

AUG 11 2009

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David C. Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner
Betsy Wergin	Commissioner

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 CapX 345-kV Transmission Projects

ISSUE DATE: August 10, 2009

DOCKET NO. ET-2, E-002, *et al.*/CN-06-1115

ORDER GRANTING AND DENYING MOTIONS FOR RECONSIDERATION, AND MODIFYING CONDITIONS

**PROCEDURAL HISTORY**

On May 22, 2009, the Commission issued its ORDER GRANTING CERTIFICATES OF NEED WITH CONDITIONS. In that Order, the Commission found that Great River Energy (GRE) and Northern States Power Company d/b/a Xcel Energy (Xcel) (collectively, Applicants) had demonstrated that their proposed 345-kilovolt (kV) transmission lines were needed, and that the need could not be fulfilled more cost-effectively via other means. Consequently the Commission granted Certificates of Need for the construction of these lines, but also adopted conditions designed to ensure that the capacity of one specific line would be available to transmit electricity from renewable sources.

On June 11, 2009, the Commission received motions for reconsideration from the following parties:

- Applicants,
- The Citizens Energy Task Force (CETF),
- The Minnesota Department of Commerce's Office of Energy Security (OES), and
- NoCapX 2020 and United Citizens Action Network (UCAN) jointly.

On June 22, 2009, the Commission received comments on the motions from the following parties:

- Applicants,
- CETF,
- OES, and

- Wind on the Wires, Izaak Walton League of America – Midwest Office, Fresh Energy, and Minnesota Center for Environmental Advocacy (collectively, Joint Intervenors).

The Commission met on July 14, 2009, to consider this matter.

## FINDINGS AND CONCLUSIONS

### **I. LEGAL BACKGROUND**

#### **A. Certificates of Need**

Anyone seeking to build a transmission line that crosses into Minnesota with a capacity exceeding 100 kV,<sup>1</sup> or more than 1500 feet of transmission line within Minnesota with a capacity exceeding 200 kV,<sup>2</sup> must first obtain a Certificate of Need from this Commission.<sup>3</sup> Because the proposed 345 kV transmission lines cross state boundaries and exceed these thresholds, Applicants must obtain Certificates of Need before proceeding.

Minn. Stat. § 216B.243 lists the principal factors the Commission must consider when determining whether a transmission line is needed. In particular, it bars the Commission from granting a Certificate unless applicants can demonstrate that the demand for electricity cannot be met more cost-effectively through conservation or load management, and is otherwise needed.<sup>4</sup>

#### **B. Resource Plans and Biennial Transmission Projects Reports**

The Commission calls upon electric utilities to demonstrate their planning processes in the context of two other types of docket as well: resource planning and transmission planning.

Any entity serving at least 10,000 customers and capable of generating 100,000 kilowatts of electricity is required to file a resource plan.<sup>5</sup> A resource plan contains a set of supply-side resource options (that is, sources of electrical supply such as generators or power purchase agreements) and demand-side options (that is, strategies for managing customer demand, such as conservation programs) that the utility could use to meet the needs of retail customers throughout

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<sup>1</sup> Minn. Stat. § 216B.2421, subd. 2(3).

<sup>2</sup> Minn. Stat. § 216B.2421, subd. 2(2).

<sup>3</sup> Minn. Stat. § 216B.243.

<sup>4</sup> Minn Stat. § 216B.243, subd. 3.

<sup>5</sup> Minn. Stat. § 216B.2422, subd. 1. The statute exempts federal power agencies.

the next 15 years.<sup>6</sup> Through the process of creating a resource plan, a utility can identify the least-expensive reliable combination of supply- and demand-side resources that will meet the utility's requirements, consistent with state and federal law and public policy.

In addition, entities that own or operate transmission lines in Minnesota biennially file a Transmission Projects Report to identify present and foreseeable future transmission inadequacies, alternative means of addressing these inadequacies, and the economic, environmental, and social issues associated with each alternative.<sup>7</sup>

### **C. Renewable Energy Standard and Conservation Standard**

The Legislature directs utilities to comply with the Certificate of Need process, resource plan process and transmission projects report process to demonstrate that they are providing service at least cost, consistent with the needs of safety, reliability, service quality, and public policy. In addition, the Legislature directs utilities to comply with the Renewable Energy Standard (RES) and conservation standard to promote public policies that favor an increased reliance on renewable energy and energy conservation – even if that reliance results in somewhat higher costs.<sup>8</sup>

The Renewable Energy Standards (RES) provides for Minnesota utilities to acquire an ever-growing share of their electricity from renewable sources, eventually reaching a 25% share by the year 2025.<sup>9</sup> Utilities are also encouraged to acquire some or all of this energy from small, locally-owned generators using renewable energy sources, called Community-Based Energy Developments (C-BED).<sup>10</sup>

The conservation standard provides for utilities to adopt conservation programs designed to displace 1.0% to 1.5% of the energy their customers would otherwise use.<sup>11</sup>

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<sup>6</sup> Minn. Stat. § 216B.2422, subd. 1(d); Minn. Rules, chap. 7843.

<sup>7</sup> Minn. Stat. § 216B.2425, subd. 7; Minn. Rules, chap. 7848.

<sup>8</sup> However, the statutes provide for a utility to seek to delay or vary these requirements if implementation would prove to be impossible or unduly expensive.

<sup>9</sup> Minn. Stat. § 216B.1691. Note that the RES provides for Xcel to acquire 30% of the energy to serve its retail customers from renewable sources by 2020.

<sup>10</sup> Minn. Stat. § 216B.1612, subd. 5.

<sup>11</sup> Minn. Stat. §§ 216B.2401, 216B.241.

## D. Environmental Review

In evaluating an application for a Certificate of Need, the Commission receives assistance from other state agencies. Minn. Rules Chap. 7849 provides for the Department to file an environmental review.

## II. THE MAY 22, 2009 ORDER

In its May 22, 2009 Order, the Commission granted Certificates of Need for three transmission projects:

- The **Brookings Project** entails construction of a 345 kV transmission line from Brookings, South Dakota, to the Hampton Corner substation proposed to be built in the southeastern quadrant of the Twin Cities metropolitan area, as well as the construction of a 345 kV line from Marshall, Minnesota, to the Granite Falls area.<sup>12</sup>
- The **La Crosse Project** entails construction of a 345 kV line between the southeast quadrant of the Twin Cities through Rochester to La Crosse, Wisconsin.<sup>13</sup>
- The **Fargo Project** entails construction of a 345 kV line from Fargo, North Dakota to Alexandria, St. Cloud, and Monticello.<sup>14</sup>

The Commission found that OES's March 31, 2008 Environmental Report meets the requirements of applicable statutes, and addresses the issues identified by the Commissioner of Commerce in his Environmental Assessment Scoping Decision.

With respect to each project, the Commission authorized Applicants to pursue construction of "upsized" lines – that is, authorized construction of transmission towers with sufficient capacity to hang two 345 kV transmission lines, even where the utility has no current plans to install a second line.

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<sup>12</sup> See *In the Matter of the Application of Great River Energy and Others for a Certificate of Need for the CapX Brookings, S.D. -- Southeast Twin Cities 345-kV Transmission Project*, Docket No. ET-2/CN-06-857.

<sup>13</sup> See *In the Matter of the Application of Northern States Power Company (d/b/a Xcel Energy) and Others for a Certificate of Need for the CapX Twin Cities-Rochester-La Crosse 345-kV Transmission Project*, Docket No. E-002/CN-06-979.

<sup>14</sup> See *In the Matter of the Application of Northern States Power Company (d/b/a Xcel Energy) and Others for a Certificate of Need for the CapX Fargo-Alexandria-St. Cloud-Monticello 345-kV Transmission Project*, Docket No. E-002/CN-06-1115.

However, the Commission found that the rationale for the Brookings Project differed from the rationale for the other projects. For example, the Commission found that the initial Vision Plan – a broad analysis demonstrating that the proposed projects would be needed under any of six possible scenarios of Commission growth – supported the La Cross and Fargo Projects but not the Brookings Project. Moreover the Commission found that Applicants had promoted the Brookings Project as a vehicle for acquiring electricity from renewable sources – especially from the strong winds that blow along the Buffalo Ridge in southwestern Minnesota and southeastern South Dakota. Consequently the Commission adopted conditions designed to ensure that the Brookings Project’s capacity would be available for electricity from these sources, as set forth in Ordering Paragraph 3:

*The Commission hereby grants Applicants’ request for Certificates of Need for the Upsized Alternatives for each of the proposed 345 kV transmission projects. The Commission grants a Certificate of Need for the Brookings Project provided that they comply with the following conditions to the extent possible:*

- A. Applicants shall sign power purchase agreements (PPAs) or commit to utility-owned renewable generation projects within the timeframe of Minn. Stat. § 216B.1691 [the RES], coordinated with the proposed in-service dates of each segment of the Brookings Project.*
- B. Applicants shall submit network (firm) transmission service requests to the Open Access Same Time Information System of the Midwest Independent Transmission System Operator, Inc. (MISO), for the total amount of new capacity enabled by this line to attempt, to the extent lawfully possible, to try to achieve full subscription of the capacity for renewable generation.*
- C. Applicants shall make a compliance filing within 30 days of obtaining the Certificates of Need, detailing the allocation of the new transmission capacity among owners. The compliance filing shall address how much capacity will be enabled by this transmission line; the allocation of the capacity among Applicants; and the type of MISO transmission service Applicants will seek to serve the renewable generated electricity to be carried on this line, recognizing that MISO allocation and restriction of MISO managed transmission capacity is beyond the scope and authority of this Commission.*
- D. As necessary to comply with condition A., Applicants shall designate the new, renewable commitments as Network Resources pursuant to MISO’s federal Transmission & Energy Markets Tariff, and seek the designation as soon as permitted under the MISO rules, but no later than 10 days after the Commission approves the PPAs or commitments.*
- E. Applicants shall report to the Commission any changes at MISO or the federal level that could affect these conditions.*

These conditions were modeled on conditions the Commission established in the *825 MW Proceeding*<sup>15</sup> regarding another set of transmission lines to Buffalo Ridge. The terms of the conditions emphasize the need to act within the regulatory framework of the Midwest Independent Transmission System Operator, Inc. (MISO), the federally-regulated administrator of the region's transmission grid. MISO's functions include administering the market which determines which generators will operate at any given time, and administering the MISO Generator Interconnection Queue to determine which generators may interconnect with the transmission grid.

### **III. REQUESTS FOR RECONSIDERATION**

#### **A. NoCapX 2020 and United Citizens Action Network**

NoCapX 2020 and UCAN ask the Commission to reconsider its Order to address two alleged defects.

First, NoCapX 2020 and UCAN argue that the report OES prepared to analyze the consequences of the CapX 2020 Group I projects on the environment (Environmental Report) was inadequate. In particular, they argue that OES failed to independently verify the information provided by Applicants, that OES inappropriately excluded certain alternatives from consideration, that the report provides inadequate discussion of the Projects' environmental consequences, and that OES failed to coordinate its environmental review with federal authorities.

Second, NoCapX & UCAN argue that new information casts doubt about the need for the proposed transmission lines. They argue that newer data regarding the consequences of the current economic recession within Minnesota, combined with evidence that demand for exported power may not materialize, should prompt the Commission to reevaluate the demand assumptions that underlie Applicants' case for the Group I transmission projects.

Applicants and OES argue that NoCapX 2020's and UCAN's request for reconsideration recapitulates its earlier arguments without raising new issues. Consequently Applicants and OES ask the Commission to deny NoCapX 2020's and UCAN's request.

#### **B. CETF**

Echoing many of the concerns cited by NoCapX 2020 and UCAN, CETF also asks the Commission to grant reconsideration to consider new evidence indicating that the state of the economy has reduced demand for the proposed transmission projects.

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<sup>15</sup> See *In the Matter of Northern States Power Company d/b/a Xcel Energy for Certificates of Need for Four Large High Voltage Transmission Line Projects in Southwestern Minnesota*, Docket No. E-002/CN-01-1958 (*825 MW Proceeding*).

CETF also asks the Commission to reconsider its choice to issue a Certificate of Need for the La Crosse Project given the legal and environmental complications associated with building a transmission line across the Mississippi. CETF asks the Commission to reconsider its approval of any “Upsized” alternative plans. Finally, CETF asks the Commission to reconsider its choice to authorize the Brookings Project to extend eastward to the new Hampton Corner substation as proposed.

Again, Applicants and OES argue that CETF’s request for reconsideration recapitulates its earlier arguments without raising new issues. Applicants dispute CETF’s characterization of how Minnesota’s environmental protection laws apply to the La Crosse Project, and argue that the Commission has ample support for approving the upsized alternatives and the Hampton Corner substation. Consequently Applicants and OES ask the Commission to deny CETF’s request for reconsideration.

### **C. Joint Intervenors**

While the Joint Intervenors comment on other parties’ requests for reconsideration, they did not file their own request.

### **D. Applicants**

Applicants ask the Commission to reconsider the conditions it placed on the Brookings Project, and to rescind most of them. They argue that other dockets – especially resource planning dockets – would provide better forums for promoting renewable sources of energy. And they dispute certain factual findings supporting the conditions. For example, they argue that the Vision Plan provided the foundation for each of the CapX 2020 projects, including the Brookings Project, contrary to the Commission’s finding.<sup>16</sup>

Most significantly, Applicants argue that the May 22 conditions will have a number of unintended consequences.

First, Applicants argue that the proposed conditions will not have the effect of reserving transmission capacity for energy from renewable sources. This is because a large number of generators, including wind turbines, have already applied to MISO’s Generator Interconnection Queue. Consequently, Applicants argue, it may already be too late to influence which sources of generation are ultimately interconnected with the Brookings line.

Second, Applicants argue that the conditions will make it hard to match the supply of renewable energy with the demand. The conditions direct Applicants to acquire enough renewable energy as necessary to fill the amount of transmission capacity made available on the Brookings Project, as that capacity becomes available. But if Applicants build the Brookings Project to become

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<sup>16</sup> May 22, 2009 Order (this docket) at 36.

operational in 2012 or 2013 as they have proposed, the conditions would cause Applicants to acquire electricity from renewable sources sooner than the RES requires. Because electricity from renewable sources tends to be more expensive than electricity from fossil fuels, a policy that results in utilities acquiring more of this electricity than necessary would tend to increase a utility's costs.

Alternatively, Applicants could postpone construction of the Brookings Project until the Applicants need the additional electricity from renewable sources. Delaying line construction would, however, also delay the benefits that the Brookings Project would have for community and regional reliability. Moreover, it could delay or impair other system upgrades that are being planned in reliance on the Brookings Project.

Third, Applicants argue that the conditions would depress demand for generators not associated with the Brookings Project, potentially including C-BED projects.

Fourth, noting that the conditions direct Applicants to use all of the firm capacity on the Brookings line for renewable sources of energy, Applicants argue that this arrangement would bar the use of coal- or gas-powered generators from providing backup service on the transmission line. In the absence of back-up service, current on the Brookings Project would fluctuate. In addition, the Applicants might find that they need to build a separate transmission line for generators running on fossil fuels.

Fifth, Applicants argue that revisions in the MISO tariffs and procedures will make it difficult to implement the conditions as written. Among other things, the conditions direct Applicants to report on how they will allocate the Brookings Project's capacity among themselves; Applicants argue that MISO effectively allocates transmission capacity, and it would be illegal for Applicants to attempt to do so outside of MISO's processes.

CETF and the Joint Intervenors oppose Applicants' petition for reconsideration, arguing that Applicants have not raised any new issues that warrant additional review. Rather, CETF cites Applicants' argument – that it will be many years before the Applicants need all the renewable energy that the Brookings Project is able to deliver – as evidence that the Brookings Project is premature and should be delayed.

#### **E. OES**

OES also asks the Commission to reconsider the conditions it placed on the construction of the Brookings Project, citing many of the same arguments made by Applicants. Yet OES does not ask the Commission simply to rescind the conditions. Rather, it proposes amending the conditions and also establishing new filing requirements.

## 1. Amendments to the Conditions

OES proposes amending the conditions on the Brookings Project as follows:

3. *The Commission hereby grants Applicants' request for Certificates of Need for the Upsized Alternatives for each of the proposed 345 kV transmission projects. The Commission grants a Certificate of Need for the Brookings Project provided that they comply with the following conditions to the extent possible:*
  - A. *Applicants shall sign power purchase agreements (PPAs) or commit to utility-owned renewable generation projects within the timeframe of Minn. Stat. § 216B.1691, coordinated with the proposed in-service dates of each segment of the Brookings Project unless such action fails to conform to an Applicant's resource requirements in its most recent resource plan or RES report and is excused by a future order of the Commission.*
  - B. *Applicants shall submit network (firm) transmission service requests to the Open Access Same Time Information System of the Midwest Independent Transmission System Operator, Inc. (MISO), for the total amount of new capacity enabled by this line to attempt, to the extent lawfully possible, to try to achieve full subscription of the capacity for renewable generation purchased under Part A.*
  - C. *Applicants shall make a compliance filing within 30 days of obtaining the Certificates of Need, detailing the allocation projected amount of the new transmission capacity among by the owners Applicants. The compliance filing shall address how much capacity will be enabled by this transmission line; the allocation projected amount of the capacity among by the Applicants; and the type of MISO transmission service Applicants will seek to serve the renewable generated electricity to be carried on this line, recognizing that MISO allocation and restriction of MISO managed transmission capacity is beyond the scope and authority of this Commission.*
  - D. *As necessary to comply with condition A., Applicants shall designate the new, renewable commitments as Network Resources pursuant to MISO's federal Transmission & Energy Markets Tariff, and seek the designation as soon as permitted under the MISO rules, but no later than 10 days after the Commission approves the PPAs or commitments.*
  - E. *Applicants shall report to the Commission any changes at MISO or the federal level that could affect these conditions.*

OES initially proposed to let each Applicant decide for itself whether or not the RES, its resource plan or some other document established some standard that would limit the Applicant's duty to acquire more renewable energy. CETF and the Joint Intervenors objected, noting that resource plans vary substantially in content and specificity. Ultimately OES offered the compromise language set forth above, making the Commission the arbiter of when an Applicant may refrain from acquiring enough renewable energy to fill the Brookings line's transmission capacity. Under the OES's proposed amendment, an Applicant would retain the duty to acquire more renewable energy subject to the limits of 1) Minn. Stat. § 216B.1691 (the RES), 2) the available capacity of the Brookings Project (which changes as each segment becomes operational), and 3) contrary terms in the Applicant's resource plan or RES report, provided the Commission concurs.

The Joint Intervenors, NoCapX 2020 and United Citizens Action Network continue to oppose these amendments. They argue that the amendments weaken provisions designed to ensure that Applicants operate the Brookings Project in a manner consistent with the reasons they claimed the line was needed.

Applicants continue to argue that the conditions are inappropriate to this proceeding and should simply be eliminated. That said, Applicants find the amended version preferable to the version adopted in the Commission's Order.

## 2. New Filing Requirements

Some of the shortcomings OES identifies in the May 22 conditions reflect an analytical perspective that OES argues is too narrow. Because most transmission lines function within the context of an interconnected interstate transmission grid, OES argues that regulators would benefit from gaining a broader perspective on the needs for, and constraints on, that grid. To this end, OES proposes that Applicants provide more information about the supply of and demand for transmission capacity.

Specifically, OES asks the Commission to adopt the following new condition for the Brookings Project:

*The Applicants shall file a report, as part of the 2009 biennial transmission plan, containing the following combined-Applicant information to the best of their knowledge:*

- A. Forecasted demand for interconnection, including:*
  - a. A forecast of the annual renewable capacity forecasted to be necessary to meet the Minnesota renewable energy standard (RES) for the CapX utilities through 2025, including estimates of:*
    - i. the gross Minnesota-RES need;*
    - ii. the Minnesota-RES qualifying resource already acquired;*
    - and*
    - iii. the net Minnesota-RES need.*

- b. a forecast of the annual non-Minnesota RES required generation capacity needed by the CapX utilities through 2025;
- c. an allowance for generation capacity to be built in the region by non-CapX utilities through 2025 (for example, utilities without Minnesota load);
- d. an explanation regarding how Minnesota's 1.0 percent to 1.5 percent energy saving goal was incorporated into the forecasts;
- e. a discussion of scenarios for the geographic distribution of the forecasted interconnection needs.
- B. Information on forecasted supply of interconnection, including:
  - a. an estimate of the interconnection capability already approved but not yet used (i.e., available to meet the forecasted demand);
  - b. a proposed transmission expansion plan with a specific size, type, and timing for individual projects;
  - c. an estimate of the annual generation interconnection capability created by the proposed transmission plan;
  - d. a brief explanation of any size, type, or timing issues inherent in the proposed transmission expansion plan (e.g., line B should come on-line 2 years after line A);
  - e. an explanation of how the proposed plan deals with geographic uncertainty in interconnection needs; and
  - f. a brief explanation of any non-interconnection benefits (i.e., reliability, reduced line losses, etc.) provided by the proposed transmission expansion plan.
- C. Resource plans filed pursuant to Minnesota Rules part 7843 after the Commission approves a transmission expansion plan shall explain how the generation plan will integrate the transmission plan into an overall system plan.

OES regards these new filing requirements as necessary to permit Minnesota regulators to provide appropriate regulatory oversight of the transmission grid. According to OES, the most important decisions that influence a transmission line proposal take place in the context of a "vision study" that considers the long-term needs of the grid as a whole. By participating at this early step of the transmission planning process, OES argues, the Commission could gain both greater perspective regarding the regional transmission needs and greater opportunity to shape the remedies for those needs. And through more detailed reporting, OES hopes that utilities would effectively produce a transmission expansion plan, analogous to a resource plan, that would detail the projected size, type, and timing of planned transmission projects. With a plan identifying each utility's transmission needs for required resources, OES claims, the Commission would be better able to evaluate and oversee generation and transmission acquisition strategies.

Whatever the merits of OES's proposed filing requirements, the Joint Intervenor's argue that they are largely unrelated to goal of the May 22 conditions – ensuring that the Brookings Project's

capacity is reserved for transmitting electricity from renewable sources. The Joint Interventors recommend that the Commission deny OES's petition for reconsideration and direct OES to pursue these filing requirements in the context of a biennial transmission filing docket.

Again, the Applicants prefer not a having conditions attached to the Brookings Project. But the Applicants would prefer to have the OES's proposal attached to this project than to leave the Commission's Order unchanged or to refer this matter for additional evidentiary proceedings.

#### **IV. COMMISSION ACTION**

##### **A. Denial of the Motions for Reconsideration**

The Commission has reviewed the record and the arguments of all parties.

The Commission finds that the motions for reconsideration from CETF, NoCapX 2020 and UCAN do not raise new issues, do not point to new and relevant evidence, do not expose errors or ambiguities in the original Order, and do not otherwise persuade the Commission that it should reconsider its original decision. The Commission will therefore deny their motions for reconsideration.

##### **B. Approval of Motions for Reconsideration, and Reconsideration**

However, the Commission finds that the arguments offered by Applicants and OES have shed new light on the conditions that this Commission attached to its grant of a Certificate of Need for the Brookings Project. Consequently the Commission will grant their motions for the limited purpose of reconsidering the conditions attached to the Certificate of Need for the Brookings Project in the Commission's May 22, 2009 Order.

As noted above, CETF, Joint Interventors, NoCapX 2020 and UCAN generally oppose changes to the May 22 conditions. They argue, among other things, that the Applicants promoted the need for the Brookings Project as a vehicle for acquiring renewable sources of energy, and consequently the Applicants should be expected to use the line for that purpose. In contrast, Applicants and OES favor rescinding or modifying the May 22 conditions. While many of their arguments were previously raised and addressed in the context of the May 22, 2009 Order, three arguments in particular prompt a shift in the Commission's analysis.

- First, Applicants and OES acknowledge that the Brookings Project provides a vehicle for moving electricity – especially electricity from generators using renewable sources of energy – to customers. But they note that the record demonstrates how the project also promotes regional and community reliability. Consequently they dispute the implication that 100% of the project's capacity should be dedicated to the purpose of moving electricity from renewable sources.

- Second, Applicants and OES argue that the conditions the Commission adopted on May 22 would be more appropriately addressed in the context of a resource plan docket. In particular, they argue that the conditions fail to incorporate an appropriate balancing of cost and benefit. As a consequence, the conditions might cause Applicants to acquire more renewable energy than the Legislature found to be appropriate as part of the RES, and more than would otherwise be deemed cost-effective as part of a resource plan.
- Finally, Applicants argue that the specific phrasing of the conditions, which were derived in modified form from the *825 MW Proceeding*, does not mesh well with the procedures MISO currently employs as part of its federally-regulated Transmission & Energy Markets Tariff (TEMT). While the conditions direct Applicants to allocate the Brookings Project's transmission capacity, the actual use of the transmission line will be governed by the operation of the MISO energy markets; efforts by private parties to allocate the use of a transmission line outside of the MISO markets may be illegal.

Upon reconsideration, the Commission finds that the parties' disagreements about the purpose and function on the Brookings Project mostly reflect a difference in emphasis. The Commission found that the Applicants promoted the Brookings Project as a vehicle for acquiring renewable sources of energy.<sup>17</sup> Yet this finding does not negate the fact that the Applicants also promoted the Brookings Project as a means to serve other functions as well – including supporting community and regional reliability and transmitting electricity generated from fossil fuel sources.<sup>18</sup> The Commission distinguished the Brookings Projects from the other projects by noting that the Brookings Project does not appear on the list of "common projects" recommended in each of the six scenarios tested in the CapX 2020 Vision Plan.<sup>19</sup> Yet even this finding proves to be a matter of interpretation: Each of the Vision Plan's six scenarios supported the construction of a new transmission line extending roughly from the Twin Cities to South Dakota – albeit not precisely where Applicants now propose to build the Brookings Project.

Moreover, the statutes and rules that generally govern how much electricity a utility must acquire from renewable sources reflect a legislative or regulatory judgment balancing cost and benefit. In contrast, in adopting the May 22 conditions the Commission directed Applicants to acquire sufficient electricity from renewable sources to fill the capacity of the Brookings Project, without knowing the precise magnitude of that capacity or the resulting costs of the energy.

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<sup>17</sup> May 22, 2009 Order (this docket) at 35-37; see, for example, Exh. 1 (Application) at 1.4, 1.14-1.15, 1.20-1.21; Exh. 67 (Kline Direct) at 12; Exh. 98 (King Direct) at 2-3; Exh. 104 (Alholina Direct) at 2-5.

<sup>18</sup> See, for example, Ex. 56 at 36-37 (Webb Direct); Ex. 104 at 7-8 (Alholinna Direct); 14 Transcript 160 (Alders); ALJ's Report, Findings 197, 250-51.

<sup>19</sup> May 22, 2009 Order (this docket) at 36.

While the foregoing considerations do not alter the Commission's finding that the Brookings Project should be used to secure access to renewable sources of energy, the Commission is persuaded of the merits of modifying the conditions governing that line. Specifically, given the multiple functions the Brookings line will serve, the Commission now concludes that it need not seek to dedicate the line's entire capacity for this single purpose. In addition, the Commission concludes that Applicants should have a mechanism to vary the conditions's requirements where they would prove to be so excessive as to conflict with the RES or the Applicants' resource plans.

The Commission will decline Applicants' proposal to simply rescind the conditions and defer consideration of these matters to Applicants' resource planning dockets. Rather, the Commission finds that OES has identified an appropriate mechanism to incorporate the balance reflected in resource planning and the RES. Specifically, the Commission will adopt the language from OES and modify the first two paragraphs of the conditions as follows:

- A. Applicants shall sign power purchase agreements (PPAs) or commit to utility-owned renewable generation projects within the timeframe of Minn. Stat. § 216B.1691, coordinated with the proposed in-service dates of each segment of the Brookings Project unless such action fails to conform to an Applicant's resource requirements in its most recent IRP or RES report and is excused by a future order of the Commission.
- B. Applicants shall submit network (firm) transmission service requests to the Open Access Same Time Information System of the Midwest Independent Transmission System Operator, Inc. (MISO), for the total amount of new capacity ~~enabled by this line to attempt, to the extent lawfully possible, to try to achieve full subscription of the capacity for renewable generation purchased under Part A.~~

The amendments to paragraphs A and B are designed to address Applicants' concerns that the conditions would compel them to acquire more energy from renewable sources than is prescribed by the RES or otherwise found to be cost-effective as part of the Applicant's resource plan.

Moreover, the amendment would eliminate the expectation that Applicants will attempt to control all of the firm capacity on the Brookings Project. This change ameliorates many of Applicants' and OES's other concerns. As amended, the conditions can no longer be read to preclude the use of fossil fuel-powered generators from providing back-up power on the Brookings line. Similarly, by leaving the option for other parties to secure firm transmission capacity on the line, these amended conditions should promote comity among Minnesota and its neighboring states.

CETF, Joint Intervenors, NoCapX 2020 and UCAN express concern that these amendments will dilute the effectiveness of the May 22 conditions. Yet the amended Brookings Project conditions will continue to aid generators using renewable energy in getting connected to the grid. While the amount of generators seeking to interconnect with the Brookings line may well exceed the line's

transmission capacity, MISO does not select generators for interconnection based solely on the order in which the generators filed their applications. As a practical matter, only generators owned by a load-serving entity (such as a utility) or contracted to a load-serving entity can advance through the queue to ultimate interconnection.<sup>20</sup> By continuing to require Applicants to build or contract for electricity from renewable sources on the Brookings line, the amended conditions will still help renewable generators advance through the MISO Queue.

The Commission previously addressed the possibility that its conditions might conflict in some manner with the MISO TEMA when it directed Applicants to implement the conditions only "to the extent possible."<sup>21</sup> More specifically, the Commission is not persuaded that conditions directing Applicants to report on the allocation of the Brookings Project's capacity conflicted with federal policy. The Commission directed Applicants to allocate the transmission line's capacity among themselves merely to determine the extent of each Applicant's duty to acquire renewable energy to be transmitted on the Brookings line. Because the conditions directed Applicants jointly to "attempt ... to try to achieve full subscription of the capacity," the extent of each Applicant's duty would depend in part upon how much capacity was being used by the other Applicant. The conditions merely permitted Applicants to determine among themselves how they would fulfill this requirement.

Nevertheless, given the changes to the conditions noted above, the Commission finds that it no longer needs to refer to allocations in its conditions. This is because the amended conditions will no longer direct the Applicants to fully subscribe the Brookings line's capacity, so the extent of each Applicant's duties will be independent of the other's. Consequently the Commission will remove all references to allocations from paragraph C as follows:

- C. Applicants shall make a compliance filing within 30 days of obtaining the Certificates of Need, detailing the ~~allocation projected amount~~ of the new transmission capacity ~~among by the owners~~ Applicants. The compliance filing shall address how much capacity will be enabled by this transmission line; the ~~allocation projected amount~~ of the capacity ~~among by the~~ Applicants; and the type of MISO transmission service Applicants will seek to serve the renewable generated electricity to be carried on this line, recognizing that MISO allocation and restriction of MISO managed transmission capacity is beyond the scope and authority of this Commission.

These language changes will eliminate a point of contention without diminishing the protections offered by the rest of paragraph C.

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<sup>20</sup> 20 Transcript at 14 - 20.

<sup>21</sup> May 22, 2009 Order (this docket), Ordering Paragraph 3.

Finally, the Commission will adopt OES's proposal to direct Applicants to make additional filings in conjunction with their next biennial transmission projects report with the goal of obtaining greater insight into the Applicants' transmission needs and planning process. The biennial transmission planning docket provides an apt forum for receiving such filings, given that transmission owners already coordinate certain types of filing in that docket. An analysis of the supply and demand for transmission capacity throughout the state will provide a useful foundation for understanding the opportunities and constraints that drive Certificate of Need cases in the future.

The Commission will so order.

### ORDER

1. The Commission grants reconsideration of its May 22, 2009 ORDER GRANTING CERTIFICATES OF NEED WITH CONDITIONS for the limited purpose of addressing the conditions the Commission placed on the Certificate of Need it granted for the Brookings Project. In all other respects, the petitions for reconsideration are denied.
2. The Commission amends the ordering paragraphs of its May 22, 2009 Order, as follows:
  3. The Commission hereby grants Applicants' request for Certificates of Need for the Upsized Alternatives for each of the proposed 345 kV transmission projects. The Commission grants a Certificate of Need for the Brookings Project provided that they comply with the following conditions to the extent possible:
    - A. Applicants shall sign power purchase agreements (PPAs) or commit to utility-owned renewable generation projects within the timeframe of Minn. Stat. § 216B.1691, coordinated with the proposed in-service dates of each segment of the Brookings Project unless such action fails to conform to an Applicant's resource requirements in its most recent IRP or RES report, and is excused by a future order of the Commission.
    - B. Applicants shall submit network (firm) transmission service requests to the Open Access Same Time Information System of the Midwest Independent Transmission System Operator, Inc. (MISO), for the total amount of new capacity ~~enabled by this line to attempt, to the extent lawfully possible, to try to achieve full subscription of the capacity for renewable generation purchased under Part A.~~
    - C. Applicants shall make a compliance filing within 30 days of obtaining the Certificates of Need, detailing the allocation projected amount of the new transmission capacity among by the owners Applicants. The compliance

filing shall address how much capacity will be enabled by this transmission line; the allocation projected amount of the capacity among by the Applicants; and the type of MISO transmission service Applicants will seek to serve the renewable generated electricity to be carried on this line, recognizing that MISO allocation and restriction of MISO managed transmission capacity is beyond the scope and authority of this Commission.

- D. As necessary to comply with condition A., Applicants shall designate the new, renewable commitments as Network Resources pursuant to MISO's federal Transmission & Energy Markets Tariff, and seek the designation as soon as permitted under the MISO rules, but no later than 10 days after the Commission approves the PPAs or commitments,
- E. Applicants shall report to the Commission any changes at MISO or the federal level that could affect these conditions.

\* \* \*

7. The Applicants shall file a report, as part of the 2009 Minnesota Biennial Transmission Projects Report, containing the following combined-Applicant information to the best of their knowledge:

- A. Forecasted demand for interconnection, including:
  - a. A forecast of the annual renewable capacity forecasted to be necessary to meet the Minnesota renewable energy standard (RES) for the CapX utilities through 2025, including estimates of:
    - i. the gross Minnesota-RES need;
    - ii. the Minnesota-RES qualifying resource already acquired; and
    - iii. the net Minnesota-RES need.
  - b. a forecast of the annual non-Minnesota RES required generation capacity needed by the CapX utilities through 2025;
  - c. an allowance for generation capacity to be built in the region by non-CapX utilities through 2025 (for example, utilities without Minnesota load);
  - d. an explanation regarding how Minnesota's 1.0 percent to 1.5 percent energy saving goal was incorporated into the forecasts;
  - e. a discussion of scenarios for the geographic distribution of the forecasted interconnection needs.
- B. Information on forecasted supply of interconnection, including:
  - a. an estimate of the interconnection capability already approved but not yet used (i.e., available to meet the forecasted demand);
  - b. a proposed transmission expansion plan with a specific size, type, and timing for individual projects;

- c. an estimate of the annual generation interconnection capability created by the proposed transmission plan;
  - d. a brief explanation of any size, type, or timing issues inherent in the proposed transmission expansion plan (e.g., line B should come on-line 2 years after line A);
  - e. an explanation of how the proposed plan deals with geographic uncertainty in interconnection needs; and
  - f. a brief explanation of any non-interconnection benefits (i.e., reliability, reduced line losses, etc.) provided by the proposed transmission expansion plan.
- C. Resource plans filed pursuant to Minnesota Rules part 7843 after the Commission approves a transmission expansion plan shall explain how the generation plan will integrate the transmission plan into an overall system plan.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

*Mark E. Oberlander for*

Burl W. Haar  
Executive Secretary

(S E A L)

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