

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

In the Matter of the Application of
Minnesota Power for a Route Permit for
the Line 16 Reroute Project in St. Louis
County

TABLE OF CONTENTS

| | |
|--|----|
| STATEMENT OF ISSUE | 1 |
| SUMMARY OF CONCLUSION | 2 |
| FINDINGS OF FACT | 2 |
| I. GENERAL BACKGROUND | 2 |
| II. PROCEDURAL SUMMARY | 3 |
| III. DETAILED DESCRIPTION OF THE PROJECT | 8 |
| IV. ROUTES EVALUATED | 9 |
| V. TRANSMISSION LINE STRUCTURE TYPES AND SPANS | 10 |
| VI. TRANSMISSION LINE CONDUCTORS | 10 |
| VII. TRANSMISSION LINE ROUTE WIDTHS | 10 |
| VIII. TRANSMISSION LINE RIGHT-OF-WAY | 10 |
| IX. PROJECT SCHEDULE | 11 |
| X. PROJECT COSTS | 11 |
| XI. PERMITTEE | 11 |
| XII. PUBLIC AND LOCAL GOVERNMENT PARTICIPATION | 12 |
| A. Public Comments | 12 |
| B. Local Government and State Agency Participation | 12 |
| XIII. FACTORS FOR A ROUTE PERMIT | 13 |
| XIV. APPLICATION OF ROUTING FACTORS | 15 |
| A. Effects on Human Settlement | 15 |
| 1. Displacement | 16 |
| 2. Noise | 17 |

| | <u>Page</u> |
|--|--------------------|
| 3. Aesthetics | 17 |
| 4. Cultural Values..... | 18 |
| 5. Recreation..... | 18 |
| 6. Public Service and Infrastructure | 18 |
| B. Effects on Public Health and Safety..... | 18 |
| 1. Construction and Operation of Facilities | 18 |
| 2. Electric and Magnetic Fields | 18 |
| C. Effects on Land-Based Economies and Direct and Indirect Economic Impacts | 20 |
| D. Effects on Archeological and Historic Resources | 21 |
| E. Effects on Natural Environment | 21 |
| 1. Air Quality | 21 |
| 2. Water Quality and Resources | 22 |
| 3. Flora..... | 23 |
| 4. Fauna..... | 23 |
| F. Effects on Rare and Unique Natural Resources | 24 |
| G. Application of Various Design Considerations | 25 |
| H. Use or Paralleling of Existing Right-of-Way, Survey Lines, Natural Division Lines, and Agricultural Field Boundaries | 25 |
| I. Use of Existing Transportation, Pipeline, and Electrical Transmission System Rights-of-Way | 25 |
| J. Electrical System Reliability | 25 |
| K. Costs of Constructing, Operating, and Maintaining the Facility..... | 26 |
| L. Adverse Human and Natural Environmental Effects Which Cannot be Avoided..... | 26 |
| M. Irreversible and Irretrievable Commitments of Resources | 27 |
| XV. NOTICE | 27 |
| XVI. COMPLETENESS OF EA | 28 |
| CONCLUSIONS OF LAW | 28 |
| RECOMMENDATION | 30 |

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**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter was assigned to Administrative Law Judge Jeanne M. Cochran to conduct a public hearing and prepare Findings of Fact, Conclusions of Law, and Recommendation on the application by Minnesota Power for a Route Permit for the Line 16 Reroute Project in St. Louis County. The new line is proposed to be built near the city of Eveleth, Minnesota.

A public hearing on Minnesota Power's proposed project was held before Administrative Law Judge Jeanne M. Cochran on October 27, 2015 at the Eveleth City Hall, 413 Pierce Street, Eveleth, MN 55734 at 7:00 p.m. The factual record remained open until November 6, 2015, for the receipt of written public comments. Minnesota Power filed Proposed Findings of Fact on November 6, 2015. The Office of Administrative Hearings (OAH) record closed on November 13, 2015, the deadline for filing replies to Minnesota Power's Proposed Findings of Fact.

David Moeller, Senior Attorney, appeared at the public hearing on behalf of Minnesota Power (Applicant or MP). Daniel McCourtney, Environmental Compliance Specialist, and Nicholas Boldt, Transmission Planning Engineer, also attended the public hearing on behalf of Minnesota Power.

Bill Storm, Environmental Review Manager, appeared at the public hearing on behalf of the Department of Commerce, Energy Environmental Review and Analysis (DOC-EERA).

Michael Kaluzniak, Senior Facilities Planner, appeared at the public hearing on behalf of the Minnesota Public Utilities Commission (Commission) Staff.

STATEMENT OF ISSUE

Has Applicant satisfied the factors set forth in Minn. Stat. § 216E.03 (2014) and Minn. R. ch. 7850 (2015) for a route permit for the 16 Line Reroute Project located in St. Louis County, Minnesota, near the city of Eveleth? If so, which route under consideration best complies with the applicable statutes and rules?

SUMMARY OF CONCLUSION

The Administrative Law Judge concludes that Minnesota Power has satisfied the applicable legal requirements for a route permit for the proposed Line 16 Reroute Project. Further, the Administrative Law Judge recommends that the Commission grant a route permit for the proposed project that authorizes construction of the project along the Applicant's proposed route.

Based on information in the Route Permit Application (Application) filed with the Commission, the Environmental Assessment (EA), the testimony at the public hearing, written comments, and exhibits received in this proceeding,¹ the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. GENERAL BACKGROUND

1. Minnesota Power is an investor-owned utility headquartered in Duluth, Minnesota. Minnesota Power supplies retail electric service to 144,000 retail customers in northern Minnesota and wholesale electric service to 16 municipalities in Minnesota. Minnesota Power's transmission network is interconnected with the regional transmission grid to promote reliability. Minnesota Power is a member of the Midwest Reliability Organization and the Midcontinent Independent System Operator.²

2. Minnesota Power has applied for a route permit for an approximately three-mile-long, 115 kilovolt (kV) high voltage transmission line (HTVL) reroute. In addition, Minnesota Power proposes to remove approximately three miles of existing transmission line.³ The proposed transmission line construction and removal is collectively referred to as the Project.⁴

3. The Project is intended to relocate a portion of the 16 Line that United Taconite has identified as conflicting with its planned tailings basin expansion. The 16 Line is currently located directly within the footprint of the proposed expansion. The portion of the existing 16 Line to be relocated is on property leased from United Taconite. The lease agreement provides that if United Taconite requests relocation of the existing line, Minnesota Power must complete that relocation in a timely manner.⁵

¹ Exhibits include all documents on the Master Exhibit list (eDocket No. 201511-115547-01). Paper copies of some of the exhibits were not provided at the public hearing, but the Administrative Law Judge agreed that the parties could cite all of the exhibits on the Master Exhibit list, even without the paper copy, because the exhibits were filed in eDockets.

² Ex. 4 at 7 (Application).

³ *Id.* at 1 (Application).

⁴ *Id.*

⁵ Ex. 4 at 1, 9 (Application); Ex. 45 at 2 (Environmental Assessment (EA)); Ex. 12 (Minnesota Power Comment Letter).

4. The proposed Project is located near Eveleth in St. Louis County.⁶

II. PROCEDURAL SUMMARY

5. On November 17, 2014, Minnesota Power filed with the Commission a Notice of Intent to File a Route Permit Application Pursuant to the Alternative Permitting Process for the Project.⁷

6. On January 16, 2015, Minnesota Power submitted its Application for the Project.⁸

7. On January 26, 2015, the Commission issued a Notice of Comment Period on Application Completeness.⁹

8. On February 3, 2015, DOC-EERA staff filed its comments and recommendations regarding the completeness of the Application and recommended the Application be found complete.¹⁰

9. On February 6, 2015, Minnesota Power filed comments acknowledging DOC-EERA staff's review of the Application and requesting that the Commission find the Application complete.¹¹

10. On February 13, 2015, the Commission issued a Notice of Meeting on Application Completeness for February 26, 2015.¹²

11. On February 18, 2015, Commission staff filed briefing papers recommending that the Commission find the Application complete. In addition, the staff recommended that the Commission: appoint a staff person as the Project's public advisor; take no action on an advisory task force at that time; grant a variance of the 10-day timeline in Minn. R. 7850.3700, subp. 3 to allow for analysis of route alternatives to include in the EA; direct staff to contact state agencies and request their participation in the development of the record; direct staff to file a generic route permit template into the record; request DOC-EERA to begin the environmental review process and perform related administrative tasks; and request DOC-EERA to present draft route alternatives to the Commission prior to issuance of the EA Scoping Decision.¹³

⁶ Ex. 4 at 1 (Application).

⁷ Ex. 1 (Notice of Intent to File Application).

⁸ Ex. 4 (Application).

⁹ Ex. 20 (Notice of Comment Period on Application Completeness).

¹⁰ Ex. 40 (DOC-EERA Comments and Recommendations on Completeness).

¹¹ Ex. 5 (Minnesota Power Reply Comments on Completeness).

¹² Ex. 21 (Commission Meeting Notice on Completeness).

¹³ Ex. 22 at 6-7 (Staff Briefing Papers on Completeness).

12. On February 20, 2015, Minnesota Power filed proof of its compliance with the mailing and publication notice requirements of Minn. Stat. § 216E.03, subd. 4, .04, subd. 4 (2014); Minn. R. 7850.2100, subp. 4.¹⁴

13. On February 26, 2015, the Commission met to consider whether the Application was complete.¹⁵ During the Agenda Meeting, Chair Heydinger questioned why the Applicant's proposed reroute did not follow the shortest possible route.¹⁶

14. On February 27, 2015, the Commission mailed a Notice of Public Information and EA Scoping Meeting to those persons on the General List maintained by the Commission, the agency technical representatives list, and the Project contact list.¹⁷

15. The Notice of Public Information and EA Scoping Meeting was published in the *Mesabi Daily News* on March 3, 2015, and the *Hometown Focus* on March 6, 2015.¹⁸

16. On March 17, 2015, the Commission issued its ORDER FINDING APPLICATION COMPLETE, NAMING A PUBLIC ADVISOR, GRANTING A VARIANCE, AND TAKING OTHER ACTION (COMPLETENESS ORDER).¹⁹ In the COMPLETENESS ORDER, the Commission: determined that the Project is eligible for the alternative permitting process under Minn. Stat. § 216E.04 (2014); found the application complete; appointed a Commission staff person as the public advisor; took no action on an advisory task force; granted a variance of the 10-day timeline in Minn. R. 7850.3700, subp. 3, to 40 days to allow for analysis of route alternatives to include in the EA; directed staff to contact state agencies; directed staff to file a generic route permit template into the record; requested DOC-EERA to begin the environmental review process and perform related administrative tasks; and requested that DOC-EERA present draft route alternatives to the Commission prior to issuance of the EA Scoping Decision to facilitate Commission input.²⁰

17. On March 23, 2015, the Commission Staff and DOC-EERA held a Public Information and EA Scoping Meeting at the Eveleth City Hall in Eveleth, Minnesota.²¹

18. On April 1, 2015, Minnesota Power filed scoping comments with the DOC-EERA, which addressed the question raised by Chair Heydinger at the February 26, 2015 Agenda Meeting regarding the alignment of the proposed route and possible alternative alignments. Minnesota Power explained that a more direct route would require placement of the Project's heavy angle structures in wetlands and peat soils. The route proposed by Minnesota Power follows a less direct route because it locates the heavy angle structures in mineral soils instead of wetlands and peat soils. Minnesota Power further

¹⁴ Ex. 6 (Affidavits of Mailing and Publication of Notice of Application).

¹⁵ Ex. 25 (Commission Order Accepting Application as Complete).

¹⁶ Ex. 30 at 4 (Staff Briefing Papers for the April 30, 2015 Agenda).

¹⁷ Ex. 23 (Notice of Public Information and EA Scoping Meetings Affidavit of Service).

¹⁸ Ex. 7 (Notice of Public Information and EA Scoping Meetings Affidavit of Publication).

¹⁹ Ex. 25 (Completeness Order).

²⁰ *Id.* at 4-5 (Completeness Order).

²¹ Ex. 44 at 2 (DOC-EERA Environmental Assessment Scoping Decision); Ex. 45 at 5 (EA).

stated that location of the heavy angle structures in wetland and peat soils rather than mineral soils would increase the foundation costs and maintenance costs.²²

19. On April 3, 2015, the scoping comment period ended.²³ Three written comments were received: one from the Minnesota Department of Natural Resources (MnDNR), one from the Minnesota Department of Transportation (MnDOT), and one from the Applicant.²⁴

20. On April 17, 2015, DOC-EERA issued a memorandum to the Commission on the EA scoping process. The DOC-EERA stated that no additional route alternatives were put forth during the scoping process, and recommended that the scoping decision for the EA on the Project include only the route proposed by Minnesota Power in its application.²⁵

21. On April 17, 2015, the Commission issued a Notice of Commission Meeting noting that it would consider what action it should take in regard to route alternatives to be evaluated in the EA at its regular meeting on April 30, 2015.²⁶

22. On April 22, 2015, Commission staff issued briefing papers on the EA scoping process. Staff noted that the route proposed by the Applicant is not the shortest possible route alignment. Staff identified two shorter possible alignments for the Project, identified as AR2 and AR3, and recommended that the Commission direct the DOC-EERA to include an analysis of AR2 and AR3 in the EA.²⁷

23. On April 27, 2015, Minnesota Power submitted comments on the April 22, 2015 Commission staff briefing papers. Minnesota Power indicated that it supported DOC-EERA's recommendation made on April 17, 2015 that no routes other than the route proposed by Minnesota Power in its Application be included in the EA. The Applicant also noted that if the Commission directed DOC-EERA to include any of the alternative segments developed by Commission staff in the EA, Minnesota Power would provide any necessary information in a timely manner.²⁸

24. On April 29, 2015, DOC-EERA submitted comments that it did not support including the two alternative segments developed by Commission staff in the EA as "no issue requiring mitigation or area of concern requiring avoidance has been identified."²⁹

25. On April 30, 2015, the Commission met to consider DOC-EERA's memorandum on the EA scoping process. The Commission determined that the two

²² Ex. 9 (Minnesota Power EA Scoping Comment); Ex. 45 at 6 (EA).

²³ Ex. 44 at 2 (DOC-EERA Environmental Assessment Scoping Decision); Ex. 45 at 5 (EA).

²⁴ Ex. 27 (MnDNR EA Scoping Comments); Ex. 28 (MnDOT EA Scoping Comments); Ex. 8 (Minnesota Power Comments – Environmental Assessment Scoping Comment); Ex. 45 at 5-6 (EA).

²⁵ Ex. 41 (DOC-EERA Comments and Recommendations).

²⁶ Ex. 29 (Notice of Commission Meeting).

²⁷ Ex. 30 at 5 (Staff Briefing Papers for the April 30, 2015 Agenda).

²⁸ Ex. 10 (MP Comments on Staff Request to Include Alternatives in the EA).

²⁹ Ex. 43 at 4 (DOC-EERA Comments – On Alternative Routes).

alternative alignments, AR2 and AR3, developed by Commission staff should be considered in the EA. The Commission directed DOC-EERA to include an analysis of AR2 and AR3 in the EA and also referred the Application to the Office of Administrative Hearings for a summary proceeding. In its Order, the Commission requested that: 1) the Administrative Law Judge emphasize the statutory time frame for the Commission to make a final decision on the Application; 2) the Administrative Law Judge ask the parties to address whether the Project meets the selection criteria of Minn. Stat. § 216E.03, subd. 7; Minn. R. 7850.4100; 3) DOC-EERA submit the EA to the Administrative Law Judge prior to the public hearing; and 4) the Administrative Law Judge prepare a report for the Commission setting forth findings, conclusions, and recommendations on the merits of the Project, alternatives, and a preferred route, applying the routing criteria set forth in statute and rule and provide comments and recommendations, if any, on the conditions and provisions of the proposed permit.³⁰

26. On May 19, 2015, the Office of Administrative Hearings issued a Notice of Prehearing Conference.³¹

27. On May 19, 2015, the Department of Commerce issued its EA Scoping Decision.³² The Scoping Decision specified that the EA would “identify and evaluate the proposed route and two alternatives (AR2 and AR3) put forth by the Commission.”³³ The EA Scoping Decision also attached a map depicting the alignments of the proposed route, AR2, and AR3.³⁴

28. While the Scoping Decision states that the EA will evaluate routes AR2 and AR3 put forth by Commission staff, the alignments of AR2 and AR3 on the map attached to the Scoping Decision are slightly different than the alignments of AR2 and AR3 as depicted in the Staff Briefing Papers.³⁵

29. On May 27, 2015, the Administrative Law Judge held a prehearing conference via telephone. David R. Moeller, Senior Attorney, Minnesota Power, and Kodi Jean Verhalen, Briggs and Morgan, P.A., appeared on behalf of Minnesota Power. Dan McCourtney of Minnesota Power also appeared. Michael Kaluzniak, Senior Facilities Planner, and Tracy Smetana, Public Advisor, participated on behalf of the Commission

³⁰ Ex. 31 at 3-4 (Order Identifying Additional Routes for Environmental Review and Referring Application to Office of Administrative Hearings).

³¹ Ex. 60 (First Notice of Prehearing Conference).

³² Ex. 44 (EA Scoping Decision).

³³ *Id.* at 6.

³⁴ *Id.* at 9 (Alternative Routes Map).

³⁵ Compare Ex. 30 at 5 (map showing AR2 and AR3), with Ex. 44 (DOC-EERA Scoping Decision with attached map (Scoping Decision Map)). AR2 and AR3, as depicted in the Scoping Decision Map, are slightly to the east of the alignment suggested by Commission Staff in the Briefing Papers. In addition, the alignment of AR3 in the Scoping Decision Map is different than that suggested by Commission Staff. Commission Staff suggested that AR3 run directly to the south from the existing 16 Line, but AR3 as depicted on the Scoping Decision Map runs southeast, then south, and then southwest.

staff. Deborah Pile, Director, and Bill Storm, Environmental Review Manager, participated on behalf of DOC-EERA.³⁶

30. On June 2, 2015, the Administrative Law Judge issued the First Prehearing Order.³⁷

31. On June 19, 2015, Minnesota Power filed information requested by DOC-EERA for its development of the EA related to the alternative segments that the Commission directed be included in the EA.³⁸

32. On August 3, 2015, the Administrative Law Judge issued the Second Prehearing Order, which scheduled a prehearing conference to discuss revising the public hearing schedule and subsequent procedural deadlines to accommodate DOC-EERA's development of the EA.³⁹

33. On August 17, 2015, the Administrative Law Judge issued the Third Prehearing Order setting the date for the public hearing and subsequent procedural deadlines.⁴⁰

34. On October 5, 2015, DOC-EERA issued the EA for the Project and its Notice of Availability of the EA.⁴¹

35. On October 12, 2015, the Commission issued its Notice of Public Hearing for the October 27, 2015 public hearing in Eveleth.⁴² That same day, the Commission filed proof of mailing of the Notice of Public Hearing to landowners along the Project.⁴³

36. Notice of the public hearing was published in the *Mesabi Daily News* on October 9, 2015, and the *Hometown Focus* on October 9, 2015.⁴⁴

37. On October 12, 2015, DOC-EERA published notice of the EA Availability in the *EQB Monitor*.⁴⁵

38. On October 27, 2015, the Administrative Law Judge conducted a public hearing at the Eveleth City Hall in Eveleth, Minnesota, at 7:00 p.m.⁴⁶ No members of the

³⁶ Ex. 61 (Prehearing Conference Transcript May 27, 2015).

³⁷ Ex. 62 (First Prehearing Order).

³⁸ Ex. 11 (Letter from Daniel McCourtney, MP, to William Storm, DOC-EERA, attaching Route Alternative Comparison as Requested by DOC-EERA (MP Route Alternative Comparison)).

³⁹ Ex. 63 (Second Prehearing Order).

⁴⁰ Ex. 64 (Third Prehearing Order).

⁴¹ Ex. 46 (Notice of Availability of the EA); Ex. 45 (EA).

⁴² Ex. 31 (Notice of Public Hearing).

⁴³ Ex. 33 (Certificate of Service to Landowners for Notice of Public Hearing).

⁴⁴ Ex. 13 (Affidavit of Publication of Nancy Novak, *Mesabi Daily News*, October 9, 2015; Affidavit of Publication of Jeffrey Asbach, *Hometown Focus*, October 9, 2015).

⁴⁵ Ex. 47 (Notice of Availability of EA published in the *EQB Monitor*).

⁴⁶ Ex. 65 at 1 (Public Hearing Transcript (Pub. Hrg. Tr.)).

public attended the public hearing. Commission staff did ask several questions of the Minnesota Power representatives.⁴⁷

39. On October 28, 2015, Minnesota Power filed comments responding to an issue raised by Commission staff at the public hearing regarding AR2. Minnesota Power also submitted a corrected table utilizing the DOC-EERA's EA, reflecting that AR2 would require only two miles of the existing 16 Line to be removed, not three miles.⁴⁸

40. On November 6, 2015, the MnDNR submitted comments regarding the two alternative route segments, AR2 and AR3, on the record.⁴⁹

41. No other comments on the Project were filed by the close of the public comment period on November 6, 2015.⁵⁰

III. DETAILED DESCRIPTION OF THE PROJECT

42. The proposed Project includes the relocation of one, approximately three-mile, 115 kV HVTL. As proposed, the Project would connect Minnesota Power's existing 16 Line on the east side of United Taconite's existing tailings basin and proceed southeast parallel to an existing railroad grade for approximately 1.25 miles. The line would then shift southwest for approximately 1.75 miles where it would reconnect to Minnesota Power's existing 16 Line.⁵¹

43. Minnesota Power proposes to primarily use H-Frame structures that will range in height from 60 to 75 feet for the Project, with spans ranging from 500 to 800 feet between structures. Minnesota Power also proposes to use 3-Pole angle structures that will range in height from 60 to 75 feet. Pole height and span length will vary depending on topography and environmental constraints within the right-of-way.⁵²

44. The total right-of-way for the parallel 115 kV transmission lines is proposed to be 100 feet wide.⁵³

45. The Project would be located south of Fayal Township and approximately four miles east of McDavitt Township in Sections 16, 17, 18, 20, 21, 28, and 29, Township 56N, Range 17W.⁵⁴

⁴⁷ Ex. 65 at 6, 17 (Pub. Hrg. Tr.).

⁴⁸ Ex. 66 (Minnesota Power Comments Responding to an Issue Raised by Commission Staff).

⁴⁹ Letter from Jamie Schrenzel, Principal Planner, MnDNR, to Michael Kaluzniak, Energy Facilities Planner, Commission (Nov. 6, 2015) (eDocket No. 201511-115559-01).

⁵⁰ See Summary of Public Comments (eDocket No. 201511-115571-01); Ex. 31 (Notice of Public Hearing) (setting a November 6, 2015 deadline for filing of written public comments).

⁵¹ Ex. 4 at 9 (Application); Ex. 45 at 2 (EA).

⁵² Ex. 4 at 13 (Application); Ex. 45 at 12-13 (EA).

⁵³ Ex. 4 at 13 (Application); Ex. 45 at 12-13 (EA).

⁵⁴ Ex. 4 at 1 (Application); Ex. 11 at § 3.1, Figure 2 (MP Route Alternative Comparison); Ex. 45 at 19, Figure 4 (EA).

IV. ROUTES EVALUATED

46. Three possible routes for the Project were evaluated in the EA: (1) the route proposed by Minnesota Power (Application Route); (2) AR2 as depicted on the Scoping Decision Map; and (3) AR3 as depicted on the Scoping Decision Map. The location of each route is depicted in Figure 4 of the EA.⁵⁵

47. The Application Route connects to Minnesota Power's existing 16 Line on the east side of United Taconite's tailings basin and proceeds southeast, parallel to a railroad grade for approximately 1.25 miles. The Application Route then turns and proceeds southwest for approximately 1.75 miles where it, again, connects to Minnesota Power's existing 16 Line. The Application Route is approximately 3.0 miles in length.⁵⁶ The Application Route was developed by Minnesota Power in consultation with United Taconite.⁵⁷

48. Route alternative AR2 connects to Minnesota Power's existing 16 Line on the east side of United Taconite's tailings basin and proceeds southeast approximately 0.65 miles parallel to a railroad grade. AR2 then turns and proceeds south for approximately 1.10 miles before it turns and proceeds west for approximately 0.60 miles where it would connect, again, to the existing Minnesota Power 16 Line.⁵⁸ AR2 is approximately 2.35 miles in length.

49. Route alternative AR3 connects to Minnesota Power's existing 16 Line on the east side of United Taconite's tailings basin and proceeds southeast approximately 0.65 miles parallel to a railroad grade. AR3 then turns and proceeds south for approximately 1.30 miles before it turns and proceeds southwest for approximately 0.75 miles where it would connect, again, to the existing Minnesota Power 16 Line.⁵⁹ AR3 is approximately 2.7 miles in length.

50. The alignments of AR2 and AR3 analyzed in the EA are the same as those set forth in the Scoping Decision Map.⁶⁰ As noted above, the alignments of AR2 and AR3 are slightly different than those proposed by Commission staff.

51. All three alternative routes would be located within the same Township, Range, and Sections but have different alignments within the affected Sections.⁶¹

⁵⁵ Ex. 45, Figure 4 (EA).

⁵⁶ Ex. 4 at 11, Figure 1 (Application); Ex. 45 at 11 (EA).

⁵⁷ Ex. 45 at 46 (EA).

⁵⁸ Ex. 45 at 19 (EA).

⁵⁹ *Id.*

⁶⁰ Compare Ex. 44 (Scoping Decision Map), with Ex. 45, Figure 4 (EA, Overview All Route Map).

⁶¹ Ex. 45, Figure 4 (EA).

V. TRANSMISSION LINE STRUCTURE TYPES AND SPANS

52. For the Project, Minnesota Power proposes to use overhead construction with wood structures. Wood poles would be direct embedded and may require guying at, but not limited to, angle locations.⁶²

53. 3-Pole angle structures and H-Frame structures will range in height from 60 feet to 75 feet with structure diameters ranging from 16 feet to 32 feet.⁶³

54. Spans between 115 kV structures are proposed to range from 500 feet to 800 feet.⁶⁴

VI. TRANSMISSION LINE CONDUCTORS

55. For the Project, Minnesota Power proposes to use shield wire(s) for lightning protection and 336.4 kcmil aluminum conductor steel reinforced conductor.⁶⁵

VII. TRANSMISSION LINE ROUTE WIDTHS

56. For the Project, Minnesota Power has requested a route width of 500 feet.⁶⁶

VIII. TRANSMISSION LINE RIGHT-OF-WAY

57. The Project will require a 100-foot right-of-way.⁶⁷

58. The Application Route follows existing infrastructure (a railroad grade) for approximately 1.25 miles.⁶⁸

59. AR2 follows the same existing infrastructure for approximately 0.65 miles.⁶⁹

60. AR3 also follows the same existing infrastructure for approximately 0.65 miles.⁷⁰

⁶² Ex. 4 at 13, 17 (Application); Ex. 45 at 14 (EA).

⁶³ Ex. 4 at 13 (Application); Ex. 45 at 13 (EA).

⁶⁴ Ex. 4 at 13 (Application); Ex. 11, Table 2; Ex. 45 at 13 (EA).

⁶⁵ Ex. 12 (Minnesota Power Public Hearing Comment Letter).

⁶⁶ Ex. 4 at 7 (Application); Ex. 45 at 12 (EA).

⁶⁷ Ex. 4 at 14 (Application); Ex. 45 at 12 (EA).

⁶⁸ Ex. 11 at § 1.1 (MP Route Alternative Comparison); Ex. 45 at 11 (EA).

⁶⁹ Ex. 11 at 3 (Route Alternative Comparison as Requested by DOC-EERA); Ex. 45 at 19 (EA).

⁷⁰ Ex. 11 at 3 (Route Alternative Comparison as Requested by DOC-EERA); Ex. 45 at 19 (EA).

IX. PROJECT SCHEDULE

61. Minnesota Power anticipates a third-quarter 2016 in-service date for the Project.⁷¹

X. PROJECT COSTS

62. Minnesota Power estimates that construction of the Project along the Application Route will cost approximately \$4.7 million.⁷²

63. Minnesota Power estimates that construction of the Project along AR2 will cost approximately \$397,000 to \$534,000 more than if constructed along the Application Route if mine tailings or granular fill, respectively, are used for construction.⁷³ These increased costs are attributable to the wetland and peat soils located along AR2 instead of the more stable mineral soils found along the Application Route.⁷⁴ Any crossing of state-owned peat resources along this route would require an encumbrance fee, which would be an additional expense that has not been included in the estimated cost of construction.⁷⁵

64. Minnesota Power estimates construction of the Project along AR3 will cost approximately \$832,000 to \$862,000 more than if constructed along the Application Route if mine tailings or granular fill, respectively, are used for construction.⁷⁶ These increased costs are attributable to the wetland and peat soils located along AR3 instead of the more stable mineral soils found along the Application Route.⁷⁷ Any crossing of state-owned peat resources along this route would require an encumbrance fee, which would be an additional expense that has not been included in the estimated cost of construction.⁷⁸

XI. PERMITTEE

65. The permittee for the Project is Minnesota Power.⁷⁹

⁷¹ Ex. 4 at 10 (Application); Ex. 45 at 17 (EA). The Application initially contemplated a first-quarter 2016 in-service date based on obtaining a Route Permit in the third quarter 2015. Because of the agreed-upon two quarter delay in the Route Permit process between Minnesota Power, the DOC-EERA, and Commission Staff, Minnesota Power is now estimating a third quarter 2016 in-service date.

⁷² Ex. 4 at 10 (Application); Ex. 45 at 18 (EA).

⁷³ Ex. 11, Table 1 (MP Route Alternative Comparison); Ex. 45 at 62 (EA).

⁷⁴ Ex. 8 (Minnesota Power EA Scoping Comment); Ex. 45 at 62 (EA); Ex. 11, Table 5 (MP Route Alternative Comparison).

⁷⁵ See MnDNR Comment Letter (November 6, 2015) (eDocket No. 201511-115559-01).

⁷⁶ Ex. 11 at 3, Table 5 (Route Alternative Comparison); Ex. 45 at 62 (EA).

⁷⁷ Ex. 8 (Minnesota Power EA Scoping Comment); Ex. 45 at 62 (EA).

⁷⁸ MnDNR Comment Letter (November 6, 2015) (eDocket No. 201511-115559-01).

⁷⁹ Ex. 4 at 8 (Application); Ex. 45 at 1 (EA).

XII. PUBLIC AND GOVERNMENT AGENCY PARTICIPATION

66. No members of the public provided comments on the proposed Project or the EA, either orally or in writing. The only comments received were from the Applicant and government agencies.

A. Public Comments

67. One person attended the Public Information and EA Scoping Meeting on March 23, 2015. No individuals took the opportunity to speak on the record at that meeting.⁸⁰

68. No written comments were received from the public on the scope of the EA.⁸¹

69. No members of the public attended the public hearing on October 27, 2015.⁸²

70. No members of the public filed comments with the Commission either via SpeakUp or by U.S. Mail.⁸³

B. Local Government and State Agency Participation

71. No local government agencies submitted comments on the Project or the EA.

72. MnDOT and MnDNR both filed comments.

73. Stacy Kotch, Utility Transmission Route Coordinator for MnDOT, submitted written comments on the scope of the EA on April 2, 2015. Ms. Kotch stated that the Application Route does not appear to abut a state trunk highway but sought to be informed if the Project area were revised.⁸⁴

74. On April 1, 2015, Rian Reed, Regional Environmental Assessment Ecologist for MnDNR, submitted written comments on the scope of the EA. MnDNR commented that it previously informed Minnesota Power that the proposed Project (using the Application Route) “is not likely to negatively affect any known occurrences of rare features” and that it had no other comments or concerns at the time of filing the comment.⁸⁵

⁸⁰ Ex. 41 at 3 (DOC-EERA Comments and Recommendations – Alternative Routes).

⁸¹ *Id.*

⁸² Ex. 65 at 6, 17 (Pub. Hrg. Tr.).

⁸³ See Summary of Public Comments (November 9, 2015) (eDockets No. 201511-115571-01).

⁸⁴ Ex. 28 (MnDOT EA Scoping Comments).

⁸⁵ Ex. 27 (MnDNR EA Scoping Comments).

75. On November 6, 2015, Jaime Schrenzel, Principal Planner for MnDNR, submitted comments regarding AR2 and AR3.⁸⁶ MnDNR stated that these alternative route segments are located in Sections 19 and 20 which are a “major harvestable state reservation of school trust peat resources.”⁸⁷ MnDNR noted that when most of Section 19 and all of Section 20 were exchanged by the State in 1964 and are now owned by United Taconite for purposes of tailings deposition, commercial peat and mineral rights were reserved by the State (School Trust).⁸⁸ MnDNR stated that “any crossing of state-owned peat resources would require an encumbrance fee.”⁸⁹

XIII. FACTORS FOR A ROUTE PERMIT

76. The Power Plant Siting Act (PPSA), Minnesota Statutes chapter 216E (2014), requires that route permit determinations “be guided by the state’s goals to conserve resources, minimize environmental impacts, minimize human settlement and other land use conflicts, and ensure the state’s electric energy security through efficient, cost-effective power supply and electric transmission infrastructure.”⁹⁰

77. Under the PPSA, the Commission and the Administrative Law Judge must be guided by the following responsibilities, procedures, and considerations:

- (1) evaluation of research and investigations relating to the effects on land, water and air resources of large electric power generating plants and high-voltage transmission lines and the effects of water and air discharges and electric and magnetic fields resulting from such facilities on public health and welfare, vegetation, animals, materials and aesthetic values, including baseline studies, predictive modeling, and evaluation of new or improved methods for minimizing adverse impacts of water and air discharges and other matters pertaining to the effects of power plants on the water and air environment;
- (2) environmental evaluation of sites and routes proposed for future development and expansion and their relationship to the land, water, air and human resources of the state;
- (3) evaluation of the effects of new electric power generation and transmission technologies and systems related to power plants designed to minimize adverse environmental effects;
- (4) evaluation of the potential for beneficial uses of waste energy from proposed large electric power generating plants;⁹¹

⁸⁶ MnDNR Comment Letter (Nov. 6, 2015) (eDocket No. 201511-115559-01).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Minn. Stat. § 216E.03, subd. 7.

⁹¹ Factor 4 is not applicable because Minnesota Power is not proposing to site a large electric generating plant.

- (5) analysis of the direct and indirect economic impact of proposed sites and routes including, but not limited to, productive agricultural land lost or impaired;
- (6) evaluation of adverse direct and indirect environmental effects that cannot be avoided should the proposed site and route be accepted;
- (7) evaluation of alternatives to the applicant's proposed site or route proposed pursuant to subdivision 1 and 2;
- (8) evaluation of potential routes that would use or parallel existing railroad and highway rights-of-way;
- (9) evaluation of governmental survey lines and other natural division lines of agricultural land so as to minimize interference with agricultural operations;
- (10) evaluation of future needs for additional high-voltage transmission lines in the same general area as any proposed route, and the advisability of ordering the construction of structures capable of expansion in transmission capacity through multiple circuiting or design modifications;
- (11) evaluation of irreversible and irretrievable commitments of resources should the proposed site or route be approved; and
- (12) when appropriate, consideration of problems raised by other state and federal agencies and local entities.⁹²

78. Minnesota Statutes section 216E.03, subdivision 7(e), provides that the Commission "must make specific findings that it has considered locating a route for a high-voltage transmission line on an existing high-voltage transmission route and the use of parallel existing highway right-of-way and, to the extent those are not used for the route, the [C]ommission must state the reasons."

79. In addition, Minn. R. 7850.4100 requires consideration of the following factors when determining whether to issue a route permit for a high voltage transmission line:

- A. effects on human settlement, including, but not limited to, displacement, noise, aesthetics, cultural values, recreation, and public services;
- B. effects on public health and safety;
- C. effects on land-based economies, including, but not limited to, agriculture, forestry, tourism, and mining;
- D. effects on archaeological and historic resources;

⁹² Minn. Stat. § 216E.03, subd. 7.

- E. effects on the natural environment, including effects on air and water quality resources and flora and fauna;
- F. effects on rare and unique natural resources;
- G. application of design options that maximize energy efficiencies, mitigate adverse environmental effects, and could accommodate expansion of transmission or generating capacity;
- H. use or paralleling of existing rights-of-way, survey lines, natural division lines, and agricultural field boundaries;
- I. use of existing large electric power generating plant sites;⁹³
- J. use of existing transportation, pipeline, and electrical transmission systems or rights-of-way;
- K. electrical system reliability;
- L. costs of constructing, operating, and maintaining the facility which are dependent on design and route;
- M. adverse human and natural environmental effects which cannot be avoided; and
- N. irreversible and irretrievable commitments of resources.⁹⁴

80. There is sufficient evidence in the record for the Administrative Law Judge to assess the Application Route using the criteria and factors set out above.

XIV. APPLICATION OF ROUTING FACTORS

81. This proceeding considered the Project and three alternative routes for the Project: the Application Route, AR2, and AR3.⁹⁵

A. Effects on Human Settlement

82. The applicable statutory and rule routing factors require consideration of the proposed transmission line route's effect on human settlement, including displacement of residences and business; noise created during construction and by operation of the Project; and impacts to aesthetics, cultural values, recreation, and public services.⁹⁶

⁹³ This factor is not applicable because it applies only to power plant siting.

⁹⁴ Minn. R. 7850.4100.

⁹⁵ Ex. 45 at 19 (EA).

⁹⁶ Minn. Stat. § 216E.03, subd. 7(b); Minn. R. 7850.4100(A).

1. Displacement

83. The land crossed by the Application Route includes areas zoned as industrial, forest agricultural management, and residential. Approximately 1.6 acres of the Application Route is zoned residential.⁹⁷

84. The land crossed by AR2 includes land zoned as industrial and forest agricultural management.⁹⁸ AR2 does not cross any land zoned residential.⁹⁹

85. The land crossed by AR3 includes land zoned as industrial, forest agricultural management, and residential. Approximately 1.3 acres of AR3 is zoned residential.¹⁰⁰

86. There are no residences located within 1,000 feet of the Application Route, AR2, or AR3.¹⁰¹

87. No displacement is anticipated as a result of the Project.¹⁰²

2. Noise

88. The MPCA has established standards for the regulation of noise levels.¹⁰³

89. The most restrictive MPCA noise limits are 60-65 A-weighted decibel (dBA) during the daytime and 50-55 dBA during the nighttime.¹⁰⁴

90. Noise concerns for the Project may be associated with construction and operation of the transmission lines. Transmission lines produce noise under certain conditions. The level of noise depends on conductor conditions, voltage level, and weather conditions. Generally, activity related noise levels during the operation and maintenance of transmission lines are minimal and do not exceed the MPCA Noise Limits outside the right-of-way.¹⁰⁵

91. The audible noise levels for any of the routes under consideration for the Project are not expected to exceed background noise levels and, therefore, would not be audible at any receptor location. The HVTL will be designed and constructed to comply with the noise standards established by the MPCA.¹⁰⁶

⁹⁷ Ex. 11 at § 6.2.2 (Route Alternative Comparison as Requested by DOC-EERA); Ex. 45 at 46 (EA).

⁹⁸ Ex. 11 at § 6.2.2 (Route Alternative Comparison as Requested by DOC-EERA); Ex. 45 at 61 (EA).

⁹⁹ Ex. 11 at § 6.2.2 (Route Alternative Comparison as Requested by DOC-EERA); Ex. 45 at 61 (EA).

¹⁰⁰ Ex. 11 at § 6.2.2 (Route Alternative Comparison as Requested by DOC-EERA); Ex. 45 at 61 (EA).

¹⁰¹ Ex. 11 at § 6.2.2 (Route Alternative Comparison as Requested by DOC-EERA); Ex. 45 at 31 (EA).

¹⁰² Ex. 4 at 29 (Application); Ex. 45 at 31 (EA).

¹⁰³ Ex. 4 at 31 (Application); Ex. 45 at 32 (EA).

¹⁰⁴ Ex. 4 at 31 (Application); Ex. 45 at 32 (EA).

¹⁰⁵ Ex. 45 at 32-33 (EA).

¹⁰⁶ Ex. 11 at § 6.2.3 (MP Route Alternative Comparison); Ex. 45 at 33-34 (EA).

3. Aesthetics

92. The routes under consideration for the Project are located in areas zoned industrial and forest agricultural management. The Application Route and AR3 also cross lands zoned residential.¹⁰⁷ The closest dwelling to any of the route alternatives is approximately 1,950 feet to the southeast in a forested area.¹⁰⁸

93. The Project will use wood structures. Structures will be H-Frame structures or 3-Pole angle structures. Direct embedded poles may require guying particularly at, but not limited to, angle structures.¹⁰⁹

94. Although the Project will be visible in the area, it is also in an area with active mining operations in close proximity. The Project will also remove an existing segment of overhead transmission line in the area.¹¹⁰

95. No members of the public, including nearby landowners, expressed any concern about the aesthetic impacts of the Project.

96. Given existing land uses and the distance from the closest dwelling, the Project is not anticipated to have adverse effects on aesthetics.¹¹¹

4. Cultural Values

97. The region surrounding the Project area has cultural values tied to English, Finnish, German, Italian, Native American, Norwegian, and Swedish heritages.¹¹²

98. No impacts are anticipated to cultural values as a result of construction of the Project.¹¹³

5. Recreation

99. The Project is located in an area that is known for outdoor recreation opportunities such as fishing, boating, cycling, hiking, hunting, cross country skiing, and snowmobiling. The Project is not in the immediate vicinity of any recognized recreational area. Two lakes, Hiekkila and Murphy Lakes, are located within one mile of and to the east of the Project.¹¹⁴

¹⁰⁷ Ex. 11 at § 6.2.5 (Route Alternative Comparison as Requested by DOC-EERA); Ex. 45 at 31, 36, Figures 4-5 (EA).

¹⁰⁸ Ex. 45 at 36, Figures 4-5 (EA).

¹⁰⁹ Ex. 4 at 13, 17 (Application); Ex. 45 at 12-13 (EA).

¹¹⁰ Ex. 4 at 33-34 (Application); Ex. 45 at 36 (EA).

¹¹¹ Ex. 45 at 36, Figure 4 (EA).

¹¹² Ex. 4 at 35 (Application).

¹¹³ Ex. 4 at 35 (Application); Ex. 11 at § 6.2.7 (MP Route Alternative Comparison); Ex. 45 at 30 (EA).

¹¹⁴ Ex. 4 at 35 (Application); Ex. 11 at § 6.2.8 (MP Route Alternative Comparison); Ex. 45 at 45, Figure 1 (EA).

100. The Project is not anticipated to impact activities on these lakes or result in adverse or significant impacts on recreation in the area.¹¹⁵

6. Public Service and Infrastructure

101. Public services in the Project area include emergency services provided by government entities, including hospitals, fire departments, and police departments, transportation corridors and projects, water supply, wastewater disposal systems, gas services, and electricity services.¹¹⁶

102. Direct impacts on public services within the Project area will be avoided under any of the routes considered.¹¹⁷

B. Effects on Public Health and Safety

103. Minnesota high voltage transmission line routing factors require consideration of the Project's effect on health and safety.¹¹⁸

1. Construction and Operation of Facilities

104. The Project will be designed in compliance with local, state, National Electric Safety Code (NESC), and Minnesota Power standards regarding clearance to ground, clearance to crossing utilities, clearance to buildings, strength of materials, and right-of-way widths.¹¹⁹

105. Minnesota Power construction crews and/or contract crews will comply with local, state, NESC, and Minnesota Power standards regarding installation of facilities and standard construction practices. Minnesota Power and industry safety procedures will be followed during and after installation of the transmission lines. This will include clear signage during all construction activities.¹²⁰

106. The Project will be equipped with protective devices that will de-energize the line if an accident occurs, such as a structure or conductor falling to the ground.¹²¹

2. Electric and Magnetic Fields

107. There are no official state or federal standards for transmission line electric fields.¹²²

¹¹⁵ See Ex. 4 at 36 (Application); Ex. 11 at § 6.2.8 (MP Route Alternative Comparison); Ex. 45 at 45, Figure 1 (EA).

¹¹⁶ Ex. 4 at 36 (Application); Ex. 11 at § 6.2.9 (MP Route Alternative Comparison); Ex. 45 at 48 (EA).

¹¹⁷ Ex. 4 at 36 (Application); Ex. 11 at § 6.2.9 (MP Route Alternative Comparison); Ex. 45 at 48 (EA).

¹¹⁸ Minn. Stat. § 216E.03, subd. 7(b)(1); Minn. R. 7850.4100(B).

¹¹⁹ Ex. 4 at 13, 28 (Application); Ex. 45 at 36 (EA).

¹²⁰ Ex. 4 at 28-29 (Application); Ex. 45 at 36 (EA).

¹²¹ Ex. 4 at 29 (Application); Ex. 45 at 36 (EA).

¹²² Ex. 4 at 21 (Application); Ex. 45 at 38 (EA).

108. The Commission has incorporated a maximum electric field limit of 8 kV/m measured at one meter above the ground at the edge of the right-of-way into route permits for transmission lines.¹²³

109. The calculated electric fields for the Project are significantly less than the maximum limit of 8 kV/m that has been imposed by the Commission.¹²⁴

110. There are no federal or state regulations for the permitted strength of magnetic fields from transmission lines. Some states have set magnetic field limits ranging from 150 mG to 250 mG at the edge of the transmission line right-of-way.¹²⁵

111. All of the routes under consideration for the Project will have the same calculated magnetic fields during operation.¹²⁶

112. Magnetic fields have been the subject of study and research for over 25 years.¹²⁷

113. Research has not been able to establish a cause and effect relationship between exposure to magnetic fields and adverse health effects.¹²⁸

114. The potential impacts of electromagnetic fields on human health were also at issue in the route permit proceeding for the Brookings Hampton 345 kV transmission line. In that proceeding, Administrative Law Judge Luis found that: “The absence of any demonstrated impact by [electromagnetic field] exposure supports the conclusion that there is no demonstrated impact on human health and safety that is not adequately addressed by the existing State standards for such exposure. The record shows that the current exposure standard for [electromagnetic fields] is adequately protective of human health and safety.”¹²⁹

115. Similarly, in the route permit proceeding for the St. Cloud–Fargo 345 kV transmission line, then Administrative Law Judge Heydinger found: “Over the past 30 years, many epidemiological studies have been conducted to determine if there is a correlation between childhood leukemia and proximity to electrical structures. Some studies have shown that there is an association and some have not. Although the epidemiological studies have been refined and increased in size, the studies do not show

¹²³ Ex. 4 at 21 (Application); Ex. 45 at 38 (EA).

¹²⁴ Ex. 4 at 22-23 (Application); Ex. 45 at 37 (EA).

¹²⁵ Ex. 4 at 23 (Application); Ex. 45 at 41 (EA).

¹²⁶ Ex. 4 at 24 (Application); Ex. 11 at § 5.2 (MP Route Alternative Comparison); Ex. 45 at 38 (EA).

¹²⁷ Ex. 45 at 41 (EA).

¹²⁸ Ex. 45 at 44 (EA).

¹²⁹ *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, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ISSUING AN HVTL ROUTE PERMIT TO GREAT RIVER ENERGY AND XCEL ENERGY adopting ADMINISTRATIVE LAW JUDGE FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION AS AMENDED at Finding 216 (Sept. 14, 2010).

a stronger related effect. In addition, a great deal of experimental, laboratory research has been conducted to determine causality, and none has been found.”¹³⁰

116. No significant impacts to human health are anticipated to arise from electromagnetic field exposure or from other sources related to the construction and operation of the Project.

C. Effects on Land-Based Economies and Direct and Indirect Economic Impacts

117. Minnesota’s high voltage transmission line routing factors require consideration of the Project’s impacts to land-based economies, specifically agriculture, forestry, tourism, and mining.¹³¹

118. There are no croplands within any of the routes under consideration for the Project. Nor is there is any prime farmland, as defined by 7 C.F.R. 657.5(a)(1) (2015), within the Application Route, AR2, or AR3.¹³²

119. There are no known tree farms or federal or state forests located within the Application Route, AR2, or AR3.¹³³

120. There are no defined tourism or recreational areas within the Application Route, AR2, or AR3.¹³⁴

121. All three routes under consideration for the Project would allow for United Taconite to complete its planned expansion of its existing tailings basin. AR2 and AR3 would be located in close proximity to the planned tailings basin expansion.¹³⁵

122. No negative impacts to land-based economies are anticipated as a result of the Project. Impacts to United Taconite mining operations are anticipated to be positive because the Project will allow for the expansion of the tailings basin.¹³⁶

123. Because AR2 and AR3 would be located in close proximity to the tailings basin expansion, selection of one of these two routes for the Project could interfere with future expansion by United Taconite and may require the line to be relocated again in the

¹³⁰ *In the Matter of the Application for a Route Permit for the Fargo to St. Cloud 345 kV Transmission Line Project*, Docket No. ET-2, E002/TL-09-1056, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ISSUING AN HVTL ROUTE PERMIT TO XCEL ENERGY AND GREAT RIVER ENERGY, *adopting* ADMINISTRATIVE LAW JUDGE FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION at Finding 125 (June 24, 2011).

¹³¹ Minn. Stat. § 216E.03, subd. 7(b)(5); Minn. R. 7850.4100(C).

¹³² Ex. 4 at 37; Ex. 11 at § 6.3.1 (MP Route Alternative Comparison); Ex. 45 at 46, 66, Figure B6 (EA).

¹³³ Ex. 11 at § 6.3.2 (MP Route Alternative Comparison); Ex. 45 at 46, 66 (EA).

¹³⁴ Ex. 11 at § 6.3.3 (MP Route Alternative Comparison); Ex. 45 at 45, 66 (EA).

¹³⁵ Ex. 11 at 8 (MP Route Alternative Comparison); Ex. 45 at 46, 66 (EA).

¹³⁶ Ex. 45 at 46 (EA).

future.¹³⁷ The Application Route relocates the 16 Line outside any foreseeable additional expansion of the United Taconite tailings basin.¹³⁸

D. Effects on Archeological and Historic Resources

124. Minnesota Rules part 7850.4100(D) requires consideration of the effects on historic and archaeological resources. Archaeologic and historic resources are those places that represent the visible or otherwise tangible record of human occupation.¹³⁹

125. Minnesota Power hired a consultant to conduct a cultural resource literature search for the Project in December of 2014 in conjunction with the Minnesota State Historic Preservation Office. The results of that research showed that no archaeological or historic resources have been documented within one mile of the Application Route, AR2, or AR3.¹⁴⁰

126. No impacts to archaeological or historic resources are anticipated as a result of construction of the HVTL along any of the three routes under consideration for the Project.¹⁴¹

E. Effects on Natural Environment

127. Minnesota's high voltage transmission line routing factors require consideration of the proposed route's effect on the natural environment, including effects on air and water quality resources, flora and fauna.¹⁴²

1. Air Quality

128. Construction of the Project will result in temporary air quality impacts caused by, among other things, construction-vehicle emissions and fugitive dust from right-of-way preparation. Additionally, ozone generation might occur during transmission line operation.¹⁴³

129. No significant impacts to air quality are anticipated as part of the Project. The Route Permit will include a condition that construction activities follow best management practices to control fugitive dust.¹⁴⁴

¹³⁷ Ex. 11 at 8 (MP Route Alternative Comparison); Ex. 45 at 46, 61, 66 (EA).

¹³⁸ Ex. 45 at 61 (EA).

¹³⁹ Ex. 4 at 38 (Application).

¹⁴⁰ *Id.*; Ex. 11 at § 6.4 (MP Route Alternative Comparison); Ex. 45 at 49 (EA).

¹⁴¹ Ex. 4 at 38 (Application); Ex. 11 at § 6.4 (MP Route Alternative Comparison); Ex. 45 at 49 (EA).

¹⁴² Minn. Stat. §§ 216E.03, subd. 7(b)(1), (2); Minn. R. 7850.4100(E).

¹⁴³ Ex. 4 at 38-39 (Application); Ex. 11 at § 6.5.1 (MP Route Alternative Comparison); Ex. 45 at 50-52 (EA).

¹⁴⁴ Ex. 4 at 39 (Application); Ex. 11 at § 6.5.1 (MP Route Alternative Comparison); Ex. 45 at 52 (EA).

2. Water Quality and Resources

130. The MnDNR Public Waters Inventory (PWI) identifies lakes, wetlands, and watercourses over which the MnDNR has regulatory jurisdiction. Minnesota law requires that a license be obtained for the passage of any utility over, under, or across any state land or public waters.¹⁴⁵

131. There are no water basins classified as PWI waterbodies or Federal Emergency Management Agency floodplains within the Application Route, AR2, or AR3.¹⁴⁶

132. The Application Route crosses approximately 157.7 acres of forested/shrub wetlands.¹⁴⁷

133. AR2 crosses approximately 144.5 acres of forested/shrub wetlands.¹⁴⁸

134. AR3 crosses approximately 161.1 acres of forested/shrub wetlands.¹⁴⁹

135. Wetlands crossed by the Project are subject to the jurisdiction of the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act and current guidance regarding the jurisdictional status of isolated wetlands. Once a route is finalized and permitting requirements determined, Minnesota Power will submit the Minnesota Local/State/Federal Application Form (Joint Application Form) for water/wetland projects to the U.S. Army Corps of Engineers' Two Harbors District, MnDNR, and St. Louis County, as necessary, prior to commencing construction.¹⁵⁰

136. The Project's temporary impacts to water resources include the possibility of sediment reaching surface waters and wetlands as the ground is disturbed by excavation, grading, and construction traffic.¹⁵¹

137. The route permit will include a condition that Minnesota Power employ erosion control best management practices and obtain any required permissions or approvals from state and federal agencies for work in waters and wetlands.¹⁵²

138. No impacts to groundwater are anticipated as a result of construction of the Project along any of the three routes under consideration.¹⁵³

¹⁴⁵ Ex. 45 at 52 (EA); Minn. Stat. § 84.415 (2014); Minn. R. ch. 6135 (2015).

¹⁴⁶ Ex. 4 at 40 (Application); Ex. 11 at § 6.5.2.1 (MP Route Alternative Comparison); Ex. 45 at 52 (EA).

¹⁴⁷ Ex. 11 at § 6.5.2.3 (MP Route Alternative Comparison); Ex. 45 at 53 (EA).

¹⁴⁸ Ex. 11 at § 6.5.2.3 (MP Route Alternative Comparison).

¹⁴⁹ *Id.*

¹⁵⁰ Ex. 45 at 54-55 (EA).

¹⁵¹ Ex. 45 at 54-55 (EA).

¹⁵² Ex. 45 at 54, Appendix C (EA).

¹⁵³ Ex. 45 at 54 (EA).

3. Flora

139. The Project is located within the Tamarack Lowlands Subsection of the Northern Minnesota Drift and Lake Plains Section, near the transition between the St. Louis Moraines and Toimi Uplands Subsections. The most common forest communities include lowland hardwoods and conifers as well as northern hardwood and aspen-birch forests.¹⁵⁴

140. The Application Route crosses approximately 4.89 acres of tamarack, 15 acres of lowland black spruce, 0.55 acres of aspen-birch, and 0.6 acres of pine land cover.¹⁵⁵

141. AR2 crosses approximately 4.35 acres of tamarack and 14.62 acres of lowland black spruce land cover.¹⁵⁶

142. AR3 crosses approximately 5.42 acres of tamarac, 17.87 acres of lowland black spruce, 0.55 acres of aspen-birch, and 0.05 acres of pine land cover.¹⁵⁷

143. To minimize impacts to trees in the Project area, Minnesota Power will limit tree clearing and removal to the transmission line right-of-way, areas that limit construction access to the Project area, and areas that impact the safe operation of the facilities.¹⁵⁸ Impacts to non-forested areas would be temporary and would primarily occur during construction of the Project.¹⁵⁹

144. To minimize the spread of invasive species, sensitive areas such as wetlands and high quality forests and prairies should be surveyed for invasive species following restoration of the construction area. If new infestations are identified, measures should be taken to control the infestation.¹⁶⁰

4. Fauna

145. The Project area is comprised of grasslands, wetlands, and woodlands that provide habitat for a variety of wildlife.¹⁶¹ Wildlife that inhabit the Project area include: small mammals such as mice, voles, and ground squirrels; large mammals such as white-tail deer; a variety of birds; and reptiles/amphibians such as frogs and snakes. Wildlife that reside in the area will likely be temporarily displaced to adjacent habitats during the construction process.¹⁶²

¹⁵⁴ Ex. 4 at 28 (Application); Ex. 45 at 55 (EA).

¹⁵⁵ Ex. 11, Table 5 (MP Route Alternative Comparison); Ex. 45 at 55 (EA).

¹⁵⁶ Ex. 11, Table 5 (MP Route Alternative Comparison); Ex. 45, Figure 12 at 8 (EA)

¹⁵⁷ Ex. 11, Table 5 (MP Route Alternative Comparison); Ex. 45, Figure 12 at 8 (EA).

¹⁵⁸ Ex. 4 at 42 (Application); Ex. 45 at 55-56 (EA).

¹⁵⁹ Ex. 45 at 42 (EA).

¹⁶⁰ Ex. 4 at 42 (Application); Ex. 45 at 57 (EA).

¹⁶¹ Ex. 11, Table 5 (MP Route Alternative Comparison); Ex. 45, Table 12 at 8 (EA).

¹⁶² Ex. 4 at 42-43 (Application); Ex. 11 at § 6.5.4 (MP Route Alternative Comparison); Ex. 45 at 57 (EA).

146. Raptors, waterfowl, and other bird species could be impacted by the Project through collision with transmission line conductors.¹⁶³

147. The electrocution of large birds, such as raptors, is more commonly associated with small distribution lines than large transmission lines. In addition, Minnesota Power's transmission line design standards provide adequate spacing to eliminate the risk of electrocution of large birds.¹⁶⁴

148. Such design standards and consultation with the MnDNR and United States Fish and Wildlife Service (USFWS) on the placement of bird flight diverters are appropriate to include as a Route Permit condition.¹⁶⁵

F. Effects on Rare and Unique Natural Resources

149. Minnesota's high voltage transmission line routing factors require consideration of the proposed route's effect on rare and unique natural resources.¹⁶⁶

150. A review of the MnDNR's Natural Heritage Information System identified northern goshawk nests and a bald eagle nest within the Project area, although none are within the alignments of the Application Route, AR2, or AR3.¹⁶⁷

151. According to the USFW website, the Canada lynx (*Lynx canadensis*), Gray Wolf (*Canis lupus*), the piping plover (*Charadrius melodus*), the rufa red knot (*Calidris canutus rufa*), and the northern long-eared bat, all federally-listed species, are known to occur within St. Louis County. These species could be present along or near the Project area.¹⁶⁸

152. If Canada Lynx or Gray Wolf are present along the final route, impacts are not anticipated to be adverse as it would not limit their movements. Piping plover, which typically occupy shoreline and open sandy habitats, would not be expected to be present along any of the routes under consideration for the Project. No rufa red knot are anticipated along any of the routes as the species only utilizes shoreline areas during its migration through St. Louis County. Suitable habitat for the northern long-eared bat is potentially near the proposed Project. To minimize the risk of adverse impact on the northern long-eared bat, Minnesota Power has agreed that tree removal will be limited to November 1 through March 31.¹⁶⁹

¹⁶³ Ex. 4 at 43 (Application); Ex. 45 at 57-58 (EA).

¹⁶⁴ Ex. 4 at 43 (Application); Ex. 11 at § 6.5.4 (MP Route Alternative Comparison); Ex. 45 at 58 (EA).

¹⁶⁵ Ex. 4 at 43 (Application); Ex. 11 at § 6.5.4 (MP Route Alternative Comparison); Ex. 45 at 58 (EA).

¹⁶⁶ Minn. Stat. § 216E.03, subd. 7(b)(1); Minn. R. 7850.4100(F).

¹⁶⁷ Ex. 4 at 44 (Application); Ex. 11 at § 6.5.4 (MP Route Alternative Comparison); Ex. 45 at 59, Figure 5 (EA).

¹⁶⁸ Ex. 11 at § 6.6 (MP Route Alternative Comparison); Ex. 45 at 59 (EA).

¹⁶⁹ Ex. 11 at § 6.6 (MP Route Alternative Comparison); Ex. 45 at 59-60 (EA).

G. Application of Various Design Considerations

153. Minnesota's high voltage transmission line routing factors require consideration of the Project's applied design options that maximize energy efficiencies, mitigate adverse environmental effects, and could accommodate expansion of transmission or generating capacity.¹⁷⁰

154. The Project is designed with sufficient capacity to meet both existing and anticipated needs of the transmission system in the Project area.¹⁷¹

H. Use or Paralleling of Existing Right-of-Way, Survey Lines, Natural Division Lines, and Agricultural Field Boundaries

155. Minnesota's high voltage transmission line routing factors require consideration of the proposed route's use or paralleling of existing rights-of-way, survey lines, natural division lines, and agricultural field boundaries.¹⁷²

156. The Application Route makes the greatest use of existing rights-of-way (1.25 miles) followed by AR2 and AR3 (both at 0.65 miles).¹⁷³

157. AR2 makes the greatest use of survey lines.¹⁷⁴

I. Use of Existing Transportation, Pipeline, and Electrical Transmission System Rights-of-Way

158. Minnesota's high voltage transmission line routing factors require consideration of the proposed routes' use of existing transportation, pipeline and electrical transmission system rights-of-way.¹⁷⁵

159. The Project area has limited transportation, pipeline, and electrical transmission system rights-of-way. An existing railway is followed by each of the routes under consideration for the Project, with the Application Route making the greatest use of the existing railway.¹⁷⁶

J. Electrical System Reliability

160. Minnesota's high voltage transmission line routing factors require consideration of the Project's impact on electrical system reliability.¹⁷⁷

¹⁷⁰ Minn. Stat. § 216E.03, subd. 7(a), (b); Minn. R. 7850.1900, subp. 2(L).

¹⁷¹ Ex. 12 (Minnesota Power Public Hearing Comment).

¹⁷² Minn. Stat. § 216E.03, subd. 7(b)(9); Minn. R. 7850.4100(H).

¹⁷³ Ex. 11 at § 1.1 (MP Route Alternative Comparison); Ex. 45 at 62, 67 (EA).

¹⁷⁴ See Ex. 45, Figure 4 (EA).

¹⁷⁵ Minn. Stat. § 216E.03, subd. 7(b)(8); Minn. R. 7850.4100(J).

¹⁷⁶ Ex. 11 at § 1.1 (MP Route Alternative Comparison); Ex. 45 at 67 (EA).

¹⁷⁷ Minn. Stat. § 216E.03, subd. 7(b)(10); Minn. R. 7850.4100(K).

161. The Project will be constructed to meet reliability requirements.¹⁷⁸

K. Costs of Constructing, Operating, and Maintaining the Facility

162. Minnesota's high voltage transmission line routing factors require consideration of the proposed route's cost of construction, operation, and maintenance.¹⁷⁹

163. The estimated cost of the Project along the Application Route is approximately \$4.7 million.¹⁸⁰

164. Construction of the Project along AR2 is estimated to cost approximately \$397,000 to \$534,000 more than if constructed along the Application Route if mine tailings or granular fill, respectively, are used for construction.¹⁸¹ Any crossing of state-owned peat resources along this route would require an encumbrance fee, which would be an additional expense that has not been included in the estimated cost of construction.¹⁸²

165. Construction of the Project along AR3 is estimated to cost approximately \$832,000 to \$862,000 more than if constructed along the Application Route if mine tailings or granular fill, respectively, are used for construction.¹⁸³ Any crossing of state-owned peat resources along this route would require an encumbrance fee, which would be an additional expense that has not been included in the estimated cost of construction.¹⁸⁴

166. For all of the overhead designs, operating and maintenance costs for the transmission line will be nominal for several years because the line will be new, and minimal vegetation maintenance is required. Annual operating and maintenance costs for the 115 kV wooden transmission structures across Minnesota Power's Upper Midwest system average approximately \$585 per mile of transmission right-of-way.¹⁸⁵

L. Adverse Human and Natural Environmental Effects Which Cannot be Avoided

167. Minnesota's high voltage transmission line routing factors require consideration of the adverse human and natural environmental effects, which cannot be avoided, for each proposed route.¹⁸⁶

168. Unavoidable impacts are those that remain after applying mitigation measures. Unavoidable adverse impacts from the Application Route lasting only as long as the construction period are expected to include impacts to existing flora and fauna,

¹⁷⁸ Ex. 45 at 12 (EA).

¹⁷⁹ Minn. R. 7850.4100(L).

¹⁸⁰ Ex. 4 at 10 (Application); Ex. 45 at 62 (EA).

¹⁸¹ Ex. 11 at § 3.5 (MP Route Alternative Comparison); Ex. 45 at 62 (EA).

¹⁸² MnDNR Comment Letter (November 6, 2015) (eDocket No. 201511-115559-01).

¹⁸³ Ex. 11 at § 3.5 (MP Route Alternative Comparison); Ex. 45 at 62 (EA).

¹⁸⁴ MnDNR Comment Letter (November 6, 2015) (eDocket No. 201511-115559-01).

¹⁸⁵ Ex. 4 at 10 (Application).

¹⁸⁶ Minn. Stat. § 216E.03, subd. 7(b)(5), (6); Minn. R. 7850.4100(M).

soil disturbance, and traffic. Unavoidable adverse effects from the proposed Project that would last at least as long as the life of the Project include: loss of forested areas, including forested wetlands, within the ROW; visual impacts; impacts to migratory birds from collisions with the lines; and potential impacts to property values.¹⁸⁷

169. Minnesota Power will implement measures as identified by regulatory agencies to minimize unavoidable impacts.¹⁸⁸

M. Irreversible and Irretrievable Commitments of Resources

170. Minnesota's high voltage transmission line routing factors require consideration of the irreversible and irretrievable commitments of resources that are necessary for each proposed route.¹⁸⁹

171. Irreversible and irretrievable resource commitments are related to the use of nonrenewable resources and the effects that the use of those resources have on future generations. Irreversible effects result primarily from the use or destruction of a specific resource that cannot be replaced within a reasonable time frame. Irretrievable resource commitments involve the loss in value of an affected resource that cannot be restored as a result of action.¹⁹⁰

172. There are few commitments of resources associated with this Project that are irreversible and irretrievable, but those few resources primarily relate to construction of the Project.¹⁹¹

173. Only construction resources, such as aggregate, concrete, steel, and hydrocarbon fuels, will irreversibly and irretrievably be committed to this Project.¹⁹²

XV. NOTICE

174. Minnesota statutes and rules require Minnesota Power to provide certain notice to the public and local governments before and during the Application for a Route Permit process.¹⁹³

175. Minnesota Power provided notice to the public and local governments in satisfaction of Minnesota statutory and rule requirements.¹⁹⁴

¹⁸⁷ Ex. 45 at 63 (EA).

¹⁸⁸ Ex. 45, Section 5 (EA).

¹⁸⁹ Minn. Stat. § 216E.03, subd. 7(b)(11); Minn. R. 7850.4100(N).

¹⁹⁰ Ex. 45 at 63 (EA).

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Minn. Stat. §§ 216.03, subd. 4, 216E.04, subd. 4 (2014); Minn. R. 7850.3300, .2100, subps. 2, 4.

¹⁹⁴ See Ex. 3 (Notice of Route Permit Application Submission).

176. Minnesota statutes and rules also require DOC-EERA and the Commission to provide certain notice to the public throughout the route permit process.¹⁹⁵

177. DOC-EERA and the Commission provided the notice in satisfaction of Minnesota statutes and rules.¹⁹⁶

XVI. COMPLETENESS OF EA

178. The Commission is required to determine the completeness of the EA.¹⁹⁷ An EA is complete if the EA and the public hearing record the issues and alternatives identified in the Scoping Decision.¹⁹⁸

179. The evidence in the record demonstrates that the EA is adequate because the EA and the public hearing record address the issues and alternatives raised in the Scoping Decision.¹⁹⁹ The Administrative Law Judge notes, however, the configurations of alternatives AR2 and AR3 included in both the Scoping Decision and EA are slightly different than the configurations of AR2 and AR3 as proposed by Commission staff.²⁰⁰

Based on the foregoing Findings of Fact and the record in this proceeding, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Commission and Administrative Law Judge have jurisdiction to consider Minnesota Power's Application for a Route Permit pursuant to Minn. Stat. §§ 216E.02, .04.

2. The Commission determined that the Application was substantially complete and accepted the Application on March 17, 2015.²⁰¹

3. DOC-EERA has conducted an environmental analysis of the Project for purposes of this route permit proceeding and the EA satisfies Minn. R. 7850.3700.

¹⁹⁵ Minn. Stat. § 216E.04, subd. 6; Minn. R. 7850.2300, .3500, .3700, .3800.

¹⁹⁶ Ex. 20 (Notice of Comment Period on Application Completeness); Ex. 21 (Commission Meeting Notice on Completeness); Ex. 23 (Notice of Public Information and Scoping Meeting); Ex. 7 (Published Notice of Public Information and Scoping Meeting); Ex. 44 (EA Scoping Decision); Ex. 46 (Notice of Availability of EA); Ex. 47 (Notice of Availability of EA in EQB Monitor); Ex. 33 (Public Hearing Notice); Ex. 13 (Published Public Hearing Notice).

¹⁹⁷ Minn. R. 7850.3900, subp. 2.

¹⁹⁸ *Id.*

¹⁹⁹ See Ex. 44 (EA Scoping Decision); Ex. 45 (EA). While the EA appears to be adequate, the comparison of the alternatives could have benefitted from additional detail regarding the potential impacts to the natural environment from each of the alternatives. The conclusions and recommendation in this Report are based on the information available in the record.

²⁰⁰ Compare Ex. 44 (Scoping Decision Map) and Ex. 45, Figure 4 (EA Route Map), with Ex. 30 at 5 (Staff Briefing Papers for the April 30, 2015 Agenda Meeting).

²⁰¹ Ex. 25 (Completeness Order).

4. Minnesota Power gave notice as required by Minn. Stat. § 216E.04, subd. 4; Minn. R. 7850.2100, subp. 2, 4, .3300.

5. Notice was provided by the Commission and DOC-EERA as required by Minn. Stat. § 216E.04, subd. 6; Minn. R. 7850.3500, subp. 1, .3700, subp. 2, 3, 6, .3800.

6. A public hearing was conducted in a community near the Project area. Proper notice of the public hearing was provided, and the public was given the opportunity to speak at the hearing and to submit written comments.

7. All procedural requirements for the Route Permit were met.

8. The Application Route, AR2, and AR3 do not present the potential for significant adverse environmental effects pursuant to the Minnesota Environmental Rights Act and the Minnesota Environmental Policy Act.

9. The evidence on the record demonstrates that the Application Route, AR2, and AR3 all satisfy the route permit factors set forth in Minn. Stat. § 216E.04, subd. 8 (incorporating by reference the factors set forth in Minn. Stat. § 216E.03, subd. 7) and Minn. R. 7850.4100.

10. The evidence on the record further demonstrates that the Application Route best satisfies the route permit factors in statute and rule because it is the least costly alternative and provides the greatest future opportunity for further expansion of United Taconite's tailings basin without resulting in significant incremental impacts to other routing factors as compared to AR2 and AR3.²⁰²

11. If AR2 or AR3 is selected for the Project, the Project will have the potential to result in additional environmental impacts and costs should United Taconite expand its tailings basin further in the future.²⁰³

12. The evidence on the record demonstrates that the route permit should be granted for the Application Route.

13. The evidence on the record demonstrates that the general route permit conditions are appropriate for the Project.

14. The route permit should require Minnesota Power to obtain all required local, state, and federal permits and licenses, to comply with the terms of those permits or licenses, and to comply with all applicable rules and regulations.

15. Any of the forgoing Findings of Fact more properly designated Conclusions of Law are hereby adopted as such.

²⁰² See Ex. 45 at 60-61, 64-67, Figure 12 (EA).

²⁰³ *Id.* at 66.

Based upon these Conclusions of Law, the Administrative Law Judge respectfully makes the following:

RECOMMENDATION

The Commission should issue to Minnesota Power the following permit for the Project:

A route permit for a high voltage transmission line along Minnesota Power's Application Route, which is depicted on Figure 2 of Minnesota Power's January 16, 2015 Application for a Route Permit for 16 Line Reroute.

Dated: December 17, 2015

s/Jeanne M. Cochran
JEANNE M. COCHRAN
Administrative Law Judge

NOTICE

Notice is hereby given that exceptions to this Report, if any, by any party adversely affected must be filed under the time frames established in the Commission's rules of practice and procedure, Minn. R. 7829.2700, .3100 (2015), unless otherwise directed by the Commission. Exceptions should be specific and stated and numbered separately. Oral argument before a majority of the Commission will be permitted pursuant to Part 7829.2700, Subpart 3. The Commission will make the final determination of the matter after the expiration of the period for filing exceptions, or after oral argument, if an oral argument is held.

The Commission may, at its own discretion, accept, modify, or reject the Administrative Law Judge's recommendations. The recommendations of the Administrative Law Judge have no legal effect unless expressly adopted by the Commission as its final order.



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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December 17, 2015

See Attached Service List

Re: In the Matter of the Application of Minnesota Power for a Route Permit for the Line 16 Reroute Project in St. Louis County {E-015/TL-14-977}

**OAH 68-2500-32500
MPUC E015/TL-14-977**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** in the above-entitled matter.

If you have any questions, please contact my legal assistant Denise Collins at (651) 361-7875 or denise.collins@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,

s/Jeanne M. Cochran

JEANNE M. COCHRAN
Administrative Law Judge

JMC:dsc
Enclosure

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

| | |
|--|----------------------------------|
| In the Matter of the Application of Minnesota Power for a Route Permit for the Line 16 Reroute Project in St. Louis County {E-015/TL-14-977} | OAH Docket No.: 68-2500-32500 |
|--|----------------------------------|

Denise Collins, certifies that on December 17, 2015 she served the true and correct **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:

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