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May 20, 2010

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Filed & Served electronically

RE: NoCapX 2020 and U-CAN Motion for Limited Intervention
Midwest Independent Transmission System Operator, Inc. and the Midwest
ISO Transmission Owners, Docket No. ER-09-1431-002

Dear Secretary Bose:

Enclosed for filing please find NoCapX 2020 and United Citizens Action Network's Motion for Limited Intervention Out-of-Time in the above-entitled docket.

This letter and Motion are being filed and served via that electronic filing to all parties.

Very truly yours



Carol A. Overland
Attorney at Law

**THE UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Midwest Independent Transmission)
System Operator, Inc. and The Midwest)
ISO Transmission Owners)**

Docket No. ER-09-1431-002

**MOTION FOR LIMITED INTERVENTION OUT-OF-TIME
BY
NOCAPX 2020 AND UNITED CITIZENS ACTION NETWORK,
LANDOWNERS DIRECTLY IMPACTED
BY THE CAPX 2020 TRANSMISSION PROJECT**

No CapX 2020 and United Citizen Action Network, by and through its counsel Carol A. Overland, Legalectric, P.O. Box 176, Red Wing, MN 55066, files this Motion for Limited Intervention in the above-captioned proceeding. In support of this filing, NoCapX 2020 and United Citizens Action Network states as follows:

1. This Motion for Limited Intervention is filed pursuant to Sections 203, 205 and 206 of the Federal Power Act (“FPA”), 16 U.S.C. §§ 824b, 824d and 824e, and Rules 212 and 214 of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission (“FERC”), 18 C.F.R. §§ 385.212, 385.214. This Motion is made out-of-time, after the deadline for Intervention, therefore a late intervention, and is a request for ~~limited~~ intervention, specifically to participate in future comment opportunities as this docket affords.

2. NoCapX 2020 and United Citizens Action Network is a party to many of the various Minnesota Public Utilities Commission proceedings, and challenges CapX 2020’s claim that the Project is necessary and its claim that it is required for “reliability,” and regarding the Brookings line specifically, its claim that the Brookings line is needed and appropriate for

generation interconnection, especially in light of demise of Big Stone II, the major generator waiting for transmission access.

3. NoCapX 2020 and United Citizens Action Network are comprised of landowners, ratepayers and residents along and/or near the proposed easement for the proposed several CapX 2020 Group I transmission lines, to be located in the States of Minnesota, North Dakota, South Dakota and Wisconsin. CapX 2020 is a major transmission project proposed to be constructed by a consortium of utilities that have not and will not divulge the ownership of the project, if constructed and operated. The CapX 2020 Group I projects entail construction of new high capacity bundled and double-circuited transmission lines from the Dakotas through Minnesota to Wisconsin and beyond, with an estimated cost of more than \$2 billion.

4. The Midwest ISO and many parties with an interest in the outcome are negotiating cost-apportionment of new transmission and generator interconnection. What concerns NoCapX 2020 and United Citizens Action Network is the tack that cost-apportionment is taking, and emergence of two divergent views, both of which are a significant departure from the market theories that are at the root of the shift in transmission and energy policy. NoCapX and U-CAN do not support a market approach to the provision of essential services, and note that in Minnesota, electricity remains a regulated industry. The interests of NoCapX 2020 and United Citizens Action Network, as landowners, ratepayers and residents directly affected by the CapX 2020 transmission project, are not represented in the FERC proceedings by any party. The interests of NoCapX 2020 and United Citizens Action Network are distinct from other intervenors in this FERC proceeding – no other party is comprised of individual landowners, ratepayers and directly affected residents concerned with the impact of market theory on electric cost and available, transfer of costs to parties that do not benefit from the infrastructure, and land

rights – the present intervenors are governments and organizations that have interests distinct from those of NoCapX and U-CAN. While there are multiple parties in the FERC proceedings with divergent positions, none are landowners and ratepayers directly affected by the outcome of this cost-apportionment proceeding.

5. NoCapX 2020 and United Citizens Action Network members are ratepayers as well as landowners along the route. Minnesota and Midwest ratepayers would bear a portion of the cost of the entire CapX 2020 project and it is not clear how project “benefits” and “costs” will be apportioned – that is the purpose of this docket and why NoCapX and U-CAN present this Motion for Intervention.

6. In the course of the Minnesota PUC proceedings, CapX 2020 has made inadequate efforts to quantify the financial impact of the Project on the Minnesota ratepayers. Throughout the Minnesota Public Utilities Commission proceeding, CapX 2020 has asserted that the cost of the Project will be shared in accordance with the cost apportionment formula approved by FERC. However, as is apparent in this docket, a cost apportionment formula is anything but certain. In other jurisdictions, cost apportionment schemes approved by FERC and relied on by utilities have been struck down. *See* FERC Order No. 494, *PJM Interconnection, L.L.C.*, 119 FERC Par. 61063 (2007); *see e.g. Illinois Commerce Commission, et al. v. Federal Energy Regulatory Commission*, 576 F.3d 470, *rehearing denied* 2009 LEXIS 24192 (7th Cir. 2009). This volatility in cost-apportionment and extreme efforts being made by utilities to shift costs to those not benefiting from the infrastructure is the primary reason NoCapX 2020 and U-CAN seek to intervene.

7. NoCapX 2020 and United Citizens Action Network have requested that a decision in the Minnesota PUC proceedings be deferred until a cost allocation formula acceptable to the court is in place for the Project. The PUC has not yet ruled on this request for suspension.

8. In light of the material importance of a valid generic cost allocation formula, for one specific to the CapX 2020 Project, for consideration to the PUC's decision in the pending CapX 2020 proceedings, and the specific need and market issues raised in this FERC Docket, NoCapX 2020 and United Citizens Action Network requests limited intervention. Information sought by FERC in this docket and made part of this record is necessary to fully inform the record in the CapX 2020 proceedings before the PUC, and NoCapX 2020 and United Citizens Action Network will integrate information into that record.

9. NoCapX 2020 and United Citizens Action Network note that the type of cost information requested of PJM by FERC in Docket ET05-121 would be useful in this docket. The questions in that docket are directly relevant to CapX 2020 costs, benefits and claimed "need" for the CapX 2020 Group I transmission projects and hope to glean this information from this docket. Instead, what seems to be happening in this MISO docket is a free-for-all wrangling-negotiation where number of votes will make the decision. That means that those in the discussion will have an inordinate say in the result and those not present bear the brunt of the cost. For that reason, NoCapX 2020 and U-CAN wish to be able to comment in the record as those opportunities arise.

10. NoCapX 2020 and United Citizens Action Network request limited intervention in the above-captioned matter to comment on these issues because cost allocation is a material issue in the CapX 2020 need and routing dockets at the Minnesota PUC. NoCapX 2020 and U-CAN will not cause any delay and pledge to adhere to comment deadlines in this docket.

11. NoCapX 2020 and United Citizens Action Network limited intervention is not intended to be disruptive or cause delay. Because NoCapX 2020 and United Citizens Action Network are directly affected by the Project, it is in the public interest that NoCapX 2020 and United Citizens Action Network intervene in these proceedings. No party would be prejudiced by our limited intervention.

12. The persons to whom correspondence, pleadings and other papers in relation to this proceeding should be addressed and the persons whose names are to be placed on the Commission's official service list are designated as follows pursuant to Rule 203, 18 C.F.R. § 385.203 (2005):

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13. NoCapX 2020 and United Citizens Action Network respectfully requests that the Commission:

- Grant NoCapX 2020 and United Citizens Action Network' request for Limited Intervention;
- Granting such other and further relief as may be necessary, just and appropriate.

Respectfully submitted,



Dated: May 20, 2010

Carol A. Overland
Attorney for NoCapX 2020
and United Citizen Action Network

CERTIFICATION OF SERVICE

I hereby certify that I have on this day e-filed the foregoing document with FERC, utilizing the e-filing system, by which each person on the service list for the Docket No. ER09-143-000 and any related Sub-Dockets is served.

Dated: May 20, 2010



Carol A. Overland
for
NoCapX 2020 and United Citizens Action Network