



Public Service Commission of Wisconsin

Phil Montgomery, Chairperson
Eric Callisto, Commissioner
Ellen Nowak, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

February 27, 2012

Re: 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

To the Service List:

I am writing in response to the February 22, 2012, letter and attached cross-examination exhibits filed by Ms. Overland on behalf of NoCapX 2020 and Citizens Energy Task Force (CETF). My letter will discuss the process and scope of cross-examination in this proceeding, and preserve objections on behalf of Commission staff with respect to Ms. Overland's filings.

The Prehearing Memorandum of December 6, 2011, describes the scope of cross-examination and provides a process for when a party seeks to cross-examine an adverse witness beyond the statements in the witness' prefiled testimony. In the section captioned "Pre-Hearing," the prehearing memorandum provides: "4. Any party who compels a witness to appear at hearing shall create a volume of written testimony for the witness in the form of either a deposition or interrogatory." This provision is later referenced in the section captioned "At Hearing," which provides: "4. Limit cross-examination of a witness by the length and scope required to reasonably investigate matters with respect to the testimony of that witness. To investigate beyond these parameters requires the party to have followed the applicable pre-hearing process for compelling the witness to appear at hearing." These provisions together allow a party to cross-examine beyond the scope of a witness' prefiled testimony only if the party first creates written testimony in the form of a deposition or interrogatory and then prefiles these documents on the due date for rebuttal testimony.

At the December 5, 2011, prehearing conference, the Administrative Law Judge discussed this process and emphasized, however, that a party must present its direct case through its own witnesses in direct testimony, and would not be allowed to "create a case through an adverse witness." (Prehearing Tr. 25-26.) This means that cross-examination can be used only for a reasonable investigation of an adverse witness' testimony. A party cannot use this approach to create its direct case.

Ms. Overland indicates in her letter that interrogatories were attached and ERF filed. It does not appear, however, that these documents were attached to the related e-mails, filed on the

ERF system or served on the parties by February 22, when rebuttal testimony was due. As a result, the parties and staff do not know what Ms. Overland will seek to elicit from their witnesses in conjunction with the cross-examination exhibits, and questions to staff witnesses based on these exhibits may be subject to objection for failure to comply with the prehearing process, and for surprise.

Ms. Overland's letter also indicates that MTEP08, MTEP11, and the Western Wisconsin Transmission Reliability Study, which she believes are important to this docket, have not been entered in the record. If Ms. Overland wishes to either cite to or cross-examine based on these documents, then she may identify the specific pages that she will be using and offer these pages as exhibits rather than citing and offering the entire document into the record. Printed copies of all cross-examination exhibits should be provided the Commission as set forth in the Prehearing Memorandum.

Finally, the Commission staff hereby preserves its right to object at the appropriate time to any of the cross-examination exhibits attached to and identified in Ms. Overland's February 22, 2012, filing. The grounds for objection may include relevancy, materiality, and foundation, among others. We also preserve our right to object, and will seek protection from any effort to cross-examine Commission staff witnesses for the purpose of creating direct testimony.

Sincerely,

/s/ Diane M. Ramthun

Diane M. Ramthun
Assistant General Counsel

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cc: Michael Newmark, ALJ