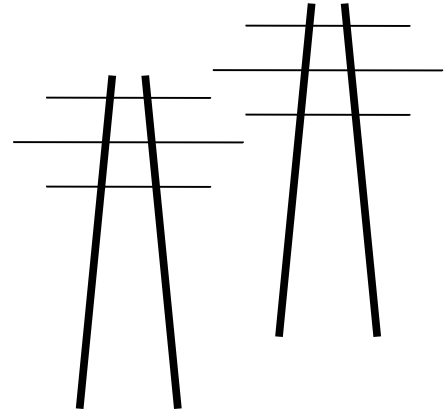


Legalelectric, Inc.

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



September 29, 2010

Richard Luis, Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
St. Paul, MN 55164-0620

via email & eFile: richard.luis@state.mn.us

RE: Response to MOES Objection to Subpoena Requests
CapX Brookings Remand
PUC Dockets: 08-1474

Dear Judge Luis, Dr. Haar and Mr. Glahn:

I've received the "Motion" of MOES' Asst. A.G. Karen Hammel, objecting to our subpoena requests. Under the rules, it is the party served a subpoena that has standing to object, MOES has not been served nor is MOES the subject of our subpoena requests yet MOES objects! MOES is charged with environmental review and informing the routing docket of potential environmental impacts – that MOES objects to subpoena requests to elicit DNR testimony on the record is disturbing.

Rather than object, MOES should be sponsoring the DNR as a witness. That is more in keeping with their charge of environmental review. It is one thing to have the DNR staff available to answer questions at a public hearing, which is what was addressed/offered by MOES at the Prehearing Conference last month, and repeated in yesterday's objection letter. It is quite another to have the DNR staff as witnesses and have their testimony at the evidentiary hearing regarding the impacts of river crossings, crossover routes and anything else between.

The Subpoena Request for the DOT's Dave Seykora has been withdrawn, after our conversation Tuesday morning where I was convinced that he would be sufficiently available to address the DOT's perspective on routing issues. As you may recall from the original Brookings hearing, it was not until the informal conference with all counsel in Lakeville, where I stressed the

necessity of Seykora's testimony and threatened to file a subpoena request, that it was agreed that Mr. Seykora would testify. Only after that did MOES decide to "sponsor" him as a witness, only after it was determined that his testimony was a good idea. It was Seykora's testimony that exposed the long held DOT scenic easements that rendered the LeSueur route infeasible and sent the Applicants scrambling.¹ This important information demonstrated that the Applicants and MOES knew or should have known that the LeSueur route was infeasible, and yet this was not part of the routing record until Mr. Seykora testified. But for his testimony, it would not have been in the evidentiary hearing record.

Unlike Dave Seykora of the DOT, the DNR has not provided testimony in the routing part of this docket, and has only submitted Comments, Comments that meaningful DNR review was thwarted by insufficient information in the DEIS and FEIS to meaningfully analyze the routes, river crossings and alternatives.² The DNR testimony is necessary to fully inform the siting record about siting issues.

MOES conflates the subpoena request with an EIS adequacy argument. Our position assuredly is that the EIS was inadequate, but that is not the point. The point is that the DNR has not addressed impacts of routing issues because the information was not present to make such an evaluation. The DNR's primary information regarding eagles and wildlife, its positions on impacts of river crossings and cross-over routes, and the CH segment, has not been part of this record, and those positions, like the DOTs, must be considered in the routing of this transmission line. MOES conflation is a diversionary red herring.

Thank you for your consideration of our Subpoena requests.

Very truly yours,



Carol A. Overland

For

NoCapX 2020 and United Citizen Action Network

¹ Findings 104 – 105; 332-337; Recommendation, Brookings (08-1474), April 22, 2010.

² See DNR letters of November 30, 2009 and February 8, 2010.