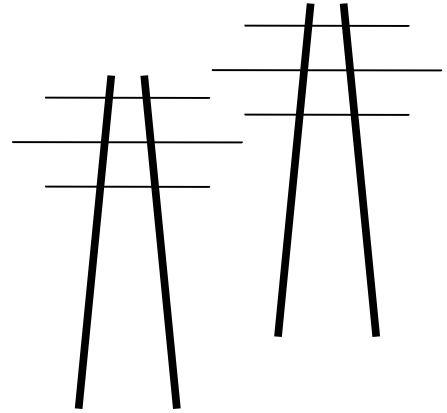


Legalelectric, Inc.

Carol Overland Attorney at Law, MN #254617
Energy Consultant—Transmission, Power Plants, Nuclear Waste
overland@legalelectric.org

P. O. Box 176
Red Wing, Minnesota 55066
612.227.8638

P.O. Box 69
Port Penn, Delaware 19731
302.834.3466



June 1, 2010

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

via eFiling

RE: NoCapX 2020 and U-CAN Motion for Order to Show Cause
PUC Docket: E002/06-1115

Dear Dr. Haar:

Enclosed for filing please find NoCapX 2020 and United Citizens Action Network's Comment Supporting Variance, Motion for Order to Show Cause, and Proposed Order.

This letter, Motion and Attachments are being eFiled and served via email to all parties of record.

Very truly yours,

Carol A. Overland
Attorney at Law

**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 VARIANCE
and
MOTION FOR ORDER TO SHOW CAUSE
For
FAILURE TO COMPLY WITH COMMISSION ORDER**

NO CAPX 2020 AND United Citizens Action Network (hereinafter U-CAN) submits this Comment and Motion for Order to Show Cause for Failure to Comply with Commission Order, together with proposed Order, in the above-captioned docket.

I. NOCAPX 2020 AND U-CAN SUPPORT A VARIANCE

In the CapX 2020 Certificate of Need docket, the 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, for which it received a Certificate of Need on May 22, 2009, modified by the Commission's Order of August 10, 2009, to "second quarter 2015."

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. Intervenor 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](#).

Simultaneously, 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) and, under Minn. R. 7849.0400, Subp. 2(H), a “Notice of Change in Timing of the Brookings Project and Interim Development Plan” was filed and served on parties on the same date in the CapX 2020 Certificate of Need Docket (ET-2, ET-002/ et al./CN-06-1115). 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. These filings have since been entered in the Brookings routing docket, and the Hampton-Alma (f/k/a Hampton-LaCrosse) docket, and NoCapX 2020 and U-CAN have requested that activities in the Brookings and Hampton routing dockets be suspended until the cost-allocation is established by FERC. The Brookings docket is before the Commission, awaiting a Final Order, and although the Hampton-Alma docket has been referred to the Office of Administrative Hearings, the first Prehearing Conference has not yet been noticed or held. These dockets are all currently in limbo.

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. CapX 2020 was predicated on 2004 and 2005 forecasts for a 2.49% annual increase in demand, and instead since 2006, peak demand has dropped over 15%. Housing starts have been and will continue to be at a standstill for the foreseeable future. At the time of the evidentiary hearing, CapX 2020 applicants did not have construction capital secured and had been pitching the project to Lehman Brothers! Now cost recovery is even more uncertain. This is a good time to take a deep breath and accept additional comments prior to any decision.

NoCapX 2020 and U-CAN also 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.

II. MOTION FOR ORDER TO SHOW CAUSE

With this Motion, NoCapX 2020 and U-CAN request that the Commission issue an Order to Show Cause and that the Applicants comply with Order Point 4 of the Order Granting

Certificate of Need, April 29, 2009, or to show cause why the Certificate of Need should not be void for non-compliance. The Certificate of Need Order requires that:

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

Order Granting Certificates of Need With Conditions, April 29, 2009, modified on August 10, 2009. This compliance filing has not been made.

A. Applicants must disclose each project's transmission capacity.

Throughout the Certificate of Need evidentiary hearing, thermal limits and stated capacity of the lines was much higher than that used as an input in the EMF modeling provided. The thermal limits, capacity, of the lines range from 2050-2211MVA. Kline, Tr. Vol 7, p. 55, l. 23-24 (capacity); Ex. 76, Shedin Attachment J, Applicants' Response to JI IR No. 3 (2211MVA); Kline, Tr. Vol. 7, p. 57, l. 4 (2050). MVA is essentially MW, "MW is the lion's share of MVA." Kline, Id. If the line is double circuited, the capacity would doubled, 4,100 MVA. Kline, Tr. Vol. 7, p. 57, l. 8. That number is consistent with the amperage and MVA levels in the May 25, 2010 filings in the Brookings docket, which included undergrounding estimates for a Lakeville segment, the Alma river crossing on the Hampton-Alma/LaCrosse line and a section of the Fargo-Monticello line.¹ The amperage and MVA levels required as stated in the undergrounding studies is NOT consistent with Applicants' claims for EMF and public relations purposes. The applicants must disclose each project's transmission capacity as required by the Commission's Order Granting Certificates of Need With Conditions.

B. Applicants must declare ownership interests of each project

¹ Specific citations to capacity assumptions in Applicant's May 25, 2010 filings will be provided in a later NoCapX 2020 and U-CAN Comment in this docket.

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 provisionally accepted the CapX 2020 application with express knowledge that ownership was uncertain and 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.

1. Applicants are requesting rate recovery before ownership or ownership structure has been disclosed.

Applicant Xcel Energy has requested the Commission grant rate recovery for CapX 2020 projects, but has not disclosed ownership interests. Given that Xcel is unwilling to risk \$1.9 million, as stated in the cost-recovery docket (09-1048), that it will delay the Brookings project rather than risk timing of just \$1.9 million in CapX expenses, the uncertainty of ownership and unwillingness of the CapX Applicants to disclose ownership interests and provide certainty, the Commission should not be ordering any recovery for any part of CapX 2020. The Commission's prior Order to disclose ownership interests and Xcel's failure to disclose and the applicants 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.

C. Changes in ownership and capacity triggers review under Minn. R. 7849.0400

Changes in ownership and capacity triggers review under Minn. R. 7849.0400 – ownership is a significant factor within the Commission's regulatory jurisdiction:

- B. A power plant capacity addition or subtraction smaller than the lesser of 80 megawatts or 20 percent of the capacity approved in a certificate of need issued by the commission does not require recertification.
- C. A change in power plant ownership smaller than the lesser of 80 megawatts or 20 percent of the capacity approved in a certificate of need issued by the commission does not require recertification.
- D. The applicant shall notify the commission as soon as it determines that a change described in item A, B, or C is imminent, detailing the reasons for the change.

Minn. R. 7849.0400, Subparts 2(B),(C),(D).

III. CAPX 2020 APPLICANTS MUST DISCLOSE TRANSMISSION CAPACITY AND OWNERSHIP

NoCapX 2020 and United Citizen Action Network support granting of a variance to allow more time for Comment, though additional “timing focused” comments will be most likely be filed separately prior to the 15 day deadline, June 1, 2010. Whether this variance is granted or not, NoCapX and U-CAN request that the Commission issue an Order to Show Cause and that the CapX 2020 applicants disclose each project’s transmission capacity, ownership and ownership structure or explain why its Certificates of Need should not be void for non-compliance. The Orders of the Commission, Order Point 4 specifically, should not be disregarded.

June 1, 2010



Carol A. Overland #254617
Attorney for NO CAPX 2020 & U-CAN
OVERLAND LAW OFFICE
P.O. Box 176
Red Wing, MN 55066
(612) 227-8638 overland@redwing.net
www.legalelectric.org
www.nocapx2020.com

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

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

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

Issue Date: June 10, 2010

**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

**NOTICE AND
ORDER TO SHOW CAUSE**

—

To: Michael Krikava, Attorney for CapX 2020 Applicants Great River Energy, Northern States Power and others

On June 1, 2010, a Motion for Order to Show Cause in this proceeding was filed on behalf of NoCapX 2020 and United Citizens Action Network (UCAN).

On April 29, 2009, an Order Granting Certificates of Need With Conditions, as modified by the Order Granting and Denying Motions for Reconsideration, and Modifying Conditions of August 10, 2009, required that:

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

However, CapX 2020 applicants have failed to make this compliance filing.

In light of the CapX 2020 applicants failure to make the compliance filing required in the proceeding,

IT IS HEREBY ORDERED:

1. By June 30, 2010, the CapX 2020 Applicants Great River Energy, Northern States Power and others shall make a compliance filing, disclosing for each project, the project's transmission capacity, owners, and share of ownership interest, or shall file a Memorandum and Supporting Affidavit to show cause why the Certificates of Need should not be void for non-compliance.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)