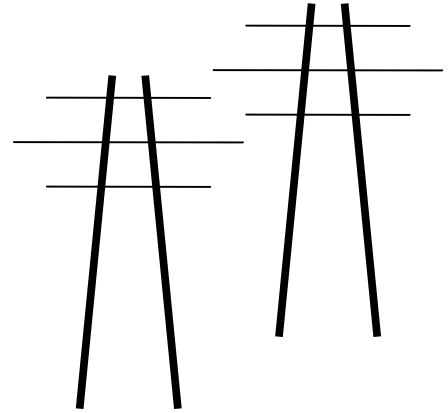


# Legalelectric, Inc.

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May 20, 2010

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

via eFiling

RE: NoCapX 2020 and U-CAN Motion to Suspend Routing Docket Proceedings  
CapX 2020 Brookings-Hampton 08-1474; Hampton-Alma 09-1448

Dear Dr. Haar:

Enclosed for filing please find NoCapX 2020 and United Citizens Action Network's Motion to Suspend Routing Docket Proceedings in the above-entitled dockets. Attached for the record also please find Attachment A – Applicants' Notice of Change in Timing of the Brookings Project and Interim Development Plan, Docket ET-2, E002 et al./CN-06-1115; Attachment B – Xcel Energy's Request for Reconsideration or Clarification – Transmission Cost Recovery Rider, Docket E002/M-09-1048; and Attachment C, NoCapX & U-CAN Motion to Intervene Out-of-Time, FERC Docket ER09-431-000.

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

Very truly yours,

Carol A. Overland  
Attorney at Law

**Enclosures:**

**Attachment A** – Applicants' Notice of Change in Timing of the Brookings Project and Interim Development Plan, Docket ET-2, E002 et al./CN-06-1115.

**Attachment B** – Xcel Energy's Request for Reconsideration or Clarification – Transmission Cost Recovery Rider, Docket E002/M-09-1048.

**Attachment C** – NoCapX 2020 and U-CAN Motion to Intervene Out-of-Time and Submit Comments, FERC Docket ER-09-1431-000

**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 the Route Permit  
Application for a 345 kV Transmission  
Line from Brookings County, South  
Dakota to Hampton, Minnesota**

**PUC Docket No. ET2/TL-08-1474  
OAH Docket No. 7-2500-20283-2**

**PUC Docket No. ET2-TL-09-1448**

**NO CAPX 2020 and UNITED CITIZENS ACTION NETWORK  
MOTION TO SUSPEND PROCEEDINGS**

**in the**

**CA[X 2020 BROOKINGS-HAMPTON AND HAMPTON-ALMA ROUTING DOCKETS**

CapX 2020 has 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.” Certificate of Need, May 22, 2009 and August 10, 2009. 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 filed a “Notice of Change in Timing of the Brookings Project and Interim Development Plan” 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 its cost-recovery mechanism through FERC. Xcel is eager to establish rate recovery for the Brookings project, but is not willing to take a \$1.9 million risk to move forward on Brookings and is seeking a “signal.”

Despite the May 17, 2010 filings in the rate recovery and Certificate of Need docket, the CapX

2020 applicants did not make a similar filing in the above-captioned CapX 2020 Brookings-Hampton routing docket, which is immediately before the Commission awaiting argument and an Order regarding the route for the CapX 2020 Brookings to Hampton transmission line (hereinafter “Brookings”), that very transmission line which is the subject of the Applicant’s May 17, 2010 filings! Thankfully, a party to this docket did enter these filings in the Brookings routing docket record to put this delay notice front and center before the Commission as it makes its decision. NoCapX 2020 further enters these CapX 2020 filings in the Hampton-Alma (f/k/a Hampton-LaCrosse) docket, and requests that activities in the Brookings and Hampton routing dockets be suspended until the cost-allocation is established by FERC. The Hampton-Alma line is physically and electrically connected to the Brookings line that is delayed. It is the Brookings line that provides electricity to the Hampton line and together they comprise two-thirds of the joint CapX 2020 Certificate of Need – they are connected. 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. Procedurally, this is a good time for a pause... or outright dismissal of the routing dockets.

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, the subject of an imminent appellate court decision. CapX 2020 applicants now admit in the May 17, 2010 filings that the project will not be in-service by the expected date in the Certificate of Need. This admission of delay because of questions of cost-recovery reveals the driver of this line – economics – and demonstrates that it will not be built absent immediate rate recovery. This revelation also confirms that there is no urgency for this line, no urgent electrical or reliability need, and that the lights will not go out if it is not in-service when expected. This is no surprise to Intervenors<sup>1</sup>.

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<sup>1</sup> NoCapX and U-CAN also note that the rate recovery statute applies to “public utility or utilities providing transmission service” only, and that although the Applicants were Ordered to identify the ownership structure for this project, they have made no commitments, nor any compliance filing, and have been asking that the Commission issue rate recovery Orders based on minimums of ownership that

NoCapX and U-CAN therefore request that these two connected routing dockets, Brookings-Hampton and Hampton-Alma, be suspended pending resolution of cost allocation.

Historically, utilities began to recover for the costs of transmission when a line was energized. It was not until the 2005 Omnibus Energy Bill that any utility had any reasonable expectation of “construction work in progress” rate recovery:

**Minn. Stat. §216B.16, Subd. 7b. Transmission cost adjustment.**

*(a) Notwithstanding any other provision of this chapter, the commission may approve a tariff mechanism for the automatic annual adjustment of charges for the Minnesota jurisdictional costs of (i) new transmission facilities that have been separately filed and reviewed and approved by the commission under section [216B.243](#) or are certified as a priority project or deemed to be a priority transmission project under section [216B.2425](#); and (ii) charges incurred by a utility that accrue from other transmission owners' regionally planned transmission projects that have been determined by the Midwest Independent System Operator to benefit the utility, as provided for under a federally approved tariff.*

*(b) Upon filing by a public utility or utilities providing transmission service, the commission may approve, reject, or modify, after notice and comment, a tariff that:*

- (1) allows the utility to recover on a timely basis the costs net of revenues of facilities approved under section [216B.243](#) or certified or deemed to be certified under section [216B.2425](#) or exempt from the requirements of section [216B.243](#);*
- (2) allows the charges incurred by a utility that accrue from other transmission owners' regionally planned transmission projects that have been determined by the Midwest Independent System Operator to benefit the utility, as provided for under a federally approved tariff. These charges must be reduced or offset by revenues received by the utility and by amounts the utility charges to other regional transmission owners, to the extent those revenues and charges have not been otherwise offset;*
- (3) allows a return on investment at the level approved in the utility's last general rate case, unless a different return is found to be consistent with the public interest;*
- (4) provides a current return on construction work in progress, provided that recovery from Minnesota retail customers for the allowance for funds used during construction is not sought through any other mechanism;*
- (5) allows for recovery of other expenses if shown to promote a least-cost project option or is otherwise in the public interest;*
- (6) allocates project costs appropriately between wholesale and retail customers;*
- (7) provides a mechanism for recovery above cost, if necessary to improve the overall economics of the project or projects or is otherwise in the public interest; and*
- (8) terminates recovery once costs have been fully recovered or have otherwise been reflected in the utility's general rates.*

*(c) A public utility may file annual rate adjustments to be applied to customer bills paid under the tariff approved in paragraph (b). In its filing, the public utility shall provide:*

- (1) a description of and context for the facilities included for recovery;*
- (2) a schedule for implementation of applicable projects;*
- (3) the utility's costs for these projects;*
- (4) a description of the utility's efforts to ensure the lowest costs to ratepayers for the project; and*
- (5) calculations to establish that the rate adjustment is consistent with the terms of the tariff established in paragraph (b).*

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are illusory and uncertain.. Establishment of cost recovery at this stage by a utility probably more important than the dollar amount.

*(d) Upon receiving a filing for a rate adjustment pursuant to the tariff established in paragraph (b), the commission shall approve the annual rate adjustments provided that, after notice and comment, the costs included for recovery through the tariff were or are expected to be prudently incurred and achieve transmission system improvements at the lowest feasible and prudent cost to ratepayers.*

The Applicants have been making their case for “Construction Work In Progress” payments in the TCR docket, the Commission approved 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. Based on the sharply decreased demand experienced by the CapX 2020 utilities since 2006, particularly Xcel; the admitted “uncertainties” of cost-allocation and schedule in the FERC docket regarding the MISO tariff; cost-apportionment issues in other jurisdictions<sup>2</sup>, the denial of Xcel’s request for immediate cost recovery by the Commission, the delay of admittedly more than one year; Xcel’s framing the issue as “whether further project development activities should continue, be scaled back, or cease,” and the Applicants’ continued failure to disclose ownership structure, it is apparent that this project, and CapX in its entirety, should not move forward. If Xcel is not willing to take that \$1.9 million risk, that sends a “signal” that should be taken to heart -- neither should the Commission and the ratepayers be willing to take that risk. The Hampton-Alma line is physically and electrically connected to the delayed Brookings line – they are connected. Neither the Brookings nor the Hampton-Alma transmission routing dockets should go forward at this time.

May 20, 2010



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<sup>2</sup> See *Illinois Commerce Commission, et al. v. Federal Energy Regulatory Commission*, 576 F.3d 470, rehearing denied 2009 LEXIS 24192 (7<sup>th</sup> Cir. 2009) rejecting PJM cost-apportionment scheme and remanding to FERC.

# **Attachment A**

Applicants' Notice of Change in Timing of the Brookings Project and Interim  
Development Plan, Docket ET-2, E002 et al./CN-06-1115



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May 17, 2010

**Michael C. Krikava**  
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mkrikava@briggs.com

**VIA ELECTRONIC FILING**

Burl W. Haar  
Minnesota Public Utilities Commission  
Suite 350  
121 East Seventh Place  
St. Paul, MN 55101-2147

**Re: 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  
Three 345 kV Transmission Lines with Associated System Connections  
MPUC Docket No.: ET-2, E-002, et al./CN-06-1115  
OAH Docket No.: 15-2500-19350-2**

Dear Dr. Haar:

Enclosed for electronic filing please find Applicants' Notice of Change in Timing of the Brookings Project and Interim Development Plan in the above-captioned matter. By copy of this letter, all parties of record are being served with same.

Very truly yours,

BRIGGS AND MORGAN, P.A.

*/s/ Michael C. Krikava*

Michael C. Krikava

MCK/rhh  
Enclosure  
cc: Service List

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

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

IN THE MATTER OF THE APPLICATION  
OF , NORTHERN STATES POWER  
COMPANY (D/B/A XCEL ENERGY),  
GREAT RIVER ENERGY, AND OTHERS  
FOR CERTIFICATES OF NEED FOR  
THREE 345 KV TRANSMISSION LINES  
WITH ASSOCIATED SYSTEM  
CONNECTIONS

Docket No. E002/CN-06-1115

**Notice of Change in Timing of the  
Brookings Project and Development  
Plan**

Pursuant to Minn. R. 7849.0400, Subp. 2(H), Northern States Power Company, a Minnesota corporation (“Xcel Energy”), and Great River Energy (collectively “Applicants”), hereby submit this Notice of Change in Timing of the Brookings Project and describe our current development plan (this “Notice”) to the Minnesota Public Utilities Commission (the “Commission”). Through this filing, Applicants provide the Commission with the required notice of a change in the timing of the in-service date of the Brookings Project from that certified in the Commission’s May 22, 2009 *Order Granting Certificates of Need With Conditions*, and its August 10, 2009 *Order Granting and Denying Motions for Reconsideration and Modifying Conditions* (“Certificate Of Need Order”) in this Docket. Applicants also provide our Development Plan describing actions taken to date and ongoing development activities that we believe will prudently put the project in position to minimize further delay of the in-service date once adequate resolution of cost allocation allows the project to move forward.

Due to the current uncertainty surrounding the cost allocation methodology which may be applied to the Brookings Project by the Midwest Independent Transmission System Operator, Inc. (“MISO”), Applicants expect the in-service date of the Project will shift to 2015, a delay of more than a year. The Commission has expressed reservation about the impact of uncertainty around the Brookings project as the result of the cost allocation issue and has been reluctant to authorize recovery of development costs by Xcel Energy. Xcel Energy filed for reconsideration and/or



clarification of the Commission's TCR Order today as well. As a practical matter these two items, schedule and cost recovery, are directly related. Assuming relief in the other docket, Applicants, and the other utilities participating in the Brookings Project, currently plan to continue pursuing all critical permits, preliminary engineering and preliminary preparations for right-of-way acquisition to minimize overall project costs upon the resolution of the cost allocation issues related to the Project.

We believe we have established a prudent approach, without over committing, to managing the project that preserves our ability to implement at the earliest possible time. Currently we have invested approximately \$16 million in investment in the project. Under the plan outlined, that investment would increase to approximately \$34 million by mid 2011, prior to commencing construction and when cost recovery certainty should be more apparent. Applicants welcome the Commission's guidance on our plan.

## INTRODUCTION

In this Docket, the Commission approved construction of three new 345 kV transmission lines which are part of the CapX2020 Group 1 Projects. Specifically, the Commission granted certificates of need for construction of: (1) the Brookings Project, a 345 kV transmission line and associated connections from the Brookings County Substation, near White, South Dakota, to the Twin Cities metropolitan area; (2) the La Crosse Project, a 345 kV transmission line and associated connections from the Twin Cities through Rochester to La Crosse, Wisconsin; and (3) the Fargo Project, a 345 kV transmission line from Fargo, North Dakota to Alexandria, St. Cloud and Monticello (collectively the "Three 345 kV Projects").<sup>1</sup> As part of its Certificates of Need, the Commission specified the "size, type and timing" of the facilities.

To date, the size, type and timing, and costs estimates of the Three 345 kV Projects remain within the boundaries specified in the Certificate of Need Order, with one exception. For reasons described in this filing, the in-service date for the Brookings Project is expected to be delayed for more than one year, triggering this filing under Minn. R. 7849.0400, subp. 2(H). Further, Applicants provide to the Commission our Interim Development Plan describing how we plan to proceed in an effort to mitigate the effects of the delay consistent with the level of support for the plan.

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<sup>1</sup> In addition to the Three 345 kV Projects, the CapX2020 Group 1 Projects also include a 230 kV project from Bemidji to Grand Rapids, Minnesota. See, *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.

## TIMING OF THE BROOKINGS PROJECT

Pursuant to Minn. R. 7849.0400, Subp. 2(H), if Applicants determine that a certified project is likely to be delayed more than one year, Applicants “must inform the commission of the desired change and detail the reasons for the change.” Applicants now anticipate the likely in-service date for the Brookings Project will be in the second quarter of 2015, a delay of over one year from what was specified in the Certificate of Need Order. As a result, Applicants are hereby informing the Commission of this change.

One of the critical requirements that must be established with some certainty to obtain utility commitments of the capital necessary to proceed with construction of the Brookings Project is the implementation of a final and enforceable cost allocation and recovery mechanism under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (“Tariff”). As the Commission is aware, the MISO Tariff structure applicable to the Brookings Project is in transition and has been the subject of contested proceedings at the Federal Energy Regulatory Commission (“FERC”).

In the Certificate of Need application for the Three 345 kV Projects, the Applicants indicated their expectation the Brookings Project would be classified as a Regional Baseline Reliability Project under the MISO Regional Expansion Criteria and Benefits (“RECB”) cost allocation provisions of the Tariff. However, the Applicants recognized such a classification was not certain. Indeed, under its prior Tariff, MISO preliminarily classified the Brookings Project as a Generator Interconnection Project. Previously, MISO’s Tariff called for the equal sharing of costs for transmission projects designated as Generator Interconnection Projects between the transmission-owning utilities and the generators who will benefit from that project, with transmission service credits available to the generator(s) who funded the Network Upgrades associated with the generator interconnection. (MISO has not made a final classification determination.)

The prior Tariff created difficulties for many stakeholders and was deemed unworkable for application to a substantial project such as Brookings. After undertaking a lengthy stakeholder process, on July 9, 2009, MISO filed proposed interim amendments to its Tariff with FERC substantially revising the method for allocating the costs of such Generator Interconnection Projects.<sup>2</sup> This filing was contested by a number of stakeholders. Nevertheless, FERC accepted the proposed

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<sup>2</sup> *Midwest Independent Transmission System Operator, Inc. and The Midwest ISO Transmission Owners*, Initial Filing, Docket No. ER-09-1431-000, July 9, 2009(as supplemented on September 17 and 18, 2009).

Tariff revisions, but directed MISO to work with stakeholders to develop a permanent solution.<sup>3</sup> FERC further directed MISO to file its proposed final cost allocation methodology by July 15, 2010.<sup>4</sup>

Applicants and many other stakeholders, including the Minnesota Office of Energy Security (“OES”) and the Organization of MISO States (“OMS”) 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. MISO has unambiguously stated that it will comply with FERC’s requirement to make a July 15, 2010 filing; yet it 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.

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.<sup>5</sup> Further, the Commission has recently expressed reluctance in Xcel Energy’s Transmission Cost Recovery Rider proceeding (Docket No. E-002/M-09-1048) to allow the beginning of recovery of the costs incurred for the Brookings Project until these cost allocation issues are resolved.<sup>6</sup>

The utilities participating in the development and construction of the Brookings Project cannot as a group, make final investment decisions without a better

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<sup>3</sup> *Midwest Independent Transmission System Operator, Inc. and The Midwest ISO Transmission Owners*, Order Conditionally Accepting Tariff Amendments and Directing Compliance Filing, Docket No. ER-09-1431-000, October 23, 2009 (“October 23 Order”).

<sup>4</sup> *Id.*

<sup>5</sup> Applicants note that the uncertainties surrounding cost allocation under the MISO Tariff pertain only to the Brookings Project and do not create uncertainties surrounding the La Crosse or Fargo Projects as both of those projects were classified by MISO as “Baseline Reliability” facilities and there is no dispute or uncertainty as to the operation of the MISO Tariff for such projects.

<sup>6</sup> *In the Matter of the Northern State 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 and 2009 True-up Report*, ORDER APPROVING 2010 TCR PROJECT ELIGIBILITY AND RIDER, 2009 TCR TRACKER REPORT, AND TCR RATE FACTORS, Docket No. E-002/M-09-1048 (April 27, 2010).

understanding of how the costs of the Brookings Project will be treated under the MISO Tariff. More certainty in the cost allocation methodology will allow Applicants and the other CapX2020 participants to better evaluate their investment decisions in the Brookings Project. 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.

At this time, it is likely that the earliest these cost allocation issues may be resolved is 2011. (MISO will make a filing in July 2010 and it is likely that filing will be subject to a contested proceeding at FERC.)

Naturally, this uncertainty requires the Applicants and other possible owners of the Brookings Project to be prudent in its pre-construction activities and dollars spent. The Project has re-evaluated the types of activities to pursue in 2010 and consequently, the costs incurred. A reallocation of the activities does not render possible the in-service date included in the Certificate of Need Order (2<sup>nd</sup> Quarter 2013). It is unlikely that the CapX2020 utilities will be able to make major project commitments and incur major expenditures before summer of 2011.

Applicants have re-scheduled the bulk of construction activities to 2012 assuming cost allocation issues will have been adequately addressed by mid 2011. A review of the remainder of the project schedule indicates completion of the project would slip by over a year, to 2015, as the result.

While Applicants remain confident that a cost allocation methodology for the Brookings Project will be successfully developed, the timing is uncertain. Moving the start of the bulk of construction related activities of the Brookings Project to 2012 will allow some time for resolution of cost allocation issues and hopefully will facilitate investment decisions. If cost allocation is not adequately addressed in 2011 there remains the risk of further delay.

### **INTERIM DEVELOPMENT PLAN**

Given the delay in the commencement of construction of the Brookings Project, Applicants reassessed what further project development activities would be prudent to continue while the cost allocation issues are resolved.

As the Commission is aware, Applicants, and the other proposed owners of the Brookings Project have entered into a Project Development Agreement (“PDA”) for the preliminary permitting and initial development of the Brookings Project. Pursuant to the PDA, the utilities participating in the Brookings Project would make

final investment decisions when all critical permits – such as a certificate of need and route permit issued by the Commission and all necessary South Dakota permits – are obtained. Our development agreements also provide for some preliminary engineering primarily to support permitting and subsequent procurement, and some preliminary preparation for right of way acquisition.

We believe that it is prudent to continue with these initial development activities on the project in year 2010, while the cost allocation issues are being resolved, so that we can preserve our ability to meet an in-service date of 2015. Virtually all stakeholders agree that the Brookings Project is an important system addition that will provide system and local benefits while also allowing significant amounts of new generation to be interconnected and deployed in the wind-rich Buffalo Ridge region of southwestern Minnesota and southeastern South Dakota. The project, in concert with the Fargo project, also enhances transmission capacity available to and from North Dakota, where both Applicants also serve loads. While MISO cost allocation is a difficult and frustrating issue, that issue does not override the fundamental that this project is worth constructing. We believe we have been prudent in developing this project and that certain development activities should be pursued and encouraged by the Commission in order to avoid substantial costs to reinitiate those activities at a later point.

Through 2009 we have invested approximately \$16 million and approximately another \$7 million is budgeted to be spent in 2010 for the remainder of the permitting process and for some preliminary engineering and preliminary right-of-way preparations. Another \$11 million in development work is anticipated in 2011 before full investment commitments are made. These expenditures represent a very small percentage of the estimated total cost of the Brookings Project, and we believe that making these expenditures in anticipation of a satisfactory resolution of the relevant MISO Tariff issues is prudent. and will help to secure a 2015 in-service date for the Brookings Project. By continuing the work contemplated by the PDA, we will help to ensure that once all cost allocation issues have been resolved, the project participants will be in a position to make investment commitments and begin procurement and construction without further delay.

Importantly, continuing development work in this interim period will help to minimize overall project costs in the long run. Reducing investment further in 2010 and 2011, and then remobilizing resources after a FERC order in the MISO Tariff proceeding would in all likelihood increase the total investment that will be needed to bring the Brookings Project to successful completion. We estimate the impact of scaling back permitting and other preliminary development work until all cost

allocation issues are resolved would add \$15 to \$20 million per year to the total cost of the Brookings Project.

As the discussions over the MISO Tariff and recovery of project development costs at the retail level have continued, Applicants felt it prudent to reassess our plans to continue development of the Brookings Project under the PDA. Due to the material cost savings that continued preliminary development work would contribute to the overall installed cost of the Brookings Project, our assessment concluded that continuing to pursue all necessary permits and beginning preliminary engineering and preliminary right-of-way acquisition preparations continues to be prudent, at least through 2010.

It is therefore our goal to continue working toward obtaining of critical permits and preliminary development work for the rest of 2010. We welcome the Commission's guidance as to the prudence of this course of action. Toward the end of 2010, we also believe it prudent to re-evaluate the progress in resolving the MISO cost allocation issues, review the progress made in obtaining permits and preliminary development work, and reassess our development plans for 2011. To the extent the Commission deems it appropriate Applicants are willing to provide an update at that time for the Commission to assess the appropriateness of continuing to spend money on our development plans for 2011.

#### **SERVICE**

Pursuant to Minn. R. 7849.0400, Subp. 2(H), a copy of this notice is being provided to all intervenors in this docket, plus the other parties noted on the enclosed service list. The rule further provides intervenors 15 days to comment on the changed circumstance and the Commission is to notify us within 45 days whether further hearings are needed. To the extent the Commission receives comment from other parties to the proceeding, Applicants respectfully request the opportunity to reply to any arguments put forward.

#### **CONCLUSION**

Applicants are providing this Notice to the Commission that the Brookings Project is likely to be delayed more than one year past the date approved in the Commission's Certificate of Need Order. Applicants believe that further hearings are not necessary and that the change in the in-service date of the Brookings Project would not "reasonably have resulted in a different decision." *See* Minn. R. 7849.0400, Sup. 2(H). To the contrary, the needs identified to be served by the Brookings Project have not changed and will be adequately served by the project under the new schedule.

Due to the delay in the in-service date, Applicants are also providing our Interim Development Plan to the Commission. Applicants appreciate any guidance the Commission deems appropriate to provide for our plans to proceed with preliminary development while the MISO cost allocation issues are being resolved. Applicants believe we have prudently assessed our options and that continued preliminary development activities for the Brookings Project are prudent to undertake for the rest of this year. We are willing to provide additional as we reassess the status of the Brookings Project for 2011.

Dated: May 17, 2010

**Respectfully submitted:**

**BRIGGS AND MORGAN**

Jennifer Thulien Smith  
Assistant General Counsel  
Xcel Energy Services Inc.  
414 Nicollet Mall  
Minneapolis, MN 55401

By: /s/ Michael C. Krikava  
**Michael Krikava (#182679)**  
**Lisa M. Agrimonti (#272474)**  
**2200 IDS Center**  
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Eric Olson  
Vice President and General Counsel  
Great River Energy  
12300 Elm Creek Boulevard  
Maple Grove, MN 55369

**Attorneys for Northern States Power  
Company, a Minnesota corporation**

# **Attachment B**

Xcel Energy's Request for Reconsideration or Clarification – Transmission Cost  
Recovery Rider, Docket E002/M-09-1048.





414 Nicollet Mall  
Minneapolis, Minnesota 55401-1993

May 17, 2010

**--Via Electronic Filing--**

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

RE: REQUEST FOR RECONSIDERATION OR CLARIFICATION  
TRANSMISSION COST RECOVERY ("TCR") RIDER  
DOCKET NO. E002/M-09-1048

Dear Dr. Haar:

Enclosed is Xcel Energy's Request for Reconsideration or Clarification in the above referenced docket. The submission of this request for reconsideration stays the effect of the Commission Order. Thus the Company is not submitting a compliance filing to restate the Transmission Cost Recovery rate factors to be in effect in 2010, required under ordering paragraph 8. The Company will submit the compliance filing after the Commission acts on the Company's reconsideration request.

Copies of this filing have been served on those parties on the attached service list. Please call me at (612) 330-6750 if you have any questions regarding this filing.

SINCERELY,

/s/

MARK SUEL  
REGULATORY CASE SPECIALIST

Enclosure  
c: Service List

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

David C. Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

IN THE MATTER OF THE PETITION OF  
NORTHERN STATES POWER COMPANY  
A MINNESOTA CORPORATION, FOR  
APPROVAL OF A MODIFICATION TO ITS  
TCR TARIFF, 2010 PROJECT  
ELIGIBILITY, TCR RATE FACTORS,  
CONTINUATION OF DEFERRED  
ACCOUNTING AND 2009 TRUE-UP  
REPORT

**REQUEST FOR RECONSIDERATION  
OR CLARIFICATION**

DOCKET No. E002/M-09-1048

**INTRODUCTION**

Pursuant to Minn. Stat. §216B.27, subd. 1, and Minn. Rules Part 7829.3000, Northern States Power Company, a Minnesota corporation (“Xcel Energy” or “the Company”) respectfully requests reconsideration or clarification of the Minnesota Public Utilities Commission’s (“MPUC” or “Commission”) April 27, 2010 ORDER APPROVING 2010 TCR PROJECT ELIGIBILITY AND RIDER, 2009 TRC TRACKER REPORT, AND TCR RATE FACTORS (“Order”) in the above-referenced docket.<sup>1</sup>

The Company appreciates that Order allowing the Company recovery through the Transmission Cost Recovery (“TCR”) Rider certain 2010 transmission project costs pursuant to Minn. Stat. §216B.16, Subd. 7b. However, the Order denies recovery, in the 2010 TCR rate factors, of the costs the Company has incurred and expects to incur through the end of 2010 related to the proposed

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<sup>1</sup> The submission of this request for reconsideration stays the effect of the Commission Order. Thus the Company is not submitting a compliance filing to restate the Transmission Cost Recovery rate factors to be in effect in 2010, required under ordering paragraph 8. The Company will submit the compliance filing after the Commission acts on the Company’s reconsideration request.

Brookings - Twin Cities 345 kV transmission line (“Brookings Project”) because the ultimate cost recovery methodology under the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO” or “MISO”) Tariff is not yet determined. The Commission should reconsider its Order because (a) Minn. Stat. §216B. 16, Subd. 7b, (the “Transmission Statute”) was designed to support new transmission projects even when there is uncertainty, and (b) the uncertainty currently challenging the Brookings Project -- cost allocation -- was addressed at the Certificate of Need hearing for the project.

As discussed below, contemporaneous with this Request for Reconsideration, the Applicants to the 345 kV Certificate of Need for the Brookings Project (the Company and Great River Energy, on behalf of the other proposed owners of the project) will submit a Notice of Change in Timing of the Brookings Project, (“Notice of Change Filing”) indicating the in-service date for the project is now anticipated for second quarter 2015. The Notice of Change Filing indicates the prudent steps taken to minimize costs until there is greater certainty regarding the final MISO cost allocation methodology applicable to the Brookings Project as well as to recognize the delays in project schedule that have already occurred.<sup>2</sup>

Xcel Energy respectfully requests that the Commission reconsider the Order or in the alternative clarify its Order. The goal of this petition for reconsideration and our Notice of Change Filing, when taken together, is to achieve an acceptable going forward plan for the Brookings Project that addresses how far the Commission would like the Company and the other CapX2020 participants to proceed until the MISO cost allocation issue is resolved, and the appropriate means of cost recovery (or cost treatment) during that period.

The Company submits this request, in part, because despite the oral statements at the hearing that the Commission does not intend to discourage the CapX2020 participants from continuing to proceed with the Brookings Project while the MISO cost allocation issue is resolved, the Order is silent on this point. The Brookings Project was developed, in part, to implement Minnesota energy policy, by allowing Minnesota utilities, including Xcel Energy, to meet the Renewable Energy Standard (“RES”) requirements adopted by the Legislature (a 25 percent wind generation requirement by 2020 for Xcel

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<sup>2</sup> The revised 2015 in-service date, however, is contingent upon work moving forward for the remainder of 2010 and 2011. Thus, between this request for reconsideration and the changed circumstance filing, the Company seeks to find an acceptable path to keep the Brookings Project moving forward without committing shareholders and customers to an unreasonable level of cost in the event, albeit unlikely, that MISO cost allocation concerns either stop or significantly delay the Brookings Project.

Energy). The Brookings Project already faces uncertainty because it does not neatly fit into any “box” under the MISO Tariff. The Order, perhaps inadvertently, adds to the uncertainty regarding development of the Brookings Project. Statements at the hearing regarding ultimate cost recovery should the project be abandoned heighten our concerns as to whether the Company should perhaps cease an already slowed development schedule for the Brookings Project.

If the Commission wishes to send a strong signal to the Company (and other CapX2020 Participants) to continue Brookings Project development activities, the most direct way to express that policy guidance would be to allow TCR recovery of the Company’s relatively small revenue requirements for expenditures through 2010 (\$1.9 million), despite the uncertainty regarding the eventual MISO cost allocation method for the total Brookings Project costs (which could range up to approximately \$522 million for the Company’s share).

Alternatively, if the Commission does not grant 2010 TCR recovery, the Company respectfully requests that the Commission clarify its Order and provide guidance on (a) whether further project development activities should continue, be scaled back, or cease; and (b) if they are to continue, the investment amount the Company should not exceed pending resolution of the MISO cost allocation issue.

If the Commission does not feel the record is sufficiently developed in this proceeding for the Commission to take this step at this time, we request that the Commission direct the Company, the Office of Energy Security (“OES”) and other interested parties to work through these issues and return a plan to the Commission regarding future investments in the Brookings Project pending resolution of the MISO cost allocation issue.<sup>3</sup>

In summary, the Company and the other CapX2020 participants believe it is important for the Commission to provide clearer direction regarding this project through its Order on reconsideration in this proceeding.

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<sup>3</sup> At hearing the Company orally suggested that one approach would be to agree on the level of costs at various steps that the Company should incur pending certainty regarding future MISO cost recovery. An order requiring the interested parties to work out a solution would be consistent with that approach.

## I. REQUEST FOR RECONSIDERATION

### A. Procedural Background and Summary of Arguments

On May 22, 2009, the Commission issued an Order granting Certificates of Need for the CapX2020 Brookings, Fargo and La Crosse 345 kV transmission lines.<sup>4</sup> On July 14, 2009, the Commission granted a Certificate of Need for the Bemidji 230 kV transmission line.<sup>5</sup>

On September 3, 2009, the Company submitted its proposed TCR petition, seeking Commission approval of the TCR rate factors to be in effect for 2010. In its TCR Petition, the Company requested recovery of \$3.5 million in 2010 revenue requirements for the four CapX2020 projects, which was reduced to \$2.9 million in the Company's reply comments. In its Comments and Reply Comments, the OES recommended the Commission accept the Company request for TCR cost recovery with respect to the Fargo, La Crosse and Bemidji CapX2020 Projects, but recommended that the Company not be allowed TCR recovery for the Brookings Project<sup>6</sup> for the following reasons:

- Xcel [Energy] ratepayers should not be required to pay for costs that may ultimately be assigned to other parties.
- Allowing Xcel [Energy] to recover costs from its ratepayers at this time may have an undue influence on the subsequent proceedings regarding ownership and cost responsibility.

The Commission Order largely followed the OES recommendations.<sup>7</sup> The Order states:

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<sup>4</sup> ORDER GRANTING CERTIFICATES OF NEED WITH CONDITIONS, Docket No. ET-2,E002/CN-06-1115 ("CON Order") (May 22, 2009); and ORDER GRANTING AND DENYING MOTIONS FOR RECONSIDERATION, AND MODIFYING CONDITIONS (August 10, 2009) ("CON Reconsideration Order").

<sup>5</sup> See, *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, ORDER GRANTING CERTIFICATE OF NEED (July 14, 2009).

<sup>6</sup> In its reply comments, the Company reduced the 2010 Brookings Project costs to be recovered in the 2010 TCR rate factors to \$1.2 million. See Xcel Energy Reply Comments at p.8. However, the 2009 TCR true-up included recovery of \$670,000 of revenue requirements associated with the Company's 2009 investments in the Brookings Project after issuance of the Certificate of Need order. So the total proposed 2010 TCR recoveries for the Brookings Project were \$1.9 million in the Company's reply comments.

<sup>7</sup> The Order also limited the 2010 TCR recoveries associated with the Wilmarth to Blue Lake 345 kV reconstruction project to an amount based on the Companies original capital budget estimate (\$6 million) and appears to have established a "cap" on TCR recoveries linked to the Company's initial capital budget estimate. While the Company believes these policy decisions were incorrect for the reasons stated in its Reply Comments and at the April 1 hearing, the Company is not seeking reconsideration of the Order on those issues. The Company will work with the OES in preparation for the 2011 TCR rate factor filing to seek to establish reasonable processes regarding capital budgeting estimates and revisions.

The Commission concurs with the OES, that it is speculative and premature to commence rate recovery on the Brookings CapX line at this point. While the Company suggests that its more conservative request for cost recovery of \$1.2 million should justify inclusion of the Brookings project in its 2010 revenue requirement, the Commission does not agree. Allowing Xcel to recover costs from its ratepayers at this time could potentially have an impact on a subsequent proceeding regarding ownership and cost responsibility for the Brookings project in 2010, due to the continuing uncertainty related to the MISO process and its impact on the final level of cost allocations among the various participants.

This Commission decision appears to be at odds with the record in the CON proceeding, the Transmission Statute authorizing the TCR Rider and the terms of the TCR Rider tariff.

One of the underlying purposes of the TCR enabling legislation was to encourage utilities to undertake long lead time projects that faced substantial risks of never coming to fruition. The Legislature attempted to address both the financial impacts and the regulatory risk by allowing for rider recovery of costs only after certain thresholds are cleared which would indicate the project is likely to proceed (e.g., issuance of a certificate of need).

The Order, by denying rider recovery in spite of having met the statutory criteria, adds back into the mix the very uncertainty that the Legislature intended to alleviate by enacting the Transmission Statute. The final Midwest ISO cost allocation process is not likely to be decided by the Federal Energy Regulatory Commission (“FERC”) until at least 2011. By the time the Commission and Company have greater certainty regarding MISO cost allocation, the Company may have expended several millions of additional dollars. Whether intended or not, the Order has created significant questions about ultimate cost recovery, and as a consequence, caused the Company to question whether the CapX2020 utilities should be further slowing down or even ceasing development activities and expenditures for the Brookings Project until the MISO cost allocation issue is resolved.

Thus the Commission should reconsider the Order and allow the Company to recover the revenue requirements for the Brookings Project in the 2010 TCR rate factors. However, as discussed in Part II, if the Commission does not

allow TCR recovery in 2010, the Commission should clarify its Order to provide guidance on (a) whether further project development activities should continue, be scaled back, or cease; and (b) if the project development efforts are to continue, the investment amount the Company should not exceed pending resolution of the MISO cost allocation issue. Alternatively, should the Commission not feel comfortable taking this step at this time, we request that the Commission direct parties to work through these issues and return to the Commission with a proposal for guidance regarding future investments in the Brookings project.

**B. MISO Cost Recovery Uncertainty Was Recognized in the CON Proceeding And Will Continue To Be An Evolving Uncertainty For Future Projects.**

The Order largely relies on the OES assertions that cost recovery should be denied because of uncertainty regarding the ultimate wholesale transmission cost recovery methodology to be applied to the Brookings Project under the Midwest ISO Tariff under the jurisdiction of the FERC.

The Company recognizes the methodology for wholesale transmission rate recovery for the Brookings Project is yet to be determined. However, this uncertainty is not new information. In the application in the CON proceeding, the Company indicated the specific cost recovery methodology under the MISO Regional Expansion Criteria and Benefits (“RECB”) cost allocation tariff was not certain. The Applicants stated they assumed the Brookings Project would be treated as a Baseline Reliability Project, with 20 percent of the costs being recovered under MISO regional rates, and 80 percent recovered through a more local allocation based on the MISO Line Outage Distribution Factor (“LODF”) methodology.<sup>8</sup> However, the application expressly indicated the project had not been moved to Appendix A to the Midwest ISO Transmission Expansion Plan (“MTEP”), and MISO could determine the project to be a Generation Interconnection Project, which would, under the Midwest ISO tariff provisions applicable at the time of the initial CON Order, require the interconnecting generators to fund 50 percent of the project costs, with remaining 50 percent funded by the Baseline Reliability Project methodology.<sup>9</sup>

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<sup>8</sup> CON Application, Appendix D-5, pp. 1-2.

<sup>9</sup> CON Application, Appendix D-5, p. 10. To date, the Midwest ISO has not made a final determination regarding the appropriate RECB classification of the Brookings Project.

Thus the Company disclosed the uncertainty regarding cost allocation under the MISO Tariff in the CON Application. The decision to deny TCR recovery, without guidance in the Order regarding the Commission's intent that the CapX2020 participants continue development activities, stands in contrast to the prior Commission orders regarding the Brookings Project, therefore justifying reconsideration.

**C. The Basis for Denial Creates Uncertainty Regarding Support for the Project.**

The Minnesota Legislature enacted the Transmission Statute in 2005. It authorizes the Commission to approve a tariff mechanism for an automatic annual adjustment of charges for new transmission facilities. On August 1, 2006, Xcel Energy petitioned the Commission in Docket No. E002/M-06-1103 to establish a new TCR tariff and to combine recovery of eligible projects as defined by both the Transmission Statute and the Renewable Statute (Minn. Stat. §216B.1645) in one automatic recovery mechanism: the TCR adjustment rider. The Commission approved the petition in its ORDER APPROVING TRANSMISSION COST RECOVERY RIDER, issued November 20, 2006.

There is no dispute in the record that the Brookings Project meets the terms of the Transmission Statute. The Brookings Project was separately filed and reviewed and approved by the Commission in the CON Order under Minn. Stat. Section §216B.243, satisfying the only statutory standard for recovery under the Transmission Statute and the TCR Rider. Moreover, the Commission has approved “a tariff mechanism for the automatic adjustment of charges” for the Minnesota jurisdictional costs of the Brookings Project, and there is no dispute in the record that the Brookings Project satisfies the terms of the TCR Tariff.

While we recognize the concerns over MISO cost allocation exist, we do not believe that the 2010 Brookings Project expenditures and recovery request will implicate either of the concerns raised by the OES. The OES recommendation was based on the assertion that the Company might over-recover its costs if TCR recovery were allowed, or that allowing TCR recovery might somehow influence the treatment of the Brookings Project in the Midwest ISO cost allocation docket at FERC. The record does not support these assertions.

First, there is no basis in the record for the Commission to conclude that the Company might over-recover its costs. Instead, the record indicates the Company will still need to invest substantial amounts (\$160 million), well



beyond those investments planned through 2010 (estimated at \$16 million in the Company's reply comments), even if the interconnecting generators were required to fund the vast majority (e.g., 80 percent) of the Brookings Project under the ultimate MISO RECB tariff mechanism. See Xcel Energy reply comments at p. 6. Thus the costs that would ultimately be borne by the Company's Minnesota retail ratepayers for the Brookings Project will far exceed the recoveries proposed in 2010, irrespective of the cost allocation methodology MISO may apply to the Brookings Project. The TCR Rider reduces total project costs and future rate recoveries by allowing more current recovery of the Minnesota jurisdictional share of the revenue requirement associated with the Brookings Project development costs.

In addition, it is important to recognize that the benefit of TCR recovery will accrue *only* to Minnesota retail ratepayers. Irrespective of the cost allocation methodology eventually applied by MISO to the Brookings Project at the wholesale level, the Company's accounting processes will ensure the savings in total project costs made possible by more current TCR recovery will accrue only to Minnesota retail ratepayers, and those benefits are not shared with either other jurisdictions (e.g., Wisconsin or North Dakota) or wholesale customers taking service under the MISO tariff. The Order does not appear to recognize these facts; on reconsideration, the Commission should consider this additional information previously provided in response to the OES recommendations.

Second, there is no record evidence supporting the OES assertion that a Commission decision allowing TCR recovery might influence the MISO cost allocation process. The Midwest ISO's complicated process of regional tariff development for the July 15, 2010 filing has been guided primarily by the Organization of MISO States Cost Allocation Regional Planning group ("OMS CARP"), the RECB Task Force and the MISO Transmission Owners group. No decision by the Commission regarding the proposed 2010 TCR Rider recovery could reasonably be viewed as affecting the MISO Tariff cost allocation process.

Finally, uncertainty exists for all transmission projects, whether the uncertainty is related to the final route (and resulting cost changes) or other factors. The MISO cost allocation process is an uncertainty, but not one that should cause project development activities to cease. As indicated in our contemporaneous Notice of Change Filing, the CapX2020 participants have responded to the uncertainty appropriately by reducing 2010 costs. However, for the Brookings Project to remain on the revised schedule for a 2015 in-service date, the

Commission's leadership in the instant proceeding and in response to our Notice of Change Filing in the CON docket is essential.

## **II. REQUEST TO CLARIFY ORDER**

### **A. The Commission Should Provide Clarification That it Will Support Efforts To Complete Route Permitting And Engineering Design So As To Meet The Currently Anticipated 2015 In-Service Date**

At the April 1, 2010 Commission hearing, at least one Commissioner orally commented that the Commission's ruling disallowing recovery of the Brookings Project should not be viewed as an indication of lack of support for the Brookings Project. However, the Commission Order -- which does not include such an indication of Commission support for the Brookings Project -- can be taken to imply that the Company should not continue project development associated with the Brookings Project (other than completing the pending Route Permit process) until after FERC decides the issue of cost allocation under the Midwest ISO Tariff. Furthermore, some of the oral discussion and exchange among parties during the hearing suggested that perhaps recovery of development costs would not be appropriate if the project ultimately does not go forward.

The Company is committed to working through the issues that face the Brookings Project and see it to a successful completion. However, we are concerned that the absence of TCR cost recovery, or at least any further guidance in the Commission's Order regarding future project development, amplifies the uncertainty and risk associated with moving forward with the project.

As noted, the Applicants to the 345 kV Certificate of Need for the Brookings Project (the Company and Great River Energy, on behalf of the other potential owners) are contemporaneously submitting a Notice of Change Filing regarding the timing of the Brookings Project, indicating the in-service date for the project is now anticipated for second quarter 2015. The Notice of Change Filing indicates that greater certainty regarding the final MISO cost allocation methodology applicable to the Brookings Project is needed so the various CapX2020 participants can make their final investment decisions, a necessary prerequisite in order for the project to proceed to construction. The Notice of Change Filing also presents our assessment of the impact of the cost allocation issue on our development plans during the next several months.

In order to preserve our ability to meet a 2015 in-service date and avoid raising the overall cost of the project substantially, we believe it prudent to proceed with preliminary engineering and other preparations. The plan is intended to conservatively manage further commitments to the project in light of uncertainty, yet position the project to move forward as quickly as possible once remaining hurdles related to cost allocation are overcome. However, we struggle with the prudence of committing several million additional dollars in an environment of uncertainty in the absence of more explicit guidance from the Commission.

Both the OES recommendations and the Commission Order are an understandable reflection of the same uncertainty faced by the proposed utility investors in the Brookings Project. However, while responding to this uncertainty by slowing certain aspects of development, the inability for the Company to recover prudently incurred costs potentially signals that ceasing expenditures, rather than slowing the pace and timing of such expenditures, may be a more appropriate response. The Company believes it is essential that the Commission either clarify its Order to support the planned efforts discussed in the Notice of Change Filing, or direct the Company, the OES and other interested parties to bring back an interim project development and expenditure plan for Commission consideration.

The importance of this step should not be understated. While the Midwest ISO will file the replacement cost allocation tariff with FERC by July 15, 2010, that tariff filing will almost certainly be protested and likely litigated. The final FERC decision on the MISO cost allocation tariff could thus be one or two years away. The Commission could most clearly indicate to the Company and the other CapX2020 utilities that they should proceed with the Brookings Project, while the Midwest ISO cost allocation issue is being resolved, by granting reconsideration and allowing the Company cost recovery for the Brookings Project in 2010 through the TCR mechanism.

However, should the Commission not be prepared to take this step, the Company respectfully requests that the Commission clarify its Order by providing guidance regarding whether further Brookings Project development activities should be scaled back pending the outcome of the Midwest ISO cost allocation issue or continue, as we discuss in the Notice of Change filing. If the Commission does not believe the record is sufficient for the Commission to provide such guidance at this time, we respectfully request that the Commission direct the Company and other interested parties to work through these issues and return a proposal to the Commission regarding future

investments in the Brookings Project pending resolution of the MISO cost allocation issue.

### CONCLUSION

Xcel Energy recognizes the importance and complexity of the issues before the Commission. However, based on the foregoing, we respectfully request that the Commission grant reconsideration, and allow recovery of the \$1.9 million in revenue requirements associated with the Brookings Project through the 2010 TCR Rider rate factors. In the alternative, the Commission should clarify its order and provide clear direction regarding the timing and prudence of current and near term future investments in the Brookings Project. If the Commission does not believe the record is sufficient for the Commission to take this step at this time, we request that the Commission direct the Company and other interested parties to work through these issues and return a proposal to the Commission regarding future investments in the Brookings Project pending resolution of the MISO cost allocation issue.

Respectfully submitted,

/s/ *James P. Johnson*

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James P. Johnson  
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Attorney for Northern States Power  
Company, a Minnesota corporation

Dated: May 17, 2010

# **Attachment C**

NoCapX 2020 and U-CAN Motion to Intervene Out-of-Time and Submit Comments,  
FERC Docket ER-09-1431-000

# Legalelectric, Inc.

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May 20, 2010

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Filed & Served electronically

RE: NoCapX 2020 and U-CAN Motion for Limited Intervention  
Midwest Independent Transmission System Operator, Inc. and the Midwest  
ISO Transmission Owners, Docket No. ER-09-1431-002

Dear Secretary Bose:

Enclosed for filing please find NoCapX 2020 and United Citizens Action Network's Motion for Limited Intervention Out-of-Time in the above-entitled docket.

This letter and Motion are being filed and served via that electronic filing to all parties.

Very truly yours



Carol A. Overland  
Attorney at Law

**THE UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Midwest Independent Transmission )  
System Operator, Inc. and The Midwest )  
ISO Transmission Owners )**

**Docket No. ER-09-1431-002**

**MOTION FOR LIMITED INTERVENTION OUT-OF-TIME  
BY  
NOCAPX 2020 AND UNITED CITIZENS ACTION NETWORK,  
LANDOWNERS DIRECTLY IMPACTED  
BY THE CAPX 2020 TRANSMISSION PROJECT**

No CapX 2020 and United Citizen Action Network, by and through its counsel Carol A. Overland, Legalectric, P.O. Box 176, Red Wing, MN 55066, files this Motion for Limited Intervention in the above-captioned proceeding. In support of this filing, NoCapX 2020 and United Citizens Action Network states as follows:

1. This Motion for Limited Intervention is filed pursuant to Sections 203, 205 and 206 of the Federal Power Act (“FPA”), 16 U.S.C. §§ 824b, 824d and 824e, and Rules 212 and 214 of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission (“FERC”), 18 C.F.R. §§ 385.212, 385.214. This Motion is made out-of-time, after the deadline for Intervention, therefore a late intervention, and is a request for ~~limited~~ intervention, specifically to participate in future comment opportunities as this docket affords.

2. NoCapX 2020 and United Citizens Action Network is a party to many of the various Minnesota Public Utilities Commission proceedings, and challenges CapX 2020’s claim that the Project is necessary and its claim that it is required for “reliability,” and regarding the Brookings line specifically, its claim that the Brookings line is needed and appropriate for

generation interconnection, especially in light of demise of Big Stone II, the major generator waiting for transmission access.

3. NoCapX 2020 and United Citizens Action Network are comprised of landowners, ratepayers and residents along and/or near the proposed easement for the proposed several CapX 2020 Group I transmission lines, to be located in the States of Minnesota, North Dakota, South Dakota and Wisconsin. CapX 2020 is a major transmission project proposed to be constructed by a consortium of utilities that have not and will not divulge the ownership of the project, if constructed and operated. The CapX 2020 Group I projects entail construction of new high capacity bundled and double-circuited transmission lines from the Dakotas through Minnesota to Wisconsin and beyond, with an estimated cost of more than \$2 billion.

4. The Midwest ISO and many parties with an interest in the outcome are negotiating cost-apportionment of new transmission and generator interconnection. What concerns NoCapX 2020 and United Citizens Action Network is the tack that cost-apportionment is taking, and emergence of two divergent views, both of which are a significant departure from the market theories that are at the root of the shift in transmission and energy policy. NoCapX and U-CAN do not support a market approach to the provision of essential services, and note that in Minnesota, electricity remains a regulated industry. The interests of NoCapX 2020 and United Citizens Action Network, as landowners, ratepayers and residents directly affected by the CapX 2020 transmission project, are not represented in the FERC proceedings by any party. The interests of NoCapX 2020 and United Citizens Action Network are distinct from other intervenors in this FERC proceeding – no other party is comprised of individual landowners, ratepayers and directly affected residents concerned with the impact of market theory on electric cost and available, transfer of costs to parties that do not benefit from the infrastructure, and land



rights – the present intervenors are governments and organizations that have interests distinct from those of NoCapX and U-CAN. While there are multiple parties in the FERC proceedings with divergent positions, none are landowners and ratepayers directly affected by the outcome of this cost-apportionment proceeding.

5. NoCapX 2020 and United Citizens Action Network members are ratepayers as well as landowners along the route. Minnesota and Midwest ratepayers would bear a portion of the cost of the entire CapX 2020 project and it is not clear how project “benefits” and “costs” will be apportioned – that is the purpose of this docket and why NoCapX and U-CAN present this Motion for Intervention.

6. In the course of the Minnesota PUC proceedings, CapX 2020 has made inadequate efforts to quantify the financial impact of the Project on the Minnesota ratepayers. Throughout the Minnesota Public Utilities Commission proceeding, CapX 2020 has asserted that the cost of the Project will be shared in accordance with the cost apportionment formula approved by FERC. However, as is apparent in this docket, a cost apportionment formula is anything but certain. In other jurisdictions, cost apportionment schemes approved by FERC and relied on by utilities have been struck down. *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 (7<sup>th</sup> Cir. 2009). This volatility in cost-apportionment and extreme efforts being made by utilities to shift costs to those not benefiting from the infrastructure is the primary reason NoCapX 2020 and U-CAN seek to intervene.

7. NoCapX 2020 and United Citizens Action Network have requested that a decision in the Minnesota PUC proceedings be deferred until a cost allocation formula acceptable to the court is in place for the Project. The PUC has not yet ruled on this request for suspension.

8. In light of the material importance of a valid generic cost allocation formula, for one specific to the CapX 2020 Project, for consideration to the PUC's decision in the pending CapX 2020 proceedings, and the specific need and market issues raised in this FERC Docket, NoCapX 2020 and United Citizens Action Network requests limited intervention. Information sought by FERC in this docket and made part of this record is necessary to fully inform the record in the CapX 2020 proceedings before the PUC, and NoCapX 2020 and United Citizens Action Network will integrate information into that record.

9. NoCapX 2020 and United Citizens Action Network note that the type of cost information requested of PJM by FERC in Docket ET05-121 would be useful in this docket. The questions in that docket are directly relevant to CapX 2020 costs, benefits and claimed "need" for the CapX 2020 Group I transmission projects and hope to glean this information from this docket. Instead, what seems to be happening in this MISO docket is a free-for-all wrangling-negotiation where number of votes will make the decision. That means that those in the discussion will have an inordinate say in the result and those not present bear the brunt of the cost. For that reason, NoCapX 2020 and U-CAN wish to be able to comment in the record as those opportunities arise.

10. NoCapX 2020 and United Citizens Action Network request limited intervention in the above-captioned matter to comment on these issues because cost allocation is a material issue in the CapX 2020 need and routing dockets at the Minnesota PUC. NoCapX 2020 and U-CAN will not cause any delay and pledge to adhere to comment deadlines in this docket.

11. NoCapX 2020 and United Citizens Action Network limited intervention is not intended to be disruptive or cause delay. Because NoCapX 2020 and United Citizens Action Network are directly affected by the Project, it is in the public interest that NoCapX 2020 and United Citizens Action Network intervene in these proceedings. No party would be prejudiced by our limited intervention.

12. The persons to whom correspondence, pleadings and other papers in relation to this proceeding should be addressed and the persons whose names are to be placed on the Commission's official service list are designated as follows pursuant to Rule 203, 18 C.F.R. § 385.203 (2005):

Carol A. Overland  
Attorney at Law (MN Lic. No. 254617)  
Legalelectric  
P.O. Box 176  
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(612) 227-8638  
(302) 834-3466  
[overland@legalelectric.org](mailto:overland@legalelectric.org)

13. NoCapX 2020 and United Citizens Action Network respectfully requests that the Commission:

- Grant NoCapX 2020 and United Citizens Action Network' request for Limited Intervention;
- Granting such other and further relief as may be necessary, just and appropriate.

Respectfully submitted,



Dated: May 20, 2010

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Carol A. Overland  
Attorney for NoCapX 2020  
and United Citizen Action Network

**CERTIFICATION OF SERVICE**

I hereby certify that I have on this day e-filed the foregoing document with FERC, utilizing the e-filing system, by which each person on the service list for the Docket No. ER09-143-000 and any related Sub-Dockets is served.

Dated: May 20, 2010



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Carol A. Overland  
for  
NoCapX 2020 and United Citizens Action Network