

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Phyllis A. Reha
David C. Boyd
J. Dennis O'Brien
Betsy Wergin

Acting Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Xcel Energy
for a Certificate of Need for the Scott County –
Structure #57 115/115kV Conversion and
Structure #57 - Westgate Upgrade in Hennepin
and Carver Counties

ISSUE DATE: June 8, 2012

DOCKET NO. E-002/CN-11-332

ORDER ACCEPTING APPLICATION
AS COMPLETE AND INITIATING
INFORMAL REVIEW PROCESS

PROCEDURAL HISTORY

On March 9, 2012, Xcel Energy (Xcel) filed an application for a certificate of need to upgrade and convert approximately 20 miles of existing transmission lines located in Scott, Carver, and Hennepin Counties (the Project). Under the Project, the existing Scott County - Bluff Creek - Westgate 69 kilovolt (kV) transmission line (approximately 14.6 miles) will be upgraded to 115 kV; and, an existing double circuit 115/69 kV transmission line (approximately 5.3 miles) will be converted to 115/115 kV.

On May 3, 2012, the Department of Commerce Division of Energy Resources (the Department) filed comments on the application, recommending acceptance upon Xcel's submission of further information relating to alternative conductors and demand management in the local area. The Department also stated that several ongoing transmission projects in the west metro area may warrant a single, more efficient, higher voltage solution in lieu of separate projects within the same area.

On May 17, 2012, Xcel filed reply comments, concurring with the Department's request for additional information and opposing consolidation of this and other ongoing transmission proceedings.

On May 23, 2012, Xcel submitted the additional information requested by the Department.

On May 25, 2012, Carol A. Overland filed comments encouraging the opportunity for public involvement if the Department pursues the development of a single, higher voltage solution as described in the Department's comments.

On May 31, 2012, the application came before the Commission.

FINDINGS AND CONCLUSIONS

I. The Project

Xcel filed its certificate of need application under Minn. Stat. § 216B.243 and Minn. Rules, parts 7849.0020 through 7849.0400, which require certificates of need to be obtained prior to construction of a large energy facility. Under Minn. Stat. § 216B.2421, subd. 3, the Project qualifies as a large energy facility because it includes capacity of 100 kV or more and is greater than 10 miles in length.

Xcel stated that the Project was identified in a study conducted by Xcel Energy Services Inc. to address existing and pending load serving problems in the developing regions of Scott, Carver, McLeod, and Hennepin Counties.¹ According to Xcel, the study showed that existing facilities in the western portion of this high-growth area do not meet current demand and will not support projected load growth. Xcel proposed the Project to ensure reliable transmission service in the western metro area and to meet developing need in the area during the next several years.

Minn. Rules, Chapter 7849 sets forth the requirements for making an application for a certificate of need, as well as the ultimate criteria for demonstrating need. The Commission determines whether an application is substantially complete.

Where material facts are in dispute, the Commission refers cases to the Office of Administrative Hearings for a contested case proceeding under Minn. Rules, part 7829.1000. Otherwise, the Commission may elect to address matters via informal proceedings under Minn. Rules, part 7829.1200.

II. Application Completeness

The Department reviewed Xcel's application to determine the extent to which it fulfilled the requirements of Minn. Rules, parts 7849.0220, 7849.0240, and 7849.0260 through 7849.0340. The Department recommended that the Commission find the filing complete upon the submission of two additional items by Xcel.

The Commission has examined the record and concurs with the Department that with the supplemental information submitted by Xcel on May 23, 2012, the application is substantially complete. The Commission's finding of substantial completeness is as to form only; it implies no judgment on the merits of the application. Further, comments more closely related to the merits of the application, rather than its completeness, can be most effectively addressed as the record is developed.

¹ *Southwest Twin Cities Phase 2 Study Update*, July 8, 2011, Appendix B of Xcel's Certificate of Need Application.

III. Process for Reviewing the Merits

The Commission has the discretion to evaluate certificate of need requests using either contested case proceedings or an informal notice and comment process.² The informal process is a less formalized method of developing the record and provides an opportunity for the identification of contested issues, which would shape the scope of contested case proceedings, should they later be determined to be necessary. At this juncture, no person has alleged that there are contested material facts for which a contested case proceeding is needed; no person has requested a contested case proceeding; and there are no other factors pointing to a need for contested case proceedings.

The Commission will therefore authorize staff to develop the record and prepare this case for Commission action without contested case proceedings under Minn. Stat. §§ 14.57 *et seq.*, unless those proceedings are later determined to be necessary. Staff will manage the development of the case record by establishing necessary comment periods and ensuring compliance with statutory requirements such as the submission of an environmental report and the holding of one or more public hearings.

Under the informal review process the Commission still asks the Office of Administrative Hearings to hold at least one public hearing, scheduled in conjunction with Commission staff. The Commission will also take the steps listed below to ensure adequate development of the record:

- request that the Department continue to study issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need;
- direct the Applicant to facilitate in every reasonable way the continued examination of the issues by the Department of Commerce and Commission staff;
- request that the Applicant place a compact disc or hard copy of the Application for review in one or more Government Center(s) and/or Public Library(ies) in the vicinity of the project;
- direct Commission staff to work with the Administrative Law Judge and the staff of the Department of Commerce in selecting suitable locations for a public hearing on the application; and
- direct the Applicant to work with Commission staff to arrange for publication of the notice of hearings in newspapers of general circulation at least ten (10) days prior to the hearings; direct that such notice be in the form of visible display ads; and direct that proof of publication be obtained from the newspapers selected.

Further, the certificate of need statute encourages public participation in certificate of need proceedings, requiring at least one hearing to obtain public opinion and requiring the Commission to designate an employee to facilitate citizen participation in the hearing process.³

² Minn. Rules, part 7829.2500, subp. 9.

³ Minn. Stat. § 216B.243, subd. 4.

The Commission has designated Tricia DeBleeckere, Facilities Planner, to facilitate and coordinate public participation in this proceeding. She can be reached by telephone at (651) 201-2254, by fax at (651) 297-7073, and by email at tricia.debleeckere@state.mn.us. Her mailing address is 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147.

IV. Environmental Review

Under Minn. Rules, part 7849.1200, the Commissioner of the Department of Commerce is required to prepare an environmental report as part of the certificate of need process for a high voltage transmission line. If, however, a route permit application for the project has been filed prior to completion of the environmental report, and the project qualifies for alternative review under Minn. Rules, part 7850.2800, a combined environmental review may be conducted.⁴ The combined review – an environmental assessment of the project – must be conducted under Minn. Rules, part 7850.3700 and is filed in both the certificate of need and route permit proceedings.

In the route permit proceeding for this project, the Commission determined that the alternative permitting process under Minn. Rules, parts 7850.2800 to 7850.3900 applies and referred the route permit application to the Office of Administrative Hearings.⁵ Further, an environmental report has not yet been filed in this docket on the certificate of need. The Commission therefore requests that the Department of Commerce Energy Facilities Permitting staff prepare an environmental assessment for the certificate of need and route permit applications, instead of conducting two separate environmental reviews.

The Commission also requests that the Department’s Energy Facilities Permitting staff jointly conduct the public meetings for the certificate of need and route permit applications.

ORDER

1. The Commission hereby accepts the application as complete upon Xcel’s supplemental filing in response to the Department’s recommendation.
2. The Commission directs use of the informal review process to develop the record.
3. The Commission requests that the Department of Commerce Energy Facilities Permitting staff prepare an environmental assessment of the certificate of need and route permit applications jointly in lieu of two separate environmental reviews.
4. The Commission requests that the Department’s Energy Facilities Permitting staff jointly conduct the public meetings for the certificate of need and route permit applications.

⁴ Minn. Rules, part 7849.1900, subp. 1.

⁵ See *Order Referring Application to the Office of Administrative Hearings for Summary Proceedings*, March 12, 2012 in Docket No. E-002/TL-11-948.

5. The Commission delegates to the Executive Secretary administrative authority for the proper development of the record.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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