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RE: USDA Rural Utilities Service EIS Scoping for the CapX2020 La Crosse Project

Dear Ms. Strength:

I represent Citizens Energy Task Force (“CETF”), a grassroots organization dedicated to fostering an energy future based on renewable energy, dispersed local energy sources, conservation, and efficient use and sizing of transmission improvements to reduce the adverse environmental, human and socioeconomic impacts of high voltage power lines. This letter provides our comments on the scope of the Environmental Impact Statement (“EIS”) for the CapX2020 La Crosse Project.

We understand that this EIS will be used to evaluate whether the United States Department of Agriculture Rural Utilities Service (“RUS”) should provide or reject financing of the 11 percent ownership share that Dairyland Power Corporation (“Dairyland”) has in the proposed CapX2020 La Crosse Project, including an ultra high voltage 345 kV power line from the Twin Cities Area in Minnesota to the La Crosse Area in Wisconsin. Although neither the Alternative Evaluation Study (“AES”) nor the Macro-Corridor Study (“MCS”) for the Project specified the level of financing requested, since the project cost is from \$380-430 million in 2007 dollars (AES, 1-7), requested RUS financing could exceed \$50 million.

We also understand that this EIS will be used to evaluate whether the United States Fish and Wildlife Service (“USFWS”) should issue or deny a Special Use Permit for crossing the Upper Mississippi River National Wildlife and Fish Refuge, given that any routing of the proposed 345 kV power line crossing the National Wildlife Refuge would require expansion of existing right-of-way width to be viable. The USFWS will participate as a cooperating agency in the National Environmental Policy Act (“NEPA”) review of the Proposal and is copied on this letter.

CETF has been a party to Minnesota Certificate of Need proceedings pertaining to the CapX2020 power lines, including the La Crosse Project.<sup>1</sup> These comments rely on evidence disclosed in the MN/CON hearings and evidence newly-discovered after trial pertaining to the La Crosse Project as well as the filings made by Dairyland to the RUS. CETF has the following concerns and comments regarding the scope of the EIS for the La Crosse Project Proposal:

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<sup>1</sup> *In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and others for Certificates of Need for the Cap X 345-kV Transmission Projects*, PUC Docket No. CN-06-1115 (“MN/CON Proceeding”).

1. The Proposal described in the AES and the MCS may not fall within the mission and authority applicable to RUS financing. The EIS should examine in detail whether the primary purpose of the La Crosse Project is to serve private power suppliers or consumers who are not Rural Electrification Act beneficiaries.
2. There is no engineering study that demonstrates the need for the La Crosse Project for regional reliability through 2020 given actual declines in peak demand for electricity and reasonable forecasts based on actual 2008 demand. The EIS should independently evaluate all load forecasts pertaining to claimed need for the Project in keeping with RUS regulations.
3. There are reasonable alternatives to the Proposal described in the AES, the MCS and their Appendices. The EIS should evaluate alternatives identified in these Comments, including specific local generation and 161 kV transmission improvements that avoid impacts on the National Wildlife Refuge and other protected natural resources while providing local community reliability.
4. The MCS appears to review Minnesota and Federal rules and policies protecting national parks and wildlife areas as considerations only for routing. The EIS should explicitly consider selection of reasonable alternatives to the La Crosse Project, once conflicts with these rules and policies have been identified.
5. Neither the AES nor the MCS describe the Proposal in sufficient detail for members of the public or decision-makers to understand the nature of the La Crosse Project. The EIS should provide detailed information and illustration regarding the size, configuration and characteristics of the Project.
6. Neither the AES nor the MCS describe the adverse impacts of the Proposal on the natural and human environment, including socioeconomic impacts. The EIS must analyze the adverse impacts of the CapX2020 La Crosse Project on the natural and human environment, including potential health and socioeconomic impacts.

CETF's concerns and requests for information and analysis in the EIS before either a USDA RUS federal financing subsidy or a USFWS Special Use Permit are granted for the La Crosse Project are detailed below.

1. **Analysis of the CapX2020 La Crosse Project primary purpose as compared with RUS financing authority to serve Rural Electrification Act beneficiaries.**

The claimed need for the La Crosse Project Proposal is to maintain reliable community service, improve regional electric system reliability and support generation development. (AES, 1-1). The regional demand asserted is to "meet several thousand megawatts ("MW") of additional demand for electric power anticipated in Minnesota, Wisconsin and parts of surrounding states between the years 2009 and 2020." (AES, 1-3).

The claim that the Proposal would support renewable generation in southeastern Minnesota (AES, 1-3) is neither specific nor supported by the record in the MN/CON Proceedings. In the Certificate of Need Proceedings, the Minnesota Office of Energy Security expert witness concluded, "The Applicants did not make a firm claim that they were going to get generation outlet due to the project." (MN/CON, Tr. V. 25, p. 68 ll.16-19 (Rakow)). No number for generation outlet capacity resulting from the La Crosse Project was identified in the CapX2020 filings or testimony, the AES, the MCS or the Southeastern Minnesota – Southwestern Wisconsin Reliability Enhancement Study of March 13, 2006 ("SE MN/SW WI

Study”) contained in AES Appendix (“Apx.”) A-2.

The community reliability need asserted in the AES is for the Rochester and Winona/La Crosse areas. The City of Rochester had a population of over 102,000 in 2007, according to the Minnesota State demographer, while its MSA population was estimated by the United States Census Bureau in 2007 as over 180,000. The population of La Crosse was 51,818 in the 2000 census. The urban population of Winona is estimated at 25,074 (all inside urban clusters) with a rural population of 1,652. (<http://www.city-data.com/housing/houses-Winona-Minnesota.html>).

It is questionable whether the needs asserted for the La Crosse Project fall within the authority of RUS financing. The Rural Electrification Act of 1936 provided federal funding for installation of electrical distribution systems to serve rural areas of the United States. At the time the act was passed, electricity was commonplace in cities, but largely unavailable in farms and other rural areas. When the USDA was reorganized in 1994, the Rural Electrification Administration became the Rural Utilities Service. In addition to helping rural areas obtain electric and phone service, RUS has helped more than 20,000 rural communities obtain modern water systems.

Statutes, rules and judicial precedent pertaining to the RUS limit the authority of the RUS to financing that improves electric service in rural areas and serves Rural Electrification Act (“RE Act”) beneficiaries. The Rural Electrification Act provides:

The Secretary of Agriculture. . . is authorized and empowered to make loans in the several States and Territories of the United States for rural electrification and for the purpose of furnishing and improving electric and telephone service in rural areas, as provided in this Act, and for the purpose of assisting electric borrowers to implement demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems. 7 U.S.C.S. §902, *see also* 7 U.S.C.S. §904.

Implementing regulations define an RE Act “beneficiary” as “ a person, business, or other entity that is located in a rural area.” 7 C.F.R. §1710.2. Loan funds may only be used for the purchase of an ownership interest in transmission facilities “to serve RE Act beneficiaries.” 7 C.F.R. §1710.106(a)(2)(ii). The Regulations clearly state “RUS will not make loans to finance . . . facilities to serve consumers who are not RE Act beneficiaries unless those facilities are necessary and incidental to providing or improving electrical service in rural areas.” 7 C.F.R. 1710.106(c)(2). This limit on RUS financing is explained in 7 C.F.R. §1710.104:

**Service to Non-RE Act beneficiaries.**

(a) To the greatest extent practical, loans are limited to providing and improving electric facilities to serve consumers that are RE Act beneficiaries. When it is determined by the Administrator to be necessary in order to furnish or improve electric service in rural areas, loans may, under certain circumstances, be made to finance electric facilities to serve consumers that are not RE Act beneficiaries.

(b) Loan funds may be approved for facilities to serve non-RE Act beneficiaries only if:

(1) The primary purpose of the loan is to furnish or improve service for RE Act beneficiaries; and

(2) The use of loan funds to serve non-RE Act beneficiaries is necessary and incidental to the primary purpose of the loan.

As explained in the AES, the MCS and the thousands of pages of MN/CON Proceedings, the primary purpose of the La Crosse Project is to serve non-RE Act beneficiaries. To the extent

that any benefit may be realized by rural area consumers, that benefit is incidental to the primary purposes of the Proposal.

Any advantage or disadvantage that might accrue to Xcel Energy or other private power suppliers involved in the CapX2020 projects if a loan is denied by the RUS is outside the scope of concern for the RUS. As explained by the Eighth Circuit in REA v. NSP, 373 F.2d 686, 696 (8<sup>th</sup> Cir. 1967), *writ of certiorari denied* 387 U.S. 945 (1967), the federal program under the RE Act is specifically for the benefit of rural families to have modern and efficient electrical facilities; it is not to serve the interests of private power suppliers.

Dairyland is obligated under the CapX2020 Project Development Agreement with Xcel Energy and other utilities to facilitate the development of the CapX2020 projects, including granting or issuance of critical permits. (MN/CON Ex. 1, Apx. B-2 (Application), p. 9). However, Dairyland is authorized to withdraw from the CapX2020 Project any time before March 31, 2010 if, despite its commercially reasonable efforts, Dairyland has not secured RUS financing. (*Id.*, p. 13).

**2. Analysis of regional need given declines in peak energy demand, conservation, reasonable load forecasts and applicable regulations.**

CETF believes that the asserted regional need for the CapX2020 power lines over a multi-state area, serving loads in far-flung large urban centers is outside the scope and authority of the RUS. Most of the customers and loads to be served by the CapX2020 projects are non-RE Act beneficiaries, rather than rural customers.

In addition, given actual declines in peak demand for electricity, conservation requirements enacted in Minnesota in 2007, and reasonable forecasts based on demand, the projected demand load in 2020 falls below the lowest threshold justified in any CapX2020 engineering study. The EIS should scrutinize, based on RUS regulatory criteria, whether Dairyland has met the minimum requirements for methods, procedures, data and analysis required for forecasts by borrowers.

The primary analysis of regional need provided by Dairyland relies upon the Vision Plan developed by the CapX2020 prior to 2005. (AES 2-4, AES Apx. A-1, p. 1). The Vision Plan performed an engineering study of regional needs across Minnesota and neighboring states, based on an assumption that peak electric demand would grow 2.49 percent annually compounded from 2009 to 2020, thus increasing by 6,300 MW. (AES Apx. A-1, p. 5). The Vision Plan also performed a “slow growth” sensitivity analysis with a 4,500 MW increase between 2009 and 2020. The scaled down demand load forecasted under this model was projected in the Vision Plan to be 24,701 MW in 2020. (AES Apx. A-1, p. 28).

In the MN/CON Proceeding, the Administrative Law Judge (“ALJ”) emphasized this lower boundary for the CapX2020 engineering analysis in her Findings, each of which were adopted in the Order of the Minnesota Public Utilities Commission certifying the CapX2020 facilities. The ALJ relied on evidence available at the time of the hearing, which suggested regional load in 2020 would exceed this 24,701 MW threshold. “Each forecast in the record is at or above the 24,701 MW slow-growth forecast in the Vision Plan upon which the engineering analysis was conducted.” (MN/CON Proceeding, ALJ Report, Finding 179)

Since the MN/CON hearing concluded, Xcel Energy, which represents over 40 percent of the regional need identified by the CapX2020 utilities, has prepared up-to-date forecasts, admitted as evidence in other Minnesota administrative proceedings. Xcel’s current forecast modifies the data provided by Applicants in the MN/CON Proceeding and demonstrates that the 2020

CapX2020 load will almost certainly fall below the lowest level for which an engineering study was done indicating that the La Crosse Project was needed for regional reliability.

The most recent forecast provided by Applicants for the MN/CON hearings was submitted in Ex. 51, a March 2008 response to discovery. In the median (medium) forecast in Ex. 51, the total load in the CapX2020 region was forecasted to be 25,708 MW in 2020, with a peak demand for Xcel Energy of 11,176 MW.

However, Xcel's most recent forecasts project a peak demand in 2020 of 9,896 MW, reducing 2020 load in the CapX2020 region by 1280 MW.<sup>2</sup> This adjustment alone brings forecasted regional demand in 2020 to 24,428 MW -- below the threshold studied in the Vision Plan.

In addition, Applicants acknowledged that their Ex. 51 forecasts did not fully take into account the 2007 Minnesota 1.5 percent energy conservation policy enacted in Minn. Stat. §216B.2401. (MN/CON Proceedings, Tr. V. 4, p. 49 (Lacey)). Reduction of forecasts to reflect compliance with Minnesota's 1.5 percent conservation policy could reduce projected load in 2020 by another 1,000 MW.<sup>3</sup>

*Figure 1 – Effect of Decline in Demand (Xcel) and Conservation on CapX2020 Regional Demand Load in 2020*

	<b>2009</b>	<b>2020</b>
<b>Xcel Median IRP Forecast</b> (MN/CON Ex. 51)	9,881 MW	11,176 MW
<b>Xcel Current Demand Forecast</b> (PINGP Uprate/CON Ex. 146, 3/30/09)	9,399 MW	9,896 MW
<b>Change in Xcel Demand -- Ex. 51 to Current Forecast</b>	(482 MW)	(1,280 MW)
<b>TOTAL CAPX2020 FORECASTS</b>		
Lowest Vision Plan load studied		<b>24,701 MW</b>
<b>2007 Median Resource Plan Forecast</b> (MN/CON, Ex. 51)	21,789 MW	25,708 MW
<b>Adjusted for Change (Xcel) Demand</b> (Current 2009 Forecast)	21,307 MW	<b>24,428 MW</b>
<b>Adjusted for Compliance with 2007 MN Conservation Law. (1,000 MW)</b>		<b>23,428 MW</b>

<sup>2</sup> Ex. 146, Response to IR Request No. 40, *In the Matter of the Application of Northern States Power Company (d/b/a Xcel Energy) for a Certificate of Need for the Prairie Island Nuclear Generating Plant for an Extended Power Uprate*, MN PUC Docket CN-08-509 ("PINGP Uprate/CON")

<sup>3</sup> The OES downward adjustment to their forecast base case from Integrated Resource Plan reduced load by 1370 MW by 2020 to comply with 1.5 percent conservation, MN/CON Proceedings ALJ Report, Attachment E. The 1,000 deduction in Figure 1 is a rough approximation of additional load reduction given demand reductions.

Once 2020 forecasted need falls below levels studied in the Vision Plan, there is no basis to assume that the CapX2020 power lines, and the La Crosse Project in particular would be selected by an engineering analysis to support regional peak demand growth. CETF requests that, in the EIS for the Proposal, the RUS evaluate and take responsibility for the accuracy of all information used to assert a need for the Proposal, as required under 7 C.F.R. §1794.2(d).

The AES for the Proposal did not reference the criteria for approval of load forecasts under 7 C.F.R. §§1710.207, 1710.208, or 1710.209. It is not clear to CETF which of these sections of the regulations should apply to Dairyland in advancing a project owned by multiple utilities or whether the minimal requirements of the regulations have been met.

Under any section of these regulations, the borrower is required to consider and identify all loads on its system of RE Act beneficiaries and non-RE Act beneficiaries, which analysis has not been provided for the CapX2020 projects. The AES has not demonstrated that the CapX2020 forecasts considered all known relevant factors that influence energy consumption, developed an adequate supporting data base or considered a range of relevant assumptions, as required by 7 C.F.R. §1710.207, let alone the additional requirements for valid and verifiable analytical techniques and analysis of a reasonable range of alternative futures as required in 7 C.F.R. §1710.208. CETF requests that the EIS explain the RUS regulatory criteria for approval of load forecasts applicable to the Proposal and provide a thorough and independent review of all forecast data and assumptions.

In addition to analyzing the data required under RUS regulations, CETF requests that the EIS specifically analyze the degree to which the load forecast assumptions of the project proponents reflect load management and conservation. The AES states the “utilities’ consideration of load management is reflected in their forecasts of future load growth in the Rochester and La Crosse areas,” (AES 3-14) but does not say what percentage of energy savings is assumed in regional or local area forecasts or what strategies and megawatt impacts are proposed for peak load management.

The EIS should provide sufficient transparency so that members of the public can understand what level of conservation and load management is forecasted and whether the projections are in compliance with Minnesota statutes setting a policy of 1.5 percent energy savings. CETF would also request that the EIS contain a reasonable range of alternative conservation and load management futures, with attendant costs and reductions in peak electricity demand.

### **3. Reasonable alternatives to the Proposal that avoid and minimize impacts on the natural and human environment.**

The community reliability needs identified in the AES and MCS are likely to be outside the scope of RUS financing authority, since they pertain primarily to non-RE Act beneficiaries who live in the cities of Rochester, La Crosse and Winona, not in rural areas. In addition, there are reasonable alternatives to the CapX2020 La Crosse Project to meet these community reliability needs.

Under NEPA, federal agencies are required to the fullest extent possible, to use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of federal actions on the quality of the environment. 40 C.F.R. §1500.2(e). The RUS considers a number of additional factors in its review of proposals under NEPA, including but not limited to the proposed action’s size and scope, state of the technology, economic considerations, legal and socioeconomic concerns, availability of resources, and the timeframe in which the identified need must be fulfilled. 7 C.F.R. §1794.12.

The AES, MCS and their Appendices, along with data developed in the MN/CON Proceeding are sufficient to identify reasonable alternatives to the Proposal that will avoid or minimize adverse impacts on the quality of the environment, including avoiding impacts on the Upper Mississippi River National Wildlife and Fish Refuge and other protected natural resources. A combination of local transmission improvements and existing and planned local generation would provide local community reliability without new transmission lines crossing the Mississippi, without any new ultra high voltage 345 kV transmission, with fewer impacts on residents and land use and, most probably, at a lower cost than the Proposal. CETF requests that the EIS identify and assess these reasonable alternatives.

Local community need in the Rochester Area will be met by the RIGO transmission projects planned by Xcel Energy to comply with the Minnesota Renewable Energy Standards and by using existing and planned local generation. Several of the statements made in the AES and the MCS regarding the RIGO projects and local Rochester generation are misleading.

The AES creates an inference that the Proposal is needed, although the RIGO projects provide approximately 468 MW of capacity in the Rochester area, stating that the 468 MW of capacity is “assuming construction of the 345 kV line from the Twin Cities to La Crosse.” (AES 2-14). The inference that the 468 MW of capacity from RIGO depends on the Proposal is false. The RIGO study itself belies this inference:

The preferred alternative in this Study will alleviate certain limitations on the transmission system in the area to allow for additional generation in a wind-rich area of the State. If constructed, it is estimated that the transmission system would be able to serve approximately 65 MW of additional load for a total of 246 MW, a level that exceeds the current load in the areas. A project being planned by Dairyland will add further support. Dairyland intends to reconductor the Rochester-Adams 161 kV line to facilitate wind outlet. If the RIGO lines and the reconductor project were constructed, the transmission system would be able to reliably service approximately 468 MW in the Rochester area, a level expected to be reached in approximately 2018. One of the Group I projects, the 345 kV line from a new Hampton Corner Substation in southeastern Twin Cities to the La Crosse area, *will further enhance* the load serving ability of the system beyond the year 2040. (RIGO Study, AES Apx. A-6, pp. 16-17, emphasis added)

The AES also appears to suggest that local generation in the Rochester area will be decreasing through the 2020 time period. (AES 3-15). This, again, is misleading. Evidence regarding existing and planned generation resources collected in the MN/CON Proceeding verifies that by 2020 Rochester Public Utilities (“RPU”) plans to add 100 MW of natural gas combustion at the West Side CT, while retiring 78 MW of generation from Silver Lake Units #1, #2 and #3 and Cascade Creek #1, for a net gain of 22 MW of generation. (MN/CON Proceeding, Ex. 222, p. 11, (Response to IR No. 29 of OES), Tr. V. 22, pp. 19-22 (Shaw)).

The AES overstates the conclusions of the SE MN/SW WI Study regarding the “inadequacy” of the 161 kV options. (AES 3-2). The Study identified two alternatives that provide adequate service to the greater La Crosse area for the 2009 summer peak load projected as 527 MW plus an additional 50 MW. (SE MN/SW WI, AES Apx. A-2, pp. 67,159). Although the Study questioned the duration of the solution provided by the recommended Alternative D, it also raised concerns about the 345 kV alternative:

There are numerous issues associated with the siting of any line, but especially a line from Rochester to the La Crosse area. This includes the availability of corridor sharing, routing a major line through the Mississippi bluff lands, routing a line across

the Mississippi River and siting a major 345 kV substation a rapidly expanding area in the La Crosse area. (SE MN/SW WI Study, AES Apx. A-2, p. 114).

By citing conclusions reached under different forecasts of demand and combining reliability information under single loss conditions with deficits from multiple generation and transmission failures, the AES gives an inaccurate summary of the community reliability needs in the Rochester and La Crosse areas and the ability of transmission and generation with fewer adverse impacts to meet these needs.

The AES fails to explain the demand side management assumptions in its load forecasts and contains highly unrealistic assumptions for peak demand increases from 2008 to 2010. In the La Crosse area, for example, total load is projected to increase from actual demand of 435.34 MW in 2008 to 484.52 MW, an increase of more than 5.5 percent compounded in the next two years! (AES 2-24).

Figure 2 – Community Reliability Alternatives in the Rochester Area and Figure 3 – Community Reliability Alternatives in the La Crosse Area, provided below, demonstrate that even using the forecasts in the AES, local 161 kV transmission improvements with existing and planned generation can meet community reliability needs in both areas. Sources of information are provided parenthetically. Demand side management and forecasts more consistent with recent peak electricity trends would further extend the years during which forecasted demand will stay within critical load limits.

*Figure 2 – Community Reliability Alternatives in the Rochester Area*

	ACTUAL PEAK LOAD (AES 2-11)			FORECASTED (AES Apx.A.3)
	Load MW 2002	Load MW 2006	Load MW 2008	Load MW 2020 (2.27%/yr)
<b>LA CROSSE PROJECT</b>				
<b>Rochester Substations</b>	290.18	329.97	307.87	<b>402.96</b>
Rate Increase 2002-2008			0.99%	
	<b>CRITICAL LOAD LEVEL (No La Crosse Project)</b>			
<b>Transmission Only (AES 2-11)</b>	181			
<b>Existing Transmission &amp; Generation (AES 2-9)</b>	362			
<b>Transmission &amp; Planned Generation (MN/CON Ex. 222)</b>	384			
<b>Transmission Only RIGO &amp; Adams Reconductoring (RIGO Study, p.16)</b>	<b>468</b>			
<b>RIGO, Adams &amp; Existing Generation (AES &amp; RIGO Study)</b>	<b>649</b>			

Figure 3 – Community Reliability Alternatives in the La Crosse Area

LA CROSSE PROJECT	ACTUAL PEAK LOAD (AES 2-23)			FORECASTED (AES Apx.A.4)
	Load MW	Load MW	Load MW	Load MW
	2002	2006	2008	2020 (1.9%/yr)
<b>La Crosse Substations</b>	425.12	464.59	435.34	<b>547.57</b>
Rate increase 2002-2008			0.40%	
<b>CRITICAL LOAD LEVEL (No La Crosse Project)</b>				
<b>Transmission Only</b> (AES 2-24)	470			
<b>Existing Transmission &amp; Generation (French Island)</b> (AES2-20)	<b>610</b>			
<b>Transmission Only Alternative "D"</b> (SE MN/SW WI Study, p. 159)	<b>577</b>			
<b>Alt "D" &amp; French Island</b> (AES & SE MN/SW WI Study)	<b>717</b>			

For the Rochester area, the RIGO transmission improvements, with or without using existing generation, provide a feasible and prudent alternative to the Proposal. The most cost-effective options in the RIGO study, options 12 and 13, have costs per MW of generation support of less than \$100,000. The installed cost of RIGO options 12 and 13 combined are approximately \$32 million. (RIGO Study, AES Apx. A-6, pp. 14-15).

For the La Crosse area, either the use of existing transmission and French Island local generation or the Alternative “D” transmission improvements in the La Crosse 161 kV Load Serving Study provide reliability beyond 2020. The cost of the La Crosse Area 161 kV facilities, including capacitor additions, 161 kV lines and substation improvements was estimated at \$39.5 million in 2006. (SE MN/SW WI Study, AEP Apx. A-2, p. 145). Although there may be some inflation since then, several aspects of the project, including the capacitor upgrades and the Genoa-Coulee 161 kV upgrade have already been completed, (MN/CON, Ex. 11, p. 2 (Supp. Resp. to IR 16 of NAWO/ILSR)), thus reducing likely costs of this alternative.

For both the Rochester and the La Crosse area, there are specific and reasonable alternatives that meet local community reliability needs and do not require impairment of a National Wildlife Refuge and other protected natural resources. Conservation and load management would yet further extend the reliability provided by 161 kV transmission improvements along with local generation. Although not required in a NEPA analysis, it should be noted that the installed costs of the alternatives to the Proposal are substantially less than the \$380 to \$430 million costs of the CapX2020 La Crosse Project.

It is irrelevant under NEPA that the CapX2020 utilities have not filed a certificate of need for the RIGO projects. Not only is such a filing within their control -- they opened a Minnesota Public Utilities Commission docket for the project in 2008, CN-08-992 -- but regulations

implementing NEPA specifically provide that an EIS must identify reasonable alternatives not within the jurisdiction of the lead agency and the no-build alternative. 40 C.F.R. §1502.14(c). A critical function of the EIS for the La Crosse Project must be to examine and identify these specific reasonable alternatives that meet community reliability needs while avoiding and minimizing environmental harm of transmission facilities.

#### **4. Minnesota and Federal laws protecting national parks and wildlife areas.**

The MCS appears to view Minnesota and Federal rules and policies protecting national parks and wildlife areas as considerations only for routing, not as a potential basis for a decision that financing or permits should be denied, given the availability of reasonable alternatives to meet community reliability needs.

The MCS cites Minnesota law prohibiting transmission line routing through state or national parks or state scientific areas, "unless the transmission line would not materially damage or impair the purpose for which the area was designated and no feasible and prudent alternative exists." (Minn. R. 7849.5930, subp. 2). The MCS then states that these environmental features will be addressed during routing and that efforts were made to avoid federally protected areas including the Upper Mississippi National Wildlife and Fish Refuge, except where there are existing transmission line corridors. (MCS 5-8).

It is undisputed that all proposed routes for the La Crosse Project would require routing through the National Wildlife Refuge. Route selection is insufficient to address the prohibition in Minn. R. 7849.5930, subp. 2.

Correspondence from the USFWS to Xcel Energy on May 4, 2009 (MCS Apx. C) reflects concerns about new right-of-way crossing the Refuge:

Regulations and policy governing uses on national wildlife refuges prohibit new uses or projects which fragment habitat and such projects include roads, bridges, and powerlines. The one exception is for minor expansion of existing rights-of-way. "Minor" is not defined and left to the discretion of the refuge manager based on professional judgment taking into account refuge specific conditions and anticipated impacts.

Based on discussions with staff, a review of our regulations and policy, and a review of your preliminary right-of-way pole configurations, I do not believe the various options would involve a minor expansion of any of the existing rights-of-way. Most of the options involve a 75 percent or more expansion of right-of-way width to be viable. Therefore, I would have to recommend to our Regional Director (the deciding official on new or expanded right-of-way requests) that no expansion of existing right-of-way be granted and that any design option be restrained or confined to existing right-of-way width.

No reference is made in either the AES or the MCS to the possibility that an alternative project, rather than an alternative route will be required to avoid impairment of the National Wildlife Refuge and expansion of right-of-way.

The MCS briefly notes that a Special Use Permit may be required from the USFWS for the La Crosse Project to cross the National Wildlife Refuge. (MCS 1-3). However, the MCS neither discusses the standards for a USFWS permit nor the impacts on the Wildlife Refuge evidenced in communications with the USFWS and in the hearing record from the Minnesota Certificate of Need proceeding. This gap must be addressed in the EIS.

USFWS regulations preclude the granting of a right-of-way permit across National Wildlife Refuge lands unless there is a finding, based on sound professional judgment, that the use “will not interfere with or detract from the fulfillment of the National Wildlife System mission of the purposes of the national wildlife refuge.” 50 C.F. R. 29.21.

Any applicant for a USFWS permit must include a detailed environmental analysis from which the USFWS can prepare an EIS in compliance with NEPA and other federal laws:

All applications filed pursuant to this subpart must include a detailed environmental analysis which shall include information concerning the impact of the proposed use of the environment including the impact on air and water quality; scenic and esthetic features; historic, architectural, archeological, and cultural features; wildlife, fish and marine life, etc. The analysis shall include sufficient data so as to enable the Service to prepare an environmental assessment and/or impact statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). 50 C.F. R. §29.21-2(a)(4).

The AES and MCS documents, along with their Appendices, contain little if any information from which either the RUS, as lead agency or the USFWS, as a cooperating agency, could prepare an EIS in compliance with NEPA. As detailed in the remaining two sections of this Comment, this gap must be rectified in order to comply with Minnesota rules and Federal regulations regarding location and permitting of power lines as well as to meet NEPA requirements.

## **5. Detailed description of La Crosse Project characteristics.**

Neither the AES nor the MCS describe the Proposal in sufficient detail to permit members of the public to understand the nature of the La Crosse Project or for decision-makers to make informed decisions as to its impacts and alternatives. The EIS should provide detailed information and illustrations regarding the size, configuration and characteristics of the Project, including characteristics if segments of the Project are encased and buried. In order to provide this information, the RUS and USFWS may need to require Dairyland to supplement its current filings with a detailed environmental analysis of the Project.

Specifically, the EIS should provide at least the following information:

- Descriptions and photographs or illustrations to scale showing all structures that would be used to support double-circuited 345 kV Project power lines. If H-frame structures may be used to support the power lines in some areas, such as river or wetland crossings (AES 1-7), those locations should be identified and the size, appearance and distance between such H-frame structures should be specifically indicated.
- Computer-generated graphics showing the various power line structures imposed on views of the Mississippi River corridor are specifically requested in order to evaluate impacts on visual and scenic features of the corridor, including the National Wildlife Refuge and scenic roads on both the Minnesota and Wisconsin sides of the river.
- Descriptions and illustrations indicating the size and depth of foundations that would need to be constructed to support double-circuited 345 kV Project power lines, including the size of the footprint that would be disrupted during construction.

- Descriptions and illustrations indicating the breadth and height of clearings of trees and other flora that would be maintained along the right-of-way for above ground Project power lines, along with specific information regarding right-of-way maintenance and preparation along river corridor and bluff lands.
- Descriptions and illustrations indicating the width and depth of areas that would be affected in order to encase and bury Project power lines under ground in areas of river crossings and National Wildlife Refuge areas.
- Projections of the level of audible noise from power lines and substations at various distances under dry and wet weather conditions, with clear references to the sources of such projections and any study data that supports the noise analysis.
- Projections of magnetic fields at the center line and at various distances from the Project power lines specifying the location and voltage of power lines for which projections are made, with clear references to sources and any study data that supports the projections of magnetic fields.
- Projections of electromagnetic fields at the center line and at various distances from the Project power lines specifying the assumptions made regarding current levels from which such projections are made, along with references to sources and any study data that supports the projections of magnetic fields.
- Descriptions and illustrations indicating existing and proposed expansions of right-of-way for any proposed Project route across the National Wildlife Refuge and other protected natural areas, indicating not only the width of the proposed expansion, but the topography, geology, plant and animal species, nests and habitats in the area where expanded right-of-way is proposed to be constructed.

**7. Adverse impacts of La Crosse Project on natural and human environment, including direct and indirect adverse impacts and any irreversible or irretrievable commitment of resources.**

Neither the AES, the MCS nor Appendices to these documents provide the information on adverse impacts to the environment or socioeconomic factors required under RUS or USFWS regulations, as described above. More critically, these documents provide little of the information needed to prepare an EIS in compliance with NEPA.

NEPA requires that an EIS discuss the environmental consequences of a proposed action and its alternatives to form the basis for a scientific and analytic comparison of alternatives to the proposal under 40 C.F. R. §1502.14. Specifically NEPA regulations require:

The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in Sec. 1502.14. It shall include discussions of

- (a) Direct effects and their significance (Sec. 1508.8).
- (b) Indirect effects and their significance (Sec. 1508.8).

- (c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See Sec. 1506.2(d).)
  - (d) The environmental effects of alternatives including the proposed action. The comparisons under Sec. 1502.14 will be based on this discussion.
  - (e) Energy requirements and conservation potential of various alternatives and mitigation measures.
  - (f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.
  - (g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.
  - (h) Means to mitigate adverse environmental impacts (if not fully covered under Sec. 1502.14(f)).
- 40 C.F.R. §1502.16.

In order to comply with these regulations, the EIS must contain a thorough and analytic review of how the characteristics of the La Crosse Project, described in detail, directly and indirectly affect the natural environment, the human environment and socioeconomic and cultural features and values. Additional information may be required of Dairyland and other CapX2020 project proponents in order to permit the EIS to be completed.

First, the EIS should provide analysis on direct and indirect effects of the Proposal on energy usage and air quality. The EIS should identify the nature of the energy sources that will be supported by the CapX2020 Projects, including coal and lignite coal from North and South Dakota, and describe the effects of such power generation on air quality and global warming. In conducting this analysis, the EIS should consider both the prevalence of coal projects in advance of wind energy in the Midwest ISO queue and the potential use of the CapX2020 power lines from the Dakotas through Minnesota to load centers in the east to circumvent Minnesota Greenhouse Gas statutes limiting the purchase of utilities of coal power without sequestration of carbon dioxide. Minn. Stat. § (Minn. Stat. §216H.03). These potential adverse effects should be compared with those of the no-build alternative and the alternatives previously identified to meet community reliability needs -- including the RIGO transmission projects, local generation and the 161 kV projects identified in the La Crosse Load Serving Study.

The EIS should then provide an evaluation of impacts of the Proposal on scenic and aesthetic features, including but not limited to impacts on the USFWS Upper Mississippi River National Wildlife and Fish Refuge, the Van Loon Wildlife Area managed by the Minnesota Department of Natural Resources ("MDNR"), the Cannon River Scenic or Recreational River area designated by the MDNR, the Minnesota Great River Road Scenic Byway and the Wisconsin Great River Road. In this evaluation, the EIS should both analyze the degree to which the Proposal will impact the purposes for which these various scenic and natural features were established and the consequences to tourism, recreation and enjoyment of these features if the Proposal were implemented as compared to implementation of the no-build alternative and the previously identified alternatives to meet community reliability needs.

In addition to evaluating visual impacts of the projects on protected natural resources, the EIS should evaluate the impacts of the Proposal and the no-build and identified alternatives on the natural environment in the National Wildlife and Fish Refuge and other areas of particular environmental concern. This analysis should include adverse impacts on wetlands, trees, habitat and areas of biodiversity significance; adverse impacts on rare and endangered species and species of concern, including aquatic species as well as birds and terrestrial species; and

adverse impacts on migratory birds and nesting areas for eagles and other bird species.

The EIS should also evaluate, given both the increase in right-of-way across the National Wildlife Refuge required by the Proposal and announced plans by utilities for 765 kV power line sizes across the Midwest, whether approval of funding by the RUS or permits by the USFWS would result in an irreversible or irretrievable commitment of national wildlife refuge resources to meet private power suppliers' interests.

The EIS should evaluate the impacts of audible noise from the Proposal, as compared to the no-build and the identified alternatives, both in residential areas and in recreational, scenic and wildlife preservation areas where quietude is of particular value.

In addition to impacts on the natural environment, the EIS should evaluate impacts on land use and the human environment of the La Crosse Project. The EIS should compare adverse impacts on agricultural land in rural areas if the Proposal is built as compared with the no-build and previously identified alternatives.

The EIS should describe the impacts of electrical interference not only on radio and television signals, but on computerized systems used in agriculture, such as a global positioning systems for farm equipment. These adverse impacts should be compared with those of the no-build alternative and previously identified alternatives.

The EIS should also evaluate the impacts of the Proposal, the no-build alternative and the identified alternatives on property values, particularly property values in rural areas. Data from communities affected by the Arrowhead 345 kV power line in Wisconsin and the 345 kV Brookings Project being routed in Minnesota should be sought to determine the likelihood under current economic conditions that implementation of the La Crosse Project will reduce property values, particularly in rural areas along the route.

The EIS should detail the impacts of magnetic and electromagnetic fields along the length of the proposed La Crosse Project as compared to the impacts of the no-build alternative and identified alternatives to address community reliability needs. The EIS should evaluate the direct and indirect impacts of magnetic fields, including impacts on livestock from stray voltage and interference with certain types of pacemakers.

The EIS should also examine current scientific and policy analysis of the increased risk of childhood leukemia and other adverse health impacts in proximity to high voltage power lines. Specific references which should be consulted to perform this analysis include D. Carpenter & C. Sage, *Setting Prudent Health Policy for Electromagnetic Field Exposures, Reviews on Environmental Health*, Vol. 23, No. 2 (2008) and *BioInitiative Report: A Rationale for a Biologically-based Public Exposure Standard for Electromagnetic Fields (ELF and RF)*, (August 31, 2007) <http://www.bioinitiative.org/report/docs/report.pdf>

This EIS analysis of direct and indirect adverse impacts of the La Crosse Project is particularly salient since all proposed routes for the La Crosse Project substantially affect agricultural lands and rural residents. It would seem paradoxical for the RUS to finance a Proposal designed primarily to serve non-RE Act beneficiaries, which Proposal would result in substantial adverse impacts to agricultural land, farms and rural residents.

## **Conclusion**

CETF has serious concerns about the proposed La Crosse Project and its adverse impacts on the natural environment and the human environment, including health, land use and property

values, particularly in rural areas. We believe that the CapX2020 Projects are designed to serve primarily non-Rural Electrification Act beneficiaries and that there is no engineering basis under current and reasonable forecasts for asserted regional reliability needs.

The community reliability needs in Rochester, La Crosse and Winona asserted by Dairyland and the CapX2020 utilities to justify the Proposal also serve primarily urban non-RE Act beneficiaries. To the extent that the RUS is interested in considering La Crosse Project financing despite this conflict, CETF believes that there are specific alternatives, detailed in Figure 2 and Figure 3 above, which meet the community reliability needs asserted by the CapX2020 applicants. These alternatives have a lower installed cost than the La Crosse Project.

When an EIS analysis is appropriately prepared, as detailed above, CETF anticipates that a determination will be made that the Proposal is in conflict with Minnesota rules and Federal regulations, which protect federal parks and wildlife areas where there are reasonable alternatives to a project. CETF anticipates that an EIS, as described above, would find that identified alternatives to meet community reliability needs result in avoidance or minimization of direct and indirect impacts of the Proposal to protected natural resources, the human environment, agricultural lands and rural residents.

CETF requests that the EIS for the La Crosse Project perform the analysis required under NEPA and the regulations of the RUS and USFWS as detailed above.

We would be happy to answer any questions or provide additional citations if that would assist agency staff in their important deliberation process.

Respectfully submitted,



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cc:

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