

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

IN THE MATTER OF THE APPLICATION OF
MINNESOTA POWER FOR A CERTIFICATE
OF NEED FOR THE HVDC MODERNIZATION
PROJECT IN HERMANTOWN, SAINT LOUIS
COUNTY;

OAH Docket No. 5-2500-39600
MPUC Docket No. E015/CN-22-607

IN THE MATTER OF THE APPLICATION OF
MINNESOTA POWER FOR A ROUTE PERMIT
FOR A HIGH VOLTAGE TRANSMISSION LINE
FOR THE HVDC MODERNIZATION PROJECT
IN HERMANTOWN, SAINT LOUIS COUNTY.

MPUC Docket No. E015/TL-22-611

MOTION TO TAKE ADMINISTRATIVE NOTICE

Minnesota Power (or the “Company”) respectfully moves for an order pursuant to Minn. Stat. § 14.60, subd. 4 (2022) and Minn. R. 1400.7300, subp. 4 (2023) to take administrative notice of Minnesota 2024 Session Law Ch. 127, signed by Governor Walz on May 24, 2024 (attached as **Exhibit A**).¹ 2024 Session Law Ch. 127 makes a variety of changes to the certificate of need and route permit pre-application procedures, application requirements, and Minnesota Public Utilities Commission (“Commission”) evaluation standards and criteria. While many of the changes are effective at a later date, certain changes are “effective on the day following enactment and for pending applications.”² The HVDC Modernization Project is pending before the Commission and,

¹ The Session Law is also publicly available electronically at:
<https://www.revisor.mn.gov/laws/2024/0/Session+Law/Chapter/127/>.

² Minn. Sess. Law Ch. 127, Art. 44, Sec. 2 (2024). This law is also codified at Minn. Sess. Law Ch. 126, Art. 8, Sec. 2 (2024). Consistent with Minn. Stat. § 645.33, both amendments to Minn. Stat. § 216B.243, subd. 3(6) should be construed together. However, should any argument be made that the two amendments to Minn. Stat. § 216B.243, subd. 3(6) are irreconcilable, the latest in date of final enactment should prevail. Given that the amendment to Minn. Stat. § 216B.243, subd. 3(6) are identical in Minn. Sess. Law Ch. 126, Art. 8, Sec. 2 (2024) and Minn. Sess. Law Ch. 127, Art. 44, Sec. 2 (2024), there should be no issues of irreconcilability but, for purposes of this Motion and Memorandum in Support, the latter-enacted amendment is cited uniformly herein.

thus, certain changes to Minnesota Law apply presently and should be considered in this proceeding. The enclosed Memorandum in Support of the Motion for Administrative Notice explains the rationale for applicability of the change to Minn. Stat. § 216B.243, subd. 3(6) to the HVDC Modernization Project.

“Agencies may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge.” Minn. Stat. § 14.60, subd. 4. In addition, an administrative law judge “may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.” Minn. R. 1400.7300, subp. 4. Under the Minnesota Rules of Evidence, a court may take judicial notice of adjudicative facts in a civil case, but the “fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Minn. R. Evid. 201(b).

Minnesota Power respectfully requests that the Administrative Law Judge take administrative notice of Minnesota Session Law Ch. 127, Art. 44, Sec. 2 (2024), specifically the enacted revision to Minn. Stat. § 216B.243, subd. 3(6), effective the day following enactment and for pending applications. A change to Minnesota Law is a judicially cognizable fact that is not subject to reasonable dispute in that it is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”³

³ Minn. R. Evid. 201.

Pursuant to Minn. R. 1400.6600, parties wishing to contest the motion must file a written response with the administrative law judge and serve copies on all parties within 10 working days after it is received.

Dated: May 28, 2024

Respectfully submitted,

MINNESOTA POWER

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MEMORANDUM IN SUPPORT OF MOTION TO TAKE ADMINISTRATIVE NOTICE

Minnesota Power (or the “Company”) respectfully moves for an order pursuant to Minn. Stat. § 14.60, subd. 4 (2022) and Minn. R. 1400.7300, subp. 4 (2023) to take administrative notice of Minnesota 2024 Session Law Ch. 127, signed by Governor Walz on May 24, 2024 (attached as **Exhibit A**).¹ 2024 Session Law Ch. 127 makes a variety of changes to the certificate of need and route permit pre-application procedures, application requirements, and Minnesota Public Utilities Commission (“Commission”) evaluation standards and criteria. While many of the changes are effective at a later date, certain changes are “effective on the day following enactment and for pending applications.”²

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

In assessing need, the commission shall evaluate:

. . .

¹ The Session Law is also publicly available electronically at:
<https://www.revisor.mn.gov/laws/2024/0/Session+Law/Chapter/127/>.

² Minn. Sess. Law Ch. 127, Art. 44, Sec. 2 (2024).

(6) possible alternatives for satisfying the energy demand or transmission needs including but not limited to potential for increased efficiency and upgrading of existing energy generation and transmission facilities, load-management programs, and distributed generation, except that the commission must not require evaluation of alternative end points for a high-voltage transmission line qualifying as a large energy facility unless the alternative end points are (i) consistent with end points identified in a federally registered planning authority transmission plan, or (ii) otherwise agreed to for further evaluation by the applicant; . . .³

Minnesota Session Law 127, Art. 44, Sec. 2 further provides that the applicable section of the Law shall be “effective the day following final enactment and applies to all pending applications.”⁴

Governor Walz signed Minnesota Session Law 127 on May 24, 2024. Thus, the effective date of the revision to Minn. Stat. § 216B.243, subd. 3(6) is May 25, 2024. Further, the application for the HVDC Modernization Project is currently pending before the Commission, with the briefing completed as of May 22, 2024.⁵ The report of the Administrative Law Judge is due June 21, 2024, allowing ample time for the Administrative Law Judge and Commission to take administrative notice of this change in Minnesota Law and apply it to Minnesota Power’s pending application.

In its combined application for a certificate of need and route permit (“Combined Application”), Minnesota Power identified the end point of the HVDC Modernization Project as the existing Minnesota Power Arrowhead 230 kV/115 kV Substation (the “Minnesota Power Proposed Configuration”).⁶ This end point was identified for the HVDC Modernization Project to ensure that the proposed and modernized direct-current (“DC”) equipment was interconnected to the existing alternating-current (“AC”) transmission

³ Minn. Sess. Law Ch. 127, Art. 44, Sec. 2 (2024).

⁴ *Id.*

⁵ Prehearing Order at 3 (eDocket Document Nos. [202312-201040-01](#) and [202312-201040-02](#)).

⁶ Ex. MP-104 at 3 and Figure 1.2-1 (Combined Application).

system at the same location as the existing DC equipment.⁷ On September 15, 2023, American Transmission Company LLC, by and through its corporate manager, ATC Management Inc. (collectively, “ATC”) requested that the Commission evaluate a system alternative for the HVDC Modernization Project, whereby the proposed and modernized DC equipment would be interconnected to the ATC Arrowhead 345 kV/230 kV Substation (the “ATC Arrowhead Alternative”).⁸ Minnesota Power objected to evaluation of the ATC Arrowhead Alternative as the Company had previously evaluated this alternative and rejected it for a variety of reasons, including cost, timing uncertainty, unnecessary complexity, and regulatory complexity associated with an existing 800 MVA limitation for power flow on the ATC Arrowhead 345 kV/230 kV Substation.⁹ The Commission ordered a contested case proceeding and referred this proceeding to the Office of Administrative Hearings to evaluate the Minnesota Power Proposed Configuration and the viability of the ATC Arrowhead Alternative.¹⁰ Minnesota Law now prohibits such evaluation of alternative end points for a high-voltage transmission line unless the alternative end points are “identified in a federally registered planning authority transmission plan” or are “otherwise agreed to” by the original applicant for a certificate of need.

The ATC Arrowhead Alternative is not identified in a federally registered planning authority transmission plan for the HVDC Modernization Project. Instead, the Midcontinent Independent System Operator, Inc. (“MISO”) has only studied the

⁷ Ex. MP-104 at 2-3 (Combined Application); Ex. MP-121 at 42-43 and Direct Schedule 1 (Winter Direct).

⁸ Ex. MP-132 (September 15, 2023, ATC Scoping Comment Letter).

⁹ Ex. MP-116 (Response to Route Alternative and Conditions Proposed to be Evaluated in the Environmental Assessment); Ex. MP-117 (Supplemental Response to Route Alternative and Conditions Proposed to be Evaluated in the Environmental Assessment).

¹⁰ Ex. PUC-701 at 9-10 (Order Identifying Alternative Proposal for Environmental Assessment Scope, Granting Variance, and Notice of and Order for Hearing).

Minnesota Power Proposed Configuration.¹¹ Further, MISO and Minnesota Power have already entered into facilities construction agreements for the Minnesota Power Proposed Configuration after undertaking the necessary steps required by MISO's externally-driven process for transmission service requests.¹² Finally, the Federal Energy Regulatory Commission has accepted these facilities construction agreements submitted by MISO and Minnesota Power for the Minnesota Power Proposed Configuration.¹³ Thus, the ATC Arrowhead Alternative does not qualify for evaluation as an alternative "identified in a federally registered planning authority transmission plan" under Minn. Stat. § 216B.243, subd. 3(6) (2024).

As the record in this Docket clearly demonstrates, Minnesota Power, as the applicant in the present proceeding, has not agreed to further evaluation of the ATC Arrowhead Alternative. When ATC proposed the ATC Arrowhead Alternative for consideration, Minnesota Power objected to its inclusion as an alternative for a variety of reasons.¹⁴ Minnesota Power continued these objections when the Commission considered the scope of alternatives to be evaluated in this proceeding.¹⁵ Minnesota Power has continued to object to the ATC Arrowhead Alternative as neither a more reasonable nor more prudent alternative to the Minnesota Power Proposed Configuration

¹¹ Ex. MP-121 at 30 and 42-43 (Winter Direct); Ex. DOC DER-602 at Rebuttal Schedule MZ-R_11 at 1 (Zajicek Rebuttal).

¹² Ex. MP-127 at 19 and Rebuttal Schedule 11 (Gunderson Rebuttal); Ex. ATC-255 at Figure 2.4.5-1 (Dagenais Rebuttal Schedule 9); Minnesota Power Initial Brief at 32-33 (May 3, 2024) (eDocket Document Nos. [20245-206380-03](#) and [20245-206380-04](#)); Minnesota Power Reply Brief (May 22, 2024) (eDocket Document Nos. [20245-207017-01](#) and [20245-207017-02](#)).

¹³ Motion for Administrative Notice (May 22, 2024) (eDocket Document Nos. [20245-207017-03](#) and [20245-207017-04](#)).

¹⁴ Ex. MP-116 (Response to Route Alternative and Conditions Proposed to be Evaluated in the Environmental Assessment); Ex. MP-117 (Supplemental Response to Route Alternative and Conditions Proposed to be Evaluated in the Environmental Assessment).

¹⁵ Ex. PUC-701 at 4 (Order Identifying Alternative Proposal for Environmental Assessment Scope, Granting Variance, and Notice of and Order for Hearing).

for the HVDC Modernization Project.¹⁶ Thus, the ATC Arrowhead Alternative has not qualified for evaluation as an alternative “agreed to for further evaluation” by Minnesota Power under Minn. Stat. § 216B.243, subd. 3(6) (2024).

In light of these facts and the recent change in Minnesota Law, the ATC Arrowhead Alternative is not a viable alternative to the Minnesota Power Proposed Configuration because it is not eligible for evaluation as a system alternative by law, given its alternative end point at the ATC Arrowhead 345 kV/230 kV Substation, to the Minnesota Power Proposed Configuration of the HVDC Modernization Project. Therefore, in addition to not being a more reasonable and prudent system alternative than the Minnesota Power Proposed Configuration for the reasons enumerated in Minnesota Power’s Initial Brief, Reply Brief, and Proposed Findings of Fact, Conclusions of Law, and Recommendation in this proceeding, such evaluation is now prohibited by Minnesota Law. As a result, the HVDC Modernization Project, as proposed by Minnesota Power in the Combined Application with modifications and proposed conditions set forth in Minnesota Power’s filings in this proceeding, should be presented to the Commission. In addition, the Department of Commerce, Division of Energy Resources’ conclusion that the HVDC Modernization Project is needed and Minnesota Power has complied with all requirements to be granted a Certificate of Need and the Department of Commerce, Energy Environmental Review and Analysis evaluation, which has not identified any aspect of the HVDC Modernization Project that would prevent the Commission from

¹⁶ Ex. MP-119 (Gunderson Direct); Ex. MP-120 (McCourtney Direct); Ex. MP-121 (Winter Direct); Ex. MP-127 (Gunderson Rebuttal); Ex. MP-129 (McCourtney Rebuttal); Ex. MP-130 (Winter Rebuttal); Minnesota Power Initial Brief (May 3, 2024) (eDocket Document Nos. [20245-206380-03](#) and [20245-206380-04](#)); Minnesota Power Reply Brief (May 22, 2024) (eDocket Document Nos. [20245-207017-01](#) and [20245-207017-02](#)).

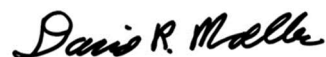
issuing a Route Permit, further supports that the Project meets all relevant certificate of need and route permit criteria.

Minnesota Power respectfully requests that the Administrative Law Judge take administrative notice of Minnesota Session Law Ch. 127 (2024), specifically the enacted revision to Minn. Stat. § 216B.243, subd. 3(6). As a result of this change in Minnesota Law, the ATC Arrowhead Alternative should be disregarded from further evaluation in this proceeding.

Dated: May 28, 2024

Respectfully submitted,

MINNESOTA POWER



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