



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

DOCKET No. E-002/TL-07-1407

Meeting Date: October 8, 2008..... Agenda Item # 12

Company: Xcel Energy

Docket No.: E-002/TL-07-1407

**In the Matter of the Route Permit Application for the Lake Yankton to Marshall
Transmission Line Project in Lyon County.**

Issue(s): Should the Commission reconsider the August 29, 2008, *Order Issuing a Route Permit*?

OES Staff: Deborah Pile..... 651-297-2375
Scott Ek.....651-296-8813

Relevant Documents

Order Issuing Route PermitAugust 29, 2008
Petitioners Letter (Stoneberg, Giles & Stroup, P.A.)..... September 17, 2008
Applicant Response (Xcel Energy)..... September 22, 2008

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

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Statement of the Issue

Should the Commission reconsider the August 29, 2008, *Order Issuing a Route Permit*?

Introduction and Background

The Minnesota Public Utilities Commission issued the *Order for a Route Permit* on August 29, 2008, granting a route permit to Xcel Energy for the Lake Yankton to Marshall Transmission project, a new, 15.7 mile 115 kilovolt (kV) high voltage transmission line (HVTL) between the Company's existing Lake Yankton Substation in Lyon County and the existing Southwest Marshall Substation in Lyon County.

On September 17, 2008, homeowners and landowners at the junction of 250th Street and County Road 7, Lyon County, Marshall, Minnesota, (Petitioners) filed a petition for reconsideration under representation of Mr. Kevin K. Stroup with Stoneberg, Giles & Stroup, P.A.

On September 22, 2008, Xcel Energy (Applicant) under representation of Ms. Lisa M. Agrimonti with Briggs and Morgan filed a response to Lyon County Landowners' petition.

Regulatory Process and Procedures

According to Minnesota Rule 7829.3000, Petition after Commission Decision, provides that a party or person aggrieved or directly affected by the Commission's decision or order may file a petition for reconsideration within 20 days of the order. The rule provides 10 days for answers to the petition and restricts reply comments to those specifically authorized by the Commission.

Minnesota Rule 7829.3000, subpart 2 requires a petition must specifically set forth the grounds relied upon or errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for the amendments.

Subpart 6 of Minnesota Rule 7829.3000 allows the Commission the flexibility to decide the matter with or without a hearing or oral argument. The Commission may vacate or stay the order, or part of the order, that is the subject of the petition, pending action on the petition.

A second petition of a commission decision or order by the same party or parties and upon the same grounds as a former petition that has been considered and denied, will not be entertained (Minnesota Rule 7829.300, subpart 7).

Party Positions

The petition specifically relates to part of a three-mile northern segment of the project located in Section 18 of Marshall Township. The Commission *Order for a Route Permit* approved route in this segment is referred to as A-1.

Petitioners

Charlie Kauffman, Betty Kaufman and other landowners along the approved segment are requesting that the Commission reconsider its route permit decision. The Petitioners allege that they were not properly noticed and did not have adequate opportunity to participate in the docket. They note concerns with proximity to homes.

The Petitioners have identified a modification to the A-1 segment that they believe addresses their concerns; they believe this modification is acceptable to area landowners.

Conclusions and Recommendations

The Petitioners request that the matter be re-opened and that a new route for the A-1 segment be approved.

The Petitioners request that the route (A-1) identified in the Commission's August 29, 2008, *Order Issuing a Route Permit* be amended to include the alternative route identified as Proposed Solution No. 1 in the Petitioners' letter.

Should the Commission decide not to consider Proposed Solution No. 1, the Petitioners request reconsideration of route A-2 for this segment of the project (Proposed Solution No. 2 in the Petitioner's letter).

Applicant

Xcel Energy in its response notes that "The Kauffman's did not provide an alternative into the record for consideration by the Commission." The Kauffman's did submit a comment letter during the routing process; however, the comment expressed concerns over potential impacts to property values and health risks, but did not suggest an additional alternative route for consideration.

The Applicant notes that seven alignments were evaluated in the area that is the subject of the Kauffman's petition, but that the Kauffman modification to A-1 was not. The Applicant questions the appropriateness of and process for considering a new route alternative after the record is closed and a decision has been made.

The Applicant also notes that it is unclear if the Petition has the support of all affected landowners.

Conclusions and Recommendations

The Applicant believes that in this routing proceeding all potentially affected landowners were afforded multiple opportunities to state their concerns and propose alternatives. The OES EFP staff and the Commission carefully considered the concerns when reaching the conclusion for the most appropriate route as identified in the August 29, 2008, *Order for a Route Permit*. The Commission could thus conclude it should not reconsider the Order, and uphold the approved route.

The Applicant requests that should the Commission reconsider and re-open the matter that the Commission affirms its Order relating to the unchallenged southern portions of the route so planning and construction may proceed on that portion of the project.

The Applicant also requests the Commission consider the petition to re-open the matter expeditiously so the Applicant may comply with the requirements identified in the BRIGO Docket that the Lake Yankton to Marshall 115 kV line be placed in service by spring 2009.

OES EFP Staff Comments

With regard to the process followed in this request, EFP staff finds that the Petitioners' submissions have been filed in a timely-manner and have sufficiently addressed the procedural requirements of Minnesota Rules 7829.3000. In addition, EFP staff believes that the Petitioner's have sufficiently met the content requirements of Minnesota Rule 7829.3000, subpart 2.

With regard to the substance of the petition, EFP staff agrees with Xcel Energy's conclusion that "all potentially affected landowners had multiple opportunities to state their concerns and propose alternatives and that OES-EFP staff and the Commission fully and carefully considered these concerns when reaching the conclusion that Segment A-1 was the most appropriate route for the north end."

The Petitioners allegation that they were not properly noticed and did not have the opportunity to participate in the docket is not supported by the record. EFP and Xcel went beyond the requirements of Minnesota Rules by notifying landowners along the proposed and alternative routes throughout the process. This included mailing the notice of application acceptance, notice of the public information and EA scoping meeting, EA Scoping Decision (which identified all alternatives being considered), and notice of public hearing. EFP staff also sent a notice of Commission hearing and availability of EFP Comments and Recommendations and Draft Permit on this matter to all persons on the Project List for this docket, including Charles Kauffman. Four of the Petitioners did submit comments during the public comment period opposing Alternative Segment A-1 and recommending the original Preferred Alternative. The affidavits of mailing with lists of recipients for these documents are posted on eFilings.

In addition, issues raised by the petitioners were evaluated in the EA and in the record and were considered by the Commission in reaching its decision in this matter. The EA and record cover impacts of all alternative routes, including alternative A-1.

Multiple routes were identified for analysis by the public through the EA scoping process. The new alternative route the Petitioners ask the Commission to consider was not proposed during the permitting process and was not evaluated in the EA. There is no provision under Minnesota Rules Chapter 7849 for a new alternative to be considered after the record is closed and a decision has been made. The EFP staff believes that in order for this alternative to be considered, the scope of the EA would need to be reopened, a supplemental EA prepared and additional hearings be held.

The OES EFP staff believes that all provisions outlined in Minnesota rules pertaining to alternative permitting process (Minnesota Rules 7849.5500 to 7849.5720) have been followed by the Commission in issuing the *Order for a Route Permit* as indicated in the Record to the proceedings, the Findings of Fact, Conclusions of Law and Order, and Permit Order.

The OES EFP staff asserts the Commission's August 29, 2008, *Order for a Route Permit* fully and adequately addresses issues raised by the Petitioners.

Commission Decision Options

- A. Reconsider the August 29, 2008, *Order Issuing a Route Permit* and stay the Order to further investigate the issues raised in the Petitioner's letter.
- B. Reconsider the August 29, 2008, *Order Issuing a Route Permit* for Segment A-1 and affirm the Order relating to the unchallenged portions of the route.
- C. Decline reconsideration of the August 29, 2008, *Order Issuing a Route Permit*.

EFP Staff Recommendation: Staff recommends Decision Option C.