



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS AND RECOMMENDATIONS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
ENERGY FACILITY PERMITTING STAFF**

DOCKET NO. E002/TL-06-1677

Meeting Date: January 24, 2008

Agenda Item # _____

Company: Northern States Power Company (d/b/a Xcel Energy)

Docket No. E002/TL-06-1677

**In the Matter of the Application for a Route Permit for the Chisago County
115/161 kV High Voltage Transmission Line Project**

Issues: Should the Commission find that the Environmental Assessment (EA) 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?

DOC Staff: David E. Birkholz651-296-2878

Relevant Documents

Route Permit Application January 5, 2007
Environmental Assessment..... August 20, 2007
ALJ Report.....November 19, 2007

The enclosed materials are work papers of the Department of Commerce Energy Facility Permitting Staff (DOC 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 Findings of Fact, Conclusions of Law and Order (Attachment A)
2. Proposed HVTL Route Permit (Attachment B)

(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 January 5, 2007, Xcel Energy (Applicant) filed a route permit application under the alternative review process for the Chisago County to Apple River transmission line project (Project). Applicants also filed an application for a Certificate of Need (E002, ET3/CN-04-1176) on November 15, 2007, for the same transmission project.

Project Area

The Minnesota portion of the proposed Project is in Chisago County. The project area extends from the central part of the county south of North Branch through Lindstrom and through Taylors Falls, where it crosses the St. Croix River. The project area is a mix of rural and developed areas and contains permanent residences and commercial areas. The area is rich in lakes, wetlands, forest and agricultural areas. An existing 69 kV transmission line delineates the proposed route.

Project Description

The Project includes:

- Replacing the existing 69 kV transmission line located between the Xcel Energy Chisago County substation and the proposed Lawrence Creek Substation near Taylors Falls, Minnesota with a new 115 kV transmission line,

- Replacing the existing 69 kV transmission line located between the proposed Lawrence Creek Substation and the St. Croix River crossing in Taylors Falls (including a portion proposed to be buried) with a new 161 kV transmission line, and
- Modifying the existing Chisago County, Lindstrom, and Shafer substations and constructing a new Lawrence Creek Substation.

Regulatory Process and Procedures

On February 12, 2007, The Commission issued an Order accepting the route permit application as complete; authorizing the Department of Commerce Energy Facilities Permitting staff to begin the alternative review process under Minnesota Rules 7849.5510-5720; authorizing the Department of Commerce Energy Permitting Facility staff to name a public advisor in this case; combining the environmental review documents and procedures in Docket No. E-002/CN-04-1176 and E-002/TL-06-1677; authorizing the Department to initiate and conduct the environmental review process; authorizing public hearings in E-002/CN-04-1176 and E-002/TL-06-1677 to be held jointly; authorizing Department and Commission staff to request assignment of an Administrative Law Judge to schedule, notice, and preside over the joint public hearing(s); and authorizing the Department Energy Facilities Permitting staff to establish an advisory task force and develop a proposed structure and charge for the task force.

Public Information and Scoping Meeting

On February 27, 2007, DOC EFP staff held the initial public information/scoping meeting in Lindstrom. Approximately 60 persons, excluding DOC/PUC staff and the applicant's representatives, attended the meeting. The purpose of the public meeting 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 Assessment (EA).

During the initial public information/scoping meeting, most concerns raised related to the portion of the proposed HVTL route that follows along the existing 69 kV line through the city of Lindstrom. Fifteen comment letters were received by the March 30, 2007 public comment deadline, most concerning impacts and possible alternatives along this segment. Other concerns raised included environmental and human health impacts. These issues, along with the typical HVTL routing impacts were incorporated into the Environmental Assessment Scoping Decision.

Advisory Task Force

A task force can be charged with identifying additional routes or specific impacts to be evaluated in the EA and it terminates when the DOC Commissioner issues an EA scoping decision. The PUC is not required to assign an advisory task force for every project; however, in this case the Commission authorized the Department to appoint one under Minn. Stat. § 216E.08, subd. 1, and to establish its charge. DOC EFP provided a charge and sent out a letter of invitation to local government officials on February 22 inviting them to participate. DOC EFP also provided applications at the public meeting for interested persons to apply to participate in the task force. The letter laid out a schedule of meetings over the three weeks of March 12th, 19th, and 26th to hold the Task Force meetings.

When it became clear that there was an insufficient reply from local governments to convene an advisory task force under the statute, DOC EFP advised the Commission on March 12, 2007 of its intention to fulfill the spirit of the statutory task force provision, and that EFP staff would arrange meetings with interested parties under an informal advisory group that would provide input to the Department in the same manner as an official advisory task force.

On March 13, 2007, the Department again sent notices to local government officials, and subsequently met with the advisory group three times during the weeks of March 19th and 26th. The group prepared and submitted recommendations on April 9, 2007. The subsequent Scoping Decision included all four of the task force's recommendations, and DOC EFP evaluated each of them in the Environmental Assessment.

Environmental Review

Applications for Certificate of Need (CN) and route permits are both subject to environmental review, which is conducted by DOC EFP staff. In this case, where the CN and route permit applications for the project were considered simultaneously, the environmental review documents were joined, as provided for under Minn. R. 7849.7100. An Environmental Assessment was prepared in accordance with part 7849.5700 in lieu of the environmental report otherwise required under part 7849.7030.

The EA Scoping Decision was signed by the DOC Commissioner on April 19, 2007. The Environmental Assessment was made available on August 20, 2007.

Public Hearing

A public hearing is 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."

ALJ Eric L. Lipman conducted public hearings on the evenings of September 4 and September 5, 2007, in the Chisago County Library in Chisago, Minnesota. The ALJ 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 September 17, 2007. Evidentiary hearings were held daily in the Chisago County Library from September 4 through September 7, 2007, and on September 10, 2007, at the Department of Commerce offices in St. Paul. The utilities and parties were allowed to make written comments to the ALJ through September 14, 2007.

In its September 14, 2007 comments to the ALJ, the Department expressed its direct requests of the Judge, including specific reasons why it did not request a route recommendation:

Thus, according to the February 12 Order and as clarified in the May 1 Order in Docket No. E-002/TL-06-1677, and Minn. R. 7849.5710, subp. 2, the Commission authorized the Department to conduct the environmental review

process including any specific requests to the ALJ concerning preparation of a report or making a recommendation to the Commission on the route. The Department is mindful that preparation of the ALJ report and recommendation for the CON contested case will involve considerable effort. Nonetheless, at this time the Department makes a specific request that the ALJ prepare Findings of Fact relating to the routing docket. However, the nature of the alternative review process being conducted by the EFP Staff is that the greater flexibility of that process allows for further development of specific route issues after the public hearings, and the EFP Staff will continue to do this as appropriate. The Department, under its delegated authority, is not making an additional request for any recommendation to the Commission in the route proceeding.

(Comments and Request For Findings of Fact of Department of Commerce, Energy Facility Permitting Staff, September 14, 2007)

The ALJ released his report on November 19, 2007. In the report he made the following recommendations:

1. The Administrative Law Judge recommends that the application for a Certificate of Need a [sic] 115 kV/161 kV transmission line from the Chisago County Substation near North Branch, Minnesota to the Apple River Substation near Amery, Wisconsin, be GRANTED.
2. The Administrative Law Judge recommends that the Routing Permit be GRANTED, AS MODIFIED by the “Around the Lakes Over Head” option.

(Summary Of Testimony At The Public Hearings & Findings Of Fact, Conclusions & Recommendation) (“ALJ Report”)

DOC EFP Staff Analysis and Comments

For the majority of the transmission line and substation proposals in the Chisago Transmission Project, there has been little or no objection. The record supports that the Application and the Environmental Assessment evaluated the required matters and that the project should go ahead as proposed. While there has been some objection to aesthetics at the St. Croix River crossing, the Department of Natural Resources and the National Park Service are both on record as viewing the project as mitigation to the wires currently coming down the bluff from Taylors Falls and crossing the river.

The only point of substantial disagreement in this routing proceeding is through the city of Lindstrom. The Applicant has proposed to rebuild a 115 kV line on the right-of-way of the existing 69 kV line along 1st Avenue North. The city of Lindstrom (“City”) intervened as a Formal Participant in the routing docket to support an alternative that would underground the new line along 1st Avenue North. DOC EFP staff reviewed both of these route alternatives in

the Environmental Assessment.¹ Additionally, evidence relating to an “Under the Lake” option and a “Newell Avenue” underground option were presented in Direct and Rebuttal Testimony.²

Defining the Question

Instead of choosing one of these options vetted in the contested case proceeding, the ALJ recommended an “Around the Lake” alternative that the DOC Commissioner had excluded from the EA in his Scoping Decision.³ The ALJ recommended this option to mitigate what he referenced in his report as “the special and definite tourism-related impacts associated with routing the line along the City of Lindstrom’s downtown corridor.”⁴ The viability of the option as an alternative in the proceeding is discussed below. Integral to the analysis here is the question whether the ALJ’s assessment of the “Around the Lakes” alternative should be given weight.

The DOC EFP staff agrees with the ALJ’s findings that there are specific impacts of the proposed project, and that some of these impacts can be mitigated in downtown Lindstrom.⁵ The Commission can determine if these impacts warrant mitigation and the extent of that mitigation that is appropriate. Adding to the difficulty of that decision is the question of the degree of impact created by the proposed project. One argument might be that the proposed project only creates an incremental aesthetic impact. If the project were not proposed, the lesser impact of the existing poles would still exist. On the other hand, the project could offer an opportunity to reduce aesthetic impact, which is the position taken by the City. The questions remain if the incremental impacts of replacing a 69 kV with an 115 kV line warrant special consideration and, if so, to what expense.

The Proposed Route

The DOC EFP staff agrees with the ALJ’s findings that there is substantial evidence in the record to support the Applicant’s proposed route. The Environmental Assessment addressed the criteria found in Minnesota Rule 7849.5910 for assessing the application. The route as designed uses existing ROW along approximately 97 percent of the line, requiring new easements only where lines are altered to accommodate the new Lawrence Creek Substation. This significantly limits the environmental and human impacts normally associated with placement of a new transmission line.⁶

However, there are possible actions that could be taken along the proposed route to help mitigate the impacts of routing through Lindstrom. The Applicant considers that replacing 12 wood poles through the area in question with seven steel poles is a mitigation; however, the steel poles are considerably larger, as noted below. This option would also underbuild the existing distribution lines. The Commission could also consider requiring the Applicant to bury the distribution lines along this segment, helping considerably in cleaning up the clutter of utilities along this segment. The City has indicated by letter to staff that they support this mitigation and would request Xcel

¹ Environmental Assessment (“EA”), Chapters 6 and 7.

² Ex. 201, Olinger Direct Testimony, at 4-5 (Under the Lakes); Ex. 20, Hillstrom Rebuttal, at 3, 9-12.

³ EA, Appendix A (Map 8), and App. B. (Scoping Decision) at p. 4.

⁴ ALJ Report, ¶¶ 98 and 105.

⁵ See generally, ALJ Report, pp. 41-45.

⁶ See EA, Chapter 6.

to help mitigate the cost to city residents and businesses to reconnect through the underground distribution system.

Another problem with the proposed route is that overhead placement along the city streets and sidewalks is complicated by the increased size of the steel poles--three-foot diameter structures--which must be set back two feet from the curb, and would occupy at least five feet of the existing sidewalks. The record establishes that existing sidewalks are as narrow as six feet wide, possibly creating a need to acquire additional easement to accommodate the increased size of steel poles.⁷ Existing wooden poles are 15 to 20 inches in diameter. Further at issue is whether existing or public easement would be available along the entire segment, especially where realignments to accommodate HWY 8 will be made between Elm Street and St. Bridget's Church.⁸

If selecting this proposal, the Commission could require Xcel Energy to further address these issues and develop appropriate mitigation measures in consultation with the City of Lindstrom.

Undergrounding along 1st Avenue

The EA reviewed this option, which was proposed by the working group, as a feasible alternative.⁹ It mitigates the visual, aesthetic impacts of the transmission line. That mitigation comes with an approximated 2.3 million dollar price tag, which is about 3.6 percent of the total project cost. If employing this option, the Applicant would trim the existing poles down to the distribution and accompanying utilities strung along this system, reducing the height of the existing poles down to approximately 40 feet.¹⁰ This would reduce the impact of the current system, but would not alleviate all visual impacts. However, the city could opt at some future point to underground these utilities on their own initiative.

However, the biggest challenge to this option as a viable alternative rests with the objections of the Minnesota Department of Transportation (DOT). DOT has established plans to reroute HWY 8 as alternating pairs, reconstructing the existing 1st Avenue as the westbound lanes to that highway.¹¹ To accomplish this, DOT would purchase the city's right of way.¹² DOT is on record as objecting to the Applicant undergrounding parallel along its ROW. It is not clear by DOT's own "Policies and Procedures" that such paralleling would absolutely be prohibited.¹³ However, since the final ROW has not been established, it is clear that a significant financial risk exists should the Applicant's installation interfere with the final alignment of the highway reconfiguration.¹⁴

Under the Lakes Alternative

In the Direct Testimony of Mr. Olinger, the city of Lindstrom introduced an additional alternative. This option would run north of the downtown area, underneath the lakes. DOC EFP

⁷ Transcript Vol. 4, Testimony of MNDOT Employee Todd Clarkowski, at 95-97; EA at 42-43 and Figures 2 and 3; and Exhibits 221 and 221A (maps of MNDOT one-way pair design for City of Lindstrom).

⁸ See, e.g., Transcript Vol. 4, pp. 17, 36-37 (Clarkowski Testimony).

⁹ EA, Chapter 7, Section 7.1 at 69-73.

¹⁰ EA, at p. 70.

¹¹ See Exhibits 221 or 221A, Map of planned alternating pairs section of Trunk Hwy 8 through City of Lindstrom.

¹² See EA, App. D, MNDOT July 27, 2007 letter from Carol Molnau.

¹³ See Exh. 529, MNDOT Policies and Procedures.

¹⁴ Transcript, Vol. 4 at 36-38 (Clarkowski Testimony).

staff does not consider this either feasible or viable as an alternative. The feasibility of this alternative is lessened by that the fact that Xcel Energy has no experience implementing or maintaining such a system.¹⁵ Xcel also referenced Minn. R. 6135.1100, MNDNR's standards for route design for electric transmission lines, noting that this rule provides, with respect to crossing public waters, lakes are to be avoided, but if there is no feasible and prudent alternative route, the extent of encroachment is to be minimized by crossing under the water.¹⁶ DOC EFP believes that the DNR would almost certainly reject such an alternative as long as any other feasible alternative existed. Furthermore, the Under the Lakes alternative is not viable based on the evidence in the record in that it introduces up to 25 additional landowners along 2.8 miles of corridor requiring new right-of-way; there is potential for significant outage times if maintenance is required; and the additional cost to the project would be from 15 to 22 million dollars, adding roughly 23 to 34 percent to the original estimate for the entire project.¹⁷

Undergrounding along Newell Avenue

In the Rebuttal Testimony of Mr. Hillstrom, Xcel Energy introduced an additional alternative of undergrounding the route along Newell Avenue rather than 1st Avenue. This is a feasible undergrounding option that parallels south of Hwy 8, avoiding the Lindstrom downtown area. It is very similar in most respects to the 1st Avenue option.¹⁸ Like the "Undergrounding along 1st Avenue" option, this alternative would mitigate the aesthetic impacts along the new downtown area and in the incoming westbound views of the city, except for the distribution and other utility lines that would remain along 1st Avenue at the trimmed-down height. As with the "Undergrounding along 1st Avenue" option above, the city could opt at some future point to underground these utilities on their own initiative.

This alternative comes with an approximated 3.5 million dollar price tag, which is about 5.5 percent of the total project cost, and requires approximately .5 mile of new corridor that could impact up to 63 residences and 16 businesses.¹⁹

This segment could not be implemented without utilizing city right-of-way under the impacted city streets. Otherwise, private easements would have to be obtained, and the record would not have evaluated the environmental impacts to the landowners along the segment. Perhaps most importantly, landowners would not have been allowed notice to participate in the public process and would arguably have been denied due process.

DOC EFP staff concludes that the Newell Avenue option is viable, subject to assignment of public easement by the City of Lindstrom. Undergrounding within the city's right-of-way would eliminate any long-term impacts to private landowners along the route segment. Short-term impacts would be the temporary disruptions associated with construction. Costs could be managed by having the City provide the easement within its ROW without additional cost to the Applicant. The City has indicated by letter to staff that they may be willing to provide that easement.

¹⁵ Transcript, Vol. 1B, at 97-99 (Duebner Testimony).

¹⁶ Exh. 20, at 5 (Hillstrom Rebuttal).

¹⁷ Exh. 20 at 4-7, 12 (Hillstrom Rebuttal).

¹⁸ Exh. 20 at 10 (Hillstrom Rebuttal).

¹⁹ *Id.*

The Newell Avenue alternative would mitigate the City's concerns about the aesthetic impact of the project as proposed by Xcel. Xcel Energy considers this option to be the only feasible alternative to its proposal for the segment in downtown Lindstrom.²⁰ The Company's concern remains as to the additional costs and how the Commission would distribute the burden of mitigation.

Around the Lake Alternative

While this option is the recommendation of the ALJ, DOC EFP staff cannot find adequate support for this alternative in the record.

The DOC Commissioner excluded this alternative from his Scoping Decision.²¹ The EA explained the reasons for its exclusion, including: the route segment would require 7.1 miles of new transmission right of way; the incremental costs would be nearly 4 million dollars including new easement costs (these costs were later re-estimated by the Applicant to be closer to 2 million dollars); the route would be within 300 feet of approximately 45 residences; construction would require clearing nearly 3.1 acres of trees; and the new route would cross nine NWI wetlands, including one that is approximately 800 feet wide, perhaps requiring Army Corps of Engineers coordination.²²

The ALJ findings affirm the record that environmental impacts along the proposed route are mitigated by the fact that 97 percent of the line utilizes existing HVTL right-of-way, based on an approximate route of 18.5 miles.²³ The ALJ Report does not discuss the additional 7.1 miles of new right-of-way required by the "Around the Lakes" alternative. Moreover, landowners along this segment were never notified of their right to participate in the review process and never noticed that their property might be affected by the proposed transmission line.

While this option may be feasible, DOC EFP staff recommends that a decision for this alternative can not be made within the current record. In order to consider this alternative, the record would need to be reopened to develop additional evidence for this segment and to allow landowners along this route an adequate opportunity to participate in developing the record. Without doing so, there is no environmental assessment available for the alternative. Even if the Commission found enough analysis of impacts, perhaps more importantly, there is a significant question of whether choosing this alternative would be a denial of due process to the affected landowners.

The ALJ finds the "Around the Lake" alternative "best" mitigates the impacts of routing the line through downtown Lindstrom and "best balances the needs of regional customers."²⁴ DOC EFP Staff suggests that, even if it were viable in the record, the option would stand as only one of a number of potentially better alternatives to the proposal (see DOC EFP proposed Findings of Fact in Attachment A).

²⁰ Applicants' Reply Brief, at 21.

²¹ EA, App. B.

²² EA, § 7.2, pp. 74-75.

²³ ALJ Report, ¶ 99.

²⁴ ALJ Report, ¶¶ 98, 105.

DOC EFP Staff Recommendation

Staff concludes that there are only two supportable options in the record--the Applicant's proposal and the Applicant's proposal including a rerouted segment along Newell Avenue in downtown Lindstrom. Neither option stands out as significantly superior due to the environmental and economic impacts of one or the other. However, either one can be mitigated to a degree by the Commission's permit conditions.

If the Commission wishes to adopt the ALJ's finding that tourism and the cultural environment within the City of Lindstrom should be protected, DOC EFP staff recommends the Newell Avenue route segment alternative.

PUC Decision Options

A. Make a Determination on the Record

1. Approve and Adopt the DOC EFP staff-recommended Proposed Findings of Fact, Conclusions of Law and Order (see Attachment A) for the Chisago Transmission Project (PUC Docket No. E002/TL-06-1677) which:
 - a. determine that the Environmental Assessment and record created at the public hearing address the issues identified in the EA Scoping Decision and
 - b. determine that an HVTL Route Permit, with appropriate conditions, should be issued to Xcel Energy.
2. Amend the Proposed Findings of Fact, Conclusions and Order as deemed appropriate to allow the above determinations.
3. Make some other decision deemed more appropriate.

B. Make a Determination on the Route

1. Approve and Adopt the Route as Proposed by the Applicant, with the condition of underbuilding the existing distribution lines along the 1st Avenue segment.
2. Approve and Adopt the Route as Proposed by the Applicant, with the condition of undergrounding the existing distribution lines along the 1st Avenue segment.
3. Approve and Adopt the Route as Proposed by the Applicant, amended to reroute the 1st Avenue segment underground as provided for by the Newell Avenue alternative.
4. Make some other decision as to the Route and permit conditions deemed more appropriate.

DOC EFP Staff Recommendations: Staff recommends options A1 and B3.