

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: **July 14, 2009** Agenda Item # **3****

Company: Great River Energy, Northern States Power Company d/b/a Xcel
Energy and Others

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

In the Matter of the Application of Great River Energy, Northern States
Power Company (d/b/a Xcel Energy) and Others for the CapX 345 kV
Transmission Projects

Issue(s): Should the Commission reconsider its May 22, 2009 *Order Granting
Certificates of Need With Conditions?*

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Relevant Documents

NoCapX2020 and U-CAN Petition for Reconsideration & Attachments. . . June 11, 2009
OES Petition for Reconsideration. June 11, 2009
CETF Petition for Reconsideration & Attachments. June 11, 2009
Applicants Petition for Reconsideration June 11, 2009
Applicants Response Comments June 22, 2009
Joint Intervenors Response Comments. June 22, 2009
CETF Response Comments June 22, 2009
OES Response Comments June 22, 2009

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Statement of the Issue

Should the Commission reconsider its May 22, 2009 Order Granting Certificates of Need with Conditions?

Procedural Background

On May 22, 2009 the Commission issued its *Order Granting Certificates of Need with Conditions* (May 22 Order).

On June 11, 2009 the following parties petitioned for reconsideration of the May 22, Order:

- NOCAPX2020 & United Citizens Action Network (NoCapX & UCAN)
- Office of Energy Security (OES)
- Citizens Energy Task Force (CETF)
- Great River Energy and Northern States Power Company (Applicants)

On June 22, 2009 the following parties filed response comments to the petitions for reconsideration:

- Wind on the Wires, Izaak Walton League of America – Midwest Office, Fresh Energy, and Minnesota Center for Environmental Advocacy (Joint Intervenors)
- CETF
- Applicants
- OES

Reconsideration

A. Standards of Review

The first standard of review is applied by the Commission at rehearing:

If, in the commission's judgment, after rehearing, it shall appear that the original decision, order, or determination is in any respect unlawful or unreasonable, the commission may reverse change, modify, or suspend the original action accordingly (Minn. Stat. 216B.27, subd. 3 & Minn. Rules 7829.3000).

In addition, the standard that would be applied by the appellate courts in review of a Commission' decision:

In a judicial review under sections 14.63 to 14.68, the court may affirm the decision of the agency, remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because of administrative findings, inferences, conclusion, or decisions are:

- a. in violation of constitutional provisions; or
- b. in excess of the statutory authority or jurisdiction of the agency; or
- c. made upon unlawful procedure; or
- d. affected by other error of law; or
- e. unsupported by substantial evidence in view of entire record as submitted; or
- f. arbitrary and capricious.

B. *Commission Orders*

Minnesota Rules 7829.3000, subp. 2 states that a petition for reconsideration or amendment must set forth specifically the grounds relied upon or the errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for the amendments.

Furthermore, Minn. Rule 7829.3000, subp. 6 states that:

The Commission shall decide a petition for rehearing, amendment, vacation, reconsideration, or reargument with or without a hearing or oral argument. The Commission may vacate or stay the order, or part of the order, that is the subject of the petition, pending action on the petition.

Party Positions

I. Petitions for Reconsideration

NoCapX 2020 and United Citizens Action Network

Significant New Information

NoCapX 2020 & U-CAN filed for Reconsideration to urge the Commission to review the material and information presented (see attachments A.- J.), to gather additional evidence and allow for additional testimony regarding the plans of the CapX 2020 applicants as well as the Midwest Transmission Owners, including information regarding their target market for the transmission capacity and their market analysis relating to need for transmission infrastructure.

Inadequate Environmental Report

NoCapX & U-CAN also asserted that the Environmental Report (ER) on the projects was insufficient and inadequate. The alternatives under review were falsely limited, impacts on land-based economies were not adequately considered and the process was not conducted jointly with the federal government. Specifically, NoCapX & U-CAN argued that the ER on the projects is inadequate because:

- a. The OES failed to independently verify the information provided by Applicants;
- b. The alternatives were falsely restricted and rejected by the OES because they could not provide all of the same benefits of the CapX projects;
- c. The impacts from the project were not adequately addressed. Specifically, the ER failed to evaluate:

- The impacts of the project on land-based economics, human settlement, and socioeconomics;
 - The impacts of the size, type and timing of the project, system configurations and voltage;
 - The impact of the upsizing of the projects; and
 - The impacts of the project in relation to Minnesota Scenic Byways.
- d. State environmental review was not associated with federal environmental review.

Conclusion

There are several reasons for the Commission to reconsider its May 22 Order. Primary among these is the evidence of a significant decrease in electric demand, such that it is not reasonable and prudent for the Commission to grant a Certificate of Need without further review of updated forecasts.

Second, the foundation of this project, that it is necessary and appropriate to export power, has been demonstrated to be an incorrect assumption as markets in the east declare that they do not want transmission from the Midwest.

Office of Energy Security

The Office of Energy Security's petition for reconsideration addressed only one aspect of the Commission's May 22 Order. The OES's concern focused on the Commission's analysis and decision regarding the conditions placed on the Brookings line. The OES provided what it argued was new information on the costs and benefits of conditions, and outlined the related errors in the May 22 Order. Staff will not repeat that discussion here but will instead simply provide the specific action-related pieces in the petition including the proposed amendments to the ordered conditions and the OES proposal for additional conditions.

The OES recommended the following changes to Ordering Paragraph 3 of the May 22 Order:

The Commission hereby grants Applicants' request for certificates of need for the Upsized Alternatives for each of the proposed 345 kV transmission projects. The Commission grants a Certificate of Need for the Brookings Project provided that they comply with the following conditions to the extent possible:

- A. Applicants shall sign power purchase agreements (PPAs) or commit to utility-owned renewable generation projects within the timeframe of Minn. Stat. § 216B.1691, coordinated with the proposed in-service dates of each segment of the Brookings Project unless such action fails to conform to the Applicant's resource requirements as accepted or approved in its most recent IRP, RES report, or other relevant report.
- B. Applicants shall submit network (firm) transmission service requests to the Open Access Same Time Information System of the Midwest Independent Transmission System Operator, Inc. (MISO), for the total amount of new ~~capacity enabled by this~~

- ~~line to attempt, to the extent lawfully possible, to try to achieve full subscription of the capacity for renewable generation purchased under Part A.~~
- C. Applicants shall make a compliance filing within 30 days of obtaining the Certificates of Need, detailing the ~~allocation~~ projected amount of the new transmission capacity ~~among by the owners~~ Applicants. The compliance filing shall address how much capacity will be enabled by this transmission line; the ~~allocation~~ projected amount of the capacity ~~among by the~~ Applicants; and the type of MISO transmission service Applicants will seek to serve the renewable generated electricity to be carried on this line, recognizing that MISO allocation and restriction of MISO managed transmission capacity is beyond the scope and authority of this Commission.
- D. As necessary to comply with condition A., Applicants shall designate the new, renewable commitments as Network Resources pursuant to MISO's federal Transmission & Energy Markets Tariff, and seek the designation as soon as permitted under the MISO rules, but no later than 10 days after the Commission approves the PPAs or commitments,
- E. Applicants shall report to the Commission any changes at MISO or the federal level that could affect these conditions.

With respect to the purpose of the proposed lines, the OES has maintained throughout the proceeding that the lines are needed to interconnect both renewable and non-renewable generation facilities, improve reliability and relieve congestion on the grid.

In order to address the issue of the extent to which the lines are used for these purposes, the OES recommended that the Commission add the following conditions:

1. The Applicants shall file a report, as part of the 2009 biennial transmission plan, containing the following combined-Applicant information to the best of their knowledge:
 - A. Forecasted demand for interconnection, including:
 - a. A forecast of the annual renewable capacity forecasted to be necessary to meet the Minnesota renewable energy standard (RES) for the CapX utilities through 2025, including estimates of:
 - i. the gross Minnesota-RES need;
 - ii. the Minnesota-RES qualifying resource already acquired; and
 - iii. the net Minnesota-RES need.
 - b. a forecast of the annual non-Minnesota RES required generation capacity needed by the CapX utilities through 2025;
 - c. an allowance for generation capacity to be built in the region by non-CapX utilities through 2025 (for example, utilities without Minnesota load);
 - d. an explanation regarding how Minnesota's 1.0 percent to 1.5 percent energy saving goal was incorporated into the forecasts;

- e. a discussion of scenarios for the geographic distribution of the forecasted interconnection needs.
- B. Information on forecasted supply of interconnection, including:
 - a. an estimate of the interconnection capability already approved but not yet used (i.e., available to meet the forecasted demand);
 - b. a proposed transmission expansion plan with a specific size, type, and timing for individual projects;
 - c. an estimate of the annual generation interconnection capability created by the proposed transmission plan;
 - d. a brief explanation of any size, type, or timing issues inherent in the proposed transmission expansion plan (e.g., line B should come on-line 2 years after line A);
 - e. an explanation of how the proposed plan deals with geographic uncertainty in interconnection needs; and
 - f. a brief explanation of any non-interconnection benefits (i.e., reliability, reduced line losses, etc.) provided by the proposed transmission expansion plan.
- C. Resource plans filed pursuant to Minnesota Rules part 7843 after the Commission approves a transmission expansion plan shall explain how the generation plan will integrate the transmission plan into an overall system plan.

Finally, the OES suggested that transmission initiatives are underway to address the same or similar information on a subregional and regional basis and that its proposed new conditions would provide a more detailed representation for Minnesota that conforms to these initiatives.

Attachment 1 to the OES petition provides a hypothetical demand for a interconnection and transmission expansion plan. The intent of the conditions is to establish a Commission-approved expansion plan detailing the size, type and timing of planned transmission projects. By creating a single transmission expansion plan the Commission would be better able to manage the goal of matching generation and transmission acquisition.

Citizen's Energy Task Force

Like the OES, CETF provided a lengthy discussion presenting its arguments in support of reconsideration. Staff will not repeat the details of that discussion here, but will instead focus on the specific actions proposed by CETF.

CETF requested reconsideration of the issuance of any certificate of need for the La Crosse Project, reconsideration of the issuance of a certificate of need for the double-circuited 345 kV Upsized Alternative for any of the CapX2020 Projects and reconsideration of the Commission's decision regarding the eastern endpoint for the Brookings Project. CETF also requested reconsideration of the Commission's decision not to reopen and supplement the record given new evidence of declines in electric demand that would bring reasonable forecasts of regional demand below the levels relied upon to justify the CapX2020 projects.

CETF asserted that the Commission's decision to grant certificates of need was unsupported by the evidence, in excess of statutory authority and affected by errors of law in the following respects:

- There is insufficient evidence in the record to determine that the eastern endpoint of the Brookings Project should be at Hampton Corner.
- The upsized double-circuit alternative of the CapX2020 Projects is unsupported by evidence in the record. The Commission exceeded its authority by approving them.
- Certification of the La Crosse Project violated the Minnesota Environmental Policy Act (MEPA), the Minnesota Environmental Rights Act (MERA), the certificate of need law and rules related to prohibited areas.
- The Applicants should have been required to demonstrate the availability of feasible and prudent alternatives that would not impair the Upper Mississippi River National Wildlife Refuge and other protected natural resources.
- There are feasible and prudent local generation and transmission upgrade alternatives, to meet the needs identified for the La Crosse Project that do not impair the Upper Mississippi River National Wildlife Refuge and other protected natural resources.
- The record should be reopened to consider newly-discovered evidence of demand declines and reasonable forecasts below threshold levels relied upon by the Applicants.
- The La Crosse Project should not have been certified without considering potential conflicts with federal regulations and policies.

CETF requested that the Commission reconsider its decision and, instead, make the following determinations:

- The eastern end point of the Brookings Project at Lake Marion or Hampton Corner should be determined in the route proceeding and based on evidence of the costs and benefits of alternatives.
- The Brookings and Fargo 345 kV lines should be modified to allow a single-circuit only.
- The certification of the La Crosse Project should be voided.

If the Commission declines to void its certification of the La Crosse Project, CETF requests that the Commission reopen the record to obtain evidence of reasonable forecasts based on actual declines in energy demand and changes in economic circumstances that undermine the claimed need for the CapX2020 projects.

Finally, CETF also requested, in light of recent information from the United States Fish and Wildlife Service, that the Commission reopen the record to obtain information regarding potential conflicts of the La Crosse Project with federal regulations and policies pertaining to the protection of national wildlife refuge areas.

Applicants- Great River Energy and Xcel Energy

The Applicants requested that the Commission reconsider the conditions placed on the Brookings line. The Applicants disagree with the proposition that the conditions are the appropriate way to implement what is essentially generation policies. Based on the record and

applicable law, the Applicants believe that a better way to balance competing state and federal policies is to authorize the Brookings project without conditions. Applicants suggested that renewable generation policy can be implemented through resource planning where a complete record can be fully developed. Applicants requested that the Commission eliminate the conditions.

The conditions require Applicants to subscribe the system outlet capacity enabled by the Brookings project with wind generation. Applicants requested that the Commission reconsider its decision because the record and applicable law support eliminating the conditions. The conditions carry unintended risks, such as excess cost, timing, and compliance issues which support their elimination.

Conclusion

Applicants respectfully request that the conditions on the Brookings line be eliminated as unsupported by the record and applicable law.

II. Parties Response Comments

Joint Intervenors

With respect to the Applicant's petition for reconsideration, the Joint Intervenors argued that no new issues were raised. The CapX Applicants opposed conditions on the Brookings Project certificate of need, and simply continue to do so on the same grounds that they raised throughout the proceeding and in oral argument before the Commission.

With respect to the OES's petition for reconsideration, the Joint Intervenors argued that the material presented as new is only so because OES chose not to raise it when the record of the proceeding was still open. Joint Intervenors argued that the OES petition is essentially late-filed comments which no other party has had an opportunity to respond to. If the Commission were to grant the OES petition for reconsideration, it would be denying parties their due process rights.

For the foregoing reasons, Joint Intervenors firmly oppose the petitions for reconsideration filed by both the CapX Applicants and OES. The OES Petition's proposal for modified "conditions" for the Brookings Project would make the conditions the Commission actually ordered meaningless; any use of the Brookings Project by Applicants, including using it entirely for non-renewable generation, would satisfy OES' conditions.

Moreover, the OES' list of information it wants to see in future Biennial Transmission Plan proceedings is not relevant to the conditions the Commission ordered in this certificate of need case, and can already be obtained through discovery in transmission and resource planning dockets.

Citizen's Energy Task Force

Neither the Applicants nor the OES have justified their petitions to eliminate or undermine the effectiveness of wind conditions. However, their requests for reconsideration raise concerns about the costs imposed by the Brookings Project and the need for the renewable energy it was certified to serve. Newly-discovered evidence, including Xcel Energy's current demand and energy forecast, reduces 2020 demand below the threshold on which the ALJ relied on to determine a minimum regional need necessary to justify the projects. Based on this evidence, CETF reiterates our request to reopen the record due to decline in demand for electricity. In light of the Applicants' and the OES' assertions regarding the timeframe for RES compliance and in answer to the Petition for Reconsideration of No CapX, CETF explicitly requests that the Commission reconsider the need for the Brookings Project, the Fargo Project and the La Crosse in light of significant new evidence of changed circumstances regarding actual and forecasted demand decline.

Applicants - Great River Energy and Xcel Energy

Applicants asserted that NoCapX & UCAN provided no new arguments or facts and point to no legal error in the May 22 Order. For at least the fifth time, NoCapX & UCAN claim that certificates of need should not be granted because the recent economic downturn overrides the demonstrated need for the three 345 kV projects. This question has been raised and rejected several times. Applicants request that the Commission deny NOCapX & UCAN's petition.

Applicants suggested that, like NoCapX & UCAN, CETF recycles already-rejected arguments and provides no new support. CETF's request should be denied. Specifically, the Applicants argued that:

- A. The system configuration must be chosen in this docket and the Hampton Corner End Point is the only system configuration supported by the record;
- B. The upsized alternative is appropriate for each of the three lines;
- C. CETF misunderstands the applicable legal standards of MERA and MEPA;
- D. The Commission considered adequate alternatives; and
- E. CETF's routing considerations are premature.

In short, Applicants respectfully request that the Commission grant reconsideration on the grounds raised by OES and deny reconsideration of NOCapX/UCAN's and CETF's petitions. The net effect is to (i) confirm the Certificates of Need for the three 345 kV Projects, and (ii) eliminate the Wind Conditions. Such an outcome is supported by the record and is consistent with applicable law.

Office of Energy Security

The OES response comments focused on CETF's accusation that "The Commission may have been misled by oral argument of the Applicant or OES to believe that the economic downturn

has not changed energy forecasts.” The OES argued that such a statement is without merit. The OES suggested that, as the Commission is well aware, forecasts – particularly short-term forecasts – are continually changing. Nevertheless, for reliability purposes the transmission system must be planned around a high peak demand forecast rather than a low forecast or a median forecast.

Staff Comment

The first question to consider is whether the arguments presented in the petitions for reconsideration provide cause for the Commission to rethink its original decisions. If the Commission does not believe there is sufficient cause, then it should reaffirm the May 22 Order and deny reconsideration. If the Commission decides it would like to further consider the issues, it can hear from parties at the meeting or it can order that further information be provided or developed through additional written submissions or by referral back to the Administrative Law Judge with direction on how to proceed.

Generally speaking, staff believes that nothing new has been presented by the parties that substantially changes the factors the Commission considered in making its initial decisions. This is particularly true with respect to the wisdom of reopening the proceeding to take into account current customer demand, the choice of an eastern end point proposed for the Brookings project, the need for the LaCrosse project at all and the upsizing of each of the three projects.

With respect to the costs, benefits and risks associated with placing the conditions on the Brookings project, the information on potential impacts is presented in a more comprehensive manner but the additional discussion does not introduce any new or additional considerations that weren't already generally taken into account by the Commission at the time of oral argument and deliberation. Staff believes there are definitely potential costs and risks associated with the Commission's decision to place the conditions on the Brookings line. Unfortunately, staff is unable to indicate for the Commission what the probability or extent of those risks may be.

As noted in the “Reconsideration” section of the briefing paper, if, in the Commission's judgment it shall appear that the original decision, order, or determination is in any respect unlawful or unreasonable it may reverse, change, modify, or suspend the original action accordingly.

Decision Alternatives

1. Grant reconsideration or rehearing of the May 22, 2009 *Order Granting Certificates of Need with Conditions* based on:
 - A. Concerns raised by the Citizen's Energy Task Force.
 - B. Concerns raised by the Office of Energy Security.
 - C. Concerns raised by NoCapX and U-CAN.
 - D. Concerns raised by the Applicant.

2. Deny reconsideration of the May 22, 2009 *Order Granting Certificates of Need with Conditions*.