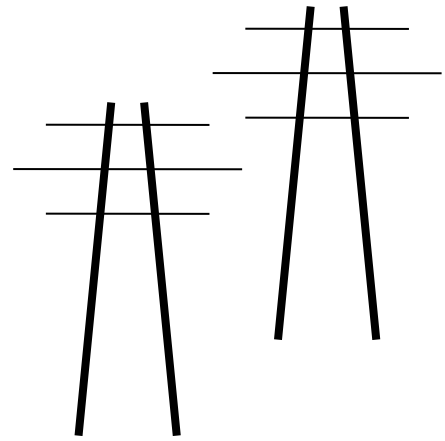


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May 13, 2014

James E. LaFave
Office of Administrative Hearings
P.O. Box 64620
St. Paul, Minnesota 55164-0620

eFiled and eServed

RE: 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

OAH Docket No.: 60-2500-30782
PUC Dockets: ET-6675/TL-12-1337
ET-6675/CN-12-1053

Dear Judge LaFave:

Attached please find Amended Motion for Extension of Public Comment to include receipt of Final Environmental Impact Statement (FEIS) into the record and allow one week for public comment on adequacy of the FEIS. In the alternative, we request that this question be certified to the Public Utilities Commission.

Thank you for your consideration of this scheduling issue.

Very truly yours,

Carol A. Overland
Attorney at Law

cc: Citizens Energy Task Force and No CapX 2020, all parties of record.

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE 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
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OAH Docket No.: 60-2500-30782
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ET-6675/CN-12-1053

**CITIZENS ENERGY TASK FORCE AND NO CAPX 2020
AMENDED MOTION FOR EXTENSION OF PERIOD FOR PUBLIC COMMENT**

Citizens Energy Task Force and NoCapX 2020 submit this Motion for Extension of the period for Public Comment in the above-captioned dockets, sufficient to receive the Final Environmental Impact Statement and for the public to have at least one week to comment on the adequacy of the environmental review. Adequacy of the environmental review is at issue and the Commission must make several determinations regarding environmental review. Minn. R. 7850.2500, Subp. 10. In addition, the Power Plant Siting Act

Last week, Ray Kirsch, Dept. of Commerce Environmental Review Manager, stated that the FEIS is due to be filed on July 11, 2014. July 11, 2014 is long after the public and evidentiary hearings have ended, and long after the close of public comment on May 30, 2014.

The Minnesota Environmental Policy Act (MEPA) specifies that the “final detailed environmental impact statement... shall accompany the proposal through an administrative review process.”

*Prior to the preparation of a final environmental impact statement, the governmental unit responsible for the statement shall consult with and request the comments of every governmental office which has jurisdiction by law or special expertise with respect to any environmental effect involved. Copies of the drafts of such statements and the comments and views of the appropriate offices shall be made available to the public. **The final detailed environmental impact statement***

and the comments received thereon shall precede final decisions on the proposed action and shall accompany the proposal through an administrative review process.

Minn. Stat. §116D.04, Subd. 6a. Comments (emphasis added).

This MEPA mandated accompaniment cannot logically occur when the Environmental Impact Statement is released after the public and evidentiary hearings have been completed and after public comment closes.

Scheduling orders and timing is determined by the Administrative Law judge. Typically, the environmental review milestones are incorporated into the schedule in scheduling orders.

In the Brookings case, No CapX and U-CAN requested that the deadline that had been established for public comments be extended to incorporate filing of the FEIS and a one week comment period, and the ALJ did order that extension.

Upon noticing that the FEIS was to be released after the public comment period had ended, No CapX 2020 and U-CAN made that same request in the CapX Hampton-La Crosse docket, and that request was denied. Attached please find copy of the Order Denying Motion in the CapX Hampton to La Crosse routing docket, where the ALJ stated that the 4100 chapter requirement of a Comment period on the FEIS "is simply not applicable here." See Order on Motion Regarding Final Environmental Impact Statements and Motion to Extend Intervention Deadline, PUC Docket 09-1448 (June 30, 2011).

This lack of FEIS comment opportunity for the public was problematic in this case. Because the public did not have the opportunity to comment on the FEIS, it was not closely scrutinized. However, as we learned the hard way, that EIS contained information that was not correct, and in the two areas where there was incorrect information, both dam crossings, both routes through those areas were very contentious.

At the Zumbro Dam, where there was no transmission line and instead a forest, it was stated that there WAS a transmission line, and the ALJ recommended that route based on corridor sharing and Minnesota's policy of non-proliferation. Only a last minute oral clarification during Commission discussion prevented that error from resulting in a transmission route through a forest rather than in a pre-existing corridor. At the Byllesby Dam area, there was no mention in the EIS of the existing three transmission line corridor, the error was not acknowledged by the Commission, and the route segment chosen was instead on a greenfield route through that area. This is the transmission corridor that was not presented in the EIS:



In requesting that the Public Comment period be extended until after the FEIS is filed for public scrutiny, CETF and No CapX2020 are hoping to avoid problems such as these.

Extension of the deadline for public comments regarding FEIS adequacy is particularly important in this case, because there are no local residents, landowners, or otherwise interested

local parties who have intervened, and thus they cannot file briefs containing FEIS adequacy comments. Further, the FEIS is not planned to be released until July 11, 2014, the date that parties' initial briefs are due. Even formal parties will have little time to review the FEIS, and the intervening parties are unfamiliar with the area and would have difficulty commenting. Public participation in review of the adequacy of the FEIS would help inform the record.

The rules governing environmental review generally, Minn. R. Ch. 4410, does not apply to Power Plant Siting Act dockets, and the requisite 10 day comment period in that chapter is inapplicable. Minn. R. 4410.2800, Subp. 2; 7850.2500, Subp. 12. However, the Power Plant Siting Act rules do require that the Commission make several determinations regarding the adequacy of the EIS.

7859.2500, Subp. 10. Adequacy determination.

The Public Utilities Commission shall determine the adequacy of the final environmental impact statement. The commission shall not decide the adequacy for at least ten days after the availability of the final environmental impact statement is announced in the EQB Monitor. The final environmental impact statement is adequate if it:

- A. addresses the issues and alternatives raised in scoping to a reasonable extent considering the availability of information and the time limitations for considering the permit application;
- B. provides responses to the timely substantive comments received during the draft environmental impact statement review process; and
- C. was prepared in compliance with the procedures in parts [7850.1000](#) to [7850.5600](#).

If the commission finds that the environmental impact statement is not adequate, the commission shall direct the staff to respond to the deficiencies and resubmit the revised environmental impact statement to the commission as soon as possible.

Minn. R. Ch. 7850.2500, Subp. 10.

The Commission was in a rather difficult spot in the CapX 2020 Hampton-La Crosse routing decision because of the FEIS problems in that docket, which was exacerbated by failure to provide comment opportunity to the public.

Extension of the public comment period also furthers the operational principles of
The Power Plant Siting Act:

216E.08 PUBLIC PARTICIPATION.

Subd. 2. Other public participation.

The commission shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the commission's rules and guidelines as provided for in section [216E.16](#).

Based on the premise of the Power Plant Siting Act of encouraging and furthering public participation and the Commission's "principal of operation," CETF and No CapX 2020 request a short comment period, at least one week, after the filing of the FEIS to address its adequacy, and in the alternative, we request certification of this question to the Commission. The people are the ones on the ground who are best able to inform the record, they are the ones who would most likely know if important issues are not adequately addressed or are being given short shrift, and they are the ones with the most at stake in a routing proceeding. Public participation can prevent material errors.

Respectfully submitted,

May 13, 2014



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