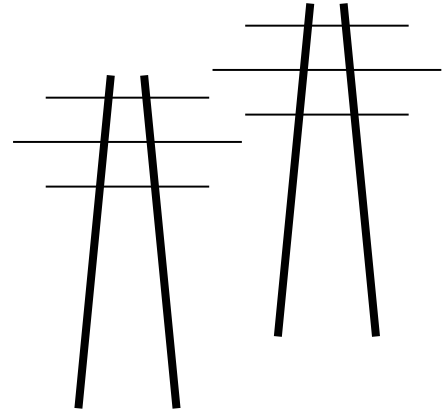


# Legalelectric, Inc.

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

1110 West Avenue  
Red Wing, Minnesota 55066  
612.227.8638



April 17, 2024

Hon. Suzanne Todnem  
Administrative Law Judge  
Office of Administrative Hearings  
P.O. Box 64620  
St. Paul, N 55164-0620

RE: NoCapX 2020 Scheduling Comments and Considerations  
Lyon Co. – Sherco Radial Transmission Line  
OAH Docket 23-2500-3978  
PUC Dockets E002/CN-22-131; E002/TL-22-132

Dear Judge Todnem:

On behalf of NoCapX 2020, I offer these comments after receipt today of the Department of Commerce proposed schedule and a quick comparison with the Commission’s proposed schedule (to which Commission claims Applicant Xcel is in agreement).

There are a couple of omissions that should be incorporated into filing of testimony, and serious timing issues regarding closing of comment period and briefing before release of the final EIS.

First, the Commission’s proposed schedule is essentially three-four weeks ahead of the proposed Commerce schedule. Given the length of the line, the need to demonstrate need, and the high level of public interest and controversy, Commerce’s proposed schedule is an improvement on the Commission’s as it allows more time for the public to review and digest information necessary to make substantive comments. However, a three month extension seems needed.

The next thing that jumps out is that the schedule omits party Direct, which is a necessary part of building a case. NoCapX 2020 proposes that party Direct be scheduled for 2 weeks (?) after Applicant Direct. There may or may not be Direct to be filed, or parties to file it (Intervention deadline is off in the distance), but the timing window should be acknowledged.

Next are the “In-Person Joint Draft EIS Information Meetings and Public Hearings,” proposed by Commerce for November 6-8, 2024, and online on November 13, 2024. As a pre-emptive and precautionary comment, the public, under statute and rule, has the opportunity to present Testimony (under oath or not) and to question witnesses. Too many times, witnesses are not

present at the Public Hearings to present or question, testimony has not been offered and entered into the record, and those witnesses are not sworn on oath. See Minn. R. 1405.0800 (attached); also Minn. R. 1400.7150, and 7829.0900. This writer observed this problem in March.

- The applicant and parties submitting testimony must be put on notice that appearance is required, that testimony must be entered and all testifying must be offered under oath.
- The public must also be advised in notices that they may question witnesses and testify under oath, and if not under oath, the ALJ will give their testimony/comments appropriate weight. It would be helpful if the specific language of Minn. R. 1405.0800 were included in notices (which have included only a statement that the public may question the parties).

**TIMING:** The proposed date of release of the Final EIS is roughly THREE MONTHS after the Evidentiary hearing and NINE WEEKS after the close of the public comment period, EIGHT weeks after Initial Briefs and THREE weeks after Reply Briefs are due. This presumes that the Final EIS will not be introduced into the record for the Evidentiary Hearing, and presumes there would be no opportunity to comment on the Final EIS or even the adequacy of the EIS. That does not work for the public<sup>1</sup>. See Minn. R. 4410.2800, Subp. 2 Written Comments (attached)..

For the schedule to work and provide for sufficient review of the EIS, either the Evidentiary Hearing, Close of Hearing Comments and release of the Final EIS should be delayed and Final EIS comment period inserted; or the Draft EIS release and everything else related to the EIS needs to be moved up and Final EIS comment period inserted, i.e., to the end of August or first week of September, and release of the Final EIS when the Initial Briefs are due allowing for comment on adequacy by the deadline for Reply Briefing.

This controversial cross-country greenfield transmission project with the stated purpose of preserving Xcel's "valuable" transmission rights is a first impression issue of both need and routing that demands thorough review. The Commission is on notice of its failures to "adopt broad spectrum citizen participation as a principal of operation."<sup>2</sup> Best efforts, and more, should be given to promote a complete process and record. These two dockets are not appropriate for cutting corners.

Very truly yours,



Carol A. Overland  
Attorney at Law

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<sup>1</sup> This was a problem that occurred in at least one of the CapX 2020 dockets, where after DEIS comment period ended, new alternate routes were added, and affected landowners could not comment after Final EIS release.

<sup>2</sup> See **Minn. Stat. §216E.08, Subd. 2** (attached); also Office of Legislative Auditor's "*Public Utilities Commission's Public Participation Processes*," online at [https://legalelectric.org/f/2020/07/OLA-Report\\_PUC2020.pdf](https://legalelectric.org/f/2020/07/OLA-Report_PUC2020.pdf). Proposed **SF 4784** would further erode public participation through repeal of Minn. Stat. §216E.08 subs 1 & 4, **eliminating Advisory Task Forces** (yet leaving Minn. Stat. §216E.08Subd. 2's notation of the opportunity of Advisory Task Forces!). See **[SF 4784's proposed Minn. Stat. §216I.14, Subd. 1 & 2.](#)**

#### **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 prefilng 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.

**Statutory Authority:** *MS s [116C.66](#); [216E.16](#)*

#### **Minn. R. 4410.2800, Subp. 2. Written comments.**

Interested persons may submit written comments on the adequacy of the final EIS to the RGU or the EQB, if applicable, for a period of not less than ten days following publication in the EQB Monitor of the notice of availability of the final EIS. The notice of availability of the final EIS shall indicate when the comment period expires.

#### **216E.08 PUBLIC PARTICIPATION.**

Subdivision 1. **Advisory task force.** The commission may appoint one or more advisory task forces to assist it in carrying out its duties. Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the commission, but at least one representative from each of the following: Regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is proposed to be located. No officer, agent, or employee of a utility shall serve on an advisory task force. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees. The task forces expire as provided in section 15.059, subdivision 6. At the time the task force is appointed, the commission shall specify the charge to the task force. The task force shall expire upon completion of its charge, upon designation by the commission of alternative sites or routes to be included in the environmental impact statement, or upon the specific date identified by the commission in the charge, whichever occurs first.

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.

Subd. 3. **Public advisor.** The commission shall designate one staff person for the sole purpose of assisting and advising those affected and interested citizens on how to effectively participate in site or route proceedings.

Subd. 4. **Scientific advisory task force.** The commission may appoint one or more advisory task forces composed of technical and scientific experts to conduct research and make recommendations concerning generic issues such as health and safety, underground routes, double circuiting and long-range route and site planning. Reimbursement for expenses incurred shall be made pursuant to the rules governing reimbursement of state employees. The task forces expire as provided in section 15.059, subdivision 6. The time allowed for completion of a specific site or route procedure may not be extended to await the outcome of these generic investigations.