

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

April 16, 2008

**PUC 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, AND GREAT RIVER ENERGY
FOR CERTIFICATES OF NEED FOR
THREE 345 kV TRANSMISSION LINES

**PETITION TO THE ALJ FOR AN
EXTENSION OF TIME TO PREPARE
DIRECT TESTIMONY**

Introduction

On January 3, 2008 Administrative Law Judge Beverly Heydinger (the “ALJ”) issued the First Pre-Hearing Order in the matter identified above, setting forth the time schedule and discovery process for the CAPX Phase I contested case proceedings. Recent developments in the appeal of the Department of Commerce’s Environmental Report Scoping Decision, the composition of the parties to the proceedings, to wit, the intervention of The Midwest Independent Transmission System Operator (“MISO”), and continued delays in the Applicants’ responses to Information Requests (“IRs”) require that adjustments be made to the time schedule to avoid prejudicing the interests of all parties in developing a full and complete record.

The North American Water Office and the Institute for Local Self-Reliance (“NAWO & ILSR”) respectfully request that the ALJ extend the deadline for parties to submit written Direct Testimony for reasons discussed below. We believe that other parties to the proceeding would also be supportive of an extension.

I. Intervention of MISO

On April 9, 2008, the Minnesota Office of Energy Security served on parties via e filing, a letter containing a formal request to MISO requesting them to intervene as a party in the above-captioned proceedings. On April 11, 2008, MISO complied with that request and submitted a petition to intervene in the contested case proceedings regarding the three CAPX Phase I high voltage transmission lines.

NAWO & ILSR presume that MISO’s petition to intervene will be granted and welcome MISO’s prominent voice and considerable expertise to the process. While NAWO & ILSR welcome the addition of MISO as a party to the proceedings, the proximity of the intervention to the deadline for submission of direct testimony makes it impossible for the parties to engage in

discovery with MISO before Direct Testimony is due. In NAWO & ILSR's view, MISO has standing distinct from other potential parties because of its role in regional transmission planning issues. The participation of MISO can change the focus of the record substantially from the Application's primarily Minnesota-based needs to include the needs of the broader MISO regional footprint.

The ALJ's First Pre-Hearing Order setting forth the rules governing the discovery process at page 3, ¶ 10, says, "A party may serve requests for information on any other party." The Order goes on to say at page 4, ¶ 14, that the responding party has fifteen (15) business days to respond to IRs.

The current time schedule sets a deadline of April 30, 2008 for the filing of Direct Testimony.

The earliest date that MISO could obtain party status is late April. With the inclusion of service days and non-business days, parties serving MISO with IRs would not see responses from MISO prior to the April 30th filing date for Direct Testimony. NAWO & ILSR believe that MISO will bring valuable insight and information to the proceedings and respectfully request that the deadline for Direct Testimony be extended in order to accommodate the inclusion of MISO in the process.

II. Applicants' Failure to Respond to Pending Information Requests

The volume of delayed responses to outstanding IRs submitted to the Applicants by NAWO & ILSR and other parties has prejudiced the timely preparation of Direct Testimony. Applicants' responses to eight outstanding NAWO & ILSR IRs are now overdue. The oldest IR was issued March 7th with a response due not later than March 28th. On March 21, NAWO & ILSR submitted two more IRs, responses to which were due April 11th. In addition, NAWO & ILSR are owed responses on two IRs on April 16th and responses of an additional two IRs are due on April 17th.

Given Applicant's performance to date, NAWO & ILSR reasonably anticipate not receiving timely responses.

Responses to other parties' IRs also are, or have been, also overdue. Key overdue responses to Department of Commerce IR #46 & #47 on forecasting are an issue. The IRs were submitted on March 3rd, and a response was due March 24. NAWO & ILSR received copies of the response to IR #46 on April 11 and the response to IR #47 on April 9. There is a significant amount of new data now to review, which review has been delayed by two weeks because of the late responses.

Lastly the Minnesota Center for Environmental Advocacy (MCEA) has 19 outstanding IRs with response due dates all in the last week of April. The responses to these IRs will require a significant amount of time to review and will almost certainly require some follow-up.

III. Pending PUC Action on the Scope of the Environmental Review

On February 28, 2008 NAWO & ILSR appealed the Environmental Report Scoping Decision made by the Commissioner of the Department of Commerce to the Public Utilities Commission (PUC) pursuant to Minn. Rule 7849.7050, subp. 8.

On April 9, 2008, the PUC requested public comments on the question of jurisdiction for the purpose of ordering changes to the Environmental Report Scoping Decision.

Those comments are due on April 18, 2008, which means that any hearing and subsequent decision issued by the PUC will come after the deadline for Direct Testimony. One of the major concerns voiced by the parties at the December 19, 2007, Pre-Hearing Conference was that the Environmental Report be complete and available for review prior to the deadline for Direct Testimony. If the PUC determines that it has jurisdiction to review the Scoping Decision and orders any changes to the scope of that document, the Environmental Report will essentially be deemed incomplete and one of the key purposes behind the schedule as designed would be lost. The Environmental Report Rules require that a completed Environmental Report accompany the Application throughout the hearing process. Specifically Minn. Rule 7849.7090 requires that only prehearing matters may be conducted before the completion of the Environmental Report.

Recommendation

The late intervention of MISO and the delayed responses to discovery by themselves would require a delay of not fewer than 45 days in the schedule date for filing Direct Testimony. The uncertainty surrounding the nature of forthcoming PUC action on the matter of completeness of the Environmental Report creates the possibility that additional time may be required for filing Direct Testimony. NAWO & ILSR anticipates that it will be late May at the earliest before the PUC could issue any order on the Scoping Decision. If changes to the scope are ordered it will take some additional time for the Department of Commerce to prepare a supplement to the Environmental Report. If the relative timing regarding the completion of the Environmental Report and the submission of Direct Testimony contained in the First Prehearing Order are to be continued, the deadline for submission of Direct Testimony should be scheduled for 30 days following the submission of any Environmental Report supplement.


Conclusion

NAWO & ILSR respectfully request that that ALJ extend the deadline for filing Direct Testimony by not fewer than forty-five (45) days for the foregoing reasons. NAWO & ILSR recognize that each piece of the schedule relates to the timeline for the entire process and we do not submit this request lightly. As the ALJ noted at page 3, ¶ 9, of the First Pre-Hearing Order, the size of the project before us merits flexibility with the timetable. The interest of all the parties in developing a full and complete record requires that sufficient time be invested at this stage of the proceedings.

Respectfully submitted:



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