



Staff Briefing Papers

Meeting Date: November 30, 2023

Agenda Item **3

Company: Dairyland Power Cooperative

Docket No: **ET3/TL-23-388**

In the Matter of Dairyland Power Cooperative's Application to Relocate an Existing 161-kV Transmission Line in Wabasha County, Minnesota

Issue(s):

- Is a certificate of need required under Minn. Stat. § 216B.243 for Dairyland's proposed 161-kV transmission line relocation project?

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Relevant Documents	Document ID	Date
Dairyland Power Cooperative, Status Update	20239-199018-02	9/18/2023
Dairyland Power Cooperative, Petition	202310-199520-02	10/11/2023
PUC, Notice of Comment Period	202310-199600-01	10/13/2023
DOC, Comments	202311-200104-01	11/1/2023
IUOE Local 49 And NCSRC of Carpenters, Comments	202311-200200-01	11/2/2023
Dairyland Power Cooperative, Status Update	202311-200187-02	11/2/2023
Dairyland Power Cooperative, Reply Comments	202311-200381-02	11/9/2023

BACKGROUND

Dairyland's existing LQ34 161-kV circuit is one of four 161 kV transmission lines that have been supplying power to local communities in the Rochester/La Crosse area for decades. In 2012, the Commission approved a route permit for the CapX2020 Hampton-Rochester-La Crosse 345-kV Project (CapX2020 Project). For approximately 13-miles between the communities of Plainville and Kellogg, the CapX2020 Project was co-located with the LQ34 line as a double circuit (161-/345-kV) transmission line carrying both the Dairyland 161-kV line and the CapX2020 345-kV line. However, recognizing future capacity needs, the CapX2020 Project was "upsized" at approval and constructed to be capable of carrying two circuits of 345-kV lines, with the Commission recognizing at that time that the 161-kV circuit would need to move off the CapX2020 Project at some future date.

In July 2020, the Midwest Independent System Operator (MISO) approved a long-range transmission planning (LRTP) portfolio including a new Wilmarth-North Rochester-Tremval transmission line (now referred to as the Mankato to Mississippi 345kV Transmission Project). This new 345-kV line would utilize the double circuit capability of the CapX2020 system between North Rochester, Minnesota, and Alma, Wisconsin. Therefore, the 161-kV circuit must be removed and relocated from the CapX2020 structures to allow the second circuit to be operated at 345 kV.

On September 18, 2023, Dairyland Power Cooperative (Dairyland) submitted a status report per the Commission's March 2023 request to receive updates from all projects in the MISO LRTP Tranche 1 Portfolio. The status report stated that the anticipated submission date of a route permit application is on or before April 2, 2024. It also stated that the in-service date, per MISO's 2021 Transmission Expansion Plan (MTEP21) report, is June 2028.

On October 11, 2023, Dairyland Power Cooperative (Dairyland) filed a petition with the Minnesota Public Utilities Commission (Commission) requesting clarification of whether a certificate of need under Minn. Stat. § 216B.243 is required for Dairyland's proposed 161 kilovolt transmission line relocation project in Wabasha County, Minnesota. Dairyland's petition also requested that the Commission resolve its petition on an expedited basis consistent with Minn. R. 7829.1275.

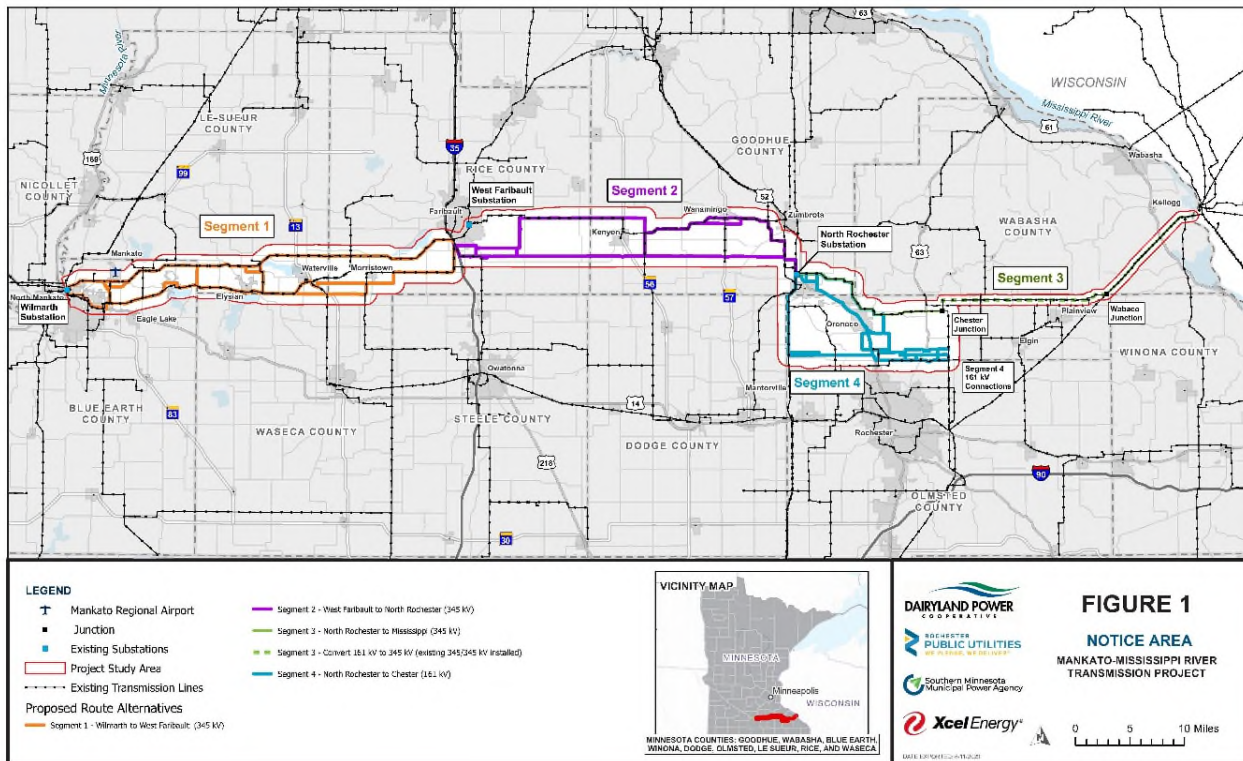
On October 13, 2023, the Commission issued a notice of comment period, with initial comments were due by November 2nd and reply comments were due by November 9th.

On November 1, 2023, the Department of Commerce (DOC) filed comments on the question of a certificate of need (CN) requirement.

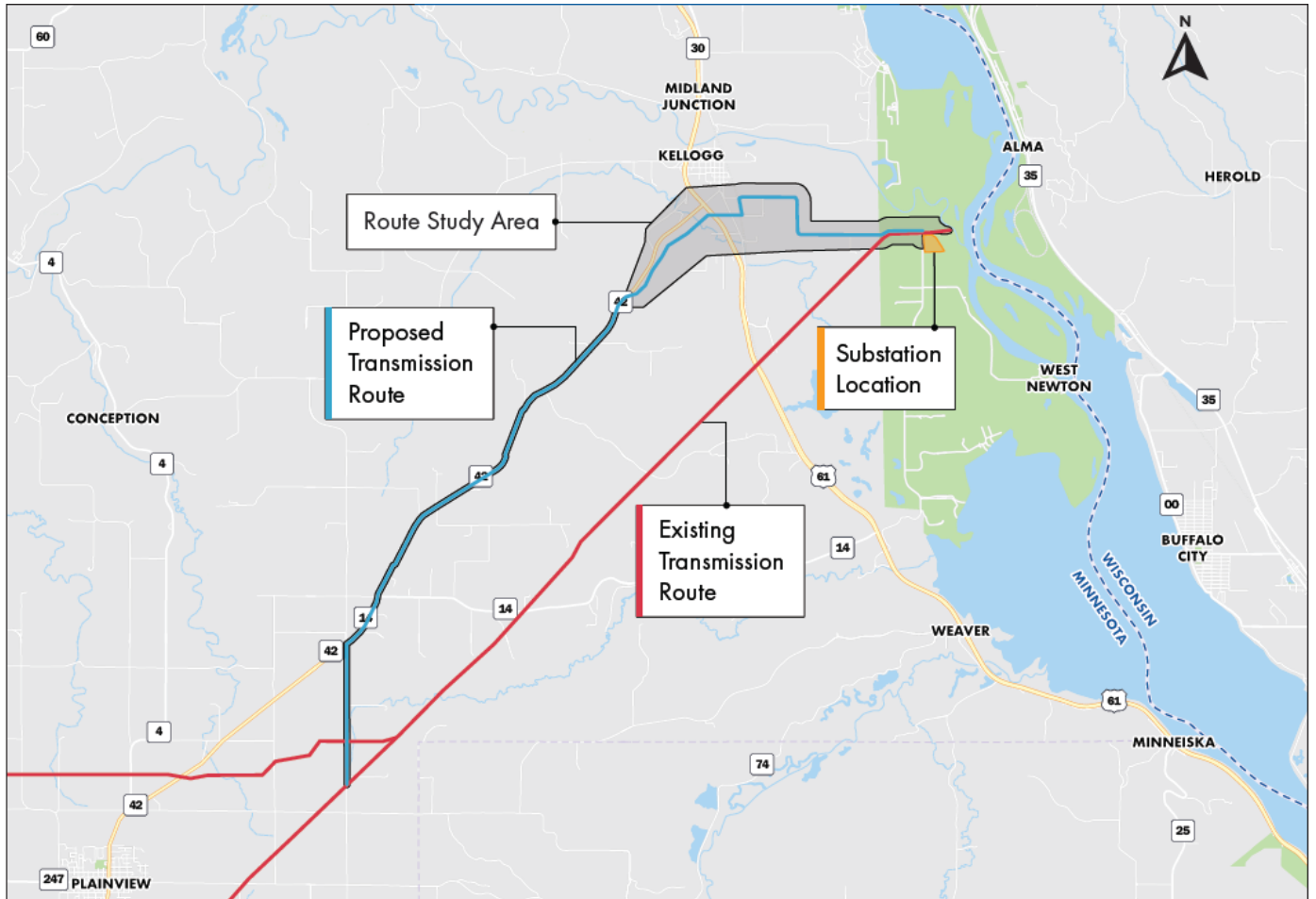
On November 2, 2023, Dairyland submitted a status report. There were no action item updates. Dairyland noted there is to be a public open house in Kellogg to gather community input on the new route of the transmission line.

On November 2, 2023 Operating Engineers Local 49 and North Central States Regional Council of Carpenters (the labor unions) submitted comments.

On November 9, 2023 Dairyland submitted reply comments.



The proposed relocated 161kv line is currently double-circuited alongside a 354kv line in Segment 3.



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STATUTES AND RULES

Certificate of Need for Large Energy Facility

Under Minn. Stat. § 216B.243, Subd. 2. no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need (CN) by the Commission.² The definition of a "Large energy facility" includes: any large high-voltage transmission lines (LHVTL) with a capacity of 100 kilovolts or more with more than ten miles of its length in Minnesota or that crosses a state line.³ The proposed project will relocate approximately 10.4 miles of 161 kV line and therefore is a large energy facility.

In Minn. Stat. § 216B.243 subd. 8, which lists potential exemptions to a CN requirement for large energy facilities, there is no mention of relocation as a candidate for exemption.

Minn. R. 7849.0030 implements the statute, which states that a CN is required for any:

1. new LHVTL
2. expansion of an existing LHVTL only when "the expansion is itself of sufficient size to come within the definition of a LHVTL."

PROJECT OVERVIEW

On September 18, 2023, Dairyland Power Cooperative (Dairyland) notified the Commission of plans to file a route permit application under the alternative review process for a 161-kV Relocation Project.⁴ The proposed Project will relocate an existing 10.4 mile 161-kV line to a new proposed 14-mile transmission line route. Once relocated, the 161 kV Relocation Project will otherwise operate at the same voltage and specifications as the current line. The Relocation Project includes relocating about 14 miles of 161-kilovolt (kV) transmission line between Plainview, Minn., and Greenfield Township in Wabasha County, Minn. It also includes building a new substation east of the city of Kellogg, Minn. Dairyland proposes to file a route permit application on or before April 2, 2024, and is seeking clarification on whether they must also apply for a certificate of need (CN) under Minn. Stat. § 216B.243.

The purpose of the proposed relocation project is to make room for the new 345-kV MISO-approved Mankato to Mississippi transmission project, which would utilize the double circuit capability of the CapX2020 system between North Rochester, Minnesota, and Alma, Wisconsin.

² Minn. Stat. § 216B.243. subd. 2

³ Minn. Stat. § 216B.2421, subd. 2(3)

⁴ Status Update to MPUC (9/18/2023) – Dairyland Power Cooperative, doc id: [20239-199018-02](#)

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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.

Therefore, the 161-kV circuit must be removed and relocated from the CapX2020 structures to allow the second circuit to be operated at 345-kV. Currently, the Dairyland 161-kV line is co-located alongside 10.4 miles of the Hampton-Rochester-La Crosse 345-kV line (CapX2020 Project). However, the CapX2020 Project was constructed to be capable of carrying two circuits of 345-kV lines. Dairyland's proposed relocation project must be completed before the proposed Mankato to Mississippi 345-kV line project (docket no. 22-532) can begin construction, the latter of which has been studied, reviewed, and approved as part of the Long-Range Transmission Plan Tranche 1 Portfolio by the Midcontinent Independent System Operator.

Under Minn. Stat. § 216B.243, a certificate of need (CN) is required for any high-voltage transmission line with a capacity of 100 kilovolts or more with more than ten miles of its length in Minnesota or that crosses a state line. Pursuant to Minn. Stat. §§ 216A.05, 216B.08, 216B.243, and Minn. R. 7829.1300, Dairyland is asserting, among other arguments, that because the proposed Project is a relocated line that will be built and operated at the pre-existing 161 kV capacity, the Project is not a "new" or "expanded" transmission line. They also argue that the "Commission previously authorized the rebuild of an existing transmission line over 10 miles in length without a CN, presumably based on the same considerations."⁵ Dairyland plans to file a route permit application by April 2, 2024 under the alternative review process for this 161 kV Relocation Project. The project is anticipated to be in service by June 2028.

COMMENTS

Department of Commerce – 11/01/2023

The Department submitted comments that address two main points:

1. Minnesota Rule 7849.0030 does not exempt Dairyland from the requirement to obtain a Certificate of Need.
2. The Commission granted Dairyland a Certificate of Need to relocate the 161-kV Transmission Line during the prior CapX Proceeding.

Minnesota Rule 7849.0030 does not exempt Dairyland from the requirement to obtain a Certificate of Need

The DOC stated that Dairyland's argument is "inconsistent with the plain meaning of the applicable statutory and rule provisions.", and that this relocation of a transmission line is new because it "will be located along a new route corridor where the line did not previously exist and will use new materials." They also stated that even "if the Commission concludes the rule is ambiguous, it should not interpret the term "new" within Minn. R. 7849.0030 to encompass "substitute" or "replacement" facilities... Conflating "substitute" or "replacement" with "new" is unreasonable because it allows the exception to swallow the statutory requirement that certificates of need are required for large energy facilities."

⁵ Petition, page 7 (10/11/2023) – Dairyland Power Cooperative, doc id: 202310-199520-02

The Department also commented on one of the purposes of the rule, which is to evaluate demand and the tools available to address it. “But this need evaluation will not occur if an applicant is allowed to rely on a decades-old certificate that was issued under materially different circumstances.” The Department stated that exemptions to the rule are meant for maintenance or repairs to a facility.⁶

The Commission granted Dairyland a Certificate of Need to Relocate the 161-kV Transmission Line During the Prior CapX Proceeding

The DOC contends that even though this relocation project is not exempt from Minn. R. 7849.0030, the Commission should “conclude it granted Dairyland a certificate of need to relocate the 161-kv transmission line during the prior CapX proceeding.”

The Department asserted that during the CapX certificate of need proceedings, “Dairyland and Xcel proposed to double-circuit their respective 161-kV and 345-kV transmission lines. They also proposed to relocate Dairyland’s 161-kV transmission line in the future to accommodate energy demand growth that would necessitate operating a second 345-kV circuit. The Commission approved this arrangement, granting the parties a certificate of need in 2009.”

The Department offered another option should the Commission make a different determination: make a CN determination for this relocation project during Xcel Energy’s certificate of need proceeding for the Mankato – Mississippi River Transmission Project (docket id: [22-532](#)) however the Department’s “preference and recommendation... is to find that Dairyland already has the requisite certificate of need for the relocation.”⁷

Comments from Operating Engineers Local 49 and North Central States Regional Council of Carpenters 11/2/2023

The Labor Unions submitted comments agreeing with Dairyland’s petition that a CN is not needed for this project. They also “applaud the Public Utilities Commission’s (Commission) recent creation of a permitting reform task force” and asserted that the Commission’s willingness to clarify whether a CN is “needed for line relocations in this and similar situations would be a good first step to ensuring that we are not tying up permitting resources unnecessarily.”⁸

Reply Comments from Dairyland Power Cooperative 11/9/2023

Dairyland submitted comments in reply to the Department of Commerce and Labor Union’s comments. They posit that the Commission should clarify that a CN is not required for reasons shared by the commenting parties:

1. The underlying record supports a finding that the commission previously approved

⁶ Comments (11/01/2023) – DOC, doc id: [202311-200104-01](#)

⁷ Ibid. page 7

⁸ Comments (11/02/2023) – IUOE Local 49 And NCSRC Of Carpenters, doc id: [202311-200200-01](#)

relocating the 161 kV Line.

- a. In the CapX2020 Project CN docket, “Dairyland and Xcel proposed to double-circuit the 161 kV and 345 kV transmission lines, and also contemplated eventual relocation of Dairyland’s 161 kV line to accommodate future demands on the transmission system.”⁹
- b. Because a CN was granted for the CapX2020 project, the Commission therefore considered and approved the possibility of a relocation.
2. It is reasonable to find that a CN is not required for a relocation under Minn. R. 7849.0030
 - a. While reiterating the language in Minn. R. 7849.0030, subp. 1 as justifiable for not needing a CN since this project is not defined under “Facilities Covered”, Dairyland also “does not seek to carve-out a blanket exemption for “substitute” or “replacement” projects. Dairyland’s Petition intentionally did not use the term “exemption.””¹⁰
 - b. They also argued that the “Department’s suggested application of the term “new” would cover nearly every conceivable transmission project, rendering the remainder of Minn. R. 7849.0030, subp. 1 related to “expansions” superfluous.”¹¹
3. Determining that the CN statutes and rules do not apply is in the public interest and will promote efficiencies in the energy transition.
 - a. While Dairyland understands the need to constrain application of this interpretation of the CN statutes, it is possible that this situation will occur again in the future.
 - b. In addition to a CN not being required for this relocation project, Dairyland argued that “it is also in the public interest to find that applicable CN statutes and rules do not require CNs for relocation of existing transmission facilities where there is no expansion of the underlying facilities.”¹²

⁹ Reply Comments (11/09/2023) – Dairyland, doc id: 202311-200381-02

¹⁰ Ibid. page 3

¹¹ Ibid. page 4

¹² Ibid. page 5

STAFF ANALYSIS

Relocation of LHVTL Needing a CN

Staff agrees with the Department that the term “new”, in the context of Minnesota Rule 7849.0030, is not intended to be, nor should be, interpreted as a synonym for “substitute” or “replacement”, or more specifically in this case a “relocation” of a proposed project that falls under the regulatory size requirements for a CN submittal. Per the Administrative Law Judge’s Report, which the applicant and the Department both cite:

“In the Upsized Alternative, the single 345 kV circuit from Hampton Corner to North Rochester would be placed on 345 kV/345 kV double-circuit structures. Also, the 345 kV line/161 kV double-circuit from North Rochester to Alma as proposed would be constructed as a 345 kV/345 kV double-circuit line, but the second circuit would be operated at 161 kV voltage and carry the existing parallel Chester–Alma 161 kV circuits **until circumstances warrant an increase in the voltage.**”¹³

The circumstance in this case is the proposed Mankato – Mississippi River Transmission Project (CN docket number: 22-532). Staff appreciates the Department’s recommendation to accept the CN determination as previously included in the CapX proceedings. However, while the project’s eventual need to relocate was acknowledged in the CapX proceeding, staff does not believe that discussion is the equivalent of granting a certificate of need for the relocation project. Instead, staff concurs with the Department’s alternative option to incorporate the issue of the need determination for the relocation of Dairyland’s 161 kV line into the CN proceeding for the Mankato project. However, if preferred, Dairyland can submit a stand-alone CN application. The two projects, including the need to relocate the 161-kV line, are inextricably linked. Joint proceedings may make sense when assessing the projects.

Regarding Dairyland’s contention that the Commission has previously waived a CN requirement for a LHVTL for the same or similar reasons, i.e., that a relocation or rebuild is not “new”, staff argues that the project reference by Dairyland does not contain a parallel justification. The Freeborn to Hayward 161kV Transmission Line Rebuild was filed by ITC Midwest as a minor alteration: “The rebuild of the existing 161kV line will replace the current wood “H” frame structures and existing conductors. A new 440 MVA 161 kV line will be constructed using steel monopole structures. The majority of the rebuild will follow the existing transmission corridor using existing easements...” “There is one exception... this section of the line, approximately 1 mile in length, required new easements to accommodate line relocation to comply with local setback requirements adjacent to a drainage ditch.”¹⁴

¹³ Comments, Page 7 (11/01/2023)– DOC, doc id: [202311-200104-01](#)

¹⁴ Freeborn to Hayward 161kV Transmission Line Rebuild – Request for Minor Alteration Authorization (9/26/2011) doc id: [20119-66626-01](#)

DECISION OPTIONS

Certificate of Need Requirement [choose one of the following:]

1. Clarify that a CN for the relocation project was already issued in the CapX2020 proceedings. (Dairyland, DOC, Labor Unions)
2. Determine that a CN is not required for the relocation project under Minn. Stat. § 216B.243. (Dairyland)
3. Determine that a CN is needed for the relocation project and:

If option 3 is chosen, choose one of the following:

- a. Direct Dairyland to file a CN application.
- b. Determine that the need for the relocation project should be decided in conjunction with the need proceeding on Xcel's Mankato–Mississippi River Transmission Project in Docket No. E002/CN-22-532. Direct Dairyland to either (1) file a CN application for the relocation project in Docket No. 22-532 or (2) coordinate with Xcel to include the relocation project in in the forthcoming CN application for the Mankato-Mississippi River Transmission Project.

(Staff interpretation of DOC alternatives)