

## Staff Briefing Papers

**Meeting Date:** April 9, 2026

Agenda Item: \*\*6

**Company:** Dairyland Power Cooperative and Northern States Power dba Xcel Energy

**Docket:** ET3, E002/CN-25-121

In the Matter of the Application for a Certificate of Need for the Gopher to Badger Link 765 kV High Voltage Transmission Line Project

- Issues:**
- Should the Commission accept the certificate of need application as substantially complete?
  - Should the Commission authorize review of the certificate of need application using the informal process or refer the matter to the Court of Administrative Hearings for contested case proceedings?
  - Should the Commission consider any additional procedural items?

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✓ **Relevant Documents**

**Date**

PUC – Order on Notice Plan and Exemptions from Certain Certificate of Need Application Content Requirements

12/23/2025

Applicants – Dairyland/Xcel Joint CN Application to the Minnesota Public Utilities Commission for a Certificate of Need for Gopher to Badger Link (17 parts including 3 parts also filed as Trade Secret)

02/06/2026

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.

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PUC – Notice of Comment Period on Application Completeness	02/11/2026
PUC EIP – Staff Comments on Certificate of Need Application Completeness and Rule Variance	02/24/2026
Applicants – Corrected Attachment B for Notice Plan	02/24/2026
DOC DER – Comments on Notice Plan Petition	02/25/2026
Minnesota Center for Environmental Advocacy, Citizens Utility Board of Minnesota, Sierra Club, Clean Grid Alliance, and Fresh Energy – Joint Comments on Application Completeness	02/25/2026
North Route Group and NO765LINE – CORRECTED Initial Comment and Notice of Appearance	02/25/2026
Overland – Legalectric – Reply Comments – Xcel Peak Demand Down 377 MW	02/27/2026
North Route Group and NO765MN – Reply Comments	03/04/2026
Applicants – Reply Comments	03/04/2026
U.S. Fish and Wildlife Service – Comments	03/04/2026
City of Spring Grove – Comments/Resolution	03/04/2026
North Route Group and NO765MN – Supplemental Comments requesting a contested case and joint hearing, discovery, and completeness supplemental comments	03/09/2026
Applicants – Supplemental Comments	03/09/2026
LIUNA MN/ND – Supplemental Comments	03/09/2026
DOC DER – Supplemental Comments	03/10/2026
Applicants – Response to Petition to Intervene	03/19/2026

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## I. ISSUES

- Should the Commission accept the certificate of need application as substantially complete?
- Should the Commission authorize review of the certificate of need application using the informal process or refer the matter to the Court of Administrative Hearings for contested case proceedings?
- Should the Commission consider any additional procedural items?

## II. PROJECT BACKGROUND

On February 6, 2026, the Application<sup>1</sup> for the Gopher to Badger Link Transmission Line Project was filed. The Project is being proposed by Northern States Power Company (d/b/a Xcel Energy) and Dairyland Power Cooperative (collectively, Applicants) and would involve constructing two new 765-kV high-voltage electric transmission lines across Minnesota as part of a broader proposed regional transmission network connecting Minnesota, South Dakota, Iowa, and Wisconsin.

In Minnesota, the Gopher to Badger Link Project would include 2 segments:

1. Segment 1: A single-circuit 765 kV high voltage transmission line that would be approximately 34 miles between the existing North Rochester Substation and a point near Marion, Minnesota.
2. Segment 2: A 765 kV/161 kV double-circuit high voltage transmission line that would be approximately 105 miles from near Marion, Minnesota, to the Wisconsin border. Segment 2 also includes a new three-circuit breaker 161 kV switching station at a location to be identified in Houston County, Minnesota, as well as minor upgrades at existing 161 kV substations to support operation of the new Project facilities.

Each segment of the route will use lattice structures to support the transmission lines, with each tower being spaced between 1,100 to 1,500 feet apart, and range in height between 150 to 199 feet tall. The project will require a 250-foot-wide right-of-way.

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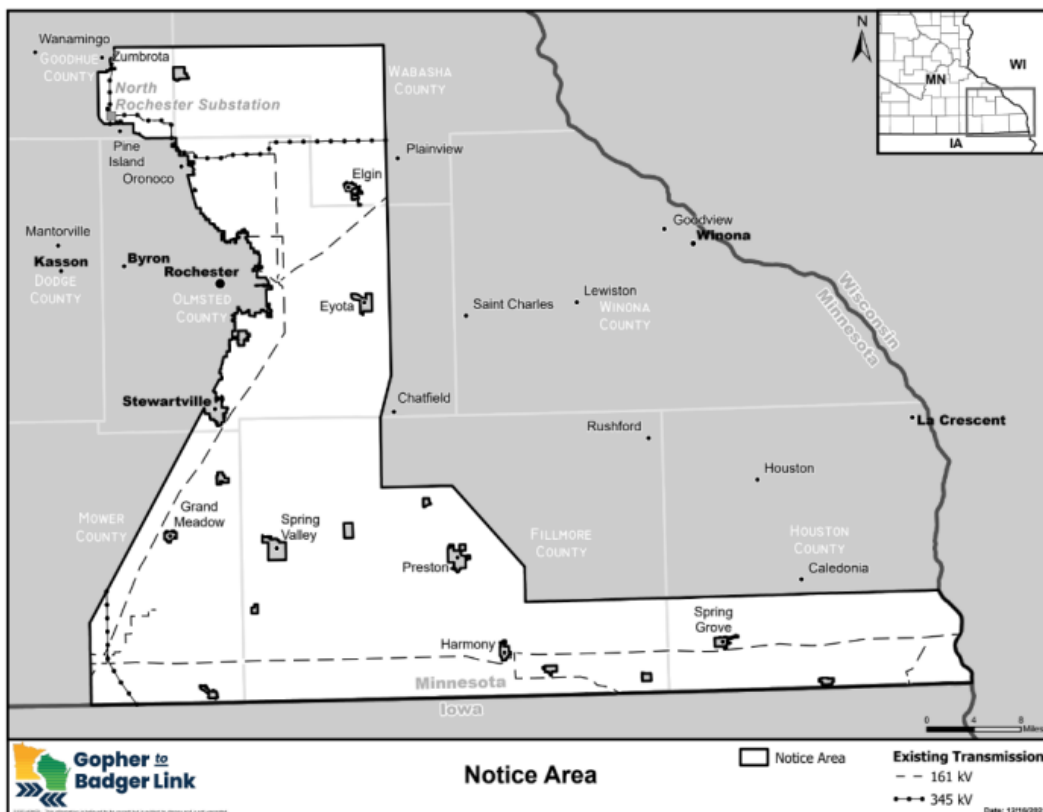
<sup>1</sup> Applicants – Initial Filing of Application (02/06/2026): [20262-227902-02](#)

The project is part of Midcontinent Independent System Operator, Inc.’s (MISO) Long Range Transmission Planning Tranche (LRTP) 2.1 projects, approved in July 2024 under the MISO Transmission Expansion Plan 2024 (MTEP24).

MISO and the Applicants have identified a need for up to 10,000 megawatts of additional electrical transmission capacity in Minnesota. As described in the Certificate of Need Application and MTEP24, the project is intended to:

- Address projected electric reliability overloads and provide support for compliance with national electric reliability standards;
- Improve efficiency in meeting current and future state and regional reliability needs;
- Provide transmission capacity to serve forecasted residential, commercial, and industrial demand, supporting Minnesota’s and the Midwest region’s long-term growth; and
- Support the transition from fossil-fuel generation to carbon-free energy resources while maintaining system reliability.

### Project Overview Map



### III. PROCEDURAL HISTORY

The Project was studied and reviewed as part of the Midcontinent Independent System Operator, Inc. (MISO) Long-Range Transmission Planning (LRTP) Tranche 2.1 Portfolio and were approved in July 2024 under the MISO Transmission Expansion Plan 2024 (MTEP24).

On February 10, 2025, Dairyland and Xcel filed Notices of Intent to Construct, Own, and Maintain the Minnesota Portion of The North Rochester – Columbia Transmission Line (Gopher to Badger Link).

On December 23, 2025, the Commission issued an order approving the Applicants' Notice Plan and exemption request.

On February 5, 2026, the Applicants provided a compliance filing outlining their actions concerning implementation of the Commission-approved Notice Plan.

On February 6, 2026, the Applicants filed an application for a certificate of need for the proposed Gopher to Badger Link Transmission Line Project.

On February 11, 2026, the Commission issued a notice requesting comments on: (1) whether the certificate of need application contained the information required under Minnesota Rules Chapter 7849; (2) whether there are any contested issues of fact with respect to the representations made in the applications; (3) whether the certificate of need application should be reviewed using the Commission's informal process or be referred to the Court of Administrative Hearings for contested case proceedings; and whether there were any additional issues or concerns related to the application. Initial comments were accepted until February 25, 2026, reply comments until March 4, 2026, and, if needed, supplemental comments until March 9, 2026.

By the close of the initial comment period, letters were received from: PUC Energy Infrastructure Permitting (EIP) staff; the Minnesota Department of Commerce, Division of Energy Resources (Department, DOC DER); Midcontinent Independent System Operator, Inc. (MISO); Minnesota Center for Environmental Advocacy, Citizens Utility Board of Minnesota, Sierra Club, Clean Grid Alliance, and Fresh Energy (Joint Commenters); North Route Group & NO765MN; Overland/Legalectric; Zumbro Township; Houston County Board of Commissioners; Viola Township; City of Spring Grove; U.S. Fish and Wildlife Service; Liuna MN/ND; and numerous members of the public including (Thomforde, Johnson, Weckworth, Kalvoda).

**\*Staff notes** that numerous public comments on the project were received, however the comments discussed the merits of the project and were unrelated to the question of

application completeness and whether the application contained the information necessary to begin the certificate of need review process. Staff will review and consider these comments again during the environmental scoping period.

By the close of the reply comment period, letters were received from: the Applicants, Overland/Legalectric, North Route Group/NO765MN, and several members of the public (Hauser, Hammel, Wray (Charles, Deborah, and David, respectively), Ninneman, Thomforde, Giesler, Johnson, Weckworth, Kalvoda, Sprick, and Reginer).

During the supplemental comment period, letters were received from: US Fish and Wildlife Service (USFWS), City of Spring Grove, MN, DOC DER, North Route Group/NO765MN, the Applicants, and LIUNA of MN/ND.

#### **IV. RULES AND STATUTES**

The statutes and rules relevant to certificate of need applications for large energy facilities that are high-voltage transmission lines include Minn. Stat. Chapter 216B and Minn. R. chapters 7829 and 7849.

##### **A. Requirements**

Minn. Stat. § 216B.243, subd. 2, provides that no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the Commission. The proposed Gopher to Badger Link Project meets the definition of a large energy facility under Minn. Stat. 216B.2421, Subd. 2 (2) because it would have a capacity of 300 kV or more and greater than one mile in length.

##### **B. Certificate of Need Application**

Under Minn. R. 7849.0220, an application for a certificate of need for a large high-voltage transmission line must include all the information required by parts 7849.0240, 7849.0260 to 7849.0340, and if applicable 7849.0270. The Commission may exempt certain data requirements pursuant to Minn. R. 7849.0200, subp. 6.<sup>2</sup> Under Minn. R. 7849.0200, subp. 5, the Commission must notify the applicant within 30 days of receipt of an application if the application is not substantially complete.

##### **C. Procedural Treatment of Certificate of Need Application**

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<sup>2</sup> The Commission, in its April 19, 2023, Order, authorized exemptions from certain certificate of need application content requirements.

Under Minn. R. 7829.2500, subp. 9, the Commission can choose one of two procedural methods to evaluate an application for a certificate of need: 1) the informal process designated under part 7829.1200 (also known as the notice and comment process);<sup>3</sup> or 2) referral to the Court of Administrative Hearings for contested case proceedings under Minn. Stat. §§ 14.57 et seq., if there are material facts in dispute.

#### **D. Environmental Report**

Minn. R. 7849.1000 to 7849.2100, establish the requirements concerning preparation of an environmental report for a large energy facility requiring a certificate of need. The environmental report must contain information on 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 address measures to mitigate potential adverse impacts.

#### **E. Timing**

Under Minn. Stat. § 216B.243, subd. 5, the Commission shall approve or deny a certificate of need for a large energy facility within 12 months of the submission of an application. This period may be extended by consent of the parties or by the Commission for good cause.

### **V. COMMENTS**

On February 9, 2026, the Commission issued a notice<sup>4</sup> establishing comment periods on (1) the completeness of the certificate of need application and (2) the appropriate procedural framework for this matter. The notice provided for initial (02/25/2026), reply (03/04/2026), and supplemental (03/09/2026) comment periods.

Comments on application completeness and the review process were filed by EIP staff, the Applicants, the Minnesota Department of Commerce, Division of Energy Resources (Department, DOC DER), Midcontinent Independent System Operator, Inc. (MISO), Minnesota Center for Environmental Advocacy, Citizens Utility Board of Minnesota, Sierra Club, Clean Grid Alliance, and Fresh Energy (Joint Commenters), Carol Overland/Legalectric, NRG/NO765MN, Local Government Units (Houston County, City of Spring Grove, Viola Township, Zumbro Township), U.S. Fish and Wildlife Service, LIUNA of Minnesota and North Dakota, and several

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<sup>3</sup> The informal process still requires at least one public hearing to obtain public comment on the necessity of granting a certificate of need (Minn. R. 7829.2500, subp. 9).

<sup>4</sup> PUC – Notice of Comment Period on Application Completeness (02/11/2026): [20262-228041-01](#)

interested members of the public (Hauser, Hammel, Wray (Charles, Deborah, and David, respectively), Ninneman, Thomforde, Giesler, Johnson, Weckworth, Kalvoda, Sprick, and Reginer). The comments are summarized below by decision topic: application completeness, procedural treatment, and administrative or other procedural requests.

Several public comments were also received that were outside of the scope of questions asked in the Notice, which are briefly discussed below, and will be revisited during the environmental scoping portion of the Project proceedings.

### **A. Public Comments Not Related to Application Completeness and Certificate of Need Proceedings**

There has been a significant amount of public input received in response to the PUC's February 11, 2026, Notice on Application Completeness, most of which expressed strong opposition to the Project and were not related to the question of application completeness. These comments generally address the merits of the project related to the route and not the completeness of the CN application. The comments raise a wide range of topics such as potential route alternatives to consider, the projected location and use of electricity transmitted, noticing for the project, potential ecology, wildlife and protected species impacts, specific landscape and aesthetic impacts, other proposed energy infrastructure projects in the area, property value impacts, impacts to prime farmland, noise and related potential health impacts, and peak demand estimates.

In addition to individual members of the public, the Commission also received similarly focused comments from Houston County<sup>5</sup>; the City of Spring Grove<sup>6</sup>; and Zumbro<sup>7</sup> and Viola<sup>8</sup> Townships.

### **B. Application Completeness**

#### ***1. Comments Supporting Completeness or Identifying No Missing Information***

EIP staff reviewed the environmental information required under Minn. R. 7849.0310 and concluded that the environmental information portion of the application is complete<sup>9</sup>.

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<sup>5</sup> Houston County, MN – Comments (02/24/2026): [20262-228539-01](#)

<sup>6</sup> City of Spring Grove, MN – Comments (03/05/2026): [20263-228971-01](#)

<sup>7</sup> Zumbro Township – Comments (02/10/2026): [20262-227995-03](#)

<sup>8</sup> Viola Township – Comments (02/26/2026): [20262-228696-01](#)

<sup>9</sup> PUC EIP – EIP Staff Comments on CN Application Completeness and Rule Variance (02/24/2026): [20262-228571-01](#)

The Department recommended<sup>10</sup> that the Commission find the application substantially complete. The DOC DER also requested the Applicants provide a completeness checklist that matches the information in the Application, provide a table listing the counties in the project Notice Area, and provide certain clarifications in Appendix D of the Application.

MISO<sup>11</sup> did not identify any missing information relevant to application completeness. MISO explained that the project is included in MISO's Long Range Transmission Planning (LRTP) Tranche 2.1 portfolio and stated that it reviewed portions of the application supporting the need for the project and found them accurate.

The Joint Commenters<sup>12</sup> discussed the project's development through MISO's LRTP process and expressed general support for the project based on clean energy, reliability, and affordability objectives.

LIUNA of Minnesota and North Dakota<sup>13</sup> urged the Commission to find the application substantially complete and allow the application review process to proceed.

## ***2. Comments Opposing Application Completeness***

A number of public commenters (Thomforde, Johnson, Weckworth, Kalvoda) raised issues related to completeness and the information contained in the application. Mr. Thomforde<sup>14</sup> offered an alternative to the Project. Mr. Johnson<sup>15</sup> asserted that alternative types of transmission should be considered, such as a 525 kV HVDC system, undergrounding, or other options. Mr. Weckworth<sup>16</sup> asserted that the application was incomplete because it didn't contain information such as maps or existing lines, coal plant closures, advances in technology, and other factors that he viewed as necessary for a complete application. Mr. Kalvoda<sup>17</sup> argued that the need for the Project has not been determined and that information such as the number of homes in the ROW was not disclosed.

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<sup>10</sup> DOC DER – Comments on Application Completeness (20/25/2026): [20262-228651-01](#)

<sup>11</sup> MISO – Comments (02/25/2026): [20262-228623-01](#)

<sup>12</sup> MCEA/CUB/Sierra Club/Clean Grid Alliance/Fresh Energy – Joint Commenters on Application Completeness (02/25/2026): [20262-228647-01](#)

<sup>13</sup> LIUNA MN/ND – Supplemental Comments (03/09/2026): [20263-229056-01](#)

<sup>14</sup> Dale Thomforde – Public Comment (02/09/2026): [20262-227942-01](#)

<sup>15</sup> Kyle Johnson – Public Comment (02/23/2026): [20262-228473-01](#)

<sup>16</sup> Craig Weckworth – Public Comment (02/23/2026): [20262-228440-01](#)

<sup>17</sup> Peter Kalvoda – Public Comment (02/26/2026): [20262-228710-01](#)

The North Route Group/NO765MN and Overland/Legalectric submitted several comments in the initial, reply, and supplemental comment periods, which all generally oppose the Project. These commenters asserted<sup>18</sup> that the Application “arguably contains the information required” and is “essentially complete,” but the Commission should not have allowed the exemptions they did from certain content requirements. These commenters also asserted<sup>19</sup> that the Application contains what they view as deficiencies, and argued that the Commission should stay the proceeding, allow for party intervention/discovery, consolidate the Project with other Projects, and refer the application to a contested case.

### **3. Applicants’ Response**

The Applicants<sup>20</sup> requested that the Commission find the application complete. In response to EIP Staff, the Applicants stated they agreed with their recommendations, including the requested variances. In response to the DOC DER, the Applicants stated they agree with the recommendation to find the Application complete, and also note some confusion as to other requests made by the DOC DER that do not appear to be application content requirements under Minn. R. 7849.0220, subp. 2, though they do note their willingness to work with the DOC DER on all matters related to the proceeding. In response to MISO and the Joint Commenters, the Applicants state they agree with their respective recommendations and appreciate the background information on the Tranche 2.1 Projects and the merits of the Gopher to Badger Project.

In response to public commenters and Overland/Legalectric comments on application completeness and the review process, the Applicants noted that there is no rule that the Notice for Application Completeness be mailed to all landowners, and that the argument to have included the Notice in additional newspapers was untimely. Concerning application content and exemptions, the Applicants again stated the arguments challenging the exemption requests are untimely and irrelevant. In response to individual commenters Thomforde and Johnson, the Applicants stated that the majority of their comments are not related to completeness, but the substance of their comments will be addressed during the environmental scoping period. In response to commenters Weckworth and Kalvoda, the Applicants asserted that the Application

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<sup>18</sup> North Route Group/NO765MN – CORRECTED Initial Comment and Notice of Appearance (02/25/2026): [20262-228660-01](#)

<sup>19</sup> North Route Group/NO765MN – Supplemental Comment – Consolidation – Discovery (03/09/2026): [20263-229071-02](#)

<sup>20</sup> Applicants – Gopher to Badger Filing Letter with Completeness Reply Comments (03/04/2026): [20263-228942-01](#)

is complete and the lack of information the commenters are asserting should be included is not required under law.

Staff Notes: The commenters challenging the Commission's Exemptions Order establishing filing requirements applicable to completeness, Overland/Legalectric did not provide their challenge in a timely manner and therefore the Order remains in effect, and those arguments fall outside the scope of this review.

Concerning other individual comments received during the application completeness comment period, staff notes that the majority of issues raised are related to alternatives, routing, underlying need for the line, localized impacts (EMF, sound), and human/environmental impacts of the Project. Though not related to application completeness, these topics are important but are more appropriately addressed during the environmental scoping portion of the future Route Permit proceedings.

## **B. Procedural Treatment**

### ***1. Informal Process Recommended***

A number of commenters recommended the Commission use the informal process (comments and reply) to evaluate the application, including the Department, MISO, the Joint Commenters, and LIUNA of MN/ND. These commenters indicated that there are no known contested issues of fact that warrant a referral to a contested case at this time.

### ***2. Contested Case Recommended***

The North Route Group/NO765MN and the Overland/Legalectric groups submitted comments<sup>21</sup> asserting there are contested issues of fact that warrant referral to the Court of Administrative Hearings for a contested case proceeding. They argued that the contested issues of fact are related to need, load forecasts, project costs, benefits, and alternatives.

Approximately 10 individual commenters requested a contested case or suggested there were contested issues of fact in the application (Hauser/Pugleasa/Schroeder<sup>22</sup>, Hammel<sup>23</sup>,

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<sup>21</sup> North Route Group/NO765MN – CORECTED Initial Comment and Notice of Appearance (02/25/2026): [20262-228660-01](#)

<sup>22</sup> Kristina Hauser, Julia Pugleasa, Sheila and Daniel Schroeder – Public Comment (03/04/2026): [20263-228957-01](#)

<sup>23</sup> Tom Hammel – Public Comment (03/04/2026): [20263-228895-01](#)

Charles/Deborah/David Wray<sup>24</sup>, Ninneman<sup>25</sup>, Thomforde<sup>26</sup>, Giesler<sup>27</sup>, Johnson<sup>28</sup>, Reginer<sup>29</sup>, Sprick<sup>30</sup>).

The majority of commenters raised issues related to the merits of the Project or other matters that are better addressed during the environmental scoping period. Concerning the procedural treatment of this application, these commenters also supported the need for a contested case hearing for various reasons including: uncertainty with demand estimates and project cost estimates, potential audio and health impacts from the project, concern over public input and alternatives to the project, and potential unique geographic formations within the area.

### **3. Applicants Response**

The Applicants noted<sup>31</sup> that several commenters requested the Certificate of Need proceeding be combined with the Route Permit proceedings to make the process more transparent to the Public.

Given the applicants' intent to file the Route Permit in the Fall of 2026, the Applicants proposed that the Commission stay the certificate of need proceeding and process it jointly with the route permit application. Considering the recommendation to stay the CN and run joint proceedings, the Applicants suggested that there is no need for the Commission to determine whether the CN application be reviewed using the informal process or be referred for a contested case at this time. The applicant's recommended that the decision should be made following the submission of the Route Permit Application so that proceedings are consistent and less confusing to the public.

*Staff Note:* Staff agrees with the Applicant that the Commission does not need to make a determination on which review process should be used for the certificate of need at this time.

### **C. Administrative or Other Procedural Requests**

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<sup>24</sup> Wray Public Comments – Submitted on various dates: [20263-228907-01](#); [20263-228910-01](#); [20263-228933-01](#)

<sup>25</sup> Amanda Ninneman – Public Comment (03/04/2026): [20263-228935-01](#)

<sup>26</sup> Dale Thomforde – Public Comment (03/06/2026): [20263-228992-01](#)

<sup>27</sup> Bonnie Giesler – Public Comment (03/04/2026): [20263-228924-01](#)

<sup>28</sup> W. Ben Johnson, M.D. – Public Comment (03/02/2026): [20263-228808-01](#)

<sup>29</sup> Dean Reginer – Public Comment (02/25/2026): [20262-228619-02](#)

<sup>30</sup> Daniel Sprick – Public Comment (02/23/2026): [20262-228495-01](#)

<sup>31</sup> Applicants – Reply and Supplemental Comments (03/04/2026; 03/09/2026): [20263-228942-01](#); [20263-229062-01](#)

## 1. *Stay Certificate of Need Application*

The City of Spring Grove<sup>32</sup> commented that the Project would have significant impacts on the City and they do not currently have enough information to evaluate the impacts on their community. As such the City requested a stay of the proceedings, an extension of comment period deadlines, and a comprehensive evaluation of route alternatives that increase separation from the City. Another individual commenter, Kyle Johnson<sup>33</sup>, requested a stay of the proceedings and recommended that the Commission compel the applicants to submit an analysis of an underground 525 kV alternative.

Overland/Legalectric and North Route Group/NO765MN argued that there are contested issues of fact that warrant a contested case proceeding<sup>34</sup> and that the CN and Route Permit proceedings should be run concurrently. These commenters asserted that contested issues of fact include broad topics such as need, load forecasts, project costs, capacity ratings, and alternatives, but the points are not fully developed. The North Route Group/NO765MN commenters also referenced Minn. Stat. § 216B.243, subd. 4, which provides for consideration of joint hearings on a certificate of need application and a route permit application.

In addition to staying the certificate of need application for the Gopher to Badger Link Project, North Route Group/NO765MN requested<sup>35</sup> that the Commission combine it with the Power On Midwest Project and require a consolidation or joint proceedings of the two CN applications once all related route permit applications have been filed on each project. North Route Group/NO765MN appeared to rely primarily on Minn. R. 1400.6350 in support of their request to join these separate dockets, while also citing Minn. Stat. § 216B.243, subd. 4 and Minn. Stat. § 216I.16 more generally in support of joint processing.

### *a. Applicants' Response*

Regarding the commenters request to stay the CN proceeding to run concurrently with the Route Permit process, the Applicants agreed and have requested<sup>36</sup> to stay the certificate of

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<sup>32</sup> City of Spring Grove – Public Comment (03/05/2026): [20263-228971-01](#)

<sup>33</sup> Kyle Johnson – Public Comment (02/23/2026): [20262-228473-01](#)

<sup>34</sup> North Route Group/NO765MN – CORECTED Initial Comment and Notice of Appearance (02/25/2026): [20262-228660-01](#)

<sup>35</sup> North Route Group/NO765MN – Supplemental Comment – Consolidation – Discovery (03/09/2026): [20263-229071-02](#)

<sup>36</sup> Applicants – Reply and Supplemental Comments (03/04/2026; 03/09/2026): [20263-228942-01](#); [20263-229062-01](#)

need on this project, as has been discussed in an earlier section of these briefing papers. The Applicants noted that the City of Spring Grove's comments would be better addressed during the scoping portion of the proceedings.

With respect to the request to consolidate the Gopher to Badger and PowerOn Midwest applications, the Applicants responded<sup>37</sup> that consolidating the two dockets has no legal support, would unnecessarily delay proceedings, and would confuse the public. The applicants argued that there is no reasonable justification for combining the two separate dockets with different ownership and applicants. The Applicants stated that they have already agreed to stay the CN and run concurrent proceedings with the Route Permit, and requested that the Commission deny the request to combine two the two CN applications.

*Staff Note:* With respect to Overland/Legalectric's assertion that "many contested issues of fact" exist, staff again notes that the comments largely raise merit-based disagreements and do not identify specific contested issues of fact. Even if such issues were defined more clearly, staff does not believe that would justify staying the certificate of need proceeding for a year or more while waiting for the Applicants to file the multiple route permit applications associated with the PowerOn Midwest certificate of need.

Regarding Minn. Stat. § 216B.243, subd. 4, staff notes that the provision applies when both applications are before the Commission (i.e., filed jointly). It does not require an applicant to file certificate of need and route permit applications simultaneously, nor does it require the Commission to stay a certificate of need proceeding until a route permit application is filed.

Regarding the request by North Route Group/NO765MN to join the PowerOn Midwest CN docket with the Gopher to Badger docket, staff notes that these are two distinct dockets involving different applicants and different schedules and the request for joint or consolidated review of two separate projects is unusual.

## **2. Intervention and Discovery**

North Route Group/NO765MN, also requested<sup>38</sup> intervention and the opportunity to conduct discovery so they could participate as parties. More specifically, they are requesting that the Commission stay the proceeding until a route permit application is filed, while at the same time allowing discovery on the merits to begin immediately.

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<sup>37</sup> Applicants – Response to Petition to Intervene (03/19/2026): [20263-229454-01](#)

<sup>38</sup> North Route Group/NO765MN – Supplemental Comment – Consolidation – Discovery (03/09/2026): [20263-229071-02](#)

Staff notes that this is unusual and procedurally difficult to support. A stay would generally suspend substantive review of the application, and staff is not aware of a clear procedural basis for allowing full merits discovery to proceed while the underlying application review is suspended.

*a. Applicants*

The Applicants responded<sup>39</sup> to the request from North Route Group/NO765MN's for intervention and discovery rights during the stay by asserting that there is no legal support to justify prolonged discovery in a stayed proceeding. Allowing such discovery would defeat the purpose of a stay.

**3. Rule Variances**

EIP staff recommended that the Commission vary Minn. R. 7849.1200 and 7849.1400 to reflect timing considerations and changes enacted in the Energy Infrastructure Permitting Act.

**4. Noticing Matters**

North Route Group/NO765MN and Overland/Legalectric groups requested<sup>40</sup> additional notice to landowners and an extension of the completeness comment deadline, asserting that landowners did not receive the Commission's notice on completeness. These commenters also asserted that the Zumbrota News-Record and the Red Wing Republican Eagle should have been included in the newspaper noticing.

## VI. STAFF DISCUSSION

The following main issues are before the Commission:

- whether the certificate of need application is substantially complete;

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<sup>39</sup> Applicants – Response to Petition to Intervene (03/19/2026): [20263-229454-01](#)

<sup>40</sup> North Route Group/NO765MN – CORECTED Initial Comment and Notice of Appearance (02/25/2026): [20262-228660-01](#)

- whether the Commission should proceed using the informal process to develop the record or instead refer the matter to the Court of Administrative Hearings for contested case proceedings; and
- whether the Commission should address the following administrative and procedural items: a stay request, combine dockets, rule variance, allow for intervention and discovery, additional information request, and re-noticing.

### **Application Completeness**

Staff recommends the Commission find the certificate of need application substantially complete. Many individual public commenters asserted that the application was incomplete, but staff notes that the majority of those concerns were merit based and related to factors that will be better addressed during the environmental scoping period. Staff will refer back to these scoping related comments during that portion of the proceeding.

### **Procedural Process**

As discussed earlier in these briefing papers, when reviewing a certificate of need application, the Commission generally has discretion to develop the record through either the informal process or the contested case process.

**Informal Process.** The informal process is designed to efficiently gather information and public input when the issues can be addressed through written filings and a public hearing.

Under the informal process, the record is typically developed through written comment periods (initial and reply) and a public hearing at which members of the public may ask questions and provide testimony. The informal process is commonly used because it is streamlined and works well when projects are less complex and significant public controversy is not expected. It allows the Commission to develop an adequate record without the need for expert witnesses, written testimony, the cross examination of witnesses, as well as a comprehensive report from an Administrative Law Judge with Findings of Fact, Conclusions of Law and a Recommendation.

Importantly, selecting the informal review process at the start does not necessarily foreclose a contested case later. As established, the informal review process provides for parties or persons to request a contested case until the reply comment period on the merits of the certificate of need application. This allows for the review of the application and the initial comments on the

merits before requesting a contested case. The Commission would then need to consider whether the review process should be converted to a contested case proceeding.

That said, the informal process has limits. It is not designed to resolve disputed facts through cross-examination or other formal evidentiary tools. If a case begins informally but later develops into one requiring formal factual development, the Commission may ultimately need to convert the matter to a contested case. In that event, the review process must be extended for the required development of expert testimony and the cross examination of witnesses, resulting in a more prolonged proceeding than if the matter had been referred to the Court of Administrative Hearings as a contested case at the outset.

**Contested Case Process.** The contested case process is designed for matters involving disputed issues of material fact, or for circumstances in which the Commission cannot reach a sufficiently informed decision without a more formal evidentiary record.

In a contested case, an Administrative Law Judge at the Court of Administrative Hearings oversees the proceeding. Parties present evidence and expert testimony, and the hearing format allows cross-examination and more structured record development. The Administrative Law Judge then issues a report with findings and recommendations for the Commission's consideration when making its final decision.

A notable point is that starting with a contested case does not always add significant time, particularly for large projects where public hearings would occur in either process. The main difference is whether the record needs formal tools to resolve disputed issues and support a defensible decision.

Regarding which process to follow, either informal or contested, staff recommends the Commission refer the matter to the CAH for a contested proceeding or decline to determine the review process to be used until the Route Permit Application is filed in the Fall of 2026. At that time the Commission will have more information regarding the review process (Standard or Major) that will be used to review the route permit application.

## **Administrative and Other Procedural Items**

### ***1. Stay Certificate of Need Application***

Staff agrees with the Applicants' request to stay the Certificate of Need proceedings until the Route Permit Application is submitted in order to make the entire permitting process more

efficient and accessible to the public. Considering the significant amount of public controversy related to the project, and considering the number of requests to stay the application and continue with a joint proceeding once the Route Permit Application is submitted, staff recommends staying the CN proceedings until the Route Permit Application is filed.

## **2. Combining Docket with Power On Midwest**

Regarding the request to combine dockets 25-117 and 25-121 made by the North Route Group/NO765MN and Overland groups, staff opposes combining these two distinct, separate projects into a single proceeding. Doing so would make the process more confusing for the public, reduce efficiency, create procedural confusion, and would be an unprecedented action to combine two separate applicant dockets of this size.

## **3. Rule Variance**

Staff recommends that the Commission vary Minn. R. 7849.1200 and 7849.1400 in this docket in order to reflect the staffing changes within the units responsible for processing siting and routing applications under the Energy Infrastructure Permitting Act. The Commission has granted similar variances in other recent dockets.

Staff recommends granting the variances to MN Rule 7849.1200 to replace “the commissioner of the Department of Commerce” or “the commissioner” with “Public Utilities Commission staff” and “Commission” as appropriate. Staff also recommends granting a variance to MN Rule 7849.1400 to allow more than ten days for the Commission to issue a scoping decision for the environmental report.

In order to vary its rules, the Commission must determine if the following requirements are met under Minnesota Rule 7829.3200 subpart 1:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.

Enforcing Minnesota Rules 7849.1200 and 7849.1400 as written would impose an excessive burden by requiring the Department of Commerce to perform environmental review activities that the legislature has tasked Commission staff with conducting for large energy infrastructure facilities.

The variance would not adversely affect the public interest; rather, it would promote efficiency by allowing Commission EIP staff to conduct the environmental review for all project approvals required from the Commission.

Finally, granting the variance would not conflict with standards imposed by law; the variance is consistent with the legislature's decision to transfer responsibility for administering environmental review of large energy infrastructure projects from the Department of Commerce to the Commission.

#### ***4. Intervention and Discovery***

Staff recommends the Commission take no action at this time on the requests for intervention and discovery by NRG/NO765MN. As discussed earlier in these briefing papers, if the Commission were to authorize a contested case proceeding, an Order for Hearing would be prepared referring the matter to the Office of Administrative Hearings. The assigned Administrative Law Judge would then determine the schedule and procedural requirements for the case, including intervention and discovery, pursuant to Minn. Stat. §§ 14.57 et seq.

#### ***5. Additional Information Requested by the Department of Commerce***

The DOC DER identified additional information that it recommended the Applicants provide, as set out in Item D and Attachment 1 of its February 23 comment letter. The DOC DER indicated that this information is not necessary for a completeness determination, but indicated the information would be useful to it in its review of the CN application. However, it did not recommend a deadline for providing the additional information.

Staff recommends the Commission require the Applicants to submit the additional information within 45 days after issuance of the Commission's written order and has proposed a decision option requiring the applicant to do so.

Alternatively, staff suggests the Commission request input from the Department and the Applicants regarding the need and appropriate timing for submission of the data.

#### ***6. Re-Noticing***

Staff does not recommend additional landowner notice or an extension of the completeness comment deadline. Minnesota statutes and rules do not require a public comment period on application completeness. The Commission's completeness comment period is a best practice and historically has been noticed only to the official service list, relevant state agencies, and tribal governments. In addition, after the Commission makes a completeness determination, it

will provide landowners, local governments and others with notice of that decision and the holding of public information meetings and the review process. Staff notes that the request of some commenters to have the Project noticed in the Zumbrota News-Record and the Red Wing Republican Eagle publications were determined during the consideration of the Notice Plan for the project and, therefore, were not made in a timely manner and should not be considered here.

## COMMISSION DECISION OPTIONS

### Certificate of Need Application

1. Accept the certificate of need application as substantially complete (Staff, Department, Applicants, Joint Commenters, LIUNA, and MISO).

Or

2. Reject the certificate of need application and indicate the specific deficiencies (Overland/Legalectric and some public commenters).

### Procedural Process

3. Defer consideration of any contested case requests until after the route permit Application has been submitted in the Fall of 2026.

Or

4. Direct that the certificate of need application be reviewed using the informal review process (Department, Applicants, Joint Commenters, and MISO).

*If the Commission selects Decision Option 4, it may also consider Decision Options 5.*

5. Request an administrative law judge at the Court of Administrative Hearings preside over the required public hearings and prepare a summary of public comments (Staff).

Or

6. Refer the certificate of need application to the Court of Administrative Hearings for contested case proceedings under Minn. Stat. § 14.57 et seq. (Staff, Overland/Legalectric, and NRG/NO765MN).

### Requests to Stay Proceeding and/or Combine

7. Order joint proceedings on the certificate of need and route permit applications for the Gopher to Badger Link Project and stay review of the certificate of need application until

the route permit application is filed (Staff, Applicants, Overland/Legalectric and NRG/NO765MN, Public Commenters).

*If the Commission selects Decision Option 7, it may also consider the following additional procedural issues:*

8. Authorize parties to proceed with discovery on the Gopher to Badger Link Project during the stay (NRG/NO765MN).

*And/or*

9. Consolidate this proceeding with Docket No. ET3, E002/CN-25-121, *In the Matter of the Application for a Certificate of Need for the Power On 765 kV High Voltage Transmission Line Project* and stay review until route permit applications for both projects have been filed (NRG/NO765MN).

#### **Administrative and Other Requests**

10. Vary Minnesota Rules 7849.1200 and 7849.1400, to align with the environmental review timing in the Energy Infrastructure Permitting Act and to reflect the legislative transfer of environmental review personnel and responsibilities related to large energy infrastructure projects from the Department of Commerce to the Commission (Staff).
11. Require the Applicants to file the additional information identified by the Department in Item D and Attachment 1 of its February 23 comment letter within 45 days after issuance of the Commission's written order (Staff and Department).
12. Provide additional notice to landowners regarding the application completeness comment period, extend the completeness comment deadline, and take no action on the certificate of need application at this time (Overland/Legalectric).

#### **Petition for Intervention**

*If the Commission orders a contested case, the Commission may grant the petition for intervention or allow the administrative law judge assigned to the case decide the petition.*

13. Grant the petition for intervention of NRG/NO765MN (NRG/NO765MN).

14. Request that the administrative law judge decide whether to grant the petition for intervention of NRG/NO765MN (Staff).
15. Deny the petition for intervention of NRG/NO765MN.

**Staff Recommendation:** 1, 3, 7, 10, 11, and 14