

PUBLIC SERVICE COMMISSION OF WISCONSIN

Joint Application of Dairyland Power Cooperative,
Northern States Power Company-Wisconsin, and
Wisconsin Public Power, Inc. , for Authority to
Construct and Place in Service 345kV Electric
Transmission Lines and Electric Substation Facilities
for the CapX Twin Cities-Rochester-LaCrosse
Project, Located in Buffalo, Trempealeau, and
LaCrosse Counties, Wisconsin

05-CE-136

NoCAPX 2020 – Response to Issue presented by Patricia Conway

NoCapX 2020, Intervenor in the above-captioned docket, makes this Response to Patricia Conway's Request for Issue to be Included in Proceeding ERF filed December 21, 2011.

There are two issues at hand, first, whether the issue Ms. Conway raises should be expressly declared to be an issue in this proceeding, and second, whether Ms. Conway's requests are procedurally proper.

1. Does Dairyland Power Cooperative, under its Articles of Incorporation, have authority to participate in this transmission project?

Patricia Conway has raised the issue of whether Dairyland Power Cooperative is authorized under its Articles of Incorporation to participate in the CapX 2020 Hampton-Rochester-LaCrosse transmission project as one that should be expressly considered in this proceeding.

She properly notes that the Commission has jurisdiction over this question. NoCapX believes that this question is materially relevant – if Dairyland is acting beyond its authority, if the purpose of this project is market-driven increase in transfer capacity, or in any way not for the purpose of serving Dairyland members, member co-ops or member utilities, it is not a

legitimate co-applicant, and the USDA's RUS should not finance Dairyland's share of the costs its involvement in this project. The express words of the Articles of Incorporation, as reported by Ms. Conway, are sufficient to call Dairyland's participation into question.

Further, the Applicants themselves have made this an issue in this proceeding. The Application references the Development Agreements, noting that Appendix G contains the Project Development Agreement "between and among the Applicants and other potential owners of the Hampton-Rochester-LaCrosse 345 kV Transmission Project." Application, p. 2-53.

Patricia Conway has a point – it would appear that whether Dairyland Power Cooperative has authority under its Articles of Incorporation to enter into the CapX 2020 development agreement is a reasonable question. By discussing the Development Agreements in the Application and by filing the Development Agreement into the record as Appendix G, the Applicants have opened this issue for consideration by the Commission. Formal declaration that this issue is to be considered in this proceeding is not necessary.

2. Was Ms. Conway's request procedurally proper?

NoCapX 2020 has observed that Patricia Conway is a "regular person," a non-attorney, participating in this docket. She has followed the specific directive provided by PSC staff regarding process to raise issues for consideration in this proceeding. Her initial request that the Dairyland authority issue be included in this proceeding was properly made.

As a party, Ms. Conway, along with the rest of the intervenors, was sent an email, in which PSC counsel Diane Ramthun directed parties to submit a list of "issues" to her for consideration at the prehearing conference. Ms. Conway then responded by email in a timely manner with her issue concisely stated. At the Prehearing Conference, Ms. Ramthun brought up Ms. Conway's issue, off the record, stating to the parties present that Ms. Conway would have to

file a formal request, with no explanation why her situation was different and no explanation why Ms. Conway's email response as requested was not sufficient to initiate discussion at the Prehearing Conference. This writer reiterated the procedure established in Ms. Ramthun's email and that Ms. Conway had followed procedure as requested, however, this sort of discussion and decision should occur on the record, particularly where the party being discussed is not present.

Because the Applicants have raised the matter of Development Agreements in their Application and Appendix G, Dairyland's authority to enter into such agreements is inherently fair game in this proceeding. However, for the record, I wish to note that Ms. Conway properly raised this issue, followed staff directions, and yet the issue she raised was inexplicably not included for consideration at the Prehearing Conference, and was discussed only off the record. If parties have an issue with an issue, it should be dealt with directly in a substantive way on the record. Ultimately, that will now be accomplished through her formal request, responses and an Order.



Dated: December 23, 2011

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