

**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 345 kV Electric Transmission Lines and Electric Substation Facilities for the CapX Twin Cities - Rochester - La Crosse Project, Located in Buffalo, Trempealeau, and La Crosse Counties, Wisconsin

5-CE-136

**ORDER ON MOTION TO AMEND  
THE PREHEARING CONFERENCE MEMORANDUM**

This order, pursuant to Wis. Admin. Code §§ PSC 2.04(1), grants in part and denies in part, the Patricia Conway Motion to Amend the Prehearing Conference Memorandum, stylized as, “Formal Request for Issue to be Included in ‘Issues List’”. (PSC REF #: 157356).

Intervenor Patricia Conway filed the motion on December 12, 2011 (PSC REF #: 156987 and 156988), and again on December 21, 2011 (PSC REF #: 157356). The motion requested the inclusion as an issue whether the “Nature of Business” and “Purpose” provisions of the Dairyland Power Cooperative Articles of Incorporation preclude Dairyland’s joint ownership in the project.

Dairyland Power Cooperative and Commission staff responded in opposition to the request (PSC REF #: 157385 and 157568). Dairyland and Commission staff argued the Commission lacks jurisdiction to entertain the issue and that all Co-applicants are “persons” for purposes of Wis. Stat. § 196.491(3).

Dairyland argued that the “Purpose” provision of the Articles of Incorporation allow joint ownership of project because “[D]airyland could not effectively serve its members isolated from other utilities.” PSC REF #: 157385 at 5. Dairyland also argued that Ms. Conway failed to show good cause for the untimely request.

No CapX 2020 responded in support of the motion (PSC REF #: 157459). No CapX 2020 argued that the Commission should accept the issue raised by Ms. Conway because: 1) the broad scope of the existing issues list already covered its inclusion; 2) statements in the application and attached

Development Agreement presume joint ownership so the matter is subject to investigation; and 3)

Ms. Conway properly raised the issue under the circumstances.

Ms. Conway replied to the Dairyland response. (PSC REF #: 157455). She argued that the “Nature of Business” provision “...limits the co-op’s scope of service and the geographical area of its operation.” PSC REF #: 157455.

Ms. Conway also stated that prior to the prehearing conference, email correspondence meant as a means to confer with parties and Commission staff with respect to potential issues, created the impression that although she could not attend the prehearing, her issue would be discussed at the prehearing as an issue at controversy because parties could not agree to its inclusion. See Notice of Prehearing Conference PSC REF #: 156014 at 1 (“[Parties] and Commission staff shall share with each other a proposed schedule and to the extent possible either come to an agreement, or be prepared to discuss any disagreement, with respect to the schedule and issues.”).

This order grants the motion, in part, because whether Dairyland continues to hold an ownership share in the project may impact the proposed: 1) timing of construction; 2) date of project completion and; 3) cost to utility ratepayers. The Commission may not have the jurisdiction or special expertise to adjudicate the effect of the Dairyland Articles of Incorporation on Dairyland’s right to an ownership share in the project. However, the Commission may regard the consequences of any change in the project’s ownership structure and the likelihood that such change may occur. Therefore, parties and Commission staff may present facts and legal argument with respect to all relevant aspects of the issue in question.

This order also excuses Ms. Conway’s untimely request. Ms. Conway presumed that her actions to present the issue in question prior to the prehearing conference secured its consideration at the conference without her presence. Ms. Conway’s presumption was incorrect. The standard prehearing practice of the Commission contemplates the party proposing a disputed issue attend the prehearing

conference (either in person or by telephone) because nothing obligates any other party or Commission staff to present the issue in absence of the proposing party.<sup>1</sup>

Although incorrect, Ms. Conway's presumption was reasonable given her actions and position as a novice intervenor. The untimely request comes to no surprise to the other parties and Commission staff and having filed it shortly after the prehearing conference caused no prejudice.

This order denies the motion, in part, because the broad scope of the existing issues list already covers all relevant aspects of the issue in question. Therefore, the ability of parties and Commission staff to present facts and legal argument on the matter requires no amendment to the issues list.

Friday, January 06, 2012



Michael E. Newmark  
Administrative Law Judge

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<sup>1</sup> In its response, NoCapX 2020 asserts that at the prehearing conference the issue in question was inappropriately discussed off-the-record: "If parties have an issue with an issue, it should be dealt with directly in a substantive way on the record." PSC REF #:157459 at 3. This advice would be welcomed had the issue been properly presented for consideration. However, as explained above, the issue was not properly raised; therefore, the matter was appropriately discussed off-the-record. Nothing precluded NoCapX 2020 from properly raising the issue at the prehearing conference on its, or Ms. Conway's, behalf. Nothing precluded NoCapX 2020 from requesting the discussion of the issue be placed on the record.