

Staff Briefing Papers

Meeting Date September 7, 2023

Agenda Item **3

Company Nexus Line, LLC

Docket No. **Docket No. ET-2/TL-21-434**

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

Issues

- Has Nexus met the requirements of Order point 9 in the Commission’s March 3 Order? If not, what requirements were not met?
- Do the financial statements and other financial information provided by Nexus in its May Petition demonstrate that the permittee has the ability to fund the decommissioning financial assurance? If not, what additional information should the Commission require Nexus to provide to demonstrate the permittee can fund the decommissioning financial assurance?
- Do the proposed terms of the guaranty provide sufficient protections to ensure Minnesota ratepayers will not have to fund decommissioning of the high-voltage transmission line? If not, what changes should be made?
- With the proposed guaranty, how will the public interest be protected in the event of the bankruptcy of the guarantor?
- Is it in the public interest to switch from a letter of credit to a parental guaranty?
- Are there other issues or concerns related to this matter the Commission should consider?

Staff

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✓ **Relevant Documents**

Date

[Nexus Line, LLC – Request to Change Form of Financial Assurance](#)

05/03/2023

Nexus Line, LLC – Attachment B Audited Financials (Trade Secret)

05/03/2023

To request this document in another format such as large print or audio, call 651.296.0406 (voice). Persons with a hearing or speech impairment may call using their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

✓ **Relevant Documents**

	Date
<u>PUC – Notice of Comment Period</u>	05/15/2023
<u>DOC-DER – Request for Extension</u>	06/30/2023
<u>Nexus Line, LLC – Reply Comments</u>	06/30/2023
<u>DOC-DER – Comments</u>	07/28/2023
<u>Nexus Line, LLC – Reply Comments</u>	08/10/2023
Nexus Line, LLC – Reply Comments (Trade Secret)	08/10/2023
<u>LIUNA Minnesota & North Dakota</u>	08/11/2023

PROCEDURAL BACKGROUND

On March 3, 2022, an Order was issued by the Minnesota Public Utilities Commission approving the partial transfer of the construction permit from Great River Energy to Nexus Line, LLC.¹

On May 3, 2023, Nexus Line, LLC requested a change in financial assurance.²

On May 15, 2023, the PUC issued a Notice of Comment Period.³

On June 30, 2023, the Minnesota Department of Commerce, Division of Energy Resources (DOC-ER) requested a 30-day extension.⁴ That same day, the Commission issued a Notice of Extended Comment Periods.⁵ Nexus also submitted comments requesting Commission action.⁶

On July 28, 2023, DOC-ER submitted comments.⁷

On August 10, 2023, Nexus submitted public⁸ and trade secret reply comments.

On August 11, 2023, LIUNA submitted reply comments.⁹

¹ PUC, [Order](#), 03/03/2022.

² Nexus, [Request to change the form of financial assurance](#), 05/03/2023.

³ PUC, [Notice of Comment Period](#), 05/15/2023.

⁴ DOC-ERP, [30-day extension request](#), 06/30/2023.

⁵ PUC, [Notice of Extended Comment Period](#), 06/30/2023.

⁶ Nexus, [Reply Comments](#), 06/30/2023

⁷ Department of Commerce, [Comments](#), 07/28/2023

⁸ Nexus, [Reply Comments](#), 08/10/2023

⁹ LIUNA Minnesota and North Dakota, [Reply Comments](#), 08/11/2023

DISCUSSION

On May 3, 2023, Nexus Line, LLC (“Nexus”) submitted a petition to the Minnesota Public Utilities Commission (“Commission” or “PUC”) to transfer the form of financial assurance from a letter of credit to a guaranty.

Per Nexus, because the company was newly formed, it could only provide audited financial statements after the permit transfer Order in March 2022.¹⁰ As an alternative, a letter of credit was offered by Nexus to show its commitment to cover the cost of decommissioning. Nexus entered a letter of credit with BNC National Bank with an initial amount of \$5 million and \$1 million per year over the next 20 years.¹¹

Nexus would like to move from a letter of credit to a guaranty. They would like to make this transition before the letter of credit’s expiration date of October 31, 2023. On this date, the letter of credit will automatically be renewed for the year if the petition is not granted.¹²

Nexus Line, LLC – 05/03/2023

Nexus Line, LLC is submitting a change in financial assurance under the decommissioning plans submitted to the Commission. Nexus cites from its October 8, 2021 letter, “...the Decommissioning Plan provides flexibility for Nexus to provide certain alternate forms of financial assurance in the future, with the understanding that any changes would need to be reviewed by the appropriate agencies first.”¹³

Nexus summarized the differences between a guaranty and a standby letter of credit. They wrote,

The traditional difference between a guaranty and a standby letter of credit is the degree to which the third party’s obligation to pay is independent from the principal obligor. Under a guaranty, the guarantor’s obligation is dependent on the underlying obligation. The guarantor may determine for itself whether the principal obligor has defaulted, raise defenses that the principal obligor would have to payment, and raise its own set of defenses to payment called “suretyship defenses.” Under a standby letter of credit, on the other hand, the payor’s obligation is independent of the underlying obligation—the issuing bank must pay the beneficiary regardless of the status of the underlying obligation.¹⁴

Nexus asserted that the defenses part of the guaranty can be waived and operate like a standby letter of credit. Nexus wrote, “Many guaranties have guarantors waive defenses, including

¹⁰ PUC, [Order](#), 03/03/2022.

¹¹ Nexus, [Request to change the form of financial assurance](#), 05/03/2023, p. 2.

¹² *Ibid.*, p. 2

¹³ *Ibid.*, p. 2.

¹⁴ *Ibid.*, p. 3.

suretyship defenses, and, like a letter of credit, require that a beneficiary only present documentary evidence to receive payment from the guarantor. A guaranty with these features would function nearly identically to a standby letter of credit.”¹⁵

To help ensure Nexus has the wherewithal to meet this obligation, they suggest using the methodologies of credit rating agencies like Moody’s Investors Service (“Moody’s”) to evaluate third-party credit support of securities. Nexus states that the “Proposed Guaranty satisfies all the terms outlined by Moody’s.” Additionally, the Nexus document submission provides bullet points for those terms.¹⁶

To add additional perspective, Nexus provides conditions in which the North Dakota Public Service Commission can accept a self-bond per North Dakota Administrative Code Chapter 69-05.2-12-05.1. While only one of three conditions needs to be met to accept a self-bond in North Dakota, Nexus could meet two.¹⁷

Minnesota Department of Commerce - 07/28/2023

The Minnesota Department of Commerce (“Department”) recommends that the Commission deny Nexus’s request. The Department opposes the change as the financial certainty would shift from regulated banks to a privately held North Dakota limited partnership. While financial statements would be provided to the Commission, it will not be easy to reverse course to a letter of credit if those statements become concerning.¹⁸

The Department concludes its remarks by highlighting the risks to Minnesota if Nexus cannot fulfill its obligation. The Department writes,

.... Minnesota will be taking on the risk that REMC will become bankrupt or otherwise insolvent and that its claim for funds for decommissioning will be in line with any number of other creditors. REMC’s structure as a limited partnership provides protection to the partners by limiting their liability to only the amount they originally invested. Collecting on a parental guarantee of a limited liability partnership could be challenging, if not impossible in the future. Nexus has not described any benefit to the public that would compensate for accepting this additional risk nor can the Department identify any such benefit.¹⁹

Nexus Line, LLC – 08/10/2023

Nexus states that the arguments provided by the Department do not “provide a reasonable basis to deny Nexus’s request.” Nexus quotes the Order showing they have express permission

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid., p. 4-5.

¹⁸ DOC-DER, [Comments](#), p. 2

¹⁹ Ibid.

to change the form of financial assurance subject to Commission approval. Additionally, the Order contemplates the conditions needed for Commission approval for a change in financial assurance by stating it “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.” Nexus states in its reply comments that it has provided financial statements audited by an independent third party in accordance with the Order.²⁰

Nexus argues that based on its financials, it is hard to imagine circumstances in which the Department of Commerce, Division of Energy Resources (DER) would ever support a change in financial assurance. They write, “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 address some of the concerns DER has, Nexus suggests requiring it to submit quarterly unaudited financial statements, in addition to audited annual financial information, to the Commission so DER has an opportunity to continue to monitor REMC’s financial position.²¹

Despite DER’s assertion about the difficulty of collecting a parental guarantee from a limited liability partnership, Nexus writes, “There is scant support for this statement, and guaranties are routinely enforced.” Nexus cites the Minnesota Supreme Court and North Dakota law to strengthen its argument about a party’s obligation to fulfill a guaranty. Additionally, “A limited partnership like REMC Assets, LP offer more recourse to a creditor than these other business forms...”²²

Nexus writes that a parental guaranty is a routinely accepted form of financial assurance for decommissioning energy facilities across the United States and has been acceptable to EERA as an adequate “financial instrument for finance assurance in the decommissioning of solar and wind facilities in Minnesota.”²³

Nexus also suggested there is a public benefit in replacing the letter of credit with a parental guaranty. Nexus believes a parental guaranty is an “efficient financial mechanism which provides a similar level of financial assurance as a letter of credit.” Additionally, a parental guaranty provides resources for the entire decommissioning obligation, whereas the letter of credit will grow over time. Further, Nexus argues that there is a public benefit to a regulatory environment where companies investing in Minnesota can rely on “a transparent and consistent regulatory framework that sets forth reasonable conditions.”²⁴

LIUNA Minnesota and North Dakota - 08/11/2023

²⁰ Nexus, Reply Comments, 08/10/2023, p. 2.

²¹ Ibid., p. 2.

²² Ibid., p. 3.

²³ Ibid., p. 4

²⁴ Ibid., p. 4

LIUNA agrees with Nexus regarding its ability to fulfill its obligation to decommission the HVDC line through a guarantee. They wrote, “The Commission’s current process for managing site permits, transfers, and decommissioning has not left the landscape littered with poorly maintained or abandoned power lines and turbines.”²⁵

They believe elevated financial requirements will hurt clean energy investment and raise power prices. They conclude that there is no basis in the record for treating the line as risky for decommissioning.²⁶

DECISION OPTIONS

1. Deny the application for a change in financial assurance. (*Department of Commerce*)
2. Approve the change in decommissioning financial assurance from the current letter of credit to the guaranty proposed in Attachment A to Nexus’s May 3, 2023, Request to Change Form of Financial Assurance filing and delegate authority to the Executive Secretary to follow the steps outlined in Nexus’s June 30, 2023 reply comments. (Nexus)

[AND, if decision option 2 is selected]

3. Require Nexus to timely file in this docket quarterly unaudited financial statements and annual audited financial statements of REMC Assets, LP, throughout the effective term of the guaranty. (Nexus)

²⁵ LIUNA Minnesota and North Dakota, [Reply Comments](#), 08/11/2023

²⁶ Ibid.