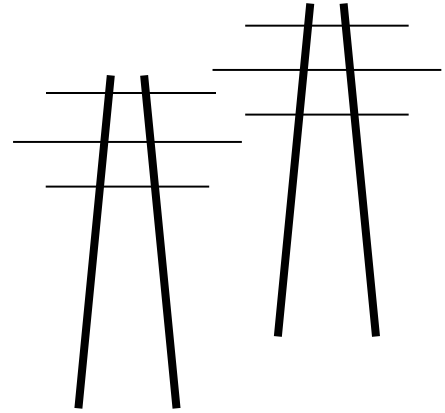


# Legalelectric, Inc.

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April 30, 2024

Will Seuffert  
Executive Secretary  
Public Utilities Commission  
121 – 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101

via eDockets & consumer.puc@state.mn.us

RE: NoCapX 2020 Initial Comments  
Big Stone South-Alexandria-Big Oaks Transmission  
PUC Dockets CN-22-538 and TL-23-159

Dear Mr. Seuffert:

I'm submitting these Initial Comments on behalf of NoCapX 2020, an intervenor with local grassroots groups in three of the CapX 2020 dockets, including some areas which are again targeted, lately targeted again by multiple large transmission projects in the area, including the above-captioned Big Stone South-Alexandria-Big Oaks Transmission, PUC Dockets CN-22-538 and TL-23-159.

## **Notice must be provided that Comments on Merits will be accepted through July 8, 2024**

First, an important procedural issue. The Commission has requested Comments on the merits of this Certificate of Need application, with extended deadlines of April 30, 2024, May 28, 2024, and June 4, 2024. The revised notice also states, in error:

*Comments received after the close of the comment period may or may not be considered by the Minnesota Public Utilities Commission.*

A Certificate of Need proceeding requires a Public Hearing, which, according to the Second Pre-Hearing Order are scheduled to be held on June 13, 17 and 18, and the Close of Public Hearing Comment Period is July 8, 2024. I've recently discussed this with Scott Ek, who acknowledged the necessity of a public hearing and that the comment period would remain open until, as Ordered by the ALJ, July 8, 2024.

From that OAH Prehearing Order of February 28, 2024:

In-Person Public Hearings - Day 1	06/13/24
In-Person Public Hearings - Day 2	06/17/24
In-Person and Online Public Hearings - Day 3	06/18/24
Close of Public Hearing Comment Period	07/08/24

The Commission should also note that under the rules, a Contested Case may be requested up until the close of the public comment period, again, July 8, 2024.

The Commission should, ASAP, send out a corrective notice retracting the statement that comments received after June 4, 2024, the comment deadline in the April 23, 2024 notice, “may or may not be considered” and that the comment period is open until July 8, 2024. After the notice of April 23, 2024, stating a deadline of June 4, 2024, how is the public to know that they may submit comments on the merits of the application until the close of the public hearing comment period? The statement that comments received after June 4, 2024 “may or may not be considered” is limiting public participation and giving out incorrect information. Please correct!

It pains me to have to remind the Commission of the rules, and it seems that in the rush to ram projects through as fast as possible, public participation and compliance with procedure falls by the wayside. This trend is disturbing.

### **Topics for Comment**

The Commission’s Notice specified three areas for comment:

- Are there any contested issues of fact with respect to the representations made in the certificate of need application?
- Should the Commission grant a certificate of need for the proposed project?
- Are there other issues or concerns related to this matter?

### **There are contested issues of fact with respect to the representations made in the certificate of need application.**

Need is a contested issue of fact. As with the other projects in this part of Minnesota, the Big Stone South-Alexandria-Big Oaks Transmission must not be considered in a vacuum. It is the applicants’ burden to demonstrate need, and in light of all these other projects, is it needed? Consider the currently under review projects, the Wilmarth-North Rochester-Tremval project (CN-22-532 and TL-23-157); Brookings-Hampton addition of 2<sup>nd</sup> circuit (CN-22-200 and TL-08-1474) and the MN Energy CON (CN-22-131 and TL-22-132).

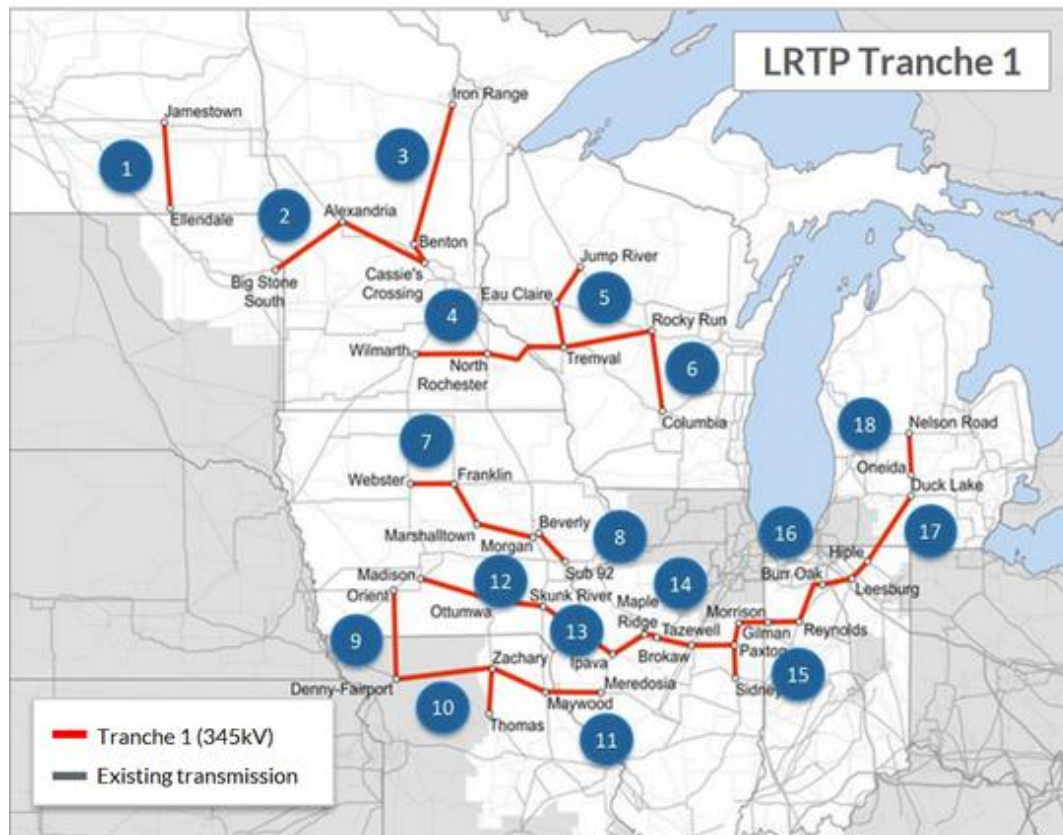
In its comments of April 23, 2024, MISO advocates for this project not independently, but as a part of “MISO’s LRTP Tranche 1 portfolio” which it claims is needed or “Minnesota and other

states in the MISO footprint would not receive the full set of benefits that are provide by the LRTP Tranche 1 portfolio<sup>1</sup>, including Minnesota.” This specific project must not be considered in a vacuum. There are numerous other projects in the area to consider, each of which would affect the “need” of the others. How much transmission do we need? Let’s see this on ONE MAP! Whether all these projects are needed are contested issues of fact.

MISO postures itself as the de facto regulator, and it is not. MISO and the Public Utilities Commission have a duty to the Minnesota ratepayers and the public, and the Commission and Applicants are too often, and too heavily, relying on “approval” of MISO as a demonstration of need. The Commission must not buy into this framing.

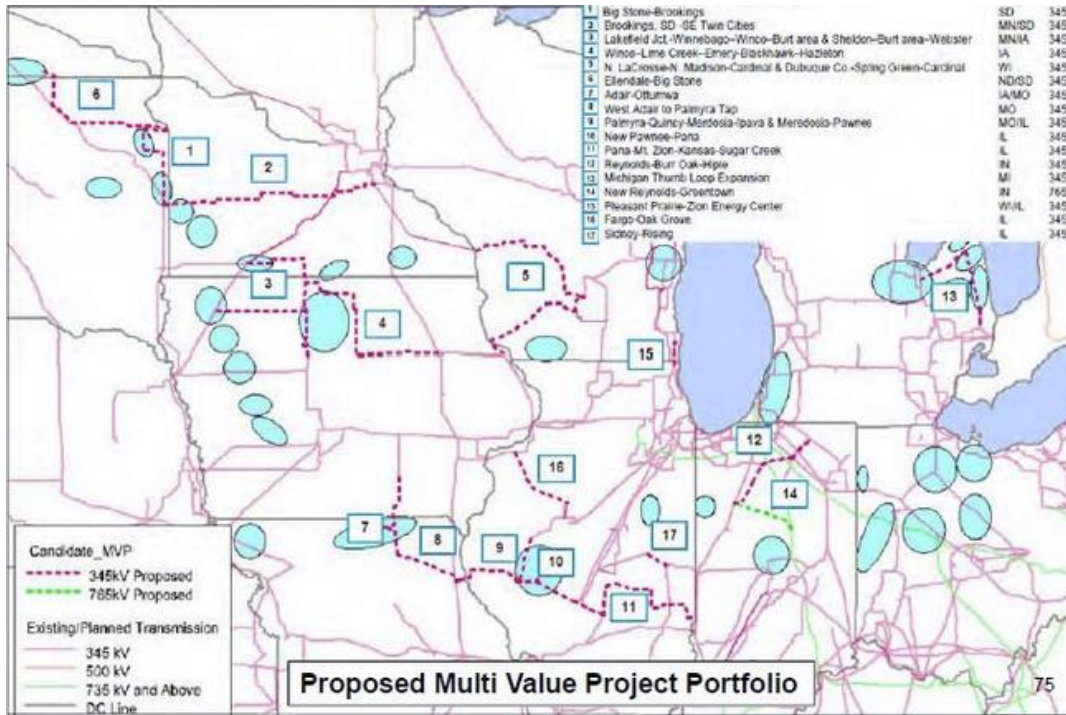
This conflation is evident in MISO’s comments, which were drafted by an employee whose duties focus primarily on economic and market issues. While economic and market issues can play a role in need, Minnesota’s Certificate of Need statutes and rules focus on Minnesota and the “need” of the applicants, which is a very different focus from that of MISO. While MISO states that [t]he Big Stone South Project provides a high voltage transmission path that increases the reliability of the regional transmission system while enhancing the ability of the Minnesota transmission system to meet local load serving needs.”<sup>2</sup> This has not been demonstrated, and review of the CapX 2020, MISO MVP Portfolio, and MISO Tranche 1 does demonstrate that the aim is bulk power transfer, not serving local load. Serving local load is a contested issue.

**Tranche 1**

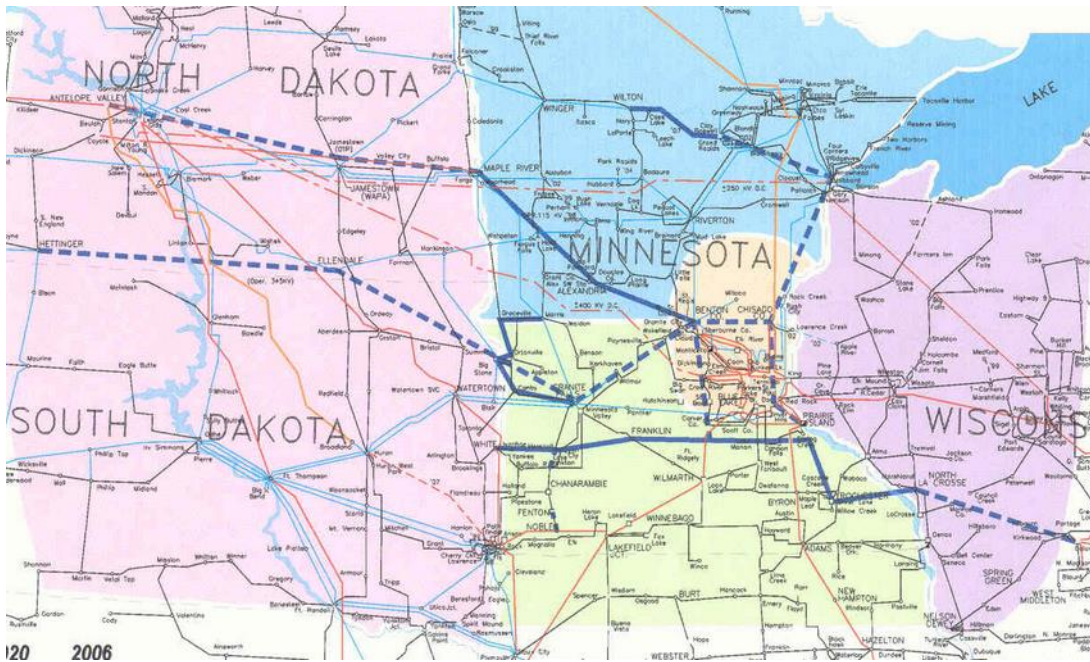


<sup>1</sup> MISO Comment, p 1.  
<sup>2</sup> MISO Comment, p. 2.

# MISO MVP Portfolio



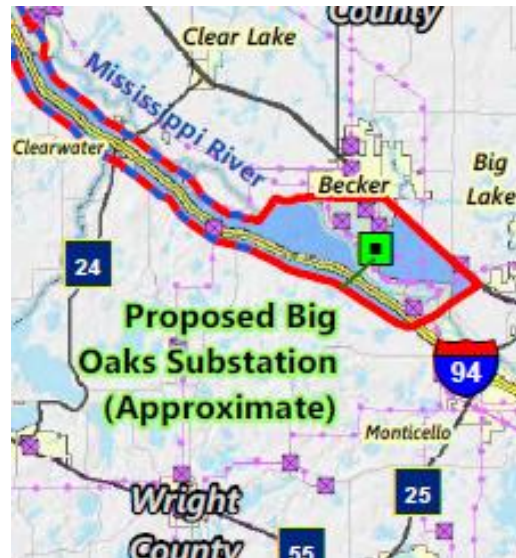
Note how much of Tranche 1, particularly in northern Iowa and southwest Minnesota tie together? And all that's on top of **CapX 2020**:



As a part of this and every application, a transmission map showing existing and proposed transmission, as well as highways, state boundaries, etc., is needed to comprehend and consider the big picture.



Is this specific project, of all the others, needed? Oddly, this project, heading to the northeast, flows in the opposite direction typical of Minnesota project. More oddly, this project ostensibly terminates at the “Big Oaks” substation, but that location is next to the Sherco substation, for which Xcel is eager to utilize. That nexus of transmission into the area and of the “need” to utilize Sherco transmission rights means that this project and the MN Energy CON (CN-22-131 and TL-22-132) could well be duplicative, that one could eliminate “need” for the other, a contested issue of fact.



MISO also waxes on about its Regional Transmission Planning, the criteria of which, again, is very different than that used by the Public Utilities Commission. For example, MISO states:

*[T]he objectives of the MTEP process are to (i) identify transmission system expansions that will ensure the reliability of the transmission system that is under the operational and planning control of MISO, (ii) identify expansion that is critically needed to support the reliable and competitive supply of electric power by this system, and (iii) identify expansion that is necessary to support energy policy mandates in effect within the MISO footprint.*

MISO Comment, p. 5. “Expansion” is not necessary, particularly when so many miles of new high voltage transmission have been built and are operating, i.e., CapX and the MVP Portfolio, and where so many are now proposed and being reviewed by the Commission. Given the proximity and overlap of current projects, those proposed deserve heightened scrutiny.

Secondly, policy is not need.

The “choice” of so much high voltage transmission locks Minnesota into a central station model. With expenditure of these amounts of dollars in distributed generation, generation near load, where the dollars spent and benefits would be higher to the state, with increased reliability and system security, the “choice” of so much high voltage transmission is not in the public interest. Distributed generation, particularly a large investment in rooftop solar and storage, would have a significant payoff for residents and ratepayers, and eliminate the cost to landowners who would

lose their land to eminent domain. The alternatives must be seriously presented and weighed.

The Commission has a mandate to determine need, and to act in the public interest. The Commission also has a specific mandate to encourage public participation. Once more with feeling:

## **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](#).

The MISO “stakeholder” process is not an open and transparent process, as only those who can pay the freight to be deemed a “stakeholder” can participate. The Commission as the regulator must actively focus on its mandate of a broad spectrum of citizen participation. Meanwhile, the legislature, at the urging of the Commission and its “streamlining” effort with “stakeholders” and not open to the public, is gutting public participation, deeming a foreshortened process the “standard process,” eliminating Advisory and Scientific Task Forces, etc., despite the report of the Legislative Auditor’s findings of deficiencies in the Commission’s process and public participation. This is a step backwards, relegating the Power Plant Siting Act to history.

### **It’s too soon to tell whether the Commission should grant a Certificate of Need for the proposed project.**

With contested issues of fact not resolved, where this is the first round of Comments, where the Commission has not yet had any comments to review, this question whether the Commission should grant a Certificate of Need is premature, and by asking this question, presumes there’s adequate information and comments prior to this Initial round. This question should not be asked until after the public comment period has closed on July 8, 2024.

### **There are other issues or concerns related to this matter.**

Yes, but saving that for Reply Comments and supplemental.

Thank you for this opportunity to comment on the merits of this project on behalf of NoCapX 2020.

Very truly yours,



Carol A. Overland  
Attorney for NoCapX