

## Staff Briefing Papers

**Meeting Date**    **May 30, 2024** **Agenda Item \*\*1**

**Company**            Northern States Power Co., d/b/a Xcel Energy

**Docket No.**        E002/CN-22-532, TL-23-157

**In the Matter of the Application of Xcel Energy for a Certificate of Need and Route Permit for the Mankato – Mississippi River 345 kV Transmission Line Project in Southeast Minnesota**

- Issues**
- Does the joint certificate of need and route permit application contain the information required under Minn. R. 7849.0220, subp. 2, and Minn. R. 7850.3100?
  - Should the certificate of need be evaluated using the Commission’s informal process or referred to the Office of Administrative Hearings for a contested case hearing?
  - Should the certificate of need and route permit proceedings be combined (i.e., joint public information meetings, joint environmental review, and joint public hearings)?
  - Are there any contested issues of fact with respect to the representations made in the application?
  - Should an advisory task force be appointed?
  - Should the Commission direct the Executive Secretary to issue an authorization to the applicant to initiate consultation with the Minnesota State Historic Preservation Office (SHPO)?

**Staff**                    Cezar Panait                    Cezar.Panait@state.mn.us                    651-201-2207

<b>✓ Relevant Documents</b>	<b>Date</b>
Xcel Energy Initial Application Filing (20 parts, Docket# 22-532, 23-157)	April 2, 2024

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

✓ **Relevant Documents**

	<b>Date</b>
Commission Notice of Comment Period (Docket# 22-532, 23-157)	April 8, 2024
Public Comment – Brady and Jennifer Taylor (Docket# 23-157)	April 19, 2024
Public Comment – Trevor Scrabeck (Docket# 23-157)	April 19, 2024
DOC DER Comments and Recommendations (Docket# 22-532)	April 22, 2024
DOC EERA Comments and Recommendations (Docket# 22-532, 23-157)	April 22, 2024
MISO Comments (Docket# 22-532, 23-157)	April 22, 2024
Public Comment – Trevor Scrabeck (Docket# 23-157)	April 22, 2024
Prehn Family and NoCapX2020 Comments (Docket# 22-532, 23-157)	April 22, 2024
Public Comment – Dale Thomforde (Docket# 23-157)	April 23, 2024
IUOE Local 49 and NCRSC of Carpenters Comments (Docket# 22-532)	April 26, 2024
Prehn Family and NoCapX2020 Reply Comments (Docket# 22-532, 23-157)	April 29, 2024
Xcel Energy Reply Comments (Docket# 22-532, 23-157)	April 29, 2024
Minnesota Center for Environmental Advocacy Comments (Docket# 22-532)	April 29, 2024
Public Comment – City of Oronoco (2 parts, Docket# 23-157)	April 29, 2024
Prehn Family and NoCapX2020 Correction Letter (3 parts, Docket# 22-532, 23-157)	April 30, 2024
Xcel Energy Supplemental Comments (Docket# 22-532, 23-1567)	May 6, 2024
DOC DER Supplemental Comments (Docket# 22-532)	May 6, 2024

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✓ **Attachments:**

Attachment A - Project Overview Map

Attachment B - Example SHPO Letter

## ISSUES

- Does the joint certificate of need and route permit application contain the information required under Minn. R. 7849.0220, subp. 2, and Minn. R. 7850.3100?
- Should the certificate of need be evaluated using the Commission's informal process or referred to the Office of Administrative Hearings for a contested case hearing?
- Should the certificate of need and route permit proceedings be combined (i.e., joint public information meetings, joint environmental review, and joint public hearings)?
- Are there any contested issues of fact with respect to the representations made in the application?
- Should an advisory task force be appointed?
- Should the Commission direct the Executive Secretary to issue an authorization to the applicant to initiate consultation with the Minnesota State Historic Preservation Office (SHPO)?

## PROJECT DESCRIPTION

Northern States Power Co., d/b/a Xcel Energy (Xcel Energy or the Applicant) has applied to the Minnesota Public Utilities Commission (Commission) for a certificate of need (CN) and a route permit for its proposed Mankato-Mississippi River 345-kilovolt (kV) Transmission Line Project (MMRT). The Project consists of (1) a new, approximately 130-mile 345-kV transmission line between the existing Wilmarth Substation in Mankato to the Mississippi River near Kellogg; and (2) a new, approximately 20-mile 161-kV transmission line between the easting North Rochester Substation near Pine Island and an existing transmission line northeast of Rochester. The Project may cross portions of Blue Earth, Le Sueur, Waseca, Rice, Dodge, Olmstead, Goodhue, Winona, and Wabasha counties and is divided into the four segments described below.

- Segment 1: a new 48- to 54-mile 345-kV transmission line between the Wilmarth Substation and a point near the West Faribault Substation;
- Segment 2: a new 34- to 42-mile 345-kV transmission line from a point near the existing West Faribault Substation to the existing North Rochester Substation;
- Segment 3: conversion of 27 miles of existing 161/345-kV transmission line to 345/345-kV operation and installation of a new 16-mile 345-kV circuit on the existing 345/345-kV double-circuit capable structures between the existing North Rochester Substation and the Mississippi River; and
- Segment 4: a new 19.6-to 23.7-mile 161-kV transmission line between the existing North Rochester Substation and the existing 161-kV Chester Line northeast of Rochester.

For this Project, Xcel Energy proposes a route width of 1,000 feet along most proposed alignments (500 feet to either side of proposed centerlines), with wider areas (up to 1.25

miles wide) around Project substations, locations with routing constraints, and where route options come together. The 345 kV portion of this Project typically requires a permanent 150-foot wide right-of-way. For the 161 kV portions of the Project, a 100-foot wide right-of-way is typically required.

Xcel Energy indicated that this Project, along with other Long Range Transmission Projects (LRTP) that were studied and approved by the Midcontinent Independent System Operator, Inc. (MISO) are needed to provide reliable, resilient, and cost-effective delivery of energy as the generation resource mix continues to evolve over the coming years. Specifically, this Project and the other LRTP projects in Wisconsin<sup>1</sup> are needed to address loading and congestion issues on the existing 345 kV transmission system across southern Minnesota and Wisconsin.

## BACKGROUND

### I. Procedural History

On April 2, 2024, Xcel Energy filed a combined certificate of need and route permit application with the Commission for the MMRT Project.

On April 8, 2024, the Commission issued a notice requesting comments on: (1) whether the certificate of need and route permit application contained the information required under Minnesota Rules 7849.0220 and 7850.3100; (2) whether the certificate of need should be evaluated using the Commission's informal process or referred to the Office of Administrative Hearings for a contested case hearing; (3) whether the certificate of need and route permit proceedings should be combined (i.e., joint public information meetings, joint environmental review, and joint public hearings); (4) whether there were any contested issues of fact with respect to the representations made in the application; (5) whether an advisory task force should be appointed; (6) whether the Commission should authorize the Executive Secretary to issue to the applicant an authorization to initiate consultation with the State Historic Preservation Office (SHPO); and (7) whether there were other issues or concerns related to the matter. Initial comments were accepted until April 22, 2024, reply comments until April 29, 2024, and supplemental comments until May 6, 2024.

By April 22, 2024, the Commission received initial comments from the Minnesota Department of Commerce Energy Environmental Review and Analysis unit (EERA); Minnesota Department of Commerce Division of Energy Resources (DOC DER); the Prehn Family and NoCapX 2020; and MISO. The Commission also received three individual public comments from residents in the project area that focus on concerns over the potential impacts and the general merits of the project or indicate a preference for certain route alternatives. These comments will be

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<sup>1</sup> Tremval - Eau Claire - Jump River and Tremval - Rocky Run - Columbia transmission projects both located in Wisconsin.

retained and will be included with other comments received during the environmental impact statement (EIS) scoping process, should the application be accepted as complete.

By April 30, 2024, the Commission received reply comments from the following:

- Xcel Energy;
- the Prehn Family and NoCapX 2020<sup>2</sup>;
- the International Union of Operating Engineers Local 49 and North Central States Regional Council of Carpenters (IUOE Local 49 and Carpenters);
- the Minnesota Center for Environmental Advocacy, Audubon Upper Mississippi River; Center for Rural Affairs; Citizens Utility Board; Clean Grid Alliance; Fresh Energy; Sierra Club; and Union of Concerned Scientists (the Joint Commenters); and
- the City of Oronoco.

Similar to the individual comment letters received from the residents in the area, the comments from the local unit of government (City of Oronoco) addressed a specific section of the Project (Segment 4 East route) which passes the Oronoco city limits and is next to a city park. The City indicated an avoidance request and a routing preference for Segment 4 alternative alongside the existing CapX 2020 line. These concerns can be addressed during the EIS scoping and development as part of the route permit application review.

On May 6, 2024, Xcel Energy and DOC DER submitted supplemental comments.

## II. Relevant Rules and Statutes

### A. Certificate of Need

**Certificate required.** No large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the Commission.<sup>3</sup> The proposed project is a large energy facility as defined by Minn. Stat. § 216B.2421, subd. 2(2), because it is a high-voltage transmission line with a capacity greater than 200 kV and greater than 1,500 feet in length.

#### *Certificate of Need Application*

Minn. Rules, part 7849, provides for Commission review of applications for a certificate of need. Specifically, Minn. Rules, part 7849.0200, subp. 5, requires the Commission to

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<sup>2</sup> The Prehn Family and NoCapX 2020 filed corrected reply comments and a separate letter seeking to correct certain statements in Xcel's reply comments on April 30, 2024.

<sup>3</sup> Minn. Stat. § 216B.243, subd. 2

determine whether an application is complete and notify the applicant of the acceptance or rejection of the application within 30 days of receipt. The content requirements for a certificate of need application for a large high-voltage transmission line are described in Minn. R. 7849.0220, subp. 2.

### *Regulatory Proceeding*

A determination on the appropriate proceeding for the proposed project must also be made by the Commission. Under Minn. Rules, part 7829.1000, the Commission may elect to refer the matter to the Office of Administrative Hearings for a contested case proceeding, or the Commission may authorize the use of the informal or expedited review process as described in Minn. Rules, part 7829.1200.

### *Environmental Report*

Minn. R. 7849.1000 to 7849.2100, establishes the requirements concerning preparation of an environmental report for a large energy facility requiring a certificate of need. The environmental report describes the human and environmental impacts of the proposed project associated with the size, type, and timing of the project; alternatives to the proposed project; and addresses measures to mitigate potential adverse impacts.

## **B. Route Permit**

**Route Permit.** Minn. Stat. § 216E.03, subd. 2, provides that no person may construct a high-voltage transmission line without a route permit from the Commission and that a high-voltage transmission line may be constructed only along a route approved by the Commission. The proposed MMRT Project meets the definition of a high-voltage transmission line under Minn. Stat. § 216E.01, subd. 4, because it would be a conductor of electric energy with associated facilities designed for and capable of operation at a nominal voltage of 100 kV or more and greater than 1,500 feet in length. The project must be reviewed under the full permitting process of Minn. Stat. § 216E.03 and Minn. R. 7850.1700 to 2700.

**Application Completeness.** A high-voltage transmission line route permit application must include all the information required under Minn. R. 7850.1900, subp. 2 and 3. The Commission may accept, conditionally accept, or reject an application. If the Commission conditionally accepts or rejects an application, the Commission must advise the applicant of the deficiencies. The applicant may refile the revised application and the Commission must again act on the application. The Commission shall not reject an application if the information that is missing can be obtained from the applicant within 60 days from the date of the application and the lack of the information will not interfere with the public's ability to review the proposed project.

**Full Permitting Process.** The review process begins on the date the Commission determines that an application is complete. Within 60 days of determining the application to be complete, a public information and scoping meeting is scheduled in the area of the project to provide information to the public about the proposed project, to answer questions from the public, to receive any proposed route alternatives, and to scope the EIS.

Under Minn. R. 7850.2600, applications for high-voltage transmission line route permits require contested case proceedings upon completion of the draft EIS. The Commission must refer the matter to the Office of Administrative Hearings (OAH) for contested case proceedings to be conducted by an administrative law judge pursuant to the contested case procedures of Minn. Stat. ch. 14.

**Environmental Impact Statement.** Minn. Stat. § 216E.03, subd. 5, and Minn. R. 7850.2500 require that an EIS be developed for a high-voltage transmission line as defined under Minn. Stat. § 216E.01, subd. 4. The Department of Commerce is responsible for preparing an EIS for the Commission. The EIS must provide information on the human and environmental impacts of the proposed project and of alternative routes; the feasibility of each alternative route considered; and mitigative measures that could reasonably be implemented to eliminate or minimize any adverse impacts identified.

**Advisory Task Force.** The Commission has the authority to appoint an advisory task force under Minn. Stat. § 216E.08 and Minn. R. 7850.3600. The Commission must determine whether to appoint a task force as early in the process as possible. If the Commission does not establish an advisory task force, a member of the public may request one, and the Commission must promptly consider the request. Upon appointment of an advisory task force, the Commission must specify the charge to the advisory task force and appoint its members in accordance with Minn. Stat. § 216E.08, subd. 1.

### C. Joint Environmental Review

Minn. R. 7849.1900, subps. 2 and 3, provide that in the event an applicant for a certificate of need for a large energy facility applies to the Commission for a route permit prior to the time the Department of Commerce completes the environmental report for the certificate of need, the Department of Commerce may elect to prepare an EIS in lieu of the required environmental report.

If combining the processes would delay completion of the environmental review, the processes can be combined only if the applicant and the Commission agree to the combination. If the processes are combined, the Department of Commerce must: (i) follow the procedures of parts 7850.2500 in conducting the environmental review; and (ii) include the

analysis of alternatives required by Minn. R. 7849.1500.

#### **D. Joint Public Hearings**

Minn. Stat. § 216B.243, subd. 4, requires joint hearings on routing and need unless it is determined by the Commission that joint proceedings are less efficient or not feasible. Also, Minn. R. 7849.1900, subp. 4, contemplates Commission approval of a joint hearing to consider both routing and certificate of need issues if it is feasible, more efficient, and would further public interest.

### **COMMENTS**

#### **III. Application Completeness**

IUOE Local 49 and Carpenters, MISO, and the Joint Commenters recommended that the Commission accept the application as complete.

EERA indicated that members of the public had raised concerns that not all the lakes in the project area are accurately displayed on some maps in the application. Accordingly, EERA recommended the Commission accept the application as complete upon filing of a new set of maps that accurately display all lakes, public waters, watercourses, and public roads throughout the project area. Once the applicant has confirmed that all surface water features are properly mapped, the applicant should confirm the analysis of potential water resource impacts in the application is accurate.

In its April 22, 2024 comments,<sup>4</sup> the Prehn Family and NoCapX 2020 raised a number of issues with regard to application completeness. They asserted that the application fails to discuss the existing underground gas storage facility in the project area and all homesteads within at least one-half mile of the proposed route. They also argued the application lacks discussion of the potential for corrosive impact of transmission lines on pipelines, potential cumulative impacts on other transmission lines in the area, and the need for new easement if the full route does not fit within the existing easement. The Prehn Family and NoCapX 2020 also argued that the application does not adequately address line losses, reactive power, electric and magnetic fields, socioeconomic impacts, and property tax impacts. Finally, they argued that the application is incomplete because it fails to identify the full system megawatt loading used in the modeling.

#### **IV. Application Review Process**

With the exception of the Prehn Family and NoCapX 2020, all others who commented on this

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<sup>4</sup> Comments, the Prehn Family & NoCapX 2020, April 22, 2024, eDockets ID [20244-205817-02](#)



issue indicated a preference for using the Commission’s informal process (comment and reply comment) to review the CN application. They argued that the informal process is sufficient because there are no issues presented that cannot be resolved using the informal process.<sup>5</sup> Additionally, they argued that the informal process would better serve the need to expedite review and approval of the project to prevent reliability issues for the projected future transmission system if the Project is not completed<sup>6</sup> and in service by the first quarter of 2030, and the need for a timely permitting and deployment of projects like this to help Minnesota meet its energy goals.<sup>7</sup>

The Joint Commenters emphasized that the Commission’s informal process provides a more efficient use of intervenors’ limited resources in cases without substantive disputes, yet maintains important provisions for environmental evaluation, a public hearing, and opportunity for written public comments.<sup>8</sup>

The Prehn Family and NoCapX 2020 requested that the certificate of need application be referred to the Office of Administrative Hearings for a contested case hearing because “this is a very high voltage transmission line proposal with much greenfield routing over many miles of southern Minnesota, and based on filings and comments, it is a highly contested proposal.” They argued that the informal process is suitable only for smaller projects that are not contested, unlike this project. They did not specify which of their arguments they consider contested issues of fact, but they stated that their comments discuss contested issues of fact and that additional contested fact issues will come out through Information Requests and the contested case.<sup>9</sup>

Regarding the route permit application review process, DOC EERA indicated that any contested issues can be addressed through the contested case hearing process, which is required under the full permitting process.

As indicated earlier, the proposed transmission line must be reviewed under the full permitting process of Minn. Stat. § 216E.03 and Minn. R. 7850.1700 to 2700. The full permitting process includes public information and draft EIS scoping meetings, preparation of a draft and final EIS, and contested case proceedings under Minn. Stat. ch. 14.

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<sup>5</sup> DOC DER Comments, April 22, 2024, eDockets ID [20244-205818-01](#)

<sup>6</sup> MISO Comments, April 22, 2024, eDockets ID [20244-205764-01](#)

<sup>7</sup> IOUE Local 49 and NCSRC of Carpenters Comments, April 26, 2024, eDockets ID [20244-206045-01](#)

<sup>8</sup> Reply Comments, Minnesota Center for Environmental Advocacy, Audubon Upper Mississippi River, Center for Rural Affairs, Citizens Utility Board, Clean Grid Alliance, Fresh Energy, Sierra Club, and Union of Concerned Scientists, collectively the “Joint Commenters”, April 29, 2024, eDockets ID [20244-206129-01](#)

<sup>9</sup> The Prehn Family and NoCapX 2020 Comments, April 22, 2024, eDockets ID [20244-205817-02](#)

## V. Joint Procedure

All commenters who addressed the question supported combining the certificate of need and route permit proceedings (i.e., joint public information meetings, joint environmental review, and joint public hearings). Commenters argued that joint proceedings would promote efficiency and avoid confusion that could be caused by holding multiple public meetings and public hearings about the same project in two different application dockets.

## VI. Advisory Task Force

Based on the project size, project complexity, known or anticipated controversy, and sensitive natural resources, EERA suggested that an advisory task is not warranted for this project at this time.

EERA reasoned that due to the 150-mile length of the line and the similar and widely distributed potential impacts of the project, a task force is a relatively poor fit as a task force is best suited for evaluating defined geographical locations and impacts. Second, EERA pointed out that the numerous route alternatives Xcel Energy has previously considered and rejected are potentially responsive to known or anticipated impacts and could be considered in the EIS as a better means of addressing impacts than a task force.

The Prehn Family was the only entity to request appointment of an advisory task force.

## VII. SHPO Letter

The Prehn Family and NoCapX 2020 recommended that the Commission direct the Executive Secretary to issue an authorization to the applicant to initiate consultation with the Minnesota State Historic Preservation Office (SHPO). No other commenters took a position on this issue.

## STAFF DISCUSSION

The Commission must determine:

- 1) whether the certificate of need and route permit application is substantially complete;
- 2) whether any actions related to the hearing process or other procedural items are necessary;
- 3) whether an advisory task force should be appointed; and
- 4) Whether to authorize the Executive Secretary to issue a letter authorizing Xcel Energy to initiate consultation with the Minnesota State Historic Preservation Office?

### **VIII. Application Completeness**

Following EERA's comments on application completeness concerning the display of lakes and public waters on the high-level maps, in reply comments Xcel Energy provided revised versions of Maps 6-1, 6-2, and 6-3 from the Application that clearly depict the locations of surface water features. Xcel Energy also confirmed that the analysis of potential water resource impacts in the Application are accurate and complete, and that waterbodies and waterways are accurately depicted in the detailed route maps in Appendix K.

Based on this supplemental information, staff recommends that the Commission accept the certificate of need and route permit application as substantially complete. Although the Prehn Family and NoCapX 2020 argued that the application is incomplete on various points that may be considered in the scoping process for further record development, staff does not believe any of the issues identified are deficiencies requiring the Commission to reject the application as incomplete under applicable rules.

### **IX. Procedural Matters**

Concerning the hearing process, staff notes that with one exception, there have been no requests to refer the certificate of need application for a contested case proceeding; however, due to the anticipated controversy and because the route permit application review process must include a contested case proceeding, the Commission may want to consider forwarding the certificate of need application to the OAH with the route application for joint proceedings.

In addition, the Commission should be aware of the possible scenario where a contested case is requested on the certificate of need application during the reply comment period on the merits, which is months into the review process. Considering the need for a contested case and then conducting one at that time would likely add additional time to the review schedule.

Staff agrees with the comments received that combining the certificate of need and route permit proceedings and environmental review is beneficial as it will expedite the review process, avoid confusion and facilitate public participation.

### **X. Advisory Task Force**

Staff agrees with EERA that an advisory task force is not appropriate for review of the project and would likely delay the review process unnecessarily. Potential impacts are distributed along a 150-mile route, so any potential recommendations from a task force would likely be disproportionate. For example, a task force based near Mankato may not consider the impacts or alternatives that are important to people in Faribault or Pine Island or Rochester. Staff believes the full review process provides interested persons adequate opportunity to identify concerns and propose alternative route segments during the EIS scoping meetings

and associated comment period, the draft EIS meetings and associated comment period, and the public hearings and associated comment period.

Should the Commission choose to appoint an advisory task force, staff recommends that the Commission appoint several task forces spread evenly across the proposed routes. Staff believes this would entail the appointment of four or more task forces (one for each route segment as identified in the application).

Notwithstanding the number of task forces, staff recommends that the Commission, if it chooses to appoint a task force, authorize EERA to establish and conduct the task force, develop a proposed structure and charge, and appoint the members in accordance with Minn. Stat. § 216E.08, subd. 1.

#### **XI. Sample Permit**

As with previous route permit applications, staff proposes to introduce a sample permit into the record of this docket. The intent of the sample permit is to provide interested persons and government agencies an opportunity, early in the process, to review standard permit language and provide suggestions for changes to the language or propose special conditions specific to the proposed project. Having a sample permit allows for greater discussion and will provide a foundation to build on during the public hearing process.

## COMMISSION DECISION OPTIONS

### Certificate of Need and Route Permit Application [choose 1 or 2 and 3 or 4]

1. Accept the certificate of need permit application as substantially complete and authorize review using the informal process (comment and reply comment) (DOC DER, EERA, IUOE Local 49, MISO, Environmental Organizations, Xcel), **or**
2. Accept the certificate of need permit application as substantially complete and refer the matter to the OAH for a contested case (The Prehn Family and NoCapX 2020)
3. Accept the route permit application as substantially complete and authorize review under the full permitting process, and refer the matter to the OAH (EERA, IUOE Local 49, MISO, Environmental Organizations, Xcel), **or**
4. Reject the route permit application and indicate the specific deficiencies [The Prehn Family and NoCapX 2020]

### Joint Proceedings Process

5. Approve, to the extent practical, joint public meetings, joint public hearings, and combined environmental review of the certificate of need and route permit applications including preparation of an EIS in lieu of an environmental report pursuant to Minn. R. 7849.1900, subp. 2. (DOC DER, EERA, Environmental Organizations, The Prehn Family and NoCapX 2020, Xcel)

### Advisory Task Force [choose one of the following]

6. Deny the request to establish an advisory task force at this time (EERA, IUOE Local 49), **or**
7. Authorize EERA to establish and conduct one or more advisory task forces, develop a proposed structure and charge, and appoint the members in accordance with Minn. Stat. § 216E.08, subd. 1. (Staff interpretation of The Prehn Family and NoCapX 2020)

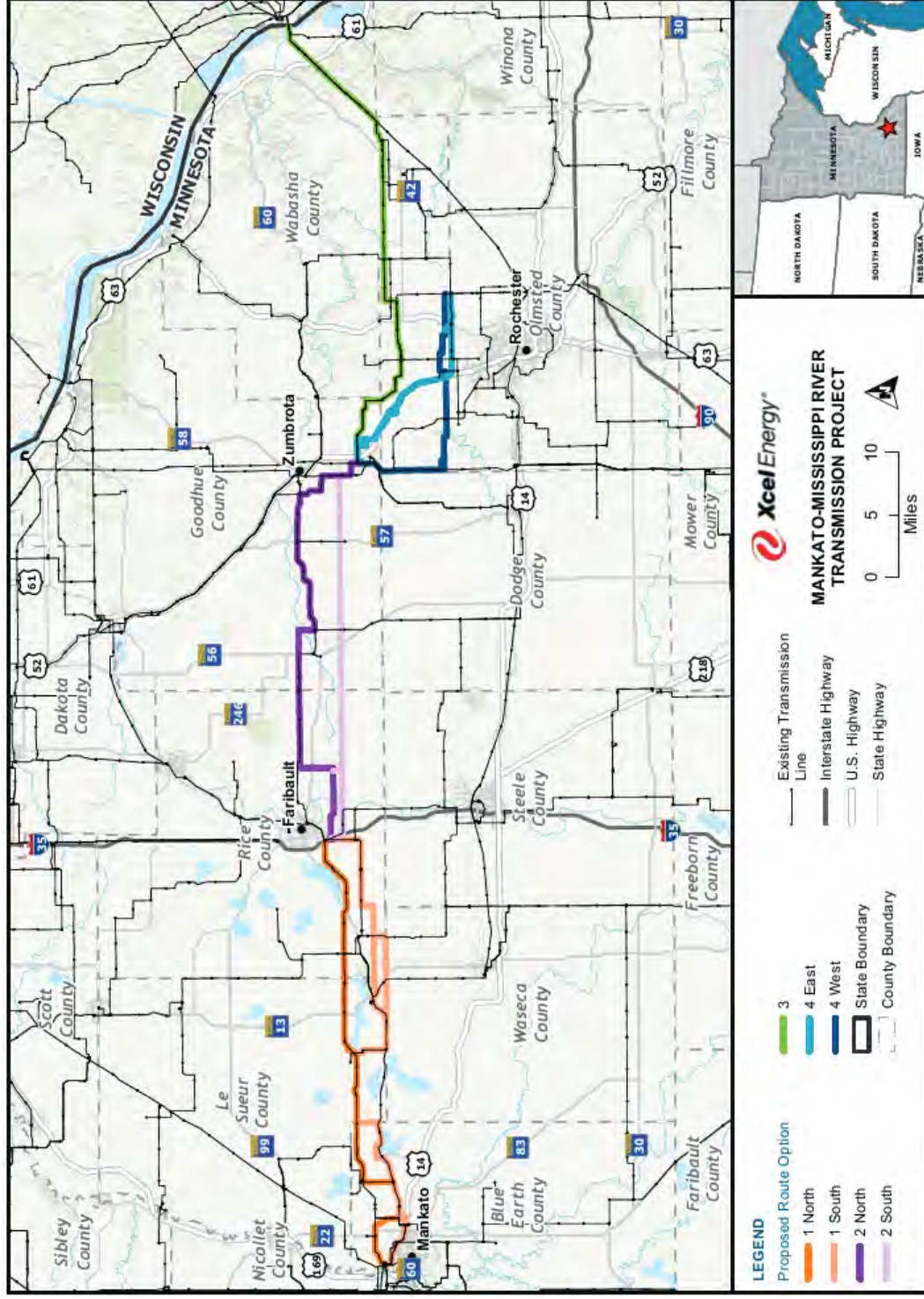
### Other

8. Authorize the Executive Secretary to issue an authorization to the Applicants to initiate consultation with SHPO.

**Staff Recommendation:** 1, 3, 5, 7, and 8

**Attachment A – Project Overview Map**

### Map 1-1 Project Overview



**Attachment B – Example SHPO Letter**



**m** MINNESOTA  
PUBLIC UTILITIES COMMISSION

[DATE]

**TO:** [Applicant Representative]  
[Applicant Company]  
[Street Address]  
[City, State, Zip]

[SHPO Staff Name]  
State Historic Preservation Office  
Minnesota Department of Administration  
50 Sherburne Avenue, Suite 203  
Saint Paul, MN 55155

**FROM:** Will Seuffert, Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
Saint Paul, MN 55101

**RE:** Authorization to Initiate Consultation under Minn. Stat. § 138.665; [*In the Matter of...*]; Docket No. [Number]

Interested Parties:

Through this authorization, the Minnesota Public Utilities Commission (Commission) intends to formalize the role of the Commission, the Department of Commerce—Energy Environmental Review and Analysis (DOC-EERA), and the above listed Applicant for a large electric power facility (as defined in Minn. Stat. § 216E.01, subd. 6) relative to the Commission's statutory responsibilities under Minn. Stat. § 138.665 to consult with the State Historic Preservation Office (SHPO).

In order to streamline the Commission's compliance with Minn. Stat. § 138.665, the Commission hereby authorizes the Applicant to initiate consultation with SHPO pursuant to Minn. Stat. § 138.665. Effective immediately, the Applicant and its authorized representatives may consult with SHPO to initiate review and consultation. Specifically, the Applicant is authorized to gather information to identify, and reevaluate if warranted, designated historic properties, and to work in coordination with other interested entities, including Tribal Nations and DOC-EERA, to assess the effects of proposed projects on designated historic properties as

described in Minn. Stat. § 138.665. As appropriate, as part of its environmental review, DOC-EERA will coordinate with SHPO in evaluating the potential effect of alternative sites and routes on historic properties as described in Minn. Stat. § 138.665.

The Commission sits in a quasi-judicial capacity and makes siting and routing decisions based solely on the administrative record developed and the comments and information submitted by the parties and participants to Commission proceedings. The Commission is also subject to Minnesota's Open Meeting Law, Minn. Stat. Ch. 13D, which requires that Commission meetings be open to the public and the record be publicly available. Ex parte communications with Commissioners are prohibited, and Commissioners hear from interested entities and people on-the-record, either through written filings or at agenda meetings that are open to the public.

Accordingly, at the time the Applicant submits its prehearing testimony prior to the public hearing on the project, the Applicant shall file a compliance filing informing the Commission of the status of consultation with SHPO. This compliance filing should demonstrate that consultation has occurred, whether the proposed project will affect designated properties, and if so, identify any permit terms and conditions agreed upon by the applicant and SHPO to avoid or mitigate any adverse effects on the designated or listed properties. The Applicant should attach to its compliance filing a letter obtained from SHPO confirming that consultation has occurred and detailing any comments, concerns, and/or recommendations regarding the project from SHPO. If SHPO objects to the proposed project, this letter should detail SHPO's objection and any proposed permit terms and conditions that, if adopted, would resolve its objection. If SHPO's objection cannot be addressed through appropriate permit terms and conditions, the SHPO may request mediation as provided for in Minn. Stat. § 138.665.

Notwithstanding this authorization, the Commission retains ultimate responsibility for consultation under Minn. Stat. § 138.665 and for determining whether to permit a large electric power facility.

If you have any questions, please direct them to [Staff Name] at [Staff Email] or [Staff Phone].

Sincerely,

Will Seuffert