

BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of Northern
States Power Company d/b/a Xcel Energy
And Dairyland Power Cooperative for a
Certificate of Need and Route Permit
for a 115kV and 161kV
Transmission Line from Taylors Falls to
Chisago County Substation

PUC Dockets: E-002/CN-04-1176
E-002/TL-06-1677

OAH Docket: 8-2500-17840-2

EXCEPTIONS - CITY OF LINDSTROM

I. INTRODUCTION

Lindstrom is pleased with the recommendation of the ALJ, which points to the “Around the Lake” route as the best routing option. This choice offers a solution that addresses many of the concerns of the City. Xcel's preferred route through Lindstrom plays havoc with the City's long standing plans to reconfigure Highway 8 and the downtown area, and these problems would be avoided with the “Around the Lake” route. However, there are several issues that arose in the Certificate of Need docket, and in the combination of a Certificate of Need with an improperly foreshortened routing process, that the City urges the Commission to recognize, because they have surfaced in prior proceedings and will likely surface again..

First, a number of process issues exist, from service and notice, to Task Force structure problems, all of which add up to a pattern of limitation of public participation. These problems have not been addressed when complaints are made, and over time, these problems grow.

Second, the state agency charged with evaluation and analysis of projects does not have the resources or expertise to properly evaluate or analyze.

Third, in a Certificate of Need proceeding, the applicant has the burden of proof. In this case, as in others, need claims by the applicant are not independently verified by any state agency, there is no engineer on staff to evaluate electrical projects, and the state does not have resources to analyze claims. The result is that applicant claims are improperly accepted as fact. The applicant has made many claims, but has not met its burden of proof in this case.

These lingering issues will come before the PUC again and again, and it's time for the PUC to wrestle with them. With large projects, such as CapX 2020, it will only get worse if not addressed.

II. XCEL HAS NOT MET ITS BURDEN OF PROOF

Xcel has the burden of proof under the Certificate of Need statute and rules, and under the Electric Facility Siting Permit chapter and rules. See Minn. Stat. §216B.243 and §216E. Because both are regarded legally as “environmental law,” this also falls under the purview of the Minnesota Environmental Rights Act and the Minnesota Environmental Policy Act. See Minn. Stat. Ch. 116B and 116D. Meeting a burden of proof requires establishing facts on the record. This has not been sufficiently accomplished by the applicants.

In addition to the problem of a lack of a factual basis for a need determination, claims and facts are conflated in the Findings of Fact, claims and facts. Repeatedly, a “Finding of Fact” states that a party “claims” something, rather than state that something is a fact. Yes, it is a fact that the party makes the claim, but that does not make the matter at issue a fact and the Findings do not state that it is – this leaves a record that does not adequately substantiate or support a recommendation

All Findings stating claims or facts or conclusions of other parties should address whether the claim was demonstrated and conclusions should include basis for conclusion. A list

includes, for example:

- Conclusion 15: “The Department concluded...”
- Conclusion 17: “The Applicants forecast...”
- Conclusion 18: “The Applicants have provided...”
- Conclusion 22: “The Applicants' general claims...”
- Conclusion 29: “Applicants appropriately evaluated... Applicants considered...”
- Conclusion 30: “Applicants also addressed...”
- Conclusion 31: “Applicants also concluded...”
- Conclusion 33: “The Department shares...”
- Conclusion 36: “The Department reviewed...”
- Conclusion 37: “... the Department concluded...”
- Conclusion 41: “...Applicants asserted...”
- Conclusion 43: “Applicants found... Nor did Xcel Energy find...:
- Conclusion 44: “Based upon Xcel Energy's engineering analysis...”

The Conclusions should be corrected to demonstrate a Conclusion of the ALJ, not a claim or conclusion of a party.

III. THE RECORD REFLECTS THE MANY REASONS THE POWERLINE SHOULD NOT RUN THROUGH DOWNTOWN LINDSTROM

There is substantial evidence to support the ALJ's recommendation that the “Around the Lakes” alternative route is preferable because Xcel's transmission line should not be routed through downtown Lindstrom, on 1st Avenue along the new Highway 8 alignment. The record amply reflects the many reasons that Xcel's preferred route should not be approved. The support in the record goes far beyond what is listed in the footnotes, and Lindstrom asks that the Recommendation be augmented to show the depth and breadth of the record.



Ex. LIND 221A, DOT Plan for Hwy 8 (cropped).

The Highway 8 changes are very important to the City of Lindstrom, to its economic development and beautification and its ability to flourish. This is a long standing project that has required much in the way of city assets and efforts to develop. The ALJ correctly recognized that raising the issue of the Highway 8 changes was not an attempt to divert the transmission line to another route, but is instead a legitimate barrier to Xcel's preferred route.¹ The record includes substantial evidence as to the impacts of the Xcel preferred route on Lindstrom:

- LIND Ex. 221, DOT plan
- Direct Testimony of Olinger, LIND 201
- Testimony of Olinger, Transcript Vol. 3, pps. 232-263
- Testimony of Clarkowski, Transcript Vol. 4, pps. 7-121:
74-81; 88-91; 92; 95; 97-98; 99; 100; 102-105; 106

Does the situation in Lindstrom, and the record of this proceeding, warrant a departure from an existing corridor? The ALJ's reading of PEER is correct. Case law has established the presumption that a transmission line has an environmental impact, and Xcel and Dairyland must prove that there is not a more feasible and prudent alternative to their proposal. People for Environmental Enlightenment and Responsibility (PEER) v. Minnesota Environmental Quality Council, 266 N.W. 2d 858, 866-7 (Minn. 1978). The Applicants have not demonstrated that there is not a more feasible and prudent alternative, and are presented with three options that are reasonable.. Further, under the Minnesota Environmental Rights Act, supported by PEER, the Applicants must also establish that:

... the conduct at issue is consistent with and reasonably required for promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not constitute a defense hereunder.

Minn. Stat. §116B.04; see also Minn. Stat. 116D.04, Subd. 6. Nothing in the record provides a basis for preference of the route through the heart of Lindstrom, and nothing in the record shows

¹ALJ Recommendation, Memorandum, p. 49-50.

that the Lindstrom route is "reasonable required for promotion for the public health, safety, and welfare in light of protection of the state's air, water, land and other resources from pollution, impairment or destruction.

The three alternatives below presented in this docket essentially mitigate impacts on the City of Lindstrom. Of the several identified by Xcel, in Xcel Prefiled Testimony, these three have reasonably comparative cost to the project as proposed. These comparisons are made assuming total cost of project is \$64 million, which includes undergrounding near river:

- Option A – DG Underground (1st Ave. to Church)**
\$2.3 million, or additional 3.6% of cost of project
- Option D – UG Alternative (Newell Ave)**
\$3.5 million, or additional 5.5% of cost of project
- Option ? – Around the Lake Alternative**
\$1.4 million, or additional 2% of cost project cost

Ex. XCEL/DPC 15, Dunham Rebuttal, Cost Matrix, Schedule 1; Hillstrom Rebuttal, Figure 1: Lindstrom Substation to Shafer Substation Alternatives.

In short, under MERA, a nominal additional cost of a more feasible and prudent alternative is no reason to reject that alternative, and the fact of additional cost is not a sufficient reason to eliminate a route from consideration. The ALJ appropriately and correctly considered these other alternatives, choosing the "Around the Lake" alternative.

IV PROCEDURAL IRREGULARITIES CALL THE RESULT INTO QUESTION

Procedural problems, including lack of service of the Application on known parties and non-compliance with the statutory requirements for a Citizen Advisory Task Force, put the credibility and validity of the proceeding in question.² These issues have been raised in this docket by parties as they occur and are part of the record.

V. THE CoN ANALYSIS SUBORDINATES THE STATUTORY REQUIREMENTS

² CRVC Comment on Procedure, Jan. 25, 2007; Lindstrom Motion to Extend Task Force, March 23, 2007; Lindstrom Ex. 203, Letter of Birkholz.

The analysis in the Recommendation subordinates the Certificate of Need statutory analysis to that of the rules. The statutory criteria receives only a cursory acknowledgement rather than analysis as the controlling law. Therefore, the analysis in the Recommendation is inadequate. This subordination of the Certificate of Need statute has the impact of shifting the burden of proof, as exemplified in Finding 62:

No party or person has demonstrated by a preponderance of the evidence that there is a more reasonable and prudent alternative to the proposed 116kV/161kV transmission line.

ALJ Recommendation, Conclusion 60, but *c.f.* Minn. R. 7849.0120(B):

A Certificate of Need for a high voltage transmission line shall be granted if it is determined that a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record...

Unlike the rule, under the statute, the burden is on the project Applicant:

No proposed large energy facility shall be certified for construction unless the applicant can show that demand for electricity cannot be met more cost effectively through energy conservation and load-management measures and unless the applicant has otherwise justified its need.

Minn. Stat. §216B.243, subd. 3.

The burden of proof is on the applicant, and in this case, the Applicant has not demonstrated that demand for electricity cannot be met more cost effectively through energy conservation and load-management measures and unless the applicant has otherwise justified its need. Need has not been demonstrated and the Certificate of Need should not be issued by the Commission.

VI. AROUND THE LAKES IS A REASONABLE SOLUTION

All in all, the “Around the Lakes” route is a reasonable solution to Xcel's desire to route a transmission line through the Lindstrom area. This option is one of several that divert from the heart of downtown Lindstrom and mitigate the concerns of the City.



Dated: December 4, 2007

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CERTIFICATE OF NEED ANALYSIS GENERIC EXCEPTIONS TO FINDINGS AND CONCLUSIONS

All Conclusions stating claims or conclusions of other parties should address whether the claim was demonstrated and conclusions should include basis for conclusion. There are no mirroring Findings of Fact that support the conclusions as written.

Conclusion 15: "The Department concluded..."
Conclusion 17: "The Applicants forecast..."
Conclusion 18: "The Applicants have provided..."
Conclusion 22: "The Applicants' general claims..."
Conclusion 29: "Applicants appropriately evaluated... Applicants considered..."
Conclusion 30: "Applicants also addressed..."
Conclusion 31: "Applicants also concluded..."
Conclusion 33: "The Department shares..."
Conclusion 36: "The Department reviewed..."
Conclusion 37: "... the Department concluded..."
Conclusion 41: "...Applicants asserted..."
Conclusion 43: "Applicants found... Nor did Xcel Energy find...:
Conclusion 44: "Based upon Xcel Energy's engineering analysis..."

Amend all Findings and Conclusions using term "Task Force" to "Working Group" to reflect that the group assembled did not meet statutory criteria for a Citizens Advisory Task Force.

SITING RECOMMENDATION

Amend following Conclusions to include

- LIND Ex. 221, DOT plan
- Testimony of Olinger, Transcript Vol. 3, pps. 232-263
- Testimony of Clarkowski, Transcript Vol. 4, pps. 7-121:
74-81; 88-91; 92; 95; 97-98; 99; 100; 102-105; 106

CERTIFICATE OF NEED SPECIFIC EXCEPTIONS TO FINDINGS

P. 5, correct *Remarks by Ms. Shellene Johnson*:
Ms. Johnson, a former of the **Taylor's Falls City Council**...

Amend Finding 11, to add:
Several parties participating in the docket were not served with the Application.³

After Finding 14, insert and renumber:
On January 25, 2007, CRVC filed Reply Comment noting procedural irregularities, service list errors, and lack of service on known prior parties and participants.

Amend Finding 22 as follows:

³CRVC Reply Comment, January 25, 2007.

On March 12, 2007, the EFP Staff filed a letter to the Commission notifying the Commission that the group assembled did not meet the statutory requirements for a Citizen Advisory Task Force and of the EFP Staff's intent to work with those Governmental officials and members of the public to form an informal advisory group.

Amend Finding 23:

On March 23, 2007, the City of Lindstrom filed a Motion for Extension of Task Force or Certification to the Commission. This matter was Certified to the Commission and the Commission denied the request.

Amend Finding 29, footnote:

See, Lindstrom's Initial Post-Hearing Brief, at 12-14; Olinger Direct Testimony, p. 2-4; Testimony, Tr. Vol. 3, p. 235-237;247-263.

Amend Finding 30:

On April 11, 2007, Commerce filed the Working Group recommendations. The Department failed to file and make part of the record a number of Attachments the Working Group submitted to be included with the report.⁴

Amend Finding 64:

The Department has no electrical engineer on staff.⁵ The application, supporting documents and information for the Environmental Assessment were provided by Xcel and were not independently verified by the Department⁶ The Department offered no engineering witness in this proceeding. The Department opined that the proposed 115kV/11 kV transmission line is needed for system reliability support in east central Minnesota and northwestern Wisconsin, but the Department did not provide competent evidence regarding reliability.

Amend finding 68 to delete Lindstrom from list served by St. Croix Falls side of system, and add following final sentence:

The City of Lindstrom is served separately from the Chisago sub, to the west (see Finding 47).

Amend footnote to Finding 69:

Lindstrom Ex. 214, 216, 217; see also Lindstrom Ex. 209, MAPP 2006 Load & Capability Report (selected) BP-3I; Ex. 212, CapX2020 Technical Update: Identifying Minnesota's Electric Transmission Infrastructure Needs, May 2005 BP-6I Ex. 220, CD with Advance Plan 7 Western Wisconsin Utilities Regional Planning Areas.

After Finding 69 (and subsequent renumbering):

___ . DSM was considered and rejected by the applicants for relief of load or peak-cutting. Xcel, Duebner Direct Testimony, p. 11. DSM was not considered by the Department for relief of load or peak-cutting. EA p. 22; Rakow Direct, p. 11-13 (DSM); "DG is not an economically feasible

⁴CRVC Exhibit 401, Testimony of Neuman, Tr. Vol. 5, p. 190-210.

⁵ When asked if there was an electrical engineer on staff at Commerce, Birkholz replied:

No, we don't employ one on our staff. We don't have the funding to do so. Birkholz Testimony, Tr. Vol. 4, l. 9-12.

⁶ Rakow Testimony, Tr. Vol. 5, p. 71, l. 1-17; p. 75, l. 14-p. 77, l. 5; Birkholz Testimony, Tr. Vol. 4, p. 213, l. 13-14; Vol. 5, p. 179, l. 24- p. 180, l. 25

alternative.” Id, p. 15. DSM was only considered in the context of full elimination of need, and not as a partial solution. Id.

___ Xcel's system needs have changed sufficiently to necessitate filing of a Notice of Changed Circumstances in the IRP docket, and the studies and load forecasts used to support this project may no longer be applicable. Lindstrom Ex. 225, Xcel Notice of Changed Circumstances.

Amend Conclusion 10:

Xcel has not demonstrated that its proposed plan is the best of alternatives, as required under the Certificate of Need statute.

Amend Conclusion 13:

Xcel claims, and the Department agrees, that the population of the area will increase by 24 percent from 2005 to 2020; Washington County's population is projected to increase by 43 percent by 2020; and the population of Polk County in Wisconsin is projected to increase by 19 percent by 2020. However, Lindstrom has experienced a severe and significant decrease in housing permits issued, and the increase in population will likely be less than applicants predict, as occurred with prior projections for population and load increase in the area.⁷ Evidence in the record instead suggests that localities in the service area face genuine challenges in spurring hoped-for residential and commercial development.⁸

After Conclusion 13, add and renumber:

Xcel's projections are contrary to other industry reports showing a less dramatic increase.⁹

Amend Conclusion 14:

Demand and energy use is increasing in east central Minnesota and northwestern Wisconsin, but it is not clear by how much.

After Conclusion 14, add and renumber:

___ DSM was considered and rejected by the applicants for relief of load or peak-cutting. Xcel, Duebner Direct Testimony, p. 11. DSM was not considered by the Department for relief of load or peak-cutting. EA p. 22; Rakow Direct, p. 11-13 (DSM); “DG is not an economically feasible alternative.” Id, p. 15. DSM was only considered in the context of full elimination of need, and not as a partial solution for claimed load increases or increased peak demand. Id. DSM could be utilized to lower peak demand.

Amend Conclusion 18:

Applicants have provided forecasts for east central and northwestern Wisconsin, however, Xcel's system needs have changed sufficiently to necessitate filing of a Notice of Changed Circumstances in the IRP docket, and the studies and load forecasts used to support this project may no longer be applicable. Lindstrom Ex. 225, Xcel Notice of Changed Circumstances.

Amend heading prior to Conclusion 19:

⁷Ex. LIND 216, Northern States Power Company Long-Range Delivery System Study (selected), p. 5-93. The tables of that specific area show, instead, a 1.055% (2014-2015) to 1.073% increase (1999-2003). Ex. LIND 214, Hugo Area Long-Range Electric Delivery System Study (selected), p. 4.

⁸See generally, September 4, 2007, Tr. At 64-75; September 5, 2007 Evening Hearing, Vol. 2C, Tr. At 43-50 and 61-62.

⁹ Lindstrom Ex. 209, MAPP 2006 Load & Capability Report (selected) BP-3I

Minn. Stat. 216B.243, Subd. 3(6); Subd. 3A; Minn. R. 7849.0120,A(2),

Amend Conclusion 19:

Demand side management (“DSM”) is capable of reducing the need for system improvements needed to serve increased load by reducing demand. Xcel rejected DSM as an alternative for this project, as did the Department. DSM could have an impact on load and peak demand, and targeted DSM has not been tried. Rakow, Tr. Vol. 5, p. 81-85.

Amend Conclusion 22:

There was no evidence in the record linking a rise in demand for electricity to promotional or marketing practices of the Applicants.

Amend Conclusion 23:

The evidence shows that existing options that do not require a Certificate of Need could lessen load and peak demand and reduce need.

Amend Conclusion 24:

The loss of electricity inherent in transmission renders it inefficient.

Amend Conclusion 25:

Xcel did not meet its burden that alternatives that do not require a Certificate of Need could not meet the needs claimed in the Certificate of Need application. Xcel's system needs have changed sufficiently to necessitate filing of a Notice of Changed Circumstances in the IRP docket, and the studies and load forecasts used to support this project may no longer be applicable. Lindstrom Ex. 225, Xcel Notice of Changed Circumstances. The project is not justified when considered under the criteria established in Minn. R. 7849.0120(A).

After Conclusion 29, add:

The project, as proposed, is significantly oversized for the stated need. The total need claimed by Xcel for service of local load is for an expected 36-87MW, and the capacity of the line proposed is 300-310MVA, or 3.5-8.6 times greater. Testimony of Duebner, Tr. Vol. 1, p. 120.

Amend Conclusion 30:

Applicants also addressed the possibility of generation alternatives. It is technically possible that generation capabilities could be located within the areas in question, and this would increase reliability and lessen or eliminate need. Applicants approached this in an “all or nothing” manner, unreasonably rejecting partial options.

Amend Conclusion 31:

Renewable resources are a partial solution, and did not receive adequate consideration.

Amend Conclusion 32:

Wind generation for local needs, with back-up generation, and in combination with DSM, should be further considered.

Amend Conclusion 33:

The Department's rejection of local generation as a solution is not based on competent evidence as no electrical engineer evaluated this option and the impact on local load and peak demand.

Amend Conclusion 34:

Xcel has not met its burden of proof demonstrating that the project as proposed provides the most reasonable and efficient means of meeting its claimed electricity service reliability issues in east central Minnesota and northwestern Wisconsin. The Department's analysis is legally not competent evidence because the project and application was not independently verified and was not reviewed by an electrical engineer.

Amend Conclusion 35:

The Applicants have not demonstrated that the size, type and timing of the proposed transmission facilities is more appropriate than other alternatives.

Amend Conclusion 36:

Applicants have not demonstrated, as required by the statute and rules, that the cost of the proposed facilities and the energy to be supplied by the proposed facilities are more reasonable and prudent than that of the alternatives.

Amend Conclusion 40:

The proposed project and the alternatives have dissimilar environmental impacts, particularly that of the preferred route through Lindstrom. System options such as DSM or distributed generation would contribute toward solving the claimed need, and would have no environmental impact.

Amend Conclusion 41:

Because the proposed project is a change in system, to a bi-directional system serving the area from two sources and with a section with the circuit off, to a single line, with current flowing, the impacts are different from a simple upgrade of a one-way line, and the impacts are greater.

Amend Conclusion 43:

Lindstrom and CRVC presented evidence of the environmental impacts and land use and environmental issues associated with the project as proposed, including substantial evidence regarding noncompensable impacts. Mitigation of impacts may be accomplished with alternative routes at a reasonable incremental cost. Option A – DG Underground (1st Ave. to Church) would cost an additional \$2.3 million, or additional 3.6% of cost of project ; Option D – UG Alternative (Newell Ave) would cost an additional \$3.5 million, or additional 5.5% of cost of project; and the Around the Lake Alternative would cost an additional \$1.4 million, or additional 2% of cost project cost.¹⁰

Amend Conclusion 44:

No substantial evidence has been entered regarding whether Xcel's claims that all the options meet NERC system reliability standards. There has been no independent verification of Xcel's Application, and the Department's review did not include an engineering analysis to determine whether NERC system reliability standards would be met.

Amend Conclusion 45:

Xcel has not met its burden and has not demonstrated whether the project as proposed offers the best overall electrical results or whether it will perform well under "system intact" conditions, whether it will perform well under a variety of contingent loading scenarios and voltage and whether it offers least system losses.

¹⁰Ex. XCEL/DPC 16, Dunham Rebuttal, Cost Matrix, Schedule 1; Hillstrom Rebuttal, Figure 1: Lindstrom Substation to Shafer Substation Alternatives

Amend Conclusion 46:

There is not substantial evidence in the record regarding existing reliability issues in east central Minnesota and northwestern Wisconsin.

Amend Conclusion 47:

There is no substantial evidence in the record demonstrating that without the proposed upgrades, electricity customers in east central Minnesota and northwestern Wisconsin would be at ever increasing risk of system failures, low voltages and unplanned blackouts. Instead, the record reflects that the project could be detrimental to natural and socioeconomic environments in this tourist-based economy.¹¹

Amend Conclusion 48:

There is no evidence in the record that the proposed project will induce future development in the area beyond the development and population growth that is already anticipated. Indeed, the record suggests that localities in the service area face genuine challenges in spurring hoped-for residential and commercial development. The record shows that this project could have a negative impact, could harm ongoing economic development efforts, and could be a disincentive to future development.¹²

Amend Conclusion 49:

As in Conclusion 47 and 48, the project could have detrimental impacts.

Amend Conclusion 50:

By utilizing the existing 60kV centerline and placing the line underground in the St. Croix River Valley, the proposed project may minimize potential environmental, land use, and aesthetic effects in that specific area.

Amend Conclusion 51:

The criteria set forth in Minnesota Rule 7849.0120(c) do not support granting a Certificate of Need for the 115kV and 161kV line as proposed.

Amend Conclusion 55:

The Environmental Assessment, as filed, was different from the Scope ordered by the Commissioner, specifically, the King alternative was not considered, as directed. Scope, Ex. 510, App. B. The conclusion in the Assessment that the proposed project “would have no significant unavoidable adverse impacts” is not substantiated.

Amend Conclusion 57:

(The statute requires a more complete analysis than is included here)

Amend Conclusion 58:

Applicants have not sufficiently explored the possibility of generating power by means of renewable energy sources, nor have they demonstrated impact of DSM, particularly targeted DSM.

Amend Conclusion 59:

¹¹T testimony at public hearing, Tr. Vol. 1C; Carlson at p. 40-54; DuBose p. 33-37; Flug, p. 61-63; Rep. Kalin, p. 64-75; Tr. Vol. 2C, Miller at 43-44; Pearson 45-50; Winterhalter at 53; Adams at 54-57; Nelson, p. 52; Johnson p. 68-90; Carlson p. 90-100;

¹² Id.

The Applicants have not sufficiently explored the possibility of generating power by means of renewable energy sources, nor have they demonstrated that the proposed project is less costly than power generated by renewable generation. The requirements of Minn. Stat. §216B.243, Subd. 3A have not been met.

Amend Conclusion 60:

Procedural problems, including lack of service of the Application on known parties and non-compliance with the statutory requirements for a Citizen Advisory Task Force put the credibility and validity of the proceeding in question. CRVC Comment on Procedure, Jan. 25, 2007; Lindstrom Motion to Extend Task Force, March 23, 2007; Lindstrom Ex. 203, Letter of Birkholz.

Amend Conclusion 61:

The record in this proceeding does not demonstrate satisfaction of the criteria set forth in Minn. Stat. §216B.243, Subd. 3 and Minn. Rule 7849.0120.

Strike Conclusion 62 – This reverses the burden of proof and is contrary to the statutory criteria, Minn. Stat. §216B.243, Subd. 3.