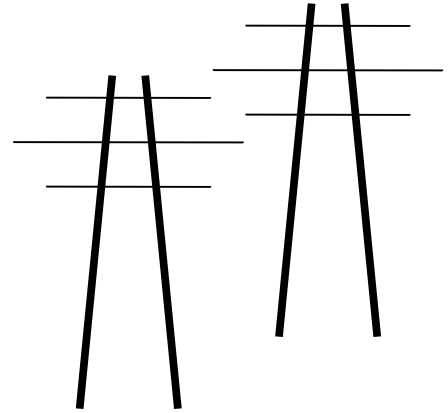


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December 3, 2010

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

via email & eFiling

RE: Objection to Surrebuttal Testimony of Dr. Peter Valberg and Motion to Strike  
NoCapX 2020, U-CAN and North Route Citizens Alliance  
CapX 2020 Fargo-St. Cloud transmission route  
OAH Docket No. 15-2500-20995-2  
PUC Docket No. ET-2, E002/TL-09-1056

Dear Judge Heydinger:

Enclosed for filing please find NoCapX 2020, United Citizens Action Network and North Route Citizens Alliance's Objection to Surrebuttal Testimony of Dr. Peter Valberg and Motion to Strike. Also enclosed please find Objection to and Motion to Strike Direct Testimony of Darrin Lahr, and to substitute "Surrebuttal" of Daniel Kline, an engineer.

This letter and Objection are being eFiled and served via email to all parties of record, with a hard copy to you.

Very truly yours,

Carol A. Overland  
Attorney at Law

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

In the Matter of the Application for a  
Route Permit for the CapX 2020 Fargo to  
St. Cloud 345kV Transmission Project

OAH Docket No.: 15-2500-20995-2  
PUC Docket No.: ET-2, E002/TL-09-1056

**NO CAPX 2020, UNITED CITIZENS ACTION NETWORK,  
and  
NORTH ROUTE CITIZENS ALLIANCE**

**OBJECTION TO SURREBUTTAL TESTIMONY OF DR. PETER VALBERG  
and  
MOTION TO STRIKE**

NoCapX 2020 (hereinafter NoCapX), United Citizens Action Network (hereinafter U-CAN) and North Route Citizens Alliance (hereinafter NoRCA) hereby submit Objection to Surrebuttal Testimony of Dr. Peter Valberg and Motion to Strike in accordance with Order Point 29 of the Prehearing Order of May 25, 2010. Contrary to Order Point 20 of that same Prehearing Order, the “Surrebuttal” Testimony of Dr. Peter Valberg is not in reply to another party’s direct case, and instead, for the first time, addresses research on the health impacts of magnetic fields. This topic is not covered in any party’s Direct or Rebuttal Testimony, and is not responsive to any evidence entered in the record. This “Surrebuttal” testimony should be stricken, Dr. Valberg’s “testimony” at the public hearing in St. Cloud should be stricken -- it is not properly within the scope of Surrebuttal testimony.

The May 25, 2010 Prehearing Order is specific about the scope:

**Any new affirmative matter that is not offered in reply to another party’s direct case will not be allowed in rebuttal testimony and exhibits.**

Prehearing Order, Order Point 20, May 25, 2010. This “Surrebuttal” must not be allowed.

The Applicants filed the “Surrebuttal” Testimony of Dr. Peter Valberg on November 30, 2010, shortly before the scheduled December 6<sup>th</sup> start of the evidentiary hearing. The testimony speaks for itself:

*Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?*

*A. I was retained by the Applicants to provide testimony to address issues related to EMF that have arisen in this route proceeding, including issues raised by NoCapX 2020/U-CAN/NoRCA in comments at public hearings and in recently-issued discovery requests.*

Valberg Surrebuttal, p. 5, l. 9-13.

Although there have been Information Requests propounded by an intervenor regarding safety of magnetic fields, Information Requests are not the “direct case.” There has been no testimony offered by any Intervening party regarding magnetic fields. There is no pre-filed Testimony to which this proffered Valberg testimony is responsive.

Applicants made an unusual strategic decision to utilize only two witnesses in their direct case. Questions about magnetic fields are nothing new, and should be presumed because “evaluation of research and investigations relating to the effects on land, water and air resources of ... high-voltage transmission lines and the effects of ...electric and magnetic fields resulting from such facilities on public health and welfare, vegetation, animals, materials and aesthetic values,including baseline studies, predictive modeling and evaluation ofnew or improved methods for minimizing adverse impacts...” is a statutory siting criteria. Minn. Stat. §216E.03, Subd. 7(b)(1). Applicants have traditionally offered a witness to testify about EMF. They chose not to do so in this docket.

The capacity and loading of the CapX 2020 transmission lines and resultant magnetic field levels are not new information and are not a new issue – this has been at issue for years,

since the 2006 CapX 2020 Phase I Certificate of Need case.<sup>1</sup> In the next CapX docket, the Brookings-Hampton routing docket both the applicants and the Office of Energy Security had been put on notice that the capacity, projected loading and projected magnetic field levels were unreasonably low.<sup>2</sup> The capacity, line loading and magnetic fields were an issue in the Environmental Review for the St. Cloud-Monticello case.<sup>3</sup> It was again an issue in the CapX 2020 Brookings remand, where an engineer submitted an affidavit confirming the claims in the prior cases.<sup>4</sup> Upon information and belief, the magnetic field charts contained in Darrin Lahr's Direct Testimony were forced into the open by McKay's Affidavit in the Brookings case.

NoCapX, U-CAN and NoRCA object to the improper filing of testimony of Dr. Peter Valberg. Applicants have had a long time to address impacts of magnetic fields, and unlike the CapX 2020 Certificate of Need and Brookings routing docket where Direct Testimony regarding EMF was filed, Applicants chose not to do so in their Direct Testimony in this case. That's their choice. Applicants now choose to file "Surrebuttal," claiming it is based on information requested in Discovery, but this was information known to be at issue years before any EMF testimony was filed in this docket. By filing this testimony at this late date, there is no opportunity for meaningful review by the Intervenors, and the testimony and claims therein have not been subject to either Discovery requests or Rebuttal testimony .

This is not "Surrebuttal" testimony, and should not be treated as such. It is contrary to the specific statement in the Order that "[A]ny new affirmative matter that is not offered in reply

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<sup>1</sup> See e.g., NoCapX 2020 Initial Brief, p. 2, et seq., "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)." [5660654](#)

<sup>2</sup> See CapX 2020 Brookings FEIS, p. 296, 335, 363, et seq. of Public Comments [http://energyfacilities.puc.state.mn.us/documents/19860/Brookings-Hampton\\_FEIS\\_3.0\\_Oral.pdf](http://energyfacilities.puc.state.mn.us/documents/19860/Brookings-Hampton_FEIS_3.0_Oral.pdf)

<sup>3</sup> See DEIS Comments of Overland, p. 6-7, March 19, 2010. [20103-48197-01](#)

<sup>4</sup> Affidavit and Comment of Bruce McKay, P.E. [201010-55587-01](#)

to another party's direct case will not be allowed in rebuttal testimony and exhibits." Dr. Peter Valberg's "Surrebuttal" testimony should be stricken.

December 3, 2010



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and  
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**OBJECTION TO SURREBUTTAL TESTIMONY OF DR. PETER VALBERG  
and  
MOTION TO STRIKE**

NoCapX 2020 (hereinafter NoCapX), United Citizens Action Network (hereinafter U-CAN) and North Route Citizens Alliance (hereinafter NoRCA) hereby submit this Objection to Direct Testimony of Darrin Lahr regarding magnetic fields and Motion to Strike.

Darrin Lahr, in his Direct Testimony, testifies regarding magnetic fields. While the proffered correction of the range of magnetic fields is long overdue, Mr. Lahr is not an electrical engineer and is not qualified to testify regarding magnetic fields. This matter was raised with applicants, and shortly thereafter, testimony of a qualified engineer on magnetic fields was filed. For this reason, we move to strike page 30, line 5 to p. 31, line 4 regarding magnetic fields. We also move to strike Lahr's Schedule 7.

Applicants have offered Daniel Kline, an engineer, to testify to these matters, and we request, because he is an electrical engineer and is qualified to testify, that his testimony submitted on November 30, 2010, and the attached Schedules 1-3 (Schedule 2 correcting an error in the title of Lahr's Schedule 7) be substituted for that of Mr. Lahr regarding magnetic fields.

December 3, 2010



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