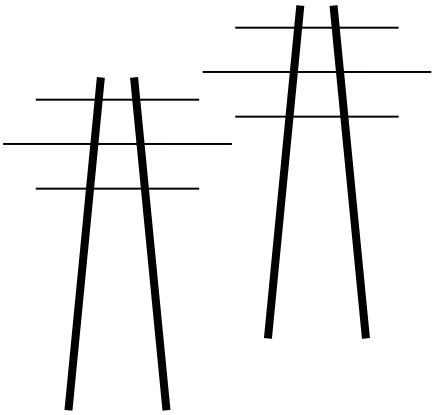
Legalectric, Inc.
Carol Overland **Attorney at Law, MN #254617**
Energy Consultant—Transmission, Power Plants, Nuclear Waste
overland@legalectric.org

1110 West Avenue
Red Wing, Minnesota 55066
612.227.8638



January 2, 2024

Christa Moseng
Administrative Law Judge
c/o Consumer Affairs Office
Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101

via eDockets and consumer.puc@state.mn

RE: **3rd Comment – PPSA Annual Hearing**
"Streamlining" – Permitting Reform "Stakeholders" Report

Dear Mr./Ms./Mx. Consumer Affairs, and ALJ Moseng:

Late this afternoon, I received notice from Commission counsel that the "Permitting Reform Stakeholder Report" regarding changes to the Power Plant Siting Act and Certificate of Need Statutes, rules, guidance, and practice, has been posted today on the Commission's notice for tomorrow's meeting. I'm filing that Report separately in the PPSA Docket, and sending to the Public Utilities Commission as there is no eDocket – this effort is NOT public, there is no Comment period, and this is the first opportunity to see the machinations.

This "Stakeholder Report" references the Power Plant Siting Act Annual Hearing:

> The end result was a group of 31 stakeholders participating in the process. A list of participating stakeholders is attached as *Exhibit A* to this Report. In addition to the feedback provided by this group, the Commission convenes an annual Power Plant Siting Act (PPSA) hearing, most recently on December 20th, 2023, to provide an ongoing opportunity for public input on the Commission's permitting processes.

This is a most odd statement, as none of the "stakeholders" participated in the PPSA Annual Hearing making Comments, and Kristen Eide-Tollefson and myself were the only members of the public present at that hearing. With the set up in the hearing room, and that the Hearing was not webcast, nor recorded (or at least there is no recording posted), it's impossible to tell who may have been lurking.

I'm particularly concerned as the Public Utilities Commission and the Department of Commerce have lost most of their institutional memory, important because "streamlining" has been ham-handedly attempted in the past, and thankfully rebuffed. Now, here we go again.

The purpose of the Power Plant Siting Act Annual Hearing is stated in statute, minorly updated in the 2023 legislative session:

216E.07 ANNUAL HEARING.

> *The commission shall hold an annual public hearing at a time and place prescribed by rule in order to afford interested persons an opportunity to be heard regarding any matters relating to the siting and routing of large electric power facilities. At the meeting, the commission shall advise the public of the permits issued by the commission in the past year. The commission shall provide at least ten days but no more than 45 days' notice of the annual meeting by mailing or serving electronically, as provided in section 216.17, a notice to those persons who have requested notice and by publication in the EQB Monitor and the commission's weekly calendar.*

One would think that if there are issues with the workings of the PPSA, they'd weigh in at the Power Plant Siting Act Annual Hearing. And one would think that if there is this ongoing "Permitting Reform Stakeholder" group meeting regarding changes to the PPSA and Certificate of Need that they would report on the doings of that group at the PPSA hearing and get it in the record. Well, as my ex used to say, "Goes to show you don't think."

There were no "stakeholders" present to disclose their concerns, and most disturbing was that the Commission's point person for this "Permitting Reform Stakeholder Group" effort, Bret Eknes, was present and did not report on this groups activities, nor did Commerce's Louise Miltich, Pete Wyckoff, or Ray Kirsch utter a peep. Suffice it to say, I was incensed and disheartened to learn there was yet another effort afoot to gut the PPSA.

As one working with and challenging projects applied for under the PPSA over the last 28 years, participating in environmental review; interventions; presenting witnesses and cross addressing DOT road planning and policy of accommodation; eagle and bat impacts and protection plans; line loss and powerflows; noise of wind and gas turbines; human and wildlife impacts; magnetic fields; impacts to specific landowners' land and farms; distributed generation and small wind workgroups; Minn. R. 1405, 4400, 7849, and 7850 rulemakings; successfully securing the first two landowner buyouts due to wind noise (and watching Commerce privately change modeling inputs to underrepresent predicted noise levels); Advisory Task Forces and many more petitions for Advisory Task Forces; NSP's nuclear waste "alternative site" task force; learning the failings of coal gasification, efficiency losses of carbon capture and pipelines, including parasitic load; then there's the many Power Plant Siting Act Annual Hearings; that said, I find it hard to imagine any "stakeholder" with comparable experience dealing with the Power Plant Siting Act challenging projects over the last 28 years. There isn't one "stakeholder" with comparable experience challenging projects proposed under the PPSA in this list of 43 individuals and 31 entities… instead they're representing utilities/developers or supporting utility projects, most being paid to do so. Where's the public interest?

This "Permitting Reform" effort is nothing more than a concerted effort to:

1) gut the environmental protections and public participation opportunities

provided by the Power Plant Siting Act; and

2) to further skew the Commission's review of "need" that's being subverted through conflation of a Commission "need" review and determination with "MISO approval."

This "Permitting Reform" effort also ignores, and/or dismisses, the **YEARS** of work done by the Rulemaking advisory Group for Minn. R. ch. 7849 (Certificate of Need) and 7850 (PPSA), which addressed many of the timing and effort issues complained of, and which the Commission dismissed out of hand. As with the PPSA annual hearings over the years, very few of the "stakeholders" listed in Exhibit A bothered to show up for that rulemaking. Now they are circumventing established process. If they had concerns, if they have concerns, where are they when there's legitimate work to do?

An important point is that these recommendations proffered specifically gut environmental review and protections. In this group of "stakeholders" there is no agency focused on the "environment" generally. Where is the MPCA and the EQB? It was the MPCA that brought the 800MVA limitation for the Arrowhead Project substation to the EQB which passed, and the MPCA performed modeling disclosing the emissions of coal gasification and extreme limitations of "carbon capture." It was the EQB that prevented NSP from siting nuclear waste in Florence Township, though it was also the EQB which granted Minnesota Power an exemption from permitting for the Arrowhead Transmission Project. Where are these agencies?

THE POWER PLANT SITING ACT IS "ENVIRONMENTAL LAW."

> *In 1973, the legislature enacted three other pieces of environmental legislation to complement MERA: (1) Section 116C.01, which created the MEQC to provide the interagency interaction necessary for the solution of complex environmental problems; (2) MEPA, c. 116D, which required all state agencies to consider environmental factors before making decisions that potentially have significant environmental effects; and (3) the PPSA, §§ 116C.51 to 116C.69, which, according to § 116C.55, subd. 1, would ensure the "sit[ing of] large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources."*

People for Environmental v. Minn. Environmental, 266 N.W.2d 858, 865 (Minn. 1978).

> *Although the focus of each of these statutes is slightly different, together they are part of a coherent legislative policy, one of whose aims is to harmonize the need for electric power with the equally important goal of environmental protection. Recognizing that the MEQC constituted the best pool of environmentally skilled personnel, the legislature chose it to administer the PPSA. To ensure that the MEQC would not sacrifice environmental protection in its attempt to site power plants and HVTLs as efficiently as possible, it required that "to the fullest extent practicable the policies, regulations and public laws of the state shall be interpreted and administered in accordance with the policies set forth in*

> *[MEPA]." Section 116D.03. And, if the MEQC failed to comply with the mandates of MEPA and the PPSA, MERA existed to permit private citizens to bring a civil action to compel the agency to consider environmental factors. Recently, in No Power Line, Inc. v. Minnesota EQC, Minn., 262 N.W.2d 312, 323 (1977), we decided that the legislature did not intend the PPSA to preempt MEPA and make it superfluous. Today we reach a similar conclusion regarding MERA. Rather than intending the PPSA to supersede MERA, the legislature passed all these statutes to ensure that administrative agencies would discharge fully their environmental responsibilities.*

Id.

And then there's the "pesky public." The Commission has failed to address the concerns of the Office of Legislative Auditor in its recommendation to encourage public participation, as required by statute.[1]

> 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.

Minn. Stat. §216E.08, Subd. 2.

++

The "stakeholders" recommendations are:

1. Direct Staff to develop plans for implementing the first four ideas in the Matrix as soon as practicable;

2. Refer the Report to the Minnesota Legislature to consider all the ideas requiring legislative action; and

3. Recommend that the Legislature enact ideas 5-12 in the Idea Matrix as a set of core changes that have been well-developed by the Stakeholder group and would, in combination, significantly improve the efficiency and timeliness of the permitting process for renewable generation and transmission projects without compromising public input and community involvement or impairing the Commission's ability to make informed decisions. (*This recommendation to the Legislature would not imply a negative view of the remaining ideas discussed by the stakeholder group*).

Starting at the beginning, with the first four recommendations:

[1] See OLA Report on PUC July 27th, 2020, online at https://legalectric.org/weblog/20287/

	IDEA	RESPONSIBLE AUTHORITY	EXPLANATION
	GENERAL MODIFICATIONS		
1.	Replace Minnesota Public Utilities Commission (PUC or Commission) completeness order with staff check-off certifying completeness.	Administrative/ PUC	Minn. Stat. § 216E.03, subd. 3 requires the PUC to "determine whether an application is complete and advise the applicant of any deficiencies within ten days." The statute does not expressly require a Commission Order. This proposal would delegate the responsibility for determining an application is complete to the Executive Secretary. This change is likely to reduce the permitting timeline by **30-60 days**.
2.	Require early coordination meetings with relevant agencies as check-off item for application.	Administrative/ PUC	When permit applicants are drafting permit applications, they and relevant agencies, local governments, and Tribal Nations should be coordinating to avoid potential delays. This change implements a best practice that creates better applications, identifies issues early, and gives participants the opportunity to resolve them early (or before) the permitting process.
3.	Establish comment periods with deadlines for state agencies (prior to public hearing).	Administrative/ PUC	This proposal would add a requirement for relevant state agencies to submit comments on a permitting proposal early in the process, prior to the public hearing. Examples (not comprehensive) of affected agencies would be: DNR, MDOT, PCA, and MDA.
4.	Allow pre-construction compliance fillings work to begin before final written PUC Order granting permit.	Administrative - PUC Guidance to EERA	Current practices have PUC and Department of Commerce Energy Environmental Review & Analysis (EERA) staff reviewing pre-construction compliance filings after the written order is issued. This proposal would allow the pre-construction compliance filings to begin prior to the written order. This change is expected to reduce the time between final written order and the start of construction by **30-60** days.

In my experience, #2 & 3 are already being done.

1. Most delays are caused by failure of the applicants to provide information. It would be wise to adopt the Wisconsin system of intense data requests after notice of pending application and before acceptance when the clock starts running. See #34.
2. Already being done.
3. "
4. ? Most compliance filing requirements are things that should/could be included with application, i.e., Avian and Bat Protection Plan.
5. Move EERA staff & Responsibilities from Commerce to PUC.

No, that's going from bad to worse. Once more with feeling:

THE POWER PLANT SITING ACT IS "ENVIRONMENTAL LAW."

It's bad enough that the PPSA was taken from the Environmental Quality Board and given to the Department of Commerce, an agency with a very different charge. That the staff moved from the EQB office to the Department of Commerce office does nothing to ally the fact of "environmental review" under a "Commerce" umbrella. If any movement should occur, the PPSA environmental review duties should go back under the Environmental Quality Board.

6. Applicant's prep of EAs would eliminate scoping. NO!
7. Replace CATFs? First, Commission too rarely authorizes CATFs, and this is an important part of public process. Minn. Stat. §216E.08, Subd. 1. Further, the Commission has perverted the process by limiting participation to "local governments," which is NOT the intent of the statute. Worse, I've observed a Task Force facilitator fail to answer questions, specifically how the DOT decides whether and how a transmission line can be

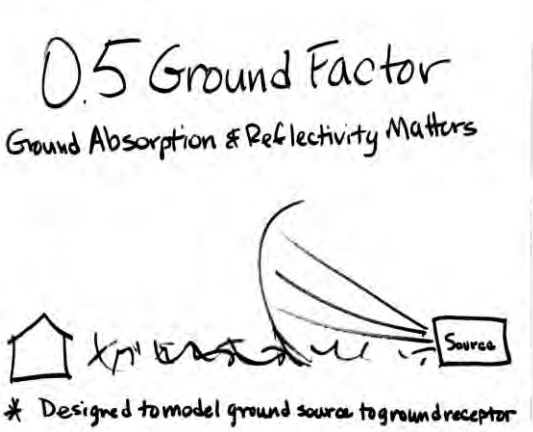
sited near a road and facilitator failed to inform members of the DOT Policy of Accommodation, a copy of which I had. Ask Xcel's Matt Langan how that went. A township Supervisor who went to a Task Force meeting was not allowed to participate! Task Forces are important because they have the on the ground information, for example, in CapX, the applicant did not know of the Stanton airport, or of the archeological dig site along Hwy. 56!

8. Anything to do with wind is premature, because there are no wind SITING rules. We were promised that there would be a rulemaking after Minn. R. ch. 7849 & 7850, and you can see how that worked. Still waiting… in the meantime, the Commission has been improperly using the SMALL wind guidelines for siting LARGE wind.
9. "Gen-Tie lines? NO. Do not expand "alternative review process."
10. Limiting contested cases this way works to eliminate public participation, and limits participation to the funded intervenors, more than likely paid to help grease the skids for whatever project, as we saw in CapX 2020.
11. Eliminate CoN for all wind and solar? Why? The distributed generation requirement, alternatives analysis, and no build are important steps.
12. Eliminate CoN requirement for gen-tie lines if associated with renewable generation… NO. Think of the Xcel desired, wanted, but not NEEDED "gen-tie line" from Lyon County to Sherco. Xcel needs to prove up need.
13. ELIMINATE CON REQUIREMENTS FOR OTHER TYPES OF HVTL PROJECTS (e.g. projects approved by MISO for regional cost allocation.) NO! MISO IS A MARKETING ENTITY, AN ENERGY MARKET, IT IS NOT A REGULATOR. MISO HAS NO CONSIDERATION OF THE PUBLIC INTERST. MISO HAS NO CONSIDERATION OF THE ENVIRONMENT. MISO'S BASIS FOR APPROVAL DOES NOT INTERSECT OR OVERLAP THE CERTIFICATE OF NEED CRITERIA. "The thinking behind this idea is that the need will have already been established in the MISO process." JUST WOW, what a gross misinterpretation of the CoN process. Applicants have relied on MISO as demonstration of need, and the Commission has relied too heavily on that "MISO approval" when it should not. The project proponent is to prove up need, and need for a project is not want, desire, etc. Wanting to preserve lucrative interconnection rights is not NEED. NO! This is the worst of all of the notions, though there are a few others close. NO!
14. Apply $50k application fee – I'm guessing the application fee does not compensate the state for time and expense. What is the justification for this? If anything, applicants should be charged much more.
15. Remove "or that transmits electric power generated by means of a nonrenewable energy source." Analysis of energy demand is crucial, as if there is no demand, no need, why build it? As of most recent Xcel SEC 10-K filing, Xcel is selling 1,500MW of excess capacity into the market. 4,565MW of coal generation will be shut down, freeing up 4,565MW of transmission capacity, transmission that does not need to be built. Xcel's 1,500 excess generation, plus 4,565MW of coal capacity now available, means that less generation and less transmission needs to be built.
16. Utilities and developers are building, building, building on the backs of farmers and landowners, who are not being adequately compensation for loss of their land and loss of their way of life. Also, this fails to take int?o account very real environmental issues, i.e.,

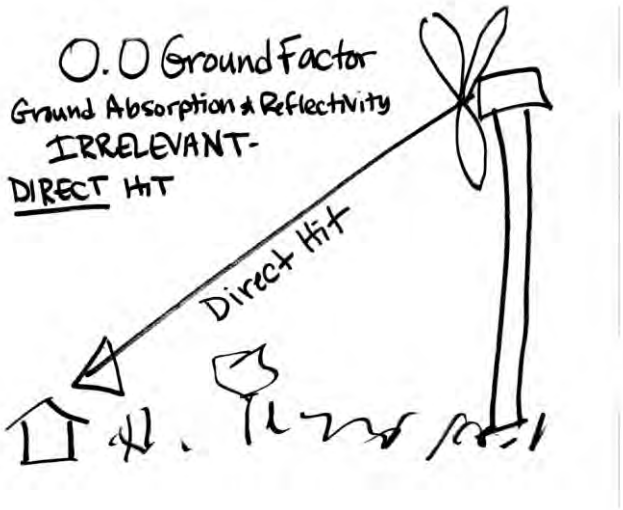
erosion on solar project land, where project needs to build unanticipated drainage ponds, etc.

17. Why create limitation or exemption. Remember the policy of non-proliferation?
18. Modify 3x5 rule. How about instead require developers to buy the land, and then cram in as many turbines as they can?
19. Modify the tall tower permit process. ??? DOT does get notice, what's the issue? Also, FAA approvals take more than 60 days. Applicants can and should be working with all state agencies, see 2 & 3 above, but they have not always paid attention. Recall applicants failure to address DOT concerns in Cannon Falls area? Remember DOT comments at the Hog Wild saloon about the rest area, comments which Commerce did not want to enter separately into the record?
20. 4410 EAW petition exemption for PUC. NO! How dare anyone suggest this. Are you aware that there is NO environmental review required for wind turbines? And the CO2 pipeline EAW requests are good examples of necessary environmental review. NO! NO! NO! NO! NO! (yes, I am shouting)
21. Replace current HVTL routing process with a more adjudicative process focused on developer proposal (up or down vote from Commission on single proposal). JUST NO!
22. Eliminate alternative routes? NO! And recall, there is not supposed to be a "preferred option," or so we were told at recent scoping meetings. Utilities have often come up with the most hare-brained ideas for routing, and with no, or limited, knowledge, there's no excuse for limiting proposed routes like this. Also, note that an "alternate" route for CapX 2020 is now part of the Wilmarth-Mississippi line proposed. Funny how that works.
23. Replace Agrcultural Mitigation Plan with related permit standard? How and what, where situations are so different. Some similar mitigation, but a standard? And if the Commission won't do rules, how will this standard come about?
24. Limit EIS to cover issues not included in the permit application and those that need further review? WHAT?!?! This presumes that utilities have provided all relevant information, which is rarely the case. An example is in the EMF projections for transmission, where the magnetic fields are so much lower on paper than in realistic modeling. It is NOT rocket science, it can be modeled in a simple spreadsheet, yet as with wind noise, they grossly underestimate/understate magnetic fields, putting those near the line in harms way.
25. Add more clarity and certainty on substance/expectations and timelines. DOH, RULES! Start promulgation solar rules, but do the wind siting rules first.
26. More clarity ad certainty on process timelines. Again, most delays are due to failure of applicant to provide necessary information. Work on pre-application process, as is done in WI, so that the information is there.
27. Guidance documents – yes, PROVIDE MORE TRANSPARENCY INTO THE DEVELOPMENT OF GUIDANCE DOCUMENTS, i.e., wind noise modeling guidance developed BEHIND CLOSED DOORS, resulting in garbage in/garbage out modeling, with more noise complaints, and forcing people to live with excessive noise.
28. Earlier prep of downstream permit applications. Agencies are already involved. I would imagine that delays occur when all the info is not available.

29. For smaller project, like minor alterations, create exemptions. ?Isn't this already been done? I believe that every new application that's come through my inbox has a list of exemptions, and the Commission only rarely does not grant them.
30. Standardization of all document types. Examples? I have no clue what this means and how it's a problem.
31. Staff consistency across agencies for project types. This is difficult, as we've lost so much institutional history, memories, of why things are done a certain way, and why other things can be a problem, and what to do about it. Examples would be helpful.
32. Rolling process – well DOH! WE NEED RULES UPDATED REGULARLY, The 2005 7849 and 7850 haven't been done, Commission is falling down on the job. Meanwhile, there still are no wind siting rules. Get on it, and stop abdicating!
33. Aligning statutory or administrative expectations with reality. The MPCA has a 50 dB noise limit, and complaint is that it's 47 db in practice. That's because the MPCA noise rule, Minn. R. 7030.0040, was not designed for wind. It's an industrial noise standard for facilities on the GROUND.



And this is also why ground factor is so important, and why noise modeling is so important, why the appropriate ground factor of 0.0 used for wind, because it's a direct hit from an elevated source. It is irresponsible to use a ground factor of 0.5 or even 0.7 for noise modeling. Utterly irresponsible, because you'll be inflicting much higher noise levels on those living nearby.



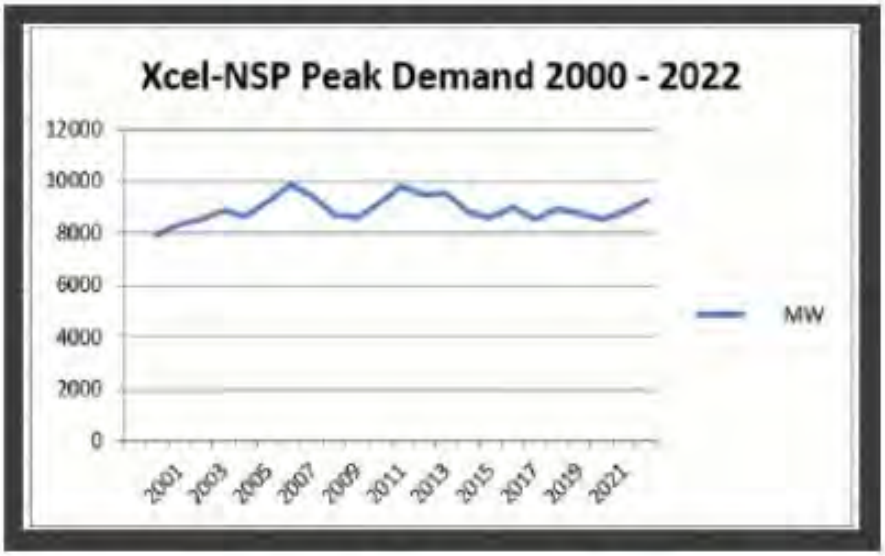
This is a self-inflicted problem. Wind rulemaking is overdue. Wind noise rules designed for WIND are long overdue. Just get to it!

34. Revise statutory timelines – again, delays are usually caused by applicants failure to provide needed information. Do this in pre-application process, as in Wisconsin. ”Wisconsin” is used as an example here, without acknowledgement of all the work and time that goes into the pre-application process in Wisconsin. Check it out.
35. Have Governor align state agencies around implementation of CFS/RES. How about starting with a serious distributed generation initiative of rooftop solar, simple solar heaters, white roof requirements, and fill in for the 4,565 MW of coal to be shut down, and stop Xcel’s 1,500MW of excess capacity export. There’s 4,565 and 1,500, so 7,000MW to play with there. Don’t forget peak demand is steady, and will probably be dropping. Read the NERC report and don’t panic. Just get to work and put generation where the load is. Don’t reward Xcel for proposing transmission solutions (because ROI is better) for distribution problems, a la Hiawatha and Hollydale. Distributed generation.

Here's Xcel’s peak demand. Remember the CapX 2020 peak demand projections, and that big transmission buildout was based on a 2.49% annual increase! **2.49%?** Not even close.

2020 12,885MW? Xcel’s SEC 10-K filings, 2000-2022. Demand essentially flat.

Xcel P	MW
2000	7,936
2001	8,344
2002	8,529
2003	8,868
2004	8,665
2005	9,212
2006	9,859
2007	9,427
2008	8,697
2009	8,615
2010	9,131
2011	9,792
2012	9,475
2013	9,524
2014	8,848
2015	8,621
2016	9,002
2017	8,546
2018	8,927
2019	8,774
2020	8,571
2021	8,837
2022	9,245

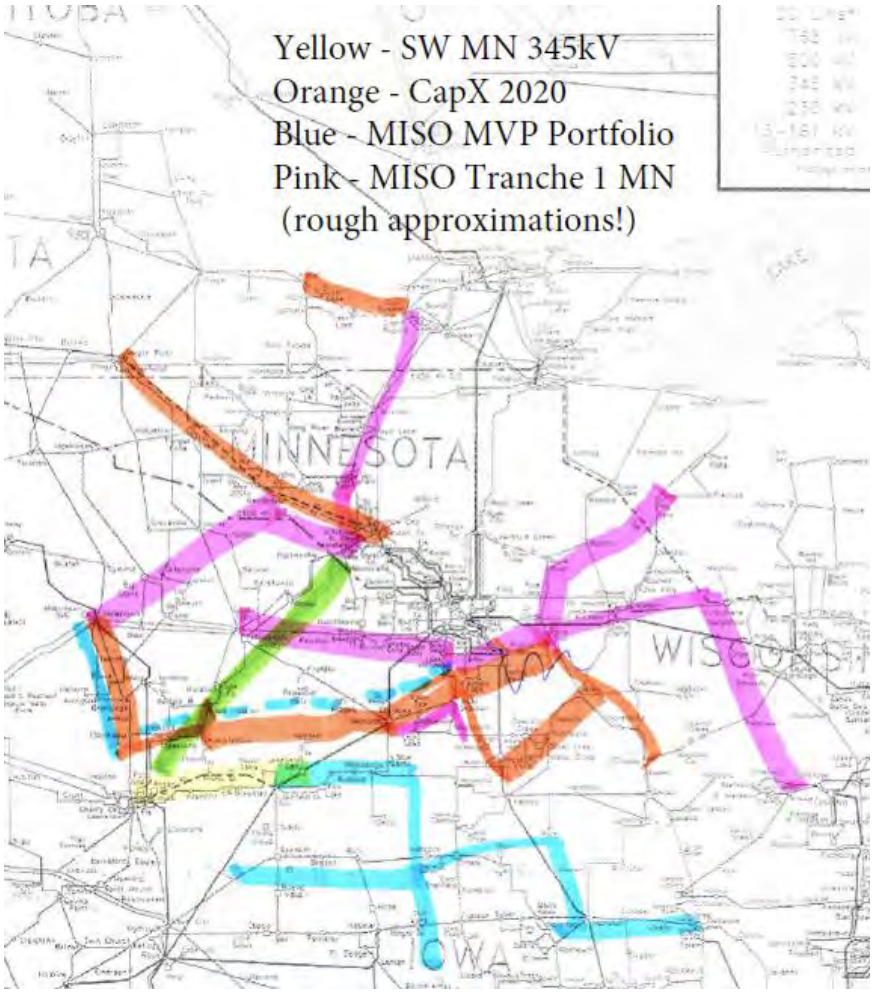


Xcel has 1,500 MW surplus to sell into the market: 2022 SEC 10K, p. 35:

MISO Capacity Credits

The NSP System offered 1,500 MW of excess capacity into the MISO planning resource auction for June 2022 through May 2023. Due to a projected overall capacity shortfall in the MISO region, the 1,500 MWs offered cleared the auction at maximum pricing, generating revenues of approximately $90 million in 2022, with approximately $60 million expected in 2023. These amounts will primarily be used to mitigate customer rate increases or returned through earnings sharing or other mechanisms.

But they apply, the Commission's never seen a transmission line it doesn't like, and are now working on "What can we do to speed this up for you?" and from regulators no less.



How much transmission do they NEED, and how much should be built on the backs of landowners and ratepayers to satisfy their marketing wants and desires?

What are you regulators going to do? Will you do your job and regulate? Will you start the overdue promulgating of rules? Will you pull out the PR-12-1246 rules and see how much of "Recommendations 1-35" are covered there? What will you do to assure any changes, that what you're lobbying for, that what you're deciding is in the public interest? And the ratepayer interest?

Very truly yours,

Carol A. Overland

Carol A. Overland
Attorney at Law