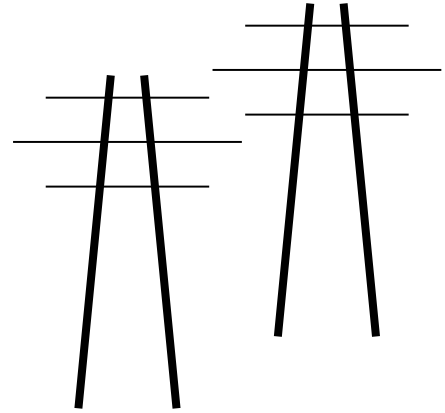


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May 12, 2025

Ann O'Reilly
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
600 N. Robert St.
St. Paul, MN 55101-0620

via eDockets only

RE: Comment on Lack of Notice to 1,341 Newly Affected Landowners
NoCapX 2020 and the Prehn Family
OAH Docket: 5-2500-40099; PUC Docket TL-23-157

Dear Judge O'Reilly:

I've received notice of the Prehearing Conference, and plan to attend. I'm camp-hosting this month, and access is sometimes sketchy, but the odds are favorable. This letter is filed by both myself as an individual who has represented parties not provided notice and also representing NoCapX 2020 and the Prehn Family on behalf of landowners faced with utility proposals for their land and community.

I'm writing this Comment because I'm jawdroppingly outraged at the failure to provide notice to 1,341¹ landowners and the prospect of upcoming hearings and ultimate routing decision moving forward when 1,341 landowners have not received adequate notice. Equally outrageous is Commerce-EERA's failure to acknowledge the basic necessity of timely notice. Granted due process is out of vogue federally, but we expect better in Minnesota. I am grateful to see this announcement of a Prehearing Conference about this notice failure and hope to see equitable treatment of these landowners.

Thirteen years ago, I observed failure to provide notice to "newly affected landowners," a detrimental failure that had left landowners with no warning, little ability to participate, administrative and judicial disregard for their predicament, and transmission routed over their land. Now, 1,341 landowners have not received notice in this docket, which harkens back to that CapX 2020 Hampton to La Crosse routing docket through Cannon Falls.² In that CapX docket,

¹ Where are the 1,341? Numbers don't add up. Original Mailing list, 2,705, add Hwy 14 (54), Round 2 (190), and Round 3 (122) = 377. Combined 2,890 – original 2705 = 185, not 377. [202412-212877-03](#) 1,341? **1,341 is nearly 50% increase from 2,705! Who and where are the 1,341?**

² PUC CapX 2020 Hampton-La Crosse transmission routing docket TL-09-1448.

Xcel and Commerce chose to disregard the DOT's Comments and Policy of Accommodation that rendered the preferred route unworkable, and route changes were not made public, notice not provided to landowners, until one or two days prior to the public hearing. See Motion for Reconsideration of St. Paul's Church and Cannon Falls Landowners, June 1, 2012³. **Those Cannon Falls landowners who were not provided notice were the ones that were given transmission on their property.** At the time, at the hearing where this lack of notice was made public, I was representing NoCapX and North Route Group and I quickly argued for a window for Intervention, but that was rejected in part because I did not have a client among those landowners (some of whom later became clients). Similarly, for these 1,341 landowners, transmission on their property and eminent domain may well be their fate. Commerce has declared it is not concerned, as notice "is a courtesy, not a legal obligation."

Other than the Prehn Family/NoCapX 2020, there is no party representing landowners on the ground. The only other party in this docket is "Clean Energy Organizations," which have historically supported transmission projects and is supporting this project.

There are three failures at issue. First is the Commerce-EERA admitted delay of Notice for the 5 months since December; second is the additional "few weeks" of additional delay before notifying of failure of Notice on May 8, 2025; and third, the failure to disclose on the part of Commerce-EERA for "a few weeks" after the December failure was "discovered." Tempest has fugited, and now we're faced with hearings at the end of this month. See Dornfeld Letter and email, May 8, 2025. The Second Prehearing Order set the intervention deadline as January 14, 2025, and that's long since passed. What options are available to these landowners?⁴

Mr. Dornfeld's take in the May 8, 2025 email reflects no sense of responsibility to those landowners.

The Department respectfully objects to holding a prehearing conference. A prehearing conference to discuss this issue is unnecessary. The Department understands that the Commission's notice will be served on the entire landowner mailing list, including the 1,341 new, potentially impacted landowners. As the Department's May 8 filing explained, the notice to newly affected landowners is a courtesy, not a legal obligation.

Dornfeld email, May 8, 2025.

That's a stunning position for a state agency to take when landowners could lose their land to this project. Due process should be top of mind these days:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No

³ PUC Document Numbers: Motion for Reconsideration: [20126-75809-01](#); Affidavits and Exhibits: [20126-75809-02](#), [20126-75809-03](#), [20126-75809-03](#), [20126-75809-04](#), [20126-75809-05](#), [20126-75809-06](#), [20126-75809-07](#), [20126-75809-08](#), [20126-75809-09](#), [20126-75809-09](#), [20126-75809-10](#), [20126-75810-01](#)

⁴ Participant status is illusory. Though enshrined in statute, "participants" are routinely prohibited from questioning witnesses, most witnesses are not present at public hearings for questioning, participants are prohibited from participating in evidentiary hearings (this was explicitly stated in a recent Prehearing Order!) where it's at the discretion of the ALJ.

State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, 14th Amendment, Section 1(emphasis added).

The position of Commerce-EERA is also contrary to the Commission's mandate to "adopt broad spectrum citizen participation as a principal of operation." Minn. Stat. §216I.16, Subd. 1. The Commission has long been lax in adopting that broad spectrum of citizen participation, reflected in the recommendations of the Office of the Legislative Auditor's "*Public Utilities Commission's Public Participation Process*" which urged recognition of the role of the public and the PUC's responsibilities to the public⁵ Since the Commission's "streamlining" steamrolling agenda and its success in achieving the 2024 legislative changes, it's become even harder to participate, and need and permitting processes have been radically constricted⁶. In a routing proceeding, notice to landowners who may/will be affected by a transmission project is fundamental.

These 1,341 landowners have rights that must be observed, and the Commission has responsibilities to the public and affected landowners that cannot be disregarded. Affected landowners must somehow be compensated for this failure to provide notice, but how? This is a failure that puts landowners at a significant disadvantage in the routing process and if not corrected, it sets a dangerous precedent.

Landowners must be provided with **immediate** specific notice, sufficient time and **assistance** to learn how this routing process "works," and means of participation, which means a delay in the schedule, including public and evidentiary hearings. The intervention deadline, filing deadlines, and meeting and hearing dates should be set forward at least as long as this notice was delayed, five months plus "a few weeks."

Commerce-EERA must take the responsibility for this mess, though it may not be the ideal entity to take the lead in fixing this mess. Some ideas:

- Every notice in this docket, and every Commission docket, must be **immediately** eFiled with Affidavit of Service and list of recipients and addresses when sent.
- Each landowner should be directly contacted by mail and phone and provided information, not public meeting "information lite," but substantive explanations sufficient for an understanding of what this project may mean to them, details on "Buy the Farm" if their land would be taken, how it is that they became affected landowners, to be sworn on oath and how to meaningfully participate. This is beyond Commerce-EERA and PUC's charge, beyond duties of the PUC's Public Advisor. Perhaps this should be handled by the A.G.'s Office-RUD, which well represents the public interest;
- Additional in-person public meetings should be held in the affected areas with targeted invitations to the 1,341 landowners in the area(s), with notice filed in eDockets.
- Landowners must be extended the clearly explained opportunity, the option, of Intervention without objection;

⁵ Online at <https://www.auditor.leg.state.mn.us/ped/pedrep/puc2020.pdf>

⁶ See also PPSA Annual Hearing Reports, 2000-2024: <https://legalelectric.org/weblog/27619/>

- Landowners will require some level of substantive assistance to be able to participate in the hearing⁷, submit testimony, question witnesses, and offer a brief, without limitation or objection from applicant or Commerce to their participation. This is the purpose of Intervenor Compensation, and it should be approved for this docket.

Realistically, landowners seldom have experience or resources to participate effectively, and in addition to Commerce-EERA, the Commission should provide some measure of assistance to bring them up to speed quickly. With hearings set for the end of this month, starting roughly two weeks from Friday's Prehearing Conference, I don't see how the necessary outreach and education can occur without postponing the hearings. It took five months and a few weeks to get to this point, and it may take that long to make up for Commerce-EERA's failure. As the responsible party, it should bear the cost of fixing its errors, though a state entity distanced from causation should lead the correction. Provision of process information and assistance is urgently needed, NOW!

Institutional history is important. Most working on this docket were not a part of the CapX 2020 Hampton to La Crosse⁸ routing docket through Cannon Falls, PUC Docket TL-09-1448. In that docket, there was a similar failure of notice, though that was Xcel's failure. The utility had disregarded the DOT's prohibition of running the transmission line over a Highway 52 interchange until the very last minute, just days before the Public Hearing, and some of those potentially affected landowners did not receive any notice at all. See Affidavits accompanying Motion for Reconsideration of St. Paul's Church and Cannon Falls Landowners⁹. An immediate attempt to extend at least some intervention rights to these landowners failed, and no effort was made by the applicants or the Commission to assist these landowners. Those landowners now have CapX 2020 transmission on their property or just outside their backyards, alongside the school's ball field. It was a travesty of process.

Lack of notice and steamrolling over landowners must not happen again. Failure to provide notice to 1,341 landowners is inexcusable, and the hearings must not go forward as currently planned. This is not a problem of the landowners' making, and they should not have to pay the price. Commerce-EERA made this problem and must take the lead in fixing its problem.

Very truly yours,



Carol A. Overland
Attorney at Law

cc: Nancy Prehn, The Prehn Family
eService on all Parties via eDockets

⁷ While rules and Orders state that one does not need to intervene to participate, participation is at the discretion of the ALJ, and in my experience, non-party participants rarely can participate in a meaningful way. As problematic is that these landowners will likely have had no experience and won't have the ability to participate effectively.

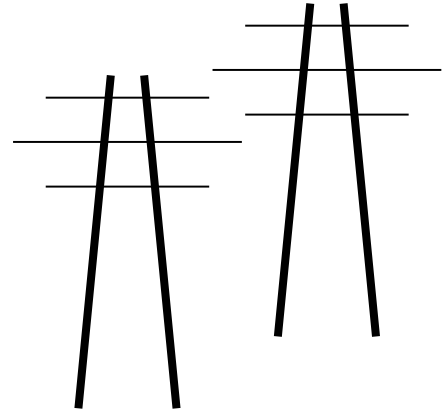
⁸ Aside from Bret Eknes, PUC and Court Reporter Shaddix, perhaps Valerie Herring worked on CapX 2020?

⁹ PUC Document Numbers: Motion for Reconsideration: [20126-75809-01](#); Affidavits and Exhibits: [20126-75809-02](#), [20126-75809-03](#), [20126-75809-03](#), [20126-75809-04](#), [20126-75809-05](#), [20126-75809-06](#), [20126-75809-07](#), [20126-75809-08](#), [20126-75809-09](#), [20126-75809-09](#) [20126-75809-10](#), [20126-75810-01](#)

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May 14, 2025

Ann O'Reilly
Administrative Law Judge
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P.O. Box 64620
600 N. Robert St.
St. Paul, MN 55101-0620

via eDockets only

RE: More on Lack of Notice to 1,341 Newly Affected Landowners
NoCapX 2020 and the Prehn Family
OAH Docket: 5-2500-40099; PUC Docket TL-23-157

Dear Judge O'Reilly:


Thanks to Valerie Herring, representing Xcel, for filing yesterday's letter with the Heine Direct Schedule 4 Affidavit of Service and description of the Company's mailing to 2,878 landowners, including the 1,341 newly affected landowners.

EERA's Scoping Decision adding the 1,341 landowners was issued December 2, 2024. Xcel's mailing went out to the landowners on January 31, 2025, which though better than no notice, was sent two weeks after the Intervention deadline. The Xcel notice is too late, and it remains EERA's problem to correct.

Newly affected landowners have not received a targeted mailing letting them know that they are "newly affected landowners." Though not sent specifically to, or identifying the landowners as, "newly affected landowners," the Xcel mailing stated:

You are receiving this letter because your property is located either on one of the newly added routes or one of the originally proposed routes. A map of all routes under consideration is included in this mailing.

That language, placement, and font is not attention grabbing – it's in the fourth paragraph, found in the "Project Status" section, in the same small font as the rest of the mailing:

Stouffville Steel Process Company

430 Nicollet Mall
Minneapolis, MN 55401

Order No. E000275-25-157
State Water Court (Tribunal)
Schedule 4 Copy of Local Government Chair and Landowner Notice
on the adequacy of the EIS and due after the public hearing. The Administrative Law Judge (ALJ) concerning the project will then prepare the Final EIS Report, which will include findings of fact, conclusions of law and recommendations. In May 2025, the ALJ will release all information on the record, including the EIS Report and Final EIS documents, and comments and information provided to stakeholders, members of the public and other stakeholders. He will also make a final decision regarding the project in May 2025.

MMRT Project (newest update) February 2025

Dear Landowner:

The proposed Minnesota River Transmission Project (MMRT Project) will improve reliability, deliver cost-effective energy and provide other benefits to the region by building new and more resilient "backbone" electric transmission infrastructure to serve customers. The proposed project includes about 1,000 miles of new and upgraded 500-kilovolt (kV) transmission lines between the existing Minnesota River Substation near Ottertail and a new 500-kV substation near Ottertail. It also includes building about 20 miles of new 138-kV transmission lines between the existing North Ottertail Substation near Pine Island and an existing transmission line northeast of Ottertail, which is being relocated from its existing alignment to build the new 500-kV transmission.

The MMRT Project is part of a portfolio of long-range electric transmission projects identified by the regional grid operator, MISO, to improve reliability and make the grid more resilient during extreme weather, and ensure continued service to the electricity they need as new generation plants are retired and new wind and solar energy investments are built.

Project status

On October 3, 2024, the Minnesota Public Utilities Commission (PUC) approved the scope of the Environmental Impact Statement (EIS) that will be prepared for the proposed project. As part of this process, new transmission line route options and system alternatives will be studied, along with the routes originally proposed in the combined Certificate of Need and Route Permit Application filed in early 2024.

You are receiving this notice because your property is located either on one of the newly added routes or one of the originally proposed routes. A map of all routes under consideration is included in this notice.

Next steps and opportunities for public comments

The Minnesota Department of Commerce – Energy, Environment and Analysis (DEEA) is expected to publish the Draft EIS for the project in the spring of 2025. A comment period will then be opened after the Draft EIS is published.

Public hearings will be conducted in the project area where landowners, local officials, and other stakeholders can provide comments about the project. Comments will be accepted on the Certificate of Need, Route Permit Application, any aspects of the route alignment under consideration, and the information contained in the Draft EIS. Both in-person and virtual hearings will be held.

The location, date and time of the hearings have not yet been determined. We will post the public hearing schedule on the MMRT Project website (mmrtproject.com) after it has been finalized and send you the State of Minnesota draft to schedule the hearing date and location.

DEEA will prepare the Final EIS for the project after the comment period closes, and public advisory hearings are completed. Additional public and other stakeholder comments

Submitting comments

After the EIS is filed, the PUC will accept public comments regarding the proposed project and the Draft EIS. The PUC will announce the deadline for written comments when the Draft EIS is released. You may submit comments to any of the following: (1) DEEA (please include contact numbers CH-555 and TR-555) or your comments to ensure they are included in the record proceeding;

- Email comments to Rich Davis, Environmental Review Manager with the Minnesota Department of Commerce, at rich.davis@state.mn.us. You may also email State Permit staff: statepermit@state.mn.us and statepermit@state.mn.us
- Submit comments online to <https://www.mn.gov/submitcomment>
- Attend public hearings, including the following address: Minnesota Department of Commerce, 430 Nicollet Mall, Suite 200, St. Paul, MN 55401

Contact Xcel Energy

If you have questions about the project or the regulatory process, please contact us by calling a toll-free 1-800-822-5555 or by sending an email to mmrt@xcelenergy.com. You may also submit questions to mmrt@xcelenergy.com. For more information about the project, please visit mmrtproject.com.

Transmission Line Information

It's my understanding that Dept. of Commerce-EERA notices to potentially affected landowners lead with a "your land may be affected" in attention grabbing **bold** and/or CAPS.¹ Commenters at public meetings/hearings often note that applicant mailings are like campaign lit or equally unwanted direct mail advertisements, items that go directly into recycling buckets. Though appreciated, applicant mailings aren't a substitute for EERA notice.

It's good to know Xcel sent out notice, but timing remains an issue due to mailing after the Intervention deadline had passed, and Xcel's mailing was a generic mailing to both original and newly affected landowners. Xcel's diligence doesn't alleviate Commerce-EERA's notice failure or the Asst. A.G.'s abject disregard of due process and property rights, stating "*the notice to newly affected landowners is a courtesy, not a legal obligation.*" See U.S. Constitution, 14th Amendment, Section 1; see also Minnesota Constitution, Article 1, Section 7. Does this really need to be stated?

Newly affected landowners have not had attention grabbing particularized notice nor have they had a reasonable chance to learn about and prepare for meaningful and effective participation. How will this be fixed in a way that graciously opens the door, encourages participation, and sufficiently informs the landowners and provides process such that they can exercise their rights? It's my guess that we need a plan and a reasonable delay, Certified to the Commission, to make up for notice deficiencies, encourage that "broad spectrum of public participation," and provide necessary due process.

Very truly yours,



Carol A. Overland
Attorney at Law

cc: Nancy Prehn, The Prehn Family
eService on all Parties via eDockets

¹ Admittedly, I may be confusing this with the notice requirements in the rulemaking proceeding that we hammered out in nine years of meetings and comments over a decade ago which was tossed out by the Commission. E,ET,IPP-999/R-12-1246 Sufficiency of notice was a primary issue then and now.