

# Legalelectric, Inc.

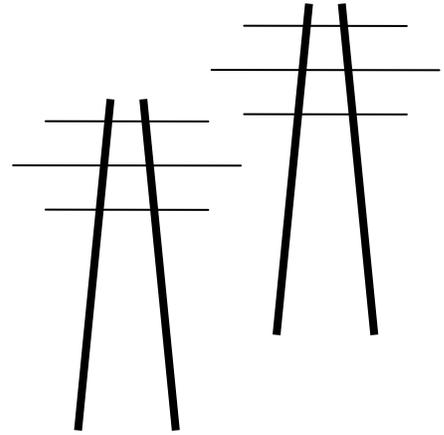
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October 24, 2012

Lisa Agrimonti, Esq.  
Briggs & Morgan  
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80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402-2157

via email and eFile

RE: Response of NoCapX 2020, U-Can and CETF to Xcel Energy  
In the Matter of the Application of GRE, NSP et al. for Certificate of Need for  
Three 345 kV Transmission Lines with Associated System Connections  
MPUC Docket No.: ET-2, E002, et al./CN-06-1115

Dear Ms. Agrimonti:

I've received your letter of October 23, 2012, resisting disclosure of "any and all New, Amended and/or Restated Project Participation Agreements, Construction Management Agreements, Transmission Capacity Exchange Agreements, and Operation and Maintenance Agreements for all segments of the CapX 2020 transmission project covered under the above-numbered Certificate of Need docket, including but not limited to Brookings –Hampton; Fargo – St. Cloud; St. Cloud – Monticello; and Hampton – Rochester – La Crosse."

My Information Request is for all of these agreements listed in the Compliance filings. I am also requesting copies of all other agreements between the participants regarding CapX 2020.

A few points:

- Citizens Energy Task Force is a party in this docket as of the Pre-Hearing Order of April 22, 2008, granting the CETF Petition of March 31, 2008, refiled on April 10, 2008. CETF was represented by Paula Maccabee during the hearing and appeal. I've been representing CETF for more than two years, in Wisconsin and FERC, and I've also filed a Notice of Appearance recently in this docket.

- Project Participation Agreements were part of the original Application, and updated copies should be furnished and filed as a matter of course.
- Your letter notes that, “[a]t no time has any person requested that the agreements be provided.” They have been requested as of October 10, 2012. Someone should be looking at these agreements. The parties I represent have an interest, and so should the Commission and Commerce in their regulatory capacity. That’s our job as parties.
- I believe that I’ve executed a Non-Disclosure Agreement in this docket, but I’d be happy to sign another if necessary.

Statements regarding these agreements are indeed a part of all the Compliance Filings, but the agreements themselves are not attached. Based on the response of Commerce to my Information Request, the Department does not have copies of the Agreements and logically has not reviewed them. Because Ownership was an issue in the Certificate of Need proceeding and is currently an issue at FERC, e.g. Dockets EL12-28 and EL13-9, regarding Hampton-Rochester-La Crosse and La Crosse-Madison (Badger-Coulee), these Project Participation and Operation Agreements are relevant.

I am particularly interested in the Transmission Capacity Exchange Agreements that were first described in the August 20, 2010 Monticello-St. Cloud Compliance filing:

*In addition, the Project Owners have established a Transmission Capacity Exchange Agreement ("TCEA") to align their rights to the capacity of the line in the event there is no longer a Regional Transmission Operating authority like the Midwest Independent System Operator. In that circumstance this Agreement would grant each Project Owner the right to use the capacity and associated transfer capability of CapX Fargo Phase 1 for all purposes associated with the transmission of electric energy and data for electric utility communications, in proportion to that Owner's percentage interest.*

I also want to review these Agreements whether the Project Participation Agreements, Transmission Capacity Exchange or any other of these agreements address the distribution of Financial Transmission Rights. Financial Transmission Rights are described in Xcel Energy’s June 30, 2012 10-Q filing<sup>1</sup> (anticipating another any day now) and derivative assets and liabilities shown. In Minnesota, we’re too familiar with the problems of derivatives on “our” utilities, particularly Xcel Energy/Northern States Power due to NRG. Financial Transmission Rights are deemed derivatives by the SEC, and:

*Electric commodity derivatives held by NSP-Minnesota include financial transmission rights (FTRs) purchased from Midwest Independent Transmission System Operator, Inc. (MISO). FTRs purchased from MISO are financial instruments that entitle the holder to one year of monthly revenues or charges based on transmission congestion across a given transmission path. The value of an FTR is derived from, and designed to offset, the cost of that energy congestion, which is caused by overall transmission load and other transmission constraints. Congestion is also influenced by the operating schedules of power plants*

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<sup>1</sup> SEC filings on line, this June 30, 2012 10Q may be found at:  
<http://www.sec.gov/Archives/edgar/data/72903/000114036112035044/form10q.htm>

*and the consumption of electricity pertinent to a given transmission path. Unplanned plant outages, scheduled plant maintenance, changes in the relative costs of fuels used in generation, weather and overall changes in demand for electricity can each impact the operating schedules of the power plants on the transmission grid and the value of an FTR. NSP-Minnesota's valuation process for FTRs utilizes complex iterative modeling to predict the impacts of forecasted changes in these drivers of transmission system congestion on the historical pricing of FTR purchases.*

*If forecasted costs of electric transmission congestion increase or decrease for a given FTR path, the value of that particular FTR instrument will likewise increase or decrease. Given the limited observability of management's forecasts for several of the inputs to this complex valuation model – including expected plant operating schedules and retail and wholesale demand, fair value measurements for FTRs have been assigned a Level 3. Monthly FTR settlements are included in the fuel clause adjustment, and therefore changes in the fair value of the yet to be settled portions of FTRs are deferred as a regulatory asset or liability. Given this regulatory treatment and the limited magnitude of NSP-Minnesota's FTRs relative to its electric utility operations, the numerous unobservable quantitative inputs to the complex model used for valuation of FTRs are insignificant to the consolidated financial statements of Xcel Energy.*

Id., p. 23. Given the use and value of financial transmission rights, the economic purpose and benefits attributed to CapX 2020 transmission build-out, and the historical snares of derivatives in the electric industry, I'm concerned about relationships between financial transmission rights and participation in CapX 2020.

The Agreements were part of the original Application, and these and any other ultimate agreements between the participants should be part of the Compliance Filing and record.

Very truly yours



Carol A. Overland  
Attorney at Law

cc: eFiled and eServed  
Paul J. Lehman, Xcel Energy  
Burl Haar, Public Utilities Commission and eFiled and eServed  
Steve Rakow, Commerce and Julia Anderson, Asst. A.G.