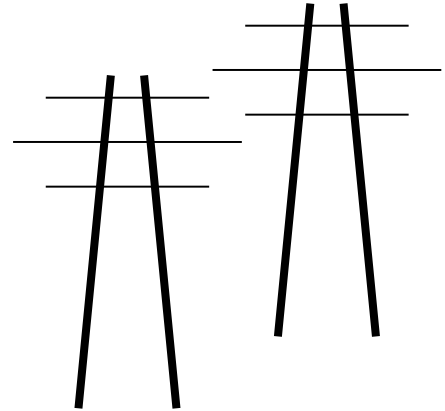


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January 12, 2024

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RE: Late-Filed Additional Overland Comment  
Use of Informal Process and Failure to Authorize Advisory Task Force  
2024 Power Plant Siting Act Annual Hearing/Energy Infrastructure Permitting  
PUC Docket: PR-24-18 OAH Docket: 22-2500-40414

To all:

This is an admittedly late-filed Comment. I request leave to file this Comment, and ask that it be accepted and included in the record and in consideration for the PPSA Annual Hearing report.

Today I'm working on the Mankato-Mississippi 345kV transmission line project, PUC Dockets CN-22-532 and TL-23-157. The way these dockets have been ordered to be handled by the Commission is a glaring example of the Commission's efforts to ram projects through and permit them without adequate review and public participation. This is an EXAMPLE only!!

## **I. THIS COMMISSION ORDER FOR INFORMAL PROCESS IS PREMATURE**

The Commission's Order of June 26, 2024<sup>1</sup>, linked below,, notes that the Commission Ordered that the Certificate of Need for the Mankato-Mississippi 345kV transmission project be reviewed under the "informal" process.

The Commission's rules do authorize use of an "informal" process, but only where a matter meets specific criteria:

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<sup>1</sup> [20246-207975-01](#) 23-157 (TL) PUC Order ACCEPTING APPLICATIONS AS COMPLETE, ESTABLISHING PROCEDURAL REQUIREMENTS, AND NOTICE OF AND ORDER FOR HEARING 06/26/2024

**7829.1200 INFORMAL OR EXPEDITED PROCEEDING.**

Subpart 1. **When appropriate.** Informal or expedited proceedings may be used when contested case proceedings are not required, for example, when:

- A. there are no material facts in dispute;
- B. the parties and the commission have agreed to informal or expedited proceedings; or
- C. informal or expedited proceedings are authorized or required by statute.

At the early stage of the proceeding, there is insufficient record on which to base a decision on the first two factors. A “need” docket is a contested matter, and whether the parties agree is misleading where only certain parties agreed, those parties that intervene to promote a project.

Where did this notion of “informal process” originate? Does this project meet the factors of appropriateness?

In this CoN docket 22-532, a review of early filings show no mention of “informal process.” Xcel, the applicant, did not request use of the informal process in its application, Notice Plan or Petition for Exemptions that I could find. The first use of "informal process" is the PUC’s notice for comments on completeness, at the very beginning, a Notice issued by the PUC<sup>2</sup>.

- 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?

The Commission’s Order, in addressing use of the informal process stated:

Additionally, the Commission will authorize the CN proceedings to follow the informal review process permitted in Minn. R. 7829.1200. This process is sufficient to allow for robust public participation and record development, and no contested issues of fact have been identified that would require a contested case on this matter in addition to the processes required under the full permitting process of Minn. Stat. § 216E.03 and Minn. R. 7850.1700 to 2700.

Commission Order, June 26, 2024.

At that early stage in the Commission’s review, before the Application was even deemed complete, the Commission discounted comments of the Prehn Family and NoCapX 2020, and gave great weight to those intervenors who were intervening in support of Xcel’s project:

With the exception of the Prehn family and NoCapX 2020, all commenters agreed with the Applicant’s request for the CN application to be reviewed under the informal review process in Minn. R. 7829.1200. Reasons cited for using the informal review process included: the need to expedite review and approval of the project to prevent reliability issues for the projected future transmission system; the need to provide opportunities for efficient use of intervenors’ limited resources in cases without substantive disputes; and sufficient opportunities in the informal process to provide for environmental evaluation, a public hearing, and written comments. The Prehn family and NoCapX 2020 requested referral of the CN application to the Office of Administrative Hearings (OAH) for a contested case hearing. Citing the high voltage and significant length of the Project, they argue that contested issues of fact will emerge throughout the Project review process. They did not include any issues of fact that they specifically argued are contested at this time.

Order, June 26, 2024.

This is rather odd, as the utility has the burden of proof, it's the utility's responsibility to prove up need. That's the purpose of a Certificate of Need proceeding. The notion of "need" is inherently contested!

Contrary to the Commission's claim, the NoCapX and Prehn Family comment regarding Completeness raised issues related to "need" for the project and regulatory review:

**THE CERTIFICATE OF NEED SHOULD BE REFERRED TO THE OFFICE OF ADMINISTRATIVE HEARINGS FOR A CONTESTED CASE HEARING**

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. This application should be referred to OAH for a contested case hearing. It is clearly not suitable for the informal process, which was designed for smaller projects that are not contested.

... and...

**ARE THERE OTHER ISSUES OR CONCERNS RELATED TO THIS MATTER?**

Yes, there are issues or concerns related to this application, including, but not limited to:

MISO IS NOT THE REGULATOR. THE COMMISSION IS THE REGULATOR. MISO's "criteria" for its "approval" is very different from the Certificate of Need and Routing approval to be considered in the contested case before an ALJ and by the Commission.

The contested case, and the Commission, must not look at this project in isolation. There are other transmission line projects proposed in the area, and all must be considered to determine whether these projects, individually, or in segments, or in full, obviate the "need" for this project, and/or could serve as an alternative to this project -- specifically the Brookings-Hampton 2nd Circuit CN-23-200 and TL-08-1474; Big Stone-Alexandria-Big Oaks CN-22-538 and TL-12-159; and Xcel's MN Energy CON Lyon Co. to Sherco 22-131 and 22-132.

The Commission must look carefully at alternatives and combinations of alternatives, without rejecting alternatives out-of-hand as applicant does. With batteries now an effective and reasonable alternative to transmission in some instances, batteries and solar near load could be a reasonable alternative to a segment or two, a project or two. The MISO configuration and "approval" is not a Minnesota criteria-based purpose or demonstration of "need."

The Commission should consider alternatives that reduce the environmental impact of transmission by ELIMINATING need for much of it. An example is geothermal.

*Grid Cost and Total Emissions Reductions Through Mass Deployment of Geothermal Heat Pumps for Building Heating and Cooling Electrification in the United States<sup>3</sup>*

The abstract:

*This report presents the results of a study on the potential grid impacts of national-scale mass deployment of geothermal heat pumps (GHPs) coupled with weatherization in single-family homes (SFHs) from 2022 to 2050. GHPs are a technology readiness level 10, commercially available technology across the United States. This study is an impact analysis only; installed costs and available land areas for installing GHPs are not accounted for in determining their estimated deployment. The three scenarios studied were (1) continuing to operate the grid as it is today (the Base scenario), (2) a scenario to reach 95% grid emissions reductions by 2035 and 100% clean electricity by 2050 (the Grid Decarbonization scenario), and (3) a scenario in which the Grid Decarbonization scenario is expanded to include the electrification of wide portions of the economy, including building heating (the Electrification Futures Study or EFS scenario). The analysis team modeled each of these three scenarios with and without GHP deployment to a large percentage of US building floor space. In all cases, deployment of approximately 5 million GHPs per year demonstrated system cost savings on the grid, consumer fuel cost savings through eliminated fuel combustion for space heating, and CO<sub>2</sub> emission reductions from avoided on-site fuel combustion—and, in the case of the Base scenario, CO<sub>2</sub> emissions reductions from the electric power sector. GHPs have traditionally been viewed as a building energy technology. The most notable result of this study, however, is the demonstration that GHPs coupled with weatherization in SFHs are primarily a grid cost reduction tool and technology that, when deployed at a national scale, also substantially reduces CO<sub>2</sub> emissions, even in the absence of any other decarbonization policy.*

See also: Renewable Energy: Distributed Generation Policies and Programs<sup>6</sup>

Distributed generation, siting generation near load, and particularly extensive rooftop solar, would also have an impact on “need” for the project. MISO is a marketing entity, and distributed generation conflicts with the MISO marketing agenda. This transmission line, as proposed, is a superhighway to Wisconsin and beyond, not needed by Minnesota and not in the public interest.

When considering alternatives, the Commission must keep in mind that a combination of alternatives may well meet the need, and must not separate out each potential alternative and base feasibility on whether an individual alternative meets the full claimed “need.”

The Commission needs to take a look at the standard environmental factors and more importantly a hard look at the Certificate of Need aspects of size, type, and timing that

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<sup>3</sup> Online at: <https://info.ornl.gov/sites/publications/Files/Pub196793.pdf>

have an environmental impact. The mere suggestion that this project should be approved does not meet the applicant’s burden of proof, nor does the claim of “MISO approval.”

*No large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the commission ... and consistent with the criteria for assessment of need.*

Minn. Stat. §216B.243, subd. 3.

A transmission project should only be approved based on the public interest regulatory definition of and criteria required to demonstrate need. It is not the job of ratepayers and landowners to shoulder the burden of fulfilling utilities’ corporate desires and wants.

Completeness Comment, NoCapX 2020 and The Prehn Family, April 22, 2024<sup>4</sup>.

Instead of forwarding this Certificate of Need to OAH for hearing, the Commission’s Order was that “need” was not a contested issue. Agency and Intervenors claiming there were no contested issues, no facts in dispute is premature – a look at the comments thus far in the docket and the attendance at the public meetings thus far shows intense interest and that the project is contested.

## **II. ADVISORY TASK FORCES HAVE PROVIDED VALUABLE INFORMATION**

Likewise, the Commission’s June 26, 2024 Order regarding appointment of an Advisory Task Force was equally obtuse, ignoring past successful and productive experience of prior task forces for long transmission lines, notably the CapX 2020 projects.

Staff Briefing Papers on the subject stated:

### **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.

PUC Staff Briefing Papers, May 22, 2024<sup>5</sup>.

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<sup>4</sup> [20244-205826-02](#) Public 22-532 (CN) DOC EERA Comments AND RECOMMENDATIONS ON APPLICATION COMPLETENESS 04/22/2024

<sup>5</sup> [20245-207007-02](#) Public 22-532 (CN) PUC Briefing Papers MAY 30, 2024 AGENDA 05/22/2024

Then the Commission parrots that rationale for rejection of an Advisory Task Force:

### III. Advisory Task Force

The Prehn family and NoCapX 2020 requested appointment of an advisory task force. The Commission has the authority to appoint an advisory task force under Minn. Stat. § 216E.08 and Minn. R. 7850.3600.

EERA recommended that the Commission not appoint an advisory task force at this time. In its reasoning, EERA stated that a task force is best suited for evaluating defined geographic locations and impacts. Since this Project is 150 miles in length and has the potential for widely distributed potential impacts, EERA argued it is not a good fit for a task force. Additionally, EERA stated that Xcel has previously considered and rejected numerous route alternatives. EERA argued these processes 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 Commission agrees with EERA that an advisory task force would not provide an effective method for developing the record in this instance. It is unclear how appointing a task force at this juncture would aid the Commission's identification and evaluation of routes and possible mitigation measures. The Commission is persuaded that the full review process provides interested persons full and comprehensive opportunities to identify concerns and to propose alternative route segments, including through the EIS scoping meetings and associated comment period, the draft EIS meetings and associated comment periods, and the public hearings and associated comment periods.

And the Order:

4. The Commission denies the request to establish an advisory task force at this time.

Order, June 26, 2024<sup>6</sup>.

The Commission and Commission staff, and EERA, should have noted for the record that those other "intervenor" who did not see a need for an Advisory Task Force have never Petitioned for an Advisory Task Force! That work falls to intervenors challenging projects. The 2024 legislature, by eliminating Advisory Task Forces at the Commission's behest, has cut out an important avenue for those affected by transmission projects to timely raise legitimate concerns including important missed environmental features, impacts, and alternate routes to be addressed in environmental review.

Advisory Task Forces also serve as notice to those affected by a project. Advisory Task Forces include representatives from affected counties, townships, and cities, and individuals and organizations found in the area with an interest in the project. Those on the ground have the most knowledge of the area, matters not addressed in an application, and of potential impacts. To shut them out leaves the scope of review to distant, uninvolved, and unknowing parties without a stake in the proceeding. Local input, "boots on the ground," is a primary form of participation.

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<sup>6</sup> [20246-207975-01](#) 23-157 PUC Order (TL) ACCEPTING APPLICATIONS AS COMPLETE, ESTABLISHING PROCEDURAL REQUIREMENTS, AND NOTICE OF AND ORDER FOR HEARING 06/26/2024



The claim that an Advisory Task Force should not be appointed was inconsistent with past successful practice successfully demonstrated in multiple CapX 2020 Advisory Task Forces:

EERA recommended that the Commission not appoint an advisory task force at this time. In its reasoning, EERA stated that a task force is best suited for evaluating defined geographic locations and impacts. Since this Project is 150 miles in length and has the potential for widely distributed potential impacts, EERA argued it is not a good fit for a task force.

Id. Yet for this application there are “defined geographic locations” touted by everyone – the applicant, EERA, Commission staff and the Commission Order:

The Project is divided into the following four segments:

- Segment 1: construction of a new 48- to 54-mile 345-kV transmission line between the Wilmarth Substation and a point near the West Faribault Substation;
- Segment 2: construction of 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, along with 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: construction of 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.

Id., see also Application Summary, Narrative, and Staff Briefing Papers.

Each of the CapX 2020 routes was divided up into sections, with Task Forces appointed to “defined geographic locations.” Each Advisory Task Force informed the record, brought up things that were unknown to the Applicants and Commerce EERA staff, information that demonstrated that adjustments were necessary, that local input was valuable.

Failure to appoint an Advisory Task Force in a situation identical to CapX 2020 where Advisory Task Forces made substantive comments and material additions to review makes no sense whatsoever.

**III. INFORMAL PROCESS AND REJECTION OF TASK FORCE IS CONTRARY TO THE COMMISSION’S MANDATE TO ADOPT A BROAD SPECTRUM OF CITIZEN PARTICIPATION AS A PRINCIPAL (sic) OF OPERATION.**

The mandate of the Public Utilities Commission, even after its 2024 gutting<sup>7</sup>, is clear:

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<sup>7</sup> Despite all the years that have passed since the advent of the PPSA, despite the multiple iterations, it’s still “principal.” [1973 c 591 s 9](#)

Sec. 7. Minnesota Statutes 2022, section 216E.08, subdivision 2, is amended to read:

Subd. 2. **Other Public participation.** The commission shall must adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall must not be limited to public meetings and hearings and advisory task forces and shall must be consistent with the commission's rules and guidelines as provided for in under section 216E.16 216I.24.

“Informal process” and failure to utilize Advisory Task Forces is not adoption of broad spectrum citizen participation as a principle of operation. To so sharply limit regulatory review and to cut citizen participation at the very beginning of the review process is backwards, making a decision without any support, and most importantly, is contrary to the Commission’s mandate found now in [Minn. Stat. §216I.16](#).

In Briefing Papers<sup>8</sup>, staff noted the rationale of Commenters to utilize the “informal” process:

They argued that the informal process is sufficient because there are no issues presented that cannot be resolved using the informal process. 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 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.

No issues? How would anyone know at this point? “Need to expedite review and approval?” “Prevent reliability issues for the projected future transmission system,” and “timely permitting and deployment” ... “to help Minnesota meet its energy goals?”

Although the Commission’s Order for the Mankato-Mississippi project is specifically used here, this is only used as an example of a disturbing general trend -- limitation of public participation is common. The “informal” process has been a favorite of the Commission and it’s now being used inappropriately. 2030 is 5 years away. More importantly, pushing policy, focused on Minnesota’s energy goals, is not regulating. Ramming projects through is abdicating the Public Utilities Commission’s regulatory role, and it is contrary to the Commission’s mandate and the public interest.

Again, I request leave to file this Comment, and ask that it be accepted and included in the record and in consideration for the PPSA Annual Hearing report. Thank you for your consideration.

Very truly yours,



Carol A. Overland  
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<sup>8</sup> [20245-207007-02](#) Public 22-532 (CN) PUC Briefing Papers MAY 30, 2024 AGENDA 05/22/2024