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August 10, 2023

**VIA E-FILING ONLY**

Mr. Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, MN 55101

**Re: Reply Comments**

**In the Matter of the Petition to Transfer a Portion of the Route Permit for the HVDC Transmission Line System and Associated Facilities in Minnesota  
MPUC Docket No. ET-2/TL-21-434**

Dear Mr. Seuffert:

Nexus Line, LLC (“Nexus”) respectfully submits these comments in response to the comments filed by the Department of Commerce, Division of Energy Resources (“DER”) on July 28, 2023<sup>1</sup> regarding Nexus’ request to change its decommissioning financial assurance from the current letter of credit to a guaranty.<sup>2</sup>

DER provides two primary reasons supporting its assertion that the Commission should deny Nexus’ request to replace the letter of credit with a guaranty. First, the Department argues that *if* Nexus’ financial wherewithal becomes concerning in the future, “it may be difficult to reverse course and return to a letter of credit” and, second, that “collecting on a parental guarantee of a limited liability partnership could be challenging, if not impossible in the future.” As discussed further below, neither of these arguments provides a reasonable basis to deny Nexus’ request.

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<sup>1</sup> DER Comments, *In the Matter of the Petition to Transfer a Portion of the Route Permit for the HVDC Transmission Line System and Associated Facilities in Minnesota* (July 28, 2023) (Docket No. ET-2/TL-21-434) (“DER Comments”).

<sup>2</sup> Compliance Filing – Request to Change Form of Financial Assurance, *In the Matter of the Petition to Transfer a Portion of the Route Permit for the HVDC Transmission Line System and Associated Facilities in Minnesota* (May 3, 2023) (Docket No. ET-2/TL-21-434) (“Compliance Filing”).

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### **REMC Assets, LP Has the Financial Wherewithal to Support the Guaranty**

The Minnesota Public Utilities Commission’s (“Commission”) March 3, 2022, *Order Approving Partial Permit Transfer Request* (“Order”) expressly allows Nexus to change the “form of, terms of, or parties to the decommissioning financial assurance” subject to Commission review and approval. The Order also contemplates that financial wherewithal would be evaluated, stating that approval of a request to change the form of financial assurance “may be conditioned on, among other things, the permittee providing the Commission with an independent third-party analysis regarding the permittee’s ability to fund the financial assurance.”<sup>3</sup> As stated in Nexus’ compliance filing on May 3, 2023, REMC Assets, LP (“REMC”) “is financially capable of providing the guaranty” and the support for this conclusion was provided, in accordance with the Commission’s March 3, 2022 Order, in the form of financial statements, audited by an independent third-party, Deloitte & Touche LLP.<sup>4</sup>

DER has had nearly three months to examine REMC’s audited financial statements, and it has presented no substantive concern regarding REMC’s *present* ability to perform under the guaranty. If DER does not believe a parental guaranty by a parent with approximately **[NONPUBLIC DATA HAS BEEN EXCISED]** in assets is sufficient to satisfy the estimated \$25 million future decommissioning obligation, then it is hard to understand what type of different decommissioning financial assurance DER would ever support. Similarly, DER did not express any concern with the form of the guaranty itself. Nor should it. REMC has the financial wherewithal to perform under the guaranty in the unlikely circumstance that Nexus cannot fulfill its obligations to decommission the HVDC line, and the form of guaranty is reasonable and commonly-accepted.

To the extent that DER’s concern is that annual financial reporting will not provide enough notice should REMC’s financial position drastically change, Nexus is willing to agree to provide quarterly unaudited financial statements, in addition to annual audited financial statements, to the Commission so that DER has additional opportunity to evaluate REMC’s ongoing financial position.

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<sup>3</sup> Order Approving Partial Permit Transfer Request, *In the Matter of the Petition to Transfer a Portion of the Route Permit for the HVDC Transmission Line System and Associated Facilities in Minnesota* (March 3, 2022) (Docket No. ET-2/TL-21-434).

<sup>4</sup> Compliance Filing at 4.

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### **Guaranties are Enforceable and Commonly Accepted Financial Assurance Instruments**

DER also asserts that “collecting on a parental guarantee of a limited liability partnership could be challenging, if not impossible in the future.”<sup>5</sup> There is scant support for this statement, and guaranties are routinely enforced.

For example, the Minnesota Supreme Court has stated that parties who enter into guaranty agreements should expect to have the guaranty enforced. Specifically, the court’s sentiment regarding guarantees can be summed up as follows:

When two competent parties who can readily read and write, sign a guaranty agreement and the plaintiff on the basis of the guaranty extends credit to the other defendant, there is nothing left for a Court to do but to find a judgment against such guarantors. \* \* \* People who sign documents which are plainly written must expect to be held liable thereon. Otherwise written documents would be entirely worthless and chaos would prevail in our business relations.<sup>6</sup>

Given that REMC is a North Dakota limited partnership (“LP”), it is also important to note that there is nothing in North Dakota’s Uniform Limited Partnership Act (2001), N.D. Cent. Code § 45-10.2-02 to -117, which requires different treatment of a guaranty issued by an LP. In North Dakota, a limited partnership, like other business forms, may incur obligations and “be sued . . . in its own name.” N.D.C.C. § 45-10.2-08. And a partnership agreement cannot vary this power of the limited partnership to be sued. *Id.* § 45-10.2-12(2)(a). A limited partnership may thus guarantee obligations and be sued if it fails to pay its obligations under a guaranty.

While it is true, as the DER states, that limited partners are not personally liable for the obligations of the limited partnership, *id.* § 45-10.2-33, this is also true of the owners of other common business forms like corporations, limited liability partnerships, and limited liability companies, *see, e.g., id.* § 10-19.1-69 (shareholders not personally liable for debts of a corporation); *id.* § 45-22-08.1 (partners in an LLP not personally liable for the debts of the LLP); *id.* § 10-32.1-26(1) (LLC members not personally liable for debts of the LLC). A limited partnership like REMC Assets, LP actually offers *more* recourse to a creditor than these other business forms, as general partners in a limited partnership are jointly and severally liable for the

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<sup>5</sup> DER Comments at 2.

<sup>6</sup> *Watkins Prod., Inc. v. Butterfield*, 274 Minn. 378, 380, 144 N.W.2d 56, 58 (1966); *see also Minnesota Tr. Co. of Austin v. Yanke*, No. C4-98-1476, 1999 WL 185205, at \*2 (Minn. Ct. App. Apr. 6, 1999).

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obligations of the limited partnership and may be joined in an action against the partnership. *Id.* §§ 45-10.2-40(1), -41(1).

Therefore, contrary to the suggestions of DER, there is nothing unique about a limited partnership as a business form that makes it anymore “challenging” to collect from than other common business forms—it is certainly not “impossible.”

A parental guaranty is also routinely accepted as a form of financial assurance in the decommissioning of energy facilities across the United States and is acknowledged by the Minnesota Department of Commerce, Energy Environmental Review and Analysis (“EERA”) as an acceptable financial instrument for financial assurance in the decommissioning of solar and wind facilities in Minnesota.<sup>7</sup>

DER also suggests that there is no “public benefit” to replacing the letter of credit with a parental guaranty. To the contrary, there are several benefits to approving Nexus’ request to transition from the letter of credit to the proposed guaranty. The first is that a parental guaranty is an efficient financial mechanism which provides a similar level of financial assurance for decommissioning as a letter of credit. Second, the parental guaranty provides financial assurance for the entire decommissioning obligation when it goes into effect, whereas the letter of credit grows over time. Accordingly, to the extent that DER is concerned about a near-term scenario where Nexus must decommission the HVDC line, the parental guaranty provides assurances related to the entire decommissioning obligation, not a lesser amount that grows over time.

Finally, Nexus agrees with DER’s statement that “decommissioning of the line will not take place until well into the future” and that the Commission should “take a commonsense approach” to this financial assurance decision.<sup>8</sup> There is a public benefit to fostering a regulatory environment where companies investing in Minnesota’s energy future can rely on a transparent and consistent regulatory framework that sets forth reasonable conditions. Here, Nexus was the first company to be required to provide a decommissioning plan for a high voltage transmission line, along with accompanying financial assurance. The Commission set forth reasonable conditions, requiring independent third-party analysis of the company’s financial information prior to replacing the letter of credit. Nexus has met that obligation. Moreover, parental guaranties are commonly accepted, enforceable financial instruments that are less costly to procure and maintain

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<sup>7</sup> See Memo on Financial Assurance Options for Decommissioning - EERA Update on Financial Assurance Options for Decommissioning of Solar and Wind Facilities, *In the Matter of the Department of Commerce Workgroup on Decommissioning of Wind and Solar Facilities* (Feb. 2, 2022) (Docket No. E999/M-17-123) at 4 (“[p]arental/corporate guaranty... available to developers affiliated with parent companies having a large and stable net worth.”).

<sup>8</sup> DER Comments at 2.



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than letters of credit. The Commission's Order reasonably provided flexibility to change the form of financial assurance. There is a public benefit to reducing regulatory burdens on infrastructure companies, particularly when financial assurance is still being provided.

### **Conclusion**

Nexus respectfully requests that the Commission approve Nexus' request to replace the letter of credit with the financial guaranty and follow the steps outlined in Nexus' June 30, 2023 reply comments to facilitate execution of the guaranty and termination of the letter of credit.

In accordance with Minnesota Rules, part 7829.0500, and Minnesota Statutes Chapter 13, Nexus has designated these Reply Comments as a **NONPUBLIC DOCUMENT – NOT FOR PUBLIC DISCLOSURE** because it contains commercially-sensitive and trade secret financial information which, if released, would have a detrimental effect on REMC Assets, LP and its affiliates as they are privately-held companies and they take substantial steps to keep their finances nonpublic by securing their financial information and only sharing it under confidentiality or similar agreements. Disclosure of the financial data could adversely affect future contracting, financing, and other business relationships by providing competitors and others in the marketplace with valuable information not otherwise available to the public and not otherwise readily ascertainable and from which these persons would obtain economic value. Release of this information could negatively impact Nexus, REMC Assets, LP and its affiliates. Nexus is also filing a public version of its Reply Comments in this docket.

Sincerely,

FREDRIKSON & BYRON, P.A.

*/s/ Christina K. Brusven*

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**In the Matter of the Petition to Transfer a  
Portion of the Route Permit for the HVDC  
Transmission Line System and Associated MPUC Docket No. ET-2/TL-21-434  
Facilities in Minnesota**

**CERTIFICATE OF SERVICE**

Breann L. Jurek certifies that on the 10<sup>th</sup> day of August 2023, she e-filed on behalf of Nexus Line, LLC a true and correct copies of Nexus' public and nonpublic reply comments via eDockets ([www.edockets.state.mn.us](http://www.edockets.state.mn.us)).

Said documents were also served as designated on the Official Service List on file with the Minnesota Public Utilities Commission and attached hereto.

Dated: August 10, 2023

*/s/ Breann L. Jurek*  
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