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Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101

eFiled and served via eFiling

RE: Comments on Request for Reconsideration
 Docket No. E002/M-09-1048

Dear Dr. Haar:

These Comments are offered on behalf of NoCapX 2020 and United Citizens Action Network, intervenors in the CapX 2020 Certificate of Need proceeding and thus far in the CapX 2020 Brookings-Hampton and Hampton-Alma/LaCrosse dockets, and further, participants in the Rural Utilities Service Environmental Impact Statement process. As of last week, we have filed a Motion to Intervene Out-of-Time in the FERC docket at issue in this rate recovery docket.

The Public Utilities Commission has gone beyond its authority in ordering any recovery to utilities for CapX 2020. CapX 2020 has not declared ultimate ownership in this project and has not complied with the Order of the Commission to do so. Absent that declaration and compliance, any Order allowing rate recovery is premature.

Procedural setting and comments

There is no Intervenor Compensation in Minnesota. Intervention and participation in these many CapX 2020 dockets is quite a burden, particularly where, unlike a utility, we cannot recover our costs from ratepayers, or where, unlike MOES, we cannot recover our costs by assessing the applicants. NoCapX 2020 and United Citizens Action Network are doing the best we can with what resources we have, and previously had not participated in this docket.

That said, please note, WE ARE HERE!

There are no intervenors in this docket, and it is not a contested case. It is with dismay that we note that no one is representing or protecting either the public or ratepayer interest. MOES is within the Department of Commerce, and the Minnesota Office of the Attorney General, RUD, is not present in this docket. Therefore, again, we are here.

Xcel has challenged the Commission's rejection of its request for rate recovery for the Brookings line. The Commission's rejection was based on the "uncertainties" of rate recovery to be authorized by FERC. However, other uncertainties in this matter are more fundamental, and preclude any rate recovery – the parties have not declared ultimate ownership of any part of CapX 2020 transmission projects proposed and have not complied with the Commission Order that they do so.

Rate recovery should not be allowed prior to compliance with Commission Order

Applicants and MOES agree that the Commission's rate recovery is based on CapX 2020's representation of potential ownership as set out in development agreements. However, these development agreements are admittedly uncertain, subject to change, and in no way obligate any party to any ownership interest.

Applicants must declare ownership interests of each project

Ownership interest in the project has been an issue throughout this proceeding, in pre-hearing filings, during the hearing, and in the arguments of parties. The Commission's Order reflects its agreement that this is a fundamental issue.

The Commission accepted the CapX 2020 application with express knowledge that ownership was at issue, and that the applicants may well not be the ultimate project owners:

On June 4, 2007, the Commission issued its ORDER DESIGNATING APPLICANTS AND SETTING FILING REQUIREMENTS authorizing GRE and Xcel to proceed as Applicants (Applicants) for this project even though other entities may ultimately take ownership interests in it.

Notice and Order for Hearing, November 21, 2007.

In reviewing each party's arguments in the Certificate of Need case, the Commission noted in its summary of U-CAN's positions that;

Finally, UCAN asks the Commission to compel Applicants to determine and disclose the identities of each line's owners, and the percentage interest each owner has.

Order Granting Certificate of Need, April 29, 2009, p. 24. On the same page, summarizing its Order to follow, it states:

Fourth, for each project Applicants should disclose the project's transmission capacity, owners, and share of ownership interest.

Order Granting Certificate of Need, April 29, 2009, p. 24. And further:

As suggested by UCAN, the Commission will direct Applicants to make a compliance filing disclosing each project's transmission capacity, owners, and ownership structure.

Order Granting Certificate of Need, April 29, 2009, p. 42.

The Commission's ultimate Order, in Order point 4 is clear:

4. Applicants shall make a compliance filing disclosing each project's transmission capacity, owners, and ownership structure.

Order Granting Certificate of Need, Order Point 4, Order, April 29, 2009, p. 24

Applicants have not yet made a compliance filing disclosing each project's transmission capacity, owners, and ownership structure.

Participants in this docket acknowledge that ownership interest is uncertain

MOES reiterates the Certificate of Need record, the Development Agreements and its prior filings in its Comment filed May 27, 2010:

Under the terms of the development contracts, Xcel states that CAPX participants have the right, but not the obligation to take ownership up to the identified project development percentages. Xcel states it has no plans to reduce its ownership level below the stated percentages for each project. Consequently, the costs included in the 2010 revenue requirement noted above reflect Xcel's minimum ownership percentage.

MOES Comments, p. 2. Xcel admits that there is "**no obligation** to take ownership up to the identified project development percentages" and states only that "it has **no plans** to reduce its ownership level beyond the stated percentages for each project." (emphasis added). This is malignant uncertainty.

No declaration of ownership and no obligation of ownership = no rate recovery

Given the uncertainty of ownership and unwillingness of the CapX Applicants to disclose ownership interests and provide certainty, the Commission has gone beyond its authority in ordering any recovery whatsoever for any part of CapX. The Commission's prior Order to disclose ownership interests and Xcel's failure to disclose and its flagrant non-compliance with the Order of the Commission should put the Commission on notice. Absent that declaration and compliance, any Order allowing rate recovery is premature. At this time, NoCapX 2020 and

United Citizen Action Network request that the Commission:

- Hold firm in denial of rate recovery for the CapX 2020 Brookings route; and
- Void any cost recovery orders for CapX 2020; and
- Reject any Petition for rate recovery unless and until the utilities have disclosed their ownership interest and complied with all other points in the CapX 2020 Certificate of Need order.

The uncertainties surrounding CapX 2020's ownership and rate recovery preclude any grant of rate recovery.

Respectfully submitted,

A handwritten signature in cursive script, reading "Carol A. Overland".

Carol A. Overland

Attorney for NoCapX 2020 and United Citizen Action Network