

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

In the Matter of the Application of ITC  
Midwest LLC for a Certificate of Need for the  
Minnesota-Iowa 345 kV Transmission Line  
Project in Jackson, Martin, and Faribault Counties

OAH Docket No.: 60-2500-30782  
PUC Docket No.: ET-6675/TL-12-1337  
ET-6675/CN-12-1053

**CITIZENS ENERGY TASK FORCE AND NO CAPX 2020**

**REPLY TO RESPONSES TO MOTION TO COMPEL  
ANSWERS TO INFORMATION REQUESTS  
AND FOR  
LEAVE TO PARTICIPATE IN LIMITED DISCOVERY AND CROSS-EXAMINATION**

Citizens Energy Task Force and NoCapX 2020 submit this Reply to the Response of Minnesota Center for Environmental Advocacy, Wind on the Wires, Fresh Energy and the Izaak Walton League, and to that of Applicant ITC Midwest the Motion to Compel Answer to Information Requests and for Leave to Participate in Discovery and Cross-Examination. A review of Information Requests in this docket thus far demonstrated that there were no Information Requests served by MCEA, et al., and triggered the request of CETF and No CapX 2020 for an increase in participation, to included limited discovery and cross examination, based on our belief that many critical issues will not be addressed in this docket by these Intervenors who are in fact supporting this project, rather than vetting it, critiquing it, or opposing it. No request for extension of time, for any change in schedule, is being made. There will be no delay.

**REPLY TO MCEA, et al.**

**I. ADMISSIONS BY MCEA, et al., WOULD ADDRESS RELEVANT ISSUES**

The Information Requests propounded in the CapX 2020 docket in 2008 are similar to those presented in this docket. MCEA, et al., provided the Information Requests, but not the responses. Attached as Exhibit A is a Request for Admissions served on MCEA on the date of this filing, and includes the 2008 CapX 2020 docket responses of MCEA, et al., and follow up correspondence. (PUC docket E-002/CN-06-1115; OAH Docket 15-2500-19350-2).

MCEA, et al., claims that answering the Information Requests in this docket would be burdensome, but if the responses provided in 2008 were truthful and complete, those answers will suffice, and providing affirmation of those responses is not burdensome.

A review of their 2008 responses, however, shows that they did not produce the documentation requested regarding their transmission promotion activities, specifically copies of grant applications, contracts/agreements, work plan and reports for the Wind on the Wires grants and documentation of WOW grant-funded activities; copies of any other Comments to DOE other than the Comment provided as guidance in the Information Requests (relevant here because the Heartland Transmission Corridor is in large part what is proposed with this ITC project/MVP 3); copies of agreements and contracts pertaining to transmission and intervention and participation in transmission proceedings, lobbying for transmission related legislation regarding tariffs, transmission entities and transfer of assets, IGCC, coal, wind; clarification of WOW and Izaak Walton League relationship and employees Soholt, Solkolski and Schuerger as employees, consultants, and consultants and employees of other organizations and/or agencies. In particular, the response to the 2008 Information Request #10 was false, as agreements do exist

and representative copies of two such agreements have been provided in this docket attached to Information Request #2 (PUC Docket ET-6675/CN-12-1053 (2014)).

As above, a Request for Admissions, with request for corrections/clarifications, has been served on MCEA, et al., and is attached as Exhibit A.

## **II. LACK OF PARTICIPATION HAS INDEED BEEN USED AS REASON TO EJECT PARTIES FROM DOCKETS**

Lack of participation by MCEA, et al., is what triggered the Information Requests served on parties by CETF and No CapX2020. MCEA, et al., object to statements that they are not “actively participating,” and that there is no requirement to “actively participate.” Legally, MCEA, et al., are absolutely correct, there is no requirement to “actively participate,” but in practice, parties opposing projects have been unreasonably denied their participatory rights, to their significant detriment. Administrative Law Judges have improperly used failure to actively participate as a basis for an Order to Show Cause as to why parties should not be removed and then ordered their Intervenor status revoked!<sup>1</sup> While this practice has been used thus far against project opponents only, and not project supporters such as MCEA, et al., apparently MCEA, et al. is not aware of challenge to and denial of party status based on participation. This practice of ejecting project opponents from participation as intervenors should not continue.

In the most relevant case, CapX 2020 transmission Certificate of Need, which is directly tied to transmission agreements of MCEA, et al., two Intervenor were served with an Order to Show Cause. Exhibit B, Order to Show Cause, Prairie Island Indian Community and United Citizens Action Network. The Prairie Island Indian Community then dropped out of the case at

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<sup>1</sup> It was due to experience with this practice, and previous OAH refusal to allow counsel to participate as non-party participants while representing other clients in dockets (Split Rock-Lakefield Jct, MEQB NO. 03-73-TR-XCEL under Certificate of Need docket 01-1958; and Mesaba Project siting docket 06-668), that No CapX 2020 and CETF requested intervention in this docket.

that time. Exhibit C, Withdrawal of Prairie Island Indian Community. United Citizen Action Network (U-CAN)<sup>2</sup> filed a response to the Order to Show Cause, the ALJ allowed U-CAN's continued participation. Exhibit D, Order Dismissing PIIC and Retaining U-CAN. Further, failure to intervene, where an intervention request was denied, was cited by a reviewing court as a basis for dismissal of an appeal of the Commission decision regarding the MinnCan pipeline Certificate of Need and Routing decision.<sup>3</sup> In that decision, the Court did not take note that a request for Intervention had been filed by MPIRG on behalf of the landowners, landowners who later banded together to become U-CAN. These landowners had requested intervention and the ALJ denied their request. Exhibit E, Order Denying Motion to Intervene. The Administrative Law Judge issuing those orders in CapX 2020 Certificate of Need and the MinnCan pipeline dockets is now the Chair of the Public Utilities Commission.

Another instance where the Administrative Law Judge issued an Order to Show Cause based on failure to "actively participate" was in the Mesaba Project siting docket. The Mesaba Project was yet another project where MCEA, et al., had an agreement regarding the project and actively promoted coal gasification, and each of them received grants from the Joyce Foundation to promote coal gasification, totaling hundreds of thousands of dollars. They intervened in the Power Purchase Agreement docket, but only regarding carbon dioxide issues and were silent on the substantive issues in that docket, and did not intervene in the Mesaba Project siting docket.

Less than one month before the hearing, the Administrative Law Judge Ordered that all of the parties actively opposing the project, Xcel Energy, Minnesota Power, and Public Energy –

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<sup>2</sup> Following this CapX CoN docket, Overland has represented U-CAN in numerous CapX 2020 transmission routing dockets and at PPSA Annual Hearings and a PUC rulemaking.

<sup>3</sup> The court held that, "Relators, as interested landowners, could have intervened, become parties to the proceeding, and participated in the contested-case hearing, but did not do so. [citation omitted]. Therefore, their argument must be dismissed as without merit." Attached Exhibit F, In the Matter of the Application of Minnesota Pipe Line Company for a Certificate of Need for a Crude Oil Pipeline and In the Matter of the Application to the Minnesota Public Utilities Commission for a Pipeline Routing Permit for a Crude Oil Pipeline and Associated Aboveground Facilities, Minn. Ct. App. A07-1318(unpublished)(2006).

Mesaba, be ejected from the proceeding, without so much as an Order to Show Cause to demonstrate interests and participation activities. Exhibit G, Mesaba Siting Docket, Fifth Prehearing Order, p. 3, ejecting project opponents Xcel Energy, Minnesota Power, and Public Energy – Mesaba. These ejected intervenors, including directly affected landowner members of Public Energy – Mesaba, were not allowed to reasonably participate in the hearing and a siting permit was issued on the basis of that defective hearing record.<sup>4</sup> The ejected parties, particularly the affected landowners, have suffered a significant loss of due process rights.

### **III. DISCLOSURE IS NECESSARY WHERE INTERVENORS SELF-LABEL AS “CLEAN ENERGY INTERVENORS”**

Intervenors MCEA, et al., have deemed themselves “Clean Energy Intervenors,” but this is a misnomer. As noted previously, when organizations framed as advocates of “environmental” and/or “renewable energy” are promoting a position, it could be presumed, mistakenly, that the position is necessarily in furtherance of “environmental” interests, or in promotion of “renewable energy.” However, where the position advanced in regulatory proceedings is based on terms of agreements and funding contracts, the organizations’ advocacy could well be against the public interest, inconsistent with their members’ interests, harmful to the environment, facilitate marketing of fossil fuel generation, and have the opposite impact of what their organizations’ image implies. The position advocated, the specific interest, and any contractual terms should be disclosed, and evidence and arguments weighed accordingly.

This is particularly important, for example, when claims are made that transmission is “for wind,” but there is no demonstration that transmission “for wind” in any way reduces coal

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<sup>4</sup> The Mesaba siting hearing was astoundingly Kafakesque, where before an audience of more than 300 in Taconite, and over 50 in Hoyt Lakes, over 20 witnesses were rammed through in two days, with nominal questioning allowed of only some of the witnesses, and one of the hearing days was convened in a hockey arena with no heat on a -20 degree day with all parties in coats and mittens. PUC Docket E-6472/GS-06-668.

generation. Instead, transmission expansion and increased capacity works to facilitate increased marketing capacity for existing coal generated electricity in the MISO market. An alternate approach of closing coal plants, which would open up transmission capacity for renewable generation, would increase renewable access to markets without new construction of transmission. In this case, increasing transmission capacity is particularly relevant due to coal plants in the immediate vicinity to MVP 3, such as the MidAmerican Energy Center, owner and promoter of the other portion of MVP 3 and the transmission from North Dakota coal plants through South Dakota connecting to this ITC Midwest's projects' extension of transmission in a long planned and promoted march across southern Minnesota. Exhibit H, ABB Lignite Vision 21 transmission showing Split Rock – Lakefield Jct.(1999); Exhibit I, WRAO transmission map showing Lakefield Jct. to Madison (1998); Exhibit J, Comment to DOE, p. 10, map proposing “MVP 3” as NIETC (2006).

Increased capacity of transmission in this area is demonstrably in the interests of those marketing coal generated electricity. Coal generated electricity is anything but “clean energy.”

### **REPLY TO ITC MIDWEST, LLC**

#### **IV. DETAILS OF NECESSARY DISCOVERY HAVE BEEN PROVIDED**

Initial Information Requests were served on ITC Midwest, IRs 1-10, and the only other discovery necessary was served today, IR 11, requesting information about agreements regarding transmission and/or transmission companies between ITC Midwest, its predecessors, and/or associated business organizations and MCEA, Fresh Energy, Wind on the Wires, and/or Izaak Walton League. This Information Request has been served on ITC Midwest, LLC, on the date of this pleading.

## **V. CONCLUSION -- DISCOVERY WILL INFORM THE RECORD ON THE ISSUES PRESENTED**

Discovery is needed for the proper presentation of the CETF and No CapX 2020 case, which focuses on this project as an enabler of coal, facilitating “transmission for coal to market,” and disregarding the inherent inefficiency of transmission, particularly in light of a variable and low capacity factor resource such as wind. No party is addressing the very high capacity of this line, its building upon a long-planned footprint of transmission across Minnesota, and its potential to facilitate market transactions for coal in Minnesota or further east.

This request for increased participation and discovery is not for purposes of delay, and the issues in controversy are significant enough to warrant the discovery. MCEA, et al., has responded to similar requests in the CapX 2020 Certificate of Need docket, and responding in this docket would not be unduly burdensome. If parties such as MCEA, et al., have executed agreements in which a term is that they will intervene in support of a project and/or transmission generally, the terms of that agreement, the position to be advocated, the support required, and the funding and funding sources for those activities should be disclosed to the parties and this court. The contractual obligations and benefits relating to transmission generally, this transmission project specifically, transmission-only companies and ITC Midwest specifically, must be disclosed and made part of the record for a full and fair record in this proceeding.

CETF and No CapX 2020 again respectfully request leave of the Court to conduct nominal discovery as already served on parties, and to cross-examine witnesses, with the specific direction that the schedule remain as set out in the Prehearing Order. CETF and No CapX 2020 are not requesting any change of schedule or delay in the established Scheduling Order. CETF and NoCapX request that its Motion to Compel be granted and that Minnesota Center for

Environmental Advocacy, Wind on the Wires, Fresh Energy and the Izaak Walton League be ordered to provide the information and documentation requested in the Information Requests.

Respectfully submitted,

March 31, 2014



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# Exhibit A

## Request for Admissions

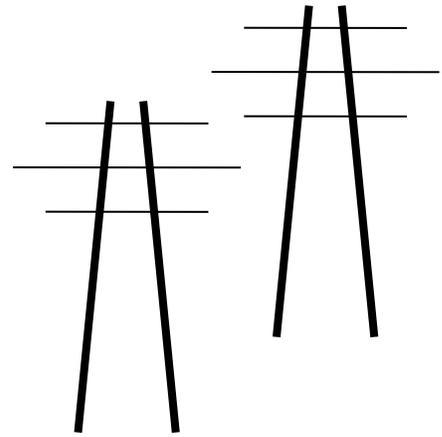
Attached – 2008 Responses to similar discovery as requested here

# Legalelectric, Inc.

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March 28, 2014

Leigh Currie  
Staff Attorney  
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via email only: lcurrie@mncenter.org

RE: In the Matter of the Application of ITC  
Midwest LLC for a Certificate of Need for the  
Minnesota-Iowa 345 kV Transmission Line  
Project in Jackson, Martin, and Faribault Counties

OAH Docket No.: 60-2500-30782  
PUC Dockets: ET-6675/TL-12-1337  
ET-6675/CN-12-1053

Dear Ms. Currie:

Attached please find Request for Admissions in the above-entitled dockets.

These matters have indeed been addressed previously, though not in this docket, and thus response to the Information Requests should not be unduly burdensome. Admissions regarding the previous answers should suffice, together with correction or clarification and provision of the documentation requested, as noted in the 2008 responses and correspondence noting deficiencies in the responses, also attached.

Thank you for your prompt attention to these requests.

Very truly yours,

Carol A. Overland  
Attorney at Law

cc: Citizens Energy Task Force and No CapX 2020

**OVERLAND LAW OFFICE/LEGALECTRIC**

**1110 WEST AVENUE  
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**OVERLAND@LEGALECTRIC.ORG**

**ITC Midwest Transmission Project - Request for Admissions #1**

Docket Number: PUC Docket No.: ET6675/CN-12-1053      Request Date: March 28, 2014  
OAH Docket No.: 60-2500-30782

Requested From: Elizabeth Goodpaster, MCEA, as attorney for MCEA, WOW, Fresh Energy,  
and Izaak Walton League.

Party Requesting Information: Carol A. Overland for NoCapX 2020 and CETF

*If you feel your responses are trade secret or privileged, please indicate this on your response.*

Request No.	<b>ITC Transmission Project</b>
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1. In the CapX 2020 Certificate of Need docket, No CapX2020 served Information Requests on MCEA, Izaak Walton League, Fresh Energy and WOW, similar to those IRs served in that above captioned docket. The earlier Information Requests were answered. See attached Information Requests and Answers.
  - a. For each Information Request, #1 – 12, attached, are these the same answers you would provide today?
  - b. For each answer where you would provide a different answer today, please so provide that answer.
  - c. For each Information Request where documentation was requested, please provide that documentation.

Response by: \_\_\_\_\_ List sources of information: \_\_\_\_\_

Title: \_\_\_\_\_

Department: \_\_\_\_\_

Telephone: \_\_\_\_\_

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

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	)	PUC Docket No. E-002/CN-06-1115
	)	OAH Docket No. 15-2500-19350-2
In the Matter of the Application of	)	
Great River Energy, Northern States	)	
Power Company, (d/b/a Xcel Energy) and	)	
Others for a Certificate of Need for the	)	JOINT INTERVENTORS'
CapX 345-KV Transmission Projects	)	RESPONSE TO CAROL A.
	)	OVERLAND'S INFORMATION
	)	REQUESTS NOS: 1-12

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The following parties in MPUC Docket No. CN-06-115 and OAH Docket No. 15-2500-19350-2, Wind on the Wires, Izaak Walton League of America – Midwest Office, Fresh Energy, and Minnesota Center for Environmental Advocacy (“Joint Intervenors”) hereby provide responses to Information Requests 1-12.

**Request #1:**

1. For each of the above entities, please provide copies of grant application, contract/agreement, work plan and reports for the Wind on the Wires grants of May, 2001 (\$4.5 million); June, 2003 (\$8.1 million) and any other subsequent Wind on the Wires grants from the McKnight and Energy Foundations (see announcements attached) and subsequent WOW funding.

**Response:** The amounts mentioned above are the total amount committed to a number of applicants, not just Wind on the Wires. The Energy Foundation receives money from McKnight that it gives to grant applicants. The amounts granted during each period and the parties that received them are available in the Energy Foundation's annual reports which can be accessed at [www.ef.org](http://www.ef.org).

2. Please provide documentation of WOW grant-funded activities related to Transmission in Minnesota, South Dakota, North Dakota, Iowa and Wisconsin, identifying dates, entity and its representative, activity, and copies of any handouts or presentations.

**Response:** Wind on the Wires footprint includes 10 Upper Midwest states including ND, SD, NE, MN, IA, WI, IL MI, IN, and OH. The grant requests WOW has made to funders include identification of this footprint and emphasis on the transmission planning work WOW does with the Midwest Independent System Operator (MISO). WOW has made numerous public presentations in the states within our footprint and those handouts and presentations are available on websites associated with those various events. Several representative samples are attached to this response. (See Attachments 1-4).

**Request #2:**

1. For each of the above entities, please provide copies of any and all Comments and Draft Comments to DOE proposing a National Transmission Corridor within Minnesota, including but not limited to the "Heartland Transmission Corridor." Identify by name the Funding source for this work and dollar amount.

**Response:** Wind on the Wires has not received any funding specifically allocated to national transmission corridor work or the Heartland Transmission Corridor concept. WOW generally works on transmission and transmission-related items and as such a transmission corridor concept fits within our work. WOW has not written any other comments on a national transmission corridor other than what was filed publicly with the U.S. Department of Energy.

2. Please provide documentation of basis for this statement, p. 7, of attached Study Comment:

*The CapX utilities are seeking approval for 3 new 345 kV transmission lines across Minnesota that will provide "backbone" infrastructure that stretches from the Dakotas, through Minnesota and into Wisconsin.*

**Response:** Wind on the Wires has no specific documentation other than what CapX2020 has publicly provided. In addition, WOW has not done any independent analysis, other than that which will be provided in expert testimony submitted May 23, 2008.

**Request #3:**

1. For each of the above entities, please provide copies of any and all Comments and Draft Comments to DOE proposing a National Transmission Corridor within Minnesota, including but not limited to the "Heartland Transmission Corridor." Identify by name the Funding source for this work and dollar amount.

**Response:** Please see Joint Intervenor's response to IR Request No. 2 above.

**Request #4:**

1. Please provide documentation of basis for this statement, p. 7, of attached Study Comment:

*The CapX utilities are seeking approval for 3 new 345 kV transmission lines across Minnesota that will provide "backbone" infrastructure that stretches from the Dakotas, through Minnesota and into Wisconsin*

**Response:** Please see Joint Intervenor's response to IR Request No. 3 above.

**Request #5:**

1. Please review attached March 6, 2006, Comment and map of AWEA, WOW, et al., to DOE proposing National Interest Electric Transmission Corridors.
  - a. Describe in detail route proposed on map for proposed NIETC in North Dakota, South Dakota and Minnesota.
  - b. Compare and distinguish between proposals of WOW, et. al., and CapX 2020.
  - c. What do the white squares on the blue line represent? If substations, identify the substations.
  - d. Comments regarding Draft Criterion 2 and 3 address economic development and market considerations. For the Midwest corridor proposed, identify areas subject to economic development benefits and identify markets to be served.
  - e. The Comments references MTEP 03 and MTEP 05. Provide copies of these transmission plans.

**Response:** We were unable to find the referenced attachment of March 6, 2006 as it was not attached. Please provide us with the

**aforementioned attachment and we will respond accordingly.**

**Request #6:**

1. In addition to the DOE's NIETC docket, in what other venues has WOW, AWEA, et al., caused this or similar comment to be filed and/or promoted and/or presented regarding the transmission corridor? Provide full documentation.

**Response: The concept of national transmission corridors has generally been discussed at American Wind Energy Association (AWEA) meetings. WOW has not written any other comments on a national transmission corridor other than what was filed publicly with the U.S. Department of Energy.**

**Request #7:**

1. How many MW of coal generation of any type are currently in MISO queue in:
  - a. North Dakota
  - b. South Dakota
  - c. Minnesota
  - d. ND, SD, and Minnesota combined

**Response:**

**a. Please refer this question to MISO. We do not have specific information other than that publicly available regarding coal generation that is currently in the MISO queue.**

**b. Please refer this question to MISO. We do not have specific information other than that publicly available regarding coal generation that is currently in the MISO queue.**

**c. Please refer this question to MISO. We do not have specific information other than that publicly available regarding coal generation that is currently in the MISO queue.**

**d. Please refer this question to MISO. We do not have specific information other than that publicly available regarding coal generation that is currently in the MISO queue.**

**Request #8:**

1. How many MW of wind generation are currently in MISO queue in Illinois?

**Response:** Please refer this question to MISO. We do not have specific information other than that publicly available regarding wind generation that is currently in the MISO queue.

**Request #9:**

1. Please review attached Wind on the Wires report "Net Environmental Impacts of Transmission Systems" and Power Point of same name.
  - a. Has WOW completed an NEITS analysis of CapX? Please provide a copy.
  - b. If no analysis has been completed for various scenarios of coal generation, using the number of MW in answer to 7(d) above, provide analysis using NEITS methodology described in WOW report for scenarios of 20%, 50%, 80% and 100% of proposed coal generation.

**Response:** a. WOW has not completed an NEITS analysis of CapX.  
b. WOW does not have adequate information to do the requested analysis.

**Request #10:**

1. MCEA, the Izaak Walton League, Fresh Energy and NAWO negotiated with Xcel/NSP during the Southwest Minnesota 345kV proceeding, resulting in the TRANSLink agreement, attached. The "Merger Agreement" also had a provision related to transmission in southwest Minnesota.
  - a.. Please provide copies of any and all agreements (complete agreement) and/or contracts regarding transmission with any and all of the applicants and/or predecessor of subsidiary corporation, including but not limited to, "TRANSLink agreement, " "Merger Agreement," "Collector System."
  - b. Provide copies of these and other agreements and contracts pertaining all or in part to transmission and generation related activities, such as intervention and participation in permitting, rate or rulemaking proceedings, lobbying for transmission or tariff legislation, transmission entities and transfer of assets, IGCC, coal, wind opposition & promotion, etc.

c. In light of agreements and contractual obligations above, describe interest and outcomes sought of each of the above parties in the CapX proceeding.

d. Identify any contractual boundaries to participation in the CapX docket.

**Response:**

- a. None exist.
- b. None exist.
- c. Not applicable.
- d. Not applicable.

**Request #11:**

1. For each of MCEA, Wind on the Wires, the Izaak Walton League, and Fresh Energy, describe by identifying organization, individuals and activity:

- a. All activities in formulation, study, development, presentation (i.e., conferences and meetings) of MTEP (all iterations).
- b. All activities I promotion of MTEP after adoption by MISO

**Response:**

- a. **WOW is the only organization referenced which would have been involved in the aforementioned activities. WOW has generally participated in meetings held by MISO on MTEP. Meeting materials were provided by MISO and can be accessed on the MISO website [www.midwestiso.org](http://www.midwestiso.org) under specific meeting dates. Meeting materials are posted for each date.**

b. none.

**Request #12:**

1. For each of MCEA, Wind on the Wires, the Izaak Walton League, and Fresh Energy, describe by identifying organization, individuals and activity:

- a. All activities in formulation, study, development, presentation (i.e., conferences and meetings) of CapX 2020 (all iterations). Provide documentation and copies.
- b. All activities in promotion of CapX2020 after adoption by MISO. Provide documentation and copies.

**Response:** WOW is the only organization referenced which would have been involved in the aforementioned questions.

a. WOW has generally provided publicly available regional information to CapX regarding expected wind development, wind resources, and megawatt amounts that will likely be needed to satisfy state RES/RPS requirements in the region. WOW does not have any specific materials other than those that would have been publicly distributed by CapX 2020 at their meetings.

b. WOW's mission is to promote wind energy and transmission to support increased wind development. To the extent that WOW believes that CapX2020 transmission lines will facilitate or support this mission, WOW has publicly supported the CapX 2020 lines. However, WOW has not engaged in any official promotional activities in support of CapX2020 separate from involvement in the CapX2020 legal proceedings.

Dated: May 22, 2008

Respectfully submitted,

/s/: Mary Winston Marrow

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May 23, 2008

Mary Winston Marrow

Staff Attorney

MCEA

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RE: Inadequate Response to Information Requests  
NoCapX 2020 IRs to MCEA et al.  
PUC Docket E-002/CN-06-1115  
OAH Docket 15-2500-19350-2

Dear Ms. Marrow:

The responses to NoCapX 2020 Information Requests are inadequate. The overall purpose of these Information Requests is to discover contractual obligations and activity under those obligations that may have an impact on MCEA, et al.'s interest and/or participation in this CapX 2020 docket.

**Points of organizational and employee/contractor status needing clarification**

There are several responses that state "WOW is the only organization referenced which would have been involved..." which is not accurate technically. Although WOW was incorporated in Minnesota on October 9, 2002, it remains a reported "program service" of the Izaak Walton League (2006 \$360,032; 2005 \$363,197; 2004 \$360,805, etc.), Beth Soholt is listed as an employee of the Izaak Walton League (2006 and 2005 as Director of WOW; 2004 as Director of Communication, Izaak Walton League), and Matt Schuerger is listed as Consultant of Izaak Walton League in 2004, and was with ME3 before that. Adam Solkolski and Matt Schuerger, now both with state's Department of Commerce, are listed on the WOW website as employee and consultant, respectively.

It appears that WOW is part of the Izaak Walton League and WOW employees are employees of the Izaak Walton League. Please clarify as necessary any references to WOW as "the only organization referenced." Also, please clarify WOW's organizational status and its representatives as necessary.

**Information Request #1:**

1a. The request is for “copies of grant application, contract/agreement, work plan and reports for the Wind on the Wires grants...” The response of MECA, et al. was only a vaguely related narrative regarding the WOW grants and did not provide any “copies of grant application, contract/agreement, work plan and reports for the Wind on the Wires grants.” Please provide these documents at your earliest convenience.

1b. This IR is seeking documentation of “WOW grant-funded activities related to Transmission in Minnesota, South Dakota, North Dakota, Iowa and Wisconsin, identifying dates, entity and its representative, activity, and copies of any handouts or presentations.” As with 1a, this response was not sufficient, and contained only representative samples. I would suspect that the grant reports requested in IR 1 would contain the information requested. Please provide the information regarding WOW grant related transmission activities and documents requested at your earliest convenience.

**Information Request #2:**

2b. The response to this IR was not sufficiently specific. Please provide citations to CapX 2020 materials that provide the basis for your statement:

*The CapX utilities are seeking approval for 3 new 345kV transmission lines across Minnesota that will provide “backbone” infrastructure that stretches from the Dakotas, through Minnesota and into Wisconsin.*

**Information Request #5:**

5a. A copy of the March 6, 2006 Comment was provided yesterday under separate cover and is provided again here, attached. Please provide information and documents requested.

**Information Request #10:**

10a. The response of MCEA, et al. is patently false and insufficient. Such agreements exist and have been filed with PUC. See attached agreements as examples. The purpose of these Information Requests is to discover contractual obligations and activity under those obligations that may have an impact on MCEA, et al.’s interest and/or participation in this CapX 2020 docket. Again, please provide copies of any and all agreements (complete agreement) and or contracts regarding transmission with any and all of the applicants and/or predecessor or subsidiary corporation, including but not limited to “TRANSLink agreement,” “Merger Agreement,” and “Collector System.” Please provide the documents requested at your earliest convenience.

10b. As with 10a, the response of MCEA, et al, is patently false and insufficient. As above, please provide documents at your earliest convenience.

10c. The response to this IR was non-responsive. Please provide information requested.

10d. The response to this IR was non-responsive. Please provide information requested. Specific citations to agreements and contracts in 10a and 10 b and interpretations would suffice.

**Information Request #11:**

11a. The response to this IR was insufficient. Matt Schuerger, M.E., as contractor or employee Wind on the Wires, made several presentations regarding MTEP that I am aware of. Provide information requested.

11b. The response to this IR was insufficient. Matt Schuerger, M.E., as contractor or employee of Wind on the Wires, made several presentations regarding MTEP that I am aware of. Provide information requested.

Please provide the information and documents requested at your earliest convenience. The information provided and information missing thus far triggers additional questions, which will follow separately.

Very truly yours,



Carol A. Overland  
Attorney at Law

Attachments

## Exhibit B

Order to Show Cause – PIIC & U-CAN

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

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.

**NOTICE AND ORDER TO SHOW CAUSE**  
-  
**PRAIRIE ISLAND INDIAN COMMUNITY**

To: Philip R. Mahowald, General Counsel  
Peter R. Jones, Assistant General Counsel  
Prairie Island Indian Community

On December 5, 2007, a Petition to Intervene in this proceeding was filed on behalf of the Prairie Island Indian Community. That Petition was not opposed, and was granted, based on the representation that the Prairie Island Indian Community would provide relevant information and an independent perspective in this matter. More specifically, the Petition stated that “the Community plans to be heavily involved in this proceeding to ensure that the transmission capacity is needed, as well as to ensure that the impact on the Community is minimized.” (Footnote omitted.) However, Prairie Island Indian Community has failed to file testimony, failed to be present to hear the public testimony, and failed to attend any of the evidentiary hearing to cross-examine the Applicants’ witnesses to this proceeding. Despite its failure to participate, Prairie Island Indian Community has not notified the undersigned of its intention to withdraw as a party. In light of its failure to participate in the proceeding,

IT IS HEREBY ORDERED:

1. By **August 16, 2008**, the Prairie Island Indian Community shall file a Memorandum and Supporting Affidavit specifying the relevant information that it intends to offer into the record during the evidentiary hearing, a detailed explanation of the role that it intends to play in evaluating the evidence provided, and explaining why it should remain as a full party, or requesting withdrawal as a party.

2. Nothing in this Order shall prohibit Prairie Island Indian Community from submitting public comments by **September 26, 2008**.

Dated: August 4, 2008

s/Beverly Jones Heydinger

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BEVERLY JONES HEYDINGER  
Administrative Law Judge

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

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.

**NOTICE AND ORDER TO SHOW CAUSE**  
–  
**UNITED CITIZENS ACTION NETWORK**

To: Russell Martin  
United Citizens Action Network (UCAN)

On December 17, 2007, a Petition to Intervene in this proceeding was filed on behalf of the United Citizens Action Network (UCAN). That Petition was not opposed, and was granted, based on the representation that UCAN members had private property interests that could be directly affected by the outcome of this proceeding and that it intended to advocate for the rights of Minnesota landowners and citizens in this proceeding. More specifically, it stated that “[UCAN] brings the unique perspective of potentially affected landowners to these proceedings, a perspective that is necessary to assist the Administrative Law Judge and Public Utilities Commission to fully understand the human and environmental impacts associated with the decisions they will make in this proceeding.” However, UCAN has failed to file testimony, and, although one of its members appeared at the evidentiary hearing on one day, UCAN has failed to prefile testimony or appear at any additional days of hearing to date or to cross-examine the Applicants’ witnesses to this proceeding. Despite its failure to participate, UCAN has not notified the undersigned of its intention to withdraw as a party. In light of its failure to participate in the proceeding,

IT IS HEREBY ORDERED:

1. By **August 16, 2008**, the United Citizens Action Network shall file a Memorandum and Supporting Affidavit specifying the relevant information that it intends to offer into the record during the evidentiary hearing, a detailed explanation of the role that it intends to play in evaluating the evidence provided, and further explaining either why it should remain as a full party, or requesting withdrawal as a party.

2. Nothing in this Order shall prohibit UCAN or its members from submitting public comments by **September 26, 2008**.

Dated: August 4, 2008

s/Beverly Jones Heydinger

---

BEVERLY JONES HEYDINGER  
Administrative Law Judge

# Exhibit C

## Prairie Island Indian Community Withdrawal

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

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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

---

OAH Docket No. 15-2500-19350-2

PUC Docket No. CN-06-1115

**PRAIRIE ISLAND INDIAN COMMUNITY'S  
MEMORANDUM IN RESPONSE TO ORDER TO SHOW CAUSE  
AND REQUEST TO WITHDRAW AS A PARTY**

TO: The Honorable Beverly J. Heydinger, Administrative Law Judge, Office of Administrative Hearings, 600 North Robert St., P.O. Box 64620, St. Paul, MN 55164-0620

The Prairie Island Indian Community ("Community") respectfully responds to the Notice and Order to Show Cause dated August 4, 2008. The Community petitioned to intervene in this proceeding on December 5, 2007. As set forth in the Community's Petition to Intervene, one of the Community's interests and concerns was and remains the applicants' alternative proposal to site the proposed transmission line at the Prairie Island substation. Because the Community's limited resources have been and will be focused on other proceedings in the Minnesota Public Utilities Commission and the Nuclear Regulatory Commission, it has not participated in the Certificates of Need proceeding to the extent it originally anticipated. While the Community has and continues to monitor this CON proceeding, it has not filed testimony or participated in the evidentiary hearing, and, given the present demands of the other proceedings, it is unlikely that the Community will do so.<sup>1</sup> We apologize for any confusion or inefficiencies that this has

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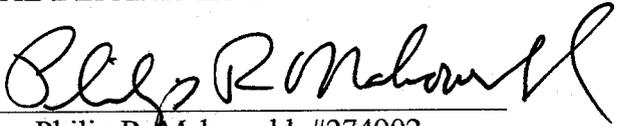
<sup>1</sup> The Community does intend to, and seeks to preserve its ability to, participate in the routing proceeding.

caused. We also appreciate the Administrative Law Judge's acknowledgement that the Community may submit public comments by September 26, 2008.

Accordingly, and in response to the Administrative Law Judge's Order to Show Cause, the Prairie Island Indian Community respectfully requests to withdraw as a party in the above-referenced proceeding.

Dated: August 15, 2008

PRAIRIE ISLAND INDIAN COMMUNITY  
LEGAL DEPARTMENT

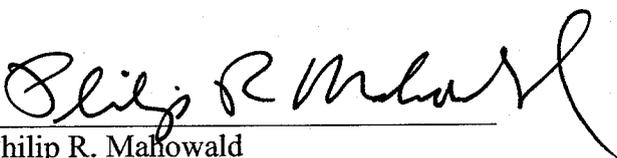
By:   
Philip R. Mahowald, #274902  
Peter R. Jones, #268616

5636 Sturgeon Lake Road  
Welch, MN 55089  
Telephone: (651) 267-4006  
Facsimile: (651) 385-4140

Attorneys for the Prairie Island Indian Community

#### CERTIFICATE OF SERVICE

Philip R. Mahowald certifies that on the 15<sup>th</sup> day of August, 2008, he served via e-mail a true and correct copy of the Prairie Island Indian Community's Memorandum in Response Order to Show Cause and Request to Withdraw as a Party as specified on the OAH Service List as of July 23, 2008.

  
Philip R. Mahowald

# Exhibit D

## Order

Dismissing Prairie Island Indian Community  
and Retaining U-CAN as Intervening Party

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

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.

**Order Dismissing Prairie Island Indian Community**

On August 4, 2008, the Administrative Law Judge issued a Notice and Order to Show Cause to the Prairie Island Indian Community and the United Citizens Action Network, to provide information by the close of business on August 16, 2008,<sup>1</sup> about why they should not be dismissed as parties to this action, based on each party's lack of participation in this proceeding.

Appearances are set forth in the attached Service List.

On August 12, 2008, Joyce Osborne and Judy Martin, members of United Citizens Action Network (UCAN), appeared at the evidentiary hearing and asked questions of David Birkholz who prepared the Environmental Report required in this proceeding. At that time, Ms. Osborne told the undersigned that UCAN may withdraw.

On August 15, 2008, the Prairie Island Indian Community filed its Request to Withdraw as a party.

On August 16, 2008, UCAN filed a written response explaining its involvement to date and the perspective it intends to maintain through the briefing process and deliberations of the Public Utilities Commission.

IT IS HEREBY ORDERED:

1. The United Citizens Action Network shall retain its status as a party to the proceedings.
2. The Prairie Island Indian Community is DISMISSED as a party.

---

<sup>1</sup> August 16, 2008 was a Saturday. Accordingly, the parties had until the close of business on August 18, 2008, the next business day, to respond.

3. The deadline to submit public comments is September 26, 2008.

Dated: August 21, 2008.

s/Eric L. Lipman for  
Beverly Jones Heydinger  
\_\_\_\_\_  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

Exhibit E

Order

Denial of MPIRG Intervention Request



15-2500-17136-2  
PL-5/CN-06-02  
PL-5/PPL-05-2003

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

In the Matter of the Application of  
Minnesota Pipe Line Company for a  
Certificate of Need for a Crude Oil  
Pipeline  
and  
In the Matter of the Application of  
Minnesota Pipe Line Company for a  
Routing Permit for a Crude Oil Pipeline

**ORDER DENYING MOTION TO  
INTERVENE AND GRANTING  
PARTICIPANT STATUS**

Appearances:

Eric F. Swanson, Winthrop & Weinstine; 225 South Sixth Street, Suite 3500, Minneapolis, MN 55402, and Heidi Larson on behalf of Minnesota Pipe Line Company.

Karen Finstad Hammel, Assistant Attorney General, and Valerie M. Smith, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, on behalf of the Department of Commerce.

Paula Goodman Maccabee, Attorney at Law, 1961 Selby Avenue, St. Paul, MN 55104, on behalf of Atina and Martin Diffley as Gardens of Eagan.

Commission staff member Robert Cupit, and Project Manager Larry B. Hartman, Department of Commerce, Energy Facility Permitting, 85 7th Place East, Suite 500, St. Paul, MN 55101-2198.

On September 14, 2006, the Minnesota Public Interest Research Group (MPIRG) submitted a Petition to Intervene in both the Certificate of Need and Routing Permit proceedings. Although the Petition was not signed, it was submitted by MPIRG and also some property owners: Russell and Judy Martin, Diane Staricka, Joyce Osborn, Roger and Joyce Tupy and Ray and Sharon Neubauer (Landowners). No affidavit or certificate of service was filed, but it appears that the parties to the proceeding received copies of the Petition. It is not clear if the Petition was filed with the Public Utilities Commission, although its staff was aware of the Petition.

The Minnesota Pipe Line Company (MPL) objected to the Petition on several grounds, including the lateness of the filing, MPIRG's failure to demonstrate that it met the legal requirements for intervention set forth in Minn. R. 1400.6200, subp. 1, or Minn. R. 1405.0900, subp. 1, and MPIRG's failure to follow certain procedural requirements.

The Department of Commerce did not object to MPIRG's intervention in post-hearing proceedings concerning the Certificate of Need, but stated that the Petition was filed after the deadline for intervention set in the First Prehearing Order entered March 30, 2006, and failed to meet certain procedural requirements. The Department also pointed out that the Petition failed to show how MPIRG's legal rights, duties or privileges would be affected by the Certificate of Need proceeding, and thus did not believe that the Petition met the standards for discretionary intervention.

In a separate filing, the Department of Commerce supported the request of the Landowners to intervene in the Routing Permit proceeding because its outcome could directly affect their property and potentially lead to its loss through the exercise of the power of eminent domain, and because the initial proposed pipeline alignment did not cross their property, but proposed changes to the route realignment could.

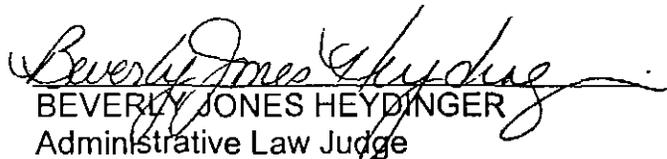
Atina and Martin Diffley as Gardens of Eagan did not oppose the Petition to Intervene.

Based on the record in this proceeding, and for the reasons more fully set forth in the Memorandum, attached hereto and incorporated herein,

IT IS HEREBY ORDERED:

1. MPIRG's Petition to Intervene is DENIED.
2. MPL shall provide each Landowner with a copy of the proposed alignment of the pipeline as of September 15, 2006, in the area where their property is located.
3. MPIRG and the Landowners shall be included on the Service List as Participants.

Dated this 29<sup>th</sup> day of September, 2006.

  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

## MEMORANDUM

MPL filed its Certificate of Need Application with the Public Utilities Commission on January 3, 2006, and its Route Permit Application on January 5, 2006. At the direction of the Minnesota Public Utilities Commission (MPUC), MPL worked with MPUC staff and the Department of Commerce to develop a letter to landowners living along the "centerline" of the proposed route and to other landowners along the route corridor, notifying them of MPL's applications.<sup>1</sup>

On February 16, 2006, the MPUC issued several orders initiating this proceeding. On February 21, 2006, the Department of Commerce issued a Notice of Application Acceptance and Public Information Meetings, with information for the public about the process to be followed, including the May 30, 2006 deadline for proposing alternative routes, and notice of information meetings in each county that the proposed pipeline would cross. That notice was published in newspapers in each of those counties, and mailed to persons listed on the Department's service list.<sup>2</sup>

On March 17, 2006, the first prehearing conference was held, a schedule was set for the proceeding, including intervention deadlines: April 17, 2006 for the Certificate of Need and May 30, 2006 for the Route Permit.<sup>3</sup>

Several alternative route alignments were filed with the Department of Commerce by May 30, 2006. Atina and Martin Diffley for the Gardens of Eagan filed a timely Petition to Intervene in the Route Permit proceeding, and the petition was granted. The Organic Consumers Association filed a timely Petition to Intervene in the Route Permit proceeding, but amended it and requested non-party participant status which was granted.

Direct Testimony in the Certificate of Need Proceeding was filed by June 21, 2006, the deadline set in the First Prehearing Order. Direct Testimony in the Route Permit Proceeding was filed by August 7, 2006, also pursuant to the prehearing order, as amended.

Public hearings on both the Certificate of Need and Route Permit were held in 14 communities between August 24 and September 14, 2006. A full-page notice of the public hearings was published in 19 newspapers, each one listing the date, time and location of each of the public hearings, and each one stating how any person could participate at the public hearing.<sup>4</sup> MPIRG filed its Petition to Intervene on September 14, 2006. An evidentiary hearing was conducted on September 15, 2006 at the MPUC. The record was left open for limited

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<sup>1</sup> See Ex. 86 and Hearing Transcript Volume ("T.") 12 at 79-80.

<sup>2</sup> Exs. 17 and 19.

<sup>3</sup> First Prehearing Order, March 31, 2006.

<sup>4</sup> Ex. 115.

additional submissions, but the testimony and cross-examination were completed on that date.

MPIRG representatives attended several hearings and asked questions or made statements at seven of them.<sup>5</sup> It offered several exhibits into the hearing record.<sup>6</sup> The public also had the opportunity through September 22, 2006, to submit additional comments, and MPIRG submitted additional comments on that date.

In its Petition, MPIRG has not stated when it first became aware of this proceeding, but among the letters that it submitted into evidence at the public hearings were letters dated as early as July 18 and July 19, 2006.<sup>7</sup>

MPIRG has failed to show why it could not have filed its Petition much earlier in the proceedings, if not prior to the intervention deadline, at least prior to the commencement of the hearings.

In its Petition to Intervene, MPIRG has not clearly stated what type of participation it seeks since all of the testimony has been taken and the hearing completed. MPIRG states that no party has presented views opposing the MPL applications, and that access to information has been limited because of lack of publicity and an unwillingness of the Department of Commerce and MPUC staff to clearly communicate with the public. Apparently, it wants to assure that its views are taken into account. Yet its representatives had the opportunity to speak and ask questions at each of the public hearings, and to submit additional comments and information into the record, and they did so. Its opposition to the certificate of need and routing permit is clear. MPIRG has not clarified how party status would have altered the role that it has played up to this point in the proceeding or going forward.

To the extent that the petition expresses concern about the safety record of MPL, Koch Pipeline Company, and other affiliates, it offers no additional evidence to supplement the record, beyond that which it presented at the hearings. In the event that the certificate of need and route permit are issued, the Office of Pipeline Safety and several federal, state and local agencies will oversee the safe installation and operation of the pipeline. None of those agencies have taken a position in this proceeding that MPL (or Koch Pipeline Company, its operator) is incapable of operating a safe pipeline.

MPIRG's stated purpose for intervention is to assure that if a Certificate of Need is granted that: the pipeline does not cross or impair the Landowners'

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<sup>5</sup> E.g. Nicholas Keener (T. 6 at 14, 47; T. 8 at 33, T. 10 at 106; T. 11 at 63, 78, 87; T. 13 at 44; T. 16 at 83); Tracey Pollock (T. 8 at 27; T. 10 at 60, 89; T. 15 at 54, 75); Annika Brink (T. 10 at 34, 104; T. 15 at 64, 72); Leslie Selting (T. 14 at 62, 72; T. 15 at 59; T. 10 at 58, 125).

<sup>6</sup> See e.g. Exs. 53, 83, 84, 87, 88.

<sup>7</sup> Ex. 112.

property; that the construction, operation, maintenance and restoration practices included in the Environmental Assessment Supplement and Agricultural Impact Mitigation Plan, including the Appendix addressing Organic Farms, are followed; and that a comprehensive woodland mitigation program is developed. Each of these bases relates to the routing permit.

It is unclear why MPIRG has an interest in the pipeline not crossing or impairing the property of the Landowners that is separate from the Landowners' interest. As individuals, the Landowners certainly have an interest in the route that the pipeline will follow. Each of them has participated in the proceeding. Russell Martin, Diane Staricka, Roger Tupy, and Joyce Osborn spoke at the public hearings and filed written comments as well.<sup>8</sup> Ray and Sharon Neubauer submitted written comments.<sup>9</sup> MPIRG's Petition does not specify what additional role the Landowners hope to play as parties that they do not have without party status. To the extent that the Petition requests intervention to assert the Landowner's right to object to the pipeline crossing their property, their opposition is already a matter of record.

MPIRG also requests that MPL be required to follow certain practices set forth in its application, and develop a comprehensive woodland mitigation program. In the event that the routing permit is granted, the MPUC may consider incorporating certain construction, operation, maintenance and restoration practices, and require a comprehensive woodland mitigation program as conditions to the permit. MPIRG's request will be treated as part of the public comment and considered in developing the findings of fact, conclusions and recommendation to the MPUC.

The rules governing pipeline routing provide liberal opportunity for public participation without seeking party status. Minn. R. 1405.0800 states that:

[A]ll persons will be allowed and encouraged to participate without the necessity of intervening as parties. Such participation shall include, but not be limited to:

- A. Offering direct testimony with or without benefit of oath or affirmation and without the necessity of prefilng as required by part 1405.1900.
- B. Offering direct testimony or other material in written form at or following the hearing....

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<sup>8</sup> Not all of the written comments have been reviewed. The citations to submissions by the Landowners that are included here may not be complete. Russell and Judy Martin (T. 10 at 70; T. 11 at 35; T. 14 at 52; T. 16 at 78; Ex. 82A, letter from Judy Martin received Sept. 18, 2006; letter from Russ and Judy Martin received Sept. 18, 2006); Diane Staricka (T. 13 at 38; Ex. 89; electronic mail sent May 15, 2006); Roger and Joyce Tupy (T. 10 at 118; T. 11 at 77; T. 13 at 44; T. 14 at 43, 91; T. 15 at 68; letter dated Sept. 18, 2006, ); Joyce Osborn (T. 10 at 54, 95; T. 11 at 14, 85; T. 16 at 51, 121; letter dated Sept. 18, 2006).

<sup>9</sup> Ex. 97.

C. Questioning all persons testifying....

MPIRG and the Landowners took full advantage of the opportunity to participate. Admittedly, the rule also states that testimony offered without benefit of oath or affirmation or written testimony not subject to cross-examination will receive only the weight the administrative law judge deems appropriate, but at no point did MPIRG or the Landowners ask to present a substantive witness or submit testimony under oath. It could have done so without party status. At this late stage of the proceeding, the hearing has ended. MPIRG has failed to request that the hearing record be reopened, or what additional evidence it would submit if it were. It has failed to specify what additional rights it wishes to assert if party status is granted.

It is not entirely clear if party status is required to appeal a final decision of the MPUC on the routing permit.<sup>10</sup> Nor is it clear that MPIRG could demonstrate that it is an "aggrieved" person. However, if the routing permit is issued and the route crosses the property of one or more of the Landowners, the Landowners may be able to make such a showing. Although not included in the petition to intervene, the Landowners have submitted information during the course of the proceeding that the pipeline alignment may cross their property.<sup>11</sup> Had they requested to intervene as individuals, perhaps they would have addressed the issue of whether intervention was necessary to protect their right to appeal, but no such argument has been made.

In order to assure that the Landowners are aware of MPL's current proposed alignment, MPL is directed to provide each Landowner with a map showing its current proposed alignment in the area of their property, as submitted to the administrative law judge on September 29, 2006, so that they are able to ascertain whether they will be directly affected. In addition, with this Order, MPIRG and the Landowners will be provided a copy of the letter from MPL's counsel dated September 28, 2006, describing its reduced pipeline corridor, and the attachments to that letter.

The parties shall add MPIRG and the Landowners as Participants to the service list, and shall provide them with copies of any submissions filed with the administrative law judge from this date.

It is apparent from MPIRG's submission that it did not have the opportunity to retain the assistance of counsel. The petition was not signed or served properly, it was not timely, it failed to set forth what legal rights, duties or privileges will be affected if it is not granted party status, and failed to set forth

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<sup>10</sup> See Minn. Stat. §§ 14.63, 116C.65.

<sup>11</sup> T. 10 at 70 (stating that a company representative spoke with Mr. Martin in the middle of May about the alignment crossing his property); Ex. 89 (Staricka); Ex. 97 (Neubauer); Letter from Joyce Osborn, dated September 18, 2006; T. 10 at 54-56; T. 10 at 115 (Mr. Tupy learned at the information meetings in March that the alignment could cross his property).

the purpose of its intervention that had not been addressed through the participation of its representatives, and by the Landowners on their own behalf. Under the circumstances, the petition must be denied.

**B. J. H.**

# Exhibit F

## Order of Appellate Court

In the Matter of the Application of Minnesota Pipe Line Company for a Certificate of Need for a Crude Oil Pipeline, and In the Matter of the Application to the Minnesota Public Utilities Commission for a Pipeline Routing Permit for a Crude Oil Pipeline and Associated Aboveground Facilities, Minn. Ct. App. A07-1318 (unpublished) (2006).

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1318**

In the Matter of the Application of Minnesota Pipe Line Company for a  
Certificate of Need for a Crude Oil Pipeline  
and

In the Matter of the Application to the Minnesota Public Utilities Commission for a  
Pipeline Routing Permit for a Crude Oil Pipeline and Associated Aboveground Facilities.

**Filed June 10, 2008  
Affirmed  
Collins, Judge\***

Minnesota Public Utilities Commission  
File Nos. PL-5/CN-06-2;PL-5/PPL-05-2003

Lori Swanson, Attorney General, Kari Valley Zipko, Assistant Attorney General, 1100  
Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134 (for respondent  
Minnesota Public Utilities Commission)

Eric F. Swanson, David M. Aafedt, Karl E. Robinson, Winthrop & Weinstine, P.A., Suite  
3500, 225 South Sixth Street, Minneapolis, MN 55402 (for respondent Minnesota Pipe  
Line Company)

Phillip R. Krass, C. John Jossart, Krass Monroe, P.A., Suite 1000, 8000 Norman Center  
Drive, Minneapolis, MN 55437 (for relators)

Considered and decided by Peterson, Presiding Judge; Connolly, Judge; and  
Collins, Judge.

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals  
by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**COLLINS**, Judge

In this certiorari appeal, relators, landowners along a proposed crude-oil pipeline route, argue that (1) they did not receive adequate notice of the certificate-of-need or routing-permit proceedings, which deprived them of due process of law; (2) notice requirements in certificate-of-need proceedings violated their right to equal protection; and (3) respondent Minnesota Public Utilities Commission's decision to grant respondent Minnesota Pipeline Company LLC's applications for a certificate of need and a routing permit was arbitrary and capricious, unsupported by substantial evidence, and contained errors of law. Because the Minnesota Public Utilities Commission's decision-making process did not violate relators' due-process or equal-protection rights, and the decision to grant the certificate of need and routing permit was neither arbitrary and capricious nor unsupported by substantial evidence and did not contain errors of law, we affirm.

### FACTS

In early January 2006, Minnesota Pipe Line Company, LLC (MPL) filed applications with the Minnesota Public Utilities Commission (the PUC) for a Certificate of Need (CON) and a Pipeline Routing Permit (routing permit) for its proposed crude-oil pipeline, which it calls the MinnCan project. The MinnCan project consists of approximately 300 miles of 24-inch diameter pipe that will transport crude oil from Clearbrook, Minnesota, to Rosemount, Minnesota. The PUC accepted the CON and routing-permit applications as substantially complete and referred the matter to the Office of Administrative Hearings for contested-case proceedings before an administrative-law

judge (ALJ). In its orders, the PUC also allowed an additional 30 days beyond the time frame provided by the administrative rules, for a total of 100 days, for submission of alternative pipeline-route proposals.

In response to public comments requesting individual notice to landowners, the PUC directed MPL to work with the Minnesota Department of Commerce (the Department) and the PUC staff to develop a landowner-notification letter. The landowner-notification letter was to include the date, time, and place of the prehearing conference (if known at the time the letter was sent). The PUC also required MPL to publish notice of public and evidentiary hearings in general-circulation newspapers at least ten days prior to the start of the hearings, and the PUC requested that the ALJ schedule public hearings in such a way that members of the public could address both the CON and routing issues.

Landowner-notification letters were sent to landowners on the proposed pipeline route. The notification letters were sent to both “centerline” landowners (those whose land was crossed by the proposed pipeline) and “adjacent” landowners (those whose land was not crossed by the proposed pipeline but still fell within the proposed pipeline corridor.) The Department held 13 public-information meetings in March 2006, one in each county crossed by the MinnCan project. At these meetings, MPL, the Department, and the PUC discussed the process for proposing an alternative route and the May 30, 2006 deadline for such proposals.

The PUC met on June 29, 2006, to consider several alternative route proposals. Three new alternative routes were proposed in the Staples area, MPL proposed an

alternative in the Belle Plaine area, and one proposal included use of MPL's existing right of way for the entirety of the pipeline route. The PUC accepted consideration of the Staples alternatives and the Belle Plaine alternative, but declined to accept the proposal for use of the existing right of way. The PUC found that extensive evidence in the record demonstrated that the existing right of way would significantly disrupt densely-settled areas in the affected counties and would have greater adverse impacts on human settlement, the natural environment, and the economy than would proceeding with the proposed route. Although the PUC did not endorse consideration of the existing right of way as an alternative, it found that matters relating to the existing right of way would be addressed in the contested-case proceedings even if the route was not proposed as a formal alternative.

Between August 24 and September 14, 2006, the ALJ held 16 public hearings as part of the contested-case proceedings in the counties impacted by the MinnCan project. The hearings were conducted in a manner that permitted the public to address both certificate-of-need and routing issues. Members of the public could speak at these meetings and question the parties. A full-page notice of the public hearings and maps of the proposed alternatives appeared in local newspapers prior to the hearings.

On September 15, 2006, the ALJ held a contested-case hearing. Thereafter, the ALJ issued findings of fact, conclusions, and recommendations to the effect that MPL's applications for a CON and a routing permit should both be granted. The ALJ concluded that MPL had satisfied the criteria for obtaining a CON set forth in Minn. Stat. § 216B.243 (2006) and Minn. R. 7853.0130 (2005), finding that MPL demonstrated the

need for the project and no other party or person demonstrated a more reasonable and prudent alternative by a preponderance of the evidence. The ALJ also concluded that MPL had conducted an appropriate environmental assessment, met the requirements for alternative environmental review in Minn. R. 4415.0145 (2005), and had considered the criteria established in Minn. R. 4415.0100 (2005).<sup>1</sup>

The PUC adopted the ALJ's findings, conclusions and recommendations with some alterations and additions. The PUC issued an order granting MPL the certificate of need and granting MPL's application for a routing permit. The PUC denied relators' request for reconsideration, and this appeal followed.

## **D E C I S I O N**

On certiorari review of an agency decision we must "adhere to the fundamental concept that decisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies' expertise and their special knowledge in the field of their technical training, education, and experience." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001) (quotation omitted). But we review errors of law de novo and need not defer to the agency's expertise. *In re Denial of Eller Media Co.'s Applications for Outdoor Adver. Permits*, 664 N.W.2d 1, 7 (Minn. 2003); *No Power Line, Inc. v. Minn. Env'tl. Quality Council*, 262 N.W.2d 312, 320 (Minn. 1977).

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<sup>1</sup> Chapter 4415 of the Minnesota Rules was renumbered in chapter 7852 in 2007. Minn. R. 4415.0145 is now numbered 7852.2700, Minn. R. 4415.0100 is now numbered 7852.1900, and Minn. R. 4415.0050 is now numbered 7852.0900. For consistency with the PUC proceedings, we will refer to the 2005 rules.

This court's review of the PUC's decision in a contested-case hearing is governed by Minn. Stat. § 14.69 (2006). *See In re Petition of N. States Power Co.*, 676 N.W.2d 326, 331 (Minn. App. 2004). Upon review of an agency decision, this court may

affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Minn. Stat. § 14.69. The party seeking review bears the burden of proving that the agency's conclusions violate one or more provisions of section 14.69. *See Markwardt v. State Water Res. Bd.*, 254 N.W.2d 371, 374 (Minn. 1977).

Substantial evidence consists of: "1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2) more than a scintilla of evidence; 3) more than „some evidence“; 4) more than „any evidence“; and 5) evidence considered in its entirety." *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977). An arbitrary and capricious agency ruling is evidenced by (1) reliance on factors not intended for consideration; (2) a complete failure "to consider an important aspect of the problem"; (3) "an explanation that runs counter to the evidence"; or (4) a decision that is so implausible it cannot be explained by the agency's expertise or differing views.

*Citizens Advocating Responsible Dev. v. Kandiyohi County Bd. of Comm'rs*, 713 N.W.2d 817 (Minn. 2006) (“CARD”).

Relators contend that, because the PUC was not granted regulatory authority over pipeline routing until 2005, and the MinnCan project was its first exercise of that authority, the PUC lacks the “expertise” in pipeline-routing matters that justifies a deferential standard of review. But the record indicates that although the PUC gained sole regulatory authority as recently as 2005, the PUC has worked closely with the Environmental Quality Board (EQB) in the past on regulatory matters. Furthermore, the PUC designated Larry Hartman, a former EQB staff member, as project manager of the proceedings in this case. Therefore, the PUC’s expertise does justify the deferential standard; a heightened standard of review is not called for.

**A. Due process**

Relators argue that they received inadequate notice of the PUC’s proceedings in this case, resulting in a denial of their procedural-due-process rights. “This court reviews de novo the procedural due process afforded a party.” *Zellman ex rel. M.Z. v. Ind. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). “Due process requires that deprivation of property be preceded by notice and an opportunity to be heard.” *Comm’r of Natural Res. v. Nicollet County Pub. Water/Wetlands Hearings Unit*, 633 N.W.2d 25, 29 (Minn. App. 2001) (citation omitted), *review denied* (Minn. Nov. 13, 2001).

The required type of notice does not follow one specific, technical definition but rather varies “with the circumstances and conditions of each case.” *In re Christenson*,

417 N.W.2d 607, 611 (Minn. 1987). Unless the interested party may otherwise lose a protected property right, personal notice is not required. *Id.* at 612. And personal notice is not required if the giving of such notice is not reasonably possible. *Walker v. City of Hutchinson*, 352 U.S. 112, 115-16, 77 S. Ct. 200, 202 (1956).

Minnesota law requires that the PUC's pipeline-routing rules must "provide for notice of proposed pipeline routes to local units of government and to owners and lessees of property along the routes being considered." Minn. Stat. § 216G.02, subd. 3(b)(2) (2006). Accordingly, Minn. R. 4415.0050 (2005) states that within 20 days of the PUC's acceptance of a pipeline-routing-permit application, "the [PUC] shall provide published notice of acceptance of the application in a newspaper in each county in which [the pipeline is proposed]." The rule further specifies the content required in the notice, including the identification of the applicant, procedures for proposing alternate routes, and notice of public-information meetings. *Id.*

Relators argue that the notice provided in this case was insufficient. But due process requires notice and an opportunity to be heard, and the record shows that relators had both. In addition to following the notice requirements specified in the rules, the PUC also required MPL to provide personal notice to affected landowners. MPL submitted a list of approximately 1,200 landowners, local officials, and other interested persons that it served with personal notice of the public hearings. The record also indicates that MPL sent multiple mailings to affected landowners informing them of the status of the pipeline-approval proceedings and MPL agents personally visited landowners to discuss the MinnCan project.

Moreover, most of the relators attended or participated in the public hearings. Nearly all participated in some manner, either through appearances at public hearings or by submitting written comments to the ALJ. Relators contend that due process was not satisfied because some relators initially did not act because, although their land fell within the pipeline corridor but was not initially crossed by the pipeline, subsequent adjustments resulted in the pipeline crossing their property after the time to intervene as a party had passed. However, due-process requirements do not assure an opportunity to intervene as a party, only the opportunity to be heard.

Relators also contend that MPL's personal notice was somehow deficient. But the PUC accepted MPL's testimony regarding its personal notice to landowners. Furthermore, a number of landowners, including several of the relators, testified that they had received notice of the pipeline at the beginning of 2006, which supports the PUC's determination that notice was adequate.

Relators further argue that they were denied due process because they were not permitted to participate in the CON contested-case hearing. Anyone may attend a contested-case hearing, but only the parties may present evidence and argument and cross-examine witnesses. Minn. R. 1400.7800 (B)(1) (2005). Here, relators were allowed ample opportunity to be heard. They were welcome to appear and present testimony at the public hearings, question the Department or MPL witnesses, and submit written comments. The transcripts of the public hearings demonstrate extensive public participation. Relators' argument that they were denied procedural due process is therefore without merit.

Additionally, relators' reliance on *Juster Bros. Inc. v. Christgau*, 214 Minn. 108, 120, 7 N.W.2d 501, 508 (1943), is misplaced. Unlike *Juster*, where an employer was not provided with any notice or hearing prior to an agency decision, relators here had numerous opportunities to present testimony and question witnesses. Similarly, *In re Wilmarth Line of the CU Project*, 299 N.W.2d 731 (Minn. 1980), does not support relators' argument that they were entitled to the opportunity to participate in the contested-case hearing without intervening as a party. In *Wilmarth*, the supreme court concluded that landowners were entitled to notice of a contested-case hearing because they needed to be given an opportunity to present their evidence. 299 N.W.2d at 736. But the supreme court also noted that in a contested case *parties* shall be afforded an opportunity for hearing after reasonable notice, and the landowners could intervene as parties because they were materially affected by the outcome of the proceedings. *Id.* at 734-35. Relators, as interested landowners, could have intervened, become parties to the proceeding, and participated in the contested-case hearing, but did not do so.<sup>2</sup> Therefore, their argument must be dismissed as without merit.

## **B. Equal protection**

Relators contend that the PUC has denied their right to equal protection because of the differing rules addressing notice for potential landowners in pipeline routing and

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<sup>2</sup> At oral argument, counsel for relators asserted that a few relators are owners of land that is crossed by the Belle Plaine and the Staples alternative routes, and those relators received notice of the placement of the pipeline on their property after the time to intervene had passed. Relators' attorney provided no evidence of which relators, if any, are landowners along these routes. Therefore we are unable to conclude that any relator was denied the opportunity to intervene as a party following the alteration of the route.

potential landowners in high-voltage transmission-line (HVTL) routing. See Minn. R. 7829.2550 (requiring direct mail notice “to landowners reasonably likely to be affected by the proposed [high-voltage] transmission line”), .2500, subp. 4, 5 (requiring published notice for certificate-of-need filings) (2005). To successfully challenge the constitutionality of the rule at issue, relators must demonstrate “not only that the [rule] is invalid but that [they] sustained or [are] in immediate danger of sustaining some direct injury resulting from its enforcement.” *Paulson v. Lapa, Inc.*, 450 N.W.2d 374, 380 (Minn. App. 1990), *review denied* (Minn. Mar. 22, 1990). Relators have not shown that they have sustained or are in danger of sustaining a direct injury as a result of the rule directing notice in CON proceedings because the PUC ordered, and MPL provided, the same notice to landowners in these proceedings as that provided to HVTL landowners pursuant to Minn. R. 7829.2550. Relators’ equal-protection claim is without merit.

**C. Arbitrary and capricious or unsupported by substantial evidence**

***1. Consideration of the Existing Route***

Relators argue that the PUC’s decision must be reversed because its decision violated the nonproliferation mandate outlined in *People for Env’tl. Enlightenment and Responsibility (PEER) v. Minn. Env’tl. Quality Counsel*, 266 N.W.2d 858 (Minn. 1978). In *PEER*, the Minnesota Supreme Court determined that the Minnesota Environmental Quality Council (MEQC) erred by selecting a new route for an HVTL instead of approving the existing route. 266 N.W.2d at 864. The supreme court concluded that “in order to make the route-selection process comport with Minnesota’s commitment to the principle of nonproliferation, the MEQC must, as a matter of law, choose a pre-existing

route unless there are extremely strong reasons not to do so.” *Id.* at 868. The supreme court determined that there was no evidence that use of the existing route would impair or destroy the environment; or that the alternative route was preferable because it would result in the condemnation of fewer homes. *Id.* at 869. The supreme court held that cost cannot override the nonproliferation policy, concluding that

[C]ondemnation of a number of homes does not, without more, overcome the law’s preference for containment of powerlines as expressed in the policy of nonproliferation. Persons who lose their homes can be fully compensated in damages. The destruction of protectable environmental resources, however, is noncompensable to all present and future residents of Minnesota.

*Id.*

In this case, substantial evidence supports the PUC’s decision that the existing route was not a viable alternative. Testimony in the record established that use of the existing route would be far more harmful than use of the new route. In addition to significant negative economic, residential, commercial, and industrial developmental impact, using the existing right of way would require two additional Mississippi River crossings; affect an additional 5.2 miles of “significant biological[-]diversity areas,” 7.9 miles of public lands, three miles of forest lands, and five miles of wetlands; and cross the Sherburne County Wildlife Refuge.

Relators argue that the PUC’s failure to refer the existing route to the ALJ for formal consideration as a route alternative at the contested-case hearing precluded proper consideration of the existing right of way. But the PUC’s decision not to include the existing right of way as a formal route alternative did not relieve MPL of its burden to

prove that its proposed route minimized human and environmental impacts compared to all other proposed routes. Minn. R. 4415.0100, subp. 3, lists the criteria for pipeline-route selection, including:

- A. human settlement, existence and density of populated areas, existing and planned future land use, and management plans;
- B. the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands;
- C. lands of historical, archaeological, and cultural significance;
- D. economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations;
- E. pipeline cost and accessibility;
- F. use of existing rights-of-way and right-of-way sharing or paralleling;
- G. natural resources and features.

In choosing not to include the existing right of way as a formal alternative here, the PUC stated that “MPL continues to bear the burden of proof and persuasion that its proposed route minimizes human and environmental impact when compared to all other proposed routes and has specifically undertaken to do that with respect to the existing route.”

The ALJ’s findings, adopted by the PUC, indicate that the ALJ exhaustively reviewed the evidence in the record to determine if MPL met its burden of proving that the existing route was not a viable alternative. The ALJ found that the record supported the PUC’s determination not to forward the existing right of way as a formal alternative for contested-case proceedings. The ALJ weighed the evidence in her memorandum in support of her findings, stating:

Neither MPL nor the Department attempted to assess the significance of placing more land and people at risk by following a new route rather than widening the existing MPL right-of-way. In addition, there was no attempt to assess the possible loss of prime agricultural land or family farms. Despite these shortcomings, it is clear that adding or replacing a pipeline along the existing route will have a significantly greater human impact because of the level of current development along that route. Following the existing pipeline for the full length of the route would not be a more reasonable and prudent alternative.

Given the findings by the ALJ regarding the greater economic, environmental, and safety impacts, and given the extent of our deference to the PUC within its area of expertise, the PUC's decision not to forward the existing pipeline route as a formal alternative for contested-case proceedings was supported by substantial evidence and was not arbitrary or capricious. The PUC and the ALJ considered the potential effects of use of the existing right of way and use of the proposed route, and found that the proposed route would have a less-significant impact.

## ***2. Certificate of Need requirements***

The PUC's decision on this issue was supported by substantial evidence and was not arbitrary and capricious. The governing regulations state that “[a] certificate of need shall be granted to the applicant if it is determined that . . . a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant.” Minn. R. 7853.0130 (B) (2005). Relators argue that the CON proceeding essentially became an “uncontested default matter” after interested property owners were “intentionally excluded” from participating in the contested-case hearing. But the ALJ's findings

clearly demonstrate that she considered evidence presented at all of the public hearings, in addition to the evidence presented at the contested-case hearing, in reaching her determinations. Therefore, relators' contention that the contested-case hearing was essentially an uncontested-default matter is not persuasive.

Relators argue that the PUC's decision to grant the CON and the routing permit did not properly evaluate the need for the pipeline or other alternatives as required by the CON regulations. Relators have the burden of showing that the PUC's findings, conclusions or decision "are not supported by the evidence in the record, considered in its entirety." *In re Proposal by Lakedale Tel. Co.*, 561 N.W.2d 550, 554 (Minn. App. 1997). Unless there is manifest injustice, this court must refrain from substituting its judgment concerning inferences to be drawn from the evidence for that of the agency, even when it might appear that contrary inferences could be drawn. *Quinn Distrib. Co., Inc. v. Quast Transfer, Inc.*, 288 Minn. 442, 448, 181 N.W.2d 696, 700 (1970).

Relators contend that there was insufficient evidence for the PUC to find that the probable result of the denial of the CON would have an adverse effect on the future energy supply. The CON requirements prohibit the PUC from granting a CON unless "the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states." Minn. R. 7853.0130(A) (2005). Relators contend that MPL has shielded much of its need analysis from public disclosure by improperly designating it as "trade secrets." But requiring confidentiality of its alleged trade secrets

does not mean that MPL failed to provide evidence from which the PUC could determine that a failure to grant the CON would have a future adverse effect on Minnesota utilities.

Evidence from the Canadian Association of Petroleum Producers was presented, which indicated that growth in crude-oil production would increase in the future. The U.S. Department of Energy's Energy Information Administration (EIA) indicated that demand would increase. A Department witness testified that "The [EIA] publication is frequently used as a reference because the EIA is seen as an independent source." The ALJ found that Minnesota refineries asked MPL to expand the capacity of its system to allow for more crude oil to be shipped from Canada. The ALJ also found that the existing supply of crude oil that was transported from the Gulf Coast was subject to foreign crude-oil supply disruptions and unreliability due to weather conditions and changes in demand from other regions. The ALJ ultimately agreed with the Department's conclusion that the adequacy of Minnesota's future energy supply could be threatened if the CON was denied.

In support of their argument that MPL failed to prove the future adverse-effect requirement for a CON, relators draw attention to the ALJ's observations indicating her discomfort with the lack of comprehensive information. Relators highlight the ALJ's finding that "[n]either MPL nor the Department fully explored whether a combination of increased capacity on the Wood River Pipe Line and available capacity in the refineries in Superior, Wisconsin and North Dakota would be adequate to meet the demand for refined petroleum products." The ALJ also noted that "[b]ecause of the close connection

between Flint Hills Resources and MPL, a more careful analysis would have assured that the determination of need could be made with greater confidence.”

But ultimately, the ALJ and the PUC concluded that the evidence of potential future adverse effect was sufficient, and “[this court’s] judgment concerning inferences to be drawn from the evidence should not be substituted for that of the agency.” *Red Owl Stores, Inc. v. Comm’r of Agric.*, 310 N.W.2d 99, 104 (Minn. 1981). The ALJ stated at the evidentiary hearing that MPL’s reliance on the Flint Hills press release was “curious,” and requested that the Department further explain the basis for the determination of need. The Department witness then testified about the supporting information and the relationship of the Flint Hills press release to the determination of need, including the evidence from the EIA. The testimony at hearings, together with the previously submitted testimony of Department witnesses, sustains the PUC’s finding of need.

Relators next argue that the PUC’s decision to grant the CON was in error because there are more reasonable and prudent alternatives to the MinnCan project. Minn. R. 7853.0130(B) provides that the PUC analysis of the CON must consider whether parties or persons other than the applicant have demonstrated a more reasonable and prudent alternative by a preponderance of the evidence, considering:

- (1) the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;
- (2) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

(3) the effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and

(4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives.

MPL presented and rejected three alternatives to the MinnCan project: (1) expansion of existing facilities; (2) trucking; and (3) reliance on existing pipelines without expansion. Relators argue that the PUC failed to consider other alternatives, including whether other refineries could increase their capacity, whether other proposed pipelines bringing crude oil to the Midwest could satisfy increasing need, and whether MPC could expand its existing pipeline. But the ALJ did consider and reject each of those alternatives.

Increased capacity of other refineries was considered. A Department witness, Jeff Haase, testified about the possibility of increased capacity at other refineries meeting the demand. Haase concluded that, currently, facilities in other states did not have plans for expansion that would increase the crude-oil supply in Minnesota. To the extent that the ALJ concluded that the Department failed to consider refineries in other states, the ALJ was in error.

Relators also contend that MPL failed to present and the PUC failed to consider expansion of existing facilities, alternative modes of transportation, or construction of a different pipeline. But the record indicates that MPL presented these alternatives and they were rejected. The ALJ considered the evidence presented regarding expansion of the existing facilities and determined that this alternative was not more reasonable and

prudent than the proposed pipeline. The ALJ's findings also reflect that the Department agreed with MPL that rail transportation was not a reasonable and prudent alternative for crude-oil transport, and no evidence was presented to the contrary. Relators further argue that the PUC should have considered other transport options. But no person or party presented any such options; therefore, the PUC's failure to consider options that were not presented does not constitute error.

Finally, relators argue that the PUC did not duly evaluate the option of constructing an alternative pipeline from St. Louis to the Twin Cities. But the record suggests that the alternative as proposed was reliance on existing pipelines, not the construction of an additional pipeline in that location. Because the construction of an alternative pipeline was not presented to the PUC, relators' argument that it failed to consider such alternative is without merit.

#### **D. Minnesota Environmental Policy Act**

Relators argue that the PUC's decision does not comply with the Minnesota Environmental Policy Act (MEPA). MEPA requires the PUC to conduct an environmental analysis before engaging in any major governmental action when that action creates "potential for significant environmental effects." Minn. Stat. § 116D.04, subd. 2a (2006). The Environmental Quality Board (EQB) "shall by rule identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an environmental impact statement in a more timely or more efficient manner to be utilized in lieu of an environmental impact statement." Minn. Stat. § 116D.04, subd. 4a (2006).

Pursuant to section 116D.04, subd. 4a, chapter 4415 (2005) of the Minnesota Rules contains the alternative form of environmental review for proposed pipelines. Minn. R. 4415.0145 requires that the applicant submit to the PUC with its application “an analysis of the potential human and environmental impacts that may be expected from pipeline right-of-way preparation and construction practices and operation and maintenance procedures.” These impacts include, but are not limited to, the impacts for which criteria are specified in Minn. R. 4415.0100.<sup>3</sup> *Id.*

The PUC found that the ALJ’s conclusions regarding the adequacy of the environmental assessment were “based on extensive findings of fact in the record,” and that the environmental assessment was consistent with the rules and the criteria under Minn. R. 4415.0100. We defer to the fact-finding process of an agency. *See Minn. Ctr. for Env’tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 465 (Minn. 2002) (“*MCEA*”) (stating that we defer to agency’s expertise in interpreting and applying its own regulations).

Relators first argue that the PUC’s decision violates MEPA because it failed to consider the existing right of way. Relators’ arguments addressing whether substantial evidence supports the PUC’s rejection of formal consideration of the existing right of way were addressed above, and that discussion need not be repeated.

Relators next argue that the PUC failed to discuss mitigation in sufficient detail to ensure that the environmental consequences had been fairly evaluated. Minn. R.

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<sup>3</sup> Minn. R. 4415.0100 includes criteria such as human settlement, the existence and density of populated areas, natural areas, wildlife habitat, water and recreational lands, and land of historical, agricultural, and cultural significance.

4415.0100, subp. 3(H), requires, in part, that the PUC consider “the extent to which human or environmental effects are subject to mitigation by regulatory control.” A Responsible Government Unit (RGU) may consider mitigation measures as offsetting potential for significant environmental effects “if those measures are specific, targeted, and are certain to be able to mitigate the environmental effects.” *CARD*, 713 N.W.2d at 835. “There is a definite difference between an RGU review that approves a project with vague promises of future mitigation and an RGU review that has properly examined a project and determined that specific measures can be reasonably expected to deal with the identifiable problems the project may cause.” *Id.*

The proper approach to relators’ mitigation issue is explicitly identified in *MCEA*: whether there is relevant evidence in the record that “a reasonable mind might accept as adequate to support the conclusion that the [PUC] *did* consider, in sufficient detail, adequate mitigation to ensure that the environmental consequences have been fairly evaluated.” 644 N.W.2d at 466. Here, there is substantial evidence that the PUC adequately considered mitigation to ensure the fair evaluation of the environmental consequences of the MinnCan project. Specifically, the PUC found that routing-permit conditions reasonably minimized the human and environmental effects of the selected route, and the record does not demonstrate that the selected route was any less subject to regulatory control than the route segments not chosen.

Moreover, the ALJ and the PUC made compliance with MPL’s proposed mitigation plans and other government permits a condition of granting the routing permit, thereby exposing MPL to penalties or revocation of its routing permit if it fails to comply.

Therefore, although MPL bears the initial responsibility of mitigation, the PUC can still enforce mitigation measures through its permitting function. *See MCEA*, 644 N.W.2d at 467 (finding it irrelevant whether a regulatory authority is responsible for enforcing mitigation efforts when an agency can enforce mitigation through its permitting function).

Relators appear to argue, however, that reliance on future regulatory efforts is error, citing *Trout Unlimited, Inc. v. Minn. Dept. of Agric.*, 528 N.W.2d 903 (Minn. App. 1995), *review denied* (Minn. Apr. 27, 1995). Relators' reliance on this case is misplaced. *Trout Unlimited* held that reliance on future regulatory efforts *in lieu* of conducting an environmental assessment constituted error. 528 N.W.2d at 909. Relators' example of the Stormwater Pollution Prevention Plan as evidence of how the PUC inadequately addressed mitigation, in actuality presents a textbook mitigation finding because it identifies the potential problem (pollution from oil spills during construction) and then determines specific mitigation measure to address the potential problem (Stormwater Pollution Prevention Plan or equivalent that is reviewed and approved by the Minnesota Pollution Control Agency). *See CARD*, 713 N.W.2d at 835 (identifying proper method of mitigation as examining a project and determining the specific measures that can be reasonably expected to deal with the identifiable problems the project may cause).

Relators also argue that the PUC failed to adequately analyze the cumulative effects of the MinnCan project. Minn. R. 4415.0100, subp. 3(I.) (2005), requires the PUC to consider "the cumulative potential effects of related or anticipated future pipeline construction." The criterion aims to determine whether the project, which may not have

the potential to cause significant environmental effects in isolation, could have a significant effect when other planned or existing state projects are considered. *CARD*, 713 N.W.2d at 829. “[A] cumulative potential effects analysis is limited geographically to projects in the surrounding area that might reasonably be expected to affect the same natural resources . . . as the proposed project.” *Id.* at 830.

Unlike the record in *Trout Unlimited*, 528 N.W.2d at 908, in which the evidence indicated that future irrigation projects in the area were “planned or likely,” here, the evidence in the record indicates that neither MPL nor any other entity had plans to add another pipeline. Relators seem to argue that the PUC erred because it relied on MPL’s statement that it had no plans to expand. But the record contains no evidence that there are any related or anticipated projects in the same area that would contribute to the environmental effects. The PUC found that MPL had no plans to run a second pipeline in the future, and the evidence suggested that MPL could get greatly increased capacity (from the project design range of 60,000–165,000 barrels per day to 350,000 barrels per day) by adding additional pumping stations to the MinnCan pipeline. Relators fail to identify how any additional proof could be presented on the issue of cumulative effects other than MPL’s testimony that it has no plans for future pipeline addition. The PUC’s findings on cumulative effects were therefore not lacking.

Finally, relators argue that the PUC’s decision is unsupported by substantial evidence, and is thus arbitrary and capricious, because the PUC failed to take a “hard look” at the environmental consequences of the pipeline route. *See CARD*, 713 N.W.2d at 832 (stating that a reviewing court’s role when reviewing an agency decision “is to

determine whether the agency has taken a „hard look“ at the problems involved, and whether it has genuinely engaged in reasoned decision-making.” (quotation omitted)). Relators contend that the PUC failed to address public concerns that the PUC was relying solely on MPL’s environmental-assessment supplement (EAS) and the environmental analysis was not conducted by an independent entity. But Minn. R. 4415.0145 (2005) states that the *applicant*, not an independent entity, must submit the EAS. Furthermore, the ALJ found that “[n]o state agency ha[d] objected to the [EAS].” The Metropolitan Council submitted a letter to the Department stating that the EAS was “complete and accurate with respect to regional concerns,” and the Department of Commerce Energy Facility Permitting Staff determined that the EAS provided the required information. We therefore conclude that the PUC took the required “hard look” at the environmental consequences of proposed MinnCan project, and its decision to approve the CON and routing permit was supported by substantial evidence.

**Affirmed.**

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# Exhibit G

## Fifth Prehearing Order

In the Matter of a Joint LEPGP Site Permit and HVTL Route Permit and Pipeline (Partial Exemption) Route Permit Application for the Mesaba Energy Project

OAH Docket No. 12-2500-17512-2

PUC Docket No. E-6472/GS-06-668

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

In the Matter of a Joint LEPGP Site Permit,  
HVTL Route Permit and Pipeline (Partial  
Exemption) Route Permit Application for  
the Mesaba Energy Project

**FIFTH PREHEARING ORDER**

Because the Joint Draft EIS became available November 5, 2007, Excelsior Energy proposed an updated schedule for this matter. On November 16, 2007, a telephone scheduling conference was held among the Administrative Law Judge and the following persons:

Byron E. Starns and Matthew B. Seltzer, Leonard, Street and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402, appeared on behalf of Excelsior Energy, Inc. (Excelsior Energy). Also appearing for Excelsior Energy were Robert Evans and Gordon Gray, Excelsior Energy, Inc., 1100 Wayzata Boulevard, Minnetonka, MN 55305.

William Cole Storm, State Planning Director, Department of Commerce, 85 7th Place East, Suite 500, St. Paul, MN 55101, appeared on behalf of the Department of Commerce.

Robert Cupit, Senior Facility Planner, Minnesota Public Utilities Commission, 121 East Seventh Place, Suite 350, St. Paul,, MN 55101-2147, named as the Commission's Representative in this matter, appeared on behalf of the Public Utilities Commission.

Based on the record and the agreement of the foregoing persons, the Administrative Law Judges make the following:

**ORDER**

1. The remaining schedule in this matter is modified to read as follows:

<b>Date</b>	<b>Event or Filing Due</b>
November 5, 2007	Draft EIS available

November 27-28, 2007	Joint Department of Commerce and Department of Energy public meetings on Draft EIS
December 21, 2007	Deadline for Excelsior to (i) provide notice of substitution of witnesses as to sponsorship of specific testimony and (ii) request permission to exempt specific witnesses from having to attend all Stage Two sessions
December 31, 2007	ALJ ruling on request to exempt specific witnesses from having to attend all Stage Two sessions
January 7-11, 2008	Service and publication of notice of hearing
January 11, 2008	Deadline for written public comments on Draft EIS to DOC and DOE
January 29, 2008, 1:00 p.m.	Stage One hearing session in Taconite
January 29, 2008, 6:00 p.m.	Stage Two hearing session in Taconite
January 30, 2008, 1:00 p.m.	Stage One hearing session in Hoyt Lakes
January 30, 2008, 6:00 p.m.	Stage Two hearing session in Hoyt Lakes
January 31, 2008, 10:00 a.m.	Reserved, Taconite
February 15, 2008	Deadline for written public comments to ALJ for inclusion into the record of contested case
February 29, 2008	Briefs and Proposed Findings
March 7, 2008	Final EIS
March 14, 2008	Deadline for Comments to ALJ on adequacy of Final EIS
March 21, 2008, anticipated	ALJ Report and Recommendation to Minnesota Public Utilities Commission ("PUC")
April 21, 2008, anticipated	Exceptions
May 22, 2008, anticipated	Final PUC Decision (hearing date)

June 2, 2008, anticipated                      Federal EIS Record of Decision  
June 23, 2008, anticipated                      State Register publication

2.        The persons previously admitted as Parties to this matter are Excelsior Energy, Xcel Energy, Minnesota Power,<sup>1</sup> and Public Energy—Mesaba.<sup>2</sup> The Fourth Prehearing Order (May 1, 2007), provided,

Unless excused by an Administrative Law Judge, failure of a party to file testimony when due shall result in that party being denied further participation as a party in this matter.

3.        Excelsior had filed its direct testimony that was due January 15, 2007, and its supplemental filing that was due March 15, 2007. No other party filed their direct testimony that was due March 15, 2007. No party filed rebuttal testimony that was due May 15, 2007, or surrebuttal testimony that was due June 15, 2007.

4.        Because they have failed to file testimony when due, Xcel Energy, Minnesota Power, and Public Energy—Mesaba are denied further participation as parties in this matter. They shall remain on the service list and may participate as members of the public and interested persons as set forth in the First Prehearing Order (January 19, 2007).

Dated: November 19, 2007

/s/ Steve M. Mihalchick

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STEVE M. MIHALCHICK  
Administrative Law Judge

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<sup>1</sup> Second Prehearing Order (January 19, 2007).

<sup>2</sup> Third Prehearing Order (February 22, 2007).

# Exhibit H

Technology Development and Marketing Plan  
for the Lignite Vision 21 Project

and

ABB – Phase II Transmission System Impact  
Study Summary Report

**LMFS-99-31**  
**TECHNOLOGY DEVELOPMENT AND MARKETING PLAN FOR THE**  
**LIGNITE VISION 21 PROJECT**

**CONTRACTOR:** Lignite Energy Council

**PRINCIPAL INVESTIGATOR:** John Dwyer  
(701) 258-7117 (O)  
(701) 258-2755 (fax)  
[jdwyer@lignite.com](mailto:jdwyer@lignite.com)

**Contacts:** Tony Rude  
[trude@lignite.com](mailto:trude@lignite.com)  
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[jburgess@lignite.com](mailto:jburgess@lignite.com)

**CONTRACT AMOUNT:** \$132,000

**Project Schedule – 11 Months**

Contract Date – 6/29/99  
Start Date – 7/1/99  
Completion Date – 6/01/00

**Project Deliverables**

First Quarterly Report – 11/30/99✓  
Draft Final Report – 7/01/00✓  
Final Report – 8/01/00✓

**OBJECTIVE / STATEMENT OF WORK**

The purpose of the Lignite Vision 21 Project (LV 21) is to revitalize growth in the lignite industry. An objective of the LV 21 Technology Development and Marketing Plan is to assist in the development of additional lignite-based electrical generation in North Dakota.

Specific Project Management Objectives for the Phase I LV 21 are:

- establish and maintain project management over the Phase I contracts, activities and support studies;
- coordinate activities of the Advisory Committees providing technical and business expertise and assistance for development and implementation of the Lignite Vision 21 Project;
- identify the most promising advanced lignite-based generation technologies;
- identify environmental and transmission issues and enhancements;
- evaluate innovative alternative extraction technologies;
- develop marketing and development strategies for potential industry and government partners;
- develop a detailed Project Development Phase II plan;
- identify funding for Phase II; and
- develop the marketing, technology and commercialization plan for the Lignite Vision 21 Project.

Specific Advanced Generation Objectives are as follows:

- determine the development status of advanced technology systems;
- identify and describe each advanced technology system;

- identify the characteristics of North Dakota lignite and identify those characteristics that do not penalize and may provide a competitive advantage for North Dakota lignite;
- estimate technical performance and economics; and
- recommend most promising advanced technology system.

## STATUS

Project management of Phase I LV 21 activities were concluded with the successful completion of the four major studies and submission of the Phase II plan. The summary results of the four studies are:

1. **Electrical Transmission Study:** The Industrial Commission contracted directly with ABB Power and the Lignite Energy Council (LEC) provided project management and supervision for this study. The North Dakota Electric Transmission Study is project LMFS-99-33. ABB identified a transmission route that could accommodate up to 800 MW of additional generation and export from North Dakota. While no existing firm capacity is available for North Dakota export and non-firm capacity is available only part of the time, upgrading of the existing Antelope Valley-Huron line to 500 kV could provide an attractive option to increase North Dakota export. This option should be evaluated in more detail including site-specific consideration and stability studies (see LMFS-99-33 for details).
2. **Environmental Enhancement Study:** The Industrial Commission contracted directly with Research Data International and the LEC provided project management and supervision for the study. The Environmental Enhancement Study is project LMFS-99-32. The study concluded environmental impacts during construction and operation of a LV 21 power plant are within manageable levels utilizing current emission control technologies (see LMFS-99-32 for details).
3. **Advanced Generation Study:** The Lignite Energy Council subcontracted with Black & Veatch for the Advanced Generation Technologies Study. The Advanced Generation Study identified pulverized coal fired technology with supercritical steam, circulating fluidized bed and integrated gasification combined cycle as the technologies with the highest probability to meet the LV 21 criteria. Advanced technologies criteria are \$1,000/kW EPC Costs, < 0.15 lbs NO<sub>x</sub>/MBtu, and 0.18 lbs/MBtu SO<sub>2</sub>. Additional criteria and performance standards are presented in the report.
4. **Alternative Lignite Extraction Technologies:** The Industrial Commission contracted directly with Dakota Gasification Company (DGC) and the LEC provided project coordination and review. The Alternative Lignite Extraction Technologies study is project LMFS-99-30. The study identified underground coal gasification, a concept called LANL and coal-bed methane as alternative technologies that warranted further study.

The contractor, Lignite Energy Council, in consultation with industry/state agency advisory panels, developed a detailed project plan for LV 21 Phase II. Activities for Phase II are project management, identification of wholesale customers and equity owners, marketing activities and planning for Phase III.

## ABB Project Summary Report

	<b><u>LIGNITE VISION 21 PROJECT</u></b>			
<b>Title:</b>	<b>PHASE II TRANSMISSION SYSTEM IMPACT STUDY SUMMARY REPORT</b>	Department ESC	Date Feb 6, 2001 Rev. 2-23-01	Page 1

<b>Author(s):</b>	<b>Reviewed by:</b>	<b>Approved by:</b>
R.J.Koessler D. Martin		

### **Summary:**

Electric Systems Consulting (ESC) of ABB Power T&D Company, Inc., has been contracted by the Lignite Energy Council to study the transmission system requirements for seven potential sites for a new 500-MW coal-fired generating unit in North Dakota. This study developed one to three alternatives for each site with one main alternative for exporting the power from North Dakota to the Minneapolis / St. Paul area. This is only one of many potential alternatives that could be developed and analysis of this alternative was limited to the technical performance to meet MAPP criteria. The evaluation did not consider contractual obligations, prior requests for transmission capacity, analysis of any potential SSR problems, or other commercial and environmental aspects.

This report is a summary of the results of the studies for each of the sites plus the common facilities for all of the sites to export power from North Dakota. For each of the seven sites in North Dakota, alternatives were developed for exporting power from North Dakota to the Minneapolis / St. Paul area. A common set of system upgrades and additions were identified for the sites for increasing the North Dakota Export (NDEX) and transferring the power to the Minneapolis / St. Paul area. The seven sites are shown in the attached diagram and described below by the nearest power system feature.

- Site #1 – Beulah Mine near Coyote Station
- Site #2 – Center Mine near Milton Young Station
- Site #3 – Falkirk Mine near Coal Creek Station
- Site #4 – Freedom Mine near Antelope Valley Station
- Site #5 – Great Northern Properties near Belfield Substation
- Site #6 – Gascoyne Mine near Hettinger Substation
- Site #7 – LUSCAR near Tioga Substation

Initially studies were made for identifying the common facilities required to export 2,450 MW from North Dakota with the new Lignite Vision 21 500-MW power plant. Studies were also made for identifying the facilities required to export 2,800 MW from North Dakota with the new Lignite Vision 21 500-MW power plant plus an additional 350 MW in transmission reservations. The transmission facilities common to all sites for increasing the NDEX to 2450 MW and transmitting the power to Minneapolis/St. Paul are listed as follows:

- Upgrade the operation of the Antelope Valley-Broadland 345 kV line to 500 kV and continue the line to Split Rock. This results in a 409-mile, 500 kV line from Antelope Valley to Split Rock, 299 miles of this 500 kV line will be the result of upgrading the existing A. Valley to Broadland line, which was built for 500 kV, but is currently operated at 345 kV. The remaining 110 miles will be new construction.
- The new 500 kV line is 88% shunt compensated (350 Mvar line shunts at each end of the line using existing 225 Mvar reactors plus new 125 Mvar reactors) to prevent excessive overvoltages during load rejection and energization.
- One 345/500 kV autotransformer (approximately 1,200 MVA) at Antelope Valley and Split Rock.
- A 70-mile, 345 kV circuit between Split Rock and Lakefield Junction.
- For high NDEX transfer scenarios (i.e., the Summer Off-Peak case), a 50-Mvar shunt capacitor at the Groton 345 kV station (to support voltages at that station following outage of the Antelope Valley to Split Rock 500 kV circuit).

Upgrading the Antelope Valley-Broadland 345 kV line to 500 kV and extending it to Split Rock is required to increase the transmission capacity for higher exports and to increase the system stability. Adding a line from Split Rock to Lakefield is required to provide a second 345 kV line to carry power out of the Split Rock (Sioux Falls) area. Without this line, an outage of the Split Rock-Sioux City 345 kV line results in overloads on the 230 kV system. These new lines are shown in the attached map of the electrical system. The new 500 kV line addition from Broadland to Split Rock is colored orange and in bold and the new Split Rock-Lakefield 345 kV line is red and in bold.

The transmission facilities required for increasing the NDEX to 2,800 MW (with generator tripping of the LV21 unit upon outages involving the A.Valley-Split Rock 500 kV line) and transmitting the power to Minneapolis / St. Paul are listed below. Only those facilities that are in addition to or modify the facilities listed above for the 2,450 MW NDEX are listed below (ie. this list is for the incremental facilities).

- 35% series compensation of the Antelope Valley-Split Rock 500 kV line
- 25% series compensation of the Leland Olds-Groton-Split Rock 345 kV line
- 220 Mvars in additional shunt compensation along the Leland Olds to Split Rock 345 kV line.
- A Broadland 500 kV station with a 1,000-MVA 500 / 230 kV transformer
- Line reactor compensation of the proposed 500 kV line is modified to the existing 225-Mvar reactors at Antelope Valley and Broadland

The transmission facilities required for increasing the NDEX to 2,800 MW without generator tripping of the LV21 unit requires additional series capacitors as listed below.

- 35% series compensation of the Antelope Valley-Split Rock 500 kV line
- 65% series compensation of the Leland Olds-Groton-Split Rock 345 kV line
- 65% series compensation of the Leland Olds-Ft. Thompson 345 kV line

The cost estimates for the common facilities to increase the NDEX to 2,450 MW and to 2,800 MW are listed as follows:

Costs for NDEX Upgrade to 2,450 MW	\$130,529,000
Costs for NDEX Upgrade to 2,800 MW With Generator Tripping	\$153,039,000
Costs for NDEX Upgrade to 2,800 MW Without Generator Tripping	\$162,039,000

The confidential site reports identify the facility additions or modifications required for each specific site in addition to those common facilities listed above. These facilities insure that power can be transmitted from the nearby power system station identified in the site list above to the common facilities for a NDEX of 2,450 MW.

Since the three main EHV lines that export power from North Dakota emanate from the Antelope Valley and Leland Olds Stations, the closer the sites are to Antelope Valley and Leland Olds the less miles of transmission lines that need to be built or reinforced to export the power. In general it is required to transmit the power to Antelope Valley and / or Leland Olds Stations or to one of the 345 kV lines that ties into these stations in order to export the power. For some of the sites, alternatives were evaluated for connecting to the local 345 kV or 230 kV systems and enhancing the system to export the power versus building a 345 kV line directly from the site to the Antelope Valley and / or Leland Olds Stations.

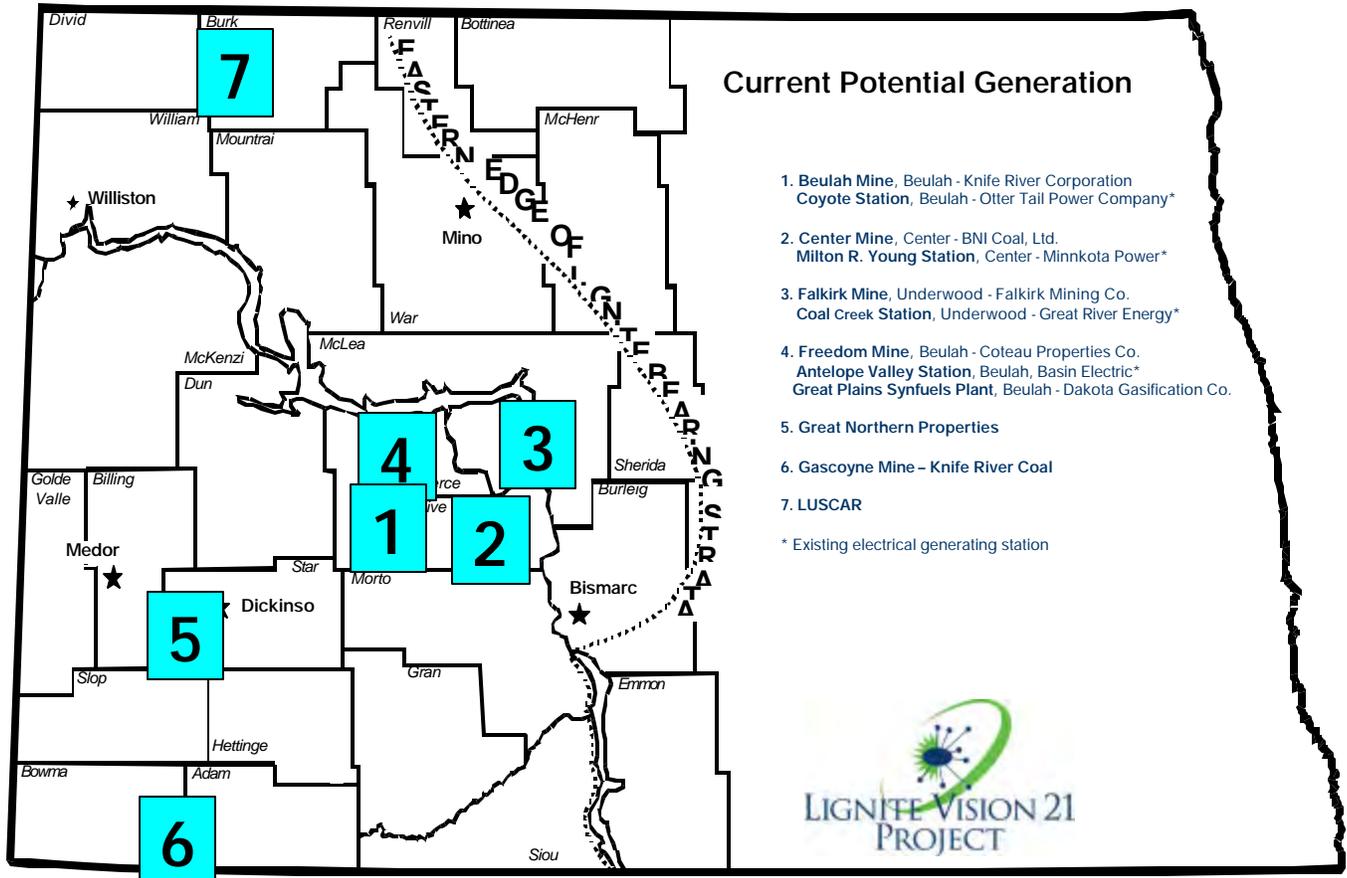
Another consideration is the isolation between the generating stations in central North Dakota. The Coal Creek power plant and station is electrically isolated from the Antelope Valley and Leland Olds transmission system. The Coyote and Milton R. Young power plants and stations are also electrically isolated from the Antelope Valley and Leland Olds transmission system. Connecting these systems together generally has an adverse impact on system stability. Alternatives that connect these systems in general will need to increase the system stability by additional enhancements such as series capacitors. Some alternatives also included an Inter-phase Power Controller (IPC) to transmit power between these stations. The IPC transmits power but still results in the station being de-coupled for system faults, that is the IPC does not transmit fault current. This keeps the systems isolated so faults on one system do not excessively impact the other system and therefore do not adversely impact the system stability.

Some of the transmission alternatives for the sites required additional series compensation in the Antelope Valley-Split Rock 500 kV line and / or the Leland Olds-Groton-Split Rock 345 kV line. These alternatives would leave less flexibility to expand the transmission system for future increases in the NDEX. The site studies did identify the total system requirements for each site to insure that each site will meet the MAPP system requirements for steady-state and stability performance.

**Conclusions:**

Facilities were identified for each site which result in all sites having the capability to export 2,450 MW. The common facilities for increasing the export level to 2,450 MW and to 2,800 MW have been identified for transfers to the Minneapolis / St. Paul area. For these common facilities an estimated cost has been provided. The individual site reports contain the facilities required for each specific site.

**Figure 1: Site Locations Map**



**Figure 2: Transmission Route Map**

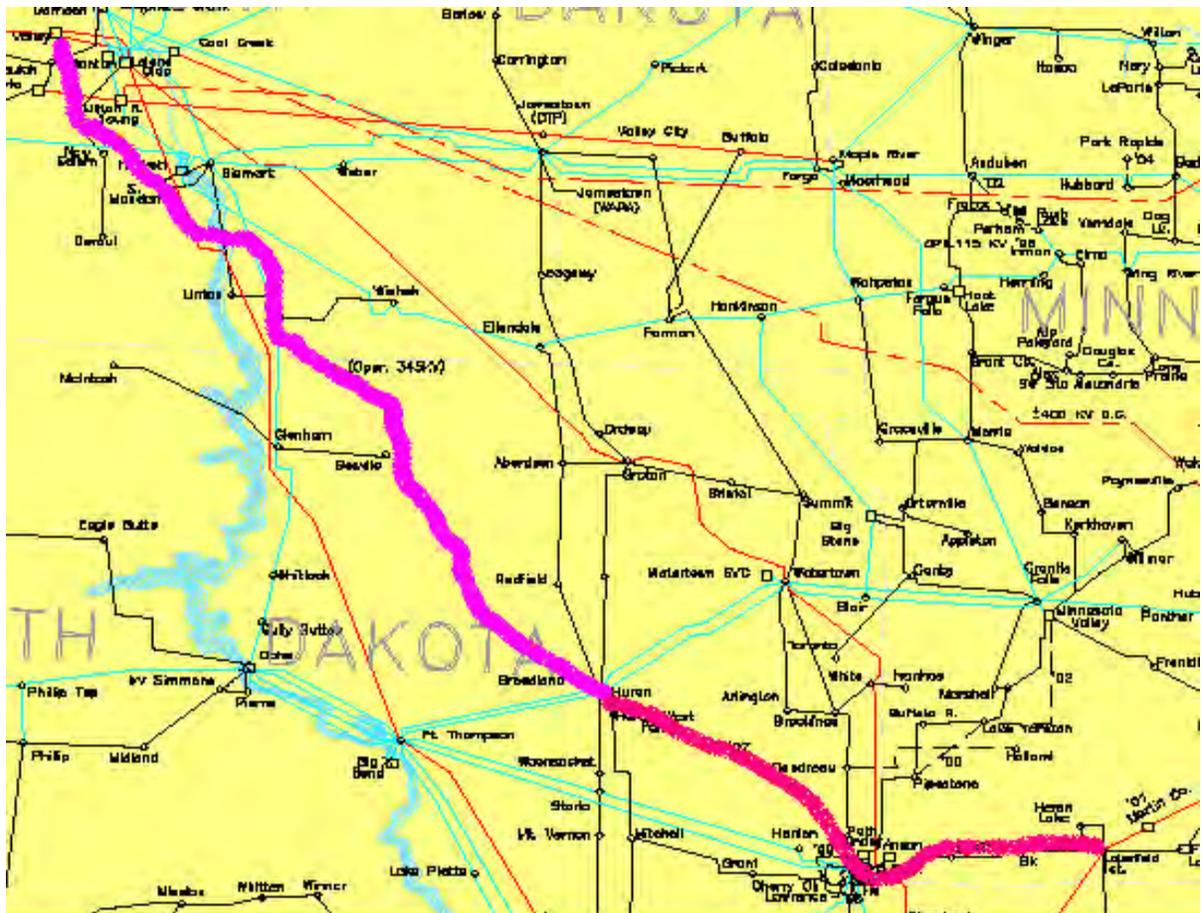


Exhibit I  
WRAO Report, p. 8

REPORT OF THE  
WISCONSIN RELIABILITY  
ASSESSMENT ORGANIZATION  
ON  
TRANSMISSION SYSTEM REINFORCEMENT  
IN WISCONSIN

June 14, 1999



# Exhibit J

March 6, 2006 Comment to DOE

Proposals for NIETC Corridors, map p. 70 of 683

March 6, 2006

Office of Electricity Delivery and Energy Reliability, OE-20,  
Attention: EPAAct 1221 Comments  
U.S. Department of Energy  
Forestell Building, Room 6H-050  
1000 Independence Avenue, SW.  
Washington, DC 20585

Re: Comments of the American Wind Energy Association, Wind on the Wires, Interwest Energy Alliance, The Wind Coalition, the Center for Energy Efficiency and Renewable Technologies, and The Renewable Northwest Project on the Department of Energy's "Considerations for transmission congestion study and designation of National Interest Electric Transmission Corridors"

The American Wind Energy Association (AWEA), Wind on the Wires (WOW), Interwest Energy Alliance, The Wind Coalition, the Center for Energy Efficiency and Renewable Technologies, and The Renewable Northwest Project appreciate this opportunity to respond to the Department of Energy's Notice of Inquiry<sup>1</sup> concerning its plans for a congestion study and possible designation of National Interest Electric Transmission Corridors (NIETCs). We believe that with high and volatile fuel prices, climate change and air quality concerns, water conservation needs, and threats to security from importing fuel, our Nation's vast resources of wind in the middle of the country can and should be tapped. As President Bush stated recently on his Advanced Energy Initiative tour, "areas with good wind resources have the potential to supply up to 20 percent of the electricity consumption of the United States." In this comment we address the proposed criteria for corridors in response to questions in the Department's inquiry, describe studies to add to the list of relevant studies in Appendix A of the notice, and identify specific corridors from the set of relevant studies that we believe will qualify as NIETCs.

## I. WHO WE ARE

AWEA is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind energy resources in the United States. AWEA's 780 members include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, renewable energy supporters, utilities, marketers, customers and their advocates. Many of AWEA's members are interested in developing wind projects in wind-rich areas but are currently prohibited from doing so because of a lack of transmission.

Wind on the Wires works on solving the technical (transmission) and regulatory barriers to interconnecting and delivering new wind power to market in the Upper Midwest. WOW

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<sup>1</sup> Department of Energy, Considerations for Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors, Federal Register notice Vol. 71, No. 22, February 2, 2006, page 5660.

members include nationally prominent wind developers and wind turbine manufacturers, AWEA, non-profit sustainable energy advocacy organizations, and other stakeholders. WOW has been actively involved in transmission planning with utilities and the Midwest Independent System Operator since 2001. WOW members have a substantial interest in the resolution and advancement of the issues in DOE's Notice of Inquiry.

The Renewable Northwest Project is a non-profit renewable energy advocacy organization whose members include environmental and consumer groups, and energy companies. RNP works in Oregon, Washington, Idaho and Montana to increase the development of clean renewable energy resources.

West Wind Wires is a wind industry advocacy program under the auspices of Western Resource Advocates that represents wind in transmission planning and operational forums throughout the Western Electricity Coordinating Council region.

The Wind Coalition is a non-profit corporation advocating for the expansion of wind energy use in Texas and the Southwest Power Pool. The Wind Coalition's members are: AES; Babcock & Brown, LP; Gamesa Energia Southwest; GE Energy, LLC; Horizon Wind Energy; PPM Energy; Renewable Energy Systems (USA); Siemens; Superior Renewable Energy; Trinity Structural Towers, Inc.; Vestas-Americas, Inc.; Environmental Defense; Public Citizen; Texas Renewable Energy Industries Association; and AWEA.

The Interwest Energy Alliance is a trade association that brings the nation's wind energy industry together with the West's advocacy community. The Alliance's members support state-level public policies that harness the West's abundant renewable energy and energy efficiency resources in Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming.

The Center for Energy Efficiency and Renewable Technologies is a not for profit public-benefit organization founded in 1990 in Sacramento. CEERT's board and host of affiliates is comprised of concerned scientists, environmentalists, public interest advocates and individuals involved in developing innovative energy technologies that share a vision to benefit the environment with sustainable solutions to California's growing appetite for energy.

## II. A "CORRIDOR" SHOULD BE BROADLY DEFINED

The first question raised in the notice is essentially "what is a corridor?" AWEA agrees with the Department that corridors should be identified as "generalized electricity paths between two (or more) locations, as opposed to specific routes for transmission facilities."<sup>2</sup> We believe this generalized approach is consistent with standard transmission planning practice and with the intent of the law. The approach avoids the obviously unworkable approach of finding that a specific route is of national interest while other routes connecting two areas are not. Congress and the Administration presumably chose the term "corridor" over other terms like "route" for a reason and we believe it was with this consideration in mind.

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<sup>2</sup> DOE Federal Register notice, page 5661.

Specifically we believe that a corridor should be defined as follows: “a corridor connects two geographic areas, defined as utility service territories, control areas, resource production areas, or points on the electric transmission system which are separated by transmission limitations.”

### III. CRITERIA FOR CORRIDOR IDENTIFICATION

AWEA generally supports the proposed criteria but respectfully submits that they do not sufficiently address the criteria required by EPCRA §1221. We suggest specific modifications below. We do not advocate wind-specific provisions but rather generally applicable provisions that we believe are required by the law.

*Draft Criterion 1: Action is needed to maintain high reliability.*

AWEA supports this criterion and notes that there are reliability benefits of accessing wind generators. The smaller unit sizes of individual wind turbines make them more reliable than a single large generator. Many types of failures can and do take large generators off line. Aggregations of wind machines do not suffer from a similar vulnerability. Reliability is composed of security and adequacy. Transmission corridors that access generation fueled by domestic resources, especially domestic renewable resources, should be recognized as improving both security and adequacy and enhancing the reliability of the overall power system. We suggest adding the following provision: “an area that would lead to supply from greater numbers of geographically dispersed small generating units that are less vulnerable to large sudden outages due to plant failure, natural disasters or malicious acts than large generating stations.”

*Draft Criterion 2: Action is needed to achieve economic benefits for consumers.*

AWEA supports this criterion as far as it goes. However it does not address the statement in EPCRA § (B)(i) that “economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy.” Economic growth can be enhanced by the rural economic development associated with wind farms in the many regions of the country. We suggest the following clarification: “an area that promotes rural economic development through generation development in rural areas such as on farms and ranches.” This provision of the act should be included in Criterion 2 or as an additional criterion.

*Draft Criterion 3: Actions are needed to ease electricity supply limitations in end markets served by a corridor, and diversify sources.*

We suggest that this criterion be clarified to specifically state that supply diversification both at the local level (power used to serve load in a particular area) and national level are covered by the criterion. In other words, a corridor to an area that would increase national consumption of wind even if the particular state or region already has significant wind usage, would qualify given the low percentage of wind currently in the national electricity portfolio. We note that the criterion as written does not address the criterion in EPCRA (B)(ii), “a diversification of supply is warranted.” Supply diversification should be clarified in this criterion or added as another criterion.

*Draft Criterion 4: Targeted actions in the area would enhance the energy independence of the United States.*

AWEA supports this provision and finds it to be consistent with EAct criterion (C), “the energy independence of the United States would be served by the designation.” We agree with the specific metrics of fuel diversity, improved domestic fuel independence, and reduced dependence on energy imports.

*Draft Criterion 5: Targeted actions in the area would further national energy policy.*

We support this criterion and find it to be consistent with EAct criterion (D) “the designation would be in the interest of national energy policy.” However we note that the notice provides no clarifying language or metrics for this criterion unlike all of the other criteria. The Department should not and cannot shy away from implementing this provision of the law.

Metrics for this criterion should be based on the Advanced Energy Initiative in the President’s State of the Union speech,<sup>3</sup> the Western Governors Association’s (WGA) unanimous clean energy resolution,<sup>4</sup> the Midwestern Governors’ Association (MGA) Regional Electric Transmission Protocol<sup>5</sup>, and any other recent multi-state or national law or policy statement on energy policy. Together the State of the Union speech and the governors’ associations resolutions provide clear criteria that are consistent with initiatives in states across the country and with initiatives in Congress.

The President’s Advanced Energy Initiative includes the following: “replacing more than 75 percent of our oil imports from the Middle East by 2025,” reducing demand for natural gas, diversifying energy sources, developing “cleaner,” “cheaper,” and “more reliable alternative energy sources.”<sup>6</sup>

The WGA resolution states “To ensure that newer, clean energy sources play an important role in meeting this goal [of a clean, secure energy future], this resolution is specifically concerned with identifying ways to increase the contribution of renewable energy, energy efficiency, and clean energy technologies within the context of the overall energy needs of the West.” It further states “the Western Governors will examine the feasibility of and actions that would be needed to achieve a goal to develop 30,000 MW of clean energy in the West by 2015 from resources such as energy efficiency, solar, wind, geothermal, biomass, clean coal technologies, and advanced natural gas technologies.” The resolution identifies wind in particular: “Western Governors also believe there is long term wind energy potential in the western plains and mountain states but that a more aggressive effort to develop this energy resource is needed. Western Governors believe that a comprehensive study of the development and transmission of the West’s wind energy resources is necessary. This study should build on the numerous subregional plans

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<sup>3</sup> <http://www.whitehouse.gov/news/releases/2006/01/20060131-6.html>

<sup>4</sup> <http://www.westgov.org/wga/policy/04/clean-energy.pdf>

<sup>5</sup> <http://www.midwestgovernors.org/issues/Protocol.pdf>

<sup>6</sup> <http://www.whitehouse.gov/news/releases/2006/01/20060131-6.html>

underway, such as the Rocky Mountain Area Transmission Study, but should emphasize policies that can facilitate wind development throughout the region.”<sup>7</sup>

The Midwestern Governors’ Association Regional Electric Transmission Protocol recognizes that additional investment in transmission is needed. The Protocol also states that the Midwest could become a substantial provider of wind-generated electricity, but the power needs to be moved to where it is needed. The Protocol also acknowledges that the benefits of additional infrastructure include more reliability, access to low-cost generation, diversity of supply, and economic development opportunities.

To derive metrics from the policy statements of the President, the MGA and the WGA, AWEA proposes that the following features from each be used. From the President’s initiative metrics should include increasing supplies of clean, low cost, reliable, and domestic energy that diversifies the nation’s energy portfolio. The WGA initiative includes these same metrics plus the development of “energy efficiency, solar, wind, geothermal, biomass, clean coal technologies, and advanced natural gas technologies.” The MGA statement includes “low cost,” “more diverse supplies leading to lower cost,” “environmental benefits from improved access to renewable generation,” “economic and job growth,” and an “expanded tax base.” Together, AWEA suggests that DOE adopt the following metrics for Criterion 5: “an area that allows for the development of clean, low cost, reliable, and domestic energy that diversifies the nation’s energy portfolio including a demonstration that a corridor will increase the use of some or all of the following: energy efficiency, solar, wind, geothermal, biomass, clean coal technologies, and advanced natural gas technologies.”

*Draft Criterion 6: Targeted actions in the area are needed to enhance the reliability of electricity supplies to critical loads and facilities and reduce vulnerability of such critical loads or the electricity infrastructure to natural disasters or malicious acts.*

AWEA suggests the following metric for this criterion as well as Criterion 1: “an area that would lead to supply from greater numbers of geographically dispersed small generating facilities that are less vulnerable to large sudden outages due to plant failure natural disasters or malicious acts than large generating stations.”

*Draft Criterion 7: The area’s projected need (or needs) is not unduly contingent on uncertainties associated with analytic assumptions, e.g., assumptions about future prices for generation fuels, demand growth in load centers, the location of new generation facilities, or the cost of new generation technologies.*

AWEA notes that this criterion is not identified in EPAct. The demonstration of whether corridors meet the other criteria should consider the issue identified here so this proposed criterion is at best redundant. Moreover, the undefined term “unduly contingent” provides little or no real guidance in selecting corridors.

*Draft Criterion 8: The alternative means of mitigating the need in question have been addressed sufficiently.*

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<sup>7</sup> <http://www.westgov.org/wga/policy/04/clean-energy.pdf>

AWEA supports this criterion but emphasizes that the *option* of transmission should be preserved through corridor status while other options are considered. Therefore we suggest a criterion that more closely tracks the language of EPA Act § 1221: “Any reasonable alternatives presented by interested parties have been addressed sufficiently to warrant preserving the transmission option, recognizing that alternatives to transmission facilities must be considered for approval of any specific project.”

#### IV. CONGESTION MODELING MUST ADDRESS NEW RESOURCES

The notice indicates that the initial electric transmission congestion study required by Federal Power Act subsection 216(a)(1) will be based on existing studies and congestion modeling of the Eastern and Western Interconnections. AWEA believes the study required by law must include the lack of transmission between supply resources like wind and electric load. Typical power system load flow and economic dispatch models take existing generators and load as given and therefore do not address this issue unless it is explicitly added. The Department’s modeling should include not only existing generators but new supply sources like pockets of wind.

#### V. RELEVANT TRANSMISSION PLANNING STUDIES

The Department’s notice indicates that it will publish its congestion study by August 8, 2006 and at that time it will invite interested parties to provide comments and recommendations concerning its needs assessments and potential corridors to address identified needs. Appendix A to the notice includes the list of transmission plans and studies the Department currently has under review for its congestion study. AWEA respectfully proposes the following five additional studies for use in the Department’s congestion study.

These five additional studies are:

- Southwest Power Pool’s (SPP) *Kansas/Panhandle Sub-Regional Transmission Study*, <http://sppoasis.spp.org/documents/swpp/transmission/studies.cfm>, January 26, 2006;
- *Report of the BPA Infrastructure Technical Review Committee 2001 – 2004*, <http://www.transmission.bpa.gov/planproj/ITRC.cfm?page=ITRC>;
- *Report of the Tehachapi Collaborative Study Group*, March 16, 2005, [www.cpuc.ca.gov/Published/Graphics/48819.pdf](http://www.cpuc.ca.gov/Published/Graphics/48819.pdf);
- the *Report of the Imperial Valley Study Group*, September 30, 2005, [www.energy.ca.gov/ivsg/](http://www.energy.ca.gov/ivsg/); and
- Southwestern Area Transmission group planning for southeastern Colorado, <http://www.azpower.org/swat/meetings/pdf/aug2005/maps.ppt>.

The existing transmission studies, both those noticed by the Department and those studies suggested above, show Draft Criteria met with transmission expansions that serve large additions of wind. Below is a description of the studies that have specifically examined the potential to bring benefits to consumers through large amounts of wind development, or identified wind-rich regions and begun the planning for the development of the wind resource.

#### **Southern Plains**

The Southwest Power Pool *Kansas/Panhandle Sub-Regional Transmission Study*, also known as the “X-Plan” because of the shape of the new lines crossing from the Nebraska border through western Kansas and into Oklahoma and the Texas Panhandle, is an important study for the Department to include because it would diversify electricity supply by accessing an extraordinarily wind-rich region. This study was driven by requests from the developers of 2,500 MW of new wind generation currently seeking interconnection to transmission. SPP prepared this study during 2004 and revised it in 2005, showing \$80 million of production cost savings annually in the Southwest Power Pool, and annual total fixed charges costs of \$74 million.<sup>8</sup> The plan uses new 345 kV line segments: Spearville-Mooreland-Potter-Tolk-Tuco, Spearville-Knoll-Pauline, and connections from Mooreland to the Northwest substation and to Wichita. These segments would allow new wind generation from western Kansas, southwestern Nebraska, western Oklahoma and the Texas panhandle to supply Kansas, Missouri, Arkansas and eastern Oklahoma immediately, and, with added transmission, Louisiana and Mississippi.

### **Desert Southwest**

Several studies of proposed new transmission in Arizona, southern Nevada and Southern California detail congestion reduction and renewable energy development opportunities associated with the proposed facilities. These include the *Report of the Imperial Valley Study Group* (for export of 2,200 MW of renewable resources from California’s Imperial Valley); CAISO studies of the Palo Verde—Devers #2 project (to bring Southwestern resources to Southern California); the Report of the Phase III Study of the Central Arizona Transmission System; and the San Diego Gas & Electric Transmission Comparison Study (to provide a new 500 kV connection from the Southwest to San Diego County and Southern California). This collection of studies by regional utility companies, completed using WECC protocols, address reliability, congestion relief and new conventional and renewable generation supply for the region.

### **Central California**

The *Report of the Tehachapi Collaborative Study Group* is a result of work directed under a California Public Utility Commission (“CPUC”) order.<sup>9</sup> The report details a plan to connect 4,500 MW of wind generation in the Tehachapi region to the state 500 kV grid. The study was led by a stakeholder collaborative that included the CPUC, the California ISO, the California Energy Commission, Southern California Edison, Pacific Gas & Electric, wind developers, and the Center for Energy Efficiency and Renewable Technologies. The Tehachapi conceptual development plan allows wind generation potential in the Tehachapi region to meet state renewable resource goals. Lack of transmission capacity has prevented the development of renewable generation supply in this region to serve the state’s well-known need for energy.

### **Pacific Northwest**

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<sup>8</sup> Costs include underlying lower-voltage upgrades, and 15% cost of capital. Fuel cost assumed in 2005 study was \$5/ MMBtu natural gas at the burner. *Addendum to the Kansas/Panhandle Sub-Regional Transmission Study* November 4, 2005. Higher natural gas prices would increase the plan’s net benefits.

<sup>9</sup> CPUC Decision 04-06-010 identified 4,060 MW of wind resource in Tehachapi in proceedings related to the implementation of the Renewable Portfolio Standard required by California law.

The Pacific Northwest has several wind-rich areas. Transmission planning in the region has focused on moving power from east of the Cascades to the coast, and from Montana to the Northwest more generally. Transmission planning to move wind power to load centers on the coast has emphasized the shorter distance transmission from the Columbia Gorge region than from Montana. These transmission reports are not included in the Department notice. The 2001 *Report of the BPA Infrastructure Technical Review Committee*, written by representatives of investor-owned utilities and publicly-owned utilities, highlight regional transmission needs. Annual updates of this inventory of unsolved congestion can be found at the BPA website <http://www.transmission.bpa.gov/planproj/ITRC.cfm?page=ITRC>.

There are three congestion bottlenecks identified in these reports that are most relevant to move wind resources from east of the Cascades to the load centers of Western Oregon and Washington: 1) McNary-John Day; 2) Paul-Allston and Allston-Keeler path; and 3) the Cross-Cascades North and South paths.

The Department notice also includes the *Montana-Pacific Upgrade Study*. This recent study by the Northwest Power Pool examined the addition of 750 MW of generation in eastern Montana, or the alternative of wind development closer to load, in western Montana near Great Falls, to serve the Puget Sound and Portland areas. The transmission options to incorporate significant new generation in Montana include one or more 500 kV circuits.

### **Intermountain West**

In September 2003, Wyoming Governor Dave Freudenthal and Utah Governor Michael Leavitt created the Rocky Mountain Area Transmission Study (RMATS) as a multi-state effort to reduce congestion and increase transmission. This work recommended two priority transmission upgrade projects in the region: the Bridger Expansion Project, and the Tot 3 Upgrade Project. RMATS also explored transmission export options. The Bridger Expansion Project adds transmission from the Jim Bridger switchyard/coal plant in southwest Wyoming East to the wind resources in central Wyoming; southwest to Salt Lake City; and West to southern Idaho. Initially, these additions would support 1,375 MW of new wind generation in southwest/south central Wyoming. Larger additions for export to Nevada and the West Coast are also described. The Tot 3 Upgrade Project would add new 345 kV facilities to export supply resources from eastern Wyoming to the Colorado Front Range load center, including export of 1,200 MW of wind generation from excellent wind resources in eastern Wyoming to Denver. The RMATS study also outlined alternatives for exporting as much as 10,000 MW of Rocky Mountain generating resources to the Pacific Northwest, Nevada and California.

Significant additional wind development in southeastern Colorado for Denver and for export via the Bridger Expansion Project will rely on transmission from the southeastern part of the state. This added transmission has been discussed in the Southwest Area Transmission regional planning effort. The reports in this effort have not been noticed by the Department. See the maps for southeastern Colorado at the website: <http://www.azpower.org/swat/meetings/pdf/aug2005/maps.ppt>.

### **Midwest**

The Midwest ISO prepared a 2003 Transmission Expansion Plan (MTEP) and the MTEP 2005 with the knowledge that this ISO serves a region with over 700,000 MW of “proven reserves” of wind power in its nine state region.<sup>10</sup> MTEP 2003 and 2005 are listed in Appendix A of the Department’s notice. The economic analysis in the MTEP 2003 study found transmission investments could reduce annual energy costs between \$304 million and \$1.6 billion when coupled with high amounts of wind, depending on natural gas price projections. 2003 MTEP includes an Exploratory Plan for Iowa and southern Minnesota for transmitting wind energy from this area (including the eastern edge of the Dakotas) to Minneapolis- St. Paul. When the study was performed, a gas price of \$3.24-\$3.85/mmBtu Natural Gas was the base case assumption, resulting in an annual benefit of \$304 Million.<sup>11</sup> In MTEP 2005, the Exploratory Plans are refined, with 3,500 MW of wind generation for Iowa and Southern Minnesota, as well as a Northwest Exploratory Plan for the Eastern Dakotas and Western Minnesota providing 1,500 MW of new wind generation.

## VII. PROPOSED CORRIDORS

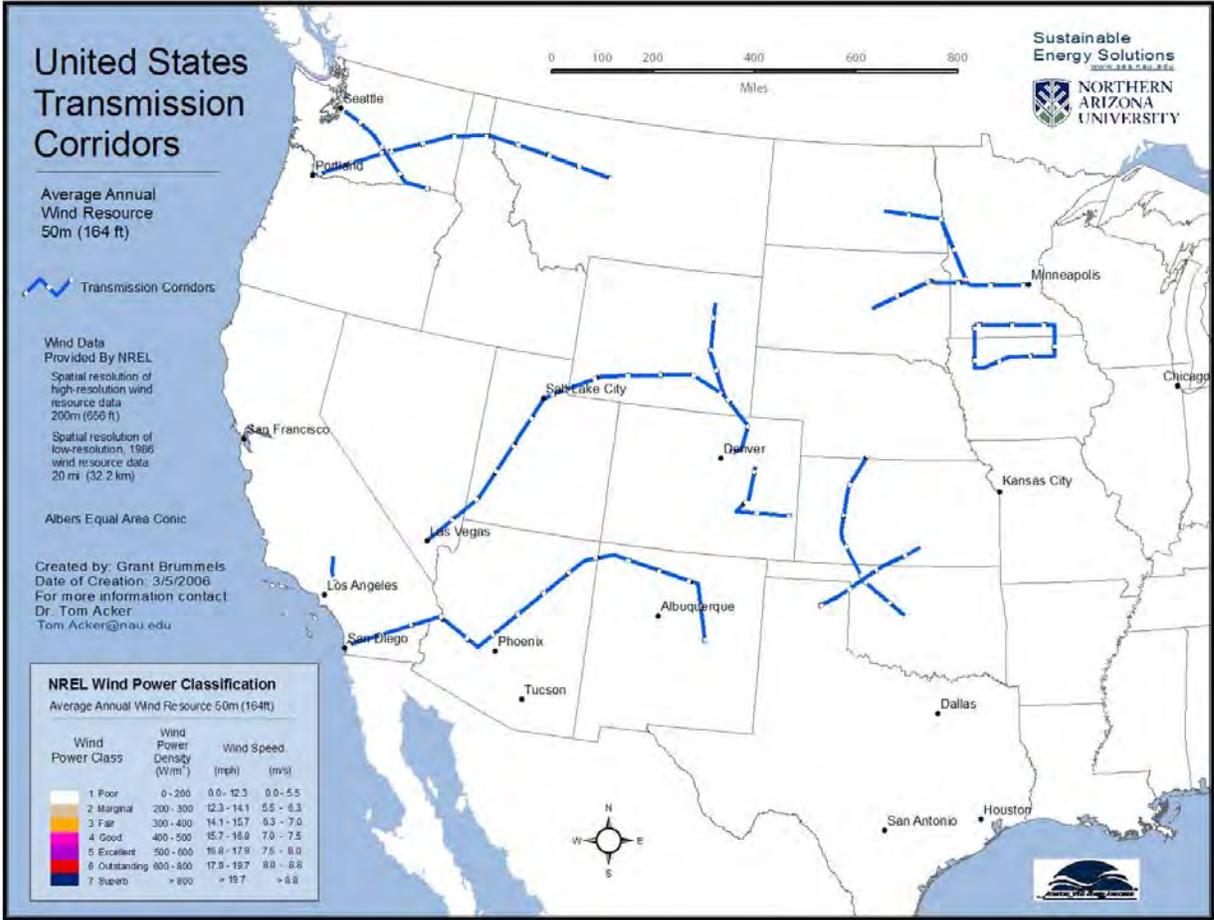
Using the information and analyses from the studies the Department has noticed and the additional studies suggested in these comments, we believe the Department will find that the corridors identified below satisfy the criteria for National Interest Electric Transmission Corridors. We are not requesting early designation per the opportunity provided in the Department’s notice; rather we provide these as preliminary suggestions on corridors that we believe should be considered in the Department’s study.

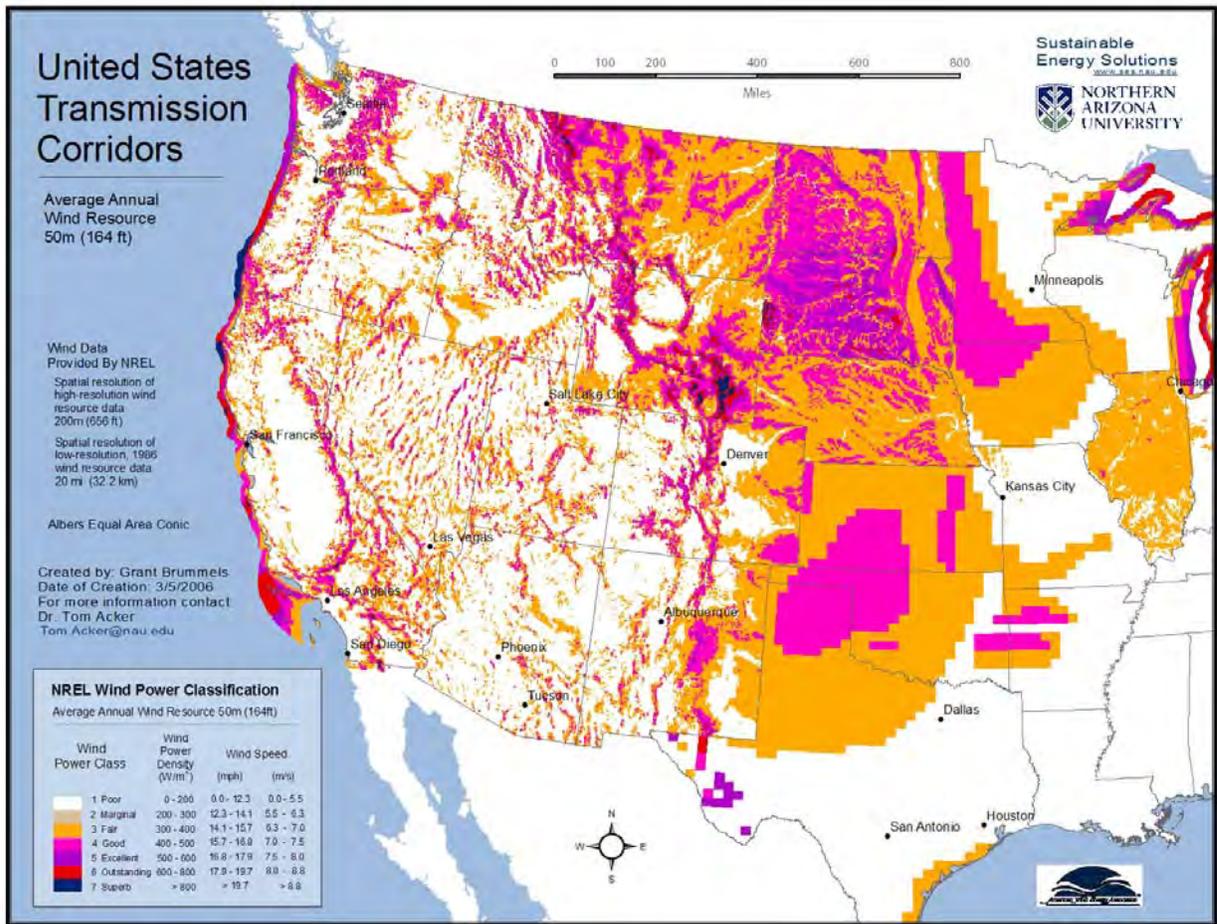
1. Northern New Mexico to San Diego as a group identified in the *Report of the Imperial Valley Study Group*, Documents on the Palo Verde—Devers #2 project, and the *Report of the Phase III Study of the Central Arizona Transmission System*;
2. Eastern Oregon/ Washington to Portland/Seattle as identified in the *Report of the BPA Infrastructure Technical Review Committee*;
3. Tehachapi to Vincent Substation, identified in *Report of the Tehachapi Collaborative Study Group*;
4. Southern Wyoming to Denver, as identified in RMATS Recommendation 1;
5. Southern Wyoming to Las Vegas, as identified in RMATS Recommendation 2;
6. Eastern Colorado to Denver, as identified in RMATS Recommendation 2;
7. Western Kansas and Oklahoma to Kansas City, identified in SPP’s *Kansas/Panhandle Sub-Regional Transmission Study*;
8. Eastern North Dakota to Minneapolis, identified in Midwest ISO’s *MTEP 03*; and
9. South Dakota to Minneapolis, identified in Midwest ISO’s *MTEP 03*.

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<sup>10</sup> See *An Assessment of Windy Land Area and Wind Energy Potential*, Pacific Northwest Laboratory, 1991.

<sup>11</sup> Greater savings to consumers are shown for higher gas prices.





**9. APS, A Subsidiary of Pinnacle West Capital Corporation, Received Mon 3/6/2006 2:12 PM**

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March 6, 2006

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 Attn: EPACT 1221 Comments