

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

In the Matter of the Application of ITC
Midwest LLC for a Certificate of Need for
the Minnesota–Iowa 345 kV Transmission
Line Project in Jackson, Martin, and
Faribault Counties

PUC Docket No. ET-6675/CN-12-1053

OAH Docket No. 60-2500-30782

**INTERVENORS WIND ON THE WIRES, FRESH ENERGY, THE IZAAK WALTON
LEAGUE – MIDWEST OFFICE, AND MINNESOTA CENTER FOR
ENVIRONMENTAL ADVOCACY’S OPPOSITION TO CITIZENS ENERGY TASK
FORCE AND NOCAPX 2020’S MOTION TO COMPEL ANSWERS TO
INFORMATION REQUESTS AND FOR LEAVE TO PARTICPATE IN DISCOVERY
AND CROSS-EXAMINATION**

Intervenors Wind on the Wires, Fresh Energy, the Izaak Walton League – Midwest Office, and Minnesota Center for Environmental Advocacy (“Clean Energy Intervenors”) object to Citizens Energy Task Force and NoCapX 2020’s Motion To Compel Answers To Information Requests and For Leave To Participate In Discovery and Cross-Examination.¹ This is nothing more than a second late request to intervene in this docket and the Court should not allow it.

PROCEDURAL HISTORY

ITC Midwest filed its initial filing in this docket in September 2012.² Its application for a Certificate of Need was filed in March, 2013.³ Wind on the Wires intervened in July 2013.⁴ In

¹ Clean Energy Intervenors intervened in the Certificate of Need docket (ET-6675/CN-12-1053) and did not intervene in the corresponding Transmission docket (ET-6675/TL-12-1337). Nevertheless, Citizens Energy Task Force and NoCapX 2020 brought this Motion To Compel Answers To Information Requests and For Leave To Participate In Discovery and Cross-Examination in both dockets. To the extent that the Clean Energy Intervenors are required to respond to the motion within the Transmission docket, please consider this Opposition as a response in both dockets.

² ITC Initial Filing—MN Iowa 345 KV Transmission Project—Jackson, Martin, and Faribault Counties, September 28, 2012.

September 2013, the intervention deadline of January 15, 2014 was established by the Court.⁵ On January 15, 2014, Fresh Energy, the Izaak Walton League – Midwest Office, and Minnesota Center for Environmental Advocacy petitioned for intervention.⁶

Despite this deadline, and despite the fact that the docket was more than a year old,⁷ Citizens Energy Task Force and NoCapX 2020 missed the intervention deadline and instead filed an “Out-of-Time Petition for Limited Intervention” on January 21, 2014. Recognizing that they were past the intervention deadline, these parties specifically requested participation for only the “narrow purpose of reviewing Discovery, and filing an Initial and Reply Brief and Exceptions.”⁷ Clean Energy Intervenors did not object to this request for limited intervention.

On January 31, 2014, the Court admitted Citizens Energy Task Force and NoCapX 2020 as “limited part[ies] to this proceeding.”⁸ (Citizens Energy Task Force and NoCapX 2020 will hereinafter be referred to as the “Limited Parties.”) The Court limited their participation to that which was specifically requested—review of discovery and the ability to file an initial brief, a reply brief and exceptions.⁹ The Court was very clear that “[n]o other participation in this proceeding will be allowed.”¹⁰

Despite this clear directive, the Limited Parties served Clean Energy Intervenors with Information Requests on February 17, 2014.¹¹ Clean Energy Intervenors promptly informed the

³ Application for a Certificate of Need, March 22, 2013.

⁴ Petition to Intervene, Wind on the Wires, July 24, 2013.

⁵ Order, Office of Administrative Hearings, September 16, 2013.

⁶ Petition to Intervene, Fresh Energy, Izaak Walton League – Midwest Office, and Minnesota Center for Environmental Advocacy, January 15, 2014.

⁷ Out-of-time Petition for Limited Intervention, January 21, 2014.

⁸ Order, Office of Administrative Hearings, January 31, 2014.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Affidavit of Carol Overland attached to the Limited Parties’ Motion to Compel, March 7, 2014 at ¶ 2.

Limited Parties that this action was beyond the scope of their allowable participation in the docket and that Clean Energy Intervenors would therefore not be responding to these requests.¹² Nevertheless, in direct contravention to this Court's January 31, 2014 Order, the Limited Parties have now brought this Motion To Compel Answers To Information Requests and For Leave To Participate In Discovery and Cross-Examination in this docket. For the reasons explained herein, this motion should be denied.

ARGUMENT

I. Absent Permission To Participate In Discovery, The Court Should Deny The Limited Parties' Motion To Compel A Discovery Response.

Rather than seeking the Court's permission to expand the scope of their participation in the docket *first*, and then, *if granted*, serving Clean Energy Intervenors with Information Requests, the Limited Parties instead served impermissible Information Requests on the Clean Energy Intervenors and are now using Intervenors' refusal to respond to this impermissible action as a basis for expanding the scope of their participation. The Court should therefore treat this motion for what it is—a second attempt at intervention—and deny the Limited Parties' Motion to Compel a Discovery Response. If the Court chooses to grant the Limited Parties' Motion to Participate in Discovery and Cross Examination, the Limited Parties can re-serve their Information Requests on the Clean Energy Intervenors and allow the Clean Energy Intervenors to respond accordingly.

II. The Motion To Expand Participation Should Be Denied.

The Limited Parties seek to expand their participation in this docket apparently based on the assertion that their interests are not adequately represented by the Clean Energy

¹² *Id.* at ¶ 7.

Intervenors.¹³ But the Limited Parties were well aware of the Clean Energy Intervenors' position when they petitioned the Court for their requested limited status. In their "Out-of-time Petition for Limited Intervention" the Limited Parties made it clear that they believe they have "a unique perspective that is not adequately represented by any other party. There is no party in this docket representing the public interest or the interest of landowners, residents and ratepayers who oppose transmission lines" ¹⁴ To suggest that their participation should be expanded because the Clean Energy Intervenors' position is unclear ignores the fact that the original Out-of-time Petition for Limited Intervention was specifically based on the assertion that Limited Parties had a unique position. Nothing has changed.

The Limited Parties also apparently object to the fact that the Clean Energy Intervenors have not served Information Requests on ITC Midwest thus far. They claim, on this basis, that the Intervenors are not "actively participating" in this docket. But there is no requirement to "actively participate" in a docket and certainly no requirement that a party serve information requests on another party—this is simply not a basis to grant full party status to a party long after the intervention deadline has passed.

Finally, even if there were a requirement to "actively participate," Clean Energy Intervenors are working to prepare direct testimony in this docket, which will be filed by the deadline of March 28, 2014. Limited Parties have no basis to claim that Intervenors are not actively participating in this docket based solely on the fact that Intervenors have not yet served Information Requests.

¹³ See, e.g., Limited Parties' Motion to Compel at p. 2 ("MCEA, et al., have not served any Information Requests on the Applicant, and their position(s) are unclear.") and p. 4 ("When organizations framed as advocates of 'environmental' and/or 'renewable energy' are promoting a position, it could be presumed, mistakenly, that the position is necessarily in furtherance of 'environmental' interests, or in promotion of 'renewable energy.'").

¹⁴ Out-of-time Petition for Limited Intervention, January 20, 2014 at 2.

III. Even If Permitted, The Information Requests Are Irrelevant And Unduly Burdensome.

The rules of the Office of Administrative Hearings specify that a party bringing a Motion to Compel must show that the discovery is needed for the proper presentation of its case, is not for delay, and that the issues or amounts in controversy are significant enough to warrant the discovery. Minn. R. 1400.6700, subp. 2. The party resisting discovery may raise objections that are available under the Minnesota Rules of Civil Procedure, including lack of relevancy and privilege. *Id.*

If ordered to respond to the Information Requests of the Limited Parties, the Clean Energy Intervenors reserve the right to object at that time to the requests as not needed for the proper presentation of their case, as well as irrelevant, unreasonably duplicative,¹⁵ and unlikely to outweigh the burden and expense of preparing the proposed discovery. *See* Minn. R. Civ. P. 26.01(b).

CONCLUSION

For the foregoing reasons, Clean Energy Intervenors respectfully request that the Court deny the Limited Parties' Motion To Compel Answers To Information Requests and for Leave To Participate in Discovery and Cross-Examination.

¹⁵ For example, Limited Parties have sought much of this same information in previous dockets in front of the Public Utilities Commission. *See* Affidavit of Leigh K. Currie attached herein as Exhibit A.

Dated: March 21, 2014

Respectfully submitted,

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