

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

**David C. Boyd
J. Dennis O'Brien
Thomas Pugh
Phyhs A. Reha
Betsy Wergin**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

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

Docket: E002/CN-06-1115

**NO CAPX 2020 AND U-CAN COMMENT REGARDING DELAY
and
REQUEST FOR FURTHER HEARINGS UNDER Minn. R. 7849.0400, Subp. H**

No CapX 2020 and United Citizens Action Network (hereinafter U-CAN) submits this Comment and Request for Further Hearings, in the above-captioned docket. NoCapX and U-CAN support a variance for additional comment and support MOES' request to receive written reply comments from the Applicants rather than having to react to oral reply comments at hearing, and we request that need for the line be addressed in additional hearings. Information has become available that, had the Commission known, could have resulted in different decision. Many factors contribute to the delay of the Brookings line, and would also reasonably contribute to delay of the entire CapX 2020 Phase I group of transmission projects. NoCapX and U-CAN together request that the Commission reopen the Certificate of Need for additional hearings, because the changes since the Application and Hearing for these projects would, should, and

could reasonably have resulted in a different decision had this information been known. The Commission has another opportunity to review this record and the need for CapX 2020 and whether it is a reasonable and prudent expense to foist upon Minnesota ratepayers.

I. DELAY DEMONSTRATES THAT THERE IS DETERMINATIVE INFORMATION THAT SHOULD BE CONSIDERED BY THE COMMISSION

The Delay noticed by CapX 2020 utilities on May 17, 2010, is not surprising, and the Commission should look into the factors causing the delay. The opening for the Commission is found in Minn. R. 7849.0400, Subpart H:

If an applicant determines that a change in size, type, timing, or ownership other than specified in this subpart is necessary for a large generation or transmission facility previously certified by the commission, the applicant must inform the commission of the desired change and detail the reasons for the change. A copy of the applicant's submission to the commission must be sent to each intervenor in the certificate of need hearing proceeding on the facility. Intervenors may comment on the proposed change within 15 days of being notified of the change. The commission shall evaluate the reasons for and against the proposed change and, within 45 days of receipt of the request, notify the applicant whether the change is acceptable without recertification. The commission shall order further hearings if and only if it determines that the change, if known at the time of the need decision on the facility, could reasonably have resulted in a different decision under the criteria specified in part [7849.0120](#).

Minn. R. 7849.0400, Subpart H.

CapX Applicant utilities' claim of delay due to cost recovery issues is not credible and should be investigated and subject to hearing.

A. CapX claims of reason for delay should be investigated in a hearing

The CapX utilities claims of their reasons for delay should be investigated, because there are reasons not raised by CapX that, if considered, should cause delay. These are also issues that the Commission should investigate and which one would hope would have a determining role in the outcome of a Certificate of Need. See Minn. R. 7849.0400, Sub. CapX claims that it is simply an issue of rate-recovery, but postponing a \$750 million or more transmission project

ostensibly due to a need for just \$1.9 million in rate recovery is at most one reason for the delay – there are likely others. Other reasons that should be questioned by the Commission in a hearing include a sharply decreased peak demand, a sharply decreased number of housing starts as indicator of population growth, a sharply decreased price of electricity, the bottom falling out of the construction capital market, and resistance in other areas of the country to transmission buildout in the Midwest. The Commission should independently verify the factors contributing to delay in construction of CapX 2020.

In the CapX 2020 Certificate of Need docket, the Applicants chose to revise their in-service date to 2012 for Lyon County to Helena and the outer segments from Brookings to Lyon and Helena to Hampton to 2012, which was approved and ordered by the Commission. Applicants have now requested a delay for “more than one year,” to 2015, a delay of **TWO** and **THREE** years. The Brookings line includes the Hampton substation – the substation is not part of the Hampton-Alma proposal. If the Brookings line is admittedly delayed at least to 2015, the in-service date for the Hampton-Alma/LaCrosse transmission line could be delayed as well. If conditions causing delay apply to not just the Brookings line but to Hampton and Fargo/Monticello as well, the Commission’s inquiry should follow.

B. The premise of “need” for CapX 2020 Brookings and CapX 2020 as a whole has been and is in question

The “community reliability” premise for the Certificate of Needs is that the group of Phase I CapX 2020 transmission projects would be “needed” by 2011 even for a “reduced” forecasted growth rate.

For their estimates of community reliability, the Applicants reduced the forecasted growth rate below historical levels. Its analysis showed that the load in the identified communities would exceed the level at which the system could provide reliable service by about 2011. OES also verified the community load projections.

Memorandum, ALJ Recommendation, p. 98 of 113 p. pdf (no page numbering on doc).

We all know that the CapX 2020 Phase I project as applied for in 2006 was based on 2004 and 2005 information, now over 5 years old. Hearing Ex. 1, Application A-1, p. 105. MOES analysis in the CoN evidentiary hearing showed demand growth by 2020 of 3,475MW. Hearing Testimony of Ham, Tr. Vol. 24, p. 42-55; Hearing Ex. 217, Ex. 265. Applicants later admitted to growth of 3,919MW, not taking into account conservation requirements of 2007. Ex. 51, NAWO/ILSR IR No. 7). We know differently now. We know that Xcel’s peak demand has dropped significantly since 2006 according to Xcel’s SEC filings¹ available online:

Xcel’s peak demand 2000 – 2009 from SEC 10-K filings:

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
7,936	8,344	8,259	8,868	8,665	9,212	9,859	9,427	8,697	8,615

Other utilities across the country are experiencing that same level of decrease in demand, and across the country electric prices have plummeted.

Now that CapX Applicants have notified the Commission of delay in the in-service date of the Brookings to Hampton part of the CapX 2020 Phase I project to “second quarter 2015” it is time to review this project and the inextricably linked projects.

C. Cost Recovery is inarguably at issue – but it’s the macro picture that needs a closer look.

Cost recovery is at issue, and information from the Xcel rate recovery docket, 09-1048, and that in other dockets where CapX utilities have requested rate recovery for CapX expenses,

¹ 2009 10-K: [http://www.secinfo.com/\\$/SEC/Filing.asp?D=Vut2.r1gf](http://www.secinfo.com/$/SEC/Filing.asp?D=Vut2.r1gf)
2007 10-K: <http://www.secinfo.com/dVut2.t1F3.9.htm>
2005 10-K: <http://www.secinfo.com/d11MXs.vbn4.5.htm>
2003 10-K: [http://www.secinfo.com/\\$/SEC/Filing.asp?D=svrp.24u6](http://www.secinfo.com/$/SEC/Filing.asp?D=svrp.24u6), et seq.

should be integrated into this docket to assure full disclosure and that the result is reasonable and prudent for Minnesota ratepayers..

Simultaneously with its filings in this Certificate of Need docket, a “Request for Reconsideration or Clarification” was made May 17, 2010, by Xcel Energy in the Transmission Cost Recovery Rider (hereinafter “TCR”) Docket (E002/M-09-1048). The delay of the in-service date is claimed to be due to failure of the Applicants to establish an adequate cost-recovery mechanism through MISO and FERC. Cost recovery is not only at issue in the CapX 2020 docket, in the Midwest, but are at issue nationally. Cost recovery tariffs approved by FERC have been remanded by the Federal Court², and FERC itself is balking at the methodology proposed for CapX and other MISO projects.³ Cost recovery is now the determining factor of whether these projects will be built, not “need,” as evidenced in Xcel’s cost recovery docket request of the Commission for advice as to “whether further project development activities should continue, be scaled back, or cease,”

The Applicants have been making their case for “Construction Work In Progress” payments in the TCR docket, and were approved in all but one of their requests, and in only the Brookings case was its request was denied. Despite the primarily favorable Order of the Commission in the TRC docket and the small amount claimed to be at issue, Xcel admits slowed development, delay, and desire to know the outcome of FERC proceedings before proceeding further. If Xcel is not willing to take that \$1.9 million dollar risk, neither should the Commission take that risk on behalf of the ratepayers. Neither the Brookings nor the Hampton-Alma (f/k/a LaCrosse) transmission routing dockets should go forward at this time.

II. NOCAPX AND U-CAN REQUEST ADDITIONAL HEARINGS

² See FERC Order No. 494, *PJM Interconnection, L.L.C.*, 119 FERC Par. 61063 (2007); see e.g. *Illinois Commerce Commission, et al. v. Federal Energy Regulatory Commission*, 576 F.3d 470, *rehearing denied* 2009 LEXIS 24192 (7th Cir. 2009)

³ See FERC Docket No. ER No. ER-09-143. NoCapX 2020 and U-CAN have filed Motion to Intervene Out-of-Time.

NoCapX and U-CAN support a variance for additional comment, support MOES' request to receive written reply comments from the Applicants rather than having to react to oral reply comments at hearing, and we request that need for the line be addressed in additional hearings.

As in our previous comments, NoCapX 2020 and United Citizen Action Network have been participants and parties in CapX 2020 proceedings since 2005 or earlier, challenging the need for the line, the size, type and timing of Applicant's proposal, and these issues are the subject of an imminent appellate court decision, expected in the next month or so. The admission of delay of the in-service date within applicants May 17, 2010 filings ostensibly based on questions of cost-recovery reveals the driver of this line – economics – and that it will not be built absent immediate rate recovery. This revelation also confirms that there is no urgency for this line, no electrical need, no reliability need, and that the lights will not go out if it is not in-service when expected.

NO CAPX 2020 and U-CAN 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. The delay of the Brookings line and Applicants' admission of the minimum time raises issues that the Commission should consider – notably that of the decreased demand since 2006 and the impact of the decreased demand on need for utility infrastructure. This is a good time to take a deep breath and accept additional comments prior to any decision.

NoCapX and U-CAN support MOES' request to receive written reply comments from the Applicants rather than having to react to oral reply comments at hearing, and we request that need for the line be addressed in additional hearings and again ask the Commission to require the applicants make a compliance filing disclosing each project's transmission capacity, owners, and ownership structure, as ordered in the April 29, 2009, Order Granting Certificates of Need With

Conditions, modified on August 10, 2009, or to show cause why the Certificates of Need should not be void for non-compliance.



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