



6. My quick review of the record thus far shows prejudicial bias on the part of the Administrative Law Judge, notably prejudicial bias in her presumption of “need” for the line when that has not been established, there is NO Certificate of Need issue for this project and no need determination in any other venue. Judge Heydinger has also shown prejudicial bias in her raising of the bar for public participation, rather than facilitating it as directed by statute and rules, resulting in prejudicial harm to the communities and the parties representing them.
7. Minnesota Administrative Rules provide for disqualification of an Administrative Law Judge:

**1405.1000 DISQUALIFICATION OF ADMINISTRATIVE LAW JUDGE.**

The administrative law judge shall withdraw from participating in the proceedings at any time upon deeming himself or herself disqualified for any reason. Upon the filing in good faith by a person of an affidavit of prejudice, the chief administrative law judge shall determine the matter as a part of the record provided the affidavit shall be filed no later than five days prior to the date set for the first hearing date.

8. The Minnesota Cod of Judicial Conduct requires that a judge perform judicial duties without bias or prejudice, and provides for disqualification where impartiality may be questioned and in bias or prejudice regarding disputed evidentiary facts at issue in the proceeding.

**Canon 3**

**A. Adjudicative Responsibilities.**

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit court personnel and others subject to the judge's direction and control to do so.

**D. Disqualification.**

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

9. In good faith, I submit this Affidavit of Prejudice as provided by Minn. R. 1405.1000.

**BIAS AND PREJUDICE IN PRESUMPTION OF “NEED” FOR THE HIAWATHA TRANSMISSION PROJECT**

10. Judge Heydinger’s bias in her presumption of “need” for the line was demonstrated in her Prehearing Order of December 7, 2009, in which she Ordered that:

**Prefiled Testimony**

8. Each of the parties shall file Direct Testimony addressing its preferred route.

Prehearing Order, December 7, 2009, Order Point 8 (Attached as Exhibit A).

11. On March 29, 2010, Judge Heydinger issued an Order to Show Cause to two parties that have not submitted a routing preference, coincidentally, the two parties at either end of the proposed route that would be host to a substation:
12. On March 29, 2010, Judge Heydinger issued an Order to Show Cause to the Seward Neighborhood Group, Inc. and Phillips West Neighborhood Organization:

The Revised Scheduling Order dated December 7, 2009, directed each party to file Direct Testimony addressing its preferred route. This requirement was discussed during a telephone conference with the parties on January 28, 2010, including both Seward Neighborhood Group, Inc., and Phillips West Neighborhood Group, Inc., and repeated in the Second Prehearing Order and Schedule Revisions issued on February 1, 2010.

To date, neither Seward Neighborhood Group, Inc. nor Phillips West Neighborhood Organization has filed testimony, given notice of its preferred route, or sponsored a witness in this proceeding. Neither of the two has requested permission to be excused from the terms of the previously issued orders, nor has either of the two notified the undersigned of its intention to withdraw as a party to this proceeding.

Judge Heydinger’s Order to Show Cause ordered:

**IT IS HEREBY ORDERED:**

1. By April 2, 2010, Seward Neighborhood Group, Inc. and Phillips West Neighborhood Organization shall each file a statement explaining why it should not be dismissed as a party, or notifying the undersigned of its intention to withdraw as a party.
2. If either one requests leave to remain as a party, it shall specify its preferred route and its basis for it, its reasons for failing to file written testimony, and the extent to which it intends to participate in this proceeding.
3. If either party fails to respond by the close of business on April 2, 2010, that party shall be dismissed as a party to this proceeding.

Order to Show Cause, March 29, 2010 (Attached as Exhibit B).

13. Ordering that parties identify a “preferred route” requires the logical presumption of need for the transmission line, which has not been determined in this case, nor has it been established by a Certificate of Need.
14. Because the line is less than 10 miles, a Certificate of Need is not required. Minn. Stat. §216B.243. Need, and issues of need including size, type, and timing, are open issues in this proceeding, and are NOT prohibited by law. See Minn. Stat. §216E.02, Subd. 2; Minn. R. 7850.4200.
15. System alternatives, individually and/or in combination, and the “no-build” alternative have yet to be addressed.
16. Minnesota law prohibits consideration of need in routing proceedings **ONLY** in two situations -- where need has been demonstrated, and in environmental review.
17. No Certificate of Need has been issued for the Hiawatha Project and the proceeding over which Judge Heydinger is presiding is not environmental review. The environmental review, an Environmental Impact Statement, is underway and is being conducted by the Dept. of Commerce’s Office of Energy Security.
18. The laws and regulations set out the restrictions to consideration of need:

**7850.4200 FACTORS EXCLUDED.**

**When** the Public Utilities Commission has issued a Certificate of Need for a large electric power generating plant or a high voltage transmission line or placed a high voltage transmission line on the certified HVTL list maintained by the commission, questions of need, including size, type, and timing, questions of alternative system configurations, and questions of voltage shall not be factors considered by the commission in deciding whether to issue a permit for a proposed facility.

Minn. R. 7850.4200 (emphasis added). Again, the Public Utilities Commission has not issued a Certificate of Need for the Hiawatha Project.

19. Further:

Questions of need, including size, type, and timing; alternative system configurations; and voltage must not be included in the scope of environmental review conducted under this chapter.

Minn. Stat. §216E.02, Subd. 2. This routing proceeding is not “environmental review conducted under this chapter.”

20. And this focus of prohibition of need issues within the context of environmental review is repeated:

**Subd. 5.Environmental review.**

The commissioner of the Department of Commerce shall prepare for the commission an environmental impact statement on each proposed large electric generating plant or high-voltage transmission line for which a complete application has been submitted. The commissioner shall not consider whether or not the project is needed. No other state environmental review documents shall be required. The commissioner shall study and evaluate any site or route proposed by an applicant and any other site or route the commission deems necessary that was proposed in a manner consistent with rules concerning the form, content, and timeliness of proposals for alternate sites or routes.

Minn. Stat. §216E.03, Subd. 5. And again, this routing proceeding is not “environmental review,” it incorporates the MOES environmental review in its Environmental Impact Statement..

21. On the other hand, routing considerations include latitude to address issues related to need and reliability. For example, in issuing a routing permit, the Commission must by law specify the design, which is inherently rooted in the need for the line:

When the commission designates a route, it shall issue a permit for the construction of a high-voltage transmission line specifying the design, routing, right-of-way preparation, and facility construction it deems necessary, and with any other appropriate conditions

Minn. Stat. §216E.02, Subd. 10(b).

22. The siting and routing criteria provide additional factors related to need for the line:

To facilitate the study, research, evaluation, and designation of sites and routes, the commission shall be guided by, but not limited to, the following considerations:

(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;

**(3) evaluation of the effects of new electric power generation and transmission technologies and systems related to power plants designed to minimize adverse environmental effects;**

(4) evaluation of the potential for beneficial uses of waste energy from proposed large electric power generating plants;

**(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;

**(7) evaluation of alternatives to the applicant's proposed site or route proposed** pursuant to subdivisions 1 and 2;

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

(9) evaluation of governmental survey lines and other natural division lines of agricultural land so as to minimize interference with agricultural operations;

**(10) evaluation of the future needs for additional high-voltage transmission lines in the same general area as any proposed route, and the advisability of ordering the construction of structures capable of expansion in transmission capacity through multiple circuiting or design modifications;**

**(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.

Minn. Stat. 216E.03, Subd. 7 (**emphasis added**).

23. The rules are more specific and include factors that are a subset of “need:”

**7850.4100 FACTORS CONSIDERED.**

In determining whether to issue a permit for a large electric power generating plant or a high voltage transmission line, the commission shall consider the following:

- A. effects on human settlement, including, but not limited to, displacement, noise, aesthetics, cultural values, recreation, and public services;
- B. effects on public health and safety;
- 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;
- F. effects on rare and unique natural resources;
- G. application of design options that maximize energy efficiencies, mitigate adverse environmental effects, and could accommodate expansion of transmission or generating capacity;**
- H. use or paralleling of existing rights-of-way, survey lines, natural division lines, and agricultural field boundaries;
- I. use of existing large electric power generating plant sites;**
- J. use of existing transportation, pipeline, and electrical transmission systems or rights-of-way;**
- K. electrical system reliability;**
- 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.

Minn. R. 7850.4100 (emphasis added).

- 24. Any presumption of need at this point in the process is premature. Ordering that Intervenor address a “preferred route” is improper, and evidence of bias and prejudice. An Order forcing the participant communities to “address its preferred route” is pitting communities against each other.

**BIAS AND PREJUDICE THROUGH INCREASE OF INTERVENORS’ BURDEN OF PRODUCTION**

- 25. The Power Plant Siting Act was established with a primary purpose of facilitating public participation.

**216E.08 Subd. 2. Other public participation.**

The commission shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the commission's rules and guidelines as provided for in section [216E.16](#).

- 26. That “principal of operation” is also reflected in the enabling legislation and rules:

**216E.16 Rules**

The chief administrative law judge shall adopt procedural rules for public hearings relating to the site and route permit process. The rules shall attempt to maximize citizen participation in these processes consistent with the time limits for commission decision established in sections [216E.03, subdivision 10](#), and [216E.04, subdivision 7](#).

**7850.1100 PURPOSE AND AUTHORITY**

The commission shall provide for broad spectrum citizen participation as a principle of operation. To ensure effective citizen participation, the commission shall maintain a public education program on, but not limited to, the considerations identified in Minnesota Statutes, section [216E.03](#), subdivision 7.

27. Public participation is encouraged in the Administrative Rules:

**1405.0800 PUBLIC PARTICIPATION.**

At all hearings conducted pursuant to parts [1405.0200](#) to [1405.2800](#), all persons will be allowed and encouraged to participate without the necessity of intervening as parties. Such participation shall include, but not be limited to:

A. Offering direct testimony with or without benefit of oath or affirmation and without the necessity of pre-filing as required by part [1405.1900](#).

B. Offering direct testimony or other material in written form at or following the hearing. However, testimony which is offered without benefit of oath or affirmation, or written testimony which is not subject to cross-examination, shall be given such weight as the administrative law judge deems appropriate.

C. Questioning all persons testifying. Any person who wishes to cross-examine a witness but who does not want to ask questions orally, may submit questions in writing to the administrative law judge, who will then ask the questions of the witness. Questions may be submitted before or during the hearings.

28. Intervention as a party has broad rights:

**1405.0900 INTERVENTION AS PARTY.**

**Subpart 1. Petition.**

Any person desiring to intervene in the hearings as a party shall submit a timely petition to intervene to the administrative law judge and shall serve the petition upon all existing parties. Timeliness will be determined by the administrative law judge in each case based on circumstances at the time of filing. The petition shall show how the petitioner's legal rights, duties, or privileges may be determined or affected by the proceedings, how those rights, duties, and privileges are not otherwise represented, and shall set forth the grounds and purposes for which intervention is sought and shall

indicate petitioner's statutory or legal right to intervene, if one should exist. The administrative law judge, with the consent of all parties, may waive the requirement that the petition be in writing.

...and...

**Subp. 4. Responsibilities of intervenors.**

Once a petition to intervene has been granted, an intervenor shall have all of the rights and responsibilities of a party.

29. As above, Judge Heydinger's Prehearing Order of December 7, 2009, required:

**Prefiled Testimony**

8. Each of the parties shall file Direct Testimony addressing its preferred route.

Prehearing Order, December 7, 2009, Order Point 8 (Attached as Exhibit A). The order does not contain any indication that compliance with this requirement has additional attached expectations beyond presentation of testimony.

30. Judge Heydinger March 20, 2010 Order to Show Cause, as above, to the Seward Neighborhood Group, Inc. and Phillips West Neighborhood Organization, stated:

The Revised Scheduling Order dated December 7, 2009, directed each party to file Direct Testimony addressing its preferred route. This requirement was discussed during a telephone conference with the parties on January 28, 2010, including both Seward Neighborhood Group, Inc., and Phillips West Neighborhood Group, Inc., and repeated in the Second Prehearing Order and Schedule Revisions issued on February 1, 2010.

To date, neither Seward Neighborhood Group, Inc. nor Phillips West Neighborhood Organization has filed testimony, given notice of its preferred route, or sponsored a witness in this proceeding. Neither of the two has requested permission to be excused from the terms of the previously issued orders, nor has either of the two notified the undersigned of its intention to withdraw as a party to this proceeding.

Judge Heydinger's Order to Show Cause ordered:

IT IS HEREBY ORDERED:

1. By April 2, 2010, Seward Neighborhood Group, Inc. and Phillips West Neighborhood Organization shall each file a statement explaining why it should not be dismissed as a party, or notifying the undersigned of its intention to withdraw as a party.

2. If either one requests leave to remain as a party, it shall specify its preferred

route and its basis for it, its reasons for failing to file written testimony, and the extent to which it intends to participate in this proceeding.

3. If either party fails to respond by the close of business on April 2, 2010, that party shall be dismissed as a party to this proceeding.

Order to Show Cause, March 29, 2010 (Attached as Exhibit B).

31. Then, on March 30, 2010, Judge Heydinger issued a letter regarding “Hearing Arrangements” which set forth expectations of attendance by witnesses and representation of parties at each and every public hearing and evidentiary hearing scheduled:

All witnesses, as well as the party’s representative, must be present throughout the public hearings. See Minn. R. 1405.2000. The purpose of the rule is to assure that the public has the opportunity to question the witnesses. The hearings begin at 2 p.m. and 7 p.m. on April 5 and 6.

Regarding presence at the Evidentiary Hearing, the letter established the expectation of attendance at every session:

It is the responsibility of each party to be represented throughout the evidentiary hearing. In the event that a party must be absent for any portion of the evidentiary hearing, a request for leave to be absent should be made in writing as soon as practicable.

32. The letter of March 30, 2010 also limits public participation (emphasis added):

Because there are so many parties to this proceeding, I will direct the members of the public to address their comments and questions to me, and **I will call on the parties to respond, as appropriate.**

I will ask the members of the public to limit their comments to five to ten minutes. If they can not complete their comments, I will invite them to speak again after all of the others who are present have had an opportunity, to attend another session, or to submit additional comments to me in writing. Persons who completed their comments at one session will not be permitted to offer their comments again at a subsequent session until other persons who are present have had the opportunity to speak. In the event that the speaker has specific questions for the witnesses, I will give them additional time.

33. The goal of a broad range of public participation is clear in the law. The communities that have intervened in this docket have a special interest in representing their residents, their businesses, and to promote development in line with their development plans. If they are not able to participate in this docket due to inability of the group to be present for each day of the entire hearing, to participate to the extent that they are able, to cross-examine witnesses as able, to be a witness as able, to write a brief as able, there is no other party to compensate for that party’s absence, no other party is representing that community’s interest.

34. Orders mandating Direct Testimony, selection of a preferred route, Orders to Show Cause for failure to participate at a particular level and letters of “Hearing Arrangements” chill public participation and prohibit it outright. Orders and letters setting requirements and expectations set a tone that is contrary to the state’s purpose of facilitation of public participation.
35. The community groups in question are underfunded, some have paid staff and some do not, and all do not have sufficient funding for counsel in this matter. . Minnesota does not have Intervenor Compensation. How is a small community group to assure a representative be present every day all day of each day of the evidentiary hearing? How is a small community group to pay for counsel to represent them at each evidentiary session?
36. Judge Heydinger has a disturbing history of attempting to chill public participation and eject participants from transmission line hearings. In the CapX 2020 Certificate of Need proceeding, PUC Docket 06-1115, Judge Heydinger issued an Order to Show Cause to United Citizens Action Network. Attached as Exhibit D.
37. United Citizens Action Network was formed when individuals affected by the MinnCan pipeline received notice that their land was selected as a potential route. When they petitioned for late Intervention, they were denied by Judge Heydinger, presiding over that docket. Attached as Exhibit E is the Appellate Court decision regarding their suit.
38. At the time the Order to Show Cause was issued in the CapX 2020 transmission docket, U-CAN members were in condemnation court regarding MinnCan and piles of dirt were on their land as the pipeline was being built and were unable to appear. Attached as Exhibit F is U-CAN’s Response to the Order to Show Cause. Attached as Exhibit F is the Affidavit of Russ Martin, U-CAN CapX Intervenor regarding Heydinger’s Order to Show Cause and appellant/denied Intervenor in the MinnCan docket.
39. This pattern of restriction of Intervenors rights to participate demonstrates bias and prejudice regarding inadequately funded Intervenors struggling to represent their organization and their constituents’ interest. Private parties and small organizations have a need for help and encouragement, a need to represent interests not otherwise represented, to participate as a party as best they can, and importantly, to preserve their rights to an appeal.
40. At this time, I request that:
  - 1) Judge Heydinger be disqualified from this case due to bias and prejudice; and
  - 2) Intervenors be expressly allowed to participate to the extent that they can; and
  - 3) Intervenors simply notify the judge in advance and waive rights to participate, such as cross-examination, when they are not able to attend.**

Further your affiant sayeth naught.

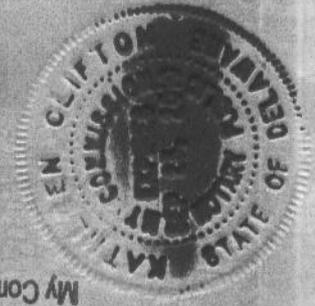
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Carol A. Overland #254617  
Attorney at Law  
Legalelectric  
P.O. Box 176  
Red Wing, MN 55066  
(612) 227-8638  
(302) 834-3466

Signed and sworn to before me this  
31<sup>st</sup> day of March, 2010.

---

Notary Public



KATHLEEN CLIFTON  
NOTARY PUBLIC  
STATE OF DELAWARE  
My Commission Expires 9-23-2010

*Kathleen Clifton*  
Notary Public

Signed and sworn to before me this  
31<sup>st</sup> day of March, 2010.

Further your affiant sayeth naught.

*Carol A. Overland*  
Carol A. Overland #254617  
Attorney at Law  
Legalectic  
P.O. Box 176  
Red Wing, MN 55066  
(612) 227-8638  
(302) 834-3466

# Exhibit A

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

In the Matter of the Application for a  
Route Permit for the Hiawatha  
Transmission Project

**REVISED SCHEDULING ORDER**

A telephone conference was held on December 4, 2009, before Beverly Jones Heydinger, Administrative Law Judge.

Appearances:

Lisa M. Agrimonti, Briggs and Morgan, P.A., and Jennifer Thulien Smith, Assistant General Counsel, Northern States Power Co., appeared on behalf of Northern States Power Company, (Applicant).

Paula G. Maccabee, Just Change Consulting/Law Offices, appeared on behalf of Midtown Greenway Coalition.

Corey M. Conover and Gregory Sautter, Assistant City Attorneys, appeared on behalf of the City of Minneapolis.

Colleen Schmidt, Director, appeared on behalf of Crew2, Inc.

Charles H. Salter, Assistant County Attorney, appeared on behalf of Hennepin County and Hennepin County Regional Railroad Authority.

Karen Finstad Hammel, Assistant Attorney General, appeared on behalf of the Department of Commerce, Office of Energy Security, Energy Facility Permitting Staff (Department). Department staff, Deb Pyle, Public Advisor, and William Storm, Project Manager, were also present.

Commission staff, Bret Eknes, was present.

Lori Ellis, Little Earth of United Tribes, and Joanna Solotaroff, Longfellow Community Council, did not appear, nor did they notify the Administrative Law Judge that they would not appear.

**Summary:**

The telephone conference was initially scheduled at the request of the Applicant to review the number of witnesses that the parties intend to call at hearing and determine whether additional hearing dates should be scheduled. Subsequent to scheduling the conference, the Department revised its schedule for completing the Draft EIS on this project and holding the public meeting to accept comment on the draft. In light of the schedule change, the Midtown Greenway Coalition requested an adjustment to the schedule set in the Prehearing Order, dated August 11, 2009.

Discussion was held among the participants concerning the number of possible witnesses, the proposed schedule, including release of the Draft EIS, separation of the public hearing and evidentiary hearing, the deadline for intervention and filing testimony, and scheduling another telephone conference.

At this time, the Department projects that the Draft EIS will be completed by January 8, 2010, and that the public hearing to comment on the Draft EIS will be held no later than the first week of February.

All of the parties participating in the telephone conference concurred in the revised schedule, including the Applicant, which acknowledged that the revisions would delay the Public Utilities Commission's decision beyond May 2010.

Based on the discussion, the Administrative Law Judge makes the following changes to the Prehearing Order.

**IT IS HEREBY ORDERED:**

1. Any person who wishes to intervene in this proceeding must file a written petition to intervene with the Administrative Law Judge no later than **January 20, 2010**, as set forth in Minn. R. 1400.6200. A Notice of Appearance shall be filed with the Petition. Any objection to a petition to intervene shall be filed within seven days of receipt of the petition, but no later than **January 27, 2010**. The petition and any objection shall be served upon all parties, pursuant to the E-service list in effect at the time of the petition.

2. The following schedule for prefilng testimony is adopted:

Direct Testimony	<b>February 18, 2010</b>
Rebuttal Testimony	<b>March 15, 2010</b>
Surrebuttal Testimony	<b>March 26, 2010</b>
List of Proposed Exhibits and Witnesses	<b>April 2, 2010</b>

3. Public hearings will be held in Minneapolis, Minnesota, on **April 5 and April 6, 2010, at 2:00 p.m. and 7:00 p.m.**, at a location to be arranged by the Applicants in consultation with the Commission staff and the Administrative Law Judge.

4. The parties shall convene on **April 5, 2010, at 11:00 a.m.**, at the location for the public hearings, to mark and introduce into evidence the prefiled testimony and accompanying attachments.

5. The evidentiary hearing shall commence on **April 12, 2010, at 9:30 a.m.**, at the Public Utilities Commission, and shall continue on April 13 through 21, 2010, as necessary to complete the presentation of the evidence.

6. Public Comments may also be submitted in writing to the Administrative Law Judge and must be received by 4:30 p.m. on **April 28, 2010**.

### **Order of Testimony**

7. Unless the parties agree otherwise, the order of testimony shall be: the Applicant, Midtown Greenway Coalition, City of Minneapolis, Crew2, Inc., Hennepin County, Little Earth of United Tribes, Longfellow Community Council, additional intervenors, if any, in the order of intervention, and the Department. Questioning of the witnesses shall proceed in the same order, subject to change by agreement of the parties or further order of the Administrative Law Judge.

### **Prefiled Testimony**

8. Each of the parties shall file Direct Testimony addressing its preferred route.

### **Objections to Prefiled Testimony**

9. Except for good cause shown, objections by any party relative to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, and serves a copy of such objections on the parties, no later than **April 5, 2010**.

### **Telephone Conference**

10. A telephone conference will be held with the parties on **January 28, 2010, at 2:30 p.m.**, to review the schedule and address other prehearing issues. All parties are expected to participate or to notify the Administrative Law Judge in advance that they are unable to do so. To participate, call **866-766-0067**, and enter passcode **7649290**.

11. Except as expressly amended by this Order, the Prehearing Order, issued on August 11, 2009, remains in effect.

Dated this 7th day of December, 2009.

s/Beverly Jones Heydinger  
\_\_\_\_\_  
BEVERLY JONES HEYDINGER  
Administrative Law Judge



## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street  
Saint Paul, Minnesota 55101

**Mailing Address:**  
P.O. Box 64620  
St. Paul, Minnesota 55164-0620

Voice: (651) 361-7900  
TTY: (651) 361-7878  
Fax: (651) 361-7936

December 7, 2009

To All Parties on the E-Docket Service List

**Re: In the Matter of the Application for a Route Permit for the  
Hiawatha Transmission Project; OAH No. 15-2500-20599-2  
PUC No. E-002/TL-09-38**

Dear Parties:

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

### **Revised Scheduling Order**

Sincerely,

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER  
Administrative Law Judge

Telephone: (651) 361-7838

BJH:nh

Enclosure

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE LAW SECTION  
600 NORTH ROBERT STREET  
PO BOX 64620  
ST. PAUL, MINNESOTA 55164-0620

**CERTIFICATE OF SERVICE**

<b><i>In the Matter of the Application for a Route Permit for the Hiawatha Transmission Project</i></b>	OAH 15-2500-20599-2 PUC E-002/TL-09-38
---------------------------------------------------------------------------------------------------------	-------------------------------------------

Nancy J. Hansen certifies that on the 7th day of December, 2009, she served a true and correct copy of the attached Revised Scheduling Order by serving as specified on the E-Docket service list.

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
Lisa	Agrimonti	lagrimonti@briggs.com	Briggs And Morgan, P.A.	2200 IDS Center80 South 8th Street Minneapolis, MN 55402	Electronic Service	No
Corey	Conover	corey.conover@ci.minneapolis.mn.us	City Of Minneapolis	350 South 5th Street City Hall, Room 210 Minneapolis, MN 554022453	Electronic Service	No
Patricia	DeBleeckere	tricia.debleeckere@state.mn.us	MN Public Utilities Commission	Suite 350 121 Seventh Place East St. Paul, MN 55101	Electronic Service	Yes
Lori	Ellis	Lori.ellis@learth.org	Little Earth of United Tribes	2495 18th Avenue S Minneapolis, MN 55404	Electronic Service	No
Sharon	Ferguson	sharon.ferguson@state.mn.us	State of MN - DOC	85 7th Place E Ste 500 Saint Paul, MN	Electronic Service	Yes

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
Burl W.	Haar	burl.haar@state.mn.us	MN Public Utilities Commission	551012198 Suite 350 121 7th Place East St. Paul, MN	Electronic Service	Yes
Karen Finstad	Hammel	Karen.Hammel@state.mn.us	MN Office Of The Attorney General	551012147 1400 BRM Tower 445 Minnesota Street St. Paul, MN	Electronic Service	Yes
Valerie T.	Herring	vherring@briggs.com	Briggs and Morgan, P.A.	551012131 2200 IDS Center 80 S. Eighth Street Minneapolis, MN 55402	Electronic Service	No
Beverly	Heydinger	beverly.heydinger@state.mn.us	Office Of Administrative Hearings	PO Box 64620 St. Paul, MN 551640620	Paper Service	Yes
Mara	Koeller	mara.n.koeller@xcelenergy.com	Xcel Energy	414 Nicollet Mall 5th Floor Minneapolis, MN 55401	Electronic Service	No
Paula	Maccabee	Pmaccabee@visi.com	Just Change Consulting	1961 Selby Avenue St. Paul, MN 55104	Electronic Service	No
Charles	Salter	chuck.salter@co.hennepin.mn.us	Hennepin County Attorneys Office	A-2000 Government Center 300 South Sixth Street Minneapolis, Minnesota 55487	Electronic Service	No
Gregory	Sautter	gregory.sautter@ci.minneapolis.mn.us	City of Minneapolis	333 South 7th Street, Suite 210 Minneapolis, MN 55403	Electronic Service	No
Colleen	Schmidt	colleen.schmidt@thecrew2.com	Crew2	2650 Minnehaha Ave S Suite 100 Minneapolis, Minnesota 55406	Electronic Service	No
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	Ste 122 9100 W Bloomington Frwy Bloomington, MN 55431	Electronic Service	Yes

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
Joanna	Solotaroff	joanna@longfellow.org	Longfellow Community Council	2727 26th Avenue South Minneapolis, MN 55406	Electronic Service	No
William	Storm	bill.storm@state.mn.us	Minnesota Department of Commerce	Room 500 85 7th Place East St. Paul, MN 551012198	Electronic Service	Yes
Jennifer	Thulien Smith	jennifer.thuliensmith@xcelenergy.com	Xcel Energy Services, Inc.	414 Nicollet Mall, 5th Floor Minneapolis, MN 55401	Electronic Service	No

# Exhibit B

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application for a  
High Voltage Transmission Line Route  
Permit for the Hiawatha Transmission  
Project

**NOTICE AND ORDER TO SHOW CAUSE -  
SEWARD NEIGHBORHOOD GROUP, INC.,  
AND PHILLIPS WEST NEIGHBORHOOD  
ORGANIZATION**

On January 5, 2010, Seward Neighborhood Group, Inc.'s Petition to Intervene was granted. On January 14, 2010, the Phillips West Neighborhood Organization's Petition to Intervene was granted. Both parties were notified that they were subject to the provisions of previously filed orders in this proceeding.

The Revised Scheduling Order dated December 7, 2009, directed each party to file Direct Testimony addressing its preferred route. This requirement was discussed during a telephone conference with the parties on January 28, 2010, including both Seward Neighborhood Group, Inc., and Phillips West Neighborhood Group, Inc., and repeated in the Second Prehearing Order and Schedule Revisions issued on February 1, 2010.

To date, neither Seward Neighborhood Group, Inc. nor Phillips West Neighborhood Organization has filed testimony, given notice of its preferred route, or sponsored a witness in this proceeding. Neither of the two has requested permission to be excused from the terms of the previously issued orders, nor has either of the two notified the undersigned of its intention to withdraw as a party to this proceeding.

**ORDER**

IT IS HEREBY ORDERED:

1. By April 2, 2010, Seward Neighborhood Group, Inc. and Phillips West Neighborhood Organization shall each file a statement explaining why it should not be dismissed as a party, or notifying the undersigned of its intention to withdraw as a party.

2. If either one requests leave to remain as a party, it shall specify its preferred route and its basis for it, its reasons for failing to file written testimony, and the extent to which it intends to participate in this proceeding.
3. If either party fails to respond by the close of business on April 2, 2010, that party shall be dismissed as a party to this proceeding.

Dated: March 29, 2010

s/Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge



## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street  
Saint Paul, Minnesota 55101

**Mailing Address:**  
P.O. Box 64620  
St. Paul, Minnesota 55164-0620

Voice: (651) 361-7900  
TTY: (651) 361-7878  
Fax: (651) 361-7936

March 29, 2010

To All Parties on the  
E-Docket Service List

**Re: *In the Matter of the Application for a Route Permit for the  
Hiawatha Transmission Project; OAH No. 15-2500-20599-2  
PUC No. E-002/TL-09-38***

Dear Parties:

Attached and served upon you as listed on the E-Docket Service List attached to the Certificate of Service List is the

**Notice and Order to Show Cause-Seward Neighborhood Group, Inc.,  
and Phillips West Neighborhood Organization**

Sincerely,

s/Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

Telephone: (651) 361-7838

BJH:nh

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE LAW SECTION  
600 NORTH ROBERT STREET  
ST. PAUL, MN 55101

**CERTIFICATE OF SERVICE**

<b>Case Title: <i>In the Matter of the Application for a Route Permit for the Hiawatha Transmission Project</i></b>	<b>OAH No. 15-2500-20599-2 PUC No. E-002/TL-09-38</b>
---------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------

Nancy J. Hansen certifies that on the 29th day of March, 2010 she served a true and correct copy of the attached Notice and Order to Show Cause-Seward Neighborhood Group, Inc., and Phillips West Neighborhood Organization as stated on the following E-Docket Service List:

Assigned Service List Members - Windows Internet Explorer  
 https://www.edockets.state.mn.us/EFiling/filing/filing.do?method=viewPrintUniqueServiceListMembers

Last Name	First Name	Email	Company Name	Delivery Method	Trade Secret
Agrimont	Lisa	lagrimont@briggs.com	Briggs And Morgan, P.A.	Electronic Service	No
Conover	Corey	corey_conover@ci.minneapolis.mn.us	City Of Minneapolis	Electronic Service	No
DeBleekere	Patricia	tricia.debleeckere@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Ellis	Lori	Lori.ellis@earth.org	Little Earth of United Tribes	Electronic Service	No
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	Yes
Gunn	Bradley	bjg@mgmlp.com	Malkerson Gunn Martin LLP	Electronic Service	No
Gustafson	Eric	eric@corcoranneighborhood.org	Corcoran Neighborhood Organization	Electronic Service	No
Haar	Burl W.	burl.haar@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Hammel	Karen Finstad	Karen.Hammel@state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Hayashida	Leslie	Leslie.M.Hayashida@wellsfargo.com	Wells Fargo & Company	Electronic Service	No
Herring	Valerie	vherring@briggs.com	Briggs and Morgan, P.A.	Electronic Service	No
Heyer	Shirley	shirleymidtownphillips@msn.com	Midtown Phillips Neighborhood Association, Inc.	Electronic Service	No
Koeller	Mara	mara.n.koeller@xcelenergy.com	Xcel Energy	Electronic Service	No
Mains	Sheldon	smains@visi.com	Seward Neighborhood Group, Incorporated	Electronic Service	No
Roston	Howard	har@mgmlp.com	Malkerson Gunn Martin LLP	Electronic Service	No
Salter	Charles	chuck.salter@co.hennepin.mn.us	Hennepin County Attorneys Office	Electronic Service	No
Sautter	Gregory	gregory.sautter@ci.minneapolis.mn.us	City of Minneapolis	Electronic Service	No
Saveikoul	Richard	rsaveikoul@felhaber.com	Felhaber, Larson, Fenlon & Vogt, P.A.	Electronic Service	No
Schmiesing	Elizabeth H.	eschmiesing@faegre.com	Faegre & Benson LLP	Electronic Service	No
Shaddix Elling	Janet	jshaddix@janetshaddix.com	Shaddix And Associates	Electronic Service	Yes
Solotaroff	Joanna	joanna@longfellow.org	Longfellow Community Council	Electronic Service	No
Springer	Tim	tim@midtowngreenway.org	Midtown Greenway Coalition	Electronic Service	No
Storm	William	bill.storm@state.mn.us	Office of Energy Security	Electronic Service	Yes
Thulien Smith	Jennifer	jennifer.thulien@xcelenergy.com	Xcel Energy Services, Inc.	Electronic Service	No
Trutnau	Crysta	pwno2005@yahoo.com	Phillips West Neighborhood	Electronic Service	No
pass	carol	cpass@runbox.com	East Phillips Improvement Coalition	Electronic Service	No

**Paper Service Member(s)**

Last Name	First Name	Company Name	Address	Delivery Method	View Trade Secret
Heydinger	Beverly	Office of Administrative Hearings	PO Box 64620, St. Paul, MN-551640620	Paper Service	Yes
Maccabee	Paula	Just Change Consulting	1961 Selby Avenue, St. Paul, MN-55104	Paper Service	No

Internet 100%

# Exhibit C

March 30, 2010

To All Parties on the  
E-Docket Service List

**Re: *In the Matter of the Application for a Route Permit for the  
Hiawatha Transmission Project; OAH No. 15-2500-20599-2  
PUC No. E-002/TL-09-38***

Dear Parties:

The public hearing on this matter begins on April 5, 2010. At the present time, there are 14 parties and the Office of Energy Security participating in the proceeding. In order to facilitate a smooth process, please make every effort to comply with the following procedures.

### **Preparation for the Public Hearings**

On **April 2, 2010**, each party must serve and file its list of proposed exhibits and witnesses. Witnesses should be listed in the order that the party anticipates that they will be called. See *also* Second Prehearing Order and Schedule Revisions, paragraph 16. Bring copies of each party's list with you on April 5, 2010.

All parties should appear at Plaza Verde on **April 5, 2010, at 11:00 a.m.** Exhibits should be labeled as set forth in the Second Prehearing Order and Schedule Revisions, paragraph 13. Each party will present their exhibits to be numbered by the court reporter, in the order that evidence will be presented:

Applicant – NSP  
Midtown Greenway Coalition  
City of Minneapolis,  
Crew2  
Hennepin County

**Re: *In the Matter of the Application for a Route Permit for the Hiawatha Transmission Project;*  
OAH No. 15-2500-20599-2; PUC No. E-002/TL-09-38**

March 30, 2010

Little Earth of United Tribes  
Longfellow Community Council  
Seward Neighborhood Group  
Corcoran Neighborhood Organization  
Phillips West Neighborhood Organization  
Wells Fargo Bank  
Midtown Phillips Neighborhood Association  
East Phillips Improvement Coalition  
Zimmer Davis  
Office of Energy Security

Ask the court reporter to mark only those exhibits that you are certain will be offered at the evidentiary hearing through your witnesses, and attempt to eliminate duplicates to exhibits listed by other parties that will precede you. Exhibits offered at hearing that have not been previously numbered will be numbered when they are offered.

Prior to the start of the public hearing, all premarked exhibits may be offered into evidence by the party's counsel or other representative who should designate the sponsoring witness for each exhibit. If there is an objection to an exhibit, the exhibit will not be received until the objection is addressed at the evidentiary hearing during the testimony of the sponsoring witness. Exhibits without objection will be received. In the event that there is a correction to the exhibit that has not been pre-filed, the correction will be made on the record when the witness is called for cross-examination.

Minn. R. 1405.1900, subp. 2, requires that each party have five copies of its testimony available at the public hearing.

### **Conduct of the Public Hearings**

All witnesses, as well as the party's representative, must be present throughout the public hearings. See Minn. R. 1405.2000. The purpose of the rule is to assure that the public has the opportunity to question the witnesses. The hearings begin at 2 p.m. and 7 p.m. on April 5 and 6. We will take a break from the afternoon hearings at approximately 5 p.m., and the evening hearing will adjourn by approximately 10:00 p.m. If public testimony cannot be concluded within that time, an additional public session will be added.

At the beginning of each public session, I will ask each party's representative to introduce himself or herself and that party's witnesses, and state its position in the proceeding.

**Re: *In the Matter of the Application for a Route Permit for the Hiawatha Transmission Project;*  
OAH No. 15-2500-20599-2; PUC No. E-002/TL-09-38**

March 30, 2010

Because there are so many parties to this proceeding, I will direct the members of the public to address their comments and questions to me, and I will call on the parties to respond, as appropriate.

I will ask the members of the public to limit their comments to five to ten minutes. If they can not complete their comments, I will invite them to speak again after all of the others who are present have had an opportunity, to attend another session, or to submit additional comments to me in writing. Persons who completed their comments at one session will not be permitted to offer their comments again at a subsequent session until other persons who are present have had the opportunity to speak. In the event that the speaker has specific questions for the witnesses, I will give them additional time.

### **Conduct of the Evidentiary Hearing**

It is the responsibility of each party to be represented throughout the evidentiary hearing. In the event that a party must be absent for any portion of the evidentiary hearing, a request for leave to be absent should be made in writing as soon as practicable. Although the rules require that every witness also be present throughout the hearing, due to the anticipated length of the hearing, I will not require this, so long as the witness is present at the public hearings and so long as the party is represented at the evidentiary hearing.

If a party is absent without approval when a witness is being cross-examined, the party will waive its opportunity to cross-examine that witness.

Ordinarily, the evidentiary hearing will begin at 9:30 a.m., there will be a break from 12:30 to 1:30 p.m., and the hearing will adjourn for the day at approximately 4:30 p.m.

In addition to the copy of the exhibit marked and received by the court reporter, each party must have a hard copy of each exhibit available for the witness and a hard copy for me if one has not been previously provided. If new exhibits, not previously prefiled, are offered at hearing, there must be sufficient hard copies for each of the parties, the judge, the witness, the court reporter and the Commission staff. See Second Prehearing Order and Schedule Revisions, paragraphs 14 and 15.

I have asked the Commission staff to check whether the parties will have internet access to Edockets from the PUC hearing room. If it is not available, you

**Re: *In the Matter of the Application for a Route Permit for the Hiawatha Transmission Project;*  
OAH No. 15-2500-20599-2; PUC No. E-002/TL-09-38**

March 30, 2010

will be notified so that you can download any prefilled testimony or orders that you may need at the hearing.

**Availability of Witnesses at the Evidentiary Hearing**

I have received a letter from Wells Fargo notifying me that its witness will not be available on three of the days scheduled for the evidentiary hearing. I have not received any other such notice. In the event that the parties have any such limitations, or have agreed with other parties to the date of testimony for any witness, please notify me.

Sincerely,

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER  
Administrative Law Judge

Telephone: (651) 361-7838

BJH:nh

# Exhibit D

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

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 Cap X 345–kV Transmission Projects.

**NOTICE AND ORDER TO SHOW CAUSE**  
–  
**UNITED CITIZENS ACTION NETWORK**

To: Russell Martin  
United Citizens Action Network (UCAN)

On December 17, 2007, a Petition to Intervene in this proceeding was filed on behalf of the United Citizens Action Network (UCAN). That Petition was not opposed, and was granted, based on the representation that UCAN members had private property interests that could be directly affected by the outcome of this proceeding and that it intended to advocate for the rights of Minnesota landowners and citizens in this proceeding. More specifically, it stated that “[UCAN] brings the unique perspective of potentially affected landowners to these proceedings, a perspective that is necessary to assist the Administrative Law Judge and Public Utilities Commission to fully understand the human and environmental impacts associated with the decisions they will make in this proceeding.” However, UCAN has failed to file testimony, and, although one of its members appeared at the evidentiary hearing on one day, UCAN has failed to prefile testimony or appear at any additional days of hearing to date or to cross-examine the Applicants’ witnesses to this proceeding. Despite its failure to participate, UCAN has not notified the undersigned of its intention to withdraw as a party. In light of its failure to participate in the proceeding,

IT IS HEREBY ORDERED:

1. By **August 16, 2008**, the United Citizens Action Network shall file a Memorandum and Supporting Affidavit specifying the relevant information that it intends to offer into the record during the evidentiary hearing, a detailed explanation of the role that it intends to play in evaluating the evidence provided, and further explaining either why it should remain as a full party, or requesting withdrawal as a party.

2. Nothing in this Order shall prohibit UCAN or its members from submitting public comments by **September 26, 2008**.

Dated: August 4, 2008

s/Beverly Jones Heydinger

---

BEVERLY JONES HEYDINGER  
Administrative Law Judge



## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street  
Saint Paul, Minnesota 55101

**Mailing Address:**

361-7900  
P.O. Box 64620  
361-7878  
St. Paul, Minnesota 55164-0620  
361-7936

Voice: (651)

TTY: (651)

Fax: (651)

August 4, 2008

To All Individuals on the Attached Service List

**Re: *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 Cap X 345-kV  
Transmission Projects; PUC Docket No. CN-06-1115;  
OAH Docket No. 15-2500-19350-2***

Dear Parties:

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

Notice and Order to Show Cause – Prairie Island Indian Community

Notice and Order to Show Cause – United Citizens Action Network

Sincerely,

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER  
Administrative Law Judge

Telephone: (651) 361-7838

BJH:nh

**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 Cap X 345-kV Transmission Projects**

PUC Docket No. CN-06-1115

OAH Docket No. 15-2500-19350-2

**OAH Service List as of July 23, 2008**

All Parties have agreed to E-File documents at: [www.edockets.state.mn.us](http://www.edockets.state.mn.us). Filing with edockets shall constitute service on the Public Utilities Commission, the Department of Commerce and the Office of Administrative Hearings.

As of this date, all parties have agreed to accept service by e-mail at the e-mail addresses listed. However, where indicated, parties have requested that the e-mail be followed by mail or delivery of a hard copy.

In the event that a pleading or attachment cannot be filed and served electronically, it must be filed and served on each of the parties at the addresses listed.

Documents that contain trade secret or nonpublic data may be e-filed, but may not be copied or served electronically.

<p>Burl W. Haar (E-file or 15 copies) Minnesota Public Utilities Commission 350 Metro Square Building 121 Seventh Place East St. Paul, MN 55101-2147 Fax: 651-297-7073</p>	<p>Beverly Jones Heydinger (E-file or Original, plus e-mail and one hard copy, excluding IR Responses)* Office of Administrative Hearings 600 North Robert Street PO Box 64620 St. Paul, MN 55164-0620 Tele: 651-361-7838</p>
<p>Sharon Ferguson (E-file or 4 copies): Minnesota Department of Commerce 85 Seventh Place East, Suite 500 St. Paul, MN 55101 Tele: 651-297-3652</p>	<p>Julia Anderson Assistant Attorney General 445 Minnesota Street, Suite 1500 St. Paul, MN 55101 Tele: 651-296-8703</p>
<p>Michael C. Krikava, Lisa M. Agrimonti and Catherine A. Biestek Attorneys at Law Briggs and Morgan, PA 80 South Eighth Street 2200 IDS Center Minneapolis, MN 55402</p>	<p>Priti R. Patel Assistant General Counsel Northern States Power Company 414 Nicollet Mall Minneapolis, MN 55401</p>

<p>Keith L. Beall Senior Attorney – State Regulatory Midwest ISO Legal Department PO Box 4202 Carmel, IN 46082 Tele: 317-249-5400</p>	<p>George Crocker, Executive Director PO Box 174 Lake Elmo, MN 55042 Tele: 651-770-3861</p>
<p>Philip Mahowald, General Counsel and Peter Jones, Assistant General Counsel 5636 Sturgeon Lake Road Welch, MN 55089 Tele: 651-267-4006</p>	<p>Elizabeth Goodpaster, Staff Attorney Mary W. Marrow, Staff Attorney Minnesota Center for Environmental Advocacy 26 East Exchange Street, Suite 206 St. Paul, MN 55101 Tele: 651-223-5969</p>
<p>Carol Overland Attorney at Law Overland Law Office PO Box 176 Red Wing, MN 55066</p>	<p>Paula Goodman Maccabee Just Change Consulting 1961 Selby Avenue Saint Paul, MN 55104 Tele: 651-646-8890 (office) 651-775-7128 (cell)</p>
<p>Christopher K. Sandberg Lockridge Grindal Nauen Suite 2200 100 Washington Avenue South Minneapolis, MN 55401 Tele: 612-339-6900 Fax: 612-339-0981</p>	<p>Russell Martin United Citizens Action Network 11600 East 270th Street Elko, MN 55020 Tele: 952-461-3352</p>
<p><b>Courtesy copy:</b> David Aafedt and John Knapp Attorneys at Law Winthrop &amp; Weinstine, PA 225 South Sixth Street, Suite 3500 Minneapolis, MN 55402-4629 Tele: 612-604-6400</p>	<p><b>Courtesy Copy (excluding IR's and IR responses):</b> Robert Cupit (One hard copy)* David Jacobson, Bret Eknes, Mike Kaluzniak, and Tricia DeBleekere Minn. Public Utilities Commission 350 Metro Square Building 121 Seventh Place East St. Paul, MN 55101-2147 Tele: 651-201-2255 Fax: 651-297-7073</p>

<p><b>Courtesy Copy (excluding IR's and IR responses):</b>  Janet Shaddix Elling  Shaddix and Associates  9100 W. Bloomington Freeway #122  Bloomington, MN 55431  Tele: 952-888-9187</p>	<p><b>Courtesy Copy (e-mail only):</b>  Lauren Ross McCalib  Great River Energy  17845 East Highway 10  P. O. Box 800  Elk River, MN 55330-0800</p>
<p><b>Courtesy Copy:</b>  Mike Michaud  Matrix Energy Solutions  N802 240th St.  Maiden Rock, WI 54750</p>	<p><b>Courtesy Copy:</b>  John Bailey  Institute for Local Self Reliance  1313 5th St. SE  Minneapolis, MN 55414</p>
<p><b>Courtesy Copy (e-mail only):</b>  Christy Brusven  Fredrikson &amp; Byron, P.A.  200 South Sixth Street, Suite 4000  Minneapolis, MN 55402-1425  Tele: 612-492-7412</p>	<p><b>Courtesy copy by e-mail (IR's and IR Responses only):</b>  Larry L. Schedin PE  LLS Resources, LLC  12 South Sixth Street, Suite 1137  Minneapolis, MN 55402  Tele: 651-223-5969  Fax: 651-223-5967</p>
<p><b>Courtesy copy (e-mail only):</b>  SaGonna Thompson  Xcel Energy  Government &amp; Regulatory Affairs  414 Nicollet Mall, 7<sup>th</sup> Floor  Minneapolis, MN 55401-1993</p>	<p><b>Courtesy copy (e-mail only):</b>  Beverly Topp  26045 Ipava Avenue W  Lakeville, MN 55044</p>
<p><b>Courtesy copy (e-mail only)</b>  Atina Diffley  Organic FarmingWorks Consulting  25498 Highview Avenue  Farmington, MN 55024</p>	
<p>*If there is a trade-secret version and a public version of the same document, only hard copies of the trade-secret version must be provided.</p>	

Electronic copies should be e-mailed to the following persons:

Atinagoe@frontiernet.net

bailey@ilsr.org  
bens@integra.net  
beverly.heydinger@state.mn.us  
bgoodpaster@mncenter.org  
bob.cupit@state.mn.us  
bret.eknes@state.mn.us  
burl.haar@state.mn.us  
cbiestek@briggs.com  
cbrusven@fredlaw.com  
cksandberg@locklaw.com  
daafedt@winthrop.com  
david.jacobson@state.mn.us  
eurekatopp@gmail.com  
gwillc@nawo.org  
jknapp@winthrop.com  
jshaddix@janetshaddix.com  
julia.anderson@state.mn.us  
kbeall@midwestiso.org  
lagrimonti@briggs.com  
Larry@LLSResources.com  
lrossmccalib@grenergy.com  
matrixenergysolutions@gmail.com  
mike.kaluzniak@state.mn.us  
mkrikava@briggs.com  
mwmarrow@mncenter.org  
overland@legalelectric.org  
pjones@piic.org  
pmaccabee@visi.com  
pmahowald@piic.org  
priti.r.patel@xcelenergy.com  
sagonna.thompson@xcelenergy.com  
sharon.ferguson@state.mn.us  
tricia.debleeckere@state.mn.us

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE LAW SECTION  
P. O. BOX 64620  
ST. PAUL, MINNESOTA 55164-0620

**CERTIFICATE OF SERVICE**

<b>Case Title: <i>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 Cap X 345-kV Transmission Projects</i></b>	<b>OAH Docket No. 15-2500-19350-2 PUC Docket No. CN-06-1115</b>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------

Nancy J. Hansen certifies that on the 4th day of August, 2008, she served a true and correct copy of the attached **Notice and Order to Show Cause – Prairie Island Indian Community and the Notice and Order to Show Cause – United Citizens Action Network** as specified on the attached service list, as of July 23, 2008.

# Exhibit E

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1318**

In the Matter of the Application of Minnesota Pipe Line Company for a  
Certificate of Need for a Crude Oil Pipeline  
and

In the Matter of the Application to the Minnesota Public Utilities Commission for a  
Pipeline Routing Permit for a Crude Oil Pipeline and Associated Aboveground Facilities.

**Filed June 10, 2008  
Affirmed  
Collins, Judge\***

Minnesota Public Utilities Commission  
File Nos. PL-5/CN-06-2;PL-5/PPL-05-2003

Lori Swanson, Attorney General, Kari Valley Zipko, Assistant Attorney General, 1100  
Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134 (for respondent  
Minnesota Public Utilities Commission)

Eric F. Swanson, David M. Aafedt, Karl E. Robinson, Winthrop & Weinstine, P.A., Suite  
3500, 225 South Sixth Street, Minneapolis, MN 55402 (for respondent Minnesota Pipe  
Line Company)

Phillip R. Krass, C. John Jossart, Krass Monroe, P.A., Suite 1000, 8000 Norman Center  
Drive, Minneapolis, MN 55437 (for relators)

Considered and decided by Peterson, Presiding Judge; Connolly, Judge; and  
Collins, Judge.

---

\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals  
by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**COLLINS**, Judge

In this certiorari appeal, relators, landowners along a proposed crude-oil pipeline route, argue that (1) they did not receive adequate notice of the certificate-of-need or routing-permit proceedings, which deprived them of due process of law; (2) notice requirements in certificate-of-need proceedings violated their right to equal protection; and (3) respondent Minnesota Public Utilities Commission's decision to grant respondent Minnesota Pipeline Company LLC's applications for a certificate of need and a routing permit was arbitrary and capricious, unsupported by substantial evidence, and contained errors of law. Because the Minnesota Public Utilities Commission's decision-making process did not violate relators' due-process or equal-protection rights, and the decision to grant the certificate of need and routing permit was neither arbitrary and capricious nor unsupported by substantial evidence and did not contain errors of law, we affirm.

### FACTS

In early January 2006, Minnesota Pipe Line Company, LLC (MPL) filed applications with the Minnesota Public Utilities Commission (the PUC) for a Certificate of Need (CON) and a Pipeline Routing Permit (routing permit) for its proposed crude-oil pipeline, which it calls the MinnCan project. The MinnCan project consists of approximately 300 miles of 24-inch diameter pipe that will transport crude oil from Clearbrook, Minnesota, to Rosemount, Minnesota. The PUC accepted the CON and routing-permit applications as substantially complete and referred the matter to the Office of Administrative Hearings for contested-case proceedings before an administrative-law

judge (ALJ). In its orders, the PUC also allowed an additional 30 days beyond the time frame provided by the administrative rules, for a total of 100 days, for submission of alternative pipeline-route proposals.

In response to public comments requesting individual notice to landowners, the PUC directed MPL to work with the Minnesota Department of Commerce (the Department) and the PUC staff to develop a landowner-notification letter. The landowner-notification letter was to include the date, time, and place of the prehearing conference (if known at the time the letter was sent). The PUC also required MPL to publish notice of public and evidentiary hearings in general-circulation newspapers at least ten days prior to the start of the hearings, and the PUC requested that the ALJ schedule public hearings in such a way that members of the public could address both the CON and routing issues.

Landowner-notification letters were sent to landowners on the proposed pipeline route. The notification letters were sent to both “centerline” landowners (those whose land was crossed by the proposed pipeline) and “adjacent” landowners (those whose land was not crossed by the proposed pipeline but still fell within the proposed pipeline corridor.) The Department held 13 public-information meetings in March 2006, one in each county crossed by the MinnCan project. At these meetings, MPL, the Department, and the PUC discussed the process for proposing an alternative route and the May 30, 2006 deadline for such proposals.

The PUC met on June 29, 2006, to consider several alternative route proposals. Three new alternative routes were proposed in the Staples area, MPL proposed an

alternative in the Belle Plaine area, and one proposal included use of MPL's existing right of way for the entirety of the pipeline route. The PUC accepted consideration of the Staples alternatives and the Belle Plaine alternative, but declined to accept the proposal for use of the existing right of way. The PUC found that extensive evidence in the record demonstrated that the existing right of way would significantly disrupt densely-settled areas in the affected counties and would have greater adverse impacts on human settlement, the natural environment, and the economy than would proceeding with the proposed route. Although the PUC did not endorse consideration of the existing right of way as an alternative, it found that matters relating to the existing right of way would be addressed in the contested-case proceedings even if the route was not proposed as a formal alternative.

Between August 24 and September 14, 2006, the ALJ held 16 public hearings as part of the contested-case proceedings in the counties impacted by the MinnCan project. The hearings were conducted in a manner that permitted the public to address both certificate-of-need and routing issues. Members of the public could speak at these meetings and question the parties. A full-page notice of the public hearings and maps of the proposed alternatives appeared in local newspapers prior to the hearings.

On September 15, 2006, the ALJ held a contested-case hearing. Thereafter, the ALJ issued findings of fact, conclusions, and recommendations to the effect that MPL's applications for a CON and a routing permit should both be granted. The ALJ concluded that MPL had satisfied the criteria for obtaining a CON set forth in Minn. Stat. § 216B.243 (2006) and Minn. R. 7853.0130 (2005), finding that MPL demonstrated the

need for the project and no other party or person demonstrated a more reasonable and prudent alternative by a preponderance of the evidence. The ALJ also concluded that MPL had conducted an appropriate environmental assessment, met the requirements for alternative environmental review in Minn. R. 4415.0145 (2005), and had considered the criteria established in Minn. R. 4415.0100 (2005).<sup>1</sup>

The PUC adopted the ALJ's findings, conclusions and recommendations with some alterations and additions. The PUC issued an order granting MPL the certificate of need and granting MPL's application for a routing permit. The PUC denied relators' request for reconsideration, and this appeal followed.

## **D E C I S I O N**

On certiorari review of an agency decision we must “adhere to the fundamental concept that decisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies’ expertise and their special knowledge in the field of their technical training, education, and experience.” *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001) (quotation omitted). But we review errors of law de novo and need not defer to the agency’s expertise. *In re Denial of Eller Media Co.’s Applications for Outdoor Adver. Permits*, 664 N.W.2d 1, 7 (Minn. 2003); *No Power Line, Inc. v. Minn. Env’tl. Quality Council*, 262 N.W.2d 312, 320 (Minn. 1977).

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<sup>1</sup> Chapter 4415 of the Minnesota Rules was renumbered in chapter 7852 in 2007. Minn. R. 4415.0145 is now numbered 7852.2700, Minn. R 4415.0100 is now numbered 7852.1900, and Minn. R. 4415.0050 is now numbered 7852.0900. For consistency with the PUC proceedings, we will refer to the 2005 rules.

This court's review of the PUC's decision in a contested-case hearing is governed by Minn. Stat. § 14.69 (2006). *See In re Petition of N. States Power Co.*, 676 N.W.2d 326, 331 (Minn. App. 2004). Upon review of an agency decision, this court may

affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Minn. Stat. § 14.69. The party seeking review bears the burden of proving that the agency's conclusions violate one or more provisions of section 14.69. *See Markwardt v. State Water Res. Bd.*, 254 N.W.2d 371, 374 (Minn. 1977).

Substantial evidence consists of: "1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2) more than a scintilla of evidence; 3) more than 'some evidence'; 4) more than 'any evidence'; and 5) evidence considered in its entirety." *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977). An arbitrary and capricious agency ruling is evidenced by (1) reliance on factors not intended for consideration; (2) a complete failure "to consider an important aspect of the problem"; (3) "an explanation that runs counter to the evidence"; or (4) a decision that is so implausible it cannot be explained by the agency's expertise or differing views.

*Citizens Advocating Responsible Dev. v. Kandiyohi County Bd. of Comm'rs*, 713 N.W.2d 817 (Minn. 2006) (“CARD”).

Relators contend that, because the PUC was not granted regulatory authority over pipeline routing until 2005, and the MinnCan project was its first exercise of that authority, the PUC lacks the “expertise” in pipeline-routing matters that justifies a deferential standard of review. But the record indicates that although the PUC gained sole regulatory authority as recently as 2005, the PUC has worked closely with the Environmental Quality Board (EQB) in the past on regulatory matters. Furthermore, the PUC designated Larry Hartman, a former EQB staff member, as project manager of the proceedings in this case. Therefore, the PUC’s expertise does justify the deferential standard; a heightened standard of review is not called for.

**A. Due process**

Relators argue that they received inadequate notice of the PUC’s proceedings in this case, resulting in a denial of their procedural-due-process rights. “This court reviews de novo the procedural due process afforded a party.” *Zellman ex rel. M.Z. v. Ind. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). “Due process requires that deprivation of property be preceded by notice and an opportunity to be heard.” *Comm’r of Natural Res. v. Nicollet County Pub. Water/Wetlands Hearings Unit*, 633 N.W.2d 25, 29 (Minn. App. 2001) (citation omitted), *review denied* (Minn. Nov. 13, 2001).

The required type of notice does not follow one specific, technical definition but rather varies “with the circumstances and conditions of each case.” *In re Christenson*,

417 N.W.2d 607, 611 (Minn. 1987). Unless the interested party may otherwise lose a protected property right, personal notice is not required. *Id.* at 612. And personal notice is not required if the giving of such notice is not reasonably possible. *Walker v. City of Hutchinson*, 352 U.S. 112, 115-16, 77 S. Ct. 200, 202 (1956).

Minnesota law requires that the PUC's pipeline-routing rules must "provide for notice of proposed pipeline routes to local units of government and to owners and lessees of property along the routes being considered." Minn. Stat. § 216G.02, subd. 3(b)(2) (2006). Accordingly, Minn. R. 4415.0050 (2005) states that within 20 days of the PUC's acceptance of a pipeline-routing-permit application, "the [PUC] shall provide published notice of acceptance of the application in a newspaper in each county in which [the pipeline is proposed]." The rule further specifies the content required in the notice, including the identification of the applicant, procedures for proposing alternate routes, and notice of public-information meetings. *Id.*

Relators argue that the notice provided in this case was insufficient. But due process requires notice and an opportunity to be heard, and the record shows that relators had both. In addition to following the notice requirements specified in the rules, the PUC also required MPL to provide personal notice to affected landowners. MPL submitted a list of approximately 1,200 landowners, local officials, and other interested persons that it served with personal notice of the public hearings. The record also indicates that MPL sent multiple mailings to affected landowners informing them of the status of the pipeline-approval proceedings and MPL agents personally visited landowners to discuss the MinnCan project.

Moreover, most of the relators attended or participated in the public hearings. Nearly all participated in some manner, either through appearances at public hearings or by submitting written comments to the ALJ. Relators contend that due process was not satisfied because some relators initially did not act because, although their land fell within the pipeline corridor but was not initially crossed by the pipeline, subsequent adjustments resulted in the pipeline crossing their property after the time to intervene as a party had passed. However, due-process requirements do not assure an opportunity to intervene as a party, only the opportunity to be heard.

Relators also contend that MPL's personal notice was somehow deficient. But the PUC accepted MPL's testimony regarding its personal notice to landowners. Furthermore, a number of landowners, including several of the relators, testified that they had received notice of the pipeline at the beginning of 2006, which supports the PUC's determination that notice was adequate.

Relators further argue that they were denied due process because they were not permitted to participate in the CON contested-case hearing. Anyone may attend a contested-case hearing, but only the parties may present evidence and argument and cross-examine witnesses. Minn. R. 1400.7800 (B)(1) (2005). Here, relators were allowed ample opportunity to be heard. They were welcome to appear and present testimony at the public hearings, question the Department or MPL witnesses, and submit written comments. The transcripts of the public hearings demonstrate extensive public participation. Relators' argument that they were denied procedural due process is therefore without merit.

Additionally, relators' reliance on *Juster Bros. Inc. v. Christgau*, 214 Minn. 108, 120, 7 N.W.2d 501, 508 (1943), is misplaced. Unlike *Juster*, where an employer was not provided with any notice or hearing prior to an agency decision, relators here had numerous opportunities to present testimony and question witnesses. Similarly, *In re Wilmarth Line of the CU Project*, 299 N.W.2d 731 (Minn. 1980), does not support relators' argument that they were entitled to the opportunity to participate in the contested-case hearing without intervening as a party. In *Wilmarth*, the supreme court concluded that landowners were entitled to notice of a contested-case hearing because they needed to be given an opportunity to present their evidence. 299 N.W.2d at 736. But the supreme court also noted that in a contested case *parties* shall be afforded an opportunity for hearing after reasonable notice, and the landowners could intervene as parties because they were materially affected by the outcome of the proceedings. *Id.* at 734-35. Relators, as interested landowners, could have intervened, become parties to the proceeding, and participated in the contested-case hearing, but did not do so.<sup>2</sup> Therefore, their argument must be dismissed as without merit.

## **B. Equal protection**

Relators contend that the PUC has denied their right to equal protection because of the differing rules addressing notice for potential landowners in pipeline routing and

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<sup>2</sup> At oral argument, counsel for relators asserted that a few relators are owners of land that is crossed by the Belle Plaine and the Staples alternative routes, and those relators received notice of the placement of the pipeline on their property after the time to intervene had passed. Relators' attorney provided no evidence of which relators, if any, are landowners along these routes. Therefore we are unable to conclude that any relator was denied the opportunity to intervene as a party following the alteration of the route.

potential landowners in high-voltage transmission-line (HVTL) routing. See Minn. R. 7829.2550 (requiring direct mail notice “to landowners reasonably likely to be affected by the proposed [high-voltage] transmission line”), .2500, subp. 4, 5 (requiring published notice for certificate-of-need filings) (2005). To successfully challenge the constitutionality of the rule at issue, relators must demonstrate “not only that the [rule] is invalid but that [they] sustained or [are] in immediate danger of sustaining some direct injury resulting from its enforcement.” *Paulson v. Lapa, Inc.*, 450 N.W.2d 374, 380 (Minn. App. 1990), *review denied* (Minn. Mar. 22, 1990). Relators have not shown that they have sustained or are in danger of sustaining a direct injury as a result of the rule directing notice in CON proceedings because the PUC ordered, and MPL provided, the same notice to landowners in these proceedings as that provided to HVTL landowners pursuant to Minn. R. 7829.2550. Relators’ equal-protection claim is without merit.

**C. Arbitrary and capricious or unsupported by substantial evidence**

***1. Consideration of the Existing Route***

Relators argue that the PUC’s decision must be reversed because its decision violated the nonproliferation mandate outlined in *People for Env’tl. Enlightenment and Responsibility (PEER) v. Minn. Env’tl. Quality Counsel*, 266 N.W.2d 858 (Minn. 1978). In *PEER*, the Minnesota Supreme Court determined that the Minnesota Environmental Quality Council (MEQC) erred by selecting a new route for an HVTL instead of approving the existing route. 266 N.W.2d at 864. The supreme court concluded that “in order to make the route-selection process comport with Minnesota’s commitment to the principle of nonproliferation, the MEQC must, as a matter of law, choose a pre-existing

route unless there are extremely strong reasons not to do so.” *Id.* at 868. The supreme court determined that there was no evidence that use of the existing route would impair or destroy the environment; or that the alternative route was preferable because it would result in the condemnation of fewer homes. *Id.* at 869. The supreme court held that cost cannot override the nonproliferation policy, concluding that

[C]ondemnation of a number of homes does not, without more, overcome the law’s preference for containment of powerlines as expressed in the policy of nonproliferation. Persons who lose their homes can be fully compensated in damages. The destruction of protectable environmental resources, however, is noncompensable to all present and future residents of Minnesota.

*Id.*

In this case, substantial evidence supports the PUC’s decision that the existing route was not a viable alternative. Testimony in the record established that use of the existing route would be far more harmful than use of the new route. In addition to significant negative economic, residential, commercial, and industrial developmental impact, using the existing right of way would require two additional Mississippi River crossings; affect an additional 5.2 miles of “significant biological[-]diversity areas,” 7.9 miles of public lands, three miles of forest lands, and five miles of wetlands; and cross the Sherburne County Wildlife Refuge.

Relators argue that the PUC’s failure to refer the existing route to the ALJ for formal consideration as a route alternative at the contested-case hearing precluded proper consideration of the existing right of way. But the PUC’s decision not to include the existing right of way as a formal route alternative did not relieve MPL of its burden to

prove that its proposed route minimized human and environmental impacts compared to all other proposed routes. Minn. R. 4415.0100, subp. 3, lists the criteria for pipeline-route selection, including:

- A. human settlement, existence and density of populated areas, existing and planned future land use, and management plans;
- B. the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands;
- C. lands of historical, archaeological, and cultural significance;
- D. economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations;
- E. pipeline cost and accessibility;
- F. use of existing rights-of-way and right-of-way sharing or paralleling;
- G. natural resources and features.

In choosing not to include the existing right of way as a formal alternative here, the PUC stated that “MPL continues to bear the burden of proof and persuasion that its proposed route minimizes human and environmental impact when compared to all other proposed routes and has specifically undertaken to do that with respect to the existing route.”

The ALJ’s findings, adopted by the PUC, indicate that the ALJ exhaustively reviewed the evidence in the record to determine if MPL met its burden of proving that the existing route was not a viable alternative. The ALJ found that the record supported the PUC’s determination not to forward the existing right of way as a formal alternative for contested-case proceedings. The ALJ weighed the evidence in her memorandum in support of her findings, stating:

Neither MPL nor the Department attempted to assess the significance of placing more land and people at risk by following a new route rather than widening the existing MPL right-of-way. In addition, there was no attempt to assess the possible loss of prime agricultural land or family farms. Despite these shortcomings, it is clear that adding or replacing a pipeline along the existing route will have a significantly greater human impact because of the level of current development along that route. Following the existing pipeline for the full length of the route would not be a more reasonable and prudent alternative.

Given the findings by the ALJ regarding the greater economic, environmental, and safety impacts, and given the extent of our deference to the PUC within its area of expertise, the PUC's decision not to forward the existing pipeline route as a formal alternative for contested-case proceedings was supported by substantial evidence and was not arbitrary or capricious. The PUC and the ALJ considered the potential effects of use of the existing right of way and use of the proposed route, and found that the proposed route would have a less-significant impact.

## ***2. Certificate of Need requirements***

The PUC's decision on this issue was supported by substantial evidence and was not arbitrary and capricious. The governing regulations state that “[a] certificate of need shall be granted to the applicant 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 by parties or persons other than the applicant.” Minn. R. 7853.0130 (B) (2005). Relators argue that the CON proceeding essentially became an “uncontested default matter” after interested property owners were “intentionally excluded” from participating in the contested-case hearing. But the ALJ's findings

clearly demonstrate that she considered evidence presented at all of the public hearings, in addition to the evidence presented at the contested-case hearing, in reaching her determinations. Therefore, relators' contention that the contested-case hearing was essentially an uncontested-default matter is not persuasive.

Relators argue that the PUC's decision to grant the CON and the routing permit did not properly evaluate the need for the pipeline or other alternatives as required by the CON regulations. Relators have the burden of showing that the PUC's findings, conclusions or decision "are not supported by the evidence in the record, considered in its entirety." *In re Proposal by Lakedale Tel. Co.*, 561 N.W.2d 550, 554 (Minn. App. 1997). Unless there is manifest injustice, this court must refrain from substituting its judgment concerning inferences to be drawn from the evidence for that of the agency, even when it might appear that contrary inferences could be drawn. *Quinn Distrib. Co., Inc. v. Quast Transfer, Inc.*, 288 Minn. 442, 448, 181 N.W.2d 696, 700 (1970).

Relators contend that there was insufficient evidence for the PUC to find that the probable result of the denial of the CON would have an adverse effect on the future energy supply. The CON requirements prohibit the PUC from granting a CON unless "the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states." Minn. R. 7853.0130(A) (2005). Relators contend that MPL has shielded much of its need analysis from public disclosure by improperly designating it as "trade secrets." But requiring confidentiality of its alleged trade secrets

does not mean that MPL failed to provide evidence from which the PUC could determine that a failure to grant the CON would have a future adverse effect on Minnesota utilities.

Evidence from the Canadian Association of Petroleum Producers was presented, which indicated that growth in crude-oil production would increase in the future. The U.S. Department of Energy's Energy Information Administration (EIA) indicated that demand would increase. A Department witness testified that "The [EIA] publication is frequently used as a reference because the EIA is seen as an independent source." The ALJ found that Minnesota refineries asked MPL to expand the capacity of its system to allow for more crude oil to be shipped from Canada. The ALJ also found that the existing supply of crude oil that was transported from the Gulf Coast was subject to foreign crude-oil supply disruptions and unreliability due to weather conditions and changes in demand from other regions. The ALJ ultimately agreed with the Department's conclusion that the adequacy of Minnesota's future energy supply could be threatened if the CON was denied.

In support of their argument that MPL failed to prove the future adverse-effect requirement for a CON, relators draw attention to the ALJ's observations indicating her discomfort with the lack of comprehensive information. Relators highlight the ALJ's finding that "[n]either MPL nor the Department fully explored whether a combination of increased capacity on the Wood River Pipe Line and available capacity in the refineries in Superior, Wisconsin and North Dakota would be adequate to meet the demand for refined petroleum products." The ALJ also noted that "[b]ecause of the close connection

between Flint Hills Resources and MPL, a more careful analysis would have assured that the determination of need could be made with greater confidence.”

But ultimately, the ALJ and the PUC concluded that the evidence of potential future adverse effect was sufficient, and “[this court’s] judgment concerning inferences to be drawn from the evidence should not be substituted for that of the agency.” *Red Owl Stores, Inc. v. Comm’r of Agric.*, 310 N.W.2d 99, 104 (Minn. 1981). The ALJ stated at the evidentiary hearing that MPL’s reliance on the Flint Hills press release was “curious,” and requested that the Department further explain the basis for the determination of need. The Department witness then testified about the supporting information and the relationship of the Flint Hills press release to the determination of need, including the evidence from the EIA. The testimony at hearings, together with the previously submitted testimony of Department witnesses, sustains the PUC’s finding of need.

Relators next argue that the PUC’s decision to grant the CON was in error because there are more reasonable and prudent alternatives to the MinnCan project. Minn. R. 7853.0130(B) provides that the PUC analysis of the CON must consider whether parties or persons other than the applicant have demonstrated a more reasonable and prudent alternative by a preponderance of the evidence, considering:

- (1) the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;
- (2) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

(3) the effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and

(4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives.

MPL presented and rejected three alternatives to the MinnCan project: (1) expansion of existing facilities; (2) trucking; and (3) reliance on existing pipelines without expansion. Relators argue that the PUC failed to consider other alternatives, including whether other refineries could increase their capacity, whether other proposed pipelines bringing crude oil to the Midwest could satisfy increasing need, and whether MPC could expand its existing pipeline. But the ALJ did consider and reject each of those alternatives.

Increased capacity of other refineries was considered. A Department witness, Jeff Haase, testified about the possibility of increased capacity at other refineries meeting the demand. Haase concluded that, currently, facilities in other states did not have plans for expansion that would increase the crude-oil supply in Minnesota. To the extent that the ALJ concluded that the Department failed to consider refineries in other states, the ALJ was in error.

Relators also contend that MPL failed to present and the PUC failed to consider expansion of existing facilities, alternative modes of transportation, or construction of a different pipeline. But the record indicates that MPL presented these alternatives and they were rejected. The ALJ considered the evidence presented regarding expansion of the existing facilities and determined that this alternative was not more reasonable and

prudent than the proposed pipeline. The ALJ's findings also reflect that the Department agreed with MPL that rail transportation was not a reasonable and prudent alternative for crude-oil transport, and no evidence was presented to the contrary. Relators further argue that the PUC should have considered other transport options. But no person or party presented any such options; therefore, the PUC's failure to consider options that were not presented does not constitute error.

Finally, relators argue that the PUC did not duly evaluate the option of constructing an alternative pipeline from St. Louis to the Twin Cities. But the record suggests that the alternative as proposed was reliance on existing pipelines, not the construction of an additional pipeline in that location. Because the construction of an alternative pipeline was not presented to the PUC, relators' argument that it failed to consider such alternative is without merit.

#### **D. Minnesota Environmental Policy Act**

Relators argue that the PUC's decision does not comply with the Minnesota Environmental Policy Act (MEPA). MEPA requires the PUC to conduct an environmental analysis before engaging in any major governmental action when that action creates "potential for significant environmental effects." Minn. Stat. § 116D.04, subd. 2a (2006). The Environmental Quality Board (EQB) "shall by rule identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an environmental impact statement in a more timely or more efficient manner to be utilized in lieu of an environmental impact statement." Minn. Stat. § 116D.04, subd. 4a (2006).

Pursuant to section 116D.04, subd. 4a, chapter 4415 (2005) of the Minnesota Rules contains the alternative form of environmental review for proposed pipelines. Minn. R. 4415.0145 requires that the applicant submit to the PUC with its application “an analysis of the potential human and environmental impacts that may be expected from pipeline right-of-way preparation and construction practices and operation and maintenance procedures.” These impacts include, but are not limited to, the impacts for which criteria are specified in Minn. R. 4415.0100.<sup>3</sup> *Id.*

The PUC found that the ALJ’s conclusions regarding the adequacy of the environmental assessment were “based on extensive findings of fact in the record,” and that the environmental assessment was consistent with the rules and the criteria under Minn. R. 4415.0100. We defer to the fact-finding process of an agency. *See Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 465 (Minn. 2002) (“*MCEA*”) (stating that we defer to agency’s expertise in interpreting and applying its own regulations).

Relators first argue that the PUC’s decision violates MEPA because it failed to consider the existing right of way. Relators’ arguments addressing whether substantial evidence supports the PUC’s rejection of formal consideration of the existing right of way were addressed above, and that discussion need not be repeated.

Relators next argue that the PUC failed to discuss mitigation in sufficient detail to ensure that the environmental consequences had been fairly evaluated. Minn. R.

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<sup>3</sup> Minn. R. 4415.0100 includes criteria such as human settlement, the existence and density of populated areas, natural areas, wildlife habitat, water and recreational lands, and land of historical, agricultural, and cultural significance.

4415.0100, subp. 3(H), requires, in part, that the PUC consider “the extent to which human or environmental effects are subject to mitigation by regulatory control.” A Responsible Government Unit (RGU) may consider mitigation measures as offsetting potential for significant environmental effects “if those measures are specific, targeted, and are certain to be able to mitigate the environmental effects.” *CARD*, 713 N.W.2d at 835. “There is a definite difference between an RGU review that approves a project with vague promises of future mitigation and an RGU review that has properly examined a project and determined that specific measures can be reasonably expected to deal with the identifiable problems the project may cause.” *Id.*

The proper approach to relators’ mitigation issue is explicitly identified in *MCEA*: whether there is relevant evidence in the record that “a reasonable mind might accept as adequate to support the conclusion that the [PUC] *did* consider, in sufficient detail, adequate mitigation to ensure that the environmental consequences have been fairly evaluated.” 644 N.W.2d at 466. Here, there is substantial evidence that the PUC adequately considered mitigation to ensure the fair evaluation of the environmental consequences of the MinnCan project. Specifically, the PUC found that routing-permit conditions reasonably minimized the human and environmental effects of the selected route, and the record does not demonstrate that the selected route was any less subject to regulatory control than the route segments not chosen.

Moreover, the ALJ and the PUC made compliance with MPL’s proposed mitigation plans and other government permits a condition of granting the routing permit, thereby exposing MPL to penalties or revocation of its routing permit if it fails to comply.

Therefore, although MPL bears the initial responsibility of mitigation, the PUC can still enforce mitigation measures through its permitting function. *See MCEA*, 644 N.W.2d at 467 (finding it irrelevant whether a regulatory authority is responsible for enforcing mitigation efforts when an agency can enforce mitigation through its permitting function).

Relators appear to argue, however, that reliance on future regulatory efforts is error, citing *Trout Unlimited, Inc. v. Minn. Dept. of Agric.*, 528 N.W.2d 903 (Minn. App. 1995), *review denied* (Minn. Apr. 27, 1995). Relators' reliance on this case is misplaced. *Trout Unlimited* held that reliance on future regulatory efforts *in lieu* of conducting an environmental assessment constituted error. 528 N.W.2d at 909. Relators' example of the Stormwater Pollution Prevention Plan as evidence of how the PUC inadequately addressed mitigation, in actuality presents a textbook mitigation finding because it identifies the potential problem (pollution from oil spills during construction) and then determines specific mitigation measure to address the potential problem (Stormwater Pollution Prevention Plan or equivalent that is reviewed and approved by the Minnesota Pollution Control Agency). *See CARD*, 713 N.W.2d at 835 (identifying proper method of mitigation as examining a project and determining the specific measures that can be reasonably expected to deal with the identifiable problems the project may cause).

Relators also argue that the PUC failed to adequately analyze the cumulative effects of the MinnCan project. Minn. R. 4415.0100, subp. 3(I.) (2005), requires the PUC to consider "the cumulative potential effects of related or anticipated future pipeline construction." The criterion aims to determine whether the project, which may not have

the potential to cause significant environmental effects in isolation, could have a significant effect when other planned or existing state projects are considered. *CARD*, 713 N.W.2d at 829. “[A] cumulative potential effects analysis is limited geographically to projects in the surrounding area that might reasonably be expected to affect the same natural resources . . . as the proposed project.” *Id.* at 830.

Unlike the record in *Trout Unlimited*, 528 N.W.2d at 908, in which the evidence indicated that future irrigation projects in the area were “planned or likely,” here, the evidence in the record indicates that neither MPL nor any other entity had plans to add another pipeline. Relators seem to argue that the PUC erred because it relied on MPL’s statement that it had no plans to expand. But the record contains no evidence that there are any related or anticipated projects in the same area that would contribute to the environmental effects. The PUC found that MPL had no plans to run a second pipeline in the future, and the evidence suggested that MPL could get greatly increased capacity (from the project design range of 60,000–165,000 barrels per day to 350,000 barrels per day) by adding additional pumping stations to the MinnCan pipeline. Relators fail to identify how any additional proof could be presented on the issue of cumulative effects other than MPL’s testimony that it has no plans for future pipeline addition. The PUC’s findings on cumulative effects were therefore not lacking.

Finally, relators argue that the PUC’s decision is unsupported by substantial evidence, and is thus arbitrary and capricious, because the PUC failed to take a “hard look” at the environmental consequences of the pipeline route. *See CARD*, 713 N.W.2d at 832 (stating that a reviewing court’s role when reviewing an agency decision “is to

determine whether the agency has taken a ‘hard look’ at the problems involved, and whether it has genuinely engaged in reasoned decision-making.” (quotation omitted)). Relators contend that the PUC failed to address public concerns that the PUC was relying solely on MPL’s environmental-assessment supplement (EAS) and the environmental analysis was not conducted by an independent entity. But Minn. R. 4415.0145 (2005) states that the *applicant*, not an independent entity, must submit the EAS. Furthermore, the ALJ found that “[n]o state agency ha[d] objected to the [EAS].” The Metropolitan Council submitted a letter to the Department stating that the EAS was “complete and accurate with respect to regional concerns,” and the Department of Commerce Energy Facility Permitting Staff determined that the EAS provided the required information. We therefore conclude that the PUC took the required “hard look” at the environmental consequences of proposed MinnCan project, and its decision to approve the CON and routing permit was supported by substantial evidence.

**Affirmed.**

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# Exhibit F

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE  
MINNESOTA PUBLIC UTILITIES COMMISSION**

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 Cap X 345-kV Transmission Projects

OAH Docket No. 15-2500-19350-2

PUC Docket No. CN-06-1115

**U-CAN RESPONSE TO ORDER TO SHOW CAUSE**

**I. INTRODUCTION AND BACKGROUND**

United Citizens Action Network (hereinafter “U-CAN”) has received the Order to Show Cause in the above-entitled matter and offers this response to that Order. As noted in the Order to Show Cause, United Citizens Action Network petitioned to intervene on December 17, 2007, and there were no objections. Minn. R. 1405.0900; 7820.0800. By the First Prehearing Order of January 3, 2008, U-CAN’s Petition to Intervene was granted, with no limitations. In that same order, there were two intervention deadlines established, one on April 15, 2008, if an Intervenor would be filing testimony, and the other deadline was June 27, 2008 (since extended to July 3, 2008), for those not filing testimony. By the Order of January 3, 2008, U-CAN is a full party in this proceeding with no limitations. The Order of January 3, 2008 assumed that not all intervenors would be filing testimony. U-CAN did not submit prefiled testimony. U-CAN has submitted a Prehearing Motion and has participated in the hearing through attendance and questioning of the state’s witness supporting the Environmental Report. U-CAN has not “failed to participate.” Further, there is no requirement in the rules for any specific level of participation, and there is no authority to revoke a party’s Intervention status, once granted, for failure to participate at some threshold level.

**II. RELEVANT INFORMATION U-CAN INTENDS TO OFFER**

As stated in its Petition for Intervention, U-CAN plans to offer the unique perspective of directly affected landowners opposing the project. No other Intervenor offers this perspective. Citizens Energy Task Force has supported conditions on the transmission lines, a position which acquiesces to the lines – this is very different from the position of U-CAN, which opposes the lines, a strong “NO-BUILD” position. Members of U-CAN had submitted relevant information through Comments in the Notice Plan formation and appearance before the PUC regarding the Notice Plan and Completeness of the CapX 2020 Application. Since the U-CAN Intervention Petition was submitted and Intervention was granted on January 3, 2008, U-CAN has submitted relevant information in the form of detailed and specific Comments for the Environmental Report Scoping and filed a Motion regarding Due Process Rights. U-CAN has attended two days of the CapX 2020 hearing, and submitted relevant information and questioned the state’s witness supporting the Environmental Report. U-CAN will submit relevant information from the affected landowner perspective going forward through submission of briefs, exceptions, and argument before the Commission.

### **III. ROLE U-CAN INTENDS TO PLAY IN EVALUATING THE EVIDENCE**

U-CAN will evaluate the evidence in this proceeding through submission of its Initial Brief, Reply Brief, Exceptions to the ALJ Recommendation, Argument before the PUC, and reserves the right of a post-Order Motion for Reconsideration and Appeal.

U-CAN is limited in resources because its members are engaged condemnation proceedings for the MinnCan pipeline -- an immediate and present case of “corridor fatigue.” During the time of the CapX 2020 hearing in July and August, MinnCan dug up U-CAN members’ property and put in a pipeline. That process is now essentially complete, and now U-CAN members have “only” the condemnation action to address. The MinnCan pipeline proceeding, construction and condemnation has been daunting, and U-CAN members have hired

counsel, drained their accounts, been in the District Court condemnation proceeding and the Appellate Court regarding the PUC decision. U-CAN is not represented by counsel, and representation is not required. Minn. R. 1405.1400. Because of the financial drain of the MinnCan proceeding, U-CAN unable to hire counsel in this second proceeding, unable to hire expert witnesses and unable to sponsor testimony, unable to add to the mountain of evidence in the CapX 2020 proceeding – Minnesota does not offer Intervenor Compensation. However, U-CAN has not failed to participate. Prior to submission of its Intervention Petition, U-CAN members participated in the Notice Plan formation in Comments and appearance before the PUC. Since the U-CAN Intervention Petition was submitted and Intervention was granted on January 3, 2008, U-CAN has filed detailed and specific Comments for the Environmental Report Scoping and filed a Motion regarding Due Process Rights. U-CAN has attended two days of the CapX 2020 hearing, and has questioned the state’s witness supporting the Environmental Report. U-CAN’s continued participation through submission of briefs and argument, evaluating the evidence through this manner, is within U-CAN’s ability and within U-CAN’s plan.

As potentially directly affected landowners, U-CAN must be allowed to continue to represent its interests in the CapX 2020 docket through submission of briefs and argument.

#### **IV. U-CAN IS A FULL PARTY AND MUST REMAIN A FULL PARTY**

United Citizens Action Network has been granted full party status in the CapX 2020 Certificate of Need proceeding. U-CAN petitioned to intervene on December 17, 2007, and there were no objections. Minn. R. 1405.0900; 7820.0800. By the First Prehearing Order of January 3, 2008, U-CAN’s Petition to Intervene was granted, with no limitations. In that same order, there were two Intervention Deadlines established, one on April 15, 2008, if an Intervenor would be filing testimony, and the other June 27, 2008 (since extended to July 3, 2008), for those not filing testimony. By the Order of January 3, 2008, U-CAN is a full party in this proceeding.

Most importantly, in the rule setting out rights and responsibilities of intervenors in power plant proceedings, there is no requirement that a party participate at any given level to retain party status:

Responsibilities of intervenors.

Once a petition to intervene has been granted, an intervenor shall have all of the rights and responsibilities of a party.

Minn. R. 1405.0900, Subp. 4. There is nothing requiring a specific level of participation. In the more general administrative rules, the rules clearly set forth rights of the parties and :

Rights and responsibilities of parties. Generally.

All parties shall have the right to present evidence, rebuttal testimony, and argument with respect to the issues, and to cross-examine witnesses.

Minn. R. 1400.7100, Subp. 1.

United Citizens Action Network has been granted full party status in the CapX 2020 Certificate of Need proceeding. There is no basis for revocation of U-CAN's party status.

## **VI. U-CAN'S INTERVENTION PRESERVES ITS RIGHT OF APPEAL**

U-CAN has been ordered to address several issues in the Order to Show Cause. One important issue not raised is the preservation of U-CAN's right to appeal. In rejection of the Petition to Intervene of members of U-CAN through MPIRG in the MinnCan case, it was noted that the Petition did not address "the issue of whether intervention was necessary to protect their right to appeal." Order Denying Motion to Intervene, p. 6. U-CAN makes that argument here.

Minn. Stat. §§ 14. 63; see also Minn. Stat. §116B.09. U-CAN specifically raised preservation of its right of appeal in its CapX 2020 Petition for Intervention:

The Administrative Law Judge assigned to this docket is the same Administrative Law Judge who denied landowners the opportunity to participate in the certificate of need evidentiary hearings in the MinnCan proceeding, because the landowners had not intervened as formal parties.

U-CAN Petition for Intervention, p. 2. December 17, 2008. As stated previously, there were no objections to U-CAN's Intervention and full party status, without limitations, was ordered on January 3, 2008.

In its MinnCan appeal, where members of U-CAN claimed "that they were denied due process because they were not permitted to participate in the Certificate of Need contested-case hearing," the court dismissed the claim, stating that "Relators, as interested landowners, could have intervened, become parties to the proceeding, and participated in the contested-case hearing, but did not do so." In the Matter of the Application of Minnesota Pipe Line Company for a Certificate of Need for a Crude Oil Pipeline, Minn. App. Ct. A07-1318.<sup>1</sup> { June 10, 2008} {Attached} Although the law is arguably unclear "if party status is required to appeal a final decision of the MPUC" it is imperative that U-CAN retain its right of appeal and maintain its Intervention status that could affect its right of appeal

Although the law is arguably unclear "if party status is required to appeal a final decision of the MPUC" it is imperative that U-CAN retain its right of appeal and maintain its Intervention status that could affect its right of appeal.

For all of the foregoing reasons, U-CAN respectfully requests that it retain full party status in the CapX 2020 proceeding.

Dated: August 16, 2008

  
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Russell Martin, President  
United Citizens Action Network  
11600 East 270<sup>th</sup> Street  
Elko, MN 55020  
952-461-3352

<sup>1</sup> Available online at: <http://www.lawlibrary.state.mn.us/archive/ctapun/0806/opa071318-0610.pdf>

# Exhibit G

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE  
MINNESOTA PUBLIC UTILITIES COMMISSION**

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 Cap X 345-kV Transmission Projects

OAH Docket No. 15-2500-19350-2

PUC Docket No. CN-06-1115

**AFFIDAVIT OF RUSSELL AND JUDY MARTIN**

Russell and Judy Martin, after being duly sworn on oath, state and depose as follows:

1. Russell Martin is the President of United Citizens Action Network, and Judy Martin is a Vice President of United Citizens Action Network.
2. United Citizens Action Network is an Intervenor with full party status in the above-entitled proceeding

**RELEVANT INFORMATION U-CAN INTENDS TO OFFER**

3. U-CAN's participation in this docket is necessary because we have a perspective, as affected landowners opposed to this line, that is not represented by any other party.
4. We also have a right of participation as affected landowners and have intervened to exercise this right.
5. U-CAN has already presented substantial information regarding environmental and land-based issues for consideration in the Environmental Report.
6. U-CAN intends to present, in its briefs, arguments, exceptions and post-hearing motions, if any, the affected landowners' perspective, including arguments regarding the costs to those directly affected by CapX 2020 transmission.
7. Those costs included disruption of daily life, physical damage to property, emotional damage and stress to the landowners.
8. U-CAN will also address economic costs to the community and individual, from decreased property values to questionable future marketability.
9. Other costs to be addressed include environmental damage, including damage to land for foundations, restrictions on agricultural and residential use, visual impacts in

communities and in protected natural resources, river corridor viewsheds, interference with migratory pathways, and fragmentation of forest habitat.

### **ROLE U-CAN INTENDS TO PLAY IN EVALUATING THE EVIDENCE**

10. As above, U-CAN will play an active role in evaluating the evidence, through its briefs, arguments, and exceptions to the Recommendation from the directly affected landowners perspective. No other party is taking this approach. We must be a part of this docket so that this view may be heard.

### **U-CAN MUST REMAIN A FULL PARTY**

11. U-CAN members have had a difficult time participating in the CapX 2020 hearing. We have been stretched to the edge of our endurance by the MinnCan pipeline which is now on our property. Our trees were cut down in January, and they started digging in June, installed it in July, and our property is now a scarred right of way. The culverts and drain-tile have been damaged, wetlands have been destroyed, the creek in the Jordan slew has been displaced and rerouted, spilling beyond its banks and flooding farmland. The pipeline company has ignored the Agricultural Mitigation Plan, and we have had to spend significant time calling and writing the company, the Army Corps of Engineers, the Soil and Water Resources Board and file multiple complaints with the PUC (see PUC docket 05-2003)..
12. Meanwhile, throughout this, we have been in the midst of a “quick take” and condemnation proceedings and an appeal of the pipeline decision. The Appellate Order is attached. The condemnation proceedings are stalled, but we’ve had to retain attorney, separate land and tree appraisers, and at this point there is no resolution in sight. It has been overwhelming.
13. Because of the pipeline struggles, the unfortunate reality is that we have not been able to devote much time to CapX 2020.
14. Because we are potentially affected landowners, we are doing the best we can, having filed Comments on the Notice Plan, significant Comments for the Scoping of the Environment Report, and have now attended two days of the hearing and have questioned the Dept. of Commerce’s witness supporting the Environmental Report.
15. We have been granted full party status and deserve to retain that status. We will be submitting briefs and exceptions, and we’ll make best efforts to be present and participate at the remaining days of the hearing in September, now that the pipeline is in.

### **U-CAN MUST PRESERVE ITS RIGHT OF APPEAL**

16. Both the ALJ’s rejection of members of U-CAN’s Petition for Intervention in the MinnCan case and the Appellate Court’s Opinion in that case, raise the issue of the

the importance of Intervention to preserve the right of appeal. We want to preserve this right, and this right should not be taken from us.

17. The members of U-CAN care and are deeply concerned about the CapX 2020 transmission proposal, and as directly affected landowners, want to be present and participate. Because of the magnitude of the MinnCan project and its impacts on us, we are overwhelmed and are struggling to keep up with CapX 2020. There are limits to what we can humanly do, and we are doing our best.

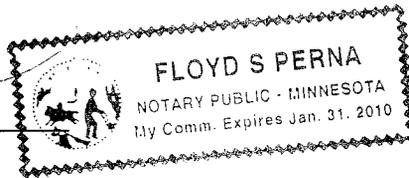
Further your affiant sayeth naught.

Dated: August 15, 2008

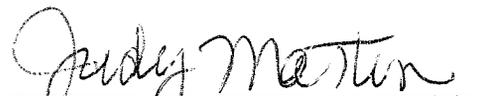
  
Russell Martin, President  
United Citizens Action Network

Signed and sworn to before me this  
15 day of August, 2008.

  
Notary Public



Dated: August 15, 2008

  
Judy Martin, Vice President  
United Citizens Action Network

Signed and sworn to before me this  
15 day of August, 2008.

  
Notary Public

