BEFORE THE STATE OF 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 CapX 345-KV Transmission Projects	)	**OAH No. 15-2500-19350-2 MPUC Dkt. No. CN-06-1115**

Direct Testimony of Christopher T. Ellison

On Behalf of Fresh Energy Izaak Walton League of America – Midwest Office Wind on the Wires Minnesota Center for Environmental Advocacy

May 23, 2008

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I. Introduction

Q. Please state your name and business address.

A. Christopher T. Ellison, Ellison, Schneider & Harris L.L.P., Attorneys at Law, 2015 H Street, Sacramento, CA 95811-3109.

Q. On whose behalf are you testifying in this proceeding?

A. Fresh Energy (FE) , Izaak Walton League of America, Inc. (League), Minnesota Center for Environmental Advocacy (MCEA), and Wind on the Wires (WOW).

Q. Please summarize your qualifications and experience.

A. I am a founding partner of a law firm that specializes in energy and environmental law. My areas of expertise include transmission, public utility and energy law, land use, and renewable energy. I have advised government agencies, non-utility energy developers, trade associations and regional reliability organizations. I have testified before the Federal Energy Regulatory Commission as an expert witness on matters of electric transmission policy. I have advised the California Energy Commission Chairman and Commissioners regarding administrative hearings on environmental compliance and licensing of new power plants, and on matters including forecasting future statewide energy production and demand, energy research and development, and setting statewide energy efficiency standards for new buildings and appliances. I am a frequent speaker on electric power issues, regional transmission organizations, electric market restructuring, transmission access, renewable energy development, power marketing and related matters. My qualifications are set forth in more detail in my resume, attached as Exhibit A.

Q. What is the purpose of your testimony?

A. In this proceeding, the Applicants[1] are seeking Certificates of Need (CON) for three high voltage transmission lines in Minnesota. Specifically, the Applicants are asking the Minnesota Public Utilities Commission (Commission) to find, among other things, that the proposed facilities satisfy the criteria in Minn. Rule 7849.0120. I propose conditions necessary to ensure that the granting of the CONs "complies with relevant policies, rules, and regulations of other state and federal agencies and governments" as required by Minn. Rule 7849.0120 (D).

I am informed by counsel that Minnesota "policies, rules and regulations" establish (1) a requirement that Minnesota utilities produce or procure for its retail customers a significant amount of renewable energy – specifically 30% by 2020 for Xcel Energy (25% wind by 2020), and 25% by 2025 for all other utilities in Minnesota. The Minnesota Renewable Energy Standard[2] (RES) will require a total of 6,000 – 7,000 megawatts (MW) of procured/produced renewables by 2025, depending on energy efficiency and load growth; (2) the Minnesota Biennial Transmission Plan statute[3] requires that utilities with an RES requirement identify transmission needed to meet the RES; (3) Minnesota statutes encourage utilities to purchase renewable-generated power from Community

[1] The Application for a Certificate of Need was filed by Northern States Power Company (d/b/a Xcel Energy) and Great River Energy on behalf of the CapX 2020 utilities that include Central Minnesota Municipal Power Agency, Dairyland Power Cooperative, Great River Energy, Minnesota Power, Minnkota Power Cooperative, Missouri River Energy Services, Otter Tail Power Company, Rochester Public Utilities, Southern Minnesota Municipal Power Agency, Wisconsin Public Power Inc., and Xcel Energy. The Application states that "nine regional electric utilities have formalized their commitment to the CapX2020 Initiative through the execution of the Participation Agreement." (Application at page 6.1)
[2] Minn. Stat. § 216B.1691 (as amended 2007).
[3] *See* Minn. Rule 7848 *et seq.*

Based Energy Development[4] (CBED); (4) as the Applicants note, "the Commission, through orders in various proceedings, including resource planning dockets, has mandated that utilities purchase additional power generated by renewable technology to meet customer demands." (Application at page 6.41); (5) as the Applicants note, "the 2007 Legislature recognized that substantial additional transmission improvements must be made to achieve [the RES]" and in fact as part of the RES required the electric utilities to file a transmission plan report by November 1, 2007. (Application at page 6.43) To assure that the requested CONs comply with these policies, I propose six conditions that the Commission should attach to the requested CONs.

II. Proposed Conditions

Q. Please discuss your first proposed condition.

A. The Commission should condition the CONs on the utilities (a) signing Power Purchase Agreements (PPAs) with renewable energy developers and/or committing to utility-owned renewable projects utilizing the capacity from the new transmission lines for renewables at least two years prior to the expected in-service date of the proposed transmission lines; and (b) timely seeking Commission approval of those contracts or utility-owned renewable project plans so that the Commission can grant approval of the PPAs/commitments within six months of the signing of the PPAs or commitments.

[4] Minn. Stat. § 216B.1612 (as amended 2007).

As explained further, this approach ensures that the in-service date for the new renewable energy generators will coincide with the in-service dates of the proposed transmission facilities (2012 – 2015). The reason for linking the timing of these two events relates to the process by which the Midwest Independent System Operator (MISO) grants generators access to the transmission grid.

As the Commission is aware, the Applicants are members of MISO. As MISO members, the Applicants have transferred functional control of their transmission facilities to that organization. Therefore, access to the Applicant's transmission facilities, including the new facilities proposed by the Applicants in this proceeding, are subject to MISO rules. Under MISO rules, a utility with native retail load obtains sufficient transmission capacity to serve that load by (a) designating, pursuant to MISO procedures, specific generation resources as "network resources"; and then (b) requesting from MISO sufficient transmission capacity, in the form of "network integration transmission service," to serve those designated network resources and deliver the energy to load.

However, under the MISO process there is no guarantee that because the Applicants build transmission and own it they will have use of those facilities to transmit power for their own loads. Likewise, there is no guarantee that because the Applicants purchase power from renewable resources they will be able to obtain transmission service in the quantity necessary to deliver the renewable energy to retail load. Once constructed and in-service, the new transmission

facilities become part of the multiutility, multistate transmission network managed by MISO and subject to MISO's open access rules, which are subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC). In short, the Applicants have no particular right to use the new transmission facilities simply because they have built them. Similarly, the Applicants have no particular right to transmit renewable energy because they have contracted with renewable energy developers or plan to construct utility-owned renewable energy projects. These principles were made clear in the Xcel Energy CON proceeding for four large high voltage transmission line projects in Southwestern Minnesota in 2002.[5]

The Commission needs to link the signing of PPAs and/or commitments to utilize the capacity for utility-owned renewable projects to the proposed in-service dates of the new transmission facilities because of the process by which the MISO grants new generators (interconnection customers) access to the transmission grid. As explained by the Applicants, "Once these three [transmission] projects are constructed they will become part of the network of 345 kV transmission lines that serve as the bulk power transport system that will allow generation development to continue." (Application at page 1.15) Functional control of the new transmission lines will be turned over to MISO and access to the new transmission lines will be subject to and governed by MISO rules.

[5] In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Certificates of Need for Four Large High Voltage Transmission Line Projects in Southwestern Minnesota, MPUC Docket No. E-002-CN-01-1958, OAH Docket No.: 15-2500-14699-2.

Therefore, the Applicants must pursue transmission capacity on the new lines for renewable energy PPAs or utility owned renewable energy projects to satisfy the Minnesota RES through the MISO process. Pursuant to the MISO process[6], the Applicant must (a) designate specific "network resources"; and (b) procure from MISO an amount of network transmission service adequate to support the designated generation resources. But in order to do that the Applicants first need to purchase the output of renewable energy projects or commit to building utility-owned renewable energy projects and have those plans approved by the Commission.

It is important that the Commission require the Applicants to take the above steps by a date certain because the demand for transmission capacity in the MISO footprint far exceeds the amount of transmission capacity currently available and will for the foreseeable future.[7] This is particularly problematic for renewable energy projects – especially wind farm development – due to the timing mismatch between how quickly a wind farm can be developed (12-18 months) versus the time needed to study, permit and construct a high voltage transmission line (5-7 years). For these reasons, the Commission should require the Applicants to sign PPAs and/or commit to utility-owned renewable energy projects sufficiently in advance of the in-service date of the new transmission lines to ensure that approval of the contracts by this Commission, subscription of the transmission capacity through the MISO process and construction of the generation facilities

[6] *See* Module B, Section 30 of the MISO Transmission and Energy Market Tariff (TEMT).
[7] It is a well known fact that transmission capacity is a huge limiting factor to renewable energy development in Minnesota.

can occur prior to such in-service date. Specifically, utilities should sign PPAs with renewable energy developers and/or commit to utility-owned renewable projects utilizing the capacity from the new transmission lines for renewables at least two years (preferably earlier) prior to the expected in-service date of the proposed transmission lines. Furthermore, utilities should timely seek Commission approval of those contracts or commitments so that the Commission can grant approval within six months of the signing of the PPAs or commitments. This timeline would allow the in-service date of the renewable energy generators and the proposed in-service date of the transmission facilities to match.

Several additional conditions are required to achieve the timing match and to assure to the highest likelihood that the capacity from the new transmission lines will be used to transmit energy from renewable resources.

Q. Please discuss your second proposed condition.

A The Commission should condition the CONs to require the Applicants to make a compliance filing with the Commission within 30 days of obtaining the conditional CON from this Commission to provide details on how the Applicants propose to allocate the new transmission capacity among the Applicants. The compliance filing must address (a) how much capacity will be enabled by the three new transmission facilities; (b) specifically by MW by Applicant, how the Applicants propose to allocate the capacity enabled by the three new transmission facilities; and (c) the exact type of MISO transmission service the Applicants

intend to seek to service the renewable-generated electricity to be carried by the new lines.

For example, the Applicants may choose to allocate the new transmission capacity along similar lines to what they have done in Figure 1-11: Potential Development of 345 kV Transmission Projects. (Application page 1.29) The Applicants have projected percentages of total line length ownership for each one of the three proposed transmission lines. The Applicants have also indicated that given a number of factors that are still uncertain at this time, these percentages may vary. However, the Applicants as a whole have committed to constructing the three transmission facilities and as such have committed to enabling a certain amount of new transmission capacity. Therefore, while the Applicants have flexibility in allocating transmission capacity amongst themselves, they must be required to show how they will use the total transmission capacity to deliver renewable energy resources.

Q. Please discuss your third proposed condition.

A. The Commission should condition the CONs on the Applicants signing PPAs or committing to utility-owned renewable energy projects within the timeframe of the Minnesota RES milestones, or earlier. The Minnesota Renewable Energy Objective sets a milestone for 2010 and thereafter the Minnesota RES contains milestones of 2012, 2016, 2020 and 2025. The Applicants have stated a need for the three proposed transmission lines to meet the 2016 milestone[8] and therefore the Applicants need to sign PPAs or commit to constructing utility-owned

[8] *See* Minn. Stat. § 216B.1691 Subd. 2a.

renewable projects well before that to allow the time to take the steps necessary with MISO to obtain transmission capacity to deliver the energy from the PPAs/utility-owned renewable projects to retail load. Several of the Applicants have stated a desire to purchase the output from and/or construct utility-owned renewable projects ahead of the RES milestones.[9] Given these facts and circumstances, the third proposed condition is appropriate and necessary.

Q. Please discuss your fourth proposed condition.

A. The Commission should condition the CONs on the Applicants committing to make to MISO, within 30 days of obtaining the conditional CONs from this Commission, transmission service requests for network (firm) transmission service on the MISO Open Access Same Time Information System (OASIS) for the total amount of new capacity enabled by the three proposed transmission lines for the output from renewable resources at power injection points reflected in the Application. Under the MISO tariff, the Applicants have the option of seeking to serve Network Load or Native Load. In their compliance filing pursuant to proposed Condition No. 2, above, the Applicants should specify which type of load they intend to apply to serve. In my view, the most appropriate service is Network Integration Transmission Service (NITS). However, the Applicants should be given an opportunity to address the appropriate service in the context of the compliance filing (and all stakeholders should be given an opportunity to comment further on this issue at that time).

[9] *See* In the Matter of Northern State Power Company d/b/a Xcel Energy's Application for Approval of Renewable Energy Plan, Minnesota Public Utilities Commission Docket No. E-002/M-07-1558.

A. The condition should further require the Applicants to work with the renewable energy generators to enable timely interconnection service under the appropriate MISO tariff provision (e.g., Attachment R, X, etc.) of the MISO Transmission and Energy Markets Tariff (TEMT). The Applicants must also provide MISO with the appropriate documentation to complete the transmission requests within the time frame required by the MISO TEMT and MISO Business Practices. This condition is necessary because the Applicants must request and receive transmission capacity to deliver the renewable energy output to their native load.

Q. Please discuss your fifth proposed condition.

A. The Commission should condition the CONs on the Applicants committing to designate the new renewable resources as Network Resources pursuant to the MISO TEMT. The Applicants should seek this designation as soon as MISO allows them to under the MISO rules, but no later than 10 days after the Commission approves PPAs and/or the commitment to construct utility-owned renewable resources.

Q. **Please discuss your sixth proposed condition.**

A. The Commission should condition the CONs on the Applicants committing to report to the Commission any proposed changes at the regional or federal level that could affect the conditions the Commission places on the CONs. A number of changes to the MISO tariff and business practices are being discussed or will shortly be discussed at the regional and federal level including MISO Generator Interconnection Queue Reform.

This condition is necessary because of the ongoing changing nature of regional and federal transmission policy. The MISO has a number of transmission and transmission-related issues to take up with stakeholders in the near future including transmission cost allocation, RECB, the open season concept for new transmission, several cross border issues with neighboring transmission entities, and similar proposals. This condition will ensure that the Commission's policies are appropriately updated as MISO policies evolve. This condition is also important to maintain continued consistency between state and federal rules applicable to these new transmission facilities.

III. Conclusion

Q. How do your proposed conditions relate to the legal standards applicable to this CON proceeding?

A. The Applicants must show, among other things, that the proposed facilities comply "with relevant policies, rules, and regulations of other state and federal agencies and governments," as required by Minn. Rule 7849.0120 (D). By implementing the conditions proposed herein, the Commission will help advance "relevant policies, rules, and regulations."

For example, the Minnesota RES[10] establishes, with respect to utility resource planning and CON, a preference for renewable energy in general, and procurement obligations in the amount of 6,000 – 7,000 MWs of renewables by 2025. Furthermore, Minnesota statutes encourage utilities to purchase renewable-generated power from CBED.[11] The Commission has also mandated that utilities

[10] Minn. Stat. § 216B.1691 (as amended 2007).
[11] Minn. Stat. § 216B.1612 (as amended 2007).

procure additional renewable power. (Application at page 6.41) The Legislature has also recognized the need for transmission improvements to meet RES goals. (Application at page 6.43.) My proposed conditions are based on the assumption that transmission capacity in the Midwest, including the capacity from the new transmission facilities proposed by the Applicants, is available to nonrenewable resources on the same terms it is available to renewable resources. This assumption makes clear that, absent conditions requiring the Applicant to take all actions necessary to assure that the new transmission capacity is in fact available to wind generators having PPAs with the Applicants, and/or available to utility-owned renewable resource projects, the new transmission capacity could be used by nonrenewable sources, a result inconsistent with preferences established by the Minnesota legislature and the Commission.

Additionally, while FERC and the MISO require open access to transmission, they do not intend to frustrate state policies or renewable development. In fact, FERC policies recognize, encourage and support wind and other renewable development. For example, in November 2004 FERC issued a Staff Briefing Paper: "Assessing the State of Wind Energy in Wholesale Electricity Markets." That paper identified issues facing wind development and sought "to further the development of wind energy in wholesale markets."[12] Furthermore, in Order 2003-A, FERC generally recognized that certain standard interconnection provisions could disadvantage generators relying on non-synchronous technology, namely wind generation. In order to avoid further exacerbating the obstacles that

[12] FERC Staff Briefing Paper, "Assessing the State of Wind Energy in Wholesale Electricity Markets," p. 7.

wind generation currently faces, the Commission allowed several deviations to the interconnection standards to accommodate newer technologies, such as wind generators. In this and several other instances, the FERC has adopted policies intended to assist renewable energy facilities in gaining access to needed transmission consistent with open access principles. My recommended conditions are consistent with this approach and FERC policies, rules, and regulations.

Q. Please summarize your proposed conditions and recommendations to the Commission.

A. The Commission should condition the CONs on the Applicants taking a series of actions to minimize the risk of non-renewable generators using available new transmission capacity in place of renewable generators. The Commission should condition the CONs as follows:

Require the Applicants to:

1. Commit to (a) signing PPAs with renewable energy developers and/or commit to utility-owned renewable generation projects that utilize the capacity enabled by the new transmission lines at least two years prior to the expected in-service date of the proposed transmission lines; and (b) timely seek Commission approval of those contracts and/or commitment to utility-owned renewable generation projects so that the Commission can grant approval of the PPAs/utility-owned projects within six months of the signing of the PPAs or commitments.

2. Make a compliance filing with the Commission within 30 days of obtaining the conditional CONs from the Commission to provide details on how the Applicants propose to allocate the new transmission capacity among the Applicants. The compliance filing must address (a) how much capacity will be enabled by the three new transmission facilities; (b) specifically by MW by Applicant, how the Applicants propose to allocate the capacity enabled by the three new transmission lines; and (c) the exact type of MISO transmission service the Applicants intend to seek to service the renewable-generated electricity to be carried by the new lines. The compliance filing should also specify which type of load Applicants intend to serve, Network Load or Native Load, and stakeholders should be given the opportunity to comment further on which is the appropriate service.

3. Sign PPAs and/or commit to utility-owned renewable generation projects within the timeframe of the Minnesota RES milestones, or earlier depending on the proposed in-service dates of each segment of the three new transmission lines.

4. (a) Make to MISO, within 30 days of obtaining the conditional CONs from the Commission, Transmission Service Requests for the total amount of new capacity enabled by the three proposed transmission lines to deliver the output produced by renewable generators per Condition No. 1 and for wind generators to deliver to load the annual energy produced; (b) work with the renewable energy generators to enable timely interconnection service under the appropriate MISO tariff provision; and (c) provide MISO with the appropriate documentation to

complete the transmission requests within the timeframe required by the MISO TEMT and MISO Business Practices.

5. Designate the new renewable resources as Network Resources pursuant to the MISO TEMT, Module B, III, Section 30 – Network Resources, within 10 days after the Commission approves PPAs and/or the commitment to construct utility-owned renewable resources.

6. Commit to report to the Commission until the proposed transmission lines are fully in service any proposed changes at the regional or federal level that could affect the conditions the Commission places on the CONs.

Q. Does this conclude your direct testimony?

A. Yes.