



Paula Goodman Maccabee, Esq.

Just Change Law Offices

1961 Selby Ave., St. Paul, Minnesota 55104, pmaccabee@visi.com
Ph: 651-646-8890, Fax: 651-646-5754, Cell 651-775-7128

June 1, 2010

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Comment on Notice of Change in Timing for Certificate of Need**
Docket No. ET2, E002/CN-06-1115

Dear Dr. Haar:

Attached in connection with Applicants' Notice of Change in Timing of the Brookings Project and Development Plan, please find the following document submitted on behalf of Citizens Energy Task Force:

Comments of Citizens Energy Task Force Requesting Hearing on Changes to Brookings Project to Determine if Recertification or Voiding Certificates is Appropriate.

This document has been e-filed and served electronically on the parties of record.

Sincerely,

Paula Goodman Maccabee
Attorney for Citizens Energy Task Force

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE 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.

PUC Docket No. CN-06-1115
OAH Docket No. 15-2500-19350-2

**COMMENTS OF CITIZENS ENERGY TASK FORCE REQUESTING HEARING ON
CHANGES TO BROOKINGS PROJECT TO DETERMINE IF
RECERTIFICATION OR VOIDING CERTIFICATES IS APPROPRIATE**

INTRODUCTION

The CapX2020 utilities have requested in a Notice of Change in Timing of the Brookings Project (“Notice”) that the Minnesota Public Utilities Commission (“Commission”) modify the certificate of need issued by the Commission for the CapX2020 high voltage transmission lines to delay the in-service date for the Brookings Project to 2015. Citizens Energy Task Force (“CETF”) does not dispute that the uncertainties regarding financing and ownership described by Applicants in their Notice preclude construction of the Brookings Project on the schedule previously proposed by the CapX2020 utilities and ordered by the Commission. However, CETF believes based on applicable law, including the rules cited by Applicants in their Notice, that the Commission should conduct substantive hearings to determine if the Brookings Project certificate should be recertified, voided or further conditioned.

In order to ensure careful review of these matters, CETF would support granting of a

variance to Minn. Rules 7849.0400, subp. 2(H) to allow more time for additional comment and consideration of the merits of the proposed change to the Brookings Project certificate of need.

The Brookings Project was certified to be completed and in service in 2012 for the segments from Lyon County to Franklin and from Franklin to Helena and to be in service in 2013 for all other segments. *Order Granting Certificate of Need with Conditions* (May 22, 2009), hereinafter “May 22, 2009 Order,” p. 16; *Administrative Law Judge Findings of Fact, Conclusions and Recommendations*, hereinafter “ALJ Findings,” Finding #138. As recently as the Brookings routing proceedings, Applicants proposed that construction of the Project would begin in the fourth quarter of 2010 and be completed by the third quarter of 2013. *Administrative Law Judge Findings of Fact, Conclusions and Recommendations In the Matter of the Route Permit Application by Great River Energy and Xcel Energy for a 345 kV Transmission Line from Brookings County, South Dakota to Hampton, Minnesota, Docket No. ET-2/TL-08-1474*, hereinafter “Routing – ALJ Findings,” Finding #83.

This delay in timing, if known at the time of certification could reasonably have resulted in a different decision under the criteria specified in Minnesota Rules, part 7849.0120. Specifically, delaying the Brookings Project until 2015 affects each factor supporting the Commission’s finding that the Brookings Project is needed for regional reliability. The circumstances studied by the CapX2020 utilities in 2005 to assess regional reliability needs – nature and location of generation, the presence of other current and planned transmission facilities and the forecasted load – have changed significantly since the Commission’s finding of need for the Brookings Project. The delay of the in-service date exacerbates this disparity and calls into question whether the probable result of denial of a certificate of need for the Project would result in an adverse effect upon adequacy, reliability or efficiency of energy supply.

In addition, if the Brookings Project's only verifiable function is to provide generation outlet capacity, particularly for renewable generation, the cost allocation dispute and delay described by Applicants in their Notice become particularly salient. Applicants' proposed delay for the Brookings Project calls into question whether the Project can meet its stated purpose to meet intermediate renewable energy standards ("RES") milestones. As documented in the Environmental Report in the certificate of need ("CON") proceedings and as evident in other dockets, the cost of the Brookings Project in comparison to the megawatts of renewable generation it supports is far in excess of the costs of other transmission to support wind projects. It is probable that alternative transmission of a reduced scale and cost could support the RES milestones in a more timely, effective and efficient manner.

CETF also opposes the Applicants' efforts to delay the Brookings Project without reconsidering certification on the grounds that such delay would place an undue burden on landowners. In addition to the general rule pertaining to changes in timing of a certificate of need, Minnesota Rules preclude delay in construction of a transmission route for more than four years unless there have been "no significant changes in any material aspects of the conditions or circumstances existing when the permit was issued." Minn. R. 7850.4700. This rule protects landowners from the risk that their property will be under a cloud for a period of years, devalued by a transmission route without a potential for compensation. While the CapX2020 utilities' Notice would protect their investors from risk, it would unduly burden persons who happen to live or farm along the proposed Brookings Project route.

Finally, the CapX2020 utilities have failed to address how the delay and uncertainty in the Brookings Project might affect the La Crosse Project. Without the Brookings Project, the La Crosse Project is a huge and unconnected radial transmission line ending in Hampton, Minnesota. Its contribution to regional reliability would be questionable. Without the asserted

claim of regional need, the record demonstrates that there are less environmentally harmful and, potentially, less costly ways of meeting community reliability needs. Even if the current MISO formula spreads the expense of the La Crosse Project sufficiently broadly so that the CapX2020 utilities would choose to proceed, landowners and protected natural resources would experience harms that would be avoided by lower voltage and more local alternatives to meet community reliability needs.

CETF requests that the Commission show the degree of concern for Minnesota citizens that the Applicants have shown for their investors and require that hearings be conducted to determine if the CapX2020 Brookings Project should be recertified or if the certificate of need should be voided. It is suggested that the connection between the Brookings and La Crosse Projects with respect to regional reliability also requires reconsideration of the need and alternatives to the La Crosse Project.

DISCUSSION

A. Delay and Uncertainty Regarding the Brookings Project Require Hearings to Determine if the Brookings Project Certificate Should be Severed and Voided.

Applicants have requested a delay in the in-service date for the Brookings Project of more than a year in duration due to a number of financial and investment uncertainties surrounding the Brookings Project. Excerpts from the Applicants' Notice include the following statements:

“The prior Tariff created difficulties for many stakeholders and was deemed unworkable for application to a substantial project such as Brookings.” (p. 3).

“After undertaking a lengthy stakeholder process. . . MISO filed proposed interim amendments to its Tariff with FERC substantially revising the method for allocating the costs of such Generator Interconnection Projects. This filing was contested by a number of stakeholders.” (p. 3)

“Applicants and many other stakeholders. . . have been working diligently with MISO on

developing a consensus approach to cost allocation for major new infrastructure projects like the Brookings Project. The process has prompted a vigorous debate and it is unclear whether or when consensus will be reached.” (p. 4)

“[I]t is unclear at this point, what cost allocation methodology will be included in the filing, and whether this methodology will apply to the Brookings Project. Applicants are also concerned that the MISO filing may result in potential challenges at FERC, thereby delaying certainty over a cost allocation methodology for a period of time.” (p. 4)

“This situation has left Applicants and the other potential owners of the Brookings Project with considerable uncertainty about the actual cost allocation methodology that will apply to their investment in the Brookings Project.” (p. 4)

“Until MISO and FERC provide clarity on how the total cost of the Brookings Project will be shared by stakeholders and the level of costs to be borne by the owners of the Brookings Project, the participants in the Brookings Project will have difficulty evaluating their investment.” (p. 5)

Where a delay of more than a year in the in-service date for a large transmission facility is sought, the Commission shall order further hearings if it determines that the changes in timing “could reasonably have resulted in a different decision under the criteria specified in part 7849.0120.” Minn. R. 7849.0400, subp. 2(H).

The criteria in Minn. R. 7849.0120 that must be reviewed before allowing the proposed delay provide for a certificate of if the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply. The Commission first evaluates the accuracy of applicant’s forecast of demand, the effects of conservation, the ability of other current and planned transmission facilities to meet future demand and whether the proposed facility represents an efficient use of resources. Minn. R. 7849.0120, subp. A.

Before Applicants’ delay can be approved, these rules also require an analysis, under changed circumstances, of whether a more reasonable and prudent alternative to the proposed facility has been demonstrated, considering the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives, the cost of the proposed facility compared to the costs of reasonable alternatives and the effects of the proposed facility upon the natural and socioeconomic environments compared to the effects of

reasonable alternatives. Minn. R. 7849.0400, subp. 2 (H); Minn. R. 7849.0120, subp. B.

In *State by Citizens Against Power Plant Pollution, Inc. v. Minn. Env'tl. Quality Bd.* 305 N.W.2d 575, 584-585 (Minn. 1981), following NSP's downward revision of its demand forecast and request for a delay of the in-service date for a large generation facility for more than a year, the Minnesota Energy Agency ("MEA") required NSP to initiate a rehearing to determine the appropriateness of recertification and issued new findings and conclusions. After these hearings, MEA recertified Sherco 3 with a delayed in-service date.

However, as to Sherco 4, the MEA severed and voided its certificate of need. The Court noted that, "this requested time delay 'increases the possibility that changes in technology, economic factors, load characteristics, fuel options and political and social considerations' are likely to result in a change in the optimal size and type of the facility necessary." *Id.*, at 581.

As described in more detail below, the delay of the Brookings Project requires the Commission to initiate new hearings, since changes in circumstances and conditions, including but not limited to the financial uncertainties emphasized by Applicant, could reasonably have resulted in a different decision as to the appropriateness of certification of the Brookings Project.

Changes in circumstance since the certification decision undermine the claim that the Brookings Project is needed for regional reliability or that the Project would meet the objective of providing 700 MW of renewable energy to meet interim RES milestones, the two justifications for its certification. In addition, as the Applicants' emphasize, the mechanism for distributing the costs of the Brookings Project are highly uncertain and controversial. As compared to other transmission projects that would provide support for renewable generation, the Brookings Project is extraordinarily expensive, imposing an untenable burden on wind developers under the current FERC formulation.

1. Changes in Generation, Underlying Transmission, and Forecasted Load Would Reasonably Support a Different Decision Regarding Certification of the Brookings Project.

Regional reliability was a critical part of the justification for all three CapX2020 projects certified by this Commission, including the Brookings Project. *May 22, 2009 Order*, pp. 27-28; *Order Granting and Denying Motions for Reconsideration and Modifying Conditions*, p. 13 (August 10, 2009); *ALJ Findings*, Conclusion #8. Applicants claimed that each CapX2020 Project was needed to address three types of need through the year 2020: regional reliability, community reliability in specific areas and generation outlet support, particularly for renewable generation. *ALJ Findings*, #151. The ALJ found that, although there was evidence that some of the local needs identified in the Application could be met with generation and lower voltage transmission, no alternative was offered that would address the need for regional reliability. *ALJ Findings*, #296, #415.

It is clear by now that the Midwest ISO (“MISO”) has made a determination that the Brookings Project cannot be classified as a Regional Baseline Reliability Project. Its classification as a Generator Interconnection Project is what has prevented the breadth of cost-spreading favored by Applicants and created the uncertainty described by the Commission in its Order denying transmission cost recovery for the Brookings Project. Order, *In the Matter of the Northern States Power Company, a Minnesota Corporation, d/b/a Xcel Energy, for Approval of a Modification to its TCR Tariff, 2010 Project Eligibility, TCR Rate Factors, Continuation of Deferred Accounting*, Docket No. E-002/M-09-1048, hereinafter “TCR Order” (April 27, 2010). MISO’s determination fundamentally calls into question the certification of the Brookings Project to meet a “regional reliability” need.

Changes in circumstances have also undermined the Commission’s prior conclusion that

the Brookings Project was needed for regional reliability. The Commission's certification of the Brookings Project explicitly relied on generation from the Big Stone coal plant expansion and the connection with transmission lines related to that coal-fired generation, noting that the Big Stone II transmission would connect with the Brookings Project at the Hazel Creek substation. *May 22, 2009 Order*, pp. 14-15, citing *In the Matter of the Application of Otter Tail Power Company and Others for Certification of Transmission Facilities in Western Minnesota*, hereinafter "Big Stone II," Docket No. ET-6131, ET-2, ET- 6130, ET-10, ET-6444, E-017, ET-9/CN-05-619.

The Southwestern Minnesota EHV Development Study used to justify the Brookings Project also assumed approximately 600 megawatts of additional generation from the Big Stone Unit 2 coal plant in its base model. Tr. V. 10, p. 153, l. 19 to p. 154, l. 3 (Alholinna); Ex. 1 (Application, Apx. A-4).

In fall 2009, the Big Stone II applicants abandoned their plan to build the Big Stone Unit 2 coal plant. In February of 2010 the Commission extinguished its Order Granting Certificate of Need with Conditions, suspended the Big Stone II Route Permit and provided for the revocation of the Route Permit for the Big Stone II transmission facilities if no entity has filed an application for certificate of need within a year. Order, *Big Stone II* (February 25, 2010).

The abandonment of the Big Stone Unit 2 generation is significant because transmission engineering depends on where energy generation is sited. Location of transmission influences generation and location of generation influences transmission. Ex. 303, pp. 18-19 (Rakow Rebuttal). In the prior CON proceedings, when the Big Stone Unit 2 coal plant still seemed a virtual certainty, the ALJ did not determine what effect changes in Big Stone II would have on the CapX2020 projects. *ALJ Findings*, #411. The Commission must make this determination in reviewing whether recertification of the Brookings Project is appropriate.

Analysis of the impacts of abandonment of Big Stone II is particularly salient, since there is record evidence that the ability of the Brookings Project to support 700 MW of wind energy depended on the Big Stone II transmission facilities. CapX2020 expert witness, Jared Alholinna testified in the CON hearings that, if the transmission improvements proposed in Big Stone II case were not built, the Brookings Project probably would not be able to support 700 megawatts of renewable energy: “likely we wouldn't be able to get 700, we would get something less than that.” Tr. V. 11, p. 38, l. 17 to p. 39, l. 1 (Alholinna). Invalidation of the assumptions regarding Big Stone II may change decisions both regarding “regional reliability” need for the Brookings Project and regarding the Project’s ability to provide its stated benefit of supporting 700 MW of wind energy.

In addition to change in circumstances resulting from abandonment of the Big Stone Unit 2 generation project, delaying the Brookings Project to 2015 undermines the CapX2020 Vision Study conclusions regarding the potential overloads of other transmission circuits. As the ALJ explained in her Findings, the planning engineers in the Vision Study of regional need analyzed the performance of the lower voltage transmission network to identify lower voltage circuits that could be overloaded. “For CapX, the planning engineers used computer simulations with year 2012 system parameters and identified numerous lower voltage circuits that could be overloaded.” *ALJ Findings*, #150.

Delay of the in-service date of the CapX2020 Brookings Project means that the underlying lower voltage system may be significantly different from what was modeled by the engineers to evaluate regional reliability. For example, the CapX2020 studies would not have included the Bemidji-Grand Rapids 230 kV power line, for which an uncontested certificate of need was issued on July 14, 2009. *In the Matter of the Application of Otter Tail Power Company, Minnesota Power and Minnkota Power Cooperative, Inc. for a 230 kV Transmission Line from*

Bemidji to Grand Rapids, Minnesota, Docket No. E-017, E-015, ET-6/CN-07-1222. The CapX2020 studies conducted in 2004 and 2005 to project overloaded circuits in 2012 also would not have included the Rochester Incremental Generation Outlet (RIGO) transmission lines, now proceeding without dispute as to need in an informal review process. Order, *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Certificate of Need for a 161 kV Transmission Line in Dodge, Olmstead and Mower Counties in Southeastern Minnesota*, Docket No. E-002/CN-08-992 (February 18, 2010). As Minnesota Rules reflect, the ability of other current and planned transmission facilities to meet future demand is a critical part of the assessment of need for a large high voltage transmission project. Minn. R. 7849.0120, subp. A.

CETF has emphasized throughout these certificate of need proceedings that the forecasts of demand and conservation supporting certification of the CapX2020 projects are out-of-date and inaccurate. Contradictions between the claims made by Applicants and more current and accurate forecasts are exacerbated by the delay of the in-service date for the Brookings Project until 2015, over a decade after the only engineering study conducted by the CapX2020 utilities to analyze a need for the CapX2020 projects for regional reliability.

As the Commission may recall, the CapX2020 Vision Study projected an annual growth rate in demand of 2.49 percent each year between 2009 and 2020, resulting in 6,287 MW of peak load growth in the CapX2020 utilities' service area and a total "expected" demand of 26,500 MW by 2020. *ALJ Findings*, #61, #161, #162. The Vision Study also conducted a sensitivity analysis, reducing the "expected" growth in peak demand by about 30 percent, to 4,500 MW between 2009 and 2020. *ALJ Findings*, #163. Under this "slow growth" analysis in the Vision Study, the overall load level for the CapX2020 utilities in 2020 was projected to be 24,701 MW. *ALJ Findings*, #61, #163 Attachment, "Att." E.

The Vision Study's assumptions regarding demand were made prior to the enactment in 2007 of Minnesota's Next Generation Energy Act, which established energy conservation requirements, including a 1.5 percent energy savings policy. Minn. Stat. §§ 216B.2401 (2009), 216B.241, subd. 1c (2009).

The most recent forecast provided by Applicants in the CON proceedings was a March 7, 2008 Response to an Information Request contained in Exhibit 51. Ex. 51 partially took into account changes in forecast resulting from Minnesota's new conservation law. Tr. V. 4, p. 49 (Lacey). The median forecast in Ex. 51 reflected an annual growth in demand from 2009 to 2020 of 3,919 MW. *ALJ Findings*, Att. E.

The Office of Energy Security ("OES") also provided an analysis of likely growth in demand within the CapX2020 region based on previously approved resource plans adjusted for new conservation. Ex. 265 (OES Chart); Ex. 217 (OES Chart); Tr. V. 24, p. 41, l. 20- p. 42, l.25. (Ham). Applying the minimum one percent conservation required under the 2007 law, OES predicted that demand would grow by 4,129 MW from 2009 to 2020. With 1.5 percent conservation, demand would grow by 3,462 MW. *ALJ Findings*, Att. E.

Load growth under either of these forecasts falls below 4,500 MW, which is the lowest level of growth studied by Applicants' engineers in the Vision Study. Applicants performed no other analysis to determine if the CapX2020 projects would be needed for regional reliability under load growth assumptions below the 4,500 MW "slow growth" scenario in the Vision Study. Tr. V. 2B, p. 15, l. 22 – p.16, l.13 (Rogelstad); Ex. 26 (App. Resp. to CETF IR 5).

In the CON proceeding, the ALJ noted that, by 2020, even if growth fell below 4,500 MW, overall demand would still be at or above the 24,701 MW slow-growth threshold in Applicants' Vision Plan:

Each forecast in the record is at or above the 24,701 MW slow-growth forecast in the Vision Plan upon which the engineering analysis was conducted. Both the Applicants' revised medium growth forecast of 25,708 MW and the OES estimate of 25,690 to 26,357 MW exceed the level used in the Applicants' analysis. *ALJ Findings*, #179.

The ALJ found, "Applicants have not completed an analysis of facilities needed at a level of forecasted growth lower than 24,701 MW in the slow-growth model." *ALJ Findings*, #180. The ALJ explicitly relied upon the fact that Applicants had "demonstrated that load growth will rise to 24,701 MW or more by 2020" to find that Applicants had shown that the probable result of denial of the certificates of need would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply. *ALJ Findings*, # 290.

After the hearing record closed, CETF and other intervenors learned from Securities and Exchange Commission (SEC) filings that peak demand for Xcel Energy actually declined from 2006 to 2008 and that peak load levels for both Xcel Energy and Minnesota Power were substantially below the base case contained in the Ex. 51 forecasts.

CETF initially made its own projections of 2020 demand for the CapX2020 utilities based on this SEC data. However, by the summer of 2009, CETF obtained more current March 2009 projections of demand through 2020 from Xcel Energy in another proceeding.

These Xcel Energy demand projections, included as Attachment B to CETF's Answer to Petitions for Reconsideration, demonstrated that customary updated 2009 utility forecasts, not just an intervenor's arithmetic, would reduce the overall load in the CapX2020 region below the threshold level on which the ALJ relied to justify regional reliability need.

According to Xcel's March 2009 forecast, peak demand in 2020 was predicted to be 9,896 MW, reducing overall load in the CapX2020 region by 1280 MW. Even without

considering updated forecasts from other utilities, Xcel’s own analysis put CapX2020 demand below the threshold level studied to justify regional need.

*Effect of Decline in Demand (Xcel Energy) on
CapX2020 Regional Demand Load in 2020*

	2009	2020
Xcel Median Forecast (CON, Ex. 51)	9,881 MW	11,176 MW
Xcel Current Demand Forecast (CETF Ans. Reconsider Petitions, Att. B)	9,399 MW	9,896 MW
Change in Xcel Demand -- Prior Ex. 51 to March 2009 Forecast	(482 MW)	(1,280 MW)
TOTAL CAPX2020 FORECASTS Vision Plan “slow growth” threshold		24,701 MW
Median CapX2020 Forecast (CON, Ex. 51, ALJ Findings, Att. E)	21,789 MW	25,708 MW
Adjusted for Change (Xcel) Demand (Most Recent 2009 Forecast)	21,307 MW	24,428 MW

2. Delay and Cost Factors Suggest that the Brookings Project May be Ineffective as well as Inefficient to Support Generation and the Renewable Energy Standards.

Changes in circumstances, including the abandonment of Big Stone II, the development of new lower voltage transmission to support load and the prediction by Xcel Energy that demand load in 2020 will fall below the lowest threshold identified by the ALJ in the CON proceedings all undermine the appropriateness of certification of the Brookings Project.

In addition, the in-service date delay and the cost allocation controversy highlighted by Applicants’ Notice suggest that the Brookings Project may be ineffective as well as inefficient in its support of renewable generation. The Brookings Project was certified to provide approximately 700 MW of additional generation outlet capacity in the Buffalo Ridge area to

support the utilities compliance with the renewable energy standards (“RES”). *ALJ Findings*, #259, #263. It was acknowledged in the CON proceedings that the Brookings Project would not be in service in time to meet the 2012 RES milestones, but the utilities asserted that the Brookings Project would enable them to meet 2016 intermediate RES milestones.² *ALJ Findings*, #472. The delay of the Brookings Project to 2015 and the fact that *none* of the generators identified by MISO to require the Project's completion in order to interconnect has signed an interconnection agreement under which they have agreed to bear the allocated cost, *see TCR Order*, p. 3, create a reasonable probability that the Brookings Project will not be effective to support renewable generation for the 2016 RES milestone.

As has become evident in MISO and FERC proceedings, the costs of the Brookings Project are also far out of proportion to customary expenses for transmission to support renewable generation. The Brookings Project, as currently proposed, would cost between \$700 million and \$755 million in 2007 dollars. *Routing -ALJ Findings*, #84. Even if the Project could support 700 MW of wind energy, an assumption called into question if Big Stone II transmission is not constructed, the cost would be at least a million dollars for every MW of wind energy.

The Environmental Report in the CON proceeding provided examples of transmission costs to support wind energy in Minnesota by summarizing the MISO Group 4 and Group 5 study projects. The MISO Group 5 transmission projects would support 2,858 MW of wind capacity at a cost of \$503 million. These projects would cost \$176,000 per megawatt of renewable outlet capacity. Ex. 5, p. 86 (Environmental Report). The transmission projects in MISO’s Group 4 would support 750MW of wind with 66 to 73 miles of 115 kV and 161 kV

² Minn. Stat. § 216B.1691, subd.2a (a) requires Xcel Energy to supply 30% of retail energy in Minnesota from renewable energy sources by 2020 with interim milestones to achieve 18% by 2012 and 25% by 2016 and requires other electric utilities to supply 25% of retail energy in Minnesota from renewable energy sources by 2025 with interim milestones to achieve 12% by 2012; 17% by 2016 and 20% by 2020.

power lines. Ex. 5, p. 83 (Environmental Report); Tr. V. 18A, p. 9 (Birkholz). Based on cost data in this record,³ it is estimated that the Group 4 projects could support 750MW of wind with approximately \$38 million in transmission costs (an estimated \$51,000 per megawatt).

Recent examples in other dockets also suggest that transmission costs for the Brookings Project are an order of magnitude greater than for other transmission designed to support wind projects to meet Minnesota' RES. The Prairie Rose project is proposed to provide 101 MW of wind energy in Rock and Pipestone Counties, Minnesota. According to the Application for Certificate of Need, this utility-scale wind project will be in service by the first quarter 2012 and will require 24 miles of 115 kV transmission, estimated to cost \$9 to \$12 million (from \$89,000 to \$119,000 per megawatt in transmission costs). *In the Matter of a Petition for A Certificate of Need for a 101 MW Wind Farm and Related 115 kV Transmission Line in Rock and Pipestone Counties, Minnesota*, Docket No. ET6838/CN-10-80 (May 13, 2010)

The EcoHarmony West Wind generation is proposed to provide from 200 to 280 MW of wind energy in Fillmore County, Minnesota. This generation project would require eight-and-a-half miles of 161 kV transmission. According to cost estimates in the Application for a Route Permit, the transmission line and substation needed to support this wind project will cost approximately \$6.1 million (from \$22,000 to \$30,500 per megawatt in transmission costs). *In the Matter of the Route Permit Application for a 161 Kilovolt Transmission Line and Associated Facilities in Fillmore County, Minnesota*, Docket No. IP-6688/TL-09-601 (July 30, 2009).

Compared to other transmission projects supporting renewable energy, the Brookings Project appears to make inefficient use of financial resources and to create an unusual level of controversy and uncertainty regarding cost allocation and the willingness or ability of wind

³ Ex. 177, p. 12a, Table 3a (Schedin Direct): calculating single circuit cost for 161 kV \$595,000 per mile; single circuit cost for 115 kV \$458,000 per mile.

generators to interconnect with the proposed transmission. CETF would request that the certificate for the Brookings Project be reconsidered in light of cost uncertainty and delay to determine whether alternative transmission would be more effective and efficient to support wind generation and attainment of the RES milestones.

B. Retaining Certification of the Brookings Project Despite a Delay in the In-Service Date would Impose an Undue Burden on Landowners.

Minnesota Rules provide that the Commission must suspend a permit if construction has not commenced after four years and may only reinstate that permit if the Commission determines that there have been no significant changes in any material aspects of the conditions or circumstances existing when the permit was issued. Minn. R. 7850.4700. The Commission customarily includes in permits a reference to this Rule, precluding a permittee from delaying construction after a transmission route permit has been issued. *See e.g.* Order, Permit Condition J, *In the Matter of the Application for a HVTL Route Permit for the Tower Transmission Line Project*, Docket No. ET015/TL-06-1624 (August 1, 2007); Order, Permit Condition I, *In the Matter of the Application for a Route Permit for the Appleton to Canby 115kV High Voltage Transmission Line Project*, Docket No. E017/TL-06-1265 (April 18, 2007). There is no provision in Minnesota Rules that a determination can be made prospectively, so that an Applicant can retain a permit despite predictions of delay.

CETF suggests that Minnesota's policy of preventing utilities from sitting on a permit reflects concerns about protection of landowners and farmers as well as concerns that land uses may change requiring reevaluation of a particular route. Once a property has been selected for a transmission line route, any improvement of the property -- even location of additional irrigation systems -- tends to stop. Property values drop, and sale of residential property with the looming prospect of the transmission line becomes infeasible. A landowner may wish to sell his property

to the utility under Minn. Stat. §216E.12, Subd. 4, colloquially known as the “buy the farm” provision, but there are no funds or mechanisms to permit this to happen while the project is on hold. If the transmission line is eventually constructed, the decline in value resulting from several years of limbo may influence potential compensation for an easement or fee title to property.

Applicants have prudently requested the Commission to protect their investors in the construction and development process. CETF requests that the Commission show comparable concern for landowners and farmers and disallow the CapX2020 utilities from retaining certification of the Brookings Project for an in-service date nine years after they first brought the CapX2020 proposal to this Commission.

C. Delay and Uncertainty Regarding the Brookings Project Supports Rehearing of Certification for the La Crosse Project.

Applicants state in their Notice that delay and uncertainty regarding the Brookings Project does not create uncertainty regarding the La Crosse Project. Notice, p. 4, fn. 5. Although CETF acknowledges that there is no uncertainty regarding cost allocation for the La Crosse Project, the changes in circumstances pertaining to regional reliability and generation outlet need identified for the Brookings Project in the previous sections of these Comments have a significant impact on the La Crosse Project. CETF requests that the Commission consider whether the certificate of need for the La Crosse Project is still valid given the delay and uncertainty surrounding the Brookings Project.

The timing and electrical connection of the La Crosse Project with the Brookings Project pose particular concerns. As reflected in the La Crosse Project routing proceedings, construction is proposed to begin for the La Crosse Project in 2011, potentially before the cost allocation and investment issues for the Brookings Project are resolved. Route Permit Application, p. ES-10, *In the Matter of the Application for a Route Permit for the CapX2020 Hampton-Rochester-La*

Crosse High Voltage Transmission Lines, E-002/TL-09-1448 (January 15, 2010).

Given the lack of consensus regarding cost allocation for the Brookings Project, it is possible that cost issues will not be resolved and the Brookings Project may not proceed. Construction of the La Crosse Project in advance of this resolution would be highly problematic.

Without the Brookings Project, the La Crosse Project is a very expensive radial transmission line⁴ from the small city of La Crosse, Wisconsin ending in the rural community of Hampton, Minnesota. Although MISO has concluded in the context of the CapX2020 proposal that the La Crosse Project would serve regional reliability needs, it is not evident that an assessment has been made as to the reliability consequences of a radial 345 kV line electrically connected to nothing.

As previously detailed in CETF's Petition for Reconsideration of the Commission's certificate of need decision and in our appeal to the Minnesota Court of Appeals, once the "regional reliability" need for the La Crosse Project is called into question, the Project fails to meet either the requirements of the Minnesota Environmental Policy Act, the Minnesota Environmental Rights Act or certificate of need statutes. Although the La Crosse Project would meet community reliability needs in the Rochester and La Crosse areas, alternative lower voltage transmission and local generation detailed in the CON record as well as the intervenors' briefs, would meet these needs without crossing the Mississippi River and without impairing natural resources, including scenic resources and the Upper Mississippi River National Wildlife and Fish Refuge. In addition to hearing whether delay and the cost allocation controversy would support voiding or further conditioning of the Brookings Project certificate of need, the Commission

⁴ The May 22, 2009 Order, p. 18, estimated that the La Crosse Project would cost between \$355 to \$363 million for the Southern Crossing and between \$364 and \$374 million for the Alma Crossing and that the Upsized Alternative would cost between \$407 to \$432 million for the Southern Crossing and between \$389 to \$415 million for the Alma Crossing.

should hear the impacts of delay and uncertainty on the need for the La Crosse Project.

CONCLUSION

For the foregoing reasons, CETF requests that the Commission order further hearings pursuant to Minn. R. 7849.0400, subp. 2 (H) to determine whether changes in circumstances support voiding or further conditioning the certificate of need for the Brookings Project. This hearing process would allow the Commission to ensure that ratepayers are not saddled with a \$700 to \$750 million project that cannot meet the needs for which it was certified. The Commission could also ensure that the property rights of citizens whose property is under a cloud due to route designation are not indefinitely and unnecessarily placed at risk.

Due to the timing and electrical connection of the La Crosse Project to the Brookings Project, CETF further requests that the Commission consider in these hearings whether the La Crosse Project should be voided or conditioned to prevent avoidable environmental harm and to protect ratepayers from the risk that they might pay for a high voltage radial line to nowhere. CETF would support a process that allows additional time for substantive comment and consideration of the merits of these issues.

DATED: June 1, 2010

Respectfully submitted:

JUST CHANGE LAW OFFICES



Paula Goodman Maccabee (#129550)
1961 Selby Avenue
St. Paul MN 55104
phone: 651-646-8890
fax: 651-646-5754
mobile: 651-775-7128
e-mail: pmaccabee@visi.com

Attorney for Citizens Energy Task Force