

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application for a
Route Permit for the Bemidji – Grand
Rapids 230kV Transmission Project

ORDER ON INTERVENTION


This matter came before Administrative Law Judge Eric L. Lipman upon the alternative motions of NoCapX 2020 and United Citizens Action Network for intervention and an adjustment of the timelines in the Third and Fourth Prehearing Orders.

Based upon the submissions of counsel, and upon all of the files, the Administrative Law Judge makes the following:

ORDER

1. The Petition for Intervention is DENIED.
2. The Motion to adjust the schedule in this matter is DENIED.

Dated: August 12, 2010


ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

NoCapX 2020 and United Citizens Action Network petition for intervention as parties in this matter and for an adjustment of the timelines set forth in the Third and Fourth Prehearing Orders. For the reasons outlined below, the requests for relief are not timely or well-taken.

I. The Motion for Intervention

In proceedings involving the routing of high voltage transmission lines, any person seeking intervention as a party is required to formally petition for this status. The petition for intervention shall "show how the petitioner's legal rights, duties, or privileges may be determined or affected by the contested case ... and shall indicate petitioner's statutory right to intervene if one should exist."¹ Regrettably, however, the movants' filings do neither. They simply assert that they are parties in other matters before the Public Utilities Commission and that their legal rights will be impacted by the outcome of these proceedings.² These assertions, however, without more, fall short of the requirements of the applicable rules.

Likewise important, the petition for intervention comes very late in these proceedings. The movants' petition was filed 7 and ½ months after the closing date for interventions; 3 and ½ months after the contested case hearings were completed; and 2 months after the other parties filed their post-hearing comments or briefs.³ By any measure, the movants have arrived too late.⁴

II. The Motion to Adjust the Schedule of Proceedings

In the alternative, the movants request that the schedule set forth in the Third and Fourth Prehearing Orders be outwardly adjusted so as to confer upon them, and other members of the public, a seven-day comment period following the filing of the Final Environmental Impact Statement (FEIS). OES and the Applicants earlier-agreed that the receipt of the FEIS would be the last milestone in this proceeding before the hearing record closed.

The movants make three key arguments in support of their request for modifying the schedule of proceedings: (1) comments that were critical of the scoping process in this matter were not disclosed by the Office of Energy Security (OES) until April 20, 2010; (2) in a letter dated April 15, 2010, the U.S. Environmental Protection Agency raised a series of nine concerns as to features of the Draft Environmental Impact Statement (DEIS); and (3) in other cases, the Scheduling Order has provided for closing the public comment period after the submission of the FEIS. None of these arguments is availing.

¹ See, Minn. R. 1400.6200, subp. 1 (2007); *accord*, Minn. R. 1405.0900, subp. 1 (2007).

² See, *Motion to Intervene*, at 1-2 (August 9, 2010).

³ See, *In the Matter of the Application for a Route Permit for the Bemidji – Grand Rapids 230kV Transmission Project*, First and Third Prehearing Orders, OAH Docket No. 8-2500-20825-2 (October 23, 2009 and March 16, 2010).

⁴ Compare generally, *In the Matter of the Application of Enbridge Pipelines (Southern Lights) LLC for a Certificate of Need for the Alberta Clipper Pipeline Project and the Southern Lights Crude Oil Pipeline Project*, Fourth Prehearing Order, OAH Docket No. 8-2500-19094-2 (E-Docket No. 4936550) (While the Commission's intervention rules "welcom[e] litigants to seek leave to participate as formal parties, intervention is not a standardless affair").

First, if the disclosures made by OES on April 20, 2010 were matters of concern to the movants, or others, the public comment period in this matter was open for a period of 13 calendar days after this date – until May 3, 2010. This would have been the time to submit critiques of the record as it existed on April 20, 2010.

Second, with respect to these documents, or the U.S. Environmental Protection Agency's letter of April 15, 2010, if the movants continue to have concerns following the release of the Administrative Law Judge's report, they can address those topics by filing exceptions to the Report directly with the Commission.⁵ The current schedule does not need to be adjusted in order for the movants to signal their concerns.

Lastly, to the extent that the movants argue that the ordinary practice in transmission line cases is to hold open the public comment period for period of days after receipt of the FEIS, the argument is not persuasive. Not only is such result not required by statute or rule,⁶ it does appear to have occurred even in an instance cited by the movants for this proposition. Movants assert that *In the Matter of the Application for a Route Permit for the Monticello to St. Cloud 345kV Transmission Line Project*, OAH Docket No. 15-2500-20665-2 (MPUC TL-09-246), "comments were received after the FEIS was issued"⁷ Yet, this does not appear to be the case. In that matter, the public comment period closed on March 19, 2010 and the FEIS in that matter was filed some 7 days later on March 26, 2010.⁸ Tellingly, counsel for the movants even submitted her own comments in that matter, on March 19, 2010, and made reference to features of the *Draft Environmental Impact Statement* in those remarks.⁹

The movants are not entitled to an adjustment of the schedule in this matter.

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⁵ See, *In the Matter of the Application for a Route Permit for the Bemidji – Grand Rapids 230kV Transmission Project*, Fourth Prehearing Order, OAH Docket No. 8-2500-20825-2 (July 29, 2010).

⁶ Compare, Minn. Stat. § 216E.03 (2009); Minn. R. 7850.2600 (2009).

⁷ See, Letter from Counsel, OAH Docket No. 8-2500-20825-2 (August 5, 2010).

⁸ See, *In the Matter of the Application for a Route Permit for the Monticello to St. Cloud 345kV Transmission Line Project*, Second Prehearing Order, OAH Docket No. 15-2500-20665-2 (January 29, 2010) (E-Docket No. 20101-46571-01).

⁹ See, Public Comment, OAH Docket No. 8-2500-20825-2 (March 19, 2010) (E-Docket No. 20103-48197-01).



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August 13, 2010

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Re: *In the Matter of the Application for a Route Permit for the Bemidji – Grand Rapids 230kV Transmission Project;*
MPUC Docket No. E-017, E-015, ET-6 / TL-07-1327
OAH Docket No. 8-2500-20825-2

Dear Parties:

The document listed below has been filed with the E-Docket system and served as specified on the attached service list.

Order on Intervention

Sincerely,

/s/ Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

Telephone: (651) 361-7842

ELL:mo
Encl.

cc: Docket Coordinator

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CERTIFICATE OF SERVICE

Case Title: <i>In the Matter of the Application for a Route Permit for the Bemidji – Grand Rapids 230kV Transmission Project</i>	OAH Docket No. 8-2500-20825-2 MPUC Docket No. E-017, E-015, ET-6 / TL-07-1327
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Mary Osborn certifies that on the 13th day of August, 2010, she served a true and correct copy of the **Order on Intervention**; by electronic mail (or as indicated on the Service List) to the following individuals:

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