

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.

FIRST PREHEARING ORDER

A prehearing conference was held before Beverly Jones Heydinger, Administrative Law Judge, on December 19, 2007, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota.

Appearances:

Michael C. Krikava, Lisa M. Agrimonti and Catherine A. Biestek, Attorneys at Law, Briggs and Morgan, P.A., 80 South Eighth Street, 2200 IDS Center, Minneapolis, MN 55402, and Priti R. Patel, Assistant General Counsel, Northern States Power Company, 414 Nicollet Mall, Minneapolis, Minnesota 55401, on behalf of the Applicants.

Julia Anderson, Assistant Attorney General, 445 Minnesota Street, Suite 1500, St. Paul, MN 55101, on behalf of the Department of Commerce (Department).

John Reinhardt, 3552 26th Avenue South, Minneapolis, MN 55406, on behalf of United Citizens Action Network.

Paula Maccabee, Attorney at Law, 1961 Selby Avenue, St. Paul, MN 55104, on behalf of Windustry.

Carol Overland, Attorney at Law, Overland Law Office, P.O. Box 176, Red Wing, MN 55066, on behalf of No CapX 2020.

George Crocker, Executive Director, P.O. Box 174, Lake Elmo, MN 55042, appeared on behalf of North American Water Office and the Institute for Local Self-Reliance.

Elizabeth Goodpaster, Staff Attorney, Minnesota Center for Environmental Advocacy, 26 East Exchange Street, Suite 206, St. Paul, MN 55101, on behalf of Wind on the Wires (WOW), Izaak Walton League of America – Midwest Office (IWLA) and Fresh Energy.

David M. Aafedt, Attorney at Law, Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis, MN 55402-4629, on behalf of Prairie Island Indian Community.¹

Robert Cupit and David Jacobson, Commission Staff, were also in attendance.

The Commission deemed the Application complete on November 27, 2007. Although the Commission has received a Request for Reconsideration of that decision, this proceeding will go forward, absent further order from the Commission. Discussion was held among the participants concerning the proposed schedule. The Administrative Law Judge makes the following Prehearing Order.

IT IS HEREBY ORDERED:

Intervention

1. The parties to this matter as named in the Commission's Notice and Order for Hearing issued November 21, 2007, were the Applicants and the Department. Petitions to intervene were filed with the Administrative Law Judge by United Citizens Action Network, North American Water Office and the Institute for Local Self Reliance, and the Prairie Island Indian Community. There was no opposition to the petitions for intervention. The Petitions for Intervention of United Citizens Action Network, North American Water Office and the Institute for Local Self Reliance, and Prairie Island Indian Community are **GRANTED**.

2. The deadline to intervene as a party is **June 27, 2008**. However, any person who wishes to call witnesses to testify at the Evidentiary Hearing shall file a Petition to Intervene on or before **April 15, 2008**, and, if the Petition is granted, pre-file testimony according to the schedule set forth below. Petitions to Intervene received after June 27, 2008, will be considered, but the scope of participation may be limited.²

3. Any party objecting to the petition shall file its objection within seven days of receipt.

¹ On December 21, 2007, the Administrative Law Judge received notice of substitution of counsel for the Prairie Island Indian Community. Hereafter, Philip R. Mahowald, General Counsel, and Peter R. Jones, Assistant General Counsel, Prairie Island Indian Community Legal Department, 5636 Sturgeon Lake Road, Welch, MN 55089, shall appear on behalf of the Prairie Island Indian Community. At their request, David M. Aafedt and John A. Knapp, Winthrop & Weinstine, P.A., will remain on the e-mail service list.

² Minn. R. 1400.6200, subp. 3

4. Persons who are not parties may, upon request, be granted the opportunity for limited participation, including the opportunity to testify, offer exhibits and question other party's witnesses, but will not be deemed a party by reason of such participation.³ Persons who are not parties are encouraged to provide their testimony and exhibits at the public hearings.

Schedule

5. The following schedule is adopted:

Completion of Environmental Report	March 31, 2008
Direct Testimony Filed	April 30, 2008
Rebuttal Testimony Filed	May 30, 2008
Surrebuttal Testimony Filed	June 13, 2008
Public Hearings	June 16-27, 2008
Evidentiary Hearing	July 7–August 1, 2008
Applicants' Post-hearing Brief	September 5, 2007
Responsive Briefs	October 5, 2007
Reply Brief, if any	October 19, 2008

6. The parties shall file and serve a list of proposed hearing exhibits, and the anticipated order that their witnesses will be called to testify by **June 27, 2008**.

7. The Evidentiary Hearing will be held at the Public Utilities Commission. The hearing will commence at **10:00 a.m.** on **July 7, 2008**. Parties that intend to offer exhibits into the hearing record shall appear at **9:30 a.m.** to have the court reporter mark the exhibits.

8. Reply Briefs may be filed by any party to address the issues raised in the Responsive Briefs, and should not raise any new issue. In the event that a party raises any new matter or misstates the record in a Reply Brief, the other parties may have five business days to respond.

Extension of Deadline for Commission Action

9. The parties have concurred with this schedule and agree that, in light of the size of the project, there is good cause to extend the timeline for the Commission's action on the Application beyond November 27, 2008, as permitted pursuant to Minn. Stat. § 216B.243, subd. 5.

Discovery

10. A party may serve requests for information on any other party. All requests for information shall be made in writing by e-mail and, upon request,

³ Minn. R. 1400.6200, subp. 5.

a copy of the request shall be sent by regular U.S. mail or other delivery service to all parties.

11. If the request for information or the response contains material designated as Trade Secret or Nonpublic information under the Minnesota Government Data Practices Act, Chapter 13, the providing party may seek a Protective Order and require that the requesting party comply with the terms of the Protective Order before the information is provided.

12. To the extent that a request includes material designated as Trade Secret or Nonpublic, an e-mail request is required only between the requesting and responding party. Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by e-mail after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday is considered received on the next business day.

13. Requests to the Applicants for information shall be directed to the Applicants' outside counsel, Mr. Krikava, Ms. Agrimonti and Ms. Biestek.

14. The party responding to the request shall provide the requested information to the requesting party within fifteen business days of receipt of the request. A business day does not include weekend days and Minnesota state holidays. In accordance with Minn. R. 1400.6100, subpt. 1, the day that the information request is received is not counted in the fifteen-day period. If the request is received after 4:30 on a business day, the following business day is also not counted in the calculation of the response period.

15. Responses to information requests shall be submitted by e-mail, and, upon request, the responding party shall follow the e-mail with a copy of the response sent by regular U.S. mail or other delivery service. To the extent that a response includes material designated as Trade Secret or Nonpublic, an e-mail response is required only between the requesting party and the responding party. Any response received before 4:30 p.m. on a business day is considered to be received on the same day. Any response that is received after 4:30 on a business day is considered to be received the following business day.

16. In the event that due to the volume or nature of information included in a response, the responding party is unable to send the response by e-mail, the responding party shall send the response by facsimile, regular U.S. mail or other delivery service so that the requesting party receives the entire response including any material designated as Trade Secret or Nonpublic by the date due. Responding parties may utilize CDs to convey large volumes of data. If the response is sent by facsimile, the responding party shall, upon request, follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The

responsive information need not be supplied to other parties unless specifically requested by a party.

17. A party that wishes to receive e-mail copies of requests or responses shall notify the requesting/responding party, who shall provide the information in that format.

18. In the event the information cannot be supplied within fifteen business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party.

19. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Hearings on such motions may be conducted by telephone conference call.

Prefiled Testimony

20. Prefiled testimony shall be marked as an exhibit and offered for admission into the record at the hearing. A hard copy shall be provided for that purpose and the offering party shall provide the unique E-file identifying number. The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.

21. Prefiled testimony that is amended, or not offered into the record, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three days prior to the commencement of the evidentiary hearing.

Order of Testimony at the Evidentiary Hearing

22. Unless the parties agree otherwise, the order of testimony shall be: Applicants, United Citizens Action Network, North American Water Office and the Institute for Local Self Reliance, Prairie Island Indian Community, other intervenors (in order of intervention), and the Department of Commerce. Questioning of the witnesses shall proceed in the same order, subject to change by agreement of the parties or further order of the Administrative Law Judge.

23. If a witness needs a day certain to offer testimony, the sponsoring party should submit a request to the Administrative Law Judge and other parties.

Examination of Witnesses at the Evidentiary Hearing

24. Witnesses shall be allowed ten minutes to summarize their prefiled testimony.

25. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

26. Except for good cause shown, objections by any party relative to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony (except surrebuttal testimony) shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, and serves a copy of such objections on the parties, no later than **June 13, 2008**. Objections to surrebuttal testimony shall be filed and served no later than **June 27, 2008**.

Procedure

27. The rules of the Office of Administrative Hearings govern the conduct of the hearings, and the Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

Filing of Documents (Excluding Information Requests and Responses)

28. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

29. The parties, including intervenors, have agreed to file all documents, including prefiled testimony, using the E-File system of the Public Utilities Commission, the Department and the Office of Administrative Hearings. Such E-filing constitutes service on those offices and upon any other party that has agreed to accept E-filing as service.

30. The original document shall be filed using the E-file system wherever feasible. Otherwise, the original document shall be filed by delivery or mail with the Administrative Law Judge.

31. The effective date of filing shall be the date the document is E-filed, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the E-filing system must retain the unique document identifier as proof of service through that system. Proof of service shall be filed with each document or within three business days thereafter.

32. With the exception of Trade Secret and other Nonpublic data, copies of all documents that are filed shall be served by e-mail according to the attached service list by 3:00 p.m., and a hard copy shall also be mailed or delivered that day to the persons so indicated on the official service list. The list will be revised as necessary by the Office of Administrative Hearings.

33. Hard copies of Trade Secret and other Nonpublic data shall be transmitted by U.S. Mail or courier to the parties who have agreed to comply with the Protective Agreement and Order. Such documents may be served on the next business day following the filing of the public version.

34. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission.

35. If Trade Secret or Nonpublic data is filed with the Administrative Law Judge, it shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures may be viewed at www.puc.state.mn.us/docs/tradsecret.pdf. Access to nonpublic data shall be governed by the Protective Agreement and Order issued in this proceeding.

Public Comment

36. Public hearings will be scheduled, and public notice given. In order to be considered, written public comments should be filed with the Administrative Law Judge on or before **4:30 p.m. on August 8, 2008**. Comments may be filed by U.S. Mail, fax or e-mail to capx.oah@state.mn.us.

Court Reporter

37. The Office of Administrative Hearings will arrange to have a court reporter present at the hearing. Parties must make arrangements with the Court Reporter to obtain a copy of the transcript. The Court Reporter should receive copies of all filings that address the schedule in this matter, and copies of the prefiled testimony. The Information Requests and Responses should not be sent to the Court Reporter.

Request for Accommodation

38. No person has requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly if either an accommodation or interpreter is needed.

Subpoenas

39. Requests of subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the administrative law judge

