

SEP 11 2007

FILED

STATE OF MINNESOTA

IN COURT OF APPEALS

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
CapX 345-kV Transmission Project.

ORDER

A07-1550

Considered and decided by Toussaint, Chief Judge; Lansing, Judge; and Klaphake,
Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

This certiorari appeal was filed on August 13, 2007. Relators North American Water Office and the Institute for Local Self Reliance seek review of a June 4, 2007 order issued by the Minnesota Public Utilities Commission (MPUC) and an August 2, 2007 order denying relators' motion for reconsideration. The June 4 order authorizes Great River Energy (GRE) and Northern States Power Company, d/b/a Xcel Energy (Xcel), to file a certificate of need application for the proposed construction of certain transmission facilities. The June 4 order grants Xcel's request for an exemption from certain filing requirements for the certificate of need application, and allows Xcel to provide substitute information.

EXHIBIT 1

The MPUC filed a statement of the case arguing that the appeal is premature because the June 4 order only decided preliminary procedural issues related to the filing of a certificate of need application and is not final. Xcel filed a motion to dismiss the appeal as premature. This court questioned the finality of the June 4 order. Relators filed a response opposing dismissal and the parties have filed jurisdiction memoranda.

Any party to a contested case before the MPUC may appeal from the decision and order of the commission in accordance with chapter 14. Minn. Stat. § 216.25 (2006). Under the Administrative Procedure Act (APA), any person aggrieved by a "final" decision in a contested case is entitled to judicial review by serving and filing a petition for a writ of certiorari. Minn. Stat. § 14.63 (2006).

An agency action is final and reviewable when the agency completes its decision-making process and the result of that process directly affects a party. *In re Intra-Lata Equal Access & Presubscription*, 532 N.W.2d 583, 588 (Minn. App. 1995), *review denied* (Minn. June 6, 1995). Relators argue that the June 4 order is immediately appealable as a final determination of relators' right to information during the certificate of need application process with no further review available.

The June 4 order specifies that the MPUC's exemption decision does not preclude any person from recommending, or the MPUC from requiring, the submission of additional information before the MPUC rules on whether the certificate of need application is substantially complete. Because the June 4 order allows for the submission

of additional information, the order does not determine the scope of the information that the MPUC will consider in ruling on the certificate of need.

Certiorari ordinarily is available only when the order from which the appeal is taken is a final determination of the parties' rights, rather than an interlocutory or intermediate order. *In re Application by City of Rochester for Adjustment of Serv. Area Boundaries With Peoples Coop. Power Ass'n*, 524 N.W.2d 540, 541 (Minn. App. 1994). Because the June 4 order is an interlocutory order that does not conclude the contested case on the planned certificate of need, the order is not immediately appealable under the APA. If necessary, relators may obtain review of the June 4 order in a proper appeal after conclusion of the contested case proceedings on the certificate of need application.

IT IS HEREBY ORDERED:

1. This appeal is dismissed as premature.
2. The writ of certiorari is discharged.

Dated: September 11, 2007

BY THE COURT



Chief Judge