

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101-2147

In The Matter of the Application of
Northern States Power Company, d/b/a
Xcel Energy, for Authority to Increase
Rates for Electric Service in the State of
Minnesota

OAH Docket No. 19-2500-33074
MPUC Docket No. E-002/GR-15-826

**NORTHERN STATES POWER COMPANY’S OBJECTION TO NO CAPX
2020’S AND CAROL A. OVERLAND’S SECOND PETITION TO INTERVENE**

Northern States Power Company, d/b/a Xcel Energy (“Xcel”) respectfully objects to the Second Petition to Intervene (“Second Petition”) filed by No CapX 2020 and Carol A. Overland (collectively, “Petitioners”) because Petitioners have not met the standard set forth in Minn. R. 1400.6200. Petitioners have not demonstrated: (1) that they have an interest in this rate case recognized by statute; (2) that they will be directly affected by this case; and (3) that their alleged interests will not be adequately represented by other parties to this proceeding.

Under Minn. R. 1400.6200, subp. 1, a person who submits a petition to intervene in a matter before the Office of Administrative Hearings (“OAH”) must file a petition and:

The petition shall show how the petitioner’s legal rights, duties, or privileges may be directly affected by the contested case; shall show how the petitioner may be directly affected by the outcome or that petitioner’s participation is authorized by statute, rule, or court decision; shall set forth

the grounds and purposes for which intervention is sought; and shall indicate petitioner's statutory right to intervene if one should exist.

A petition to intervene shall be granted “upon a proper showing pursuant to subpart 1 [of Minn. R. 1400.6200] unless the judge finds that the petitioner's interest is adequately represented by one or more parties participating in the case.” Minn. R. 1400.6200, subp.

3. In other words, even if a petitioner meets the technical requirements of subpart 1 of Minnesota Rule 1400.6200, intervention may be denied if a petitioner's interest is already adequately represented by any other party to the proceeding. *Id.*

Despite being provided an opportunity to refile a petition to intervene after their first petition was denied, Petitioners have still failed to establish: (1) that the interests they raise are relevant and proper for consideration in this proceeding, (2) that any alleged relevant interest they may have in this proceeding is not already adequately represented by the other parties to this proceeding, or (3) that they will be directly affected by the outcome of this case.¹

Certainly, Carol Overland, as an individual ratepayer, has not established any basis on which she should be granted party status. Ms. Overland has not established that her interest as an Xcel ratepayer or in rate recovery issues are not adequately represented by the Department of Commerce (“Department”) or Office of the Attorney General (“OAG”) or that she will be uniquely affected by the outcome of the case. *See In re Minnegasco*, Docket No. G-008/GR-92-400, 1992 WL 474702 (Minn. P.U.C. Nov. 10, 1992) (applying Minn. R. 1400.6200, subp. 3 and denying petition to intervene in general rate case because the Department and OAG were already representing interests of general

¹ Petitioners apparently concede that their participation is not authorized by statute, rule, or court decision, as they do not raise this issue in their Petition.

ratepayers). Nor do Ms. Overland's past representations as an attorney on behalf of clients establish that she – as opposed to her clients – has an interest that is not adequately represented by a party to this proceeding. Ms. Overland can participate, as all other members of the public can participate, through the public hearing and public comment process.

With respect to No CapX 2020, first, Petitioners fail to explain how the interests they seek to represent are proper or relevant in this forum. For example, Petitioners state that “No CapX 2020 is a Minnesota non-profit business organization in good standing, . . . specifically formed to intervene in the CapX 2020 Certificate of Need docket to address transmission issues related to CapX 2020 and subsequently to address transmission issues related to MISO's 17 project MVP Portfolio.” (Second Petition, p. 2). Of course, the Certificate of Need dockets referred to have closed. Moreover, to the extent that No CapX 2020 seeks to use this general rate case to raise issues related to “MISO's 17 Project MVP Portfolio,” they have chosen the wrong forum. Petitioners fail to explain how issues such as “Interest in the equity of rate recovery authorized by FERC under Schedule 26A, and others, and how this will be treated under the Commission's jurisdiction” or “NSP proposes recovery schemes that raise jurisdictional issues between Minnesota v/ [sic] and FERC for MVP Portfolio projects” are relevant or appropriate in the context of this general rate case.

Second, Petitioners fail to demonstrate that any alleged relevant interest they may have in this proceeding is not already adequately represented by the other parties. While Ms. Overland or certain unidentified members of No CapX 2020 may be Xcel ratepayers,

that fact alone cannot support intervention as a party. Petitioners attempt to distinguish their interests from other parties due to their “freedom from funding incentives and requirements to advocate certain issues and positions, non-participation in the e21 Initiative and consensus regarding its policies, and particularly promotion of transmission, transmission cost allocation and finish rate recovery schemes.” (Second Petition, p. 9). Petitioners also imply that No CapX 2020 is uniquely “interested in the shift of focus from native load to market transactions, and jurisdictional issues present in the subtle and not-so-subtle shifting toward legitimization of ‘regional’ planning and rate authority, and away from state and Commission authority.” (*Id.*, p. 6). Nowhere does No CapX 2020 explain how this alleged freedom from funding incentives or interest in regional planning provides a relevant basis for intervention as a party in a general rate proceeding.

Petitioners also claim that their interests in Xcel’s “[r]ate recovery plan for the other CapX projects,” the rate of return that Xcel will seek under its Minnesota general rates, “the equity of rate recovery authorized by FERC under Schedule 26A,” and “propose[d] [rate] recovery schemes that raise jurisdictional issues between Minnesota v/ [sic] and FERC for MVP Portfolio projects” support intervention. However, to the extent such issues tie to rate recovery being sought from ratepayers in this proceeding, the interest in fair recovery is shared by all ratepayers. Regarding the members of No CapX 2020, their interests are already represented by both the Department (on behalf of all ratepayers) and by the OAG (on behalf of residential and small business ratepayers), parties to this proceeding. As the Commission has recognized, concerns “common to the

general ratepayers . . . are properly represented by the Department,” and therefore are not grounds for intervention. *In re MCI Commc 'ns Corp.*, Docket P-443,3012/PA-97-1532, 1998 WL 307947 (Minn. P.U.C. 1998).

Because a party to this proceeding is already representing Petitioners' alleged interests, Petitioners' Petition should, again, be denied. Minn. R. 1400.6200, subp. 3; *see also, In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in Minnesota*, OAH 68-2500-31182, 2014 WL 1006175 (Minn. P.U.C. March 14, 2014) (“Moreover, even if Minnesota Power’s generalized concern regarding precedent is sufficient to establish grounds for intervention under Minn. R. 1400.6200, the Administrative Law Judge finds that Minnesota Power’s interests in this proceeding are adequately represented by Northern States Power Company d/b/a Xcel Energy (Xcel).” . . . “Minnesota Power’s unsupported assertion that no party will adequately represent its interests is insufficient to meet its burden to show that its interests will not be adequately represented.”)

Lastly, Petitioners' general claims that they have participated and intervened in other proceedings before the Public Utilities Commission and that their legal rights and interests will be impacted by the outcome of these proceedings fall flat. Indeed, similar reasons for intervention **offered by No CapX 2020 have previously been rejected** and a similar petition to intervene filed by No CapX 2020 has been denied. *In the Matter of the Application for a Route Permit for the Bemidji-Grand Rapids 23GkV Transmission Project*, OAH 8-2500-208252, 20110 WL 3534664 (Minn. P.U.C. August 12, 2010) (applying Minn. R. 1400.6200 and holding that No CapX 2020’s assertions that it is a

party in other matters before the Public Utilities Commission and that its legal rights would be impacted by the outcome of the instant proceedings “without more, fall short of the requirements of the applicable rules”). Moreover, while Petitioners contend that “ratepayers, individuals, members, and organizations working with No CapX 2020 will be directly affected by the outcome of this proceeding” (*id.*, p. 9 (emphasis added)), they do not state that No CapX 2020 actually represents the interests of these ratepayers, individuals, members or organizations who have worked with them. As such, No CapX 2020 has not established that **its** interests will be uniquely affected by the outcome of this case. As noted above, even if No CapX 2020 actually represented these individuals and organizations, Petitioners fail to demonstrate that their petition to intervene should be granted, as Petitioners do not explain why such interests are not represented by the Department and the OAG.

For the foregoing reasons, Petitioners have not satisfied the requirements for intervention set forth in Minn. R. 1400.6200, and their Petition to Intervene should be denied.

Dated: February 1, 2016

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