

STATE OF MINNESOTA
IN COURT OF APPEALS

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.

O R D E R

A09-1646
A09-1652

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE
THERE IS A QUESTION WHETHER THIS COURT HAS JURISDICTION:**

1. In appeal A09-1646, which was filed on September 9, 2009, NoCapX 2020 and United Citizens Action Network, and the Citizens Energy Task Force (CETF) filed separate certiorari appeals (A09-1646 and A09-1652, respectively) from orders issued on May 22, 2009, and August 10, 2009, by the Minnesota Public Utilities Commission (MPUC) granting certificates of need for three high-voltage 345-kV power line projects.

2. Because the appeals arise from the same agency proceeding, consolidation will enhance judicial economy.

3. In its statement of the case, the MPUC states that relators seek judicial review of environmental-review decisions. The MPUC argues that because the applicable statute, which is the Minnesota Environmental Policy Act (MEPA) contains a specific mechanism for judicial review of such determinations by a declaratory-judgment action in the district court, these certiorari appeals are not properly before this court.

4. Any party to a proceeding before the MPUC, or any person aggrieved by a decision and order and directly affected by it, may appeal from the decision and order of the MPUC in accordance with chapter 14. Minn. Stat. § 261B.52, subd. 1 (2008).

5. Decisions on the need for an environmental-assessment worksheet, the need for an environmental-impact statement, and the adequacy of an environmental-impact statement may be reviewed by a declaratory-judgment action in the district court of the county wherein the proposed action, or any part thereof, would be undertaken. Minn. Stat. § 116D.04, subd. 10 (2008).

IT IS HEREBY ORDERED:

1. Appeals A09-1646 and A09-1652 are consolidated.

2. Respondents' briefs shall address both appeals. Respondents' briefs shall be filed within 30 days after service of the last relator's brief, in accordance with Minn. R. Civ. App. P. 131.01, subd. 2.

3. On or before October 5, 2009, the parties shall serve and file informal memoranda (an original and four copies) with the clerk of the appellate courts, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155, which shall address the following:

(a) Is a declaratory-judgment action in district court under Minn. Stat. § 116D.04, subd. 10, the proper avenue for relators to obtain judicial review of the MPUC's May 22, 2009, and August 10, 2009 orders?

(b) If the answer to (a) is yes, should the writ of certiorari should be discharged? *See White Bear Rod & Gun Club v. City of Hugo*, 388 N.W.2d 739, 741 (Minn. 1986) (holding that certiorari is an extraordinary writ that is appropriate only when no other review is authorized by law).

4. Memoranda filed after October 5, or memoranda filed without *four copies* and *proof of service*, may not be considered by the court.

5. Failure to comply may result in such sanctions as the court deems appropriate, including dismissal.

6. If, after completion of research, relators conclude this court lacks jurisdiction over the appeal, relators shall immediately file a notice of voluntary dismissal.

7. This order does not stay or extend briefing deadlines or other procedural requirements under the rules.

Dated: September 25, 2009

BY THE COURT

/s/

Judge Heidi S. Schellhas