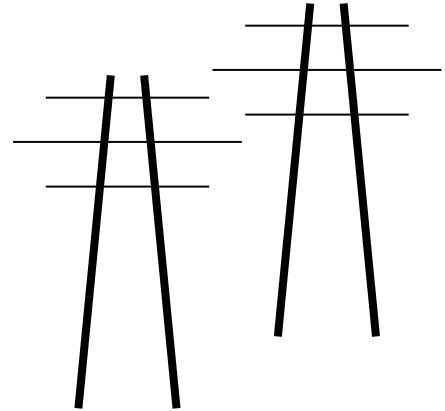


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May 12, 2025

Ann O'Reilly
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
600 N. Robert St.
St. Paul, MN 55101-0620

via eDockets only

RE: Comment on Lack of Notice to 1,341 Newly Affected Landowners
NoCapX 2020 and the Prehn Family
OAH Docket: 5-2500-40099; PUC Docket TL-23-157

Dear Judge O'Reilly:

I've received notice of the Prehearing Conference, and plan to attend. I'm camp-hosting this month, and access is sometimes sketchy, but the odds are favorable. This letter is filed by both myself as an individual who has represented parties not provided notice and also representing NoCapX 2020 and the Prehn Family on behalf of landowners faced with utility proposals for their land and community.

I'm writing this Comment because I'm jawdroppingly outraged at the failure to provide notice to 1,341¹ landowners and the prospect of upcoming hearings and ultimate routing decision moving forward when 1,341 landowners have not received adequate notice. Equally outrageous is Commerce-EERA's failure to acknowledge the basic necessity of timely notice. Granted due process is out of vogue federally, but we expect better in Minnesota. I am grateful to see this announcement of a Prehearing Conference about this notice failure and hope to see equitable treatment of these landowners.

Thirteen years ago, I observed failure to provide notice to "newly affected landowners," a detrimental failure that had left landowners with no warning, little ability to participate, administrative and judicial disregard for their predicament, and transmission routed over their land. Now, 1,341 landowners have not received notice in this docket, which harkens back to that CapX 2020 Hampton to La Crosse routing docket through Cannon Falls.² In that CapX docket,

¹ Where are the 1,341? Numbers don't add up. Original Mailing list, 2,705, add Hwy 14 (54), Round 2 (190), and Round 3 (122) = 377. Combined 2,890 – original 2705 = 185, not 377. [202412-212877-03](#) 1,341? **1,341 is nearly 50% increase from 2,705! Who and where are the 1,341?**

² PUC CapX 2020 Hampton-La Crosse transmission routing docket TL-09-1448.

Xcel and Commerce chose to disregard the DOT's Comments and Policy of Accommodation that rendered the preferred route unworkable, and route changes were not made public, notice not provided to landowners, until one or two days prior to the public hearing. See Motion for Reconsideration of St. Paul's Church and Cannon Falls Landowners, June 1, 2012³. **Those Cannon Falls landowners who were not provided notice were the ones that were given transmission on their property.** At the time, at the hearing where this lack of notice was made public, I was representing NoCapX and North Route Group and I quickly argued for a window for Intervention, but that was rejected in part because I did not have a client among those landowners (some of whom later became clients). Similarly, for these 1,341 landowners, transmission on their property and eminent domain may well be their fate. Commerce has declared it is not concerned, as notice "is a courtesy, not a legal obligation."

Other than the Prehn Family/NoCapX 2020, there is no party representing landowners on the ground. The only other party in this docket is "Clean Energy Organizations," which have historically supported transmission projects and is supporting this project.

There are three failures at issue. First is the Commerce-EERA admitted delay of Notice for the 5 months since December; second is the additional "few weeks" of additional delay before notifying of failure of Notice on May 8, 2025; and third, the failure to disclose on the part of Commerce-EERA for "a few weeks" after the December failure was "discovered." Tempest has fugited, and now we're faced with hearings at the end of this month. See Dornfeld Letter and email, May 8, 2025. The Second Prehearing Order set the intervention deadline as January 14, 2025, and that's long since passed. What options are available to these landowners?⁴

Mr. Dornfeld's take in the May 8, 2025 email reflects no sense of responsibility to those landowners.

The Department respectfully objects to holding a prehearing conference. A prehearing conference to discuss this issue is unnecessary. The Department understands that the Commission's notice will be served on the entire landowner mailing list, including the 1,341 new, potentially impacted landowners. As the Department's May 8 filing explained, the notice to newly affected landowners is a courtesy, not a legal obligation.

Dornfeld email, May 8, 2025.

That's a stunning position for a state agency to take when landowners could lose their land to this project. Due process should be top of mind these days:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No

³ PUC Document Numbers: Motion for Reconsideration: [20126-75809-01](#); Affidavits and Exhibits: [20126-75809-02](#), [20126-75809-03](#), [20126-75809-03](#), [20126-75809-04](#), [20126-75809-05](#), [20126-75809-06](#), [20126-75809-07](#), [20126-75809-08](#), [20126-75809-09](#), [20126-75809-09](#), [20126-75809-10](#), [20126-75810-01](#)

⁴ Participant status is illusory. Though enshrined in statute, "participants" are routinely prohibited from questioning witnesses, most witnesses are not present at public hearings for questioning, participants are prohibited from participating in evidentiary hearings (this was explicitly stated in a recent Prehearing Order!) where it's at the discretion of the ALJ.

State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, 14th Amendment, Section 1(emphasis added).

The position of Commerce-EERA is also contrary to the Commission's mandate to "adopt broad spectrum citizen participation as a principal of operation." Minn. Stat. §216I.16, Subd. 1. The Commission has long been lax in adopting that broad spectrum of citizen participation, reflected in the recommendations of the Office of the Legislative Auditor's "*Public Utilities Commission's Public Participation Process*" which urged recognition of the role of the public and the PUC's responsibilities to the public⁵ Since the Commission's "streamlining" steamrolling agenda and its success in achieving the 2024 legislative changes, it's become even harder to participate, and need and permitting processes have been radically constricted⁶. In a routing proceeding, notice to landowners who may/will be affected by a transmission project is fundamental.

These 1,341 landowners have rights that must be observed, and the Commission has responsibilities to the public and affected landowners that cannot be disregarded. Affected landowners must somehow be compensated for this failure to provide notice, but how? This is a failure that puts landowners at a significant disadvantage in the routing process and if not corrected, it sets a dangerous precedent.

Landowners must be provided with **immediate** specific notice, sufficient time and **assistance** to learn how this routing process "works," and means of participation, which means a delay in the schedule, including public and evidentiary hearings. The intervention deadline, filing deadlines, and meeting and hearing dates should be set forward at least as long as this notice was delayed, five months plus "a few weeks."

Commerce-EERA must take the responsibility for this mess, though it may not be the ideal entity to take the lead in fixing this mess. Some ideas:

- Every notice in this docket, and every Commission docket, must be **immediately** eFiled with Affidavit of Service and list of recipients and addresses when sent.
- Each landowner should be directly contacted by mail and phone and provided information, not public meeting "information lite," but substantive explanations sufficient for an understanding of what this project may mean to them, details on "Buy the Farm" if their land would be taken, how it is that they became affected landowners, to be sworn on oath and how to meaningfully participate. This is beyond Commerce-EERA and PUC's charge, beyond duties of the PUC's Public Advisor. Perhaps this should be handled by the A.G.'s Office-RUD, which well represents the public interest;
- Additional in-person public meetings should be held in the affected areas with targeted invitations to the 1,341 landowners in the area(s), with notice filed in eDockets.
- Landowners must be extended the clearly explained opportunity, the option, of Intervention without objection;

⁵ Online at <https://www.auditor.leg.state.mn.us/ped/pedrep/puc2020.pdf>

⁶ See also PPSA Annual Hearing Reports, 2000-2024: <https://legalelectric.org/weblog/27619/>

- Landowners will require some level of substantive assistance to be able to participate in the hearing⁷, submit testimony, question witnesses, and offer a brief, without limitation or objection from applicant or Commerce to their participation. This is the purpose of Intervenor Compensation, and it should be approved for this docket.

Realistically, landowners seldom have experience or resources to participate effectively, and in addition to Commerce-EERA, the Commission should provide some measure of assistance to bring them up to speed quickly. With hearings set for the end of this month, starting roughly two weeks from Friday's Prehearing Conference, I don't see how the necessary outreach and education can occur without postponing the hearings. It took five months and a few weeks to get to this point, and it may take that long to make up for Commerce-EERA's failure. As the responsible party, it should bear the cost of fixing its errors, though a state entity distanced from causation should lead the correction. Provision of process information and assistance is urgently needed, NOW!

Institutional history is important. Most working on this docket were not a part of the CapX 2020 Hampton to La Crosse⁸ routing docket through Cannon Falls, PUC Docket TL-09-1448. In that docket, there was a similar failure of notice, though that was Xcel's failure. The utility had disregarded the DOT's prohibition of running the transmission line over a Highway 52 interchange until the very last minute, just days before the Public Hearing, and some of those potentially affected landowners did not receive any notice at all. See Affidavits accompanying Motion for Reconsideration of St. Paul's Church and Cannon Falls Landowners⁹. An immediate attempt to extend at least some intervention rights to these landowners failed, and no effort was made by the applicants or the Commission to assist these landowners. Those landowners now have CapX 2020 transmission on their property or just outside their backyards, alongside the school's ball field. It was a travesty of process.

Lack of notice and steamrolling over landowners must not happen again. Failure to provide notice to 1,341 landowners is inexcusable, and the hearings must not go forward as currently planned. This is not a problem of the landowners' making, and they should not have to pay the price. Commerce-EERA made this problem and must take the lead in fixing its problem.

Very truly yours,



Carol A. Overland
Attorney at Law

cc: Nancy Prehn, The Prehn Family
eService on all Parties via eDockets

⁷ While rules and Orders state that one does not need to intervene to participate, participation is at the discretion of the ALJ, and in my experience, non-party participants rarely can participate in a meaningful way. As problematic is that these landowners will likely have had no experience and won't have the ability to participate effectively.

⁸ Aside from Bret Eknes, PUC and Court Reporter Shaddix, perhaps Valerie Herring worked on CapX 2020?

⁹ PUC Document Numbers: Motion for Reconsideration: [20126-75809-01](#); Affidavits and Exhibits: [20126-75809-02](#), [20126-75809-03](#), [20126-75809-03](#), [20126-75809-04](#), [20126-75809-05](#), [20126-75809-06](#), [20126-75809-07](#), [20126-75809-08](#), [20126-75809-09](#), [20126-75809-09](#) [20126-75809-10](#), [20126-75810-01](#)