

## COUNTY OF CHISAGO

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In Re: Application of LS Power, LLC,  
LS Power Development, LLC and/or  
Sunrise River Energy, LLC, for a Permit and  
Development Agreement for a Natural Gas Electrical  
Generating Plant in the Town of Lent, Minnesota

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### CONCERNED RIVER VALLEY CITIZENS NOTICE OF INTERVENTION

TO: Chisago County, through its Board and Janet Reiter, County Attorney, 313 North Main Street, Center City, MN 55012.

PLEASE TAKE NOTICE that, pursuant to the Minnesota Environmental Rights Act. Minnesota Statute 116B.09, Subdivision 1, Concerned River Valley Citizens, the undersigned, intervenes in the above-entitled proceedings before the County of Chisago and any and all of its committees.

#### BACKGROUND AND FACTUAL BASIS FOR INTERVENTION

1. LS Power, LLC; LS Development, LLC; and/or Sunrise River Energy, LLC (hereinafter the “Developer”) has proposed an 855MW natural gas power plant in the County of Chisago, Minnesota. This project is at least twice as large as any other natural gas plant in the state of Minnesota.
2. Three similar projects have been proposed in the area, none of which have gone forward. The MISO Feasibility Study for one of those projects that did go forward to the point of a Feasibility Study, project G135, a 660MW project, noted that significant transmission upgrades and additions would be necessary for a project that size. See Attached Exhibit A, [MISO Feasibility Study - G135](#)<sup>1</sup>.
3. Of transmission alternatives proposed for G135, above, all required addition of new 345kV transmission lines, not just to interconnect to the substation, but also required new 345kV transmission lines to deliver the power. Interconnection costs were estimated at \$1.25 million, as the plant was to be built right next to the Chisago Substation. Necessary transmission upgrades are estimated to cost \$36-40 million if energy is sold to Xcel Energy – other electrical studies and cost estimates would have to be made if the power were to be delivered elsewhere. Exhibit A, p. 2. Options were evaluated for addition of transmission necessary to deliver to Xcel Energy territory, and Option 1, a reconductor option, was rejected as too expensive and impractical. See Ex. A, p. 7.

The other two transmission options for G135, specifically, were:

#### **Option 2:**

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<sup>1</sup> This study may be found on-line at [http://legalelectric.org/f/2009/06/g135\\_report.pdf](http://legalelectric.org/f/2009/06/g135_report.pdf).

- New 345kV line, built with 954 ACSR, double circuited overhead built for 345/345kV, operated at 230kV/345kV with existing 230 kV line from just outside Chisago Substation to the Red Rock Substation 345kV bus. This is 45 miles of new line on existing right-of-way.
- Estimated Cost : \$33 million
- Expand Chisago Substation for 345kV new line termination for the line to Red Rock
- Estimated Cost: \$2.65 million
- 345kV modifications at Red Rock Substation to accommodate new line termination
- Estimated Cost: \$2.8 million

**Option 2 Total Estimated Infrastructure Cost: \$38.45 million**

**Option 3:**

- 31.6 miles of double circuit 345kV, operated at 230kV/115kV.
- Estimated Cost: \$700K/mile = \$22 million
- 8.7 miles of 115kV conductor on the empty side of the existing Lone Lake – King 115kV line and 0.6 miles of new 115kV from Oak Park Substation to King Substation.
- Estimated Cost: \$1 million
- Expand Chisago Substation for 230kV line terminations with two 336 MVA transformers, and 115kV line termination for line to King.
- Estimated Cost: \$14 million
- New 115kV line termination at King Substation.
- Estimated Cost: \$600K

**Option 3 Total Estimated Infrastructure Cost: \$36.35 million**

The line diagrams for these transmission additions are as follows:

**Figure 4.1.2.1 – Option 2 Post Generation and Upgrades System Diagram**

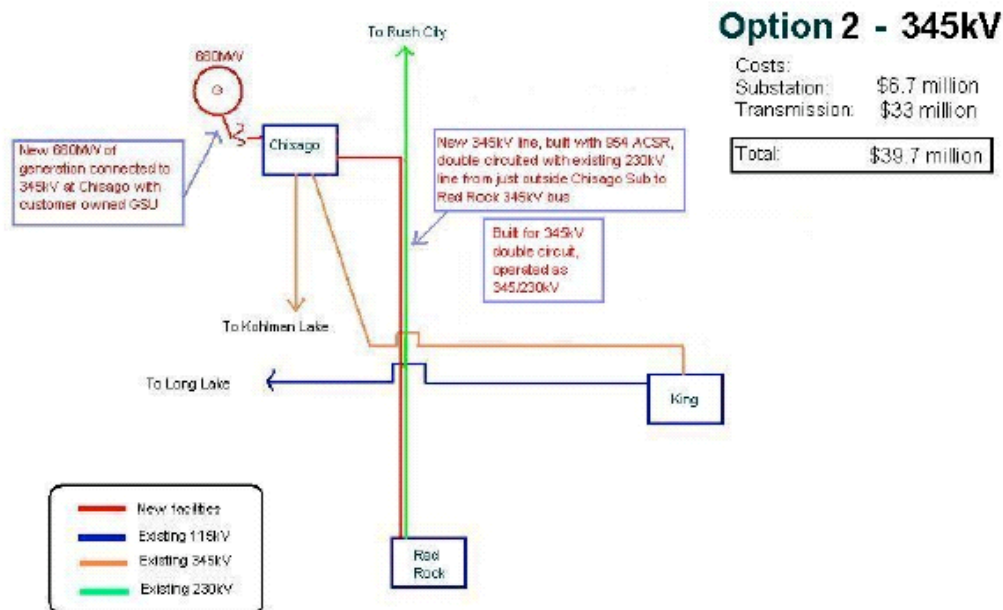
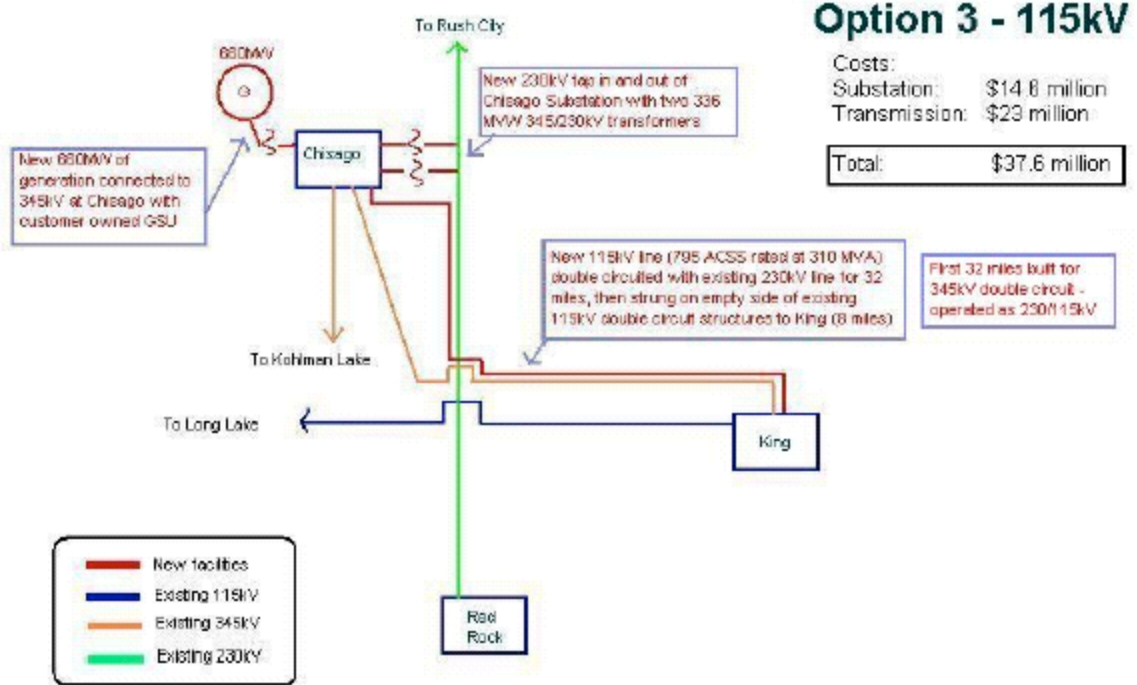


Figure 4.1.2.2 – Option 3 Post Generation and Upgrades System Diagram



This prior proposed project, at 660 MW, is about ¾ the size of the 855MW LS Power proposal. Additional upgrades would be expected for another 200MW of power transfer.

- The MISO Transmission Feasibility Analysis for the current LS Power Sunrise River Energy natural gas plant project shows that addition of this power plant would require significant and expensive transmission upgrades and addition of transmission<sup>2</sup>

G975	855 MW	SPA			
Limiting Constraint	Contingency	DF	Rating	PU Overload	FCITC
34014 ADAMS 5 161 60102 ADAMS 3 345 1	MAPP-9	0.06	300.00	1.87	-3367.10
34020 HAZL S 5 161 34135 DUNDEE 5 161 1	34018 HAZLTON3 345 34093 ARNOLD 3 345 1	0.05	167.00	1.55	-1051.60
61906 MAPLE LF 161 61948 BYRON 5 161 1	60102 ADAMS 3 345 63032 PL VLLY3 345 1	-0.06	-302.00	1.26	-538.90
61906 MAPLE LF 161 63430 CASCADE 161 1	60102 ADAMS 3 345 63032 PL VLLY3 345 1	0.06	302.00	1.21	-315.00
60251 TERMINL3 345 61491 TERMID2Y 110 9	NSPf	0.06	672.00	1.09	-220.50
38449 ARROWHD 345 61615 ARROWHD4 230 1	NSP 1D	-0.16	-800.00	1.09	335.80
60186 AS KING3 345 60199 CHIS CO3 345 1	60199 CHIS CO3 345 60221 KOLMNLK3 345 1	-0.63	-1166.00	1.05	684.10
69507 SENECA 5 161 69523 GENOA 5 161 1	WPL-ARP3e	-0.05	-304.00	1.04	567.10
60199 CHIS CO3 345 60221 KOLMNLK3 345 1	60186 AS KING3 345 60199 CHIS CO3 345 1	0.63	1166.00	1.03	725.30

See Exhibit B, MISO Feasibility Study results for LS Power Sunrise River Energy plant, interconnection request G975.

<sup>2</sup> The MISO Feasibility Study for the LS Power Sunrise River Energy plant may be found on-line at [http://legalelectric.org/f/2009/06/transition\\_feasibility\\_analysis\\_posting\\_g901-g999.pdf](http://legalelectric.org/f/2009/06/transition_feasibility_analysis_posting_g901-g999.pdf)

- In the 2009 state legislative session, legislation was passed, with knowledge of the Lent Township (Township) and Chisago County (County), exempting Developer, LS Power, from utility personal property tax contingent on a Development Agreement to be executed with the County.

5. Utility personal property tax revenues are divided between the County, Township and North Branch Public School District (School District) hosting utility infrastructure. Minn. Stat. §272.02, Subd. 92, which states as conditions that the MISO interconnection agreement must not provide for any new transmission routes or corridors; requires a development agreement with the county that addresses process water use and discharge in coordination with a local wastewater treatment facility; requires a development agreement with the county that addresses mitigation of noise and visual impacts; and which requires a host fee agreement with the county, township and school district in lieu of utility personal property tax. The statute specifically states:

**Minn. Stat. §272.02, Subd. 92. Electric generation facility; personal property.**

*(a) Notwithstanding subdivision 9, clause (a), attached machinery and other personal property that is part of an electric generation facility that exceeds 150 megawatts of installed capacity, does not exceed 780 megawatts of summer capacity, and meets the requirements of this subdivision is exempt. At the start of construction, the facility must:*

- (1) be designed to utilize natural gas as a primary fuel;*
- (2) be owned by an entity other than a public utility as defined in section [216B.02](#), subdivision 4;*
- (3) be located within five miles of two or more interstate natural gas pipelines;*
- (4) be located within one mile of an existing electrical transmission substation with operating alternating current voltages of 115 kV, 345 kV, and 500 kV;*
- (5) be designed to provide electrical capacity, energy, and ancillary services;*
- (6) have satisfied all of the requirements under section [216B.243](#);*
- (7) have executed an interconnection agreement with the Midwest Independent System Operator that does not require the acquisition of more than one mile of new electric transmission right-of-way within the county where the facility is located, and does not provide for any other new routes or corridors for future electric transmission lines in the county where the facility is located;*
- (8) be located in a county with an essential services and transmission services ordinance;*
- (9) have signed a development agreement with the county board in the county in which the facility is located. The development agreement must be adopted by a two-thirds vote of the county board, and must contain provisions ensuring:*
  - (i) the facility is designed to use effluent from a wastewater treatment facility as its preferred water source if it includes any combined-cycle units, and will not seek an exemption from legislative approval under section [103G.265, subdivision 3](#), paragraph (b); and*
  - (ii) all processed wastewater discharge will be colocated with the outfall of a wastewater treatment facility;*
- (10) have signed a development agreement with the township board in the township in which the facility is located containing provisions ensuring that noise and visual impacts of the facility are mitigated. The development agreement must be adopted by a two-thirds vote of the township board; and*
- (11) have an agreement with the host county, township, and school district for payment in lieu of personal property taxes to the host county, township, and school district for a total amount not to exceed \$600,000 per year for the operating life of the facility. Any amount distributed to the school district is not subject to the deductions under section [126C.21](#).*

*(b) Construction of the facility must begin after March 1, 2010, and before March 1, 2014. Property eligible for this exemption does not include electric transmission lines and interconnections or gas pipelines and interconnections appurtenant to the facility.*

6. The Town of Lent and the County of Chisago have entered into discussions and negotiations with LS Power and, upon information and belief, are drafting a Development Agreement.
7. Intervenor CRVC has many concerns regarding issues focused on economic, need, and environmental impacts of this project which are now or should be under discussion.
8. The LS Power Sunrise River Energy Station has been on the agenda at Chisago County meetings several times. The first time:

Blake Wheatley of LS Power described his proposed Chisago County project. No action was taken.

Exhibit C – April 15, 2009 Official Proceedings.

9. In an April 29, 2009, letter, the Chisago County Attorney acknowledges and discusses the Development Agreement negotiations, the legislation terms proposed, and the various material terms of the Development Agreement as laid out in the legislation. See Exhibit D – County Attorney Letter of April 29, 2009.
10. In a Memo dated June 19, 2009, Mary Darragh Schmitz, Chisago County Environmental Services Director, raises issues regarding the terms of the utility personal property tax and the Development Agreement Exhibit E – Memorandum of Schmitz, June 19, 2009. In this letter, it is acknowledged that negotiations are ongoing with LS Power regarding some economic and environmental material terms of the Development Agreement, and the following issues were raised:
  - At least 50% of the facility’s peak daily water use will be supplied through reuse and recycling.
  - Any harm to an aquifer or surface water as a result of construction or operation and maintenance of the facility will be mitigated.
  - Construction or operation and maintenance of the facility will not add to the impairment of any Federal Clean Water Act section 303d listed lake, river or stream segment and operation will be fully consistent with the recommendations of a Total Maximum Daily Load study.
  - Construction or operation and maintenance of the facility will not withdraw any water from the Mount Simon Hinckley aquifer which is inconsistent with the recommendations of the county geologic and hydrogeologic atlas.
  - Construction or operation and maintenance of the facility will be consistent with the Minnesota Endangered Species Act and will not result in an unauthorized taking of any state or federally listed endangered species.

- Construction or operation and maintenance of the facility will be consistent with the provisions of the 1989 Minnesota Groundwater Protection Act and the intent of M.S. 103G.271.
  - Construction or operation and maintenance of the facility will be consistent with the recommendations of any state or federally funded watershed study.
  - construction or operation and maintenance of the facility will have in place a Wellhead Protection Plan approved by the Commissioner of the Minnesota Department of Health.
  - Construction or operation and maintenance of the facility will be consistent with the water quality goals of the receiving waters, especially those designated as wild and scenic under the federal Wild and Scenic Rivers Act of 1968.
11. The June 19, 2009 Memo also raises the issue of compensation for government work, as the Dept. of Commerce may assess for its work on utility proposals:
- Sections 3.2 and 4.2.2 of the draft developer's agreement discuss reimbursement of expenses for professionals to review, evaluate and monitor the project. It appears that this only applies to professionals outside of County employment.

Exhibit E – Memorandum of Schmitz, June 19, 2009.

12. This memo also raises several important questions that must be addressed:
- Has any electric generation facility been built to date that uses wastewater effluent as the preferred water source? If so, please share any data with the County. If not, please provide an analysis documenting why the reuse of effluent will be successful as a preferred water source.
  - Please explain why the use of the Chisago Lakes wastewater treatment plant outfall is preferred to an outfall located at the site of the plant. Will the discharge be treated to a higher standard?
  - Does the sewage treatment process at the Chisago Lakes wastewater treatment plan properly treat any contaminants contained in the returning wastewater from the electric generation facility including thermal pollution? Please provide any data regarding this question.

Exhibit E – Memorandum of Schmitz, June 19, 2009.

13. On June 30, 2010 (sic) Sunrise River Energy, LLC, provided responses to many of the concerns of the Director of Environmental Services:

- Acknowledging the County’s jurisdiction regarding the Wetland Conservation Act.
- Refusing to make any changes to the development agreement to address points raised above.

Exhibit F – Letter from Sunrise River, LLC, to Chisago County, June 30, 2009.

14. The LS Power project, as proposed, does not comply with and is not allowed under either the Chisago County Comprehensive Plan or Zoning Ordinances. Because of necessary transmission system additions, it also is contrary to Chisago County’s transmission ordinance.
15. Substantive content of discussions, negotiations and the Development Agreement have not been made public. References to discussions have been vague and non-informative, with no indication of what has been discussed.
16. Concerns regarding the impact of the plant on the Sunrise River and the St. Croix River have been raised by the National Park Service, noting the St. Croix National Scenic Riverway was designated a part of the National Wild and Scenic River System under the Wild and Scenic Rivers Act (Public Law 90-542) in 1968. NPS noted potential for impacts on aquatic and recreational resources, aquifer drawdown, and thermal and pollution increases from discharge water. NPS has called for a full Environmental Impact Statement. Exhibit G – National Park Service Letter, July 28, 2009.
17. At the August 10, 2009, meeting of the Chisago County Water Plan Policy Team, the proposed Sunrise River Energy Station was on the agenda:

*Much discussion ensued regarding this complex project and approval processes. There was some discussion that LS Power seeks a lesser process than a full Environmental Impact Statement study to evaluate the impact of the project development and subsequent plant operation.*

*Motion by McKenzie, second by Schirber; "That the Water Plan Policy Team recommends to the Chisago County Board, all process approving agencies and all Chisago County legislators that the development process for the LS Power plant in Chisago County must include a full Environmental Impact Statement study." With Schmitz abstaining, the motion passed with all ayes.*

Exhibit H, Minutes of Chisago County Water Plan Policy Team, August 10, 2009.

18. At that August 10, 2009, meeting, Mike Mueller, DNR Area Hydrologist, presented regarding the project:

*Mike Mueller, DNR Area Hydrologist, discussed a technical memorandum from Barr Engineering, engineers for the proposed project, dated June 26, 2009, which described preliminary information regarding the geology and well information of the area. Mueller also discussed a more recent geological cross-section of the area developed by the Minnesota state geologist. Mueller also presented and discussed a June 12, 2009 letter from the Minnesota DNR to LS Power Development which outlines the exploration and testing which will be required by the DNR regarding the project.*

Id.; see also Exhibit I – Technical Memorandum, Barr Engineering, June 26, 2009.

19. The Chisago County Local Water Management Plan Policy Team recommended to the Chisago County Board of Commissioners passed a motion recommending that both Lent Township Board of Supervisors and the Chisago County Board of Commissioners include in their Development Agreements the material term that an Environmental Impact Statement be completed on the project, noting:

*The Policy Team has substantial concerns with construction and operation of the proposed Sunrise River Energy Station including very high levels of water use and negative impacts on receiving waters. Completion of a rigorous and thorough Environmental Impact Statement will provide critical information necessary for protection of our natural resources.*

Exhibit J – Recommendation of EIS, Chisago County Local Water Management Plan Policy Team, August 11, 2009.

20. The proposed LS Power Sunrise River Energy project has been a regular topic of discussion at County Board meetings. Based on concerns raised by the public, County Staff, and the National Park Service, the County Board passed a resolution that the LS Power Development Agreement with both the County and Lent Township include “a requirement that an Environmental Impact Statement be completed for the proposed Sunrise River Energy Station ‘on a single site.’” Exhibit K – August 19, 2009 Official Proceedings.
21. Many county residents have attended county board meetings looking for information. After many months of activity between Chisago County and LS Power, the County has planned to hold a public meeting on October 19, 2009. Exhibit L, September 2, 2009, Official Proceedings.

The motion as amended was now before the Board for consideration as follows: Commissioner McMahon offered a motion to approve the Community Meeting on October 19, 2009 at the Chisago City Community Center. Motion seconded by Greene. Commissioner McMahon offered a friendly amendment to remove the Chisago City Community Center Hall Rental Agreement from the motion. The friendly amendment was **accepted**



by the second. Commissioner McMahon offered a *friendly amendment to change the location to the Lent Town Hall with County Administrator Moosey serving as chair and make the meeting a joint informational meeting with Lent Township*. The *friendly amendment* was **accepted** by the second and, upon a roll call vote being taken thereon, the motion **carried unanimously**.

22. Upon information and belief, for over eight months, since at least February, 2009, Chisago County officials have been in “discussion” with LS Power regarding the Sunrise River Energy power plant project, and have entered into formal negotiations regarding a Host Fee Agreement and Development Agreement, both required under Minn. Stat. §272.02, Subd. 92..
23. Chisago County has land-use regulatory authority, shared with the Town of Lent, which also has land use regulatory authority, and may impose more restrictive regulations than those of other governmental units. Lent Township may not loosen regulations, expand land uses, or make land uses more permissive than the County standards. Exhibit M - Lent Township Land Use Regulations, Chapter One, Relationship to Chisago County Official Land Use Regulations (January, 2007).

#### INTERVENTION

24. Because the Chisago County Board of Commissioners and Chisago County have entered into negotiations of a Development Agreement which is intended to address issues of importance and concern to county residents and the general public; and because legislation has been passed providing the LS Power project a utility personal property tax exemption if certain conditions are met, including the Host Fee Agreement and Development Agreement currently under negotiation by the County Board, a “proceeding” has been commenced pursuant to Minn. Stat. § 116B.09, Subdivision 1.
25. Concerned River Valley Citizens, Intervenor (hereinafter “CRVC”), is a Minnesota not-for-profit corporation, which was incorporated, in part, to promote the sustainable development of the St. Croix River valley area, while conserving its water, native animal and plant communities, and other natural, archaeological, scenic, and historical resources—especially those resources adjacent to, visible from, or affecting the St. Croix National Scenic Riverway.
26. CRVC’s registered office is located in the County of Center City, Minnesota. Most of CRVC’s members and Board reside within the County of Chisago, State of Minnesota. Shellene Johnson, President, lives in the City of Lindstrom, County of Chisago, State of Minnesota.
27. CRVC asserts its legal right to Intervene in this matter and be a party to this proceeding pursuant to the Minnesota Environmental Rights Act, which states in part:

*Except as otherwise provided in section 116B.10, in any administrative, licensing, or other similar proceeding ..., any natural person residing within the state ... or any ...*

*corporation, association, organization, or other legal entity having ... members ... residing in this state shall be permitted to intervene as a party upon the filing of a verified pleading asserting that the proceeding ... involves conduct that has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state”*

Minn. Stat. 116B.09, Subd. 1

28. The Minnesota Environmental Rights Act states, “Natural resources shall include, but not be limited to, all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources. Scenic and esthetic resources shall also be considered natural resources when owned by any governmental unit or agency.” Minn. Stat. 116B.02, Subd. 4. The scenic and esthetic, water and air resources of Chisago County, and the St. Croix National Scenic Riverway are included as natural resources under this statute.
29. Upon information and belief, if the project proceeds based upon the conditions of the Host Fee Agreement and Development Agreement to be made between Developer and Chisago County, Lent Township, and North Branch Public School District and subsequent permits applied for and granted based on these agreements, this project “... is likely to cause pollution, impairment, or destruction of the ... air, water, land and other natural resources located within the state.”
30. A power plant this size is deemed a large electric generating facility. Minn. Stat. §216B.243. The transmission lines necessary for system stability and deliverability if this project is interconnected, above in paragraphs 2-4 are also deemed large electric generating facilities. Minn. Stat. §216B.243. Under Minnesota law, all large electric generating and transmission facilities are deemed to have significant environmental impacts. See *People for Envl. Enlightenment and Responsibility (PEER), Inc. v. Minn. Envl. Quality Council*, 266 N.W.2d 858 (Minn. 1978).
31. CRVC provides this Notice of Intervention under the authority of the Minnesota Environmental Rights Act. Intervenor will submit additional facts in support of the Notice of Intervention during the various meetings and hearings in this proceeding.



Dated: October 8, 2009

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**VERIFICATION**

STATE OF MINNESOTA   )  
  )ss.  
COUNTY OF CHISAGO   )

Shellene Johnson, being first duly sworn on oath, states that she is the President of Concerned River Valley Citizens, the Intervenor above-named, that she has read the foregoing Notice of Intervention, and that the same is true of her own knowledge, except as to those things stated on information and belief and as to such she verily believes it to be true.

Dated: 10/9/09

  
\_\_\_\_\_  
Shellene Johnson  
President, CRVC

Signed and sworn to before me this  
9<sup>th</sup> day of October, 2009.

  
\_\_\_\_\_  
Notary Public

