



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS AND RECOMMENDATIONS OF THE
OFFICE OF ENERGY SECURITY
ENERGY FACILITY PERMITTING STAFF**

DOCKET No. E017, ET AL./TR-05-1275

Meeting Date: June 5, 2008

Agenda Item # _____

Company: Otter Tail Power Company; Central Minnesota Municipal Power Agency; Heartland Consumers Power District; Montana-Dakota Utilities Company; and Western Minnesota Municipal Power Agency (collectively, the “Applicants”)

Docket No. E017, et al./TR-05-1275

In the Matter of the Application to the Minnesota Public Utilities Commission for a Route Permit for the Big Stone Transmission Project in Western Minnesota.

Issues: Should the Commission find that the Environmental Impact Statement (EIS) and the record adequately address the issues identified in the Scoping Decision?

Should the Commission issue an HVTL route permit identifying specific routes and permit conditions for the proposed Big Stone Transmission Project?

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Relevant Documents

Route Permit Application	December 9, 2005
Final Environmental Impact Statement	December 1, 2006
ALJ Report.....	August 15, 2007

The enclosed materials are work papers of the Office of Energy Security Energy Facility Permitting Staff (OES EFP). They are intended for use by the Public Utilities Commission and are based on information already in the record unless otherwise noted.

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Documents Attached:

1. Proposed HVTL Route Permit

(Relevant documents and additional information can be found on eDockets (06-1677) or the DOC EFP website: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=18938>)

Statement of the Issues

Should the Commission find that the Environmental Assessment and the record adequately address the issues identified in the Scoping Decision? Should the Commission issue an HVTL route permit, identifying a specific route and permit conditions for the proposed Chisago Transmission project?

Introduction and Background

On December 9, 2005, Otter Tail Power Company and partners (Applicants) filed a route permit application for the Big Stone transmission line project (Project). Applicants also filed an application for a Certificate of Need (E017, et al./CN-05-619) on October 3, 2005, for the same transmission project.

Project Area

The Project consists of two separate high voltage transmission lines. One line would run north and east from the Big Stone Plant in Big Stone City, South Dakota, to Morris, Minnesota, and a second line would run south from the Big Stone Plant within South Dakota, then east to Canby, Minnesota, and on to Granite Falls, Minnesota. The project area is primarily rural with a mix of developed areas containing permanent residences and commercial areas. The area is rich in wetlands and agricultural areas. Existing 115 kV transmission lines generally delineate the proposed routes.

Project Description

Line One (the “Morris” line) – Big Stone to Morris, Minnesota:

- a new 230 kV transmission line from the Big Stone Plant to Ortonville, Minnesota (approximately seven miles long, two miles of which are located in Minnesota);
- the rebuild of an existing 115 kV transmission line to 230 kV from Ortonville, Minnesota, to the Johnson Junction switching station located in Johnson, Minnesota (approximately 25 miles), and then from the Johnson Junction switching station to the Morris substation near Morris, Minnesota (approximately 16 miles).

Line Two (the “Granite Falls” line) – Big Stone to Granite Falls, Minnesota:

- a new line capable of operating at 345 kV from the Big Stone Power Plant to Canby, Minnesota, traveling due south in South Dakota, and crossing the Minnesota-South Dakota border west of Canby (approximately 54 miles, approximately 14 miles of which are in Minnesota);
- the rebuild of an existing 115 kV transmission line from Canby, Minnesota, to Granite Falls, Minnesota (approximately 39 miles), to a line which is also designed and capable of operating at 345 kV, but which would operate at 230 kV initially. The line would terminate at the Granite Falls substation.

Regulatory Process and Procedures

On December 21, 2005, the Commission issued an Order accepting the route permit application as complete; authorizing OES EFP to begin the full review process under Minnesota Rules 7849.5200-5340; authorizing OES EFP to name a public advisor in this case; referring the matter to the Office of Administrative Hearings for a contested case hearing; and in lieu of an Advisory Task Force, directing OES to proactively consult and inform local governments, enlisting their advice on the scope of the EIS and route alternatives.

Public Information and Scoping Meeting

OES EFP sponsored public meetings on January 24, 2006, in Benson, January 25th in Morris and Ortonville and January 26th in Canby and Granite. The purpose of the public meetings was to provide the public with information about the project, afford the public an opportunity to ask questions and present comments, and to solicit input on the content of the Environmental Impact Statement.

During the initial public information/scoping meetings and in written comments, most concerns raised related to the construction and operation of the Big Stone II coal plant from which these transmission lines originate. Most of these comments were not directly related to the construction and operation of the transmission lines. One major alternative route was proposed to be included in the EIS review but was rejected (see Final EIS, p. 77). Some concerns were raised, including environmental and human health impacts. These issues, along with the typical HVTL routing impacts were incorporated into the EIS Scoping Decision.

Enhanced Local Government Involvement

OES EFP met several times with a committee appointed through the Upper Minnesota Valley Regional Development Commission (UMVRDC). The committee included at least one representative from each of the counties potentially impacted by the project. The group met to discuss possible alternatives for inclusion in the EIS scope. The group continued to meet intermittently throughout the process and continued to offer suggestions and recommendations to OES regarding local issues and possible mitigations.

The UMVRDC committee recommendation was submitted into the record at the hearing supporting the Applicants' proposed route as the most reasonable route alternative. The committee stated these routes were "the most compatible with existing Land Use Plans of the affected counties." The UMVRDC endorsed this recommendation by official action on November 20, 2006.

Environmental Review

Applications for Certificates of Need (CN) and route permits are both subject to environmental review, which is conducted by OES EFP staff. On November 29, 2005, the Commission agreed to combine the environmental report for the Certificate of Need and the Environmental Impact Statement documents, as provided for under Minnesota Rule 7849.7100. An EIS was prepared in accordance with part 7849.5300 in lieu of the environmental report otherwise required under part 7849.7030.

The EIS Scoping Decision was signed by the DOC Commissioner on February 28, 2006. The Draft EIS was made available on July 31, 2007, and public information meetings on the draft were held in conjunction with the public hearings. The Final EIS was released on December 1, 2006, including responses to substantive comments on the draft.

Public Hearing

Public hearings are required in both CN and route permit proceedings. In situations when CN and route permit applications for the same project are considered simultaneously, Minnesota Statute 216B.243, subd. 4, states "Unless the commission determines that a joint hearing on siting and need under this subdivision and section 216E.03, subdivision 6, is not feasible or more efficient, or otherwise not in the public interest, a joint hearing under those subdivisions shall be held."

ALJs Stephen M. Mihalchick and Barbara L. Nielson conducted public hearings in Western Minnesota October 9-13 and in St. Paul October 16th. The ALJs provided the opportunity for members of the public to air their views regarding the proposed and alternate routes. The period for written public comments closed on October 31, 2006. Evidentiary hearings were held in St. Paul in December 2006.

The Judges released their report on August 15, 2007. In the report they made the following recommendations, in relevant part, that:

"The Commission **GRANT** the Applicants' Petition for a Certificate of Need for the construction and operation of the Transmission Project."

“The Commission **ISSUE** Routing Permits for the transmission lines (a 230 kV line from the South Dakota border to the Morris Substation and a 345 kV line from the South Dakota border to the Granite Falls Substation) along the route preferred by the Applicants and authorize construction of the lines, substations, and other associated facilities described in the applications, including a new site for the Canby Substation as described in the record.”

“The Commission find that the Final Environmental Impact Statement prepared by the Department is adequate.”

Route Permit issues have not been considered in further PUC and OAH proceedings on the Big Stone Certificate of Need docket. The record for the route permit docket stands as of the original Judges’ report.

OES EFP Staff Analysis and Comments

Alongside a CON process that created high levels of controversy, the Route Permit process in this docket has been one of little debate. According to the ALJ Report, “*No concerns* (emphasis added) about the transmission line routes or the potential impacts of the lines were raised during the course of these proceedings by the public or the participants.”¹

For the most part, the Applicants’ proposed routes replace existing 115 kV transmission lines along the established rights-of-way. Even though the projects cover many miles, very little new corridor (approximately 14 miles) would be required. There are only a couple issues to address concerning possible conditions to impose in the permit.

Allowing a 2000-foot Route

In the first place, the Applicants’ have asked for a route width of 2000 feet, 1000 feet on each side of a route centerline (in most instances that centerline would be the existing right-of-way). While this is a larger concession than usual in recent route permits, there were no comments on the record against this request. In addition, the Judges suggested, “Designating a wider route than is actually necessary for the right-of-way will give the Applicants the ability to consult with landowners to determine the precise location for the transmission structures to minimize potential impacts.”² This means the existing route can be corrected in places to align on section lines, avoid certain natural areas, etc.

However, one reason the routing process has been lacking in controversy is, again, that the new lines replace and update existing transmission. The Judges found, “Based on the information compiled by the Applicants in the Application for Route Permits, the information reported by the Department in the Environmental Impact Statement, and the comments received from the public, there is no evidence that the preferred route of the proposed transmission lines would have a significant impact on the natural environment.”³

¹ Mihalchick & Neilson, *Findings Of Fact, Conclusions Of Law, And Recommendation*, Finding of Fact 241

² FOF 253

³ FOF 263

However, that finding takes into consideration that, “As discussed previously, the preferred routes call for only a small addition of new right-of-way, since they will follow or parallel existing right-of-way for most of the route.”⁴ Staff recommends that the permit include instruction from the PUC to stay along the existing alignment to the extent possible to avoid environmental impacts, and to exercise the limits of the route width prudently to achieve the same effect.⁵

DNR Recommendations

In their comments on the Draft EIS, The Department of Natural Resources (DNR) supported the proposed route from Ortonville to Morris. However, it recommended an alteration to reroute a short portion of the route near the Prairie Wildlife Management Area to mitigate the impact on the WMA. The DNR also recommended the use of Avian Flight Diverters along this section. The section “represents a primary migratory flight corridor ... proposed for possible designation as a State Important Bird Area.”⁶ The Avian Flight Diverters were recommended as the “best possible mitigation against incidental avian mortality.”

The recommendation includes additional length, complexity, cost, environmental and new corridor considerations. Again, staff references the Judges’ comments on the use or paralleling of existing rights-of-way. Staff doesn’t consider that this option has significant advantages over the proposed route. However, staff supports the agency’s recommendations on flight diverters, and recommends the PUC instruct Permittees to consult with the Department of Natural Resources Area Wildlife Manager during planning and construction of this segment of the route.⁷

OES EFP Staff Recommendation

Again, it is the opinion of OES that the record for the route permit docket stands as of the original Judges’ report. No route permit issues were considered in the subsequent supplementary need proceedings. If the Certificate of Need is granted, the August 15, 2007, ALJ Findings of Fact, Conclusions of Law and Recommendations can form the basis for a route permit decision. In those findings and conclusions, the Judges were clearly supportive of the Applicants’ proposed route. Additionally, the Judges found that the FEIS properly addressed the relevant issues.⁸

Given the lack of opposition in the record to the Applicants’ proposed routes, the Judges’ recommendations in the case, the recommendation of the local government task force, and OES EFP’s own investigation in the Environmental Impact Statement, staff recommends the PUC approve the Applicants’ proposed routes as delineated in the attached “Proposed Route Permit,” with the special conditions specified in Section V.

⁴ FOF 268

⁵ Proposed Route Permit, Section V. Special Conditions, No. 2

⁶ FEIS, p. 203

⁷ Proposed Route Permit, Section V. Special Conditions, No. 4

⁸ FOF 338-355

PUC Decision Options

A. Make a Determination on the Record

1. Adopt the August 15, 2007, ALJ Findings of Fact, Conclusions of Law and Recommendations for the Big Stone Transmission Project in Western Minnesota related to PUC Docket No. E017, et al./TR-05-1275 which:

- a. determine that the environmental impact statement and record created at the public hearing address the issues identified in the EIS Scoping Decision;
- b. recommend issuing a Routing Permit for the transmission lines (a 230 kV line from the South Dakota border to the Morris Substation and a 345 kV line from the South Dakota border to the Granite Falls Substation) along the route preferred by the Applicants and construction of the lines, substations, and other associated facilities described in the applications, including a new site for the Canby Substation as described in the record.

2. Amend August 15, 2007, ALJ Findings of Fact, Conclusions of Law and Recommendations for the Big Stone Transmission Project in Western Minnesota as deemed appropriate.

3. Make some other decision deemed more appropriate.

B. Make a Determination on the Route Permit

1. Approve and Adopt the Route as Proposed by the Applicants, with the conditions delineated in the OES Proposed Route Permit.

2. Approve and Adopt the Route as Proposed by the Applicant, with additional conditions as delineated by the Commission.

3. Make some other decision as to the Route and permit conditions deemed more appropriate.

OES EFP Staff Recommendations: Staff recommends options A1 and B1.