

**BEFORE THE STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION**

In the Matter of the Application of the Route
Permit Application for a High Voltage
Transmission Line Route Permit for the
Hiawatha Transmission Project

**MIDTOWN GREENWAY COALITION
PETITION FOR VARIANCE
TO SUBMIT REPLY
AND
REPLY TO APPLICANT'S EXCEPTIONS
TO THE ALJ REPORT**

INTRODUCTION AND PETITION FOR VARIANCE

Midtown Greenway Coalition ("MGC"), petitions this Commission for a variance to submit a reply to exceptions filed by Applicant Northern States Power Company, doing business as Xcel Energy ("Xcel Energy") in the above matter. Along with our Petition for Variance, MGC submits for this Commission's consideration a Reply to Applicant's Exceptions to the ALJ's Report.

MGC is a non-profit organization representing 17 neighborhoods along the Lake Street/Midtown Greenway corridor with a mission to empower communities to develop, improve, protect, and enjoy the Midtown Greenway as a green urban pathway to improve people's lives, support community development and foster sustainable transportation. In connection with this mission, the MGC intervened in the above matter to oppose a proposal by Xcel Energy to place a 115 kV high voltage line along the Midtown Greenway bicycle and pedestrian corridor, immediately adjacent to homes and housing and business developments along the Greenway corridor.

The MGC supported broad citizen participation, collaborated with other neighborhood intervenors, sponsored expert testimony, conducted extensive cross-examination and prepared a detailed brief and findings of fact pertaining to every aspect of routing, including adverse impacts of Xcel Energy's proposal on historic resources, property values, housing development, public health and public safety, trail user and future transit development. MGC advocated for an underground route on 28th Street (Route D), rejection of Xcel's preferred Hiawatha substation

site and mitigation of impacts from both the Hiawatha and Midtown substations.

From the perspective of the MGC and the many communities we represent, the Administrative Law Judge (“ALJ”) Report does not conform to the positions advocated by the MGC and our members. The MGC and other neighborhood groups believe that need for the Hiawatha Project has not been demonstrated and that Xcel should have analyzed load management, conservation and distributed energy before initiating any routing proceeding. The MGC and our members opposed the Hiawatha substation site selected by the ALJ and requested more substantial mitigation for both the Hiawatha and Midtown substations.

However, the MGC and groups we represent believe that the ALJ listened to the concerns of citizens and experts regarding unique historical resources, community development, public health and safety, recreation, transit and environmental justice in recommending an underground transmission line route beneath 28th Street (Route D). If the Commission were to approve the ALJ’s Report, although some residents would still oppose the power line, the substation sites and the loss of community green space, the ALJ’s thoughtful approach to the evidence would foster community acceptance of a controversial project.

Xcel Energy’s exceptions, which disregard the record as well as community concerns, would undermine the balance achieved by the ALJ Report. Xcel’s proposal to exclude community participation to minimize impacts from substations is particularly galling since the MGC and other community intervenors were the only parties in this matter to take positions regarding substation selection or mitigation.

The MGC requests leave of the Minnesota Public Utilities Commission (“Commission”) to submit a reply to the exceptions filed by Xcel Energy in this matter. Minnesota Rules 7829.2700, subp. 2 generally provide that parties shall serve and file replies to exceptions within ten days of the due date for exceptions unless a statutory deadline applies. Although a transmission route permit is customarily subject to a statutory deadline, in this case intervening legislation has vitiated the deadline for the routing of the Hiawatha Project. No further action on this docket will occur until the certificate of need requirements of 2010 Minn. Laws, ch. 361, art. 5, sec. 19 are met. No certificate of need has yet been filed in MPUC Docket CN-10-694 to begin any applicable statutory deadline. A variance to allow a reply to exceptions would result in no delay and would be appropriate under the unusual facts of this case.

In addition, given the extended delay that will take place before this routing matter is

heard by the Commission, MGC believes that equity supports granting leave to community intervenors to submit a reply. Xcel Energy's exceptions strike at the heart of the advocacy by the MGC, citizens and neighborhoods to protect the Midtown Greenway, the economic and public health of South Minneapolis communities and environmental justice in our densely populated, low income and diverse neighborhoods. Our community's advocacy stretched meager resources, and it is uncertain whether parties will be able to intervene in the certificate of need proceeding as well. Given limited resources and extensive delay before any hearing before the Commission, an opportunity to reply to exceptions before memories have faded and personnel changed is necessary to provide community parties with substantial justice. In this spirit, the MGC requests that our Petition be granted and that our timely Reply to Applicant's Exceptions to the Administrative Law Judge's Report be fully considered by this Commission. As explained in the Reply below, we request that all of Xcel Energy's exceptions be rejected.

REPLY TO APPLICANT'S EXCEPTIONS

1. The ALJ Correctly Applied MEPA and MERA Standards.

Xcel Energy claims that the ALJ's Report "oversimplifies" and incorrectly applies the standards that protect historical resources under the Minnesota Environmental Rights Act ("MERA") and the Minnesota Environmental Policy Act ("MEPA"). Xcel's exceptions are misplaced.

Xcel objects to the ALJ's inclusion of the statement in Finding 240 that agencies are required to consider environmental factors before making decisions regarding projects that "potentially have significant environmental effect." The language to which Xcel objects comes directly from Minnesota Statutes. MEPA states that an environmental impact statement analyzing the environmental factors must be prepared where there is "potential for significant environmental effects." Minn. Stat. §116D.04, subd. 2a.

Xcel also attempts (Exceptions, p. 4) to delete the language in the ALJ's Conclusion 7 stating that cost, convenience and efficiency are not sufficient reasons to select an alternative with the potential to impair designated historic resources. This language is paraphrased from the Minnesota Supreme Court case of *State by Archibal v. County of Hennepin*, 495 N.W. 2d 416, 426 (Minn. 1993), where the Court held that the County could not tear down the Armory to build a new jail, stating:

It may well be true that use of the Armory site may be more convenient, indeed may be more efficient, than alternative more remote sites, but that is simply not enough under MERA and our cases. . . [E]ven if there is some increased cost, MERA itself requires that "economic consideration alone shall not constitute a defense." *Minn. Stat. § 116B.04* (1992).

It is appropriate for an ALJ to apply Minnesota Supreme Court precedent.

Xcel proposes to inject language regarding “materiality,” which is confusing and minimizes the significance of impacts to resources on the National Register of Historic Places. Federal rules interpreting the National Environmental Policy Act (“NEPA”), upon which Minnesota statutes are based, describe the “significance” of impacts in terms of their potential to affect listed resources. Federal rules state that the intensity or severity of impact includes consideration of “proximity to historic or cultural resources,” (40 C.F.R. 1508.27(b)(3); the “degree to which the effects on the quality of the human environment are likely to be highly controversial,” (40 C.F.R. 1508.27(b)(4); and the “degree to which the action *may* adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or *may* cause loss or destruction of significant scientific, cultural, or historical resources.” (40 C.F.R. 1508.27(b)(8), emphasis added). Again, far from being “simplistic,” the ALJ’s language interpreting MEPA and MERA is directly in keeping with federal rules suggesting how parallel statutes should be interpreted to protect historical resources.

Xcel’s exceptions to Finding 240 and Conclusion 7 would inappropriately diminish protection required under law of designated historic resources, are without merit and should be rejected.

2. ALJ Findings Regarding Human Health and Safety are Supported by the Record.

ALJ Findings 314, 315, 321, 328 and 457 regarding human health and safety concerns from electric and magnetic fields are consistent with prior findings approved by the Commission. They reflect a careful distinction between definite proof of causation, which the ALJ does not claim, and legitimate public health concern based on epidemiological studies showing increases in childhood leukemia where magnetic fields exceed 3 to 4 milligauss (0.3 to 0.4 microTeslas). Xcel’s exceptions mischaracterize the record, disrupt the balanced approach taken by the ALJ and would rob factual data in the Hiawatha Project record and Findings of meaning and significance. From the perspective of the community, Xcel’s exceptions reflect an indifference to

the health risks that would be imposed on a neighborhood of low-income families, immigrants and minority communities. These exceptions must be rejected.

Xcel seems to suggest that denial of health concerns from magnetic fields is required by prior Commission orders. The paragraph 315A that Xcel proposes be injected into this case (Exceptions, p. 9) is not relevant to the Hiawatha Project since no evidence in this case pertains to State standards for exposure. This paragraph is contained in a previous ALJ Report in a CapX2020 transmission case.¹

More comparable to the findings in this Hiawatha Project case are those in the ALJ's Report in the CapX2020 Certificate of Need proceedings, which Report was also approved by this Commission.² The Commission's decision approved Finding 404 that the World Health Organization ("WHO") had reviewed the health implications of electromagnetic fields and, in particular, the possible link between exposure and incidence of childhood leukemia. "Although the WHO could not conclude that there was a causal link, there is still troubling evidence of increased risk of childhood leukemia associated with average exposure to residential power-frequency magnetic field of about 0.3 to 0.4 microTeslas." (ALJ Report for CapX2020 CON, Finding 404).

The ALJ's Findings 314 and 315 in the Hiawatha Project Report closely parallel prior findings adopted by the Commission in this CapX2020 proceeding. In addition to making a careful distinction between proof of causation and public health concern about leukemia, the ALJ in these proceedings referenced specific studies from the epidemiological literature and a written submission by Representative Karen Clark, a nurse and advisor on environmental justice and environmental health issues.³ The ALJ's Findings were consistent with prior precedent, carefully drawn and strictly based on the evidence in this record. They should not be disturbed.

¹ ALJ Findings of Fact, Conclusions and Recommendations, adopted in Order Granting Route Permit, *In the Matter of the Route Permit Application by Great River Energy and Xcel Energy for a 345 kV Transmission Line from Brookings County, South Dakota to Hampton, Minnesota*, Docket No. ET-2/TL-08-1474 (April 22, 2010).

² ALJ Findings of Fact, Conclusions and Recommendations, adopted in Order Granting Certificates of Need with Conditions, *In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and others for Certificates of Need for Three 345 kV Transmission Lines*, MPUC Docket CN-06-115 (May 22, 2009) ("ALJ Report for CapX2020 CON")

³ The ALJ cited the following evidence in support of Findings 314 and 315: WHO Report, Environmental Health Criteria 238, Extremely Low Frequency Fields, 2007, at 11-20, Rep. Clark Letter and Attachments, eDocket Doc. No. 20105-50442-01 (May 10, 2010); Ahlbom, A., et al., A Pooled Analysis of Magnetic Fields and Childhood Leukaemia, *British Journal of Cancer* (2000), 83(5), 692-698 at 58-65; Greenland, S., et al., A Pooled Analysis of Magnetic Fields, Wire Codes and Childhood Leukemia, *Epidemiology* (Nov. 2000), Vol. 11, No. 6, 624-634, at 66-76; Rep. Clark Letter and Attachments, eDocket Doc. No. 20105-50442-01 (May 10, 2010).

The ALJ’s findings regarding the level at which magnetic fields are associated with childhood leukemia is also salient in the particular case of the Hiawatha Project where small setbacks, high population density and multi-level housing would create continuous magnetic field exposures at much higher levels than is customary for overhead high voltage lines. Citing Applicant’s data, the ALJ found:

320. Average current conditions would most closely reflect chronic, everyday conditions. Because the overhead lines would be constructed near multi-unit dwellings that have multiple floors, the Applicant estimated the magnetic fields of average current at 25 feet from the proposed centerline at varying distances from the ground to better approximate the exposure for people living on the second story or higher. The findings are summarized below:

Calculated Magnetic Flux Density (Milligauss)

Overhead Route	Current	Distance from Centerline	1 meter (3.28 feet)	4 meters (13.12 feet)	8 meters (26.24 feet)	12 meters (39.36 feet)
Route A1 and E2	138 amps (average)	25 feet	13.82/13.66	26.15/26	55.31/55.39	64.63/64.82
Routes B and C	138 amps (average)	25 feet	7.63/16.54	6.41/11.59	8.86/23.93	11.30/55.03

321. Hundreds of families in South Minneapolis would be exposed to the magnetic fields reflected in the table above, because there are 245 dwellings within 25 feet of Route A1, 335 dwelling units within 25 feet of Route B, 206 dwelling units within 25 feet of Route C, and 730 within 25 feet of Route E.

.....Magnetic field levels for persons living on the second or third floor (from 6 to 10 meters above ground) of a dwelling within 25 feet of Route A1 are 10 to 15 times the level of concern identified by the WHO and epidemiological literature associating transmission lines with childhood leukemia.

The ALJ’s explanation of public health concern at 3 to 4 Milligauss is important to understand the justification for rejecting Xcel’s overhead Route A1. Under the unique facts of the Hiawatha Project, this line would expose families and children to continuous magnetic fields of 55 or 64 Milligauss – many times higher than the levels associated with childhood leukemia.

The ALJ’s Finding 328 that underground transmission alternatives with lower magnetic and electric fields would reduce the safety and health impacts of the Hiawatha Project is supported by the Final EIS, which explained that underground construction would mitigate

safety and health concerns. (FEIS, pp. 29, 424 - 425). The ALJ's Findings 201, 202, 205, 212, 214 and 217 summarize safety and health concerns expressed by members of the affected communities and their elected City and State representatives, providing further support for Finding 328.

Representative Karen Clark's testimony underscores the importance of health and safety issues in the Hiawatha Project Area:

Even if it is not practical to change all existing power lines to reduce risks of magnetic field exposures, precaution and environmental justice must prevent new power lines such as the Hiawatha Project from begin routed overhead in close proximity to homes in a community already experiencing the cumulative impacts of environmental injustice. Please note that the Phillips community is a racially diverse and low-income community with a very high proportion of children, infants and pregnant women. This community is particularly vulnerable to health problems due to the impacts of lead, arsenic, air emissions and multiple triggers for asthma. Our Phillips community cannot afford to become another experiment in environmental health risk.⁴

Xcel's proposed alterations of the ALJ's Report would conflict with precedent, evidence, precaution and environmental justice. They should be rejected.

3. ALJ Findings Regarding Midtown Greenway Bike Use are Supported by the Record.

The ALJ's Finding 296 that an overhead high voltage line along the Midtown Greenway would be more likely to deter use of the bicycle and pedestrian trails than alternative routes is well supported by record evidence, including Findings 222, 223, 225 and 227 which summarize public testimony that the amenities and use of the Greenway would be impaired by an overhead high voltage line.

Additional record support is provided in testimony of Tim Springer, Executive Director of the Midtown Greenway Coalition and an expert on bike trails; "An overhead power line on the Midtown Greenway would have a negative impact on the aesthetic quality of trail users' experiences and is likely to decrease the popularity of the trail." Ex. 36, p. 16 (Springer Direct). Mr. Springer also testified that he had received comments of many people who said that they would use the trail less if an overhead transmission line were built. Tr. Vol. 7 at 155 (Springer). Expert Paul Mogush, testified that he had studied trail preferences and that, "Installation of

⁴ Rep. Clark Letter & Attachments, p. 4, eDocket Doc. No. 20105-50442-01 (May 10, 2010).

overhead transmission lines would significantly alter the visual environment of the Midtown Greenway, diminishing the public's love for the asset." Ex. 183, p. 3 (Mogush Supp. Direct).

Xcel's exceptions to Finding 296 ignore record evidence pertaining to the Greenway, including sworn expert testimony and propose conclusions for which no evidence was provided. They are a distraction at best, and should be rejected.

4. ALJ Findings Regarding Property Values are Supported by the Record.

Xcel's objections to the ALJ's Finding 259 suggesting that close proximity to an overhead power line is one of the factors that deflates home value are misplaced. This ALJ's Finding, again, is a measured conclusion directly supported by the record.

In addition to the FEIS pages footnoted by the ALJ in connection with Finding 259, several other Findings support the conclusion in this case that close proximity to overhead lines is a factor that deflates home values. Public testimony expressing concern about impacts on community development and property values of an overhead Hiawatha line is summarized by the ALJ in Findings 205, 208, 214. The ALJ also cited expert testimony of Steve Cramer, the Executive Director of Project for Pride in Living and former Executive Director of the Minneapolis Community Development Agency, among other credentials. Mr. Cramer testified that overhead lines in the Hiawatha Project Area would stigmatize adjoining land as less desirable, detracting from redevelopment and investment. (Finding 254).

Although Xcel claimed that overhead power lines have not impeded residential development in suburban areas, the ALJ found Xcel's examples distinguishable from the Hiawatha Project Area. Xcel's examples did not have the small lot size or density of the Project Area, most of the pictured lines ran well behind homes and none of the lines were within 20 feet of building facades. (Finding 253). The ALJ emphasized the unique density of the Hiawatha Project Area, with approximately 8,000 people within 500 feet of Xcel's preferred overhead route. (Finding 51). Xcel has not constructed an overhead 115 kV line in such a densely populated area since 1957. (Finding 56; Ex. 52).

Whether or not transmission lines deflate home values in less densely populated areas, the Finding in this case that close proximity to an overhead line is a factor that deflates home values is, if anything, an understatement. Xcel's exception should be rejected.

5. ALJ Conditions Regarding Substation Mitigation are Appropriate.

ALJ Conditions 2 and 3 regarding the Hiawatha and Midtown substations balance Xcel Energy's preference for the Hiawatha and Midtown North substation sites with concerns raised by the MGC and other community intervenors regarding impacts to the Midtown Greenway bicycle and pedestrian trails, conformance with City plans for development and aesthetic impacts of an industrial substation use near homes and the historic Midtown Greenway.

The ALJ Conditions appropriately identify issues of concern from the record regarding each proposed substation, such as City development plans and potential destruction of the Midtown Greenway trench as issues for the Midtown North substation (Conclusion 3) and the need to minimize disruption of current and planned Midtown Greenway bicycle and pedestrian trails at the Hiawatha site. (Conclusion 2). These concerns are based on the factual record, which includes City plans and Xcel's commitment for a pedestrian promenade at the Midtown North substation (Finding 147), likelihood that the Midtown substation would encroach upon the slope of the Greenway trench and conflict with City land use plans (Findings 495, 496, 498), removal of green space and hundreds of trees and shrubs at the Hiawatha site (Findings 113, 114) and plans for future development of a leg of the Greenway trail on the edge of the Hiawatha substation site (Finding 117). Xcel's revisions eliminate the care and specificity regarding mitigation of substation impacts provided by the ALJ Report and should be rejected.

The ALJ's Conditions identified how MnDOT, the City and the County would consult with Xcel Energy to minimize impacts of the substations on the Midtown Greenway, future transit, City plans and surrounding structures. The ALJ did not restrict this to a political process involving elected officials. There was testimony in the record from planning staff regarding substation conflicts with land use plans (See e.g. Finding 494) and the ALJ Report did not constrain City or County process by excluding normal channels of staff review of proposed development. Xcel Energy's exceptions undermine the ability of the City and the County staff to engage in a professional dialogue to mitigate impacts of the substations and should be rejected.

The ALJ Report also explicitly included community groups in the process of consultation to minimize substation impacts. The ALJ noted that neither the City of Minneapolis nor Hennepin County had taken any positions regarding substation locations or design (Findings 174, 176). On the other hand, the Midtown Greenway Coalition (Finding 173) and other community groups, including intervenors Longfellow Community Council (Finding 178),

Seward Neighborhood Group (Finding 179), Midtown Phillips Neighborhood Organization (Finding 182) and East Phillips Improvement Coalition (Finding 183) all advocated for specific locations and mitigation for substations. Despite testimony at trial that Xcel was willing to meet with neighborhood groups prior to submitting substation designs (Tr. Vol. 7, pp. 60-61 (Asah) and the substantial community concerns about substation mitigation, Xcel now requests a change in the ALJ Report to exclude community groups from its consultation process.

Xcel's exceptions to the ALJ's Conclusions 2 and 3 pertaining to substation mitigation contradict the record, undermine the balance between parties and would fan the controversy that the ALJ's Report has ameliorated. Xcel's proposals should be rejected.

6. MGC has Identified One Minor Factual Error in the ALJ's Report.

Although MGC did not submit any exceptions to the ALJ's Report, we have detected a minor factual error in the ALJ's discussion of the G-4 substation alternative that the Commission may choose to correct.

The original letter from the Minnesota Department of Transportation ("MnDOT") submitted to the Office of Energy Security on March 10, 2010 (Ex. 228) suggested that the G-4 site would not be available because of agreements in effect with the Metropolitan Council, as stated in the ALJ's Findings 137 and 191. However, subsequent exhibits that amended this information are not reflected in the Findings. A letter from Brian Lamb at the Metropolitan Council dated April 26, 2010, along with a cover email from MnDOT (Ex. 232) modified the previous position constraining use of G-4. Based on this later evidence, if the site were feasible, neither MnDOT nor the Metropolitan Council would oppose the use of G-4 as a substation site and MnDOT would consider the site to be available for purchase. (Ex. 232; Tr. Vol. 11, at 182-183, 189 (Seykora). A clarification of this minor point in the record is provided in Attachment 1 to this Reply.

CONCLUSION

The Midtown Greenway Coalition respectfully requests that our Petition be granted and our Reply to Exceptions considered by this Commission due to unique circumstances in this case where intervening legislation altered the statutory deadline and in order to achieve substantial justice. The ALJ's Report, although it did not reflect all of the wishes and goals of the community, reflected a concern for history, community resources, health and participation as

well as a thorough analysis of the record and applicable law. Xcel Energy's exceptions would disregard the record, disrupt the balance needed in for such a controversial project and exclude community groups from participation and consultation. The MGC asks that Xcel's exceptions be rejected in their entirety.

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Respectfully submitted,

JUST CHANGE LAW OFFICES



Paula Goodman Maccabee (#129550)
1961 Selby Avenue
St. Paul MN 55104
phone: 651-646-8890
fax: 651-646-5754
mobile: 651-775-7128
email: pmaccabee@visi.com
Attorney for Midtown Greenway Coalition

ATTACHMENT 1

137. ~~In light of MnDOT's ownership of a portion of the G-4 site that includes a and its lease to the Metropolitan Council, but neither MnDOT nor the Metropolitan are opposed to making the site may not be available to the Applicant for a substation. (Ex. 232; Tr. Vol. 11, at 182 (Seykora)).~~

191. MnDOT considers the property at the Hiawatha West, G-4 and G-3 sites as surplus and those parcels may be available for sale, but asserts that ~~Site G-4 and Site G-5~~ are is not available because of agreements in effect with the Metropolitan Council. (Ex. 228; Ex. 232; Tr. Vol. 11, at 183,189 (Seykora)).