

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
600 North Robert Street  
Saint Paul, Minnesota 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East, Suite 350  
Saint Paul, Minnesota 55101-2147**

**In the Matter of the Application of Minnesota Power for a Certificate of Need and a  
High Voltage Transmission Line (HVTL) Route Permit for the HVDC  
Modernization Project in Hermantown, St. Louis County**

**OAH Docket No. 5-2500-39600  
MPUC Docket Nos. E-015/CN-22-607 and E-015/TL-22-611**

**REPLY TO MINNESOTA POWER  
MOTION TO TAKE ADMINISTRATIVE NOTICE**

**June 11, 2024**

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American Transmission Company LLC by and through its corporate manager ATC Management Inc. (“ATC”) files this Reply to the May 28, 2024 Motion of Minnesota Power (“MP”) to Take Administrative Notice (“Motion”). In its Motion, MP requests that the Administrative Law Judge (“ALJ”) and Minnesota Public Utilities Commission (“Commission”) take administrative notice of Minnesota 2024 Session Law Ch. 127, signed by Governor Walz on May 24, 2024, which makes certain changes to the certificate of need and route permit pre-application procedures, application requirements, and evaluation standards and criteria.

While administrative notice is unnecessary, as administrative notice is confined to “cognizable *facts*” and the Commission can and must apply the relevant law whether or not it “takes notice” of such laws, ATC does not object to the ALJ and Commission taking administrative notice of Minnesota 2024 Session Law Ch. 127. ATC does vigorously object, however, to MP’s incorrect and unlawful assertion that the change in law means that the Commission cannot consider whether a more efficient, more reliable, and less impactful alternative exists than the MP Proposal and that the Arrowhead Substation Alternative must be summarily disregarded at this late date. As discussed below, Minnesota 2024 Session Law Ch. 127 is not retroactive. Consequently, while the change in law may preclude the Commission from evaluating certain alternative end points in certain other pending and future applications, it has no impact whatsoever in this proceeding because consideration of the Arrowhead Substation Alternative had already commenced pursuant to order of the Commission consistent with then existing law and is now near complete.

As relevant here, Minnesota 2024 Session Law Ch. 127, Art. 44, Sec. 3 revises Minn. Stat. § 216B.243, subd. 3(6) as follows:

In assessing need, the commission shall evaluate:

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(6) possible alternatives for satisfying the energy demand or transmission needs including but not limited to potential for increased efficiency and upgrading of existing energy generation and transmission facilities, load-management programs, and distributed generation, except that the commission must not require evaluation of alternative end points for a high-voltage transmission line qualifying as a large energy facility unless the alternative end points are (i) consistent with end points identified in a federally registered planning authority transmission plan, or (ii) otherwise agreed to for further evaluation by the applicant; . . .<sup>1</sup>

This section of the law is “effective the day following final enactment and applies to all pending applications” but is not retroactive.<sup>2</sup>

There is a strong presumption against the retroactive application of statutory amendments in this state. Minn. Stat. § 645.21 provides that “no law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature.” The legislature is required to express its intention to make a law retroactive regardless of whether that law affects procedural or substantive rights. *Estate of Murphy v. State*, 293 Minn. 298, 308, 198 N.W.2d 570, 576 (1972). A “retroactive law” is one that “looks backward or contemplates the past, affecting acts or facts that existed before the act came into effect” and one “which affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute.” *In re a Petition for Instructions to Construe Basic*

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<sup>1</sup> Minnesota Session Law 127, Art. 44, Sec. 2. (2024).

<sup>2</sup> *Id.*

*Resol. 876 of Port Auth. of City of St. Paul*, 772 N.W.2d 488, 494 (Minn. 2009); *see also Cooper v. Watson*, 290 Minn. 362, 369, 187 N.W.2d 689, 693 (1971) (“A retrospective law, in the legal sense, is one which takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability, in respect of transactions or considerations already past.”).

Here, MP’s assertion that application of the newly enacted Minnesota 2024 Session Law Ch. 127 requires the Commission to immediately cease all consideration of the ATC Arrowhead Alternative in this proceeding, *after a full record has been developed*, is incorrect and violates black letter Minnesota law and canons of statutory construction because such an application would unlawfully deprive ATC of statutory, vested rights that ATC has exercised which existed at the commencement of this proceeding pursuant to then-existing law.

Specifically, at the commencement of this proceeding, the law as it existed at the time vested ATC with the express right and opportunity to present the Commission with possible alternatives for consideration.<sup>3</sup> ATC exercised its statutory right on September 15, 2023 when it requested that the Commission evaluate an alternative proposal whereby the HVDC Modernization Project would be interconnected to the Arrowhead 345 kV/230 kV Substation.<sup>4</sup> The Commission, recognizing its obligation to evaluate proposed alternatives, then ordered a contested case proceeding and referred this proceeding to the Office of

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<sup>3</sup> Minn. Stat. § 216B.243, Subd. 3.

<sup>4</sup> Ex. MP-132 (September 15, 2023, ATC Scoping Comment Letter).

Administrative Hearings to evaluate the viability of the Arrowhead Substation Alternative, stating:

The Commission discontinues the informal certificate of need process and ALJ summary proceeding and refers the matter to the Office of Administrative Hearings for contested case proceedings. The Commission requests that the ALJ produce a report by June 2024 and further requests that the ALJ focus the contested case proceedings on the impact of ATC's alternative.<sup>5</sup>

The Order further stated,

The feasibility of ATC's alternative is a significant issue because, before granting a certificate of need, the Commission must consider whether a more reasonable and prudent alternative has been demonstrated. Thus, the feasibility of ATC's alternative could directly influence the Commission's certificate of need analysis.<sup>6</sup>

Consideration of the Arrowhead Substation Alternative is near complete, the hearing and all briefing has been completed, and the ALJ's report is due this month.

Minnesota 2024 Session Law Ch. 127 does not require the Commission to cease consideration of alternatives that the Commission has already required consideration of, and which have already had a full record developed. To read and apply the law in such a manner would impermissibly deprive ATC of rights that existed at the beginning of this proceeding (and throughout the contested case hearing) in violation of Minnesota Law. Moreover, to read the new law in this way is inconsistent with the plain language of the new law, which states that the "Commission *must not require evaluation* of alternative end points for a high-voltage transmission line qualifying as a large energy facility unless . . ."

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<sup>5</sup> Ex. PUC-701 (Order Identifying Alternative Proposal for Environmental Assessment Scope, Granting Variance, and Notice of and Order for Hearing).

<sup>6</sup> *Id.*

But the Commission has already taken that action and did so long before the new law was enacted. Furthermore, ATC has already invested significant time, money and resources in furtherance of its statutory right to present the Commission with an alternative for consideration. Likewise, the OAH and Commission have similarly expended considerable time and resources evaluating the Arrowhead Substation Alternative in order to determine the most reasonable and prudent alternative. ATC's then-existing right to have its proposed alternative considered by the Commission, and the Commission's prior determination that this alternative should be evaluated, cannot be terminated or revoked by Minnesota 2024 Session Law Ch. 127 because such law is not retroactive. To do so would be both unlawful and unequitable.

MP may not *want* the Commission to consider the Arrowhead Substation Alternative, given its efficiency, reliability and human and natural environmental benefits, but it cannot use this new legislation to shield the MP Proposal from the consideration of an alternative already ordered to be evaluated. In conclusion, ATC makes no objection to the ALJ and Commission taking administrative notice of Minnesota 2024 Session Law Ch. 127, but strongly objects to MP's proposed unlawful application of Minnesota 2024 Session Law Ch. 127 to immediately cease the ongoing consideration of the ATC Arrowhead Alternative.

Dated: June 11, 2024

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