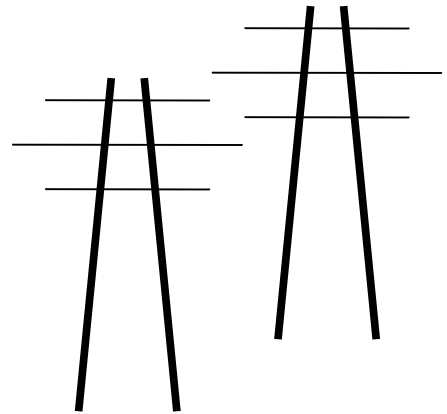


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February 28, 2012

Sandra Paske, Secretary to the Commission
Public Service Commission of Wisconsin
610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

Judge Michael Newmark
Public Service Commission of Wisconsin
610 North Whitney Way
P.O. Box 7854
Madison, WI 54707-7854

RE: NoCapX 2020 and Citizens Energy Task Force Motion for Official Notice
In the Matter of the Application for a Route Permit for the CapX 2020 Hampton-
Alma-LaCrosse High Voltage Transmission Lines
Wisconsin PSC Docket 05-CE-136

Dear Ms. Paske and Judge Newmark:

Attached and ERF filed please find NoCapX 2020 and Citizens Energy Task Force Motion for Official Notice of the MISO Tariff Attachment FF; MTEP08, MTEP 10, MTEP 11 and the associated Project and Facility Appendices for each.

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland". The signature is written in black ink.

Carol A. Overland
Attorney at Law

**BEFORE THE
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 Hampton-Rochester-LaCrosse
Project, Located in Buffalo, Trempealeau, and
LaCrosse Counties, Wisconsin

PSC Docket No. 05-CE-136

**NO CAPX 2020 and CITIZENS ENERGY TASK FORCE
MOTION FOR OFFICIAL NOTICE**

NoCapX 2020 and Citizens Energy Task Force bring this Motion for Official Notice, as provided by Wis. Stat. 227.45(3), and request that the Administrative Law Judge and the Public Service Commission take official notice of the MISO Tariff Attachment FF; MISO Transmission Expansion Plan (MTEP) 08, MTEP 10, MTEP 11, and the associated Project and Facility Appendices for each MTEP.

I. Wisconsin Administrative Procedure supports Official Notice

Wisconsin Administrative Procedure supports Official Notice of the FERC Tariff Attachment FF and the MTEP reports and appendices. The administrative process regarding admission of evidence is designed to be inclusive and specifically not as restrictive as in a court proceeding. By express language in Wisconsin statute, administrative proceedings are not bound by rules of evidence, instead “[t]his section requires very relaxed rules of evidence.” Wis. Stat. 227.45(1); see also *Rutherford v. Labor & Industry Review Commission*, 2008 WI App 66, 309 Wis. 2d 498, 752 N.W. 2d 897, 06-3110. These MISO documents that Applicants and most parties are citing are relevant and provide necessary information with reasonable probative value.

It is not immaterial, irrelevant or unduly repetitious – the MTEPs provide primary documentation of information referred to and relied upon by multiple parties but which not yet in the record!

General reference and citation by Applicants is not sufficient – parties are not free to cite whatever evidence in the universe they deem relevant and just provide a link – Intervenors would undoubtedly not be afforded that same latitude. The documents are necessary evidence.

These are large documents, referenced by the Application and many parties' witnesses, weighty in volume and importance, and are a part of Applicants burden of production. The Prehearing Order stated that documents shall not be admitted using a link. When asked to produce these documents, Applicants and MISO have declined our requests to produce the documents for the record, and Applicants suggested Official Notice. Official notice is less burdensome than admission and its related copying effort and expense.

At this time, we request Official Notice. Wis. Stat. 227.45(3) of the following documents, found at these MISO links:

MISO Tariff Attachment FF:

<https://www.midwestiso.org/Library/Tariff/Pages/Tariff.aspx>

MTEP 11 and Project and Facilities Appendices:

<https://www.midwestiso.org/layouts/MISO/ECM/Redirect.aspx?ID=120701>

<https://www.midwestiso.org/layouts/MISO/ECM/Redirect.aspx?ID=113909>

MTEP 10 and Project and Facilities Appendices:

<https://www.midwestiso.org/Planning/TransmissionExpansionPlanning/Pages/TransmissionExpansionPlan2010.aspx>

MTEP 08 and Project and Facilities Appendices:

<https://www.midwestiso.org/layouts/MISO/ECM/Redirect.aspx?ID=17242>

<https://www.midwestiso.org/layouts/MISO/ECM/Redirect.aspx?ID=104506>

In the alternative, NoCapX and CETF request that the Applicants be Ordered to produce and file these documents they rely on, and in the alternative, NoCapX and CETF request

admission of the documents into the record and an additional \$2,000.00 in Intervenor Compensation for copying costs for PSC staff copies.

A. Documents at issue: MISO Tariff Attachment FF

Cost allocation and the impacts of the project on Wisconsin ratepayers are a primary focus of the Application and the Citizens Utility Board case. The MISO cost sharing tariff is a necessary evidentiary document, and its link was provided by the Applicants in response to a CUB Interrogatory, attached as King Direct, Exhibit 12; and the MVP tariff is also cited by PSC's Neumeier, Direct Testimony, p. 3-4; see e.g., Applicant Data Request response:

3-CUB/RFP-7: Please provide a copy of (or link to) the MISO cost sharing rules known as Regional Expansion Criteria and Benefits I referenced on page 122, lines 16-17 of Applicants' Direct Testimony.

RESPONSE: The Regional Expansion Criteria and Benefits allocation rules are set forth in Attachment FF to the MISO Tariff.

<https://www.midwestiso.org/Library/Tariff/Pages/Tariff.aspx>

King Direct, Exhibit 12.

“Benefits” attributed to this transmission project must be weighed against costs as a statutory criteria for issuance of a Certificate of Public Convenience and Necessity. “Benefits” are discussed in the Application, Supplemental Need study, and by many witnesses, and the “Regional Expansion Criteria and Benefits allocation rules” that determine the benefits allocation scheme that is the subject of this testimony is a necessary part of this record. Testimony regarding benefits, and comparison of claimed benefits-to-costs, can only be evaluated with full disclosure of the MISO cost allocation scheme in the record and before the Commission. Justice may be blind, but the Commission needs an eyes-open fully informed record to support its decisions.

NoCapX 2020 and Citizens Energy Task Force request official notice of Attachment FF to the MISO Tariff.

B. MTEP08, MTEP 10, MTEP 11 and Project and Facility Appendices

The MTEP 08, MTEP 10, MTEP 11 and the Project and Facility Appendices for each are fundamental documents setting out the rationale and cost allocation scheme upon which the CapX 2020 Hampton-Rochester-LaCrosse transmission project is based. The MISO MTEP process provides the assumptions for the modeling and the reasoning for selection of the various projects into specific appendices. The Application cites the MTEP reports repeatedly as justification for the project, as do Applicant, ATC, MISO and other witnesses, including three PSC staff witnesses. See Buening Direct, p. 8-9, and p. 10; Direct Testimony of Webb.

NoCapX 2020 and Citizens Energy Task Force request official notice of the MTEP 08, MTEP 10, MTEP 11, and the Project and Facility Appendices to each.

II. PSC Staff attempts to shift the burden production to Intervenors

As above, the MTEP reports are cited by Applicants in the Application and Supplemental Need Study as justification for the project and are cited by many witnesses, including CUB's Hahn and at least three PSC Staff witnesses. An example is the Application, where MTEP is repeatedly referenced, and links are provided. CPCN Application, §2.19, p. 2-65.

Based on the February 27, 2012 letter, counsel for PSC seems to object to our pre-filing of Interrogatories and Exhibits, bent on keeping essential and obviously relevant information out of the record. The result of this position is an improper shift of the burden of production from the Applicants to Intervenors. It also shifts the burden of proof – if Applicants are not required to file the documents supporting their case, it falls to Intervenors.

Prefiling of NoCapX/CETF exhibits was done after consultation and specifically discussing prefiling of exhibits with same PSC Counsel, both on November 30, 2011 and February 16, 2012. On February 16, 2012, we discussed in particular the meaning of the words in the Prehearing Transcript, p.25-26, with transcript in hand, and were in apparent agreement that yes, filing of Exhibits was proper and indeed required for those relevant areas of cross going beyond a party's Direct testimony, and we were in apparent agreement that NoCapX/CETF would have to file documents about which we have questions for witnesses, questions regarding fundamental documents referred to by Applicants and PSC which, although referenced, were not provided for the record. "To be on the safe side, if going beyond Direct, then do it that way... If going beyond direct prefiled, then file."¹ We've done as directed. Objection is unwarranted.

Further, the prehearing memorandum clearly states:

17. No evidence shall enter the record solely by citation to an internet hyperlink.

However, Applicants' filings and parties' prefiled testimony is repeatedly referencing the MISO reports and MTEP reports not in the record by citation to an internet hyperlink. PSC Counsel has not objected to parties' flagrant use of link citations to evidence not in the record, but objects to efforts to enter these same cited primary and necessary documents into the record and attempts to further shift the Burden of Production to Intervenors:

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 into 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.

PSC Counsel letter, p. 2.

¹ Ramthun, Telephone conversation 2/16/12.

Applicants, parties and PSC staff are the ones citing to these documents and establishing their importance to this docket! Why would PSC staff object to having the complete MTEPs and the (public) Western Wisconsin Transmission Reliability Study² in the record? There is no explanation of this unusual position.

PSC Staff did not file a Motion, nor is PSC staff in a position to issue Orders. While Staff is welcome to register objections, under Wisconsin Administrative Procedure there is no legal basis for objection to entry of these primary documents in the record. Wis. Stat. 227.45(1). Nor is it reasonable to require specific citations and offering only those pages into the record – there are appropriate questions for cross-examination, but for the most part, the document speaks for itself, and the volumes it speaks are important, and all the information contained must be available to parties, not only to Applicants in their hyperlinking. It may be appropriate for selections to be provided to witnesses for reference during cross examination, but the entire documents must be in the record³. Cross-examination is not the only reason to have a document in the record – the full document is necessary to reference with specific citations as this proceeding moves forward. Logistical issues can be worked out. However, there is no excuse for not having these complete documents in the record, and less excuse for objection. These Applicant-relied-upon documents are necessary for a complete record.

III. Intervenor do not have resources to provide copies of Applicants primary documents to PSC staff

The MISO Tariff Attachment FF; MTEP08, MTEP 10, MTEP 11 the associated Project and Facility Appendices are well over 1,000 pages. Our Intervenor Compensation request included a reasonable budget for witnesses and a plan that was not duplicative of any party.

² Copies of the Western Wisconsin Transmission Reliability Study were shipped and by now have been received by PSC staff.

³ NoCapX and CETF have no intention of walking witnesses over the entire document or even a large part of it. These documents would be used as Applicants have used them, primarily for citation purposes.

NoCapX was denied Intervenor Compensation, and CETF received roughly one-third of its reasonable budget, \$1,000 for expenses, and **nothing whatsoever** for witnesses. “Nothing at all” means that NoCapX and CETF are unable to present witnesses. Our participation opportunities are now limited to motion practice, cross-examination, briefs, and comments on staff recommendations. NoCapX and CETF are operating within the Commission ordered constraints.

It’s true that provision of copies has been slightly delayed, apparently by Applicants too, as PSC Staff contacted counsel for NoCapX and CETF and the Applicant’s Tom Hillstrom about when copies would be sent. CETF and NoCapX do not have the general Intervenor funds that other intervenors receive, and do not have funds to make 10,000 copies for PSC staff. We’ve had to secure a loan for what has been shipped, copies have now been made for PSC staff and will likely arrive prior to the filing of this Motion. Copies of Interrogatories have also been sent, under separate cover, but these Interrogatories were received by PSC staff when originally served. There is no surprise⁴.

The MISO Tariff Attachment FF; MTEP08, MTEP 10, MTEP 11 the associated Project and Facility Appendices are thousands of pages. MTEP 08 and MTEP 11 alone are roughly 660 pages, and copying and shipping for those two only would be essentially another \$650.00. The copying and shipping costs for exhibits for PSC Staff sent thus far is \$982.52, and the PSC awarded only \$1,000.00 for expenses -- \$17.48 isn’t enough to cover just the two MTEPs.

Shifting the burden of production is improper. Unfunded intervening parties should not be required to produce the Applicants fundamental documentation supporting the project.

Unfunded intervening parties should not be relied on by the PSC to make their copies when

⁴ Additional Interrogatories have been served on PSC staff and others, and responses have not yet been received. If PSC Counsel would like those unanswered Data Requests filed, pending response, we can do that.

ratepayers pay for Intervenor Compensation, the costs of PSC operations and Applicants' assessment for their permitting proceedings.

IV. Request for Official Notice or Admission of Fundamental Documents

Inclusion of these documents protects the integrity of the process, the Commission, and its decisions, because the MISO Tariff Attachment FF; MTEP 08, MTEP 10, MTEP 11 and the Project and Facility Appendices are necessary for a full and complete record. A full and complete record means that the Commission can be confident the record supports a decision -- whatever decision the Commission makes.

NoCapX 2020 and CETF request official notice of MISO Tariff Attachment FF; the MTEP 08, MTEP 10, MTEP 11 and Project and Facility Appendices. In the alternative, NoCapX and CETF request that the Applicants be Ordered to produce and file these documents, and in the alternative, that NoCapX and CETF be ordered to produce and file these documents and further request an additional \$2,000.00 in Intervenor Compensation for cost of copying these documents for PSC staff.

February 28, 2012



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