueur crossing point of the Preferred Modified Route. The northernmost eagle nest identified is south of the Belle Plaine crossing point for both the Arlington Crossover Route and Gibbon Crossover Route.¹⁹¹

123. An active feeding area was identified where approximately twenty eagles have been observed. That site is near the Belle Plaine crossing location of the Minnesota River for the Arlington Crossover Route and Gibbon Crossover Route.¹⁹²

124. No eagle nests have been observed within a mile of the proposed corridors, but eagle nest locations can change from year to year. Eagle nests are typically spaced 2-3 miles apart based on their home range and territory, and a pair of nesting eagles will not tolerate another pair in “their” territory.¹⁹³ The entire area of the Minnesota River valley between Le Sueur and Belle Plaine is a major corridor for spring and fall migration and for nesting pairs of eagles that utilize open water patches to forage. This entire area is “prime real estate” for bald eagles.¹⁹⁴

125. Both locations and any location along the Minnesota River would have equal detrimental impact on eagles and other birds covered by the Migratory Bird Act.¹⁹⁵

126. The evidence in the record of the Remand Proceeding does not show a marked difference between the impact on eagles to be expected from following either the Modified Preferred Route crossing the Minnesota River at Le Sueur or the Alternate Route crossing at Belle Plaine. There is no impact on eagles that precludes permitting of either crossing point.

E. Application of Various Design Considerations

127. Minnesota high voltage transmission line routing criteria require consideration of applied design options for the Project that maximize energy efficiencies, mitigate adverse environmental effects, and accommodate potential expansion of transmission or generating capacity.¹⁹⁶

128. The design options of the facilities in Segment 4 along the Modified Preferred Route, along the Arlington Crossover Route, and along the Gibbon Crossover

¹⁹⁰ Ex. 163 at Schedule 3, Attachment 14, at 6-9 (Leshner Remand Direct).

¹⁹¹ Remand Ex. 405, Le Sueur/Henderson Recovery Zone map.

¹⁹² Remand Exs. 420A-420C; Belle Plaine Evening Tr. at 146-155.

¹⁹³ Remand Ex. 516, at 6 (Albrecht Remand Direct).

¹⁹⁴ *Id.* at 7-8.

¹⁹⁵ Remand Ex. 516, at 12 (Albrecht Remand Direct).

¹⁹⁶ Minn. Stat. §§ 216E.03, subd. 7(b)(3) and (10); Minn. R. 7850.4100(G).

Route each maximize energy efficiencies, mitigate adverse environmental effects, and accommodate future expansion.¹⁹⁷

F. Use or Paralleling of Existing Right-of-Way, Survey Lines, Natural Division Lines and Agricultural Field Boundaries

129. Minnesota high voltage transmission line routing criteria require consideration of the proposed route's use or paralleling of existing rights-of-way, survey lines, natural division lines, and agricultural field boundaries.¹⁹⁸

130. Regarding Segment 4, approximately 92.9% of the Modified Preferred Route uses or parallels existing right-of-way, survey lines, natural division lines, or agricultural field lines.¹⁹⁹

131. Approximately 93.2% of the Arlington Crossover Route uses or parallels existing right-of-way, survey lines, natural division lines, or agricultural field lines.²⁰⁰

132. Approximately 91.2% of the Gibbon Route uses or parallels existing right-of-way, survey lines, natural division lines, or agricultural field lines.²⁰¹

133. The record demonstrates that, in Segment 4, the Modified Preferred Route, Arlington Crossover Route, and Gibbon Crossover Route nearly equally use or parallel existing rights-of-way, survey lines, natural division lines, and agricultural field boundaries.

G. Use of Existing Transportation, Pipeline, and Electrical Transmission System Right-of-Way

134. Minnesota high voltage transmission line routing criteria require consideration of the proposed route's use of existing transportation, pipeline and electrical transmission system rights-of-way.²⁰²

135. Applicants analyzed possibilities for co-locating the Project at the Minnesota River crossings. Of the five original Minnesota River crossings assessed, only two are relevant to this proceeding, Le Sueur, to be used only for the Modified Preferred Route, and Belle Plaine, to be used only if either the Arlington Crossover Route or the Gibbon Crossover Route is selected.

136. The Modified Preferred route follows an existing road/bridge corridor across the Minnesota River at that location.

¹⁹⁷ Ex. 2 at pp. 3-5, 3-6 (Application).

¹⁹⁸ Minn. Stat. § 216E.03, subd. 7(b)(9); Minn. R. 7850.4100(H).

¹⁹⁹ Remand Ex. 163, Schedule 10 (Leshner Remand Direct).

²⁰⁰ Remand Ex. 163, Schedule 10 (Leshner Remand Direct).

²⁰¹ Remand Ex. 163, Schedule 10 (Leshner Remand Direct).

²⁰² Minn. Stat. § 216E.03, subd. 7(b)(8); Minn. R. 7850.4100(J).

137. The ALJ Recommendation issued on April 22, 2010, analyzed the proposed structures and Applicants' need for flexibility in making the final decision on what structures are appropriate. Applicants continue to need flexibility in the permit terms to work with USFWS and MnDNR to arrive at the final structure type to be used for the HVTL when crossing the Lower Minnesota River.

138. Approximately 72% of the Modified Preferred Route follows existing transportation, pipeline, and electrical transmission system rights-of-way.²⁰³

139. Approximately 70% of the Arlington Crossover Route follows existing transportation, pipeline and electrical transmission system rights-of-way.²⁰⁴

140. Approximately 68% of the Gibbon Crossover Route follows existing transportation, pipeline and electrical transmission system rights-of-way.²⁰⁵

141. The record demonstrates that the Modified Preferred Route uses more existing transportation, pipeline, and electrical transmission system right-of-way than either of the two Crossover Routes.

H. Costs of Constructing, Operating, and Maintaining the Facility

142. Minnesota high voltage transmission line routing criteria require consideration of the each proposed route's cost of construction, operation and maintenance.²⁰⁶

143. For Route Segment 4, the Modified Preferred Route and its Associated Facilities will cost \$165 million (in 2010 dollars) to construct and \$300 to \$500 per mile to operate and maintain.²⁰⁷

144. The Arlington Crossover Route and its Associated Facilities will cost \$186 million (in 2010 dollars) to construct and \$300 to \$500 per mile to operate and maintain.²⁰⁸

145. The Gibbon Crossover Route and its Associated Facilities will cost \$168 million (in 2010 dollars) to construct and \$300 to \$500 per mile to operate and maintain.²⁰⁹

146. The record demonstrates that it will cost marginally less to construct the Modified Preferred Route and its Associated Facilities than the Gibbon Crossover Route and its Associated Facilities. The cost of The Arlington Crossover Route and its

²⁰³ Remand Ex. 163, Schedule 10 (Leshner Remand Direct).

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Minn. R. 7850.4100(L).

²⁰⁷ Remand Ex. 164, at 7 (Lennon Remand Direct).

²⁰⁸ *Id.*

²⁰⁹ *Id.*

Associated Facilities is significantly higher than those of either the Modified Preferred Route or the Gibbon Crossover Route.

I. Adverse Human and Natural Environmental Effects Which Cannot be Avoided

147. Minnesota high voltage transmission line routing criteria require consideration of the adverse human and natural environmental effects, which cannot be avoided, for each proposed route.²¹⁰

148. Unavoidable adverse impacts include the physical impacts to the land, primarily agricultural land, due to the construction of the Project.²¹¹

149. Applicants have identified mitigation measures and Applicants will work with the public and public agencies to minimize the unavoidable adverse environmental effects that may arise during construction of the Project.²¹²

J. Irreversible and Irretrievable Commitments of Resources

150. Minnesota high voltage transmission line routing criteria require consideration of the irreversible and irretrievable commitments of resources that are necessary for each proposed route.²¹³

151. Irreversible and irretrievable resource commitments are related to the use of nonrenewable resources and the effects that the use of those resources have on future generations.²¹⁴ Irreversible effects result primarily from the use or destruction of a specific resource that cannot be replaced within a reasonable time frame.²¹⁵ Irretrievable resource commitments involve the loss in value of an affected resource that cannot be restored through later actions.²¹⁶

152. There are few commitments of resources associated with this Project that are irreversible and irretrievable, but those few resources primarily relate to construction of the Project.²¹⁷

153. Only construction resources, such as concrete, steel and hydrocarbon fuels, will be irreversibly and irretrievably committed to this Project.²¹⁸

²¹⁰ Minn. Stat. § 216E.03, subd. 7(b)(5) and (6); Minn. R. 7850.4100(M).

²¹¹ Ex. 2 at p. 4-13 (Application).

²¹² Ex. 2 at § 6-9 (Application).

²¹³ Minn. Stat. § 216E.03, subd. 7(b)(11); Minn. R. 7850.4100(N).

²¹⁴ Ex. 2 at p. 4-14 (Application).

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

154. The commitment of these resources is similar for the Modified Preferred Routes, Arlington Crossover Route, and the Gibbon Crossover Route.²¹⁹

155. The overall length of the Modified Preferred Route is less than the Arlington Crossover Route or the Gibbon Crossover Route. As a result, fewer poles will be needed for the Modified Preferred Route than for the Gibbon Crossover Route. The greatest commitment of resources is to the Arlington Crossover Route.²²⁰

K. Consideration of Issues Presented by State and Federal Agencies

156. Minnesota high voltage transmission line routing criteria allow for the consideration of problems raised by state and federal agencies when appropriate.²²¹

157. Mn/DOT, USFWS, and MnDNR expressed concern with various aspects of the Modified Preferred Route.²²² These concerns were addressed in the ALJ Recommendation. Regarding Segment 4, Mn/DOT and MnDNR expressed no specific concerns.

158. The ALJ Recommendation set out the USFWS and MnDNR concerns regarding waterfowl, particularly during migration periods, and a heron rookery which lies within the proposed Le Sueur/US 169 project corridor of the Modified Preferred Route.²²³

159. The USFWS concerns were all related to the Applicants' obligations under the BGEPA. Those concerns were discussed in the foregoing Findings.

160. On remand, MnDNR did not identify any new issues with the Le Sueur and Belle Plaine crossings.

161. The Modified Preferred Route with a Lower Minnesota River crossing at Le Sueur would minimize impacts to the Minnesota River Valley because: 1) the land use near the point of crossing the Minnesota River at Le Sueur features industrial uses, thereby reducing impacts to homes and sensitive environmental features; and 2) opportunities for sharing existing corridors exist at Le Sueur. Placing the crossing point at Belle Plaine would have a disproportionate adverse impact on the potential for economic development coincident with population growth in that area when compared to Le Sueur.

²¹⁹ Ex. 2 at p. 4-14 (Application); Ex. 102 at pp. 16-19 (Poorker Direct); Ex. 104 at pp. 8-10 (Lennon Direct); Applicants January 19, 2010 Letter at Route Impact Table, filed 01/19/10, Doc. Id. 20101-46155-01.

²²⁰ Remand Ex. 163, Schedules 10 and 11 (Leshner).

²²¹ Minn. Stat. § 216E.03, subd. 7(b)(12).

²²² Ex. 102 at Schedule 20 at pp. 27-38 (Poorker Direct); Ex. 103 at pp. 14-16 (Poorker Rebuttal); Ex. 140 at pp. 3-11 and Schedules 42- 47 (Poorker Supplemental).

²²³ ALJ Recommendation, at 23-26.

1. Undergrounding

162. For both Le Sueur and Belle Plaine, Applicants analyzed undergrounding alternatives. A full analysis of undergrounding was conducted in the contested case held prior to the Remand Proceeding.²²⁴

163. U-CAN and NoCapX asserted that “the relative weight of the economic and environmental costs of an aerial crossing have increased due to acknowledged potential for eagle takes at either crossing, evidence of consistent and essentially similar impacts the length of the Valley, and the prohibitive DOT scenic easements near LeSueur”²²⁵.

164. U-CAN and NoCapX cite the federal regulations regarding eagle take permits as supporting their position. An eagle take permit is required where “the take cannot practicably be avoided.”²²⁶ As defined in federal rules:

Practicable means capable of being done after taking into consideration, relative to the magnitude of the impacts to eagles, the following three things: the cost of remedy compared to proponent resources; existing technology; and logistics in light of overall project purposes.²²⁷

165. Applying the three criteria in the federal regulation, the cost (\$400 million in 2007 dollars) of the remedy (undergrounding) is very high in relation to the cost of the rest of the Project (\$700 - \$800 million in 2007 dollars), existing technology will address the problem, and logistically, implementing the undergrounding alternative would be difficult. Under the rule criteria, undergrounding is not a practicable option for crossing the Minnesota River.

166. As discussed elsewhere in this Recommendation, the USFWS has not identified any impact to the eagle population that precludes issuance of a permit for aerial routing of the HVTL. Mn/DOT has affirmatively stated that neither proposed crossing will affect any scenic easement held by Mn/DOT. No undergrounding alternative has been identified that would significantly reduce the cost of that option.

167. Due to the significant environmental impacts, construction challenges and costs, undergrounding at Le Sueur or Belle Plaine is not a superior alternative to an aerial crossing.

168. The record does not support an underground design at either of the Minnesota River crossings under consideration in the Remand Proceeding.

²²⁴ ALJ Recommendation, at 64-66..

²²⁵ NoCapX Remand Brief, at 11.

²²⁶ 50 C.F.R. § 22.26.

²²⁷ 50 C.F.R. § 22.3.

III. Route Width Flexibility

169. The PPSA directs the Commission to locate transmission lines in a manner that “minimize[s] adverse human and environmental impact while ensuring continuing electric power system reliability and integrity and ensuring that electric energy needs are met and fulfilled in an orderly and timely fashion.”²²⁸

170. The PPSA further authorizes the Commission to meet its routing responsibility by designating a “route” with a “variable width of up to 1.25 miles.”²²⁹

171. Applicants requested originally a route width of 1,000 feet for the 345 kV transmission line, and where necessary, flexibility to increase the width up to 1.25 miles, centered on the proposed alignment for the majority of the Modified Preferred Route.²³⁰

172. Applicants subsequently agreed to narrow the route width to 600 feet except for certain locations in Segment 4, where they requested a width of 1,000 feet to 1.25 miles.²³¹

173. The ALJ Recommendation analyzed the issue of route width flexibility and noted that the proposed route width is consistent with prior Route Permits issued by the Commission.²³²

174. Applicants’ Amended Request for a 600 foot-wide route width, except for those areas where they continue to request a width of 1,000 feet to 1.25 miles, for the Modified Preferred Route is consistent with the PPSA.²³³

IV. Notice

175. Minnesota statute and rules require Applicants to provide certain notice to the public and local governments before and during the Application for a Route Permit process.²³⁴

176. The notice that Applicants provided to the public and local governments prior to the Remand Proceeding was detailed in the ALJ Recommendation and found to satisfy of Minnesota statutory and rule requirements.²³⁵

²²⁸ Minn. Stat. § 216E.02, subd. 1.

²²⁹ Minn. Stat. § 216E.02, subd. 1.

²³⁰ Ex. 2 at § 2.3 (Application).

²³¹ Applicants’ Reply Brief, at 8.

²³² See *In the Matter of the Application for a HVTL Route Permit for the Badoura Transmission Line Project*, Docket No. ET-2, ET015/TL-07-76 Findings of Fact, Conclusions of Law and Order Issuing A Route Permit to Minnesota Power and Great River Energy For the Badoura Transmission Line Project And Associated Facilities (Oct. 31, 2007).

²³³ *Id.*

²³⁴ Minn. Stat. § 216E.03, subd. 3a; Minn. Stat. § 216E.03, subd. 4; Minn. R. 7850.2100, subp. 2; Minn. R. 7850.2100, subp. 4.

²³⁵ ALJ Recommendation at 4-8, 94-99.

177. On September 17, 2010, Applicants mailed a notice to landowners whose property was within or adjacent to the proposed or alternate routes in Segment 4 in accordance with Minn. Stat. § 216E.03, subd. 6.²³⁶ That mailed notice was limited to those landowners whose property falls within 1000 feet of the proposed routes.

178. Between September 22, 2010, and September 23, 2010, OES published notice of the public hearings to be held in the Remand Proceeding, along with information about the Project and the methods for submitting public comment, in three newspapers located in Arlington, Le Sueur, and Belle Plaine, in accordance with Minn. R. 7850.2100, subp. 6.²³⁷

V. Adequacy of FEIS

179. The Commission is required to determine the adequacy of the FEIS.²³⁸ An FEIS is adequate if it: (A) addresses the issues and alternatives raised in scoping to a reasonable extent considering the availability of information and the time limitations for considering the permit application; (B) provides responses to the timely substantive comments received during the DEIS review process; and (C) was prepared in compliance with the procedures in Minnesota Rules 7850.1000 to 7850.5600.²³⁹

180. The Commission's Remand of this proceeding did not change the locations to be examined for routing of the segment under consideration. All of those areas were included in the FEIS completed by the OES. The record demonstrates that the FEIS is adequate for this routing decision because the FEIS addresses the issues and alternatives raised in the Scoping Decision, provides responses to the substantive comments received during the DEIS review process, and was prepared in compliance with Minnesota Rules 7850.1000 to 7850.5600.

CONCLUSIONS

1. The Public Utilities Commission and Administrative Law Judge have jurisdiction to consider Applicants' Application for a Route Permit.²⁴⁰

2. The Commission determined that the Application was substantially complete and accepted the Application on January 29, 2009.

3. OES has conducted an appropriate environmental analysis of the Project for purposes of this route permit proceeding and the FEIS satisfies Minn. R. 7850.2500. Specifically, the FEIS addresses the issues and alternatives raised through the scoping process in light of the availability of information and the time limitations for considering the permit application, provides responses to the timely substantive comments received

²³⁶ Remand Ex. 46 (eDockets No. 20109-55052-01).

²³⁷ Remand Ex. 45 (eDockets No. 20109-55018-01).

²³⁸ Minn. R. 7850.2500, subp. 10.

²³⁹ *Id.*

²⁴⁰ Minn. Stat. §§ 14.57-.62 and 216E.02, subd. 2.

during the DEIS review process, and was prepared in compliance with the procedures in Minn. R. 7850.1000-7850.5600.

4. Applicants gave notice as required by Minn. Stat. § 216E.03, subd. 3a; Minn. Stat. § 216E.03, subd. 4; Minn. R. 7850.2100, subp. 2; and Minn. R. 7850.2100, subp. 4.

5. OES gave notice as required by Minn. Stat. § 216E.03, subd. 6; Minn. R. 7850.2300, subp. 2; Minn. R. 7850.2500, subp. 2; Minn. R. 7850.2500, subp. 7; Minn. R. 7850.2500, subp. 8; and Minn. R. 7850.2500, subp. 9.

6. Public hearings were conducted in communities located along the proposed high voltage transmission line routes for Segment 4. Applicants and OES gave proper notice of the public hearings, and the public was given the opportunity to speak at the hearings and to submit written comments. All procedural requirements for the Route Permit were satisfied.

7. The record demonstrates that the Modified Preferred Route for Segment 4, and its Associated Facilities, satisfies the route permit criteria set forth in Minnesota Statute § 216E.03, subd. 7 and Minnesota Rule 7850.4100.

8. The record establishes that both the Gibbon Crossover Route and the Arlington Crossover Route, each connecting the Modified Preferred Route and Alternate Route in Sibley County, and crossing the Minnesota River west of Belle Plaine, and its Associated Facilities, satisfy the route permit criteria set forth in Minnesota Statute § 216E.03, subd. 7 and Minnesota Rule 7850.4100.

9. The record demonstrates that the Modified Preferred Route for Segment 4 is the best alternative for the 345 kV transmission line between Brookings County Substation and Hampton Substation.

10. The record demonstrates that it is appropriate to grant a Route Permit for the 345 kV transmission line and Associated Facilities along the Modified Preferred Route.

11. The record demonstrates that it is appropriate for the Route Permit to provide the requested route width of 600 feet, except for those locations where Applicants are requesting a route width of 1,000 feet or up to 1.25 miles, as shown on Attachment 2 to Applicants' Proposed Findings of Fact, Conclusions and Recommendation.²⁴¹

12. It is appropriate for the Route Permit to require Applicants to obtain all required local, state, and federal permits and licenses, to comply with the terms of those permits or licenses, and to comply with all applicable rules and regulations.

²⁴¹ Applicants' Proposed Findings of Fact, Conclusions and Recommendation, filed 02/16/10, Doc. Id. 20102-47095-09.

13. Any Findings more properly designated Conclusions are adopted as such.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE MINNESOTA PUBLIC UTILITIES COMMISSION WILL ISSUE THE ORDER WHICH MAY ADOPT OR DIFFER FROM THE RECOMMENDATION.

Based on the Findings of Fact, Conclusions, and the record, the Administrative Law Judge makes the Recommendations set forth above in this Report.

Dated: December 22nd, 2010

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

Reported: Janet Shaddix and Associates
Transcripts Prepared

NOTICE

Under the PUC'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 PUC, 350 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 PUC shall make its determination on the applications for the Certificate of Need and Route Permit after expiration of the period to file Exceptions as set forth above, or after oral argument, if such is requested and had in this matter. In accordance with Minn. R. 4400.1900, the PUC shall make a final decision on the Route Permit within 60 days after receipt of this Report.

Notice is hereby given that the PUC may accept, modify, condition, or reject this Report of the Administrative Law Judges and that this Report has no legal effect unless expressly adopted by the PUC.

Attachment 1

Oral Testimony at the Public Hearings

1. More than 250 people attended the four public hearings on remand held in three different locations. Public hearings were held on October 4 and 5, 2010. The hearings were held in Le Sueur at 2:00 p.m. on October 4, 2010; Arlington at 6:30 p.m. on October 4, 2010; and Belle Plaine at 2:00 p.m. and 6:30 p.m. on October 5, 2010. Many of those in attendance at these hearings offered oral testimony. The following findings summarize many of the significant comments offered during the public hearings on remand. Not all testimony is summarized, but much of the testimony offered at the hearings repeated information or is similar in substance to that presented below. Although not summarized here, all oral testimony was heard and carefully considered in preparing these the Findings of Fact and Recommendation to the Commission.

2. At the Le Sueur hearing, 10 people spoke in addition to the parties.²⁴²

3. Delores Hagen testified on behalf of herself and Henderson Feathers. Ms. Hagen submitted several documents into the record including a copy of the BGEPA and a sample of information gathered by Henderson Feathers over 20 years. Henderson Feathers is a birding organization that monitors and reports sightings of various birds in the Le Sueur and Henderson areas (Ms. Hagen referred to this area as the “Henderson/Le Sueur recovery zone”). Ms. Hagen also provided a booklet that Henderson Feathers prepared which includes maps of nests within the area monitored by Henderson Feathers.²⁴³

4. Art Straub testified and submitted a written copy of his testimony at the Le Sueur public hearing.²⁴⁴ Mr. Straub testified that he participated in some of the recordkeeping referred to by Ms. Hagen in her submission of information from Henderson Feathers. Mr. Straub and his wife have been teachers for 50 years. Currently they both volunteer full-time for several organizations. He testified that in 2009 MnDNR asked if he would obtain the longitude and latitude of each eagle nest between “upper Le Sueur and Jessenland.”²⁴⁵ Mr. Straub testified that the Applicants’ aerial survey in the spring was conducted while eagles were on nests with eggs and eaglets. Additionally, he testified that the Minnesota River is an important flyway for migrating birds and may choose the river as their migratory path. He requested that a nonaerial crossing of the Minnesota River be considered. Mr. Straub testified about an eagle nest approximately 1.3 miles from the Jessenland church. He testified that the entire Minnesota River Valley is an important pathway for migratory birds.²⁴⁶

²⁴² Le Sueur, Public Hearing, Oct. 4, 2010, 2:00 p.m. at p. 3.

²⁴³ Le Sueur, Public Hearing, Oct. 4, 2010, 2:00 p.m. at pp. 34-39.

²⁴⁴ Ex. 406.

²⁴⁵ Le Sueur, Public Hearing, Oct. 4, 2010, 2:00 p.m. at p. 43.

²⁴⁶ Le Sueur, Public Hearing, Oct. 4, 2010, 2:00 p.m. at pp. 39-47.

5. Linda Rist noted that the viewing of eagles is better in the Le Sueur vicinity than it is in the vicinity of Belle Plaine. Because U.S. Highway 169 slopes downhill as it moves from north to south in vicinity of Le Sueur, Ms. Rist is concerned also that helicopters would not be able to land on the highway for emergencies, especially if the power line is in the way.

6. Dr. Deb McKay noted that to cross the Minnesota River at Belle Plaine, the proposed 345 kV line would not have to deal with as great a change in elevation as it would at Le Sueur, and stated also that the Myrick alternative route in Le Sueur, as opposed to the “Stoppelmann” route at Belle Plaine, is much prettier. Dr. McKay called the decision between building a 345 kV powerline crossing at Belle Plaine or at Le Sueur to be a “no brainer” – it is obvious to McKay that Belle Plaine should be chosen.

7. Allan Muller of Red Wing argued that the Applicants should build the 345 kV line underground at whatever Lower Minnesota River crossing point is chosen.

8. James Meehan’s testimony related to the farm he owns in Henderson. He testified that the Modified Preferred Route currently traverses directly through his farm and suggested that if that route is chosen the centerline should instead go down the east and south borders, following a road, instead of bisecting his property.²⁴⁷ The choice is navigating a deep ravine, versus bisecting a farm field.

9. Fran and David Hennen testified regarding the Myrick Alignment Alternative. The Hennens testified that because “there are no issues in Belle Plaine” the Le Sueur crossing should not be selected.²⁴⁸

10. Applicants’ witness Mr. Leshar responded to the Hennens’ comments by clarifying that the Myrick Alignment Alternative was selected because of the Mn/DOT easements identified along U.S. Highway 169 in the fall of 2009. Additionally, Mr. Leshar testified that although there are some challenges associated with following the Myrick Alignment Alternative, the Modified Preferred Route would still be constructible along that route.²⁴⁹

11. Four of the 10 speakers at the Le Sueur public hearing testified that they believed a Belle Plaine crossing of the Lower Minnesota River was the better route for the Project.²⁵⁰

12. Nine members of the public spoke at the Arlington public hearing on remand in addition to party witnesses.²⁵¹

²⁴⁷ Le Sueur, Public Hearing, Oct. 4, 2010, 2:00 p.m. at pp. 47-53.

²⁴⁸ Le Sueur, Public Hearing, Oct. 4, 2010, 2:00 p.m. at pp. 54-73.

²⁴⁹ Le Sueur, Public Hearing, Oct. 4, 2010, 2:00 p.m. at pp. 61-63.

²⁵⁰ See Le Sueur, Public Hearing, Oct. 4, 2010, 2:00 p.m. at pp. 59, 67, 86 and 88.

²⁵¹ Arlington, Public Hearing, Oct. 4, 2010, 6:30 p.m. at p. 3.

13. Kelly Baggenstoss testified that he was concerned that the transmission line, if placed near his home in Sibley Township along the Arlington Crossover Route would have an effect on several metal plates his wife had implanted after an accident.²⁵²

14. Vicky Wolter testified at the Arlington and Belle Plaine public hearings.²⁵³ Ms. Wolter testified at the Arlington public hearings that she was concerned landowners with homes beyond the routes were not receiving mailed notices but still believe their property values will be impacted. She also testified that because Belle Plaine does not have an active birding organization like Henderson Feathers in Le Sueur, certain information has not been recorded. She testified that the impact to eagles at Belle Plaine would be equal to, if not greater than, the impact at Le Sueur. Ms. Wolter also expressed concern about magnetic fields and possible health effects.²⁵⁴

15. Ms. Wolter is concerned that many of the houses lying within or less than 500 feet from the proposed centerline for the 345 kV line in Faxon Township of Sibley County were not accounted for in the Applicants' estimates.

16. Several members of the public present at the Arlington public hearing testified to sightings of eagles in the Belle Plaine area and actual locations of eagle nests there.²⁵⁵

17. Mark Kuske presented data bearing on the potential impact on eagles if a Belle Plaine crossing is chosen. Mr. Kuske concentrated on the wildlife/"eagles" situation on the Sibley County side of the river, noting first the spectacular view available to a motorist on Sibley County Road 6, which lies on a bluff above the Minnesota River. Mr. Kuske noted that a number of eagles gather on the "flats" lying below the bluff, in the flood plain of the River. Mr. Kuske argued that the data relied upon by the United States Fish and Wildlife Service (USFWS) in its June, 2010 letter favoring a crossing at Belle Plaine was based on research that was "lacking" and would not be acceptable to a sixth grader (Mr. Kuske teaches sixth grade science). Mr. Kuske noted that bald eagles do nest on power poles, and that as many as 75 to 100 bald eagles reside at Silver Lake, a body of water lying in Sections 4 and 5 of Jessenland Township, Sibley County. From Silver Lake, the creatures can easily range over the Minnesota River in the course of their flights and hunting. Mr. Kuske noted that the alternative route, which is part of the permit application for an alternate route in this matter (if Belle Plaine is chosen as the crossing area) would result in construction of the 345 kV line within a mile (to the north) of the large concentration of eagles at Silver Lake.

18. Kevin Fahey, a long time employee of CenterPoint Energy, raised questions regarding electromagnetic force (EMF) levels and stray voltage, which the

²⁵² Arlington, Public Hearing, Oct. 4, 2010, 6:30 p.m. at pp. 32-33.

²⁵³ Arlington, Public Hearing, Oct. 4, 2010, 6:30 p.m. at p. 35-60; Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at p. 78.

²⁵⁴ Arlington, Public Hearing, Oct. 4, 2010, 6:30 p.m. at pp. 35-60.

²⁵⁵ See Arlington, Public Hearing, Oct. 4, 2010, 6:30 p.m. at pp. 72, 78, 97, 99, 110 and 129; Ex. 409.

Administrative Law Judge already addressed in his initial Report in this matter. The Administrative Law Judge explained to Mr. Fahey that it was his opinion evidence regarding EMF and stray voltage was immaterial to the issues on remand.

19. In response to concerns regarding stray voltage and EMF, Mr. Leshar noted that such effects are often radiated from distribution lines, rather than transmission lines of the type under consideration in this matter and that distribution lines that cause difficulty to adjacent farm yards can be buried.

20. Darik Schultz questioned whether companies that own utilities that may either be crossed or paralleled by the Project had been notified of the project.²⁵⁶ Mr. Leshar responded that utilities are aware of the Project and Applicants will work closely with those affected utilities after a route is selected and a Route Permit is issued by the Commission.²⁵⁷

21. At the Belle Plaine afternoon hearing, eight members of the public testified in addition to parties and two representatives of MnDNR.²⁵⁸

22. Dr. Shayne Marker, D.V.M., represented the Wayne Koepp family during the afternoon hearing at Belle Plaine, and noted that stray voltage can “stress” farm animals, specifically dairy cattle. Mr. Leshar, on behalf of the Applicants, noted that if the Belle Plaine crossing is chosen and the 345 kV line is built in the vicinity of Wayne Koepp’s animals (or anyone else’s) the company will check for stray voltage before the line is built, and after.

23. Glen Schultz testified that he was concerned about impacts on his personal use grass runway located near Roberts Creek and German Road that would be a third of a mile from the power line if the Belle Plaine crossing of the Lower Minnesota River is selected.²⁵⁹

24. Kevin O’Brien questioned how close the Project would be to the Belle Plaine elementary school if the Belle Plaine crossing of the Lower Minnesota River were selected by the Commission.²⁶⁰ Applicants’ witness, Mr. Leshar responded that the centerline would be about half a mile from the football fields and approximately three-quarters of a mile from the elementary school building.²⁶¹

25. At the afternoon public hearing in Belle Plaine, State Representative David Bly testified. Rep. Bly represents District 25B, which includes the area between Northfield and Belle Plaine. He testified that the information provided regarding eagle nests and environmental concerns seemed inconclusive as to whether the Le Sueur or

²⁵⁶ Arlington, Public Hearing, Oct. 4, 2010, 6:30 p.m. at pp. 122-30.

²⁵⁷ Arlington, Public Hearing, Oct. 4, 2010, 6:30 p.m. at p. 122-23.

²⁵⁸ Belle Plaine, Public Hearing, Oct. 5, 2010, 2:00 p.m. at p. 3.

²⁵⁹ Belle Plaine, Public Hearing, Oct. 5, 2010, 2:00 p.m. at p. 38.

²⁶⁰ Belle Plaine, Public Hearing, Oct. 5, 2010, 2:00 p.m. at p. 47.

²⁶¹ Belle Plaine, Public Hearing, Oct. 5, 2010, 2:00 p.m. at p. 49.

Belle Plaine crossing of the Lower Minnesota River was a better location for the Project.²⁶²

26. Gary Steinhagen serves on the Belle Plaine School Board. Steinhagen predicts that the Belle Plaine School District will lose up to 200 students if the 345 kV line is built at the Belle Plaine crossing, due to an open enrollment choice to stay away from a power line moving into the same proximity as their school. For every 50 students lost, the District loses \$300,000 in state aid. He asserts many people will not believe a representation that the power line proposed to run near the schools is “safe”, because “perception is reality”.²⁶³

27. Esther Stoppelmann, after whose family Stoppelmann Boulevard (which runs from the Minnesota River to Highway 169, on a line parallel to the proposed 345 kV line) noted that the City of Belle Plaine was considering annexation of the territory between the current west edge of the City’s residential area to the east side of Stoppelmann Boulevard.

28. Judy Theis lives with her husband, Jesse Theis, on farmland situated on top of a bluff west and 70 feet above Stoppelmann Boulevard. Ms. Theis notes that, in order to avoid going directly through farm fields as the proposed line connects between the Minnesota River and Highway 169, the utilities would have to take out a number of trees. In addition, the tops of any poles bearing the 345 kV lines would be at or higher than eye level from the Theis farmsite.

29. Sarah Leonard, an adult daughter of Wayne Koepp, noted that the Koepp dairy farm houses 375 dairy cattle, and is a place where eagles perch on the trees frequently. They are found on the tree line that separates the farms of Wayne and Mark Koepp, who has a large hog-raising operation.

30. The afternoon hearing in Belle Plaine featured appearances by Jamie Schrenzel and Lisa Gelvin-Innvaer, from the staff of the Minnesota Department of Natural Resources (DNR). Ms. Schrenzel pointed out that the DNR has authority to issue crossing permits for the placement of transmission lines on public lands and waters. She noted that Belle Plaine and Le Sueur have “roughly similar” environmental characteristics, noting further that, when choosing between Belle Plaine and Le Sueur as river crossing sites, the presence of eagles is the “tie breaker”. Ms. Schrenzel then noted that the United States Fish and Wildlife Service (USFWS) is the authority to decide which crossing point would impact eagles greater. Ms. Schrenzel testified that the DNR formerly favored Belle Plaine as the crossing point because it was perceived as an area where there would be less impact on the environment in general, but since Applicants now propose to construct the line across the Minnesota River at a location south of Buck’s Lake (if Le Sueur is chosen as the crossing point), the considerations “are even”.²⁶⁴ As between the Gibbon and Arlington Crossover Routes, the DNR has

²⁶² Belle Plaine, Public Hearing, Oct. 5, 2010, 2:00 p.m. at pp. 97-105.

²⁶³ Belle Plaine Public Hearing, Oct. 5, 2010, 2:00 p.m, at p. 61.

²⁶⁴ Belle Plaine afternoon transcript, at 90.

no preference regarding choosing of a way to get to the Belle Plaine River Crossing, emphasizing again that it favored Belle Plaine initially because of concerns about Buck's Lake. Ms. Schrenzel testified that the Gibbon Crossover, which requires more licenses from the DNR, and the Arlington Crossover, which crosses more County "biological survey sites", are "about equal".²⁶⁵

31. Ms. Gelvin-Innvaer noted that eagles generally do not nest on power poles. She then presented to the parties confidential data from the Natural Heritage Database Information System, noting where the Department has confirmed that eagles are nesting.²⁶⁶

32. Twenty-one people testified at the evening public hearing in Belle Plaine in addition to the parties and Mn/DOT.²⁶⁷

33. Dallas Giles testified at the evening public hearing in Belle Plaine that it appeared, based on the information provided through a website created by USFWS, that the information USFWS relied on to support its conclusion that Le Sueur crossing would be more impactful to eagles was information provided by a local Le Sueur birder who made observations and submitted those observations to USFWS.²⁶⁸

34. Kevin Fahey testified he was concerned about the safety of the Project and an existing pipeline existing in the same area.²⁶⁹

35. Nancy Giles, who lives on Stoppelmann Boulevard, testified she believed it was "unacceptable" that after issuing its comment letter on June 10, 2010, USFWS was "still sending emails to other wildlife agencies asking if they knew anything about the eagle population in Belle Plaine" as late as August 18, 2010.²⁷⁰ Ms. Giles noted that the impact of eagles at Le Sueur and Belle Plaine was relatively equal, but that the impact on humans, and the economy, would be much greater at Belle Plaine.

36. Mayor Tim Lies testified and represented both the City of Belle Plaine and Friends of the Minnesota Valley, an environmental advocacy group. Mayor Lies presented a City of Belle Plaine city council resolution passed on April 22, 2009 that opposed the Belle Plaine crossing of the Lower Minnesota River.²⁷¹

37. Mayor Lies also stressed that the City has an Orderly Annexation Agreement in place with Blakeley Township of Scott County, within whose boundaries lies the area where the Applicants hope to build the 345 kV line if a Belle Plaine crossing is chosen.

²⁶⁵ *Id.*, at 91.

²⁶⁶ *Id.*, at 119.

²⁶⁷ Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at pp. 3-4.

²⁶⁸ Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at pp. 34-35.

²⁶⁹ Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at pp. 43-45.

²⁷⁰ Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at p. 47.

²⁷¹ Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at pp. 52-55.

38. Mike Kreger testified he was asked to attend and speak at the hearing after Letter to the Editor he wrote two weeks prior to the hearing was published in the Belle Plaine Herald.²⁷² Mr. Kreger started the Minnesota Waterfowl Association (“MWA”) in Sibley County in 1989.²⁷³ Since that time, MWA was able to restore several wetlands and “the three Mud Lakes and Washington Lake” became “feeding and resting areas.”²⁷⁴ Mr. Kreger also testified that MnDNR uses nearby Silver Lake near the Belle Plaine crossing of the Lower Minnesota River as a holding pond for walleyes and because of the shallow waters there are large amounts of winter kill that attract eagles to this area, sometimes upwards of 100 eagles at a time.²⁷⁵ He testified that eagles near Belle Plaine use Silver Lake, the three Mud Lakes and Washington Lake for feeding and resting.²⁷⁶ Finally, Mr. Kreger clarified that Buck’s Lake in Le Sueur does freeze every year and because the freeze depletes oxygen levels, MnDNR opens the lake to promiscuous fishing and the winterkill at Buck’s Lake, just like that at Silver Lake, attracts eagles.²⁷⁷

39. Mr. Kreger is a former DNR employee. He lives within 200 to 300 yards of Silver Lake in Sibley County, where the USFWS has purchased 1,500 acres on the southeast side of the lake. Silver Lake is used by the DNR as a holding pond. Mr. Kreger noted also that Washington Lake has at least 800 acres of open water year around. In a conversation with Tony Sullins of the USFWS, Mr. Kreger learned that Sullins had never been to Buck’s Lake and was not aware of what the USFWS had done in Sibley County to restore the habitat for eagles. Mr. Kreger noted also that there is land purchasing activity between Belle Plaine and Henderson, designed to dedicate much of that territory to remaining in its natural condition. Kreger testified further that Mr. Sullins told him he chose, in the June 10, 2010 USFWS letter, to protect Buck’s Lake because it was his understanding that it had open water throughout the winter. Mr. Kreger noted that Mr. Sullins’s assumption about that open water was incorrect. Mr. Sullins also was under the impression that Silver Lake, Mud Lake, and Washington Lake freeze over during the winter, so eagles forage there only in the spring time, which also was an incorrect assumption.

40. Joel Bahr noted that last year (the winter of 2009-2010) open water remained on the Sibley County side of Buck’s Lake throughout the winter, and more eagles were observed there than ever before.

41. Vicki Wolter presented a Petition (Exhibit 416), signed by several hundred people living in Faxon Township, Sibley County, urging the commission to choose the Le Sueur crossing.

²⁷² Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at p. 59.

²⁷³ Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at p. 61.

²⁷⁴ Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at p. 61.

²⁷⁵ Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at pp. 62 and 64.

²⁷⁶ Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at p. 65.

²⁷⁷ Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at p. 67.

42. Ms. Wolter also related that Mr. Sullins had told her the USFWS relied on reports from birders from the Henderson, Minnesota area, who favored a crossing at Belle Plaine. Mr. Wolter again testified she never has seen an eagle at Buck's Lake. She sees eagles every day at her residence, which is three miles north of Belle Plaine on Highway 25 in Sibley County. She notes that the siting of eagles is more difficult for motorists near Belle Plaine, because Sibley County Road 6 does not travel in the flat area near the river, but is uphill from the eagle habitat near the River, as compared to the situation along Highway 93 west of Buck's Lake, where the Highway passes directly next to the Minnesota River.

43. David Seykora from the Minnesota Department of Transportation noted that a scenic easement exists in the Belle Plaine area, but that easement will not impede the crossing of a 345 kV line at Belle Plaine along the line preferred by the Applicants. The easement is 1500 feet east of the intersection of Highway 169 and German Road, extending 750 feet south of the road.

44. Maria Tracy, who lives 300 feet away from the proposed center line of the 345 kV line in the Belle Plaine vicinity, noted that she did not receive specific individual notice of the public Hearings on Remand. Ms. Tracy urged that the remand proceeding focus itself away from eagles and concentrate on looking at the human impacts of any route alternative the Commission may choose.

45. Sheri Prokosch grew up on a farm near the area proposed for construction of the 345 kV line near Belle Plaine. She remembers that open water existed for eagles during the winter in the area of the Minnesota River near her family's farm, and that she was told not to skate on the river when she was a little girl, because of the dangers of thin ice.

46. Jim Koonst is a manager for Stier Bus Company at Belle Plaine. The company has a cell phone tower lying 2000-3000 feet west of the centerline of the proposed 345 kV line on the Scott County side in Belle Plaine. The Stier Tower is 180 feet high. Applicants' witness Daniel Leshar testified that his company would pay for moving of the cell phone tower if necessary.

47. Lyle Wiste of Dryden Township testified that he was concerned about the proximity of the Gibbon Crossover Route to his home.²⁷⁸

48. Belle Plaine Public Schools Superintendent Kelly Smith testified that he had submitted comments in a letter addressed to ALJ Luis on August 26, 2010.²⁷⁹ The letter stated that the Belle Plaine schools are located approximately 0.4 miles from the Arlington and Gibbon crossover routes and that he was concerned about this proximity.²⁸⁰ Additionally, Superintendent Smith testified he lived in Red Wing, Minnesota for three years and witnessed eagles living near the Prairie Island Power

²⁷⁸ Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at p. 117.

²⁷⁹ Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at p. 161.

²⁸⁰ Ex. 421 (Letter from Superintendent Kelly Smith).

Plant and that eagles were able to survive “in that area sharing space with the power lines and a power plant.”²⁸¹

49. Superintendent Smith noted also that a certain number of houses lie between the present school building on the School District’s site west of the built-up portion of Belle Plaine, which site is planned to accommodate Belle Plaine’s Senior High School in the future. It is anticipated that Belle Plaine will grow to over 10,000 population (from its present population of 6,000) in the next 20 years, and that households will have to build around the powerline if the Belle Plaine crossing is chosen.

50. Jesse Theis testified that he is a scientist by profession, and that an average science student in the fifth grade would “laugh” at the “science” behind the USFWS letter issued June 10, 2010.

51. Theresa Ruhland, a resident of Derrynane Township near Le Sueur, testified at the evening public hearing in Belle Plaine. She testified that the route requested by Applicants for the Modified Preferred Route near RES creates a “severe intrusion into” her farm.²⁸² Ms. Ruhland testified that the placement of power poles 1,000 feet east of RES would impact her and her husband’s livelihood. Ms. Ruhland testified she supported a crossing of the Lower Minnesota River at Belle Plaine instead of the Modified Preferred Route crossing at Le Sueur.²⁸³

52. At both the afternoon and evening public hearings in Belle Plaine, there were members of the public who testified to water bodies that were open year-round near the Belle Plaine crossing area.²⁸⁴

53. Members of the public testified at the Belle Plaine public hearings about locations of either eagle sightings or nests in and around Belle Plaine.²⁸⁵

54. Also, several members of the public who spoke at the Arlington and Belle Plaine public hearings testified that a crossing of the Lower Minnesota River at Belle Plaine would have the same impacts as a crossing at Le Sueur.²⁸⁶

55. At all of the hearings there were members of the public who expressed concern that there were so many comments and concerns about protecting eagles, but that the impacts on humans must also be considered.²⁸⁷

²⁸¹ Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at p. 167.

²⁸² Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at p. 172.

²⁸³ Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at pp. 172-74.

²⁸⁴ Belle Plaine, Public Hearing, Oct. 5, 2010, 2:00 p.m. at p. 121; Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at pp. 75 through 77.

²⁸⁵ See Belle Plaine, Public Hearing, Oct. 5, 2010, 2:00 p.m. at pp. 37, 120-21, 135 and 162; Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at pp. 33, 47, 63, 65, 76, 87, 125, 127-28, 135, 144, 146-47, 157 and 159-60.

²⁸⁶ See Arlington, Public Hearing, Oct. 4, 2010, 6:30 p.m. at pp. 57, 77, 81 and 129; Belle Plaine, Public Hearing, Oct. 5, 2010, 2:00 p.m. at p. 136; Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at p. 86.

Written Comments from the Public

1. A large number of written comments were received from concerned members of the public, State and Federal agencies, and businesses. These comments addressed a variety of issues. Some of the public comments have been addressed in the body of the Report, where the issue raised is addressed. The summary provided here does not reference all of the comments received. The following Findings summarize the issues presented by the commentators.

2. A number of comments raised the question of a potential for adverse health effects from EMF/ELF, and to a lesser extent, stray voltage, which was fully discussed in the ALJ Recommendation. Additionally, that issue is outside of the scope of this Remand Proceeding.

3. Myra and Gerald Nagel of German Road in Belle Plaine note that there are many eagles in their area and there are also other wildlife such as wild turkeys, coyotes, and foxes. The Nagels also express concern for the two dairy farms and one hog farm on German Road that may be impacted by the Alternate Route.²⁸⁸

4. Jeanette Seeman of Arlington requests that the proposed transmission line be placed where there is not a large population of people because it has not been proven that electricity does not cause human health effects.²⁸⁹

5. William and Sandra Boecker of Henderson write that the Arlington Crossover Route will pass just north of Silver Lake, which has an eagle population. The Boeckers note that there is a north/south airplane landing strip that is located approximately 1/3 mile north of Silver Lake that will be impacted if the Arlington Crossover Route is selected. The Boeckers also state they have plans to build a home north of Silver Lake that may be impacted if the Arlington Crossover Route were chosen.²⁹⁰

6. Mary Albrecht, who lives on the Scenic Byway Road in Belle Plaine, writes that she has seen eagles flying over her house and in the River valley. Albrecht is concerned about transmission lines running so close to schools and homesteads.²⁹¹

7. C. Jay and Scott Gavin of Henderson write that more people and wildlife will be impacted by the Alternate Route as compared to the Preferred Route at Le Sueur.²⁹²

²⁸⁷ See Belle Plaine, Public Hearing, Oct. 5, 2010, 2:00 p.m. at pp. 30-31; Belle Plaine, Public Hearing, Oct. 5, 2010, 6:30 p.m. at pp. 37-38, 105-06, 111, and 120.

²⁸⁸ Nagel October 12, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

²⁸⁹ Seaman October 12, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

²⁹⁰ Boecker October 11, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

²⁹¹ Albrecht October 15, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

²⁹² Gavin October 16, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

8. Kevin Kamps of Henderson supports the Preferred Route over the Alternate Route.²⁹³

9. Loren and Shirley Stier of Belle Plaine noted that they have seen several bald eagles from their home which borders the proposed route in Belle Plaine. The Stiers request that a complete scientific study of avian life in the Minnesota River Valley be ordered.²⁹⁴

10. John Lambrecht of Belle Plaine expressed concern about the impact that the Belle Plaine crossing will have on wildlife, the economic growth of Belle Plaine, and the enrollment in the Belle Plaine public schools. Mr. Lambrecht also noted that the Belle Plaine crossing costs more than the Le Sueur crossing.²⁹⁵

11. Shelia Lambrecht, a resident of Belle Plaine who lives on Stoppelmann Boulevard, noted that she sees many wildlife creatures near her home, not just eagles. Ms. Lambrecht also indicated that the Belle Plaine crossing should not be considered because it costs “so much more” than the Le Sueur crossing.²⁹⁶

12. Kathryn Hodapp of Belle Plaine opposes the Belle Plaine crossing. She notes that the Belle Plaine crossing route goes near her property, which has many breeds of birds, including eagles. Ms. Hodapp is concerned about the impact that the proposed transmission lines will have on her home value and on nearby schools. Ms. Hodapp supports burying the proposed transmission line.²⁹⁷

13. Mark Hodapp of Belle Plaine opposes the Belle Plaine crossing. Mr. Hodapp states that the Belle Plaine crossing will impact a greater number of people, that there are eagle populations at Belle Plaine, and that the Belle Plaine crossing will cost more. Mr. Hodapp is also concerned about the effect of the proposed transmission lines on property values in the area.²⁹⁸

14. Irene Sickmann of Arlington prefers the Gibbon Crossover route. Ms. Sickmann writes that the Gibbon Crossover is 8 miles shorter and \$20 million cheaper than the Arlington Crossover Route.²⁹⁹

15. Larry and Sharon Sickmann of Arlington wants to know which side of Highway 5 the Applicants propose to place the transmission line poles. The Sickmanns also request that a “Bloom Box” and a hydrogen cell be investigated as these technologies would obviate the need for the new transmission facilities.³⁰⁰

²⁹³ Kamps October 15, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

²⁹⁴ Stier October 12, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

²⁹⁵ Lambrecht October 13, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

²⁹⁶ Lambrecht October 11, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

²⁹⁷ Hodapp October 8, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

²⁹⁸ Hodapp October 5, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

²⁹⁹ Sickmann October 7, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

³⁰⁰ Sickmann October 5, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

16. Laura Fahey of Belle Plaine states that the proposed transmission lines will stunt the growth of Belle Plaine and requests that the Preferred Route be selected.³⁰¹

17. Jenna Fahey opposes the Belle Plaine crossing and is concerned about the impact that the proposed transmission lines will have on trees, plants, and animals that are living near her home which is along the proposed Belle Plaine Crossing route.³⁰²

18. Merry Kay Bandelin of Arlington opposes the Arlington Crossover Route. Bandelin is concerned that the proposed transmission line will impact agricultural land and residences in the Arlington area.³⁰³

19. Victor and Trisha Zaiher oppose the Arlington Crossover Route as this route contains many dairy farms, a National Wildlife Resting Area, and is close to Silver, Mud, and Washington Lakes. The Zaihers own land near Silver and Washington Lake and the woods near these lakes are full of wildlife, including lots of eagles.³⁰⁴

20. Harlan Harms of Arlington wrote in opposition to the Arlington Crossover Route. Harms is concerned about the impact that the poles will have on his farm and about potential stray voltage impacts to his cattle.³⁰⁵

21. Gordon and Sherry Bates of Green Isle comment that impacts to people should be given greater weight than impacts to animals and that the route selected should be the one that impacts the fewest number of people. The Bateses noted that the southerly Preferred Route will impact the fewest people and should be selected.³⁰⁶

22. Catherine Creech of Henderson writes that the Preferred Route will not impact as many small farms as the Alternate Route. Ms. Creech is concerned about the potential impact that the proposed transmission lines will have on neighboring farms and dairy cattle.³⁰⁷

23. Beth Hansen of Belle Plaine states that the Belle Plaine crossing will impact the migration of a number of avian species. Ms. Hansen maintained that adding the proposed 345 kV line along the same route as the existing 69 kV line will result in a number of bird deaths. Ms. Hansen requested that instead of choosing either the Belle Plaine or Le Sueur crossing, that a route along Blakeley Road near Henderson be selected as this area is an unbuildable flood plain with gravel pits and junk yards.³⁰⁸

³⁰¹ Fahey October 7, 2010 Letter (eFiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

³⁰² Fahey October 13, 2010 Letter (eFiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

³⁰³ Bandelin October 14, 2010 Letter (eFiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

³⁰⁴ Zeiher October 14, 2010 Letter (eFiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

³⁰⁵ Harms October 15, 2010 Letter (eFiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

³⁰⁶ Bates October 15, 2010 Letter (eFiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

³⁰⁷ Creech October 16, 2010 Letter (eFiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

³⁰⁸ Hansen October 9, 2010 Letter (eFiled Oct. 25, 2010), eDockets Document No. 20101-55811-01.

24. Steve Gerken of Belle Plaine writes that he believes the eagle population in Belle Plaine either matches or exceeds the eagle population that is present at Le Sueur. Mr. Gerken requests that USFWS perform a more complete study of the eagle populations at both locations before it makes a final recommendation.³⁰⁹

25. Ross Arneson, the City Attorney for Arlington, writes that the Arlington Crossover Route will impact future growth for Arlington. Mr. Arneson notes that the Arlington Crossover Route would impact waterfowl and wildlife along High Island Creek and other lakes in the area as this area is a heavily traveled migration route for geese and ducks. Mr. Arneson states, however, that there will be impacts to wildlife no matter where the route is placed so impacts to wildlife should not be a determinative factor.³¹⁰

26. Curtiss and Norma Mueller of Belle Plaine write that they are discouraged by the lack of communication they have received regarding this process. The Muellers expressed concern about the impacts that the proposed transmission line will have on eagle populations in the area and on farming properties that they own.³¹¹

27. Louis and Vera Lieske requested that the ALJ order that the USFWS do a complete scientific study on avian life in the Minnesota River Valley.³¹²

28. Mark and Bruce Koepp operate a hog farm in Belle Plaine. The Koepps are concerned about the impact that the proposed transmission lines will have on their pigs because studies have shown that 2 to 4 mG of EMF cause health issues. The Koepps note that eagles feed on pig carcasses on their farm.³¹³

29. Attorney Daniel Steinhagen writes on behalf of his brother, Gary Steinhagen who owns and operates a dairy farm in Belle Plaine. Mr. Steinhagen opposes the Belle Plaine crossing in favor of the Le Sueur crossing. Mr. Steinhagen is concerned that the proposed transmission lines will limit the amount of his brother's pasture land and will result in less food for the cows.³¹⁴

30. Mark and Michelle Kuske of Belle Plaine oppose the Belle Plaine crossing because it will impact 14 more homes than the Le Sueur crossing. The Kuskes contend that the proposed power lines will impact the value of these homes. The Kuskes also noted that the Belle Plaine crossing will result in a transmission line being located over the top of an underground petroleum pipeline in multiple places.³¹⁵

31. Theresa Ruhland wrote that the United States Fish and Wildlife Service recommended the power line cross the Minnesota River in Belle Plaine for the safety of bald and golden eagles. She urged the ALJ to recommend the CapX2020 power line

³⁰⁹ Gerken October 10, 2010 Letter (filed Oct. 25, 2010), eDockets Document No. 20101-55811-01.

³¹⁰ Arneson October 13, 2010 Letter (filed Oct. 25, 2010), eDockets Document No. 20101-55811-01.

³¹¹ Mueller October 12, 2010 Letter (filed Oct. 25, 2010), eDockets Document No. 20101-55811-01.

³¹² Lieske October 12, 2010 Letter (filed Oct. 25, 2010), eDockets Document No. 20101-55811-01.

³¹³ Koepp October 15, 2010 Letter (filed Oct. 25, 2010), eDockets Document No. 20101-55811-01.

³¹⁴ Steinhagen October 18, 2010 Letter (filed Oct. 25, 2010), eDockets Document No. 20101-55811-01.

³¹⁵ Kuske October 20, 2010 Letter (filed Oct. 25, 2010), eDockets Document No. 20101-55811-01.

cross the Minnesota River in Belle Plaine to avoid the addition of another aerial crossing of the Minnesota River. The line could share a corridor with an existing 69 kV line in Belle Plaine. If the 345 kV line crosses the river in Belle Plaine and proceeds through Scott County to the Helena substation site, the RES modification section of the route which intrudes into Ms. Ruhland's farm fields would be eliminated.³¹⁶

32. Steve Ruhland suggested that calling one route "preferred" and the other "alternate" had led many to a false sense of complacency. He added that the power line running by the new elementary school in Belle Plaine would be more than a half mile away. He further said that while no one would want their children to go to a school under a transmission line, a half mile is far cry from directly under the line.³¹⁷

33. Robert Fimon lives in Belle Plaine. His son attends Oak Crest School, near the proposed 345 kV line. The line also will run in front of Fimon's house. Fimon believes he might have to sell his property, and his son might have to attend a different school, if the Belle Plaine Crossing is ordered.

34. Mark and Shirley Katzenmeyer from Le Sueur suggested that the Minnesota River crossing should be in Belle Plaine. They noted that the school in Belle Plaine would not be affected as much because the power line would be two miles away, whereas Le Sueur's Mayo Park and Fox Hollow Riding Arena would be "feet away".³¹⁸

35. Louis Longhenry is a retired postmaster from Carver, Minnesota, located about five miles northeast of Minnesota Highway 25. Mr. Longhenry expressed his surprise when, at the hearing, so many people living near the proposed route were not located on the detailed maps that were shown. He wondered how all those houses were omitted from the maps that were displayed at the public hearing, because it almost looked as though someone simply drew lines on a map without really taking into account what was actually on the ground by verification. Mr. Longhenry asserted that it was obvious from the maps and the number of testimonials from the public that they were never notified about the proposed route of the transmission line. With the number of homes, businesses, a nearby Belle Plaine Airport and more that were missed on the maps, he believes that a poor attempt was made to verify the accuracy of houses potentially affected by the Project if a Belle Plaine Crossing is chosen.³¹⁹

36. Gary Schrupp wrote that he did not want to have the power line go through Belle Plaine because too many homes and wild life habitats will be affected. He urged selection of the Preferred Route instead.³²⁰

³¹⁶ Ruhland October 29, 2010 Letter (efiled Nov. 17, 2010), eDockets Document No. 201011-56630-01.

³¹⁷ Ruhland October 31, 2010 Letter (efiled Nov. 4, 2010), eDockets Document No. 201011-56178-01.

³¹⁸ Katzenmeyer October 14, 2010 Letter (efiled Oct. 29, 2010), eDockets Document No. 201010-55948-01.

³¹⁹ Longhenry October 13, 2010 Letter (efiled Oct. 29, 2010), eDockets Document No. 201010-55948-01.

³²⁰ Schrupp October 12, 2010 Letter (efiled Oct. 26, 2010), eDockets Document No. 201010-55830-01.

37. Kevin Fahey favors a Le Sueur crossing because there are more eagles in Belle Plaine by Silver Lake, which is really close to the power line; the current school and future school would be close to the proposed power line; Faxon Township has an airport with low flying planes; and that Faxon Township (across the Minnesota River from Belle Plaine) is the fastest growing township in Sibley County. The power line would be running along Highway 25, which is prime land for future building.³²¹

38. Peggy Kreger and her husband have been in Arlington, Minnesota for thirty three years. Her husband, Mike Kreger, testified at the hearing on October 5, 2010 in Belle Plaine. Ms. Kreger noted the important connection between Washington Lake and Silver Lake because that is where they see eagles circling above. In the spring, the trumpeter swans and geese fly over their house so low, she can hear their wings whistle when she stands outside. If the power line towers are placed between these areas, it will disrupt the wildlife animals' comfort zone and the connection between the lake areas. It will take a long time for the animals to recover, or they may choose to leave the area. In Ms. Kreger's opinion, this area is a safe home for the animals or they would not be there.³²²

39. Karl and Rosemary Dieball live near Silver Lake in Sibley County. They wrote that CapX2020 spent years researching "the most cost effective and least amount of conflict with the public and private land owners. This is why they have a preferred route."³²³

40. David Ruehling owns a farm in Arlington, Minnesota. As a supervisor in Dryden Township, several of his neighbors contacted him about their opposition to the proposed power lines in Arlington. He also thinks that the original preferred route in Le Sueur should be the first choice. In his opinion, if the impact on eagles is the main concern, then the Belle Plaine Crossing will be just as bad. He believes that the southern route would be the most practical and economical. The second choice would be north with the Gibbon crossover which would be considerably shorter and more practical than Arlington, impacting less people and natural resources.³²⁴

41. Michelle Burns lives in Le Sueur in the Minnesota River Valley, south of Belle Plaine, north of Le Sueur and east of Henderson. She and her husband have lived there for fifteen years and own over 125 acres in the River valley. She believes that the Belle Plaine crossing is the more favorable route for the power lines rather than the Le Sueur crossing. She notes the density of the bird population in the Le Sueur/Buck's Lake corridor is higher than in the Belle Plaine area and that more birds choose to nest and breed near Le Sueur than at Belle Plaine. This last factor distinguishes the Le Sueur area over Belle Plaine.³²⁵

³²¹ Fahey October 16, 2010 Letter (efiled Oct. 26, 2010), eDockets Document No. 201010-55830-01.

³²² Kreger October 8, 2010 Letter (efiled Oct. 26, 2010), eDockets Document No. 201010-55830-01.

³²³ Dieball October 13, 2010 Letter (efiled Oct. 26, 2010), eDockets Document No. 201010-55830-01.

³²⁴ Ruhling October 16, 2010 Letter (efiled Oct. 26, 2010), eDockets Document No. 201010-55830-01.

³²⁵ Burns October 15, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 201010-55745-01.

42. David and Mary Hennies expressed concern about the power line passing north of Arlington and near Silver Lake because the lake is beautiful, a southern Minnesota gem, surrounded by prairie and woods. The lake is a stopping place for ducks, geese and swans during migration. In the spring, large numbers of eagles gather on the ice, catching fish from the lake. The Hennies acknowledged that no CapX route is ideal, but because of these reasons, the research done showed the Henderson/Le Sueur route is the best and most economically feasible.³²⁶

43. Mark Melsha requested that the “original” Preferred Route be chosen because research shows it is the most cost effective route that offers the least amount of conflict to public and private land owners. He said eagles should not be a deciding factor as they are growing in population every year. Humans should be the deciding factor.³²⁷

44. Maynard Rucks was a member of the site task force at Henderson that had several meetings early on in the process. He said the result of those meetings was determined that the better solution would be to move the route south along Interstate 90. His reason for that recommendation is so the power line also would transmit the power generated by wind power farms. Another reason is that it would eliminate the need to cross the Minnesota River two times. He further stated that it is a real slap in the face to the citizens who gave their time when there is no consideration to them when they give another alternate solution. Mr. Rucks noted the land owners near Belle Plaine have already had their land trampled with the pipe line.³²⁸

45. Joel and Tami Wentzlaff live on Silver Lake. They oppose the power lines following this route because they love the wildlife. Every spring, they see eagles on the lake when the ice is just about to go off, and some of the eagles stay around all year. They do not want to look out their front window or walk out of their door and have to look at huge power lines. They also expressed concerns regarding health impacts, including those that could affect their eighteen-month-old son. They also anticipated that their land value will decrease if one of the Crossover Routes is chosen.³²⁹

46. Dolores Hagen of Henderson Feathers wrote that much of what had been submitted by the USFWS and Henderson Feathers about the transmission line crossing through the Minnesota River had been ignored, or misinterpreted. She stated it makes no sense to tear another hole in the river environment by construction of a new power line crossing when one already exists, and there is no sense at all to destroy another location. Ms. Hagen resubmitted a number of comments by others from the earlier proceeding.³³⁰

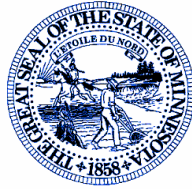
³²⁶ Hennies October 14, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 201010-55745-01.

³²⁷ Melsha October 17, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 201010-55745-01.

³²⁸ Rucks October 17, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 201010-55745-01.

³²⁹ Wentzlaff October 17, 2010 Letter (efiled Oct. 25, 2010), eDockets Document No. 201010-55745-01.

³³⁰ Hagen September 21, 2010 Letter (efiled Oct. 18, 2010), eDockets Document No. 201010-55567-01.



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December 22, 2010

To: All Participants on the Service List

Re: *In the Matter of the Application of the Route Permit Application by Great River Energy and Xcel Energy for a 345 KV Transmission Line from Brookings County, South Dakota to Hampton, Minnesota;*
MPUC Docket No. ET-2/TL-08-1474
OAH Docket No. 7-2500-20283-2

Dear Parties:

The document listed below has been filed with the E-Docket system and served as specified on the attached service list.

Findings of Fact, Conclusions, and Recommendation on Remand

Very truly yours,

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Telephone: (651) 361-7843

RCL:mo

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
P. O. BOX 64620
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CERTIFICATE OF SERVICE

Case Title: <i>In the Matter of the Application of the Route Permit Application by Great River Energy and Xcel Energy for a 345 KV Transmission Line from Brookings County, South Dakota to Hampton, Minnesota</i>	OAH Docket No. 7-2500-20283-2 MPUC Docket No. ET-2/TL-08-1474
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Mary Osborn certifies that on the 22nd day of December, 2010, she served a true and correct copy of the Findings of Fact, Conclusions, and Recommendation on Remand; by electronic mail (or as indicated on the Service List) to the following individuals:

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