

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 and a
Route Permit for the Minnesota-Iowa
345 kV Transmission Line Project in
Jackson, Martin and Faribault Counties

**ORDER DENYING CITIZENS ENERGY
TASK FORCE AND NOCAPX 2020'S
AMENDED MOTION FOR EXTENSION
OF PERIOD FOR PUBLIC COMMENT**

This matter came before Administrative Law Judge James E. LaFave upon the Amended Motion for Extension of Period for Public Comment of Citizens Energy Task Force (CETF) and NoCapX 2020 filed on May 13, 2014.¹ On May 19, 2014, CETF and NoCapX 2020 filed a renewed Motion for Intervention as a full party.²

On May 23, 2014, the Minnesota Department of Commerce, Energy Environmental Review and Analysis Division (DOC-EERA) filed a response in opposition to the motion. On May 27, 2014, ITC Midwest filed a response to the motion. No other party took a position on the motion.

Based upon the submissions of the parties and participants, and upon all of the contents of the hearing record,

¹ The initial Motion for Extension of Public Comment of CETF and NoCapX 2020 was filed on May 12, 2014.

² CETF and NoCapX 2020 withdrew their renewed Motion for Intervention as a full party by letter dated May 27, 2014.

IT IS HEREBY ORDERED:

1. Citizens Energy Task Force and NoCapX 2020's Motion for extension of the public comment period is **DENIED**.
2. Citizens Energy Task Force and NoCapX 2020's request that the question be certified to the Minnesota Public Utilities Commission is **DENIED**.

Dated: July 24, 2014

s/James E. LaFave

JAMES E. LAFAVE
Administrative Law Judge

MEMORANDUM

Background

This Motion seeks an order to allow the public to comment on the Final Environmental Impact Statement (FEIS) as part of the proceedings in this docket. The Power Plant Siting Act³ and Minnesota Rules Chapter 1405 and 7850 set forth the procedures for the Environmental Impact Statement (EIS) process. Pursuant to those rules the Minnesota Department of Commerce, Energy Environmental Review and Analysis Division (DOC-EERA) issued a draft EIS (DEIS). The DEIS was then published and made available to the public. The DOC-EERA held informational meetings and properly provided the required comment period on the DEIS.

Minn. R. 7850.2500, subps 7 and 8, provide that the DOC-EERA "shall hold the record on the environmental impact statement open for receipt of written comments for not less than ten days after the close of the informational meeting." The DOC-EERA then prepares the FEIS which must respond to the substantive public comments.⁴ The DOC-EERA typically prepares the FEIS as a copy of the DEIS to which the DOC-EERA attaches the public comments and its response to the comments.⁵ The MPUC, upon receipt of the FEIS, must determine whether the FEIS is adequate prior to making its final determination on the route permit application. That is the process that is being followed in this case.

³ See, Minn. Stat. ch 216E.

⁴ Minn. R. 7850.2500, subp. 9.

⁵ *Id.*

The Positions of the Parties

CETF and NoCapX 2020 seek an order to extend the public comment period, for at least one week after the receipt of the FEIS, to allow comment on the adequacy of the environmental review. To support their position, they cite to the Minnesota Environmental Policy Act (MEPA) which states in part: “The final detailed environmental impact statement and the comments received thereon shall precede the final decision on the proposed action and shall accompany the proposal through an administrative review process.”⁶ In addition, they argue that such a comment period is necessary because of possible inaccuracies in the FEIS. Further, they assert an additional public comment period is necessary because no local landowners or residents have intervened in this proceeding. In the alternative, CETF and NoCapX 2020 request that the question be certified to the MPUC.

The DOC-EERA opposes the motion of CETF and NoCapX 2020. DOC-EERA argues the motion exceeds CETF and NoCapX 2020’s limited role in this proceeding. DOC-EERA also asserts the motion fails on the merits. It argues that while the MEPA anticipates a comment period for the FEIS, this requirement is inapplicable to environmental review conducted in accordance with the Power Plant Siting Act⁷ and its associated rules on routing⁸ and hearing.⁹

ITC Midwest also opposes CETF and NoCapX 2020’s motion to extend the public comment period. It contends that Minnesota law does not provide for a comment period on the FEIS and that past practice in other recent MPUC route permit proceedings does not support providing such a comment period. Further, ITC Midwest also questions CETF and NoCapX 2020’s standing to bring the motion.

Discussion

a. The Motion by CETF and NoCapX2020 exceeds the scope of their limited participation

On January 20, 2014, CETF and NoCapX 2020 filed an Out-of-Time Petition for Limited Intervention (Petition). The Petition was filed after the deadline to intervene had passed, and 146 days after the intervention deadline had been set. The Petition specifically requested “status as limited parties, with the narrow purpose of reviewing Discovery, filing an Initial and Reply Brief and Exceptions.”¹⁰ Based on those representations to this Tribunal, the Petition was granted by Order dated January 31, 2014.¹¹ The Order clearly stated “No other participation in this proceeding will be allowed.”¹²

⁶ Minn. Stat. § 116D.04, subd 6a.

⁷ See, Minn. Stat. Ch. 216E.

⁸ See, Minn. R. 7850.

⁹ See, Minn. R. 1405.

¹⁰ Out-of-Time Petition for Limited Intervention at 1 (January 20, 2014).

¹¹ Order on Petitions to Intervene by Citizens Energy Task Force and NoCapX 2020 (January 31, 2014).

¹² *Id.*

Despite the limited nature of their participation, on February 17, 2014, CETF and NoCapX 2020 served Information Requests on the Minnesota Center for Environmental Advocacy (MCEA), Wind on the Wires, Fresh Energy and the Izzak Walton League.¹³ Then on March 7, 2014 CETF and NoCapX 2020 brought a Motion to Compel and for Leave to Participate in Discovery and Cross-Examination. That Motion was denied on April 1, 2014.¹⁴ Now, for the third time, and in sharp contrast to their initial representations to this Tribunal, CETF and NoCapX 2020 seek to act beyond the limited nature of their role.

The rules governing intervention in these proceedings authorize the Administrative Law Judge to “specify the extent of participation permitted”¹⁵ CETF and NoCapX 2020; that participation was specifically limited to reviewing Discovery, filing an Initial and Reply Brief and Exceptions.¹⁶ Bringing the motion under consideration goes well beyond the narrow role granted to CETF and NoCapX 2020. The motion, therefore, must be denied.

b. The environmental review required by law is being followed

CETF and NoCapX 2020 mistakenly argue that the MEPA requires a comment period on the FEIS in this case.

In the construction of a transmission line of 110 kV or more, the law requires that the “environmental review shall be conducted according to parts 7849.1000 to 7849.21000 and 7850.1000 to 7850.5600.”¹⁷ As discussed above, the process detailed in the relevant rules is being followed.¹⁸

NoCapX 2020 made a similar motion for a FEIS comment period in the Hampton-Rochester-La Crosse 345 kV transmission line project.¹⁹ As in this case, NoCapX 2020 argued the more general provisions of the MEPA and the rules adopted pursuant to the MEPA govern the conduct of the EIS. Administrative Law Judge Kathleen D. Sheehy denied the motion. In her order, Judge Sheehy gave this cogent analysis:

MEPA sets out the environmental review requirements applicable to all types of proposed actions that may adversely impact the environment, including, for example, underground mines, petroleum refineries, paper mills, highway projects, and solid waste disposal facilities. The Environmental Quality Board adopted rules pursuant to Minn. Stat.

¹³ Affidavit of Carol A. Overland ¶ 2 (March 7, 2014).

¹⁴ See, Order Denying Citizens Energy Task Force and NoCapX 2020’s Motion to Compel Answers to Information Requests and leave to Participate in Discovery and Cross-Examination (April 1, 2014).

¹⁵ Minn. R. 1400.6200, subp. 3.

¹⁶ Out-of-Time Petition for Limited Intervention at 1 (January 20, 2014).

¹⁷ Minn. R. 4410.4300, subp. 6. (Environmental Review – Transmission Lines).

¹⁸ See, Minn. Stat. § 216E.03, subd. 5.

¹⁹ See, *ITMO Appl. By Xcel Energy for a Route Permit for Hampton – Rochester – La Crosse 345 kV Trans. Line Project*, MPUC Docket No. E002/TL-09-1448, OAH Docket No. 3-2500-21181-2 (2011).

§ 116D.04, subd. 5a, establishing which governmental units are to be responsible for the environmental review of particular proposed actions and how the review is to take place. The rules established under this authority explicitly provide that, for the construction of high voltage transmission lines, the environmental review “shall be conducted” according to the PUC’s rules for environmental review in a certificate of need proceeding (Minn. R. 7849.1000 to 7849.2100) or in a route permit proceeding (Minn. R. 7850.1000 to 7850.5600).²⁰ Minn. R. 4410.2800, subp. 2, which requires a public comment period for a final EIS in other circumstances, is simply not applicable here.²¹

Even assuming CETF and NoCapX 2020 have standing, because the proper process regarding the EIS is being followed, their motion must be denied.

c. CETF and NoCapX 2020 failed to articulate grounds to justify certifying the question to the MPUC.

CETF and NoCapX 2020 requested that this question be certified to the MPUC. Minn. R. 1400.7600 sets out the six factors to be weighed in determining whether a motion should be certified. Those factors are:

- (A) Whether the motion involves a controlling issue of law over which there is a difference of opinion.
- (B) Whether the ultimate termination of the hearing would be materially advanced.
- (C) Whether the time expended between the motion to certify and the ultimate determination would prejudice the prevailing party.
- (D) Whether to delay the ultimate determination to after the hearing would render the matter moot or render the agency ruling meaningless.
- (E) Whether developing a full record is necessary and would avoid remanding the matter.
- (F) Whether the issue to be certified is solely within the expertise of the agency.²²

CETF and NoCapX 2020, however, did not argue which factor they believed

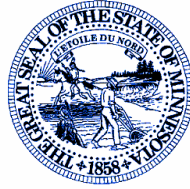
²⁰ Minn. R. 4410.4400, subp. 6.

²¹ *ITMO Appl. By Xcel Energy for a Route Permit for Hampton – Rochester – La Crosse 345 kV Trans. Line Project*, MPUC Docket No. E002/TL-09-1448, OAH Docket No. 3-2500-21181-2 (2011); *Order on Motion Regarding Final Environmental Impact Statements and Motion to Extend intervention Deadline* (June 30, 2011); eDockets No. 20116-64296-01.

²² Minn. R. 1400.7600.

supported their certification request. They did not even argue why they wanted the motion certified to the MPUC. The Administrative Law Judge, after a review of the motion record, does not believe any of the factors listed in Minn. R. 1400.7600 apply in this case. The request of CETF and NoCapX 2020 to certify the question to the MPUC is therefore denied.

J. E. L.



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July 24, 2014

See Attached Service List

**Re: In the Matter of ITC Midwest LLC Cert/Need for MN/Iowa 345 kV line
Project in Jackson, Martin and Faribault Counties**

**OAH 60-2500-30782
MPUC ET-6675/TL-12-1337
ET-6675-CN-12-1053**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **ORDER DENYING CITIZENS ENERGY TASK FORCE AND NOCAPX 2020'S AMENDED MOTION FOR EXTENSION OF PERIOD FOR PUBLIC COMMENT** in the above-entitled matter.

If you have any questions, please contact my legal assistant Kendra McCausland at (651) 361-7870 or kendra.mccausland@state.mn.us.

Sincerely,

s/James E. LaFave

JAMES E. LAFAVE
Administrative Law Judge

JEL:klm
Enclosure

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ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of ITC Midwest LLC Cert/Need for MN/Iowa 345 kV line Project in Jackson, Martin and Faribault Counties	OAH Docket No.: 60-2500-30782
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Kendra McCausland, certifies that on July 24, 2014 she served the true and correct **ORDER DENYING CITIZENS ENERGY TASK FORCE AND NOCAPX 2020'S AMENDED MOTION FOR EXTENSION OF PERIOD FOR PUBLIC COMMENT** by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:

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