

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
MINNESOTA 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

OAH Docket No. 15-2500-19350-2

PUC Docket No. CN-06-1115

U-CAN RESPONSE TO ORDER TO SHOW CAUSE

I. INTRODUCTION AND BACKGROUND

United Citizens Action Network (hereinafter “U-CAN”) has received the Order to Show Cause in the above-entitled matter and offers this response to that Order. As noted in the Order to Show Cause, United Citizens Action Network petitioned to intervene on December 17, 2007, and there were no objections. Minn. R. 1405.0900; 7820.0800. By the First Prehearing Order of January 3, 2008, U-CAN’s Petition to Intervene was granted, with no limitations. In that same order, there were two intervention deadlines established, one on April 15, 2008, if an Intervenor would be filing testimony, and the other deadline was June 27, 2008 (since extended to July 3, 2008), for those not filing testimony. By the Order of January 3, 2008, U-CAN is a full party in this proceeding with no limitations. The Order of January 3, 2008 assumed that not all intervenors would be filing testimony. U-CAN did not submit prefiled testimony. U-CAN has submitted a Prehearing Motion and has participated in the hearing through attendance and questioning of the state’s witness supporting the Environmental Report. U-CAN has not “failed to participate.” Further, there is no requirement in the rules for any specific level of participation, and there is no authority to revoke a party’s Intervention status, once granted, for failure to participate at some threshold level.

II. RELEVANT INFORMATION U-CAN INTENDS TO OFFER

As stated in its Petition for Intervention, U-CAN plans to offer the unique perspective of directly affected landowners opposing the project. No other Intervenor offers this perspective. Citizens Energy Task Force has supported conditions on the transmission lines, a position which acquiesces to the lines – this is very different from the position of U-CAN, which opposes the lines, a strong “NO-BUILD” position. Members of U-CAN had submitted relevant information through Comments in the Notice Plan formation and appearance before the PUC regarding the Notice Plan and Completeness of the CapX 2020 Application. Since the U-CAN Intervention Petition was submitted and Intervention was granted on January 3, 2008, U-CAN has submitted relevant information in the form of detailed and specific Comments for the Environmental Report Scoping and filed a Motion regarding Due Process Rights. U-CAN has attended two days of the CapX 2020 hearing, and submitted relevant information and questioned the state’s witness supporting the Environmental Report. U-CAN will submit relevant information from the affected landowner perspective going forward through submission of briefs, exceptions, and argument before the Commission.

III. ROLE U-CAN INTENDS TO PLAY IN EVALUATING THE EVIDENCE

U-CAN will evaluate the evidence in this proceeding through submission of its Initial Brief, Reply Brief, Exceptions to the ALJ Recommendation, Argument before the PUC, and reserves the right of a post-Order Motion for Reconsideration and Appeal.

U-CAN is limited in resources because its members are engaged condemnation proceedings for the MinnCan pipeline -- an immediate and present case of “corridor fatigue.” During the time of the CapX 2020 hearing in July and August, MinnCan dug up U-CAN members’ property and put in a pipeline. That process is now essentially complete, and now U-CAN members have “only” the condemnation action to address. The MinnCan pipeline proceeding, construction and condemnation has been daunting, and U-CAN members have hired

counsel, drained their accounts, been in the District Court condemnation proceeding and the Appellate Court regarding the PUC decision. U-CAN is not represented by counsel, and representation is not required. Minn. R. 1405.1400. Because of the financial drain of the MinnCan proceeding, U-CAN unable to hire counsel in this second proceeding, unable to hire expert witnesses and unable to sponsor testimony, unable to add to the mountain of evidence in the CapX 2020 proceeding – Minnesota does not offer Intervenor Compensation. However, U-CAN has not failed to participate. Prior to submission of its Intervention Petition, U-CAN members participated in the Notice Plan formation in Comments and appearance before the PUC. Since the U-CAN Intervention Petition was submitted and Intervention was granted on January 3, 2008, U-CAN has filed detailed and specific Comments for the Environmental Report Scoping and filed a Motion regarding Due Process Rights. U-CAN has attended two days of the CapX 2020 hearing, and has questioned the state’s witness supporting the Environmental Report. U-CAN’s continued participation through submission of briefs and argument, evaluating the evidence through this manner, is within U-CAN’s ability and within U-CAN’s plan.

As potentially directly affected landowners, U-CAN must be allowed to continue to represent its interests in the CapX 2020 docket through submission of briefs and argument.

IV. U-CAN IS A FULL PARTY AND MUST REMAIN A FULL PARTY

United Citizens Action Network has been granted full party status in the CapX 2020 Certificate of Need proceeding. U-CAN petitioned to intervene on December 17, 2007, and there were no objections. Minn. R. 1405.0900; 7820.0800. By the First Prehearing Order of January 3, 2008, U-CAN’s Petition to Intervene was granted, with no limitations. In that same order, there were two Intervention Deadlines established, one on April 15, 2008, if an Intervenor would be filing testimony, and the other June 27, 2008 (since extended to July 3, 2008), for those not filing testimony. By the Order of January 3, 2008, U-CAN is a full party in this proceeding.

Most importantly, in the rule setting out rights and responsibilities of intervenors in power plant proceedings, there is no requirement that a party participate at any given level to retain party status:

Responsibilities of intervenors.

Once a petition to intervene has been granted, an intervenor shall have all of the rights and responsibilities of a party.

Minn. R. 1405.0900, Subp. 4. There is nothing requiring a specific level of participation. In the more general administrative rules, the rules clearly set forth rights of the parties and :

Rights and responsibilities of parties. Generally.

All parties shall have the right to present evidence, rebuttal testimony, and argument with respect to the issues, and to cross-examine witnesses.

Minn. R. 1400.7100, Subp. 1.

United Citizens Action Network has been granted full party status in the CapX 2020 Certificate of Need proceeding. There is no basis for revocation of U-CAN's party status.

VI. U-CAN'S INTERVENTION PRESERVES ITS RIGHT OF APPEAL

U-CAN has been ordered to address several issues in the Order to Show Cause. One important issue not raised is the preservation of U-CAN's right to appeal. In rejection of the Petition to Intervene of members of U-CAN through MPIRG in the MinnCan case, it was noted that the Petition did not address "the issue of whether intervention was necessary to protect their right to appeal." Order Denying Motion to Intervene, p. 6. U-CAN makes that argument here.

Minn. Stat. §§ 14. 63; see also Minn. Stat. §116B.09. U-CAN specifically raised preservation of its right of appeal in its CapX 2020 Petition for Intervention:

The Administrative Law Judge assigned to this docket is the same Administrative Law Judge who denied landowners the opportunity to participate in the certificate of need evidentiary hearings in the MinnCan proceeding, because the landowners had not intervened as formal parties.


U-CAN Petition for Intervention, p. 2. December 17, 2008. As stated previously, there were no objections to U-CAN's Intervention and full party status, without limitations, was ordered on January 3, 2008.

In its MinnCan appeal, where members of U-CAN claimed "that they were denied due process because they were not permitted to participate in the Certificate of Need contested-case hearing," the court dismissed the claim, stating 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." In the Matter of the Application of Minnesota Pipe Line Company for a Certificate of Need for a Crude Oil Pipeline, Minn. App. Ct. A07-1318.¹ { June 10, 2008} {Attached} Although the law is arguably unclear "if party status is required to appeal a final decision of the MPUC" it is imperative that U-CAN retain its right of appeal and maintain its Intervention status that could affect its right of appeal

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For all of the foregoing reasons, U-CAN respectfully requests that it retain full party status in the CapX 2020 proceeding.

Dated: August 16, 2008



Russell Martin, President
United Citizens Action Network
11600 East 270th Street
Elko, MN 55020
952-461-3352

¹ Available online at: <http://www.lawlibrary.state.mn.us/archive/ctapun/0806/opa071318-0610.pdf>