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LEGISLATIVE ENERGY COMMISSION

Thank you for the opportunity to present today.

Landowner representation and land rights has been a primary focus of my legal career -- 15 years representing individual landowners, groups and local governments directly affected by utility infrastructure in Minnesota, Wisconsin, Iowa, California, and New Jersey, so I've had some comparative experience with different systems of regulation.

Transmission from a landowner perspective

There are many unexamined assumptions, and the most dangerous is this heightened and frantic sense that we urgently need more electricity NOW! And to do that, we need more transmission NOW! We have plenty of electricity, and can chose our generation.

Minnesota has a rich history of land rights struggles triggered by transmission routing. Legislative consideration of land rights regarding transmission is nothing new. Minnesota's "Buy the Farm" option is unique in providing landowners a way to get out from under a proposed transmission line on their land. This is an important example of what the legislature can do!

In 2004, Sen. Vickerman held meetings on easements, stream of payment options, and land rights, triggered by landowner uprising after the 2003 permitting of the Split Rock – Lakefield Jct. 345 kV line paralleling Interstate 90 in SW Minnesota. At least one bill was introduced. Then in 2005, that effort was sidetracked by the legislatively mandated Landowner Payments Working Group, which included only one affected landowner and not a single party representing affected landowners. That group did not present any recommendations or model legislation.

The main objection of landowners is their righteous indignation at the "lie of transmission." **See Exhibit A, *Transmission Lies*.** Land may only be taken for a public purpose. Landowners intuitively understand that transmission is wanted, not needed, and it is particularly offensive for a utility to take their land for their private purpose and gain. So how is it that utilities think they can take Minnesota landowners property by eminent domain?

"Need" for transmission is an unexamined assumption

"Need" is a transmission lie. Transmission is wanted to facilitate "economic transactions," to trade in wholesale electricity between the power companies themselves – this has nothing to do

with service of utilities' native load. Utilities have incentive to overstate "need" when they build infrastructure for peaks. The higher the peak they build for, with peak occurring only a few times annually, the deeper the off-peak valley and the more electricity they can sell on the market when generation is available but not "needed."

Demand for electricity is down. Peak Demand is down, sales of electricity is down. Any way you look at it, demand is down and has been down since 2007. **Ex. B, Decreasing Demand.** Why the hyped-up fear of freezing in the dark in an incubator without a job?

CapX Appeal - Issues Raised by NO CapX 2020 and United Citizens Action Network

Primary focus of Intervenors NoCapX and U-CAN is that CapX 2020 is not needed. Again, there is that unexamined assumption that we urgently need more electricity, and it is false.

Three issues will be raised by NoCapX 2020 and U-CAN on appeal:

1. **Decreased Demand:** Offer of Proof submitted to Administrative Law Judge with evidence that demand has decreased significantly from 2007-present. That's NOT a "blip" since last fall's market crash. For Xcel, it's an 11+% decrease in 2007-2008 and another "weather adjusted" decrease of 2.2% in the first 2 quarters of 2009. That's more than 13% decrease in demand for a plan that relied on a 2.49% growth! **Ex. B, Decreased Demand.**

2. **The Big Picture:** The larger extent of plans, the phased and connected actions, were publicly revealed in February release of JCSP plans, and an April 3 press release of more of the CapX plans. **Ex. C, The Big Picture.**

3. **Environmental review was inadequate.** Commerce denied there was a necessary federal EIS (Rural Utilities Service), did not adequately consider a range of alternatives, and inappropriately limited system alternatives.

MINNESOTA'S ENERGY LAW -- EXTENSIVE LEGISLATIVE CHANGE IS NEEDED

Repeal Minn. Stat. §117.189 NOW. Public service corporations are NOT special. Repeal ALL exemptions for public service corporations, including compensation to landowners for attorneys' fees (§4); loss of going concern (§8); minimum compensation (§ 10) (appraisal limit has been repealed). Here's the statutory language to be repealed:

> **117.189 PUBLIC SERVICE CORPORATION EXCEPTIONS.**
>
> Sections 117.031; 117.036; 117.055, subdivision 2, paragraph (b); 117.186; 117.187; 117.188; and 117.52, subdivisions 1a and 4, do not apply to public service corporations. For purposes of an award of appraisal fees under section 117.085, the fees awarded may not exceed $500 for all types of property.

Mandate coal shutdown mirroring RES standards. Conceptualize RES differently! Problem: RES mandates do nothing but create a market for renewable energy and add RES to the already existing load, resulting in a surplus of generation. Any RES mandate must be paired/mirrored with a mandate to shut down coal generation to better balance demand and supply. Given the dramatic extended decrease in demand, we're at a point where we can safely begin to shut down coal plants and replace with intentionally sited renewable energy.

Strengthen "Buy the Farm," Minn. Stat. 216E.12, Subd. 4, formerly 116C.63, Subd. 4. Amend "Buy the Farm" to provide notice to landowners of this option with notice of Certificate of Need and Routing applications; drop voltage threshold to 115kV. People need to know they can get out from under lines.

Strengthen notice provisions for Certificate of Need and Routing. Statutory notice provisions to affected landowners and local governments are too weak. Utilities have no incentive to provide notice because insufficient notice won't invalidate a permit. For example, CapX CoN was applied for July 2007, but notice to landowners was provided as late as this April, May and June, 2008, a year late, and those landowners had no opportunity to Intervene.

Repeal the 2005 Transmission Omnibus Bill (2005 Session Laws Ch. 97) **BOLD** = urgent! https://www.revisor.leg.state.mn.us/bin/getpub.php?pubtype=SLAW_CHAP&year=2005&session_number=0&chapter=97

- 216B.02, Subd. 10; 216B.16, Subd. 7b-c; 216B.2425, Subd. 2; 216B.62, Subd. 5a (allowing and facilitating TRANSLink style xmsn companies);
- **216B.1645, Subd. 1(1); 216B.2425 Transmission needed to support renewable – repeal because they're calling everything "transmission for wind" when it's not;**
- **216B.243, Subd. 3(3, (9)-(12) (easing transmission criteria);**
- **216B.62, 216B.16, Subd. 7b - allowing recovery for construction in progress;**
- **Article 3 – 1116C.52, Subd. 2; 116C.53, Subd. 2, 116C.57, Subd. 1, 2(c), 116C.575, Subd. 5; et seq. 116C becomes 216E, gutting state Power Plant siting authority with transfer from EQB to Commerce – Commerce antithetical to environmental protection.**
- 216B .243, Subd. 7 should require ALL relevant agencies to participate, i.e., AG's office is snoozing on this – massive ratepayer impact, but where is RUD in CapX? ABSENT!
- 216C.052, Reliability Administrator should provide help to intervenors, technical assistance, and provide technical assistance for state staff – Commerce sfaff overloaded beyond belief; and
- 216B.2425 – mandate public participation in Transmission Plan

"NEED" REVIEW - THE MOST IMPORTANT THING TO DO, LEGISLATIVELY SPEAKING:

The legislature needs to mandate and fund a baseline electrical need study to take an honest look at Minnesota need, item by item:

1. Honest look at demand trends over last 10 years, utilizing utility SEC filings, Annual Reports, and Load & Capability Reports and NERCC reports. UPDATE quarterly;
2. Calculate impact of stepped shutdown of coal generation mirroring RES mandates;
3. Calculate impact of 1.5% energy conservation mandate;
4. Determine true system potential of conservation and efficiency investments
5. Calculate impact of load shifting to reduce peaks;
6. Calculate impact of reconductoring transmission grid;
7. Calculate impact of reconductoring, undergrounding and upgrading distribution system;
8. Calculate impact of mandating "Smart Grid" for efficiencies in distribution;
9. Then calculate need with specificity -- what we need, when and where;
10. Investigate the many ways to satisfy that need -- send out for public comment!

In Grist: Transmission Lies

February 3rd, 2009

Against the so-called 'need' for new long-distance, high-voltage transmission lines

The following is a guest post from Carol A. Overland, a utility regulatory attorney and electrical consultant based in Minnesota and Delaware, representing clients in energy dockets including transmission projects, wind, gas and coal gasification generation, and nuclear waste.

Transition ... transmission ... transition ... transmission ...

That old Bowie hook is on my mind as I represent individuals, community organizations, and local governments opposing high-voltage transmission lines. Today we're at a crossroads in energy, a transition point where the decisions we make, like electricity itself, are binary. What we choose will determine how we use electricity in the future. The first step is to carefully define "need."

Transmission doesn't produce electricity. It is passive infrastructure that just sits there, conducting energy from one place to another. At its worst, though, it's an enabler of dysfunctional energy planning and profit-driven projects that are against the public interest. Claims that we "need" transmission are end-stage conclusions of a many-step planning process that we as a society have not yet consciously begun.

"Need" is a term of art, and the crucial task for energy planners is to define the need. We need energy when we flick the switch, and when we do, that's a utility's need for service of local electrical load. We also need renewable generation, and we have an equally compelling need to reduce the CO2 emissions, pollutants, and toxic waste of electrical generation (a need not readily recognized in energy planning). Energy planners plan for peak "flick of the switch" need, those few very hot summer days or very cold winter nights. How much "flick of the switch" energy do we need? It depends.

Prior to assessing local load-serving need and making demand projections — before "need" is considered — the first and unarguably least-cost step is conservation. We can easily make up for an annual projected increase in demand of 1.5 percent through conservation, and can probably cut today's "need" by 10 percent or more, though compound conservation gets more difficult as we cherry pick the easy stuff. The next step before analyzing need is to enact energy efficiency, demand-side management, and load-shifting to cut the peaks and level out the dips. This is also a comparatively least-cost means of meeting demand.

When that's done, and not before, it's time to assess our need for electricity — the supply side. Utilities, which are in the business of selling electricity and building their infrastructure — for which we pay, routinely promote sales and exaggerate growth in demand. Because of their overstatements of need in similarly recessionary times, we overbuilt in the 1970s, to the extent that many proposed plants were ultimately canceled. Still so much was built that we haven't needed much utility infrastructure since. We've been through this before, and should be mindful in making investments.

Because of the recent utility industry shift to market-based dispatch, whereby generation is no longer strictly for service of local load but for wider regional or national electricity markets, market expansion has become the driver for the utility "need" for transmission. This is the key difference: how much transmission utilities need to serve their local load (the public good) vs. how much they need to participate in markets (greater profits). North American Electric Reliability Corporation (NERC), the private overseer of all things

transmission, admits in Reliability Assessments that there is a lot of new electrical generation planned and that the transmission system is sufficient to meet local load-serving needs. The confounding factor: NERC notes that the transmission grid is constrained in places and is not sufficient for market purposes, for market expansion.

The short explanation of the shift to market focus is that, in theory, it makes generation available to all who want it, based on price rather than location. The cheapest is sold first, and buyers queue up in line. But the sale price is busbar price at the generator or seller, and does not take into account the costs of getting it from here to there — notably transmission construction, transmission service, and line loss. These costs are tacked on and billed to the purchasing utility, and will be added to the customer's bill. The market "price" thus appears misleadingly low. Cheap coal-generated electricity from West Virginia looks awfully good to buyers in New Jersey when all the costs aren't factored in to the sale price.

This is the crucial point: The divergence between traditional "local load-serving need" and the desire of utilities to beef up need claims, to build generation and transmission at ratepayer expense, in order play the market. State regulatory proceedings are couched in traditional "local load-serving need" terms, and utilities must prove up need before they are granted Certificates and proceed with construction. Investments must be "reasonable and prudent." Opportunity to play the market is not reasonable and prudent, so it's not a reason to build a transmission line — utility desire to increase market transactions is not recognized as "need" in a Certificate of Need or Certificate of Public Convenience and Necessity proceeding. This is where transmission lines become transmission lies: Transmission projects for market trading are couched in terms recognized by regulators.

Planning for "peak load" is a transmission lie. Utilities have incentive to overstate "need" when they build for peaks. The higher the peak they build for (with peak occurring only several times annually), the deeper the off-peak valley and the more electricity they can sell on the market when generation is available but not "needed." Conservation and peak-shaving is against their interest because it lowers peak and lessens the valley of market sales.

"We'll have blackouts" and "we're going to freeze in the dark" are transmission lies. A review of recent blackouts — the ones used to justify transmission projects — shows that they occurred during off-peak times where utilities were overloading the lines, pushing more electricity than the system could handle. Despite warnings that the system was at risk, operators did not cut back on loading. An industry report on one blackout during "light load condition and low cost Mid-Continent Area Power Pool (MAPP) generation," while "there were high simultaneous exports," concluded:

This event should not be filed away as just another close call. We need to recognize just how close we were to collapsing portions of the Eastern Interconnection and adjust operating guides and reporting practices to avoid recurrence. There are real limits to the transfer capability out of the MAPP region and those limits are interdependent. This event is an alarming representation of how the MAPP regional interconnected system is being operated at and even beyond its capabilities.1

Utility "forecasts" are a lie. Despite their propensity to overstate need, several utility CEOs recently admitted that use has decreased from 3-9 percent, and that future infrastructure projects should be reconsidered. If we've moved from 1.5-2 percent projected growth to 3-9 percent decrease — with no increase in sight — that 4.5-11 percent drop in forecasted demand will substantially alter projections for years to come. The longer that drop continues, the further out it will affect projections. Despite this change in use and extension of "need" out in time, utilities are holding on to outdated projections. They still want to build infrastructure based on inflated "need," infrastructure that we will pay for — and pay them a percentage return on investment. If approved, utilities will cover costs and make a return whether it is needed or not.

"It's for renewable generation" is a lie. The massive transmission infrastructure expansion proposed is not "for renewables" because transmission may not discriminate by generation type. Federal regulations prohibit discrimination among generators — it's first come, first ready, first served. There are tens of thousands of megawatts of coal projects, with transmission studies complete or in progress, waiting for interconnection, and whatever generation is ready will be connected. Another side of this lie is when wind advocates support transmission, claiming "it's for renewables," and ignore the impacts of transmission on the communities it traverses. Rather than make this convoluted "it's for renewables" claim, there's a better way: if renewable energy mandates were directly linked with shut down of fossil generation, and if renewable generators were thoughtfully sited, both the electricity market and transmission infrastructure would be open and available.

"Long distance transmission" is a lie. Transmission is inherently inefficient over long distances. Transmission physics entails high levels of line loss, and the longer the line, the higher the line loss. To avoid this fact of physics, the electric industry has shifted its line loss analysis for new projects to a "system wide" loss, so the numbers look low. But consider actual numbers of megawatts of line loss, and look at "coal plant equivalents" to make up that loss — for every 500-600 MW of line loss, a coal plant or more would have to be built! Line losses are charged in Federal Energy Regulatory Commission rates, but this is not considered directly in the market transactions. Line loss is an afterthought add-on to the customer's bill after transmission service is provided. Consider too the capital cost of transmission, starting at about $1.5 million per mile for 345kV lines and upward from there.

Utilities' frame of "need" for "public purpose" is a lie. Most transmission regions of the country are now planning transmission expansion to make their markets workable — to be able, theoretically, to ship power across the country. For example, in the Midwest, it's the Midwest Transmission Expansion Plan. In PJM on the east coast, it's the Regional Transmission Expansion Plan. These plans are all market-based, but for those transmission projects in states that regulate transmission, they'll couch "need" in terms recognized by the state to get the approvals they need.

For example, CapX 2020 in the Midwest is framed for Minnesota regulators as needed for "local load-serving," "regional reliability," and "generation interconnection" — despite being an obvious expansion for coal through Minnesota to points east. The Mid-Atlantic Power Pathway is framed as necessary to serve local load in the Delmarva peninsula, despite being an obvious pass-through from West Virginia coal to New Jersey, connecting major power plants for export to the Northeast. Utility framing of this market-based, profit-based purpose as public purpose "need" also serves as their basis for taking land through eminent domain, because a corporation's private purpose is expressly prohibited as justification for a taking.

Will we fall for transmission lies? Is new transmission a public purpose, a public need, provision of an essential service for a utility's service area? Or is it an industry grab for market opportunities and profits at the public's expense?

In my years of practice, I've yet to see a transmission line actually meant for the "need" proposed. We must take a critical look at these projects' claims, because we're the ones who will pay, and the lines will go over our land. Odds are, it's private-purpose infrastructure that commits us to 50 or more years of wrongheaded, inefficient, and polluting central-station generation.

Electricity is binary, as is our situation now — we're at a point where we must choose our path.

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1 Nebraska Public Power District, Report on June 10-11, 1997 Disturbance. See also Northern MAPP/Northwestern Ontario Disturbance — June 25, 1998 — Final Report; NERC Investigation of August 14, 2003 blackout.

THIS IS CAPX 2020

Multiple Phases – right now we're on "Phase I"

Table 4. Summary of Vision Plan

Facility Name				
From	**To**	**V olt (kV)**	**Miles**	**Cost ($M)**
Alexandria, MN	Benton County (St. Cloud, MN)	345	80	60
Alexandria, MN	Maple River (Fargo, ND)	345	126	94.5
Antelope Valley (Beulah, ND)	Jamestown, ND	345	185	138.75
Arrowhead (Duluth, MN)	Chisago County (Chisago City, MN)	345	120	90
Arrowhead (Duluth, MN)	Forbes (Northwest Duluth, MN)	345	60	45
Benton County (St.Cloud, MN)	Chisago County (Chisago City, MN)	345	59	44.25
Benton County (St. Cloud, MN)	Granite Falls, MN	345	110	82.5
Benton County (St. Cloud, MN)	St. Bonifacius, MN	345	62	45.5
Blue Lake (Southwest Twin Cities, MN)	Ellendale, ND	345	200	150
Chisago County (Chisago City, MN)	Prairie Island (Red Wing, MN)	345	82	61.5
Columbia, WI	North LaCrosse, WI	345	80	60
Ellendale, ND	Hettinger, ND	345	231	173.25
Rochester, MN	North LaCrosse, WI	345	60	45
Jamestown, ND	Maple River (Fargo, ND)	345	107	80.25
Prairie Island (Red Wing, MN	Rochester, MN	345	58	43.5
TOTAL			**1620**	**$1,215 ($M)**

Exhibit 17, Portion of the 2005 Biennial Report Filed by Transmission Utilities, p. 36; Ex. 1, Application, App. A-1, Technical Update October 2005; see also Exhibit 12, CapX 2020 Update, June 14, 2006; Rogelstad, Vol. 2A, p. 69-74; Rogelstad, Direct Testimony p. 17; Rogelstad, Tr. Vol 2A, p. 39 et seq.

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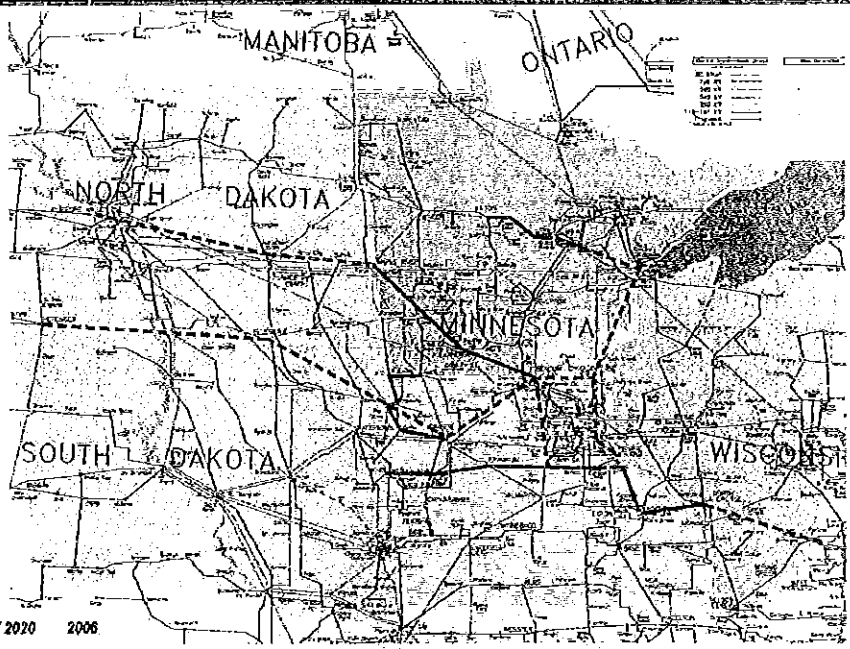
Continuing work refines the plan, but the first project group is ready for implementation



THIS IS JCSP/MTEP 08:

The types and approximate locations for the new transmission are shown in Figure 1-2.

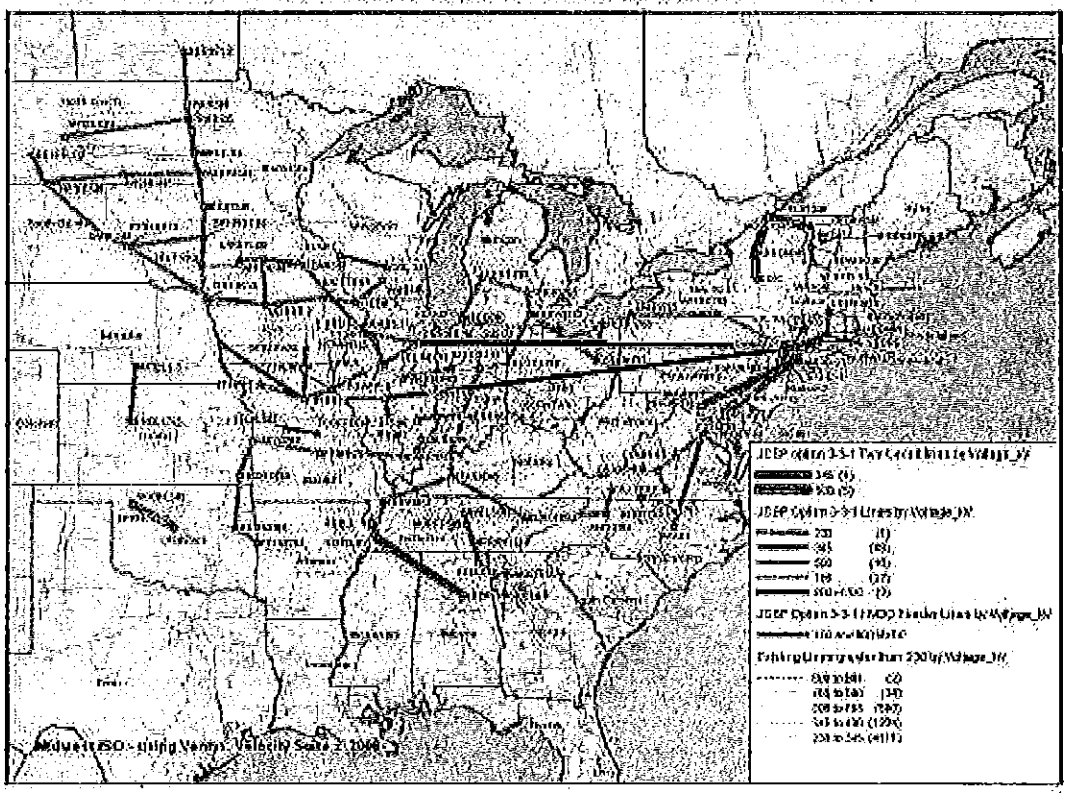


Figure 1-2: Reference Scenario Conceptual Transmission Overlay

XCEL's SHRINKING DEMAND
CAPX 2020 ISN'T NEEDED!

See www.nocapx2020.info

CapX claims in handouts at the June 16th, 2009 Plainview RUS public scoping meeting that:

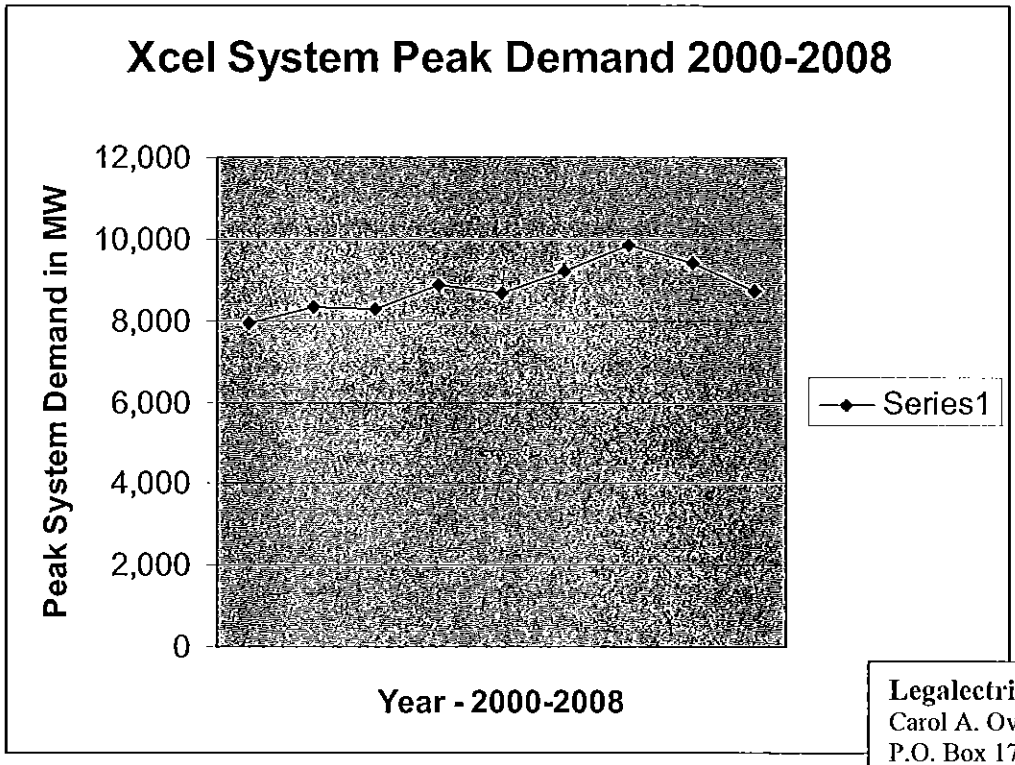
Electricity usage continues to climb

Why does the electric transmission grid need to be expanded? The simple answer: Because we're using more electricity than we did just a few years ago – and it's expected to grow another 40 percent by 2030.

But guess again -- look at Xcel's SEC 10Ks for 2008[1], 2006[2] and 2002[3] for electric demand:

System Peak Demand (in MW)

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009 1-2Q
7,936	8,344	8,259	8,868	8,665	9,212	9,859	9,427	8,697	YTD sales-2.2%[4]



This chart says it all!

Where is demand headed?

This is not a "short term blip" due to the economic depression, it began in 2007, and it's still going down in 2009!

This does not include the 1.5% mandate to conserve!

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[1] Xcel 2008 SEC 10-K: http://www.secinfo.com/$/SEC/Filing.asp?D=Vut2.s1Uy
[2] Xcel 2005 SEC 10-K: http://www.secinfo.com/d11MXs.vbn4.htm
[3] Xcel 2002 SEC 10-K: http://www.secinfo.com/dsvrp.24u6.htm#_008
[4] Xcel 2Q 2009 Earnings Call transcript, p. 2 http://seekingalpha.com/article/153000-xcel-energy-inc-q2-2009-earnings-call-transcript?page=2