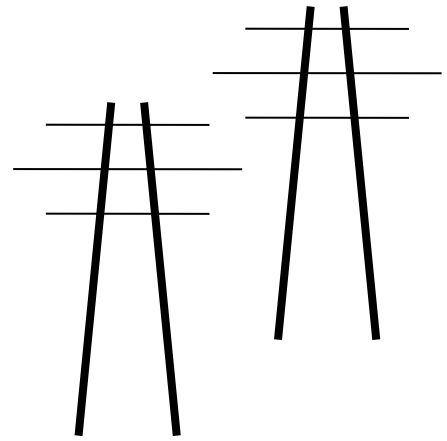


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September 1, 2015

Judge Ann O'Reilly
Office of Administrative Hearings
PO Box 64620
St. Paul, MN 55164-0620

via email and eFiling

In Re: Public Comment of RRANT
In the Matter of the Application of Minnesota Power for a Route Permit for the Great
Northern Transmission Line Project in Roseau, Lake of the Woods, Beltrami,
Koochiching and Itasca Counties
PUC Docket No.: E15/TL-14-21
OAH Docket No.: 65-2500-31637

Dear Judge O'Reilly:

Attached please find Public Comment of Residents and Ratepayers Against Not-so-Great-Northern Transmission (RRANT).

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland".

Carol A. Overland
Attorney at Law

cc: Parties and eFile Service List

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

In the Matter of the Application of Minnesota
Power for a Route Permit for the Great
Great Northern Transmission Line Project in
Roseau, Lake of the Woods, Beltrami,
Koochiching and Itasca Counties

OAH Docket No.: 65-2500-31637
PUC Docket No.: E15/TL-14-21

**RESIDENTS AND RATEPAYERS AGAINST NO-SO-GREAT-NORTHERN
TRANSMISSION (RRANT) PUBLIC COMMENT**

Residents and Ratepayers Against Not-so-Great Northern Transmission (RRANT) submits this Public Comment while awaiting an order regarding its Motion to Intervene Out-of-Time. RRANT's interest is in assuring that landowners directly affected by this project receive prompt specific notice, notifying them that their land may be directly affected – not a general public notice of a hearing, meeting, or release of DEIS. As related in its Motion for Leave to Intervene, RRANT discovered information on eDockets that certified that Notice was sent to “ADDITIONAL new landowners” on the late date of July 27, 2015. On this date, twenty four landowners were provided notice that their land may be affected by this project. There is no evidence that these landowners were provided notice at any other time, no certificate of affidavit of service provided by either the Applicants or Commerce EERA – despite several requests and time to provide documentation, there is no evidence that landowners were provided notice that they were directly affected. This failure of notice is a failure of due process and a deprivation of these landowners' due process rights.

RRANT does not take a position regarding routing, but actively wants to assure that agency comments are entered into the record as exhibits such that members of the public,

agencies, the administrative law judge and the Commission are appropriately aware of agency comments related to routing matters, and that those agency comments are considered.

I. INTRODUCTION

RRANT requests that the proposed routing segments including land owned by the 24 “ADDITIONAL new landowners” be specifically excluded from consideration for routing this project. Mindful that Minnesota statute provides that specific notice will not invalidate the routing proceedings, RRANT does not request that the proceedings be invalidated, only that these parcels not be available for routing. See Minn. Stat. § 216E.03, Subd. 4; Minn. R. 7850.2100, Subp. 6.

II. NOTICE TO LANDOWNERS TO BE PROVIDED BY APPLICANTS

There are different types of notice required when routing a transmission line. One type is project notice, provided to a landowner upon submission of an application. Another type of notice is required for informational meetings, scoping meetings and the scoping decision, DEIS comment sessions and public hearings in the routing docket, and such notice is provided by the Department of Commerce. This notice is not the type of notice at issue in this proceeding, although it seems this notice was flawed as well. The type of notice at issue is notice to landowners specifically stating that this project has been applied for and that their land may be directly affected.

A. NOTICE TO LANDOWNERS DIRECTLY AFFECTED BY PROJECT.

The black-letter law of the state of Minnesota includes requirement of notice to landowners to be provided by project applicants:

Subd. 4. Application notice.

Within 15 days after submission of an application to the commission, the applicant shall publish notice of the application in a legal newspaper of general

circulation in each county in which the site or route is proposed and send a copy of the application by certified mail to any regional development commission, county, incorporated municipality, and town in which any part of the site or route is proposed. **Within the same 15 days, the applicant shall also send a notice of the submission of the application and description of the proposed project to each owner whose property is on or adjacent to any of the proposed sites for the power plant or along any of the proposed routes for the transmission line.**

Minn. Stat. §216E.03, Subd. 4 (selected)(**emphasis added**). The Commission's rules provide a similar notice requirement:

Subp. 2. Notification to persons on general list, to local officials, and to property owners.

Within 15 days after submission of an application, the applicant shall mail written notice of the submission to the following people:

- A. those persons whose names are on the general list maintained by the PUC for this purpose;
- B. each regional development commission, county, incorporated municipality, and township in which any part of the site or route or any alternative is proposed to be located; and
- C. each owner whose property is adjacent to any of the proposed sites for a large electric power generating plant or **within any of the proposed routes for a high voltage transmission line**. For purposes of giving notice under this item, owners are those persons shown on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer, or any other list of owners approved by the commission.

Minn. R. 7850.2100, Subp. 4 (**emphasis added**). The statute and rules do not specify whether newly identified landowners on newly proposed routes be given notice under this section, and the presumption of this section is that all affected landowners would be identified in the application, and that all affected landowners would be sent notice as above. As is clear, not all affected landowners are identified, and not all identified affected landowners receive notice.

B. PROOF OF SERVICE TO DIRECTLY AFFECTED LANDOWNERS.

Proof of service of project notice falls on the Applicant:

Subp. 5. Confirmation of notice.

Within 30 days after providing the requisite notice, the applicant shall submit to the PUC documentation that all notices required under this part have been given. The applicant shall document the giving of the notice by providing the PUC with affidavits of publication or mailing and copies of the notice provided.

Minn. R. 7850.2100, Subp. 5. There is no similar requirement of “confirmation of notice” in state statute.

C. FAILURE OF SERVICE TO DIRECTLY AFFECTED LANDOWNERS.

Despite this requirement to provide notice, however, Minnesota law provides an out for failure of service:

The failure to give mailed notice to a property owner, or defects in the notice, does not invalidate the proceedings, provided a bona fide attempt to comply with this subdivision has been made.

Minn. Stat. §216E.03, Subd. 4. The rules provide a similar out for inadequate service:

Subp. 6. Failure to give notice.

The failure of the applicant to give the requisite notice does not invalidate any ongoing permit proceedings provided the applicant has made a bona fide attempt to comply, although the commission may extend the time for the public to participate if the failure has interfered with the public's right to be informed about the project.

Minn. R. 7850.2100, Subp. 6.

As to the other type of notice, for informational meetings, scoping meetings and the scoping decision, DEIS comment sessions and public hearings in the routing docket, and not landowner notice, there is indeed no requirement that Commerce give notice to landowners identified in scoping, or to give landowners notice of the scoping decision:

Within five days after the decision, the commissioner shall mail notice of the scoping decision to those persons whose names are on either the general list or the project contact list.

Minn. R. 7850.2500, Subd. 2 (selected).

D. EQUITY REQUIRES LANDOWNERS WHO DID NOT RECEIVE NOTICE BE EXEMPTED FROM ROUTING CHOICES.

Despite several requests and time to provide documentation, there is no evidence that the 24 “ADDITIONAL new landowners” were provided notice that they were directly affected. Under the laws of the state of Minnesota, failure to give notice to directly affected landowners is a failure of the applicants, but not a flaw that would render the proceedings so flawed that the Commission could not make a decision on the route. This failure of notice is a failure of due process and a deprivation of these landowners’ due process rights.

RRANT intervened in the Certificate of Need docket, and has been participating in this docket, as a watchdog of public process¹. Late notice is a recurring issue in transmission routing proceedings, and late notice is unacceptable. RRANT counsel has represented Intervenors in Commission dockets where landowners received very late notice, to their extreme detriment, and has strongly objected in those instances. In the CapX 2020 Brookings docket, the Le Sueur “Myrick Alternative” Minnesota River crossing was informally proposed during a public hearing as a means to avoid the DOT scenic easements, and then it was introduced by applicants after release of the DEIS and hearings, after completion of the routing public hearings and during the contested case, **two years after filing of the Application**. This case was remanded to the ALJ by the Commission for rehearing regarding the Minnesota River crossing.² Ultimately, another route was selected after remand.

In the CapX 2020 La Crosse docket, similarly, a route option was added through Cannon

¹ RRANT does not, and is not claiming to, represent any specific “ADDITIONAL new landowners.”

² See CapX 2020 Brookings-Hampton, 08-1474:

20107-52970-01	PUBLIC	08-1474	<input type="checkbox"/>	TL	PUC	ORDER--REMANDING TO OFFICE OF ADMINISTRATIVE HEARINGS	07/27/2010
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Falls during the time of the public hearings.³ That was also after release of the DEIS and completion of public comment on the DEIS. At that time, No CapX 2020 filed a Motion to Extend Intervention Deadline to give landowners an opportunity to participate.⁴ No CapX 2020's Motion was denied.⁵ The Commission selected a route over those landowners land and St. Paul's Lutheran Church and School and Cannon Falls Landowners filed a Motion for Reconsideration⁶ which was denied, and it was then appealed⁷ and the Commission's decision affirmed. That part of the CapX 2020 project is under construction over those landowners' land, landowners who did not receive notice that they would or could be directly affected until the last days of the public hearing.

3

20116-63548-01	PUBLIC	09-1448	<input type="checkbox"/>	TL	NORTHERN STATES POWER COMPANY	LETTER--AFFIDAVIT OF MAILING POTENTIAL ALIGNMENT HWY 19	06/14/2011
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4

20116-63772-01	PUBLIC	09-1448	<input type="checkbox"/>	TL	NOCAPX2020 AND UCAN	MOTION---TO EXTEND INTERVENTION DEADLINE	06/17/2011
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5

20116-64296-01	PUBLIC	09-1448	<input type="checkbox"/>	TL	OAH	ORDER--ORDER ON MOTION REGARDING FINAL ENVIRONMENTAL IMPACT STATEMENTS AND MOTION TO EXTEND INTERVENTION DEADLINE	06/30/2011
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6

20126-75809-01	PUBLIC	09-1448	<input type="checkbox"/>	TL	ST. PAULS LUTHERAN CHURCH AND SCHOOL AND CANNON FALLS LANDOWNERS	MOTION--ST PAULS LUTHERAN SCHOOL AND CHURCH AND CANNON FALLS LANDOWNERS MOTION FOR RECONSIDERATION	06/19/2012
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7

20129-78637-01	PUBLIC	09-1448	<input type="checkbox"/>	TL	RELATOR ST. PAUL'S LUTHERAN SCHOOL AND CHURCH AND CANNON FALLS LANDOWNERS	OTHER--WRIT	09/13/2012
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Late notice, and late notice which deprives landowners of their opportunity to participate and circumvents their due process rights, is not acceptable.⁸ There is no legal or moral basis for going forward with a routing decision from a pool of proposed routes that include these parcels for routing consideration. RRANT requests that these parcels of the 24 “ADDITIONAL new landowners” be removed from consideration for routing the Great Northern Transmission Line.

III. AGENCY COMMENTS MUST BE INCLUDED IN THE HEARING RECORD

By Order of the Administrative Law Judge in this docket, Agency Comments were included in the hearing record, specifically Exhibit 281 – DNR Comments; Exhibit 282 – DOT Comments; and Exhibit 283 – USFWS Comments. This was requested because at the August 12, 2015, hearing in Grand Rapids, it was discovered that the comments of agencies were only included in the EIS record and would not become part of the hearing record until the release of the FEIS, and they would be relegated to an Appendix of the FEIS.

Agency Comments should be exhibits, made available to parties, the public, the ALJ, and the Commission, for three reasons:

- The FEIS is not due to be released until October 1, 2015, one month after public comments are due. The public will not have this information front and center for review and inclusion in public comments.
- The FEIS is not due to be released until October 1, 2015, after party Initial Briefs are due and agency comments not part of the hearing record cannot be addressed in briefs.
- If they are not readily available and part of the record, these Comments may not be sufficiently considered for the Recommendation and Commission decision.

An example of why these agency Comments are important is also found in this docket, as

⁸ Due to history of parties receiving late notice and then being subjected to a Commission Order routing over their land, leading to remands and appeals, this issue has been a focus of the Commission’s Minn. Ch. 7850 rulemaking docket, and Commission rulemaking drafts address this specific issue. For more information, see PUC Docket 12-1246.

revealed at the August 12, 2015 hearing, where an “Effie Route” alternative was developed, one supported by several members of the public and local governments, but disfavored by the Applicant, which that it should not be further considered. Alternately, the DNR has actively requested additional information be developed about this alternative because of the sensitive areas that other alternatives would pass through. Without inclusion of the DNR Comments in the record, we would not be aware of this comment and the DNR’s request for further information.

Further, there are additional DNR Comments that were filed September 1, 2015, that should also be included as exhibits, perhaps adding to Exhibit 281, to fully inform the record:

20159-113683-02	PUBLIC	14-21	<input type="checkbox"/>	TL	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	COMMENTS--APPLICATION COMMENTS ENCLOSURE	09/01/2015
20159-113683-04	PUBLIC	14-21	<input type="checkbox"/>	TL	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	COMMENTS--DEIS COMMENTS ENCLOSURE	09/01/2015
20159-113683-01	PUBLIC	14-21	<input type="checkbox"/>	TL	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	COMMENTS--COMMENTS GREAT NORTHERN TRANSMISSION LINE ROUTE PERMIT	09/01/2015
20159-113683-03	PUBLIC	14-21	<input type="checkbox"/>	TL	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	COMMENTS--EARLY COORDINATION ENCLOSURE	09/01/2015

The documents added to the record as Ordered at the August 12, 2015 public hearing were denoted as Exhibit 281 – DNR Comments; Exhibit 282 – DOT Comments; and Exhibit 283 – USFWS Comments, and had been previously eFiled as follows:

20158-113095-03	PUBLIC	14-21	<input type="checkbox"/>	TL	MINNESOTA DEPARTMENT OF NATURAL	COMMENTS--WCA ATTACHMENT	08/07/2015
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					RESOURCES		
20158-113095-02	PUBLIC	14-21	<input type="checkbox"/>	TL	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	COMMENTS-- COMMENT LETTER FOR APPLICATION	08/07/2015
20158-113095-01	PUBLIC	14-21	<input type="checkbox"/>	TL	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	COMMENTS-- COMMENT LETTER FOR DEIS	08/07/2015
201411-105005-01	PUBLIC	14-21	<input type="checkbox"/>	TL	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	LETTER--RESPONSE TO SCOPING SUMMARY REPORT	11/26/2014
20148-102320-01	PUBLIC	14-21	<input type="checkbox"/>	TL	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	COMMENTS	08/15/2014
20148-102320-04	PUBLIC	14-21	<input type="checkbox"/>	TL	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	COMMENTS--SMA PLAN	08/15/2014
20148-102320-02	PUBLIC	14-21	<input type="checkbox"/>	TL	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	COMMENTS--ROSEAU COUNTY MAP	08/15/2014
20148-102320-03	PUBLIC	14-21	<input type="checkbox"/>	TL	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	COMMENTS--LOTW COUNTY ROUTE SEGMENT ALTERNATIVES RESOURCES MAP	08/15/2014
20158-113130-01	PUBLIC	14-21	<input type="checkbox"/>	TL	MNDOT	COMMENTS	08/10/2015
20148-102265-01	PUBLIC	14-21	<input type="checkbox"/>	TL	MNDOT	COMMENTS	08/14/2014
201412-105102-01	PUBLIC	14-21	<input type="checkbox"/>	CN	US FISH & WILDLIFE SERVICE	LETTER--ROUTE ALTERNATIVE RECOMMENDATIONS	12/02/2014

It appears that these have now all been included in the record as Exhibits 281, 282, and 283.

Two of the DNR letters, [20158-113095-02](#) filed 8/7/2015, and [20148-102320-01](#) filed 8/15/2014, are identical, and thus only one enclosed one hard copy of that document was enclosed for filing.

RRANT is appreciative of inclusion of these state and federal Agency Comments part of the hearing record. Through a more complete record, this simple step can provide information that would be helpful in avoiding remands and appeals in this case and in the future.



Dated: September 1, 2015

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