

February 28, 2008

VIA E-FILING & U.S. MAIL

Dr. Burl Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

Commissioner Wilson
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul Minnesota 55101-2198

**Re: Requests for Certificates of Need for Three 345 kV Transmission
 Line Projects with Associated System Interconnections
 PUC Docket No. E-002/CN-06-1115, OAH No. 15-2500-19350-2**

**Request for Clarification/Expansion of Environmental Report Scoping
Decision**

Dear Dr. Haar & Commissioner Wilson,

In accord with Minn. Rules Ch. 7849.7050, the North American Water Office and the Institute for Local Self Reliance requests the Public Utility Commission's clarification and expansion of the Environmental Report Scoping Decision issued by the Commissioner of the Department of Commerce dated February 18, 2008.

The North American Water Office and the Institute for Local Self Reliance appreciate your attention to the issues raised in our petition.

Sincerely,



Mike Michaud

For:
North American Water Office
P.O. Box 174
Lake Elmo, MN. 55042

Institute for Local Self Reliance
1313 5th St. SE
Minneapolis, MN 55414

PUC Docket No: E-002/CN-06-1115
OAH No. 15-2500-19350-2

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

AFFIDAVIT OF SERVICE
BY HAND DELIVERY, E-MAIL, OR US MAIL

Mike Michaud, being duly sworn, says that on the 28th day of February, 2008, he served a copy of:

**REQUEST FOR CLARIFICATION/EXPANSION OF THE COMMISSIONERS'
SCOPING ORDER DATED FEBRUARY 18, 2008
ON BEHALF OF
THE NORTH AMERICAN WATER OFFICE
&
INSTITUTE FOR LOCAL SELF RELIANCE**

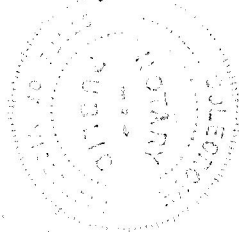
upon all persons on the official service list in this matter, by hand delivery, electronic filing, or mailing to them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing the same with the post office, directed to said persons at the last known mailing address of said persons.



Mike Michaud

Subscribed and sworn to before me this
28th day of February 2008.


Notary Public



STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Thomas Pugh
Phyllis Reha
David Boyd
J. Dennis O'Brien

Chair
Commissioner
Commissioner
Commissioner
Commissioner

February 28, 2008

DOCKET NO. **E002/CN-06-1115**
OAH No. 15-2500-19350-2

IN THE MATTER OF THE
APPLICATION OF NORTHERN STATES
POWER COMPANY D/B/A XCEL
ENERGY, GREAT RIVER ENERGY FOR
CERTIFICATES OF NEED FOR THREE
345 kV TRANSMISSION LINES

**REQUEST FOR
CLARIFICATION/EXPANSION OF
THE COMMISSIONERS' SCOPING
ORDER DATED FEBRUARY 18, 2008**

INTRODUCTION

On February 18, 2008, the Commissioner of the Department of Commerce (the "Department") issued an Environmental Report Scoping Decision ("Scoping Decision") in the above-captioned proceedings. As written, the Scoping Decision is subject to differing interpretations, and therefore lacks sufficient clarity and transparency. The failure to include specific details as to the scope of the Environmental Report in the Scoping Decision makes it impossible for the parties and the public to evaluate whether the Environmental Report will accomplish its intended purposes. Pursuant to Minn. Rules 7849.7050, subp.8, the North American Water Office ("NAWO") and Institute for Local Self Reliance ("ILSR") hereby notify the Commissioner of the Department of Commerce and the Public Utilities Commission ("the

Commission”) that we request the Commission to clarify and expand the Scoping Decision.¹ In particular, NAWO/ILSR requests the Commission to clarify the scope and extent of the analysis with respect to the project alternatives, forecasting, and generation impacts.

ISSUES

I. THE ALTERNATIVES ARE NOT MUTUALLY EXCLUSIVE. RATHER, THEY ARE COMPLIMENTARY AND THEREFORE SHOULD BE ANALYZED IN COMBINATION

The Scoping Decision says that the Environmental Report will describe and analyze the feasibility of five (5) different alternatives to the CAPX Phase I Project. The implication of the language used in the Scoping Decision is that the five alternatives are exclusive, or, from a different point of view, will not be considered in combination.

There is no specific language in the Scoping Decision that addresses the process that the Commissioner intends to use in describing and analyzing the listed alternatives. Without an explanation of how the alternatives will be reviewed, i.e., exclusively or in combination or both, there is no way for the public or any party to the proceedings to evaluate the adequacy of the Scoping Decision. There is no logical, statutory or regulatory reason for considering the alternatives only individually.. To artificially isolate the examination of alternatives distorts a process designed and intended to be comprehensive, transparent, and inherently fair and open.

¹ The translation of Minn. Rules 7849.7050 subp.8 from an Environmental Quality Board rule to a Public Utilities Commission rule appears to have been garbled a bit. Despite the requirement of Minn. Stat. §14.06(a) that, “Each agency shall adopt rules, in the form prescribed by the revisor of statutes, setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent that those procedures directly affect the rights of or procedures available to the public,” subp.8 does not set forth a clear procedure for requesting a review of the Commissioner’s decision. Even so, NAWO/ILSR is merely seeking clarification of certain elements of the Scoping Decision which the Commission should have the capacity to provide. The Commission may want to take note of the incoherent nature of this particular subpart and engage in a revision in order to enhance clarity in the future.

NAWO / ILSR respectfully requests that the Commission clarify for the parties whether the Department should evaluate the project alternatives separately or in a combined and complimentary fashion.

II. EACH PROPOSED HIGH VOLTAGE TRANSMISSION LINES (HVTL) IN THE PROJECT MUST BE EVALUATED ON ITS OWN MERITS, AND CONSIDERED WITH RESPECT TO EACH AND ALL OF THE CITED ALTERNATIVES

The Scoping Decision does not incorporate specific language that directs the Commissioner's staff to evaluate each of the proposed HVTLs as a separate project. As Windustry noted in its comments on the Scoping Decision, the parties and the ALJ in the contested case proceedings have determined to address each proposed HVTL on its own merits.² In the interest of consistency in the Certificate of Need process, there is significant value in the Environmental Report addressing alternatives in the context of each HVTL. It is likely that one or more HVTL may be more amenable to the project alternatives than others. Based on the public input into the process, NAWO/ILSR anticipates that the Commissioner will agree. The lack of clarity in the Scoping Decision makes it impossible for NAWO/ILSR, the other parties to the proceedings, and the public as a whole to determine whether the Commissioner's staff will be evaluating alternatives to each individual HVTL or the CAPX Phase I Project application as a whole.

NAWO/ILSR respectfully requests that the Commission clarify whether the Department must address the analysis of alternatives for each line separately or analyze the entire project as a whole.

² Windustry Scoping Comments at 3; citing Prehearing Conference, December 19, 2008.

III. THE ANALYSIS OF ALTERNATIVES MUST TAKE INTO ACCOUNT MULTIPLE LOAD GROWTH SCENARIOS

The feasibility of the project alternatives and the environmental impacts of the proposed project and alternatives are directly tied to the forecasted increase in electrical load. NAWO/ILSR would like to assume, given the questions raised throughout the public comments that were filed with the Commissioner, that the Environmental Report will examine the most likely environmental impacts in the context of a range of different load growth scenarios in the analysis of the project alternatives. Because the Scoping Decision does not even include the word “forecast,” it is impossible to determine at this time whether the Environmental Report will examine multiple load growth scenarios and quantify the range of impacts in determining the feasibility of the project alternatives.

NAWO / ILSR respectfully requests that the Commission clarify that the Environmental Report should address the environmental impacts considering a range of probabilities around the most likely load growth forecast to analyze the feasibility of the Project Alternatives.

IV. THE SCOPE OF THE ENVIRONMENTAL REPORT SHOULD INCLUDE AN EXAMINATION OF IMPACTS FROM ENERGY SOURCES ENABLED BY THE PROJECT AND THE VARIOUS ALTERNATIVES EXAMINED

The Scoping Decision determined that the analysis will not examine impacts from specific energy sources. The Commissioner’s decision cites the Applicants’ claim that these transmission lines will operate independently from any specific energy sources, and states that these proposed lines are not directly associated with any particular generating source.

It has been well established in this record so far that whether these lines are indeed generation neutral or will enable a specific class of generating sources (like coal) to the

disadvantage of another class of generating sources (dispersed CBED wind) is a contested fact in dispute. To the extent that if the lines are not built, additional coal generation in the Dakotas may be limited, there is an identifiable environmental impact from the proposed project versus the no build alternative.

In a previous Certificate of Need docket for a HVTL, the scope of the Environmental Report was set to include examination of various generation scenarios.³ Simply because the proposal is for transmission facilities does not mean that impacts from generation sources should not be examined in the Environmental Report. Where distinctions can be drawn between alternatives on the basis of differences in the likely development of various classes of generation, there are environmental impacts that need to be examined.

NAWO/ILSR respectfully requests that the Commission respond to the public comments filed that cite concerns regarding generation sources. If the Commission is unable to supply a satisfactory reason for disregarding generation sources, NAWO/ILSR respectfully requests that the Commission require that the scope of the Environmental Report consider the impacts from various generation resources enabled by the alternatives to be examined.

V. THE PURPOSE OF THE SCOPING DECISION IS TO FACILITATE AN OPEN AND TRANSPARENT PROCESS WHICH CREATES AN OPPORTUNITY FOR MEANINGFUL PUBLIC PARTICIPATION

The purpose of the Scoping Decision can be discerned from the language of Minn. Stat. § 116D.04 Subd. 2A (f) which states, “an early and *open* process shall be utilized to limit the scope of the environmental impact statement.” (Emphasis added) While the cited statute provides guidance for the scoping decision for an environmental impact statement rather than an environmental report, the underlying purpose of the scoping decision remains the same. The

Department has taken all the typical steps for conducting an open process in determining the appropriate scope for the Environmental Report except for the lack of clarity in the Scoping Decision itself. Without any general or specific response to the public input to the Scoping Decision by the Commissioner, the parties and the members of the public who chose to participate in the process have been denied any meaningful participation. By failing to respond to the public comments or to make any commitment to a specific course of action for conducting the Environmental Review, the Commissioner has drawn the curtains on what is meant to be an open and transparent process.

The Department received 54 written comments totaling 155 pages of public input on the Scoping Decision, none of which is addressed in the Scoping Decision itself. It is incumbent upon the Department to make at least some response to the comments and public input in the Scoping Decision. Failure to do so represents a failure to act in the public interest. NAWO/ILSR respectfully requests the Commission to require clarification and order the Commissioner of the Department address the public comments and input in the Scoping Decision document.

NAWO/ILSR respectfully requests that the Commission clarify which sources were relied upon in reaching the Scoping Decision and why some sources were ultimately rejected.

CONCLUSION

The Scoping Decision does not provide the parties, the Commissioner's staff, or the public with any guidance or information regarding the scope of the forthcoming Environmental Report. The document in no way reflects or responds to the significant public input that purportedly helped craft it. The extensive written and oral public comments are flatly ignored, giving no indication whether that input was accepted or rejected. No party to the proceedings

³ See Big Stone II Transmission Line Docket, CN-05-619.


will be able to look to the Scoping Decision to evaluate whether the Environmental Report that is ultimately issued falls within the scope ordered by the Commissioner or not. NAWO/ILSR respectfully request that the Commission clarify the intended method for analyzing project alternatives, the intended approach to the proposed lines, the role of, and most likely, load growth forecasts, include the impacts from various generation resources, and the sources relied upon in preparing the Scoping Decision. By their very nature the requested clarifications must be made available to the Commissioner's staff in order to prepare the Environmental Report, therefore, NAWO/ILSR sees no compelling reason to deny the request.

Considering the significance of the proposed project and its alternatives on the long future provision of electrical service to Minnesota ratepayers, the Commission should act to build the best possible record in this matter.

Respectfully submitted by,



Mike Michaud
On Behalf of NAWO,
and ILSR



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