

TOWN OF LENT
LENT TOWN BOARD

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

**CONCERNED RIVER VALLEY CITIZENS
NOTICE OF
INTERVENTION**

TO: Town of Lent, Lent Town Board, c/o Troy Gilchrist, Attorney for Lent Town Board,
Kennedy & Graven, 470 U.S. Bank Plaza, 200 So. 6th St., Minneapolis, MN 55402.

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 Lent Town Board and any 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 within the Town of Lent, 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](#)¹.
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:

¹ This study may be found on-line at http://legalelectric.org/f/2009/06/g135_report.pdf.

Option 2:

- 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

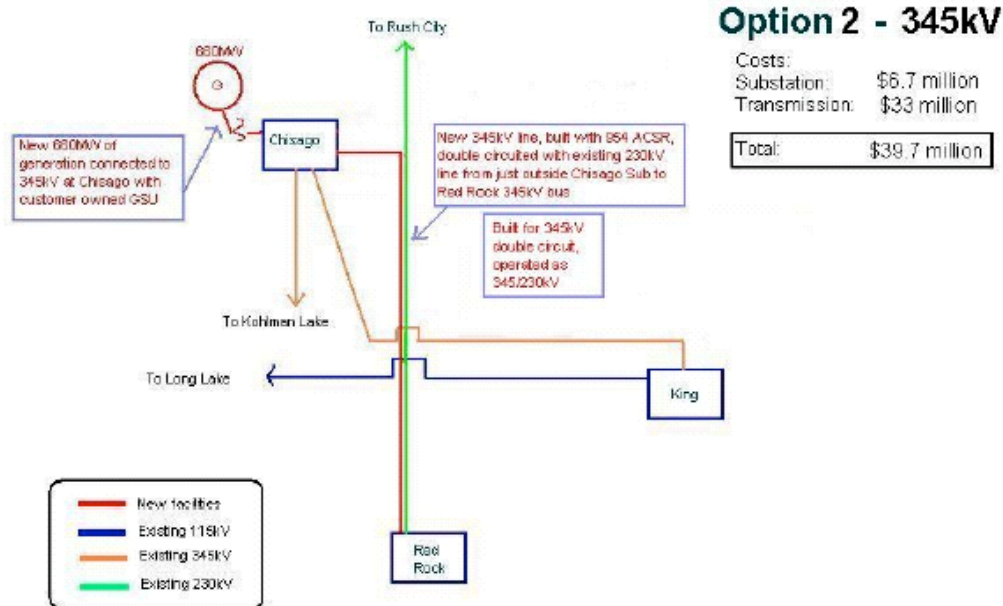
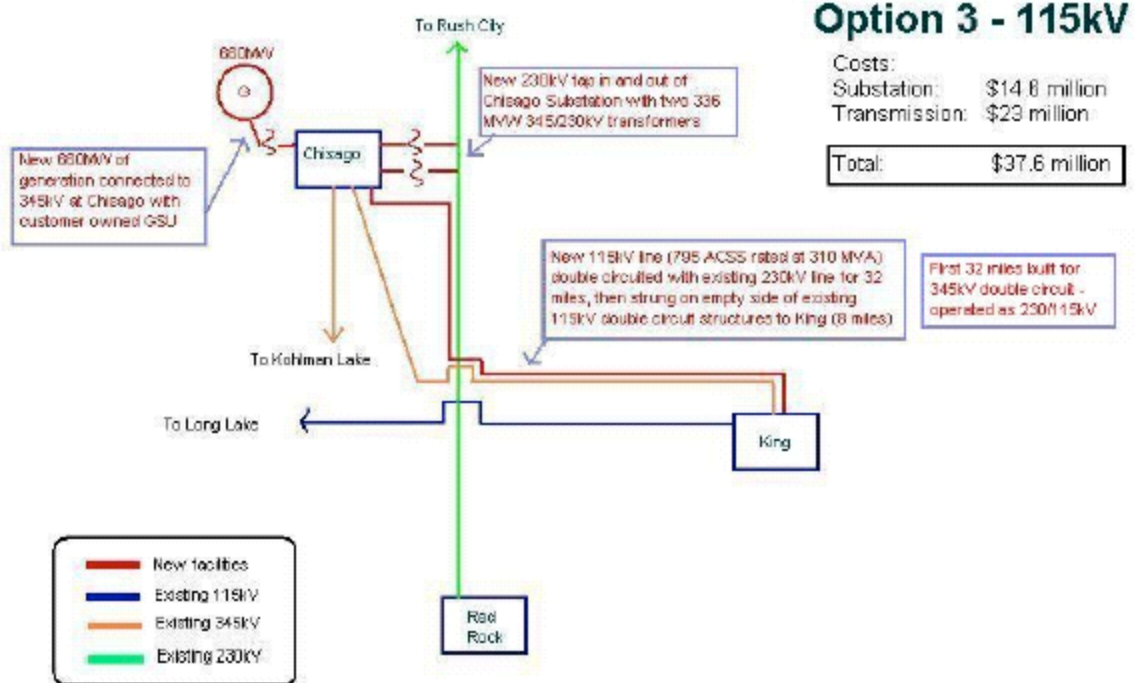


Figure 4.1.2.2 – Option 3 Post Generation and Upgrades System Diagram



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 transmission²

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
39449 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

² 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

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

5. 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. 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 a Development Agreement, and have retained attorney Troy Gilchrist, of Kennedy and Graven, formerly of Minnesota Association of Townships, to represent the town on this matter. Exhibit C, Minutes of the Lent Town Board Meeting June 16, 2009:

Gene Olson reported that he has been attending meetings for LS Power Plant.

Lyle Johnson moved to authorize attorney Troy Gilchrist to act on behalf as Attorney for the LS Power Plant on behalf of Lent Township. Mike Olson seconds. All in favor, motion carried. Laura will email the minutes to Attorney Troy Gilchrist.

7. Township attorney Troy Gilchrist, retained for this matter, stated that the Development Agreement is being written “right now.” See Exhibit D, *Hundreds attend meeting to learn about power company agreement*, Chisago County Press, July 30, 2009. Mr. Gilchrist also stated that in addition to noise and visual impacts, the township wants to address traffic and use of township roads, compliance with state noise standards, lighting details, impose height restrictions, landscaping and setbacks for the plant, reimbursement of town costs, and application to successors and assigns of LS Power. The LS Power project, as proposed, does not comply with and is not allowed under either the Lent Township Comprehensive Plan or Zoning Ordinances.
8. 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. See Exhibit E, Minutes of the Lent Town Board Meeting, February 17, 2009:

There was discussion about a Peaker Plant

9. Many township residents have attended town board meetings looking for information. See Exhibit F, Minutes of the Lent Town Board Meeting May 19, 2009:

Gene Olson noted that he has been receiving lots of phone calls about the LS Power Plant.

10. At one meeting, inquiring members of the public were rebuffed with statements that there has been no application and “the public will be notified when the Township receives an application.” See Exhibit G, Minutes of the Lent Town Board Meeting April 21, 2009:

Public Comments- Lent Township resident, Mark Koran, along with 17 other residents attended to ask about the LS Power Plant. Mark commented that the public would like to be informed on what is happening with the LS Power Company. Gene Olson noted that Lent Township has not received any

applications from LS Power Company and that the public will be notified when the Township receives an application. The discussion took one hour.

11. In addition to retaining an attorney to represent the Town Board's interests in the discussions, negotiations and the Development Agreement, the Town Board is also looking at retaining WSB & Associates or another firm as a consultant. See Exhibit H, Minutes of the Lent Town Board Meeting July 21, 2009:

Letter from WSB & Associates- The Board recommends waiting until after the July 22 Informational Meeting before responding to WSB & Associates for consulting purposes.

12. After over six months of activity between the Lent Town Board and LS Power, the Lent Town Board held a public meeting to focus on issues "directly related to the Town's role in the proposed power plant project." Exhibit H, Minutes of the Lent Town Board Meeting July 21, 2009:

July 22, 2009 Public Meeting- The purpose of the meeting is to focus on the issues directly related to the town's role in the proposed power plant project. For example; site, sound, lighting, and traffic.

13. The Lent Town Board Meeting of July 22, 2009, was well attended. From the article cited in Exhibit D:

There were 300 folding chairs placed in rows inside the township hall and almost every chair had a body seated in it, while many people stood.

It was at this meeting that township attorney Troy Gilchrist noted the ongoing negotiations regarding the Development Agreement.

Gilchrist said there have been a few conversations and the draft agreement is being written right now.

See Exhibit D, *Hundreds attend meeting to learn about power company agreement, Chisago County Press, July 30, 2009.*

In the August 18, 2009, Lent Town Board meeting, the July 22, 2009 meeting was discussed:

Gene commented on the July 22, 2009 Informational meeting. There were many comments about the proposed LS Power Plant.

See Exhibit I, Minutes of the Lent Town Board Meeting August 18, 2009.

14. Lent Township Officials have continued discussions regarding the power plant, and at least one Supervisor has attended a tour of Xcel's High Bridge gas plant, a much smaller

one than that proposed by LS Power. See Exhibit I, Minutes of the Lent Town Board Meeting August 18, 2009:

Lyle Johnson commented on the LS Power Plant. When and if LS Power applies for a permit, Lyle would like to look at a plant that is as close to the proposed LS Plant as possible. Gene Olson will attend a tour on Wednesday August 19, 2009 at 9:00 at a plant in St. Paul.

15. For over six months, since at least February, 2009, Lent Township 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.
16. The Lent Town Board has retained an attorney to represent them in the matter of LS Power’s Sunrise River Energy project, and is discussing retention and perhaps has retained other consultants in this matter.
17. The Town of Lent 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 J, Lent Township Land Use Regulations, Chapter One, Relationship to Chisago County Official Land Use Regulations (January, 2007).

INTERVENTION

18. Because the Lent Town Board has entered into negotiations of a Development Agreement which is intended to address issues of importance to township residents and the general public; retained counsel and likely consultants, 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 Town Board, a “proceeding” has been commenced pursuant to Minnesota Statute 116B.09, Subdivision 1.
19. 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.
20. CRVC’s registered office is located in the County of Chisago, 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.

21. 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 (Emphasis added.)

22. 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 Lent Township, Chisago County, and the St. Croix National Scenic Riverway are included as natural resources under this statute.
23. 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 Lent Township, 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.”
24. 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).
25. 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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