

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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J. Dennis O'Brien
Thomas Pugh
Phyllis A. Reha
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application for a High
Voltage Transmission Line Route Permit for
the Essar Steel Transmission Project

ISSUE DATE: July 14, 2009

DOCKET NO. E-280/TL-09-512

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On June 1, 2009, the Nashwauk Public Utilities Commission and Minnesota Power filed an application for a route permit under the full permitting process set forth at Minn. Stat. Chapter 216E and Minnesota Rules 7849.5010 *et seq.* The Applicants proposed to construct four 230-kilovolt high voltage transmission lines and two associated substations in Itasca County to serve a single end-user, Essar Steel Minnesota.

On June 23, 2009, the Energy Facility Permitting Staff of the Office of Energy Security of the Minnesota Department of Commerce filed comments recommending, among other things, that the Commission refer the application to the Office of Administrative Hearings for contested case proceedings.

On June 25, 2009, the application came before the Commission.

On June 29, 2009, the Commission issued an Order in this docket accepting the Applicants' Route Permit Application as substantially complete. The Order also authorized the Energy Facility Permitting staff of the Office of Energy Security to process the application under the full permitting process in Minn. Rules, Parts 7849.5200 to 7849.5330, to name a public advisor in this case, and to establish an advisory task force and develop its structure and charge.

FINDINGS AND CONCLUSIONS

I. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over applications for route permits for large energy facilities, including the transmission line project at issue, under Minn. Stat. § 216E.02, subd. 2. The statute states in relevant part:

Subd. 2. The commission is hereby given the authority to provide for site and route selection for large electric power facilities. The commission shall issue permits for large electric power facilities in a timely fashion and in a manner consistent with the overall determination of need for the project under section 216B.243 or 216B.2425.

The transmission line proposed by the Applicant cannot be constructed without a route permit from the Commission. Minn. Stat. § 216E.03, subd. 2 states:

Subd. 2. No person may construct a high voltage transmission line without a route permit from the commission. A high voltage transmission line may be constructed only along a route approved by the commission.

The four 230-kilovolt transmission lines proposed are high voltage transmission lines, and therefore a route permit is required prior to construction. The application was submitted pursuant to the provisions of the full permitting process set forth in Minn. Rules, Parts 7849.5200 - 7849.5340.

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.

The Administrative Law Judge assigned to this matter will conduct hearings as described in this Notice and submit a report to the Commission.¹ Following receipt of the Administrative Law Judge's report, the Commission will make its final decision in accordance with Minn. Stat. Chapters 14 and 216E.²

II. Issues to be Addressed

Minn. Stat. § 216E.03, subd. 10 states that no route permit shall be issued in violation of the route selection standards and criteria established in Minn. Stat. § 216E.03, subd. 7 and in rules adopted by the commission.

Minn. Stat. § 216E.03, subd. 7 provides a list of considerations in designating sites and routes. Minnesota Rules applicable to applications for route permits are Minn. Rules, Parts 7849.5010 to 7849.6500.

¹ Minn. Rules, Part 1405.2400. In 2005, the Minnesota Legislature transferred jurisdiction to issue site and route permits from the Environmental Quality Board to the Public Utilities Commission. Therefore, the term "Board" appearing in Minn. Rules, Chapter 1405 now refers to the Public Utilities Commission. See 2005 Minn. Laws, c.97, art.3, §§ 17 and 19.

² Minn. Rules, Part 1405.2500. See also Minn. Rules, Part 4400.1900.

In the course of contested case proceedings, the parties to this proceeding should address whether the proposed project meets these criteria. They may also raise and address other issues relevant to the Application.

III. Public Participation

Minn. Stat. § 216E.08, subd. 2 encourages public participation in this transmission line route permit proceeding, stating:

The commission shall adopt broad spectrum citizen participation as a principle of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the commission's rules and guidelines as provided for in section 216E.16.

To facilitate public participation, Minn. Stat. § 216E.08, subd. 3 states:

The commission shall designate one staff person for the sole purpose of assisting and advising those affected and interested citizens on how to effectively participate in site or route proceedings.

Pursuant to this provision, the Commission has authorized the Energy Facility Permitting Staff of the Office of Energy Security to name a public advisor. As defined in Minn. Rules, Part 7849.5250, the public advisor is available to answer questions from the public about the permitting process. The public advisor does not give legal advice or other advice that may affect the legal rights of the person being advised, and is prohibited from acting as an advocate on behalf of any person.

Minn. Stat. § 216E.03, subd. 6 requires at least one hearing to obtain public opinion on the application, stating:

The commission shall hold a public hearing on an application for a site permit for a large electric power generating plant or a route permit for a high-voltage transmission line. All hearings held for designating a site or route shall be conducted by an administrative law judge from the Office of Administrative Hearings pursuant to the contested case procedures of chapter 14.

Further, Minn. Rules, Part 7849.5330, subp. 1 requires that at least a portion of the hearing must be held in a county where the proposed high voltage transmission line would be located.

To further facilitate public participation, the statute requires public notice as follows:

Notice of the hearing shall be given by the commission at least ten days in advance but no earlier than 45 days prior to the commencement of the hearing. Notice shall be by publication in a legal newspaper of general circulation in the county in which the public hearing is to be held and by certified mail to chief executives of the regional development commissions, counties, organized towns, townships, and the incorporated municipalities in which a site or route is proposed.³

³ Minn. Stat. § 216E.03, subd. 6.

With respect to the hearings, the statute provides for substantial public participation, stating:

Any person may appear at the hearings and offer testimony and exhibits without the necessity of intervening as a formal party to the proceedings. The administrative law judge may allow any person to ask questions of other witnesses. The administrative law judge shall hold a portion of the hearing in the area where the power plant or transmission line is proposed to be located.⁴

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, 600 North Robert Street, St. Paul, Minnesota 55101; (651) 361-7842. The mailing address is: Office of Administrative Hearings, P.O. Box 64620, St. Paul Minnesota 55164-0620.

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 and the rules of the Office of Administrative Hearings, Minn. Rules, Parts 1405.0200 to 1405.2800. Regarding any issue on which Chapter 1405 is silent, the provisions of Minn. Rules, Parts 1400.5100 to 1400.8400 regarding contested cases shall apply 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. Hearings may be recessed and reset by the Administrative Law Judge pursuant to Minn. Rules, Parts 1405.1400 to 1405.2300.

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.

- *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.

⁴ *Id.*

- *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. Minn. Rules, Part 1405.0600. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Minn. Rules, Part 1405.0800. Under Minn. Rules, part 1405.1300, 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.

- *Commission's Representative; Advice Regarding Procedures*

The Commission's representative in this matter is Mike Kaluzniak, Facilities Planner, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2257.

The member of the Attorney General's staff who may be contacted for advice on matters dealing with Commission procedures is 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, the Energy Facility Permitting Staff of the Office of Energy Security, and the parties.

- *Timing Considerations*

The hearings before the Administrative Law Judge must follow the Office of Energy Security's (OES) release of the draft Environmental Impact Statement. Consequently, the dates for hearings cannot be set until the OES completes the Environmental Impact Statement (EIS) scoping process and determines the schedule for completion of the EIS. The Commission therefore refers this case

to the Office of Administrative Hearings for hearing with the understanding that the OES will work with that office to establish a schedule once the EIS scoping process is complete.

At the same time, the Commission notes that Minn. Stat. § 216E.03, subd. 9 requires the Commission to make a final decision on the Applicants' request for a route permit within one year from the date on which the Commission finds the application to be complete. Although the Commission may extend this time limit for up to three months for just cause or upon agreement of the Applicants, the Commission requests that the Administrative Law Judge assigned to this matter take this requirement into consideration in scheduling the proceedings.

- *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, Persons, and Intervention

Currently, the only parties to this case are the Applicants. Other persons who wish to be granted permission by the Administrative Law Judge to intervene in this matter, must do so pursuant to Minn. Rules, Part 1405.0900. Subpart 1 of that rule prescribes the timing and contents of a petition to intervene. Subpart 2 prescribes the timing and content of any objection to the petition and Subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petitions.

The hearing process established under Minn. Rules Chapter 1405 is designed to facilitate public participation, and persons need not intervene as parties to participate. All public participants have significant procedural rights, including, but not limited to, the right to be present throughout the proceeding, to offer direct testimony in oral or written form, to question all persons who testify, and to submit comments to the Administrative Law Judge and the Commission.

Persons who intervene and are granted party status have additional rights and responsibilities, including, but not limited to, the right to object to another's petition for intervention within seven days of service of the petition, the rights to submit direct testimony and conduct cross-examination of other parties' witnesses in the first stage of any two-stage hearing conducted by the Administrative Law Judge pursuant to Minn. Rules, Part 1405.1500, subp. 2, and the responsibilities to submit prefiled testimony, comply with discovery requests, produce witnesses, file briefs, and serve all documents on all other parties.

The description of rights in this section is summary in nature, as required by Minn. Rules, part 1405.0500, subp. 1, I, and is not intended to be comprehensive. Review Chapter 1405 to identify the scope of rights and authority to act given "persons" or restricted to "parties" under the various provisions of that Chapter.

D. Prehearing Conference

A prehearing conference will be scheduled by the Administrative Law Judge. The Office of Administrative Hearings will notify all parties of its time, date, and place.

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 prehearing 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 powerline routing 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

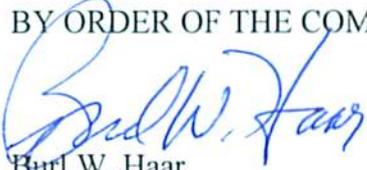
Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300- 7845.7400, which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

ORDER

1. The Commission hereby refers this matter to the Office of Administrative Hearings for a contested case proceeding, including the public hearing required as part of the review of the route permit application.
2. The contested case proceeding shall begin with a prehearing conference at a date, time, and place to be set by the Administrative Law Judge, in consultation with Commission staff.
3. One or more public hearings shall be held in this matter at a time and place determined by the Administrative Law Judge after consultation with Commission staff and the Energy Facility Permitting Staff of the Office of Energy Security. Commission staff and the Energy Facility Permitting Staff will also work with the Administrative Law Judge to select a suitable location for the evidentiary hearings on the application.
4. The Commission asks the Energy Facility Permitting Staff of the Office of Energy Security to commence the review procedures set forth in Minn. Rules, Parts 7849.5200 to 7849.5330.

5. The Applicants shall facilitate in every reasonable way the continued examination of the issues by the parties.
6. The Office of Energy Security shall publish notice of the public and evidentiary hearings at least ten days in advance in visible display ads in newspapers of general circulation throughout the state. The Applicants shall work with Commission staff and the Energy Facility Permitting Staff to develop a plan to meet this requirement, including a proposed text, a list of the newspapers they propose to use, and proposed publication dates prior to publication. The Applicants shall obtain proofs of publication of the ads required above.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



(SEAL)

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BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert St.
P.O. Box 64620
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FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Application for a High
Voltage Transmission Line Route Permit for the
Essar Steel Transmission Project

MPUC Docket No. E-002/TL-09-38

OAH Docket No. E-280/TL-09-512

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Eric L. Lipman, Office of Administrative Hearings, Suite, 1700, 600 North Robert St., P.O. Box 64620, St. Paul, MN 55164-0620; (651)361-7842.

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 14th day of July, 2009 she served the attached

NOTICE AND ORDER FOR HEARING.

MNPUC Docket Number: E-280/TL-09-512

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
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Peter Brown
Eric Witte
Marcia Johnson
Kate Kahlert
Bob Cupit
Mike Kaluzniak
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John Lindell - OAG

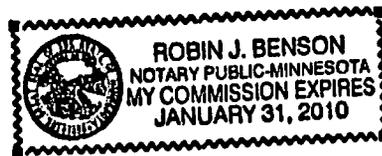
Margie DeLaHunt

Subscribed and sworn to before me,

a notary public, this 14 day of

July, 2009

Robin Benson
Notary Public



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