

**STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph Sullivan	Commissioner
John Tuma	Commissioner

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

Docket No. ET3/TL-23-388

REPLY COMMENTS

Dairyland Power Cooperative (Dairyland) respectfully submits these reply comments to the Minnesota Public Utilities Commission (Commission)¹ in response to the initial comments submitted by the Minnesota Department of Commerce (Department) and the Operating Engineers Local 49 and North Central States Regional Council of Carpenters (Labor Unions).

INTRODUCTION

To Dairyland’s knowledge, the facts and circumstances prompting the Petition are fairly unique. A CN is typically required for construction of a large energy facility in the state.² As set forth in the Petition, the 161 kV Relocation Project contemplates the relocation of an existing 161 kV line based on the Midcontinent Independent System Operator’s (MISO) approval of the long-range transmission planning (LRTP) portfolio. Once relocated, the 161 kV Relocation Project will otherwise operate at the same voltage and specifications. The relocation of the line was previously contemplated by the Commission in its approval of the CapX2020 Project,³ and the 161 kV Relocation Project does not appear to fall within the facilities covered under the CN rules, as it is

¹ Notice of Comment Period (Oct. 13, 2023) (eDocket No. 202310-199600-01) (Notice). The Commission issued the Notice soliciting comments on whether a certificate of need (CN) is required for Dairyland’s proposed transmission line relocation under Minn. Stat. § 216B.243. The Notice was filed in response to Dairyland’s Petition seeking clarification of whether a CN is required for Dairyland’s proposed 161 kilovolt (kV) transmission line relocation project in Wabasha County, Minnesota (the 161 kV Relocation Project). *See* Petition by Dairyland (Oct. 11, 2023) (eDocket No. 202310-199520-02) (Petition).

² Minn. Stat. § 216B.243. A “large energy facility” is defined, in relevant part, as “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.” Minn. Stat. § 216B.2421, subd. 2(3).

³ Petition at 7; *citing 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*, PUC Docket No. ET-2, E-002/CN-06-1115, Findings of Fact, Conclusions, and Recommendations at 24 (Feb. 27, 2009).

not “new” or an “expansion.”⁴ Dairyland filed the Petition to seek clarification from the Commission regarding the need for a CN for the 161 kV Relocation Project to ensure that permitting for this project can proceed without unnecessary delay.

Dairyland appreciates the Department’s and Labor Unions’ thoughtful analysis and recommendations. After review of the initial comments and consistent with the positions set forth by all commenting parties, Dairyland requests that the Commission clarify that the 161 kV Relocation Project does not require a CN.

ANALYSIS

A. The Commission Should Clarify that a CN is Not Required.

1. All Commenting Parties Agree that a CN is Not Required.

Both the Department and Labor Unions agree that a CN should not be required for the 161 kV Relocation Project. The Labor Unions note that “a CN is not needed to relocate the existing 161 kV line...[and that c]larifying that a CN is not needed for line relocations in this and similar situations would be a good first step to ensuring” future permitting efficiencies.⁵ The Department similarly agrees that a CN is not required in this instance because the Commission already granted a CN in the prior CapX2020 proceeding.⁶ Dairyland also agrees that a CN should not be required in this instance and believes both reasons are valid.

In the following sections, Dairyland outlines how both rationales support a finding that no CN is required.

2. The Underlying Record Supports a Finding that the Commission Previously Approved Relocating the 161 kV Line.

Record evidence demonstrates that the Commission previously approved the 161 kV Relocation Project. Dairyland and the Department cite to the Commission’s CN approval of the CapX2020 Project, which incorporated approval of the 161 kV Relocation Project. In that CN docket, Dairyland and Xcel proposed to double-circuit the 161 kV and 345 kV transmission lines, and also contemplated eventual relocation of Dairyland’s 161 kV line to accommodate future demands on the transmission system. Specifically, Finding 101 of the Administrative Law Judge’s Report, which the Commission adopted in relevant part, states:

⁴ Petition at 6; *citing* Minn. R. 7849.0030.

⁵ Initial Comments by the Labor Unions at 1 (Nov. 2, 2023) (eDocket No. 202311-200200-01) (Labor Comments).

⁶ Initial Comments by the Department at 8 (Nov. 1, 2023) (eDocket No. 202311-200104-01) (Department Comments).

101. In the Upsized Alternative, the single 345 kV circuit from Hampton Corner to North Rochester would be placed on 345 kV/345 kV double-circuit structures. Also, the 345 kV line/161 kV double-circuit from North Rochester to Alma as proposed would be constructed as a 345 kV/345 kV double-circuit line, but the second circuit would be operated at 161 kV voltage and carry the existing parallel Chester–Alma 161 kV circuits until circumstances warrant an increase in the voltage. **At that point, the second circuit would operate at 345 kV, and the 161 kV line would be moved.** (Ex. 121 at 11 (Grivna Rebuttal); Ex. 25). (Emphasis added.)^[7]

The Administrative Law Judge’s analysis illustrates the recognition that the ultimate relocation of the line would be required when the second circuit of the project would be converted to 345 kV. Because the Commission previously considered and approved this outcome,⁸ Dairyland and the Department agree that a CN is not required for the 161 kV Relocation Project. Dairyland requests that the Commission issue a clarifying order confirming the validity of its previous orders and confirming Dairyland’s and the Department’s analysis.

3. It is Reasonable to Find that a CN is Not Required for a Relocation.

Dairyland continues to believe that the Commission could also interpret Minn. R. 7849.0030, subp. 1, and conclude that the 161 kV Relocation Project does not trigger the need for a CN. Dairyland does not seek to carve-out a blanket exemption for “substitute” or “replacement” projects. Dairyland’s Petition intentionally did not use the term “exemption.” Instead, Dairyland believes a reasonable reading of the statutes and rules demonstrate that a CN is not needed here because it is not one of the “Facilities Covered” under Minn. R. 7849.0030, subp. 1. If the Commission accepts Dairyland’s position, its clarification may be as narrowly tailored as the Commission deems appropriate.

As previously noted, a CN is required for construction of large energy facilities constructed in Minnesota.⁹ A “large energy facility” is defined, in relevant part, as “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.”¹⁰ The relevant rule clarifies that a CN is required for a

⁷ *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*, PUC Docket No. ET-2, E-002/CN-06-1115, Findings of Fact, Conclusions, and Recommendations at 24 (Feb. 27, 2009).

⁸ *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 the CapX 345-kV Transmission Projects*, PUC Docket No. ET-2, E002/CN-06-1115, Order Granting Certificates of Need with Conditions at 43 (May 22, 2009).

⁹ Minn. Stat. § 216B.243.

¹⁰ Minn Stat. § 216B.2421, subd. 2(3).

“new” large energy facility or for “expansion” of a large energy facility only when “the expansion is itself of sufficient size to come within the definition of ... [a large energy facility].”¹¹ It is a basic canon of construction that “every law shall be construed, if possible, to give effect to all its provisions.”¹² The Department’s suggested application of the term “new” would cover nearly every conceivable transmission project, rendering the remainder of Minn. R. 7849.0030, subp. 1 related to “expansions” superfluous.

Dairyland understands and appreciates concerns that an overbroad application of the rules could lead to unreasonable outcomes allowing parties to skirt statutory CN requirements;¹³ however, these concerns are mitigated by a full reading of Minn. R. 7849.0030. A CN is required for an “expansion” of a large energy facility that itself falls within the definition of a large energy facility. This language acts as a safeguard that ensures material modifications to large energy facilities gain Commission approval. Furthermore, the Commission may also clarify that its interpretation of the statutes and rules is narrowly tailored to capture the unique circumstances presented here.

Determining that the CN statutes and rules do not apply is in the public interest and will promote efficiencies in the energy transition. Dairyland concurs with the Labor Unions that “[t]he ‘need’ for the line is already well established through its decades of use and there is no question of ‘size, type or timing’ ... [and c]larifying that a CN is not needed for line relocations in this and similar situations” will promote efficient uses of time and permitting resources in the energy transition.¹⁴ While Dairyland understands the need to constrain application of this interpretation of the CN statutes, it is possible that this situation will occur again in the future. Transmission resources are vital as we work to implement Minnesota’s clean energy requirements. Moreover, Minnesota’s routing criteria encourages the Commission to route transmission along existing transmission rights-of-way.¹⁵ To continue progressing towards carbon-free electricity by 2040, it is possible that creative transmission solutions will be increasingly required to accommodate added renewables on the system. Dairyland respectfully suggests that clarifying that no CN is required for transmission lines that must be relocated in circumstances similar to those presented here is in

¹¹ Minn. R. 7849.0030.

¹² Minn. Stat. § 645.16.

¹³ Department Comments at 4-5.

¹⁴ Labor Comments at 1.

¹⁵ Minn. Stat. § 216E.03, subd. 7(e).

the public interest and will expedite the ability to incorporate expanded transmission facilities onto the grid.

Notwithstanding the preceding analysis, Dairyland appreciates the analysis provided by both the Department and Labor Unions. Importantly, both recognize that a CN should not be required for the 161 kV Relocation Project. Dairyland, therefore, urges the Commission to reach the same conclusion, regardless of the underlying rationale.

CONCLUSION

Dairyland requests that the Commission issue a clarifying order stating that a CN is not required for the 161 kV Relocation Project. In addition to this baseline conclusion, Dairyland believes it is also in the public interest to find that applicable CN statutes and rules do not require CNs for relocation of existing transmission facilities where there is no expansion of the underlying facilities.

Dated: November 9, 2023

Respectfully submitted,

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