

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

In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and others for Certificates of Need for the Cap X 345-kV Transmission Projects.

**CITIZENS ENERGY TASK FORCE  
COMMENTS ON ENVIRONMENTAL  
REPORT JURISDICITON AND  
SCOPING ISSUES**

**INTRODUCTION**

The Citizens Energy Task Force (“CETF”) requests that the Public Utilities Commission (“Commission”) assert its jurisdiction at this time to ensure the completeness of the Environmental Report. CETF recognizes the conflict in interpretation of applicable Minnesota rules, but believes that there are significant and substantive omissions in the scope of the Environmental Report which the Commission will eventually be required to consider and rectify. In the interests of an orderly and efficient procedure, CETF requests that the Commission review the scoping decision of the Department of Commerce (“DOC”) and Environmental Report at this time and request a Supplement to the Environmental Report to address specific impacts and alternatives that are critical to this record and decision.

CETF is an informal association of community residents who own property in Dakota County. Many of CETF’s members received notice from the applicants in this matter, the CapX 2020 utilities, that the proposed high voltage power lines were likely to cross their property, creating direct adverse impacts to their interests. In addition to concern about the direct human, financial and environmental impacts of the proposed transmission lines on their property, CETF members came together in January of this year to protect the community’s interests in development of sustainable, community-based energy within the State of Minnesota. CETF believes that development of renewable, community-based energy will affect rural socioeconomic interests and the future of agriculture in Minnesota as well as community-wide interests in air quality, water quality, prevention of public health consequences from electromagnetic fields and prevention of global climate change.

On or about January 15, 2008, CETF submitted comments to the DOC requesting that the Environmental Report include an analysis of impacts and alternatives pertinent to their interests. In these comments, CETF also incorporated by reference comments of United Citizens Action Network and Windustry.

On January 18, 2008, the Department of Commerce issued its scoping decision, describing “Matters to be Addressed” and “Issues Outside the Scope of the Environmental Report.”

On February 28, 2008, the North American Water Office (NAWO) and the Institute for Local Self Reliance (ILSR) submitted to both the DOC and the Public Utilities Commission (Commission) a Request for Clarification/Expansion of Environmental Report Scoping Decision.

On March 18, 2008, Commission staff member Robert Cupit sent a letter suggesting that the issue of scoping of the Environmental Report was restricted to the jurisdiction of the DOC, and that Minnesota Rule language suggesting otherwise was a typographical error.

On March 28, 2008, NAWO and ILSR filed a request with the Commission requesting that the Commission review the Environmental Report scoping decision.

On March 31, 2008, the Department of Commerce released its Environmental Report pertaining to the CapX 2020 high voltage power lines.

On April 9, 2008, the Commission issued a Notice of Deadline for Filing Comments on the question of jurisdiction over changes that may be made to an Environmental Report Scoping Decision Order of the Commissioner of the Department of Commerce. The Commission provided that comments would be accepted through April 18, 2008.

On April 14, 2008, CETF served and filed a Petition to Intervene as a party in this matter.

## DISCUSSION

### **1. The Commission has jurisdiction to review the scope of the Environmental Report as well as to determine its sufficiency.**

On the face of the language of Minnesota Rule 7849.7050, Subp. 8, the Commission is charged with the responsibility of reviewing an appeal from the DOC’s decision on what alternatives and impacts to include in the Environmental Report. This Rule provides that any person may request to bring the matter of what alternatives or impacts to include in the Environmental Report to the commissioner and then states, “A request to bring the matter to the *commission* shall not preclude the commissioner from beginning preparation of the

environmental report in accordance with the commissioner's decision.” Minn. R. 7849.7050, Subp. 8 (emphasis added).

Commission staff may believe that this language results from a typographical error in the process of transferring responsibilities from the Environmental Quality Board to the Department of Commerce pursuant to Minnesota Laws 2005, Chapter 97, Sections 17 and 19(b). The reference in Subpart 8 to an appeal procedure before the board under Minn. R. 4405.0600, Subpart 5, creates further ambiguity. There is both an inconsistency in the language of the rules and a question of whether the legislative policy intentionally deprived citizens of a more objective second look at the scope of a decision on what alternatives or impacts to include in the Environmental Report on a large energy facility.

Whether or not the reference to the “commission” in part 7849.7050, Subpart 8 is an error or a protective holdover for citizens, it is clear that the Commission has the jurisdiction to review the scope of the environmental report and determine if additional alternatives or impacts should be addressed. The Commission makes the ultimate decision on the adequacy of an environmental report when it determines if a high voltage power line is needed. Minn. R. 7849.7090, Subp. 2. This Subpart continues,

The PUC may direct the commissioner to prepare a supplement to the environmental report, or the environmental assessment or EIS if one is prepared pursuant to part 7849.7100, if the PUC determines that an additional alternative or impact should be addressed or supplemental information should be provided.

Citizens Environmental Task Force suggests to the Commission and its staff that, however Minn. R. 7849.7050, Subp. 8 is interpreted, it would be in the interests of a timely development of this record for the Commission to accept jurisdiction and supplement the environmental report at this time, rather than allowing the parties to prepare expert testimony without addressing alternatives and impacts which are critical under applicable laws.

**2. The Commission should broaden the scope of the Environmental Report to ensure that the alternatives considered in this proceeding meet the requirements of environmental review.**

When the responsibilities of the Environmental Quality Board were transferred to the Public Utilities Commission in 2005, the Legislature required that the duties of the Department

of Commerce and the Commission must be carried out consistent with the Minnesota Environmental Policy Act (MEPA):

To ensure greater public participation in energy infrastructure approval proceedings and to better integrate and align state energy and environmental policy goals with economic decisions involving large energy infrastructure, all responsibilities, as defined in Minnesota Statutes, section 15.039, subdivision 1, held by the Environmental Quality Board relating to power plant siting and routing under Minnesota Statutes, sections 116C.691 to 116C.697 . . . and rules associated with those sections are transferred to the Public Utilities Commission under Minnesota Statutes, section 15.039, except that the responsibilities of the Environmental Quality Board under Minnesota Statutes, section 116C.83, subdivision 6, and Minnesota Rules, parts 4400.1700, 4400.2750, and 4410.7010 to 4410.7070, are transferred to the commissioner of the Department of Commerce. . . *The Department of Commerce and the Public Utilities Commission shall carry out these duties in accordance with the provisions of Minnesota Statutes, section 116D.03.* (emphasis added). Minnesota 2005 Session Laws, Chapter 97, article 3, section 17.

Minnesota Statutes 116D.03, the MEPA law, requires in any action by state agencies that “to the fullest extent practicable the policies, rules and public laws of the state shall be interpreted and administered in accordance with the policies set forth in sections 116D.01 to 116D.06.” Minn. Stat. 116D.03, Subd. 1. This obligation exists whether or not an environmental impact statement is the document used to perform environmental review. Minn. Stat. 116D.04, Subd. 7. Specifically, MEPA imposes a duty on state agencies to “develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” Minn. Stat. 116D.03, Subd. 2(4). MEPA also creates an obligation to “reduce the deleterious impact on air and water quality from all sources.” Minn. Stat. 116D.02, Subd. 2(16). In language similar to the federal National Environmental Policy Act (NEPA), Minnesota law provides that no state action which is likely to cause impairment of the environment shall be allowed if there is a feasible and prudent alternative:

No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct. Minn. Stat. 116D.04, Subd. 6.

Minnesota case law requires that administrative agencies use independent expertise and make an impartial evaluation of environmental considerations in conducting environmental review of a proposed project:

The purpose of all environmental legislation, at both the state and the federal levels, is to force agencies to make their own impartial evaluation of environmental considerations before reaching their decisions. The agency's role . . . is to be a source of independent expertise whose scientific investigation can uncover the data necessary to make an informed environmental decision. No Power Line v. Minnesota Environmental Quality Council, 262 N.W. 2d 312, 327 (Minn. 1977).

A state agency with jurisdiction over alternatives must independently evaluate alternatives in terms of their environmental benefits, costs and risks. Where a responsible state agency acted as a "conduit" for an environmental review and merely validated the applicant's analysis, this was ruled insufficient under MEPA. Cedar-Riverside Environmental Defense Fund v. Hills, 422 F. Supp. 294, 326-27 (1976), *rev'd on other grounds*, 560 F. 2d 377 (8<sup>th</sup> Cir. 1977) "MEPA's purpose is to force agencies to make their own impartial evaluation of environmental considerations before reaching their decision." Iron Rangers for Responsible Ridge Action v. Iron Range Resources, 531 N.W. 2d 874, 880 (Minn. App. 1995).

In its comments filed this January, CETF requested that the Environmental Report analyze as feasible and prudent alternatives to the CapX 2020 high voltage power lines:

- 1) Distributed generation and community-based energy;
- 2) Wind generation in southeast Minnesota to provide a renewable resource closer to load;
- 3) Concentrated solar power with thermal storage to reduce winter peak demand;
- 4) Efficiency, conservation and combined heat and power to address reliability as well as demand; and
- 5) Alternatives to minimize environmental impacts including non-proliferation of new transmission corridors and underground placement of transmission lines.

CETF also incorporated by reference the comments of Windustry and United Citizens Action Network which requested consideration of additional alternatives, including:

- 1) transmission designed for renewable energy sources to comply with Minn. Stat. §216B.243, subd.3; and 2) transmission designed to maximize wind generation outlet capacity and meet Minnesota renewable energy standards by coordinating construction of power lines with power purchase agreements for renewable energy. Minn. Stat. 216B.2425, Subd. 7. Conditioning the issuance of permits for a power line to limit environmental impacts of generation is a reasonable

and feasible alternative that should be considered in environmental review. Border Power Plant v. Department of Energy, 260 F. Supp. 2d 997, 1031 (U.S. D.C. S. Cal. 2003). The Environmental Report Scoping Decision did not include any of the above alternatives requested by CETF.

In order for environmental review to consider feasible and prudent alternatives to each of the proposed CapX 2020 transmission lines, CETF repeats its request that the above alternatives be included within the scope of the Environmental Report and that the Department of Commerce make its own rigorous and independent analysis of alternatives to each of the proposed high voltage transmission line projects separately. Without this analysis, it is not possible for the public or for citizen participants to determine if there is a feasible and prudent alternative to any or all of the proposed high voltage power lines that would reduce or prevent their harm to the environment.

**3. The Commission should require supplementation of the Environmental Report to evaluate air quality and greenhouse gas emissions impacts of the power lines and the generation sources to which they would be connected.**

Under Minnesota statutory law as well as precedent pertaining to environmental review, the Commission should require an analysis of the impacts of renewable and non-renewable generation which will use the proposed CapX 2020 high voltage power lines for transmission. CETF does not disagree with the Department of Commerce that the fossil-fuel or wind energy sources that would depend on the CapX 2020 are not part of the proposed “project” itself. However, CETF believes that the use of the CapX 2020 transmission lines by fossil-fuel generation is not only reasonably foreseeable, it is an assumption of the modeling on which the applicants’ assertion of need is based. Minnesota’s certificate of need law requires that the commission analyze the nature of the renewable or non-renewable generation transmitted by high voltage power lines prior to determining need. Minn. Stat. 216B.243, subd. 3a. The validity of applicants’ broad statements that the CapX 2020 power lines are needed for regional reliability does not relieve the applicants and the responsible state agency from analyzing the impacts, both negative and positive, of the generation sources which would be served by the lines.

Even though a generation source is outside the scope of a “project,” environmental

analysis of the action still requires analysis of the air and water impacts of the generation sources as “adverse environmental effects” of permitting the construction of transmission lines. Border Power Plant Working Group, 260 F. Supp. 2d at 1013. “Reasonable forecasting and speculation” is implicit in environmental review so agencies should not be allowed to shirk their responsibilities by labeling discussion of future environmental effects as “crystal ball inquiry.” Foreseeable significant effects which would be caused by implementation of the proposed state action must be evaluated in environmental review. *Id.* at 1015, *citing* Methow Valley Citizens Council v. Regional Forester, 833 F. 2d 810, 816-17 (9<sup>th</sup> Cir. 1987).

Along with a general obligation to evaluate the air and water quality impacts of renewable and non-renewable generation which would be transmitted if the proposed project or its alternatives were constructed, Minnesota law and policy call for the evaluation of the greenhouse gas emissions associated with transmission alternatives.

Minnesota Statutes enacted in 2007 define “statewide power sector carbon dioxide emissions” to include “the total annual emissions of carbon dioxide from the generation of electricity within the state and all emissions of carbon dioxide from the generation of electricity imported from outside the state and consumed in Minnesota.” Minn. Stat. 216H.03, Subd. 2. “Emissions of carbon dioxide associated with transmission and distribution line loss are included in this definition.” *Id.* Unless preempted by federal law, until a comprehensive greenhouse gas reduction law is adopted to substantially reduce these emissions, no person shall “construct within the state a new large energy facility that would contribute to statewide power sector carbon dioxide emissions.” Minn. Stat. 216H.03, Subd. 3. Exceptions are provided for facilities that offset emissions in specified ways. Minn. Stat. 216H.03, Subd. 4.

The proposed CapX 2020 high voltage transmission lines are new “large energy facilities” governed by this law. *See* Minn. Stat. 216B.2421, Subd. 2. The CapX 2020 application was filed with the Commission on August 16, 2007, after the exemption date specified in Subd. 7(1). Even if applicants might request an exemption of their projects from the law pursuant to Subd. 7(3), this would require an extraordinary finding by the Commission that each of the power lines is “essential” for the reliability of Minnesota’s electrical system or to avoid placing a substantial burden on ratepayers. Minn. Stat. 216H.03, Subd. 7(3). Without predetermining the result of this exemption process, it is clear that the record analyzing a new large energy facility must provide data from which the total greenhouse gas impacts of the

proposal could be determined.

Analysis of greenhouse gas (GHG) emissions in environmental review of proposed Minnesota projects was unanimously recommended by the Governor's Minnesota Climate Change Advisory Group:

Including consideration of GHG emissions as part of EAW and EIS processes and documents would enable comparison of reference case GHG emission levels to future GHG emission levels as a result of proposed projects. Such information could be helpful in targeting development decisions that minimize GHG emissions or in pointing out the need for authority to regulate GHG emissions. Agencies should utilize state-developed guidelines and tools in EAW and EIS documents comparing reference case and estimated future GHG emissions. This information will guide officials and developers in choosing technologies and activities that result in development that protects the environment and reduces additional contributions of GHGs." (Minnesota Climate Change Advisory Group Final Report, 7-6, <http://www.mnclimatechange.us/ewebeditpro/items/O3F16700.pdf>

An environmental review document published earlier this year by the California Public Utilities Commission and U.S. Bureau of Land Management in regard to a 150-mile long transmission line project explains the nature of the methodology used as well as the conclusions reached in the particular situation facing California. *Executive Summary of the Draft Environmental Impact Report / Environmental Impact Statement and Proposed Land Use Amendment for the proposed Sunrise Powerlink transmission line project*. January 3, 2008, <http://www.cpuc.ca.gov/Environment/info/aspensunrise/deir/02%20Exec%20Summary.pdf>. Because greenhouse gas emissions have potential environmental impacts, failure to disclose and analyze their significance also runs counter to environmental review. Border Power Plant Working Group, 260 F. Supp. 2d at 1029.

CETF requests the Commission to require analysis of the air quality impacts of generation that would be transmitted by the CapX 2020 power lines as part of the Environmental Report. Specifically, CETF requests, in keeping with Minnesota law and policy, that the Commission require that the Environmental Report be supplemented to analyze the greenhouse gas impacts of the proposed high voltage transmission projects and alternatives. This analysis may suggest feasible alternatives, conditions, offsets or mitigation strategies to reduce the adverse environmental effects of the proposed projects.

## CONCLUSION

However this Commission decides to interpret the language of Minn. R. 7849.7050, Subp.8, the Commission has jurisdiction to require expansion of the scope of the Environmental Report to ensure that alternatives and impacts critical to decision in this matter are thoroughly analyzed. CETF respectfully requests that the Commission exercise this jurisdiction to require supplementation of the Environmental Report in advance of the filing of testimony so that an orderly and complete record can be developed.

DATE: April 18, 2008

Respectfully submitted,

*Paula G. Maccabee s/s/*

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