

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy and Dairyland Cooperative for a Certificate of Need for a 115 kV and 161 kV Transmission Line from Taylors Falls to Chisago County Substation

ISSUE DATE: February 12, 2007

DOCKET NO. E-002/CN-04-1176;
E-002/TL-06-1677

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

In November 2002, Northern States Power Company d/b/a Xcel Energy and Dairyland Power Cooperative (hereinafter Applicants) filed a petition for exemption from certain parts of Minn. Rules Chapter 7849.

On April 8, 2003, the Commission issued its Order Granting Exemption in Part and Requiring Supplementary Filing and Notice.

In July 2004, Applicants filed a Notice Plan for a certificate of need for the Chisago County project. On October 6, 2004, the Commission issued an Order Approving Notice Plan with Modifications. Applicants did not implement the notice plan nor file the associated certificate of need.

On June 30, 2006, Applicants filed a revised notice plan, which addressed the modifications required in the Commission's 2004 Order. On October 6, 2006, the Commission approved and further modified the revised notices.

On November 16, 2006, Applicants filed their application for a certificate of need.

On January 2, 2007, the Department of Commerce (the Department) filed comments on the completeness of Applicants' application.

On January 5, 2007, Applicants filed an application for a route permit under the alternative permitting process, Docket No. E-002/TL-06-1677.

On January 25, 2006, the certificate of need and routing matters came before the Commission.

On the same date that it issued this Order, the Commission issued an Order Accepting the Certificate of Need Application as Substantially Complete Pending Submission of Additional Data¹ and an Order Accepting Route Permit Application as Complete, Authorizing Selection of Public Advisor, and Combining Environmental Review and Public Hearing.²

FINDINGS AND CONCLUSIONS

I. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over the applications for certificates of need for large energy facilities, including the project at issue, under Minn. Stat. §§ 216B.2421 and 216B. 243. The statute requires the Commission to hold at least one public hearing under the Administrative Procedure Act before acting on this or any other application for a certificate of need. Minn. Stat. § 216B.243, subd. 4.

The Commission finds that it cannot resolve the issues raised in the Application on the basis of the record before it. Those issues turn on specific facts that are best developed in formal evidentiary hearings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

II. Issues to be Addressed

Minn. Stat. § 216B.243, subd. 3 and Minn. Rules 7849.0100 - 7849.0120 set forth criteria that must be met to establish need for proposed large energy facilities, including the project at issue. Minn. Rules 7849.0100 requires specific written findings on each of these criteria. The parties to this proceeding should address whether the proposed project meets these criteria.

The parties shall address the above issues in the course of contested case proceedings. They may also raise and address other issues relevant to the Application.

III. Public Participation

Minn. Stat. § 216B.243, subd. 4 encourages public participation in certificate of need proceedings. The statute requires at least one hearing to obtain public opinion on the application and requires the Commission to designate an employee to facilitate public participation in the hearing process.

The Commission has designated Bret Eknes, Facilities Planner, to facilitate and coordinate public participation in this proceeding. He may be reached by telephone at (651) 201-2236, by fax at (651) 297-7073, and by e-mail at bret.eknes@state.mn.us. His address is Suite 350, 121 7th Place East, St. Paul, Minnesota 55101-2147.

¹ Docket No. E-002/CN-04-1176.

² Docket No. E-002/TL-06-1677.

Members of the public need not become formal parties to participate in the hearing process. They are encouraged to attend the public hearing(s) and to submit testimony and exhibits. Person who cannot attend the public hearing(s) and wish to comment may submit written comments to the Administrative Law Judge. The Commission will require the Company to publish notice of the public and evidentiary hearings in newspapers throughout the affected area of the state, to encourage public participation.

IV. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Eric L. Lipman. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7601.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. § 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Bret Eknes, Facilities Planner, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2236; or Jeanne Cochran, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-2106.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary and public hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and the parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are Applicants and the Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held on Friday, February 23, 2007 at 9:00 a.m. The prehearing location will be at the Minnesota Public Utilities Commission, Large Hearing Room, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

V. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., apply to certificate of need cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

VI. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

VII. Joint Public Hearings

The Commission has authorized the public hearings in the certificate of need docket, E-002/CN-04-1176 and the route permit application, E-002/TL-06-1677, to be held jointly.³ In addition, the environmental review proceedings in both the certificate of need and routing dockets have been combined.⁴ The Commission asks the Administrative Law Judge to schedule, notice and preside over the joint public hearing(s) in both matters.

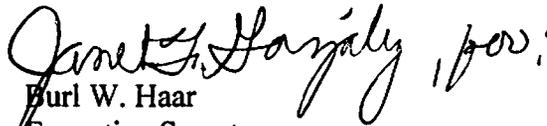
³ See, Order Accepting Route Permit Application as Complete, Authorizing Selection of Public Advisor, and Combining Environmental Review and Public Hearings, Paragraphs 5 - 6, Docket No. E-002/TL-06-1677.

⁴ Order Accepting Route Permit Application as Complete, Authorizing Selection of Public Advisor, and Combining Environmental Review and Public Hearings, Paragraph 4, Docket No. E-002/TL-06-1677.

ORDER

1. A contested case proceeding shall be held on Applicants' certificate of need application for a 115 kV and 161 kV transmission line from Taylors Falls to Chisago County substation.
2. At least one public hearing shall be held in these matters at a time and place determined by the Administrative Law Judge after consultation with Commission staff and the Department of Commerce Energy Facilities Permitting staff.
3. The Commission asks the Department of Commerce to continue its examination of the merits of the application and to provide a recommendation on the reasonableness of granting the requested certificate of need.
4. The Company shall facilitate in every reasonable way the continued examination of the issues by the Department of Commerce.
5. The Company shall place its application and any supplementary materials filed in this docket on a website.
6. The Company shall work with staff of the Commission and the staff of the Department of Commerce, as necessary, to arrange for the publication of notice of the hearings in newspapers of general circulation at least ten (10) days prior to the start of the hearings, that such notice be in the form of visible display ads, and that proofs of publication of such ads be obtained from the newspapers selected.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION


Burl W. Haar
Executive Secretary

(SEAL)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling 651-201-2202 (voice) or 1-800-627-3529 (MN relay service)

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Certificate of Need
Application for the Chisago 115/161 k/V
Transmission Line

MPUC Docket No. E-002/CN-04-1176;
E-002/TL-06-1677

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Eric L. Lipman, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,
Minneapolis, Minnesota 55401; (612) 341-7601.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____

STATE OF MINNESOTA)
)SS
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

I, Margie DeLaHunt, being first duly sworn, deposes and says:

That on the 12th day of February, 2007 she served the attached
NOTICE AND ORDER FOR HEARING.

MNPUC Docket Number: E-002/CN-04-1176 & E-002/TL-06-1677

XX By depositing in the United States Mail at the City of St.
Paul, a true and correct copy thereof, properly enveloped
with postage prepaid

XX By personal service

XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

Commissioners
Carol Casebolt
Peter Brown
Eric Witte
Marcia Johnson
AG
David Jacobson
Bob Cupit
Ken Wolf
Bret Eknes
Mary Swoboda
Jessie Schmoker
Sharon Ferguson - DOC
Julia Anderson - OAG
Curt Nelson - OAG

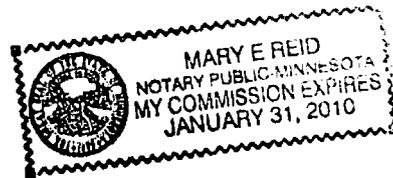
Margie DeLaHunt

Subscribed and sworn to before me,

a notary public, this 12 day of

February, 2007

Mary E. Reid
Notary Public



10:
MN PUC

Burl W. Haar (0+15)
MN Public Utilities Commission
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St. Paul MN 55101-2147

20:
Dept. of Commerce

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30:
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