

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben
Valerie Means
Matthew Schuerger
Joseph K. Sullivan
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application for a Certificate
of Need for the Proposed 345 kV Brookings
County, Lyon County and Helena County
Hampton Second Circuit Project

SERVICE DATE: October 10, 2023

DOCKET NO. E-002/CN-23-200

The above entitled matter has been considered by the Commission and the following disposition made:

- 1. Determined that the Application is substantially complete.**
- 2. Approved the Applicant's variance request.**

This decision is issued by the Commission's consent calendar subcommittee, under a delegation of authority granted under Minn. Stat. § 216A.03, subd. 8 (a). Unless a party, a participant, or a Commissioner files an objection to this decision within ten days of receiving it, it will become the Order of the full Commission under Minn. Stat. § 216A.03, subd. 8 (b).

The Commission agrees with and adopts the recommendations of the Department of Commerce, which are attached and hereby incorporated into the Order.

BY ORDER OF THE COMMISSION



Will Seuffert
Executive Secretary



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September 6, 2023

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E002/CN-23-200

Dear Mr. Seuffert:

Attached are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

Application to the Minnesota Public Utilities Commission for a Certificate of Need for the Proposed 345 kV Brookings County – Lyon County and Helena – Hampton Second-Circuit Project

The Application was filed by Monsherra S. Blank; Director, Regulatory and Strategic Analysis; behalf of Northern States Power Company doing Business as Xcel Energy on August 15, 2023.

The Department recommends that the Minnesota Public Utilities Commission (Commission) **find that the application contains the information required under Minn. R. 7849.0220, subp. 2, and the Department does not oppose the Applicant's proposed variance request.** The DOC-DER is available to answer any questions the Commission may have.

Sincerely,

/s/ Louise Miltich
Assistant Commissioner of Regulatory Analysis

/s/ Michael N. Zajicek
Rates Analyst

MNZ/ad
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E002/CN-23-200

I. INTRODUCTION

A. NOTICE AND EXEMPTION PETITIONS

On May 16, 2023, Northern States Power Company, doing business as Xcel Energy (Xcel or the Applicant) filed a *Notice Plan Petition In the Matter of the Application of Xcel Energy for a Certificate of Need for the Proposed 345 Brookings County – Lyon County and Helena – Hampton Second-Circuit Project* (Notice Petition).¹ The Notice Petition provides the Applicant’s proposed Notice Plan to communicate its intent to construct: a second 345 kV circuit on double-circuit capable structures installed when the Brookings County – Hampton 345 kV transmission line was originally permitted and constructed, reconfigure certain lines near substations mostly within existing easements, and upgrade the Brookings County, Lyon County, Helena, and Hampton Substations with new 345 kV Breakers. Additionally certain relay setting changes will be required at the Steep Bank Lake and Hawks Nest Lake substations.

Also, on May 16, 2023, Xcel filed an *Exemption Request Petition for the Application of Xcel Energy for a Certificate of Need for the Proposed 345 Brookings County – Lyon County and Helena – Hampton Second-Circuit Project* (Exemption Petition)² in order to obtain exemptions from certain data requirements of Minnesota Rules part 7849.

The Notice Petition provided a plan to notify potentially affected members of the public about the proposal under Minnesota Rules Part 7849.2550. In response to the Notice Petition and Exemption Petition, comments were filed by the Minnesota Department of Commerce, Division of Energy Resources (Department) on June 2, 2023.³ On July 12, 2023, the Minnesota Public Utilities Commission (Commission) issued an Order approving the Exemption and Notice Petitions (July 12 Order). Specifically, the Commission granted exemptions from the following Minnesota Rules, with the provision of alternative data and requiring the applicant to provide data for 7849.0260, subparts A(3), C(6), and D, 7849.0270 1-6, 7849.0290, 7849.0300, and 7849.0340⁴:

- 7849.0260, subp. A(3) and C(6), Expected or Estimated Losses;
- 7849.0260, subp. D, Map;
- 7849.0270, subp. 2(E), System Revenue Requirements;

¹ Initial Filing – Notice and Variance – Brookings-Hampton Second-Circuit Project May 16, 2023. eDocket ID# [20235-195886-01](#)

² Initial Filing – Exemption Request – Brookings-Hampton Second-Circuit Project May 16, 2023. eDocket ID# [20235-195886-02](#)

³ Comments – On Notice Petition June 2, 2023. eDockets ID# [20236-196367-02](#) and

Comments – On Exemption Request Petition June 2, 2023. eDockets ID# [20236-196367-01](#)

⁴ Order on Notice plan and Exemption Request July 12, 2023, eDocket ID# [20237-197416-01](#)

- 7849.0270, subps. 1-6, Forecasting;
- 7849.0280, System Capacity;
- 7849.0290, Conservation; and
- 7849.0300, Consequences of Delay and 7849.0340, Alternative of No Facility.

B. CERTIFICATE OF NEED APPLICATION

On August 15, 2023, the Applicant filed their *Application to the Minnesota Public Utilities Commission for a Certificate of Need for the Proposed 345 Brookings County – Lyon County and Helena – Hampton Second-Circuit Project* (Application). The Application requested that the Commission approve a certificate of need (CN) to install a second circuit on the double-circuit capable structures of the 345 kV Brookings County – Hampton transmission line and upgrade existing substations. Xcel stated that this project would reduce energy costs by reducing congestion in the area, allowing for more low-cost energy from South Dakota, North Dakota, and Southern Minnesota to flow to high load areas. Xcel estimated that the project would provide \$334.83 million in benefits over the life of the project and would cost approximately \$102 million to construct.

In response to the Applicant's filing, on August 18, 2023, the Commission issued its *Notice of Comment Period on Completeness and Variance Request* (Notice). The Notice stated that comments on completeness are due on September 1, 2023, and reply comments on completeness are due September 8, 2023. The Commission requested comments on the following topics:

- Does the certificate of need application contain the information required under Minn. R. 7849.0220, subp. 2?
- Are there any contested issues of fact with respect to the representations made in the application?
- Should the application be evaluated using the Commission's informal process or referred to the Office of Administrative Hearings for contested case proceedings?
- Should the Commission delegate administrative authority to the Executive Secretary to issue the Delegation of Authority to the Applicant for SHPO consultation as reflected in Attachment A of this notice?
- Should the Commission approve Xcel's Variance Request to not file 13 copies of this, and future, Certificate of Need applications with the Commission?
- What additional procedural processes should be applied to the review of the application?

Below are the Comments of the Department regarding the completeness of the Application with regards to Minn. R. 7849.0220, subp. 2 and the Applicant's Variance Request. The Department notes that the completeness review and recommendations do not include an evaluation of the merits of the Application and should not be misconstrued to imply that the Application meets regulatory requirements for approval of the CN. The Department does not have a position on the delegation of administrative authority and does not have any recommendations on additional procedural processes.

II. DEPARTMENT ANALYSIS

A. BACKGROUND

The Applicant proposes to install a second 345 kV circuit on double-circuit capable structures installed when the Brookings County – Hampton 345 kV transmission line was originally constructed. According to the Applicant, the Project is needed to reduce congestion that prevents low-cost energy from being accessed by high load centers, which would result in reduced energy costs. Additionally, the Applicant states the Project will strengthen the regional grid and support wind generation facilities in Minnesota and South Dakota. As listed in the Application, the proposed project includes:

- installation of a second 345 kV circuit on double-circuit capable structures on the Brookings County Hampton 345 kV transmission line entirely within existing right of ways;
- reconfiguration of certain lines near substations, mostly within existing easements;
- upgrades to the Brookings County, Lyon County, Helena, and Hampton substations with new 345 kV breakers; and
- relay setting changes to the Steep Bank Lake and Hawks Nest Lake substations.

Minnesota Statutes § 216B.2421, subd. 2(2) defines a large energy facility (LEF) as “any high voltage transmission line with a capacity of 200 kilovolts or more with more than 1,500 feet in length.” In turn, Minnesota Statutes § 216B.243, subd. 2 states “[n]o large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the Commission.” Since the project calls for over 1,500 feet of transmission line construction with a capability of operating at 345 kV and is not being constructed to connect a CN exempt facility to existing transmission infrastructure, the proposed project qualifies as a LEF and a Certificate of Need (CN) is required. Minnesota Rules Chapter 7849 addresses the filing requirements for a CN for an electric transmission facility.

B. COMPLETENESS REVIEW

Minnesota Rules 7849.0240 subp. 2, and 7849.0260 to 7849.0340 contain the filing requirements for a CN application for a large high-voltage transmission line. Minnesota Rule 7849.0220, Subp. 2 states that each transmission CN application:

shall include all of the information required by parts 7849.0240 and 7849.0260 to 7849.0340. If, however, a proposed [large high voltage transmission line] LHVTL is designed to deliver electric power to a particular load center within the applicant's system, the application shall contain the information required by part 7849.0270 for that load center rather than for the system as a whole.

The Department reviewed the Application for completeness considering the rule requirements and exemptions granted by the Commission in its July 12 Order as discussed above and concludes that the Applicant has met the completeness requirements. Table 1 below summarizes the Department’s completeness review.

Table 1: Department Completeness Review

Minnesota Rule	Short Description	Exemption?	Location	Complete?
7829.2500	Brief Summary	None	Summary and Cover Letter	Yes
7849.0200	Cover Letter and Table of Contents	None	Summary and Cover Letter	Yes
7849.0240	Need Summary and Additional Considerations	None	Sections 1.9 and 1.10	Yes
7849.0260	Proposed LHVTL and Alternatives Application	<ul style="list-style-type: none"> • subp. A (3) and C (6)—Exemption with Alternative Data • subp. D Exemption with Alternative Data 	Chapters 1, 2, 4, and 6 Sections 2.1, 2.2, 2.3, 4.6, 6.5, 6.6, and Appendices C, D, and E Figure 3.2	Yes
7849.0270	Peak Demand and Annual Consumption Forecast	Exemption with Alternative Data	Section 2.3, Chapter 4 and Appendices C, D, and E	Yes
7849.0280	System Capacity	subp. B through I—Exemption	1.2	Yes
7849.0290	Conservation Programs	Exemption with Alternative Data	Section 4.4 and Appendices E and F	Yes
7849.0300	Consequences of Delay	Exemption with Alternative Data	Table 4.4	Yes
7849.0310	Environmental Information	None	Chapter 7	Yes
7849.0320	Generation Alternatives	None	No LEGF Alternative	Yes
7849.0330	Transmission Alternatives	None	Sections 2.4, 5.2, 5.3, 5.4, 5.6, 6.3, 6.5, 7.1, 7.2, 7.3, 7.4 and 7.6	Yes
7849.0340	No-Facility Alternative	Exemption with Alternative Data	Table 4.4	Yes

Xcel provided a table showing, for each filing requirement, whether an exemption was granted and/or the location within the Application where the relevant information can be found.⁵ The Department reviewed this table and concludes that it correctly indicates where the required information is located in the Application.

C. *PROCESS REVIEW*

During the completeness review process, the Department also makes a recommendation regarding the proper process to use for the proceeding. At this time, the Department has not identified any contested issues of fact with respect to representations made in the application. However, the Department has not analyzed the merits of the Petition. Minnesota Rules 7829.1200, subp. 1, provides three examples for when the Commission's informal or expedited proceedings may be used:

- A. there are no material facts in dispute;
- B. the parties and the Commission have agreed to informal or expedited proceedings; or
- C. informal or expedited proceedings are authorized or required by statute.

While the project is an approximately 98.5 mile-long transmission structure, the vast majority of the proposed project adds a second line to existing double circuit capable structures using existing right of ways and easements. Therefore, the project should not result in significant impacts to land use or impact landowners more than the existing transmission facilities already do. As such, the Department does not currently see a need for a contested case. That said, the Department would not object to a Commission-ordered contested case if parties claim significant contested material facts and/or raise controversial issues and would participate in a contested case to the best of its ability.

D. *VARIANCE REQUEST*

The Applicant requested a variance to Minn. Rule 7849.0200, which requires the Applicant to file 13 physical copies of this and future CN filings with the Commission. Minnesota Rules 7829.3200, subp. 1, states that the Commission shall grant a variance to its rules when it determines that the following requirements are met:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.

The Applicant believes that because electronic filings meet the needs of Commission staff, physical copies are unnecessary and that printing and delivering 13 copies of the filing, complete with trade secret information, represents an "excessive burden" under Minn. R. 7829.3200, subp. 1(A). The Applicant believes there would be no adverse impact on the public if it filed only electronically, as the public will still have electronic access to the filing. Additionally, the Applicant argues that the provision of physical copies was always intended as a convenience for the Commission, not the public. Finally, the

⁵ Appendix A of the Application

Applicant stated that the variance would not conflict with standards imposed by law, because the requirement is a Commission rule, not a statute.

The Department mostly agrees with the Applicant's analysis given the modern ability to electronically share information. Although it is not the Department's appropriate role to determine whether printing and delivering 13 physical copies of the CN filing qualifies as an "excessive burden," the Department notes that permitting the Applicant's requested variance does not appear to impact public availability of physical copies or otherwise impact the public interest. Finally, while the Department disagrees with the Applicant's position on requirements under statute versus rule, the Department is not aware of any conflict other than Rule 7849.0200, subp. 2 that would prevent Applicant from filing electronically. In conclusion, the Department does not oppose the Applicant's variance request.

E. RESPONSE TO NOTICE

Below the Department summarizes its responses to the topics for comment identified in the Commission's notice of comment period:

- Does the certificate of need application contain the information required under Minn. R. 7849.0220, subp. 2?

The Department recommends that the Commission find the Application complete.

- Are there any contested issues of fact with respect to the representations made in the application?

The Department has not identified any contested issues of fact at this time, however the Department's analysis to this point reflects primarily the completeness of the Application, and does not analyze the merits of the information within.

- Should the application be evaluated using the Commission's informal process or referred to the Office of Administrative Hearings for contested case proceedings?

The Department recommends use of the Commission's informal process but the Department would not object to a Commission-ordered contested case if parties claim significant contested material facts and/or raise controversial issues and would participate to the best of its ability.

- Should the Commission delegate administrative authority to the Executive Secretary to issue the Delegation of Authority to the Applicant for SHPO consultation as reflected in Attachment A of this notice?

The Department does not have a position on whether to delegate administrative authority.

- Should the Commission approve Xcel's Variance Request to not file 13 copies of this, and future, Certificate of Need applications with the Commission?

The Department does not oppose the Applicant's variance request.

- What additional procedural processes should be applied to the review of the application?

The Department does not have any recommendations for additional procedural processes that should be applied to the review of the application.

III. DEPARTMENT RECOMMENDATION

The Department recommends that the Commission determine the Application is substantially complete and that the Commission evaluate the Application using the Commission's informal comment process. Finally, the Department does not oppose the Applicant's variance request.

CERTIFICATE OF SERVICE

I, Robin Benson, hereby certify that I have this day, served a true and correct copy of the following document to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States mail at St. Paul, Minnesota.

Minnesota Public Utilities Commission ORDER

Docket Number: **E-002/CN-23-200**

Dated this **10th** day of **October, 2023**

/s/ Robin Benson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Sarah	Beimers	sarah.beimers@state.mn.us	Department of Administration - State Historic Preservation Office	50 Sherburne Avenue Suite 203 St. Paul, MN 55155	Electronic Service	No	OFF_SL_23-200_CN-23-200
David	Bell	david.bell@state.mn.us	Department of Health	POB 64975 St. Paul, MN 55164	Electronic Service	No	OFF_SL_23-200_CN-23-200
Brian	Bell	bell.brian@dorsey.com	Dorsey & Whitney LLP	50 South Sixth St. Suite 1500 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_23-200_CN-23-200
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_23-200_CN-23-200
Randall	Doneen	randall.doneen@state.mn.us	Department of Natural Resources	500 Lafayette Rd, PO Box 25 Saint Paul, MN 55155	Electronic Service	No	OFF_SL_23-200_CN-23-200
Michael	Drysdale	Drysdale.michael@dorsey.com	Dorsey & Whitney LLP	50 South Sixth Street, Suite 1500 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_23-200_CN-23-200
Kate	Fairman	kate.frantz@state.mn.us	Department of Natural Resources	Box 32 500 Lafayette Rd St. Paul, MN 551554032	Electronic Service	No	OFF_SL_23-200_CN-23-200
Annie	Felix Gerth	annie.felix-gerth@state.mn.us		Board of Water & Soil Resources 520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_23-200_CN-23-200
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_23-200_CN-23-200
Todd	Green	Todd.A.Green@state.mn.us	Minnesota Department of Labor & Industry	443 Lafayette Rd N St. Paul, MN 55155-4341	Electronic Service	No	OFF_SL_23-200_CN-23-200

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kari	Howe	kari.howe@state.mn.us	DEED	332 Minnesota St, #E200 1ST National Bank Bldg St. Paul, MN 55101	Electronic Service	No	OFF_SL_23-200_CN-23-200
Ray	Kirsch	Raymond.Kirsch@state.mn.us	Department of Commerce	85 7th Place E Ste 500 St. Paul, MN 55101	Electronic Service	No	OFF_SL_23-200_CN-23-200
Chad	Konickson	chad.konickson@usace.army.mil	U.S. Army Corps of Engineers	180 5th St # 700 Saint Paul, MN 55101	Electronic Service	No	OFF_SL_23-200_CN-23-200
Stacy	Kotch Egstad	Stacy.Kotch@state.mn.us	MINNESOTA DEPARTMENT OF TRANSPORTATION	395 John Ireland Blvd. St. Paul, MN 55155	Electronic Service	No	OFF_SL_23-200_CN-23-200
Dawn S	Marsh	dawn_marsh@fws.gov	U.S. Fish & Wildlife Service	Minnesota-Wisconsin Field Offices 4101 American Blvd E Bloomington, MN 55425	Electronic Service	No	OFF_SL_23-200_CN-23-200
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_23-200_CN-23-200
Stephan	Roos	stephan.roos@state.mn.us	MN Department of Agriculture	625 Robert St N Saint Paul, MN 55155-2538	Electronic Service	No	OFF_SL_23-200_CN-23-200
Christine	Schwartz	Regulatory.records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_23-200_CN-23-200
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_23-200_CN-23-200
Zeviel	Simpser	simpser.zev@dorsey.com	Dorsey & Whitney LLP	50 South Sixth Street Suite 1500 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_23-200_CN-23-200

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Jayne	Trusty	execdir@swrdc.org	SWRDC	2401 Broadway Ave #1 Slayton, MN 56172	Electronic Service	No	OFF_SL_23-200_CN-23-200
Jen	Tyler	tyler.jennifer@epa.gov	US Environmental Protection Agency	Environmental Planning & Evaluation Unit 77 W Jackson Blvd. Mailstop B-19J Chicago, IL 60604-3590	Electronic Service	No	OFF_SL_23-200_CN-23-200
Cynthia	Warzecha	cynthia.warzecha@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road Box 25 St. Paul, MN 55155-4040	Electronic Service	No	OFF_SL_23-200_CN-23-200
Alan	Whipple	sa.property@state.mn.us	Minnesota Department Of Revenue	Property Tax Division 600 N. Robert Street St. Paul, MN 551463340	Electronic Service	No	OFF_SL_23-200_CN-23-200
Jonathan	Wolfgram	Jonathan.Wolfgram@state.mn.us	Office of Pipeline Safety	445 Minnesota St Ste 147 Woodbury, MN 55125	Electronic Service	No	OFF_SL_23-200_CN-23-200