

**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

MPUC Docket No. ET-2, E-002, et
al./CN-06-1115

OAH Docket No. 15-2500-19350-2

**APPLICANTS' RESPONSE TO UCAN
MOTION**

I. INTRODUCTION

Northern States Power Company, a Minnesota corporation ("Xcel Energy"), submits this response on behalf of itself and Great River Energy (collectively, "Applicants") to the motion of United Citizens Action Network ("UCAN"). UCAN raises concerns in two subject areas: (a) the Department of Commerce's ("Department") efforts to involve the public in the scoping of environmental review, and (b) Applicants' efforts to involve the public in identifying routing options while route permit applications are developed for filing later this year. Applicants believe neither criticism has any merit and respectfully request that the Administrative Law Judge ("ALJ") (i) deny the Motion, (ii) decline to certify issues to the Minnesota Public Utilities Commission ("Commission"), and (iii) proceed with the contested case.

As to the concern over the Department's scoping notice, UCAN asserts essentially that more should have been done to encourage public participation in the Environmental Report scoping meetings. Contrary to UCAN's view, however, Applicants believe the public had an adequate opportunity to participate in scoping.¹

¹ It should be noted that responsibility for the design, notice and conduct of the scoping process rests with the Department, not with Applicants. We respectfully defer to the Department's analysis of the rules that guide that effort.

Regardless of how the notice rules might be interpreted, we believe there is no practical issue before the ALJ. As part of Applicant's ongoing commitment to provide information to those living in the study area, newsletters were sent to all those that received notice of our Application, a group of approximately 73,000 in addition to about 565 government officials. That newsletter included notice of all of the Department's scoping meetings. Through the combined efforts of the Department and the Applicants, scoping meetings were well publicized and well attended.

The second area of complaint has to do with Applicants' efforts to involve the public in the development of route permit applications. Somehow UCAN finds our efforts to engage the public in the process of identifying routes a nefarious attempt to divert attention from this certificate of need proceeding. Nothing could be further from the truth. Applicants are very sensitive to the impact new transmission infrastructure has on property owners. Applicants are committed to working through these very important public policy matters very openly. And Applicants have committed to do everything reasonably possible to include the community in the examination of whether the lines should be built as well as where the lines should be located. Part of the motivation to involve the public in route development during the first half of 2008 is to provide further incentive to those that see their property potentially affected to participate in this certificate of need proceeding.

UCAN concludes its complaints by renewing an argument, previously rejected by the Commission, that the certificate of need process and the route permit process should be merged. This issue was argued vigorously at the Commission (including by UCAN's representative Mr. Reinhardt). After considerable discussion and careful consideration the argument the Commission concluded that conducting need and routing simultaneously in this circumstance is infeasible. The ALJ need not revisit this issue and should dismiss UCAN's motion.

II. ARGUMENT

A. NOTICES AND PUBLIC MEETING ISSUES WERE HANDLED APPROPRIATELY.

The first five points of the motion boil down to UCAN's assertion that the Department should have done more to encourage public participation in this proceeding. UCAN's motion recites several claimed shortcomings in the Department's notices and conduct of the public meetings, citing various subparts to Minn. R. 7849.7050. Applicants disagree with UCAN's contention that the public is being excluded. Points 1 through 5 of the Motion should be denied.

Applicants are committed to facilitating (i) broad public participation, and (ii) developing an overall record that is supportable at the Commission. The Commission approved a pre-application notice plan for this proceeding that was commented on by a number of interested parties. Applicants notified 73,000 landowners as well as about 565 local government officials in the general vicinity of the projects of the Application and upcoming proceeding. Similar pre-application notice was published in over a hundred newspapers throughout the project study areas. These notice efforts are described in the Affidavit of Timothy Carlsgaard ("Carlsgaard Aff.") accompanying this response.

Although not required by the approved notice plan or by rule, Applicants issued two press releases for broad circulation. Carlsgaard Aff. ¶ 3. And Applicants sent a second mailing to this same broad group of recipients, inviting them to Applicant-sponsored open house meetings. Carlsgaard Aff., ¶ 2. Applicants held 24 open houses in the general vicinity of the projects so that members of the public may learn more about the projects and participate in the process. Carlsgaard Aff., ¶ 4. These communications went well beyond the requirements of the rules and were intended to maximize broad public knowledge and opportunity to participate.

As part of Applicants' commitment to go beyond the requirements of the rules, a third mailing was sent on November 16, 2007. This mailing is very important to the current motion. It was the first CapX2020 newsletter and it was sent to the same 73,000 (plus about 565 government officials) who were notified of the Application. That newsletter included notice of the 10 public meetings sponsored by the Department in December. *Carlsgaard Aff. Exh. 3*. The newsletter was sent much more than 10 days prior to any of the Department-sponsored public information meetings. These direct communications to the public not only satisfy, but go beyond fulfilling the intent of the relevant rules to provide the public with additional opportunities to participate.

UCAN complains that the Department should have provided notice of the public information meetings on the environmental review to the same list of 73,000 people with whom Applicants communicated. Applicants defer to the Department in the interpretation of the operative rules and the Department's compliance with them. Regardless of the Department's interpretation of the technical notice requirements, UCAN's objective has been met and the broad list has received the information necessary to participate meaningfully in the process. *Carlsgaard Aff. Exh. 3*.

UCAN also complains about the number of newspapers used for published notice of the public information meetings. It is correct that Applicants undertook to publish the newspaper notices at the request of the Department. Doing so violated no rule. And Minn. R. 7849.7050, subp. 3, does not require that notice be published in all 106 newspapers originally selected by Applicants to announce the certificate of need application. Rather, the Department instructed Applicants which newspapers to include. Applicants understand that the 17 newspapers chosen by the Department satisfies published notice in the area of the projects. Minn. R. 7849.7050, subp. 3.

Finally, UCAN complains that the 10 public information meetings were held at “inconvenient times and locations.” Applicants agree that public convenience is an important factor to be taken into account in scheduling the locations and times of public information meetings. Applicants also agree multiple public information meetings at multiple locations is important in light of the magnitude of these projects.

In this instance, Applicants believe the Department chose locations and times that attempted to balance public convenience with the need to complete the Environmental Report in a timely manner on the schedule required by the ALJ’s First Prehearing Order. The 10 locations from Winona to Moorhead, and Marshall to Clearwater, provided both daytime and evening opportunities for interested members of the public. The meeting schedule provided adequate opportunities for interested people to have a meaningful role of their choice. In short, between the Department’s notices and Applicants’ repeated communications, members of the public have been provided with the opportunity to participate.

B. NEED IS PROPERLY CONSIDERED SEPARATE FROM ROUTE

The second area of concern expressed in UCAN’s motion has to do with the relationship of the routing process to this certificate of need contested case. UCAN’s motion in this area is a repeat of arguments made before the Commission in January. The Commission already found in its *Order Approving Notice Plans and Requiring Compliance Filings* (“Notice Plan Order”) that the certificate of need and routing proceedings should proceed separately in this instance. This finding is binding upon UCAN, Applicants, and the ALJ, and cannot be revisited here. UCAN admits that this is an issue the Commission addressed and resolved. UCAN does not dispute the Commission’s findings that a combined need and routing process would result in public confusion and that the negatives would outweigh the positives.

As a result, UCAN provides no basis for the ALJ to certify the question back to the Commission. Furthermore, the issues raised by UCAN in its motion are virtually identical to issues UCAN presented to the Commission when it filed comments on the Departments scoping decision for the Environmental Report. In that document, UCAN repeats all of its claims about notice and the supposed confusion over routing issues. The Commission has not taken up UCAN's issues. No further action is necessary in this contested case on these issues and UCAN should not be allowed to delay the proceeding.

The fact that the regulatory proceedings will proceed separately does not mean that routing activities are not currently taking place. To the contrary, Applicants are simultaneously working diligently toward preparing their routing applications for the transmission proposals under consideration here. Applicants have chosen to invite the community to actively participate in that initiative in an effort to maximize public participation and develop route alternatives with the best-available information. Applicants are committed to working closely with the public and local officials to gather pertinent information, to explore the land use and environmental issues that might influence route selection and to present well-developed routing options to the Commission. Indeed, Applicants have been criticized in the past that notice to 73,000 landowners was too broad and involved many landowners who will not be directly impacted by the lines. A result of the effort to gain public participation early in route selection is so that the Applicants can be more effective and knowledgeable about potential environmental impacts as possible routes are analyzed.

UCAN repeatedly asserts that Applicants have misled the public by diverting attention from the certificate of need to routing issues. These assertions are incorrect and disappointing. Applicants have worked hard to provide meaningful information on topics of interest to the people who have participated thus far. Applicants have sponsored numerous open houses on the proposed facilities and the CapX2020

initiative. These open houses have not been required by the rules and have been undertaken voluntarily to maximize citizen understanding and participation. Those open houses are designed to address whatever issues and questions interested members of the public may have. Carlsgaard Aff. ¶ 9-10.

Some landowners are understandably more interested in learning whether their particular parcels are likely to be impacted than they are with questions of "size, type and timing" of the lines. In an effort to be responsive to public inquiry, Applicants have provided information to landowners who have requested it. At no time did Applicants discourage landowners from participating in this need proceeding and at no time did Applicants suggest that landowners should avoid participating in the current proceeding. Carlsgaard Aff. ¶ 9-10. Motion points 6-9 should be denied.

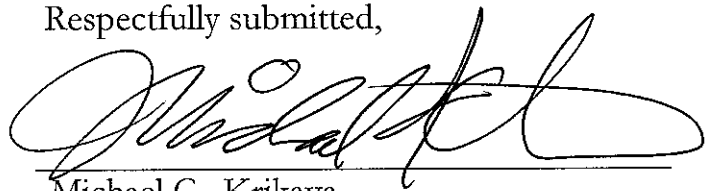
III. CONCLUSION

In summary, UCAN's motion should be denied. Adequate notice has been provided to ensure that interested members of the public will have the opportunity to participate. The certificate of need proceeding is proceeding separately from routing and there is no basis to change that process. And UCAN's request to create delay should be denied.

Dated: February 15, 2008

Priti R. Patel
Assistant General Counsel
Xcel Energy Services Inc.
414 Nicollet Mall
Minneapolis, MN 55401

Respectfully submitted,



Michael C. Krikava
Lisa A. Agrimonti
Catherine A. Biestek
Briggs and Morgan
2200 IDS Center
Minneapolis, MN 55402

NORTHERN STATES POWER COMPANY