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Right-of-way acquisition and construction process in North Dakota

CapX2020 is a joint initiative of 11 transmission-owning utilities in Minnesota, North and South Dakota, and Wisconsin to upgrade and expand the electric transmission grid to ensure continued reliable and affordable service. The 700 miles of CapX2020 Group 1 projects include three proposed 345 kilovolt (kV) transmission lines, including the Fargo-St. Cloud-Monticello line, and a 230 kV line.

The CapX2020 utilities were granted Certificate of Public Convenience and Necessity on January 12, 2011 from the North Dakota Public Service Commission (ND PSC) for the North Dakota portion of the Fargo-St. Cloud-Monticello 345 kV transmission line. A Certificate of Corridor Compatibility application was filed December 30, 2010 with the ND PSC. A Route Permit application will be filed with the ND PSC in summer 2011.

In accordance with the permit determination, CapX2020 representatives will proceed to acquire easements, which are required in order to construct, operate and maintain the transmission line. CapX2020 will follow the sequence of acquisition activities described below. Xcel Energy will be acting as the project manager for the CapX2020 utilities.

In order to acquire the necessary easements there are several data gathering and document preparation steps that will take place. The general process of easement acquisition and line construction is outlined below.

1. LAND TITLE OWNERSHIP

CapX2020 will examine the public records for each parcel crossed by the transmission line. A title report will be prepared to determine the legal description of the property, establish the owners of record, and provide information regarding easements, liens, restrictions, encumbrances and other conditions of record.

2. INITIAL LANDOWNER CONTACT

After the title report has been prepared, a CapX2020 right-of-way representative will contact each landowner (or his or her

representative) to discuss the project, confirm the ownership interests, describe the process and answer questions. The CapX2020 representative will also obtain landowner input regarding the project and the property.

3. SURVEY AND SOIL BORINGS

In certain cases, CapX2020 survey crews may need to enter the property to complete preliminary survey work or wetland delineation. Survey crews may also need to take soil borings, which will proceed only after authorization is received to enter the property. The data obtained by the survey crews will be used to refine a preliminary design.

4. STRUCTURE LOCATION STAKING

After the design is completed, survey crews will identify the transmission line's centerline and the location for each pole. This allows the landowner to review pole locations prior to entering an easement agreement.

5. DOCUMENT PREPARATION

CapX2020 will prepare all documents required to complete each easement transaction. Typical documents might include easement, option agreement and clearing and construction access notice. The CapX2020 utilities that will own the line will be named as parties to these documents; one of them will be designated as the authorized agent to represent the operating companies when dealing with the landowner on easement and line issues.

6. EASEMENT EVALUATION

CapX2020, with the assistance of qualified appraisers, will develop a compensation payment for each easement in a consistent, fair and equitable manner. In addition to the compensation payment for the easement, CapX2020 will offer landowners an incentive payment to acquire the easement through negotiation.

7. NEGOTIATED AGREEMENT

A CapX2020 representative will meet with the landowner to present and discuss maps showing the location of the easement and the line route across the landowner's parcel. In addition, the representative will present the compensation payment and the legal documents to the landowner. After the issues have been discussed and the landowner's questions have been answered, the landowner will be allowed a reasonable amount of time in which to consider the transaction. The CapX2020 representative will work closely with the landowner to resolve concerns and reach agreement.

8. ACQUISITION BY EMINENT DOMAIN (CONDEMNATION)

In some cases, the parties may not be able to reach a negotiated agreement. In those situations, CapX2020 will need to use the eminent domain process (also known as "condemnation") to acquire the easement. The condemnation procedure for a utility is codified in Chapter 32-15 of the North Dakota Century Code.

According to Section 32-15-01 of the North Dakota Century Code:

Eminent domain is the right to take private property for public use.

Private property may not be taken or damaged for public use without just compensation first having been made to or paid into court for the owner. When private property is taken by a person, no benefit to accrue from the proposed improvement may be allowed in ascertaining the compensation to be made therefor. Private property may not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business. A determination of the compensation must be made by a jury, unless a jury is waived. The right of eminent domain may be exercised in the manner provided in this chapter.

When right-of-way cannot be acquired by a negotiated settlement, certain utility companies have the power to acquire it by utilizing the laws of eminent domain. These laws grant the right to take private property for a public use, but protect property owners' rights by requiring that just compensation be paid for all property acquired.

If a utility wishes to utilize the power of eminent domain, it files a complaint in the county in which the property to be acquired is located. The court will make any legal determinations, such as the "public use" and "necessity" of the taking. The damages to which the landowner(s) is entitled are determined by a jury, unless a jury is waived.

Once a determination of damages has been made and judgment setting forth that award has been entered by the court, the utility must either pay the award amount to the landowner(s) or deposit it into court. After the award of damages has been paid or deposited, the utility may take possession of and use the property.

More detailed information regarding eminent domain proceedings in North Dakota is provided in Chapter 32-15 of the North Dakota Century Code.

Landowners should consult with legal counsel regarding their rights with respect to eminent domain proceedings.

CapX2020 will remain available to negotiate with landowners while the condemnation process is underway. If the parties reach an agreement while the condemnation proceeding is pending, CapX2020 will take the steps necessary to dismiss the proceeding with respect to the settled parcel(s).

9. THE CONSTRUCTION PROCESS

As part of the easement acquisition process, the CapX2020 representative will discuss with the landowner the construction schedule. During construction, the following may be required, if applicable:

- Construction access to the easement
- Temporary removal or relocation of certain fences
- Installation of temporary gates
- Early harvest of crops where possible
- Removal or relocation of equipment and livestock from the right-of-way
- Removal and disposal of vegetation
- Construction survey staking – pole locations and right-of-way limits
- Installation of pole foundations and disposal of excess soil material
- Erection of poles on foundations
- Stringing and attachment of wires (conductors)
- Construction clean-up and restoration
- Damage settlement

10. RESTORATION AND CLEAN UP

The CapX2020 representative will assess and tabulate any damages incurred during construction and contact each property owner after construction is complete to settle claims for any such damages. After construction is complete, CapX2020 will restore the damaged property as close as possible to its original condition. If damage occurred to crops, fences or other property during construction, CapX2020 will fairly reimburse the landowner for those damages.