



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS AND RECOMMENDATIONS OF THE

OFFICE OF ENERGY SECURITY

ENERGY FACILITY PERMITTING STAFF

DOCKET NO. E-017, E-015, ET-6/TL-07-1327

Meeting Date: October 28, 2010

Agenda Item # _____

Company: Otter Tail Power Company, Minnesota Power, and Minnkota Power Cooperative, Inc.

Docket No. E-017, E-015, ET-6/TL-07-1327
In the Matter of the Application for a Route Permit for the Bemidji – Grand Rapids 230 kV Transmission Line Project

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 a Route Permit identifying a route and permit conditions for the Bemidji – Grand Rapids 230 kV Transmission Line?

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Relevant Document(s)

Route Permit Application June 4, 2008
 Final EIS September 2, 2010
 ALJ “Findings of Fact, Conclusions and Recommendation” September 20, 2010
 Letter from Leech Lake Band of OjibweOctober 13, 2010

The enclosed materials are work papers of the OES EFP staff. They are intended for use by the Commission and are based on information already in the record unless otherwise noted. This document can be made available in alternative formats, i.e., large print or audio tape, by calling (651) 296-0406 (Voice) or 1-800-627-3529 (TTY relay service).

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Attached Document(s)

Proposed Findings of Fact, Conclusions of Law and Order
Proposed HVTL Route Permit
Proposed HVTL Route Permit Map Set

(Relevant documents and additional information can be found on eDockets (07-1327) or the PUC Energy Facilities website:
<http://energyfacilities.puc.state.mn.us/Docket.html?Id=19344>)

Statement of the 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 a Route Permit identifying a route and permit conditions for the Bemidji – Grand Rapids 230 kV Transmission Line?

Introduction and Background

On June 4, 2008, Otter Tail Power Company, Minnesota Power, Minnkota Power Cooperative, Inc. (Applicants) filed a route permit application on behalf of themselves Northern States Power Company and Great River Energy for the Bemidji to Grand Rapids 230-kV Transmission Line Project (the “Project”). The Applicants filed a certificate of need application for the Project on March 17, 2008 (E017, E015, ET-6/CN-07-1222). The Project is over 200 kV and requires a Certificate of Need (CN). An Order from the Commission on July 14, 2009, granted a CN for the Project.

Project Area

The Project is located in portions of Beltrami, Hubbard, Cass, and Itasca counties. Communities within the Project area are Bemidji, Cass Lake, Bena, Zemple, Deer River and Cohasset; the Project crosses both private and public lands. Land cover along the Project is a mixture of deciduous and coniferous forests, wetlands, cropland and developed areas comprised of transportation, residential and commercial land uses.

A large portion of the Project, approximately 40 miles of the 70-mile Project length, is located within the boundaries of the Leech Lake Reservation. The Project also crosses the Chippewa National Forest (CNF) and portions of the Bowstring State Forest.

Project Description

The proposed Project consists of a 230 kV transmission line between the Wilton 230 kV Substation, located just west of Bemidji, and the Boswell 230 kV Substation in Cohasset, Minnesota. It also includes improvements to both the Wilton and Boswell

substations and expansion of the existing Cass Lake Substation to accommodate 230 kV service. More specific descriptions of the general project elements for the recommended route (also referred to as “Route 4” or “Applicants Route”) can be described as follows:

A 230 kV high voltage transmission line:

The HVTL proceeds roughly 70 miles west to east between Wilton and Boswell substations. Beginning at the Wilton Substation, the HVTL proceeds south from the Wilton Substation along two 69 kV transmission lines for 1.2 miles, then over land for approximately 2,000 feet, before turning southeast to follow the Great Lakes Pipeline through southern Bemidji. Aside from some slight deviations to avoid homes, the route continues eastward along the Great Lakes Pipeline until Hubbard County Highway 45. At Hubbard County Highway 45, the route jogs overland to the northeast for approximately one-half mile to parallel the Enbridge pipeline for approximately 5.9 miles to the city of Cass Lake.

From the Cass Lake Substation, the route continues east along the BNSF railway and Enbridge pipeline, deviating from the Railroad and pipeline to skirt the south side of the city of Cass Lake for approximately one mile before turning north and then east to continue paralleling the Enbridge pipelines and the BNSF railroad for approximately 26 miles to the Mississippi River near Ball Club. The route would cross the Mississippi River at a new crossing, located approximately 500 feet south of the existing Great River Energy 69 kV transmission.

After crossing the Mississippi, the route continues to parallel the pipelines and Great River Energy’s 69 kV transmission line for approximately 0.6 mile to Itasca County Road 119. At County Road 119, the route proceeds cross-country in a southeasterly direction to Itasca County Road 118. The route follows County Road 118 for approximately 1,200 feet, continuing east cross-country, then north for approximately 1,000 feet then turning northeast for another 2,150 feet before rejoining the Great Lakes pipeline. The route continues to follow the Great Lakes pipeline for approximately 10.2 miles, and then follows a Minnesota Power 115 kV transmission line for the remaining 4.5 miles to the Boswell Substation.

For the majority of the Project the Applicants propose using wood H-frame structures with heights of 70 to 90 feet and spans of 600 to 1,000 feet between structures. For portions of the Project where available right-of-way is constrained, the Applicants propose using steel single-pole self-supporting structures 80 to 100 feet tall with spans of 400 to 800 feet between structures.

The Applicants propose to acquire permanent right-of-way easements of approximately 125 feet for the majority of the route. For four short segments located in areas with other physical constraints, the Applicants propose to acquire a narrower right-of-way, estimated to be approximately 75 feet. The Applicants have requested a 1,000 foot wide route width to allow for flexibility in determining the actual right-of-way to accommodate landowner concerns; through development of the record, certain portions of the route have been narrowed to approximately 155- 715 feet. The final alignment (i.e., permanent and maintained rights-of-way) will be located within this designated route unless otherwise authorized below. This width will provide the Applicants with the

flexibility to do minor adjustments of the specific alignment or right-of-way to accommodate landowner requests and unforeseen conditions.

Approximately half of the route length would be constructed adjacent to the Enbridge pipeline. Enbridge recently completed temporary clearing for a pipeline project; the Enbridge clearing accounts for approximately half of the ROW required for the Project along the pipeline.

Wilton Substation Modifications

The Project's additions and modification to the existing Wilton 230 kV Substation do not require physical expansion beyond the limits of the existing fenced perimeter. The Wilton Substation is located in a rural area east of Bemidji. The Project would add two new 230 kV breakers and a line termination structure, modifications to the existing 230 kV buses, and relay panels. The Project will also entail completion of a new ring bus section, as well as five new 230 kV switches with foundations, steel structures, and control panels. All of the proposed improvements will be similar in size to existing structures; changes to height and visibility are not anticipated.

Cass Lake Substation Expansion and Modifications

The existing Cass Lake 115/69 kV Substation in Section 17 of Pike Bay Township (Township 145N, Range 31W) in Cass County, will be upgraded and expanded by approximately 320 feet to the west to provide for 230 kV capability. Otter Tail Power Company owns the approximately 2.2 acres where the expansion would take place. The new 230 kV equipment will include a 230 kV three-breaker ring bus with line switches, a new 230/115 kV transformer (~187 MVA), and a new 115 kV three-breaker ring bus to integrate the 230/115 kV transformer into existing 115 kV equipment and transmission lines at the substation. Due to the addition of new 230 kV equipment and associated protection facilities, the substation will require a new control house, relay panels, foundations, steel structures, and switches. The existing substation will remain energized during and after the expansion to serve local loads.

Boswell Substation Modifications

The Project's additions and modifications to the existing Boswell 230 kV do not require physical expansion beyond the limits of the existing fenced perimeter. The Boswell 230 kV Substation is part of the Boswell Generation Plant and is located on land owned by Minnesota Power. The land use at the substation site is industrial, in keeping with its location near the Boswell Generation Plant. The following additions and modifications are proposed: relocation of an existing 230 kV transmission line to a new terminal structure within the substation fence line, enabling the Project's HVTL to use the vacated 230 kV terminal structure in the substation; a new 230 kV circuit breaker, instrument transformers, air break switch, and associated buswork and steel structures; and new protection /control equipment for the Project's HVTL and the relocated, existing 230 kV line, with minor changes to existing substation protection/control equipment. All of the proposed improvements will be similar in size to existing structures; changes to height and visibility are not anticipated.

Regulatory Process and Procedures

High voltage transmission lines with a voltage above 200 kV are required to undergo the Full Review Process under Minnesota Rule 7850.1700-2700 and Minnesota Statute 216E.04. Under the Full Review Process, an applicant is required to present a proposed and an alternative route.

The application must provide specific information about the proposed project, applicant, environmental impacts, alternatives and mitigation measures (Minn. Rule 7850.1900). The Commission may accept an application as complete, reject an application and require additional information to be submitted, or accept an application as complete upon filing of supplemental information (Minn. Rule 7850.2000). The Commission accepted the application as complete in its Order of June 30, 2008.

Environmental Impact Statement

The Full Review Process requires preparation of an Environmental Impact Statement (EIS); Under Minnesota Statute 216E.03, subd. 5, no other state environmental documents shall be required. In addition to crossing the CNF, Minnkota Power Cooperative has requested financial assistance from the United States Department of Agriculture Rural Utilities Service (RUS); both of these are considered major federal actions that may have significant impact on the environment and consequently trigger environmental review under the National Environmental Policy Act (NEPA).

Following consultation with the Applicants, EFP and RUS staff agreed to serve as co-lead agencies in preparing an EIS in compliance with both state and federal requirements. CNF, the United States Army Corps of Engineers (USACE), and the Leech Lake Division of Resource Management (LLDRM) served as cooperating agencies in preparing the EIS. The Draft EIS (DEIS) was released on February 23, 2010; EFP and RUS staff held DEIS information meetings on March 16-18, 2010, in Bemidji, Blackduck, Deer River and Cass Lake. Public Comments on the DEIS were received until April 26, 2010. The Final EIS (Minn. Rule 7850.2500) was released on September 2, 2010.

EIS Scoping and Route Alternatives

EFP and RUS staff conducted public information and scoping meetings (Minn. Rule 7850.2300) in Blackduck, Cass Lake, Deer River, Bemidji, and Walker, Minnesota on August 11-15, 2008. Written comments were accepted until September 30, 2008.

The federal agencies consider both of the routes proposed in the Route Permit Application to be within one study area. Based on scoping comments and further analysis by the cooperating agencies, the federal agencies determined that the EIS must evaluate a viable route alternative different than the two routes proposed in the Application.

Based on a review of the scoping comments, the Advisory Task Force Report, and input from EFP staff regarding the federal agency position on route alternatives, the Director of the OES issued a Scoping Decision on March 31, 2009. In that decision, three routes and a number of segment alternatives were identified for analysis in the EIS. During the development of the DEIS, several “problem areas” were identified within the routes identified in the original scope. These “problem areas” are related to engineering

constraints (particularly along US Highway 2), areas of cultural use and environmental features. The Director of the OES issued a revised Scoping Decision, incorporating nine (9) new route segments, ranging in length from 0.2 to 5.6 miles, on February 11, 2010.

Contested Case Hearing

A contested case hearing (Minn. Rule 7850.2600 and Minn. Rule 1405) was conducted by Administrative Law Judge (ALJ) Eric J. Lipman in Bemidji, Blackduck, Cass Lake and Deer River on April 21 through April 23, 2010. There were no interveners in the hearing. The public comment period for the hearing closed on May 3, 2010; the hearing record remainder open for receipt of the Final EIS. The ALJ report and recommendation was released on September 20, 2010. The ALJ recommended that the Commission issue a route permit to the Applicants along their Preferred Route, denominated as Route 4 in the EIS and hearing record.

OES EFP Staff Analysis and Comments

Findings of Fact, Conclusions of Law, and Order

The attached “Findings of Fact, Conclusions of Law and Order” include the Findings of Fact from the ALJ’s September 20, 2010, “Findings of Fact, Conclusions and Recommendation” in their entirety. No one filed exceptions to the ALJ findings with the Commission. EFP staff agrees with the ALJ recommendation to issue a permit along the Applicants’ Preferred Route and recommends that the Commission accept the ALJ findings with one exception to the ALJ recommendation, several technical corrections to the findings, and three additional findings.

EFP Staff Exception

EFP staff takes exception to the ALJ recommendation 2 (c) that a new 115 kV breaker station at the Nary Junction be approved as part of the Project and recommends that the Commission order approve the 230 kV transmission line, improvements to the Wilton, Cass Lake, and Boswell substations only.

The possibility of a Nary Breaker Station was introduced in the Application as a project component and as an improvement to permit the Project to be double-circuited with an existing 115kV transmission line along Route 1A,¹ a routing option that would bring the Project south of Cass Lake. This routing option, characterized as Segment Alternative A, is also analyzed in the EIS as a routing option if the project is constructed along Alternative Segment A of Route 1.²

As the proposed breaker station is an improvement to the existing 115 kV system, a Route Permit from the Commission is not required for this reliability improvement.

Although the Applicants make a reasonable case in the hearing record for the addition of a Nary Breaker Station to improve reliability in the larger Bemidji area, it is not an element of Route 4, it appears to be necessary regardless of whether the Project is constructed, and its construction does not require Commission approval.³ In order to acknowledge the

¹ Ex. 24, at 2-4.

² Ex 35A at 53

³ See Ex. 30, at 6 – 8

Applicants' case for the Nary Breaker Station, as well as certain 115 kV thermal improvements that were also addressed in the hearing record,⁴ EFP staff proposes to amend heading F.2 in the ALJ's findings to read "Other Bemidji Area Improvements Addressed in Hearing Record" and move this heading to before ALJ finding 88 in order to address the ALJ findings on both the Nary Breaker Station and the 115 kV Thermal Improvements.

EFP Staff Amended Findings

EFP staff recommends technical corrections to findings 58, 107, 110, 112, 114, 116, , 125, 131, 133, 137, 138, 139, 141, 155, 157, 158, 160, 179, 183, 192, 194, and 199, as identified in the attachment. These changes correct typographical errors and reflect updated impact calculations presented in the Final EIS, rather than the Applicants' testimony, for the routes considered in this proceeding.

In addition, Finding 120 is amended to reflect a more robust understanding of natural resource use resulting from public comment and discourse with agencies during the development of the EIS and the mitigation required by the CNF.

EFP Staff Additional Findings

EFP staff believes that the record supports additional findings (proposed findings 218, 219, and 220) to address the identification of the federally-preferred alternative, mitigation for the loss of treaty trust resources, and acknowledge the comments of the Greater Bemidji Area Joint Planning Board.

Environmental Impact Statement

The ALJ concluded EFP conducted an appropriate environmental analysis of the Project and that the FEIS satisfies Minnesota Rule 7850.2500.⁵ The ALJ further concluded that "The FEIS addresses the issues and alternatives raised in scoping to a reasonable extent considering the availability of information and the time limitations for considering the permit application. Moreover, the FEIS provides responses to the substantive comments received during the DEIS review process and was prepared in compliance with the procedures in Minn. R. 7850.1000 through 7850.5600."⁶

Permit Conditions

The ALJ concluded that "The Commission's final permit condition should include provisions to ensure that the Applicants employ such construction and management practices so as to avoid the displacement of homes and mitigate impacts to the natural environment."⁷

Because the EIS serves as the primary permitting document for several of the federal agencies involved in its preparation, mitigation measures required for various federal permits and permissions are identified in greater detail for this project than in most other transmission projects reviewed by the Commission. In light of the ALJ's conclusion, and

⁴ ALJ Findings

⁵ ALJ Conclusion 3

⁶ ALJ Conclusion 4

⁷ ALJ Conclusion 16

after review of this record, staff is recommending a number of refinements to the route and conditions for the route permit:

Leech Lake Reservation

The Route, as well as 2 of the other 3 routes evaluated in the EIS, crosses the Leech Lake Reservation. The Applicants have designed the Route to avoid crossing on or over tribal trust land. The Leech Lake Band of Ojibwe (LLBO), however, retains sovereignty over lands within their reservation boundaries, regardless of land ownership.⁸

On October 13, 2010, the LLBO Tribal Council sent a letter to the Commission expressing support of Route 4, the recommended route.⁹ The letter identified the LLBO's interest in maintaining a sustainable environment and promoting the Band's cultural and religious values within the Reservation boundaries, and the resulting concerns they had with the Project. The letter further detailed the ongoing consultations between the Applicants and the LLBO to identify suitable mitigation measures to address the Band's concerns. As a result of the consultation, the LLBO Tribal Council and the Applicants have reached an agreement that addresses the LLBO's concerns.

Minnesota Statute 216E.10, subdivision 1 establishes the route permit as the sole route approval required by the State and its political subdivisions. The Permit, at 8.8.2 requires the Permittees to obtain all required local, state, tribal, and federal permits and permissions (emphasis added) for the Project, and to comply with any conditions identified in required permits and permissions.

Route Width

The ALJ report, at finding 216, notes that the Applicants have requested a route width of 1,000 feet. As noted above, through the development of the record, certain portions of the route have been narrowed to approximately 155 -715 feet. As preliminary route design proceeds, field investigations have shown a number of constraints in the area of the Enbridge Pumping Station, shown on page 59 of the accompanying route maps. Constraints identified by Applicants' engineers include the pumping station, a wild rice farm to the south of the pumping station, and unclear land rights on a former portion of US Highway 2 which is now the frontage road south of US Highway 2. Applicants have suggested that a wider route in this area, perhaps 3,000 feet, may be necessary. EFP staff believes that the procedures outlined in Permit Condition 3.1 are sufficient to address variations outside the designated route if the alignment in the attached route maps does not prove to be workable and recommends that the Commission approve a 1,000 foot route width in this area.

Right-of-Way Width

The ALJ report, at finding 75, noted that single-pole structures may be used in areas where available right-of-way is limited by existing infrastructure or development, and referenced the locations identified by the Applicants in their Post-Hearing response brief. That Brief, at page 4, identified four areas where narrower right-of-way using single-pole structures may be appropriate. Upon further route refinement in one of these areas, an area of old growth forest and a heron rookery approximately 5 miles west of Bena, the route has been re-routed to avoid this area and would no longer require single-pole construction. As design for the

⁸ Ex 35A, at p. 4

⁹ eDockets filing number [201010-55425-01](https://www.dockets.courts.mn.gov/CaseDetails.aspx?CaseID=201010-55425-01)

Project has proceeded, Applicants have identified an additional area in the route's final approach to the Boswell Substation where single pole structures would provide the best ability to avoid conflicts with existing transmission lines at the Boswell Substation.

Staff recommends use of single pole construction and a narrower right-of-way (estimated at 75 feet) in the following areas:

1. Cass Lake: The portion of the Route in Cass Lake along the BNSF Railroad and along MN Highway 371 (shown on Map Sheet 19);
2. Bena: The portion of the Route south of the Enbridge pipelines through Bena (shown on Map Sheet 38);
3. Deer River – Enbridge Pumping Station: The area between the Enbridge Pumping Station and US Highway 2 would require single pole structures to avoid US Highway 2 right-of-way and the Enbridge facilities (shown on Map Sheet 59).
4. The last 2,370 feet of the route into Boswell Substation would use single poles to avoid conflicts with the existing transmission lines in this area (shown on Map Sheet 66).

Archaeological Resources

Because of the federal decisions required for the Project, review of the Project and consultation with tribes and agencies under Section 106 of the National Historic Preservation Act was required. RUS, in cooperation with the LLBO, CNF, and USACE, has developed a Programmatic Agreement to address potential impacts to archaeological or cultural resources that may result from the Project.¹⁰ In light of the significant consultation with potentially affected parties, and responsible agencies, the permit language for Archaeological and Historic Resources in Permit Condition 4.2.7 has been changed to defer to the Programmatic Agreement.

Construction Environmental Control Plan

Permit Condition 5.1 requires the Permittees to develop a Construction Environmental Control Plan. The purpose of this plan, commonly used in pipelines, is to aggregate all the environmental management plans and permits developed for the Project and to serve as a resource for contractors and regulatory agencies. EFP staff recommends this condition based on the record in this Project, but does not anticipate that a comprehensive environmental control plan would be necessary for all HVTL permits.

Construction and operation of the Project will result in long-term impacts to some soils, forested land, wetlands, shrub land, cropland, grassland, agricultural land and farmland.¹¹ The record has identified a number of specific mitigation measures to address adverse environmental impacts that could result from the Project.¹² As the Applicants proceed with route design, right-of-way acquisition, construction and eventual operation of the Project, a number of plans will need to be developed to incorporate agreed upon mitigation measures into the design, construction, and maintenance of the Project and communicate those measures to contractors and regulatory agencies.

¹⁰ ALJ Findings 147, and 148

¹¹ ALJ Finding 195

¹² ALJ Finding 183

The Construction Environmental Control Plan requires development of a construction progress reporting system to inform the Commission as well as appropriate state, federal, and tribal resource agencies. The Construction Environmental Control Plan also requires the Permittees to provide dedicated environmental inspectors and monitors to oversee construction and monitor compliance with the environmental plans developed for the Project.

Environmental Management Plan

The purpose of the Environmental Management Plan, Permit Condition 5.2, is to develop plans that minimize disturbance to the extent possible, and where disturbances cannot be avoided, identify mitigation measures to minimize soil erosion and sedimentation, restore land cover to disturbed areas, and restore agricultural land to productive use. The Environmental Management Plan would include elements of a soil erosion and sediment control plan and an agricultural mitigation plan. Applicants have committed to reducing the impact of their route through implementation of an Agricultural Mitigation Plan.¹³

Vegetation Management Plan

The route will result in the permanent clearing of approximately 575 acres of forestland, including approximately 383 acres within the CNF.¹⁴ The loss of vegetative screening is anticipated to be one of the major impacts of the Project. Because of the sensitivity of the area, it is anticipated that substantial re-vegetation will be needed to restore the area, while not to its original state, to an aesthetically and functionally similar status.¹⁵

Because of the significant tree clearing required for the Project, and the desire to accomplish the tree clearing during a time when the ground is frozen in order to minimize impacts, Applicants anticipate that tree clearing would happen some months before actual construction begins. Applicants also anticipate that final design cannot be completed until trees are cleared to provide a better understanding of site conditions in areas that are currently forested. Because of the lag time between tree clearing and Project construction, EFP staff recommends that a Vegetation Management Plan, Permit Condition 5.3, be submitted prior to the Plan and Profile required in Permit Condition 4.1.

Treaty Trust Resources

The United States entered into a number of treaties with the LLBO under which the LLBO retained rights to many of the resources on the Leech Lake Reservation. All Federal agencies have trust obligations to assure that the Project does not infringe or negate the LLBO's ability to exercise these retained treaty rights.¹⁶ Permit condition 5.4 requires the Permittees to advise the Commission upon completion of the cultural resource and environmental justice mitigation measures identified in the CNF's Record of Decision.

¹³ ALJ Finding 136

¹⁴ Revised Finding 137

¹⁵ ALJ Finding 148, See Exhibit 35A, Table ES-3 at ES-24 to ES-30

¹⁶ Ex 35A (FEIS) at pp. ES-3 – ES-4, and p. 4

Avian Mitigation Plan

In light of the concerns to avian species raised with this Project, the Applicants have developed a Draft Avian Mitigation Plan¹⁷ to identify potential risks to avian species from the Project and to identify strategies that will be implemented to avoid or minimize impacts to birds or their habitats. Permit Condition 5.5 requires the Permittees to finalize this mitigation plan and to provide this information as a compliance filing.

Carr Lake Area

The Applicants have identified an eagle nest in the area of Carr Lake (Maps Sheet 6) that would need to be avoided. It is possible that the route could be double-circuited with the existing 115 kV line in this area in a manner that avoids the eagle nest and minimizes impacts to landowners in this area. Permit Condition 5.6.1 requires the Permittees to work with landowners in this area to develop the most appropriate routing and report to the Commission on the actions taken in this area at the time that the Plan and Profile are filed.

Other Comments

A number of the comments identified the particular routing preferences of individuals. Those comments can be found in the ALJ report at findings 8-60, and are not addressed in these comments.

The Project Area contains a number of linear features, Great Lakes' natural gas pipeline, several Enbridge pipelines (including the recently permitted Alberta Clipper and Southern Lights projects), US Highway 2, the BNSF railroad, and several transmission lines. Several members of the public commented on the number of existing easements located on some parcels, and what they believe to be an excessive burden on landowners who will bear multiple easements.¹⁸ Although the existing easements do present an opportunity to consolidate environmental impacts, and indeed were presented by the RUS as a rationale for selecting Route 4 (the Applicants' preferred route), it is true that due to its routing along previously disturbed areas, the Route will impose additional burdens on landowners. Permit Condition 4.2.6 requires the Permittees to work with landowners to identify and address landowner issues related to the line, such as distance from structures, tree clearing, and other aesthetic concerns. Additionally, Minnesota Statute 216E.12, subdivision 4, often referred to as the "buy the farm" provision, provides landowners with the option of requesting that the Permittee purchase the entire parcel, rather than an easement required for the HVTL. The Applicants have agreed to provide written disclosures of these protections.¹⁹ EFP staff, in consultation with Commission staff, is in the final stages of drafting a *Landowner Guide to Easement* publication; Permit Condition 4.5 would require the Permittees to provide all affected landowners with a copy of this guide at the time of first contact with the landowners.

As the route parallels existing pipelines for a significant portion of the length, approximately 54 of 70 miles, some members of the public²⁰ have identified safety concerns with locating transmission lines in close proximity to either oil or natural gas pipelines. This issue is addressed in some detail in the FEIS and in the hearing record. The ALJ found that the

¹⁷ Ex 35A, Appendix I

¹⁸ ALJ Findings 22, 23, 29, 30, 44, 46 and 56

¹⁹ ALJ Finding 80

²⁰ ALJ Findings 53 and 56

Applicants have established the safety of locating HVTLs adjacent to pipeline rights-of-way.²¹

In its comments, DNR²² requested that the Project avoid the Bemidji Slough Wildlife Management Area (WMA). As shown on the attached map (Sheet 7), the Applicants propose to re-align the route to the north and the east of the WMA. In order to accomplish this, the route would extend slightly beyond the area designated in the Route Permit Application, as shown in the shaded triangular area on the northeast corner of the WMA. These landowners were notified in the original project notice.²³

EFPP staff believes that, on balance, Route 4, with the permit conditions and agreed-upon mitigations, provides the best routing alternative through a challenging area and agrees with the ALJ recommendation²⁴ in this case that the Commission should:

1. Issue a Route Permit along the Applicants' Preferred Route as described in the Route Application, excepting the ALJ's recommendation of the Nary Breaker Station in favor of the discussion above;
2. Authorize modifications to the Wilton, Cass Lake, and Boswell substations.²⁵

PUC Decision Options:

- A. Approve and adopt the attached Findings of Fact, Conclusions of Law, and Order for the Bemidji – Grand Rapids 230 kV Transmission Line Project, thereby:
 1. Determining the Environmental Impact Statement and record created at the public hearing address the issues identified in the EIS Scoping Decisions; and
 2. Issuing the high voltage transmission line Route Permit as attached, with appropriate conditions, to Otter Tail Power Company, Minnesota Power, and Minnkota Power Cooperative, Inc., Northern States Power Company, and Great River Energy.
- B. Approve and adopt the Findings of Fact, Conclusions of Law, and Order as above while imposing any further permit conditions as deemed appropriate.
- C. Amend the Findings of Fact, Conclusions of Law, and Order and Route Permit as deemed appropriate.
- D. Make some other decision deemed more appropriate.

EFPP Energy Facility Permitting Recommendation: Option A.

²¹ ALJ Finding 128

²² eDocket filing number [20104-49543-03](#)

²³ Ex 7 and 8, eDocket filing numbers [5677878](#) and [5682528](#)

²⁴ ALJ Recommendation 2

²⁵ ALJ Conclusion 12