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**In the Matter of Dairyland Power
Cooperative’s Application to Relocate
an Existing 161 kV Transmission Line
in Wabasha County, Minnesota**

Docket No. ET3/TL-23-388

**INITIAL COMMENTS OF THE
MINNESOTA DEPARTMENT OF
COMMERCE**

Although Minn. R. 7849.0030 does not exempt Dairyland Power Cooperative’s proposed 161-kV transmission project from a need determination, the Commission should find that it granted Dairyland a certificate of need to relocate its 161-kV transmission line during the prior CapX proceeding. In the alternative, the Commission should make a need determination for Dairyland’s project in conjunction with Xcel Energy’s proposed project in Docket No. E002/CN-22-532 or allow Dairyland to file its own certificate of need application.

BACKGROUND

Dairyland intends to file a route permit application with the Commission to relocate an existing 161-kV transmission line that is currently double-circuited with a 345-kV transmission line operated by Xcel Energy.¹ Co-location of the two lines arose out of the original CapX certificate of need proceeding. That docket was unusual – as it served to consolidate the permitting process for multiple large energy facilities.² In that matter, the Commission directed Xcel and

¹ Dairyland Petition at 2 (Oct. 11, 2023) (eDocket No. 202310-199520-02).

² The CapX project was chiefly comprised of a series of 345-kV transmission lines from Brookings, South Dakota to Granite Falls, Minnesota; Rochester, Minnesota, to La Crosse, Wisconsin; and Fargo, North Dakota to Monticello, Minnesota. *See In re Appl. of Great River Energy, N. States Power Co., & Others for Certificates of Need for the CapX 345-kV Transmission*

Great River Energy to serve as the “applicant” on behalf of approximately a dozen entities that would ultimately take ownership interests in the project.³ Dairyland was one of the participating entities.⁴

As part of their joint application, the applicants proposed to double circuit Dairyland’s 161-kV transmission line with Xcel’s 345-kV transmission line. They explained:

[W]e propose that the 345 kV be double-circuited. Immediately, however, the second circuit should be ordered to be operated at 161 kV voltage and carry the existing parallel Chester – Alma 161 kV circuits until circumstances warrant a change. This configuration could remain until the transmission system justified deploying the second 345 kV circuit, at which point the 161 kV line would be moved.⁵

The administrative law judge found that this proposal was reasonable and should be considered (along with another alternative) during the route permit process.⁶ The Commission agreed, granting Xcel, Dairyland, and the other applicants a certificate of need in 2009.⁷ The route permit process was then completed in 2012.⁸

Projects, Docket No. 06-1115, Application for a Certificate of Need for Three 345-kV Transmission Line Projects § 1.1 (page 28) (Aug. 16, 2007) (eDocket No. 106495)

³ *Id.* § 1.29 (page 56) (depicting contemplated ownership stakes).

⁴ Central Minnesota Municipal Power Agency, Dairyland Power Cooperative, Great River Energy, Minnesota Power, Minnkota Power Cooperative, Missouri River Energy Services, Otter Tail Power Company, Rochester Public Utilities, Southern Minnesota Municipal Power Agency, Wisconsin Public Power, Inc., and Xcel (both its Minnesota and Wisconsin operations) had interests in the various aspects of the project. Docket No. 06-1115, ORDER DESIGNATING APPLICANTS AND SETTING FILING REQUIREMENTS at 3–5 (June 4, 2007).

⁵ Docket No. 06-1115, Grivna Rebuttal at 11 (June 16, 2008) (eDocket No. 5278640).

⁶ Docket No. 06-1115, FINDINGS OF FACT, CONCLUSIONS, & RECOMMENDATIONS at 21-22, 94-96 (Feb. 27, 2009) (eDocket No. 5791590).

⁷ Docket No. 06-1115, ORDER GRANTING CERTIFICATES OF NEED WITH CONDITIONS (May 22, 2009) (eDocket No. 20095-37752-01) (adopting the ALJ’s report except where inconsistent with the PUC’s order).

⁸ *In re Xcel Energy’s Appl. for a Route Permit for the CapX 2020 Hampton-Rochester-La Crosse High Voltage Transmission Line*, Docket No. E-002/TL-09-1448, ORDER ISSUING ROUTE PERMIT AS AMENDED (May 30, 2012) (eDocket No. 0125-75128-01).

Consistent with the original plan and certificate of need order, Dairyland now needs to relocate its 161-kV transmission line to accommodate the double-circuiting of another a 345-kV transmission line.⁹ To effectuate the relocation, Dairyland plans to file a route permit application with the Commission in 2024.

On October 11, Dairyland filed a petition with the Commission seeking clarification on whether a certificate of need would be required in addition to a route permit. Dairyland asserted in its petition that the relocation project was exempt from the certificate of need requirement under Minn. R. 7849.0030.¹⁰ The Commission noticed this comment period to solicit input from interested parties.¹¹

DISCUSSION

Although Minn. R. 7849.0030 does not exempt Dairyland from the requirement to obtain a certificate of need, the Commission should find that it already granted the cooperative a certificate of need to relocate its 161-kV transmission during the prior CapX proceeding. In the alternative, the Commission could make a need determination for Dairyland’s project during Xcel’s upcoming certificate of need proceeding given the “but-for” causal relationship between the projects. To the extent that Dairyland prefers it, the Department also does not oppose Dairyland filing a separate certificate of need application.

I. MINNESOTA RULE 7849.0030 DOES NOT EXEMPT DAIRYLAND FROM THE REQUIREMENT TO OBTAIN A CERTIFICATE OF NEED.

Dairyland wrongly asserts that it is exempt from the obligation to obtain a certificate of need under Minn. R. 7849.0030. Dairyland’s argument is inconsistent with the plain meaning of the applicable statutory and rule provisions. Even if these provisions were ambiguous, the

⁹ Dairyland Petition at 2.

¹⁰ *Id.* at 6.

¹¹ NOTICE OF COMMENT PERIOD (Oct. 13, 2023) (eDocket No. 202310-199600-01).

Commission should interpret them to preclude Dairyland from obtaining a certificate of need exemption under the rule.

State law prohibits an applicant from siting or constructing a “large energy facility” without first obtaining a certificate of need.¹² A large energy facility is “any high-voltage transmission line with a capacity of 100 kilovolts or more with more than ten miles of its length in Minnesota or that crosses a state line[.]”¹³ As Dairyland acknowledges, its approximately 13-mile, 161-kV transmission line project plainly falls within the definition of a large energy facility that requires a certificate of need.¹⁴

Dairyland claims that a certificate of need is not required because the relocated transmission line will not be “new” under Minn. R. 7849.0030. This rule states:

A certificate of need is required for a new LEGF, a new LHVTL, and for expansion of either facility when the expansion is itself of sufficient size to come within the definition of “large electric generating facility” or “large high voltage transmission line[.]”

The Commission should give the word “new” its plain and ordinary meaning.¹⁵ A logical place to look for a word’s plain meaning is the dictionary.¹⁶ The word “new” means “having been made or come into being only a short time ago; recent.”¹⁷ In this instance, Dairyland’s relocated transmission line will undisputedly be new when it enters service. It will be located along a new route corridor where the line did not previously exist and will use new materials. Dairyland’s argument that the relocated transmission line is not “new” appears to conflate that term with

¹² Minn. Stat. § 216B.243, subd. 2.

¹³ Minn. Stat. § 216B.2421, subd. 2(3).

¹⁴ Dairyland Petition at 6–7.

¹⁵ *Allan v. R.D. Offutt Co.*, 869 N.W.2d 31, 33 (Minn. 2015).

¹⁶ *See Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016).

¹⁷ New, *American Heritage Dictionary* (5th ed. 2018).

“substitute” or “replacement.”¹⁸ Yet, these words are not synonyms. Under Dairyland’s interpretation, for example, a 2023 Toyota Camry purchased to replace a 1998 Toyota Camry would not be “new” because it would merely serve the same purpose as the prior car. As this example illustrates, “new” and “substitute” have different meanings and it would risk radically expanding the scope of the Commission’s exemption rule.

Even if the Commission concludes the rule is ambiguous, it should not interpret the term “new” within Minn. R. 7849.0030 to encompass “substitute” or “replacement” facilities. If an administrative rule is ambiguous, courts will only defer to a reasonable agency interpretation.¹⁹ Conflating “substitute” or “replacement” with “new” is unreasonable because it allows the exception to swallow the statutory requirement that certificates of need are required for large energy facilities.²⁰ Extending the car analogy, a utility could, for example, swap out an existing coal-fired power plant for a replacement coal-fired facility of the same size without applying for a certificate of need. Or a pipeline company could substitute a replacement pipeline in a different location for an existing, aging facility without applying for a certificate of need.²¹ This is an unreasonable outcome that skirts the statutory requirements.

It also fails to recognize that the need for a particular facility can change over time. Indeed, a key purpose of certificate of need proceedings “is to ensure that there is actually a need for a new

¹⁸ Substitute, *American Heritage Dictionary* (5th ed. 2018) (“One that takes the place of another); Replace, *American Heritage Dictionary* (5th ed. 2018) (“To take the place of; To fill the place of; provide a substitute for”).

¹⁹ *In re Denial of Contested Case Hearing Requests*, 993 N.W.2d 627, 646 (Minn. 2023) (“[W]hen the language is ambiguous, we may, but are not required to, defer to the agency’s reasonable interpretation of the statute or regulation.”).

²⁰ Minn. Stat. § 216B.243, subd. 2.

²¹ Minn. R. 7853.0030 (requiring a certificate of need applicant for a “new” petroleum facility to provide certain information).

large energy facility.”²² Need is dependent on energy demand and the tools available at that time to alleviate that demand (e.g., other facilities or conservation).²³ But this need evaluation will not occur if an applicant is allowed to rely on a decades-old certificate that was issued under materially different circumstances.

The Minn. R. 7849.0030 exemption should be limited to circumstances where a facility undergoes maintenance or repair that could arguably render the facility “new” such as when a utility replaces corroding steel or rotting wood transmission towers. While the replacement of aging transmission towers would be significant, the transmission line itself would remain located in the exact same location and other associated equipment (e.g., conductors or transmission substations) would remain the same. This interpretation ensures that new facilities receive a need determination while major maintenance and repair work is not delayed or inhibited.

For these reasons, the Commission should not interpret Minn. R. 7849.0030 to exempt Dairyland’s relocation project from the certificate of need requirement.

II. THE COMMISSION GRANTED DAIRYLAND A CERTIFICATE OF NEED TO RELOCATE THE 161-kV TRANSMISSION LINE DURING THE PRIOR CAPX PROCEEDING.

Although Dairyland is not exempt under Minn. R. 7849.0030, the cooperative should not be required to file its own certificate of need application. Instead, the Commission should conclude it granted Dairyland a certificate of need to relocate the 161-kv transmission line during the prior CapX proceeding.

²² *In re Enbridge Energy, Ltd. P’ship*, 964 N.W.2d 173, 212 (Minn. Ct. App. 2021), *review denied* (Aug. 24, 2021); *In re Comm’n Investigation Regarding the Appropriate Regul. Response to Propane-Storage Projects*, Docket No. E-999/CI-14-423, ORDER ESTABLISHING VARIANCE PROCEDURES at 6 (June 19, 2014) (eDocket No. 20146-100597-01) (“A key purpose of a certificate-of-need process is to assure that new capacity is actually needed so that large energy facilities are not overbuilt and their costs inappropriately passed on to customers.”)

²³ *Id.*, subd. 3(1)-(4), (8) (conservation and energy demand), Minn. R. 7849.0120(A)(1)-(2)(same); Minn. Stat. § 216B.243, subd. 3(6) (alternative facilities), Minn. R. 7849.0120 (B)(1)-(2), (4) (same).

In the prior CapX certificate of need docket, Dairyland and Xcel proposed to double-circuit their respective 161-kV and 345-kV transmission lines. They also proposed to relocate Dairyland's 161-kV transmission line in the future to accommodate energy demand growth that would necessitate operating a second 345-kV circuit.²⁴ The Commission approved this arrangement, granting the parties a certificate of need in 2009.²⁵ Because the relocation was addressed in the original certificate of need application and approved by the Commission, the Commission should find that Dairyland already holds a certificate of need for the relocation project. To the extent the Commission reaches a different conclusion, the Commission could make a need determination for Dairyland's project during Xcel's certificate of need proceeding or permit Dairyland to file its own certificate of need application. The Department's preference and recommendation, however, is to find that Dairyland already has the requisite certificate of need for the relocation project arising out of the prior CapX proceeding.

²⁴ Docket No. 06-1115, Grivna Rebuttal at 11.

²⁵ Docket No. 06-1115, ORDER GRANTING CERTIFICATES OF NEED WITH CONDITIONS; Docket No. 06-1115, FINDINGS OF FACT, CONCLUSIONS, & RECOMMENDATIONS.

CONCLUSION

The Commission should find that Dairyland's project is not exempt from obtaining a certificate of need under Minn. R. 7849.0030. Instead, the Commission should find that it already issued Dairyland the required certificate of need in the previous CapX proceeding.

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Respectfully submitted,

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