



Energy Facility Permitting
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February 29, 2012

Dr. Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
127 7th Place East, Suite 350
St. Paul, MN 55101-2147

RE: Comments and Recommendation of the Energy Facility Permitting (EFP) Staff on a Minor Alteration Request (Docket No. E002, ET2/TL-09-1056)

Dear Dr. Haar:

Attached are the Comments and Recommendation of the EFP Staff in the following matter:

Application for a Minor Alteration for the Fargo to St. Cloud 345 kV Transmission Line Project

The Petition was filed on December 21, 2011 by:

Darrin Lahr
Supervisor, Siting and Land Rights
Xcel Energy
Minneapolis, MN 55402

EFP staff is available to answer questions from the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read 'David E. Birkholz', is written in a cursive style.

David E. Birkholz
EFP Staff

Attachments

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

DOCKET NO. E002, ET2/TL-09-1056

Meeting Date: March 8, 2012 Agenda Item #3

Company: Northern States Power Company (dba Xcel Energy) and Great River Energy

Docket No. E002, ET2/TL-09-1056

**In the Matter of the Application for a Route Permit for the Fargo to St.
Cloud 345 kV Transmission Line Project**

Issues: Should the Commission authorize the Applicants' Request for a Minor Alteration for the Fargo to St. Cloud 345 kV Transmission Line?

EFP Staff: David E. Birkholz 651-296-2878

Relevant Document(s)

Findings of Fact, Conclusions of Law, And Order Issuing an HVTL Route Permit To Xcel Energy And Great River Energy June 24, 2011
Application for Approval of Route Permit Amendment..... September 21, 2011
Application for Approval of Route Permit Amendment, Omitted PagesOctober 7, 2011
Application for Approval of Minor Alteration in Oak Township..... December 21, 2011
Order Approving Minor Alterations and Issuing a Route Permit Amendment January 9, 2012
Public Comments on Minor Alteration in Oak Township February 10, 2012

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

Attached Document

Proposed Minor Alteration Map
Projected Permit Amendment

(Relevant documents and additional information can be found on eDockets (09-1056) or the PUC Energy Facilities website: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=25053>)

Statement of the Issue

Should the Commission authorize the Applicants' Request for a Minor Alteration for the Fargo to St. Cloud 345 kV Transmission Line?

Introduction and Background

On October 1, 2009, Xcel Energy and Great River Energy (Permittees) filed a route permit application under the full review process for the Fargo to St. Cloud 345 kV transmission line project (Project). The Project is over 200 kV and requires a Certificate of Need (CN). An Order from the Commission on May 13, 2009, granted a CN for the CapX2020 Phase I project, of which this line segment application is a part. The Commission issued an Order on June 24, 2011, issuing a Route Permit for the Project.

Project Description

The Project runs between the North Dakota border south of Fargo, through Alexandria and continuing through to the Quarry Substation in St. Joseph Township. Applicants are permitted to construct a project comprising a transmission line and substation upgrades as summarized below (using segments from the Final Environmental Impact Statement):

1. From the North Dakota border south of Fargo to Alexandria, following the Modified Preferred Route (generally along I-94), using Option 2B;
2. From Alexandria to Sauk Center, following the Modified Preferred Route to Option 6 and then following Route A to the point where it rejoins the Modified Preferred Route;
3. From Sauk Center to Saint Joseph, following route G, including Option 11 and the E-5 segment of Option 12; and
4. Including the modifications to the Alexandria Substation, and updates required to connect to the Quarry Substation described in the Route Permit Application.

Order for a Permit Amendment

On September 21, 2011, Permittees applied for a Permit Amendment for 11 minor alterations. On January 9, 2012, the Commission ordered the acceptance of 10 of the minor alterations; the 11th, a proposed adjustment in Oak Township to the Rimcrest Road portion of the permitted route, specifically Adjustment 4.0 and Adjustment 4.1, was not accepted. At the meeting, the Commission directed Permittees to continue working with the affected landowners in the area, including the Elfering family who own property adjacent to Adjustment 4.1 and had objected to that adjustment.

Description of Requested Minor Alteration

On December 21, 2011, Permittees submitted a request for a Minor Alteration that addresses further options on the Oak Township requests. Following discussions with landowners, Permittees have returned an application with the following potential alternates:

1. **Adjustment 4** leaves the right-of-way (ROW) of Rimcrest Road south of Freeport for a short distance to move further away from one residence.
2. **Adjustment 4.1** reroutes the alignment from Rimcrest Road cross country to CR 11.
3. **Adjustment 4.2** is a new alternate that moves the alignment approximately 850 feet east of the 4.1 alternative.

Regulatory Framework

On December 21, 2011, the Permittees submitted a request for a minor alteration pursuant to Minnesota Rule 7850.4800 to relocate the transmission line outside the designated route. The Permittee has the option to request a minor alteration under Minn. Rule 7850.4800 subp. 1; and the Commission has the authority to grant that request.

On January 18, 2012, EFP efiled and mailed the required notice of application to the “general list” and the “project list” and set a public comment period that expired on February 3, 2012.

Minor Alteration Criteria

Under Minn. Rule 7850.4800, subp. 1, "A **minor alteration** is a change in a large electric power generating plant or high voltage transmission line that **does not result in significant changes** in the human or environmental impact of the facility." [Emphasis added.]

The Commission's determination under this rule is whether or not proposed changes could be considered a minor alteration, or would require the Applicant to go through the full permitting process instead.

For example, if a small portion of an existing 345 kV line installed along Rimcrest Road was proposed to be moved for a specific purpose, e.g., Adjustment 4.0, the decision would likely be straightforward. If an Applicant came to the Commission instead to remove an installation from an existing right-of-way to create 2.6 miles of new transmission corridor across farm property and in or near wetlands, the question of whether or not such an action would require a full permitting process would become a much more complicated question.

EFP Staff Analysis and Comments

The route permitted by the Commission in the area covered by this alteration request was laid out as a route alternate by the Advisory Task Force (ATF). According to task force members, their principle concern lay in avoiding proliferation of utility corridors.¹ The part of the route in question here parallels existing right-of-way (ROW) along Rimcrest Road. The route avoids bisecting active farmland, and avoids designated wetlands to the extent possible. This was verified in the EIS analysis and mapping and compared to the other potential route options, before being recommended to the Commission by the Administrative Law Judge.

There were a large number of route alternatives provided by the ATF and the public that were reviewed in the EIS. In each case mapping and tabular data were analyzed and compared for generally a 1000 foot corridor. The adjustments proposed by the Permittees in this request, except for Adjustment 4.0, are outside the area analyzed in the EIS. Thus, EFPs analysis relies on the information in the alteration request.

Adjustment 4

This is a short segment reroute just outside the permitted route. It leaves existing ROW for 80 percent of its length to move the line farther away from a residence that is already greater than 300 feet from the alignment. However, the new area crosses land belonging to a family member who has agreed to host the transmission line.

Adjustment 4.1

This adjustment directly bisects cultivated farmland and other farmland. According to the Permittees' analysis in their minor alteration application, this adjustment would have an impact on 20 percent more NWI wetlands than the original route, and place one pole in a wetland. (A nest along this route originally thought to have been an eagle's nest has been identified as a hawk's nest by the USFWS.)

One issue in assessing the comparative impact of the adjustment is a count of fewer residences in the vicinity of the requested change. However, in neither the original alignment nor the adjusted alignment are any homes within 150 feet of that alignment. In addition, along either Rimcrest Road in the permitted route or County Road 11 in Adjustment 4.1, the transmission line would be on the opposite side of the road away from any houses. In neither case would the Permittees be seeking an easement from the owners on the side of the road with the residence.

Adjustment 4.2

According to the application, "Adjustment 4.2 would make the least use of existing rights-of-way and would have more acres of wetlands within the right-of-way but it would increase the distance between the Project and residences." The application describes the adjustment as having the same wetland impacts as 4.1. It would have considerably more bisection of cultivated land than 4.1. It would not be within 150 ft. of any residences, but neither is the permitted route nor 4.1. According to the Permittees' impact table, none of the options, the permitted route or any of the three options, impacts any acres of residential land use.

¹ Freeport to St. Cloud Advisory Task Force Report, March 19, 2010 at 2

Public Comments

There was a mix of public comments on the application. Commentors along the originally permitted route generally favor Adjustment 4.1 or 4.2. Commentors along 4.1 generally favor the original route but have allowed that 4.2 is more acceptable compared to 4.1. Commentors along 4.1 have also argued that the request for a Minor Alteration does not qualify as one under the rule.

Staff finds that the request for a Minor Alteration is allowed, Commission action is authorized and correct proceedings for notice and comment have been followed under the rule.

Minn. Statute 216E.03, Subd. 7 and Minn.Rule 7850.4100 identify factors to be considered when designating routes; the route and alignment identified in the route permit minimize the overall potential impacts relating to these. Staff notes the following opportunities for modest adjustments are written into the permit in Section III.A:

Route width variations outside the designated route may be allowed for the Permittee to overcome potential site specific constraints. These constraints may arise from any of the following:

1. Unforeseen circumstances encountered during the detailed engineering and design process.
2. Federal or state agency requirements.
3. Existing infrastructure within the transmission line route, including but not limited to roadways, railroads, natural gas and liquid pipelines, high voltage electric transmission lines, or sewer and water lines.
4. Planned infrastructure improvements identified by state agencies and local government units and made part of the evidentiary record during the contested case proceeding for this permit.

Any adjustments must be located to have comparable overall impacts relative to the factors in Minn. Rule 7850.4100 as does the alignment identified in this permit.

Applicants have in past dockets, e.g., 09-246 and 09-1315, requested minor route changes beyond those authorized in Permit Section III.A through minor alteration applications to accommodate specific landowner conflicts. However, these cases did not include the introduction of entirely new route alternatives or moving the route to impact other landowners.

Proliferation Considerations

Staff notes the adjustments are contrary to the argument against proliferation espoused regularly during compilation of the original record. Now that the final route has been permitted, many landowners have voiced a preference for avoiding existing ROW, generally to move the alignment farther away from residences. However, since residential land use is not affected by the permitted route in this case, the Commission's decision will be to judge between the policy of using existing corridors to determine a route and the landowners' preferences in determining an alignment.

Staff notes the recently amended Minn. Statute 216E.03, Subd. 7. **Considerations in designating sites and routes** at (e):

The commission must make specific findings that it has considered locating a route for a high-voltage transmission line on an existing high-voltage transmission route and the use of parallel existing highway right-of-way and, to the extent those are not used for the route, the commission must state the reasons.

The statute clearly and specifically singles out nonproliferation as a routing consideration that has special status (it is the only criterion that requires a finding to explain why it was not followed.)

In her Findings of Fact, ALJ Heydinger noted how this statutory requirement does and does not apply in this case:

235. The Legislature' has also directed the Commission to make specific findings that it considered locating a high voltage transmission line on an existing high voltage transmission line route or parallel to existing highway right-of-way, and to state its reasons if it did not select such a route. The statute does not apply to this proceeding because the Route Permit was filed prior to the statute taking effect, **but the principle established in PEER applies.**² [Emphasis added]

The Commission may determine that other considerations rate higher than *PEER* in this decision. However, if one of the adjustments in this application is ordered, the proliferation statute would apply to it in future proceedings. Any ordered adjustment would create a new corridor that would be required by Minn. Statute 216E.03, subd. 7(e) to be given special consideration for future high voltage transmission routes.

Other Considerations

The Commission in its Order of January 9, 2012, approved 10 separate adjustments it determined qualified under Minn. Rule 7850.4800 as minor alterations. One consideration from that Order was as follows:

Here, careful consideration leads to the conclusion that the benefits of following existing rights-of-way are significantly lower than the benefits of honoring the unanimity of affected landowners, of not routing the line unnecessarily close to homes and farmsteads, and of not doing unnecessary damage to agricultural operations.

Under these considerations, staff believes the 4.1 and 4.2 options currently under review in this application do not qualify as minor alterations.

- 1) In that Order, the Commission established that "unanimity of affected landowners" is a valid consideration. In the instance of this application, that unanimity has not been established. Interested parties along 4.1 have pointed out concerns about 4.2, but note that they prefer that option to 4.1.

² Findings of Fact, Conclusions and Recommendation, ALJ Heydinger, April 25, 2011

- 2) The Commission noted not routing the line unnecessarily close to homes and farmsteads. The intent of mitigation has always been to maximize distance from residences. While there is no established standard for what would qualify as "unnecessarily close," no residence on any of the route options, the permitted route or any of the minor alterations, is on the same side of the road as the transmission line or closer than 150 feet. The Commission has never found that that distance constitutes a danger or unacceptable risk to residents. In fact, innumerable permitted segments are similar to the one along Rimcrest Road.
- 3) The final clause of the above considerations was not doing unnecessary damage to agricultural operations. In fact, the existing permitted route parallels existing road right-of-way for 100 percent of the segment. Each of the alterations creates new transmission corridor across cultivated farm land (and wetland areas).

Finally, staff notes that it does not consider any of the options as particularly detrimental to human health or the environment. That includes the currently permitted route. The question then lies in application of the rules and the Commission's considerations as expressed in its previous Order.

Commission Decision Options

- A. Approve the Permittees' request and adopt one of the Minor Alterations, relocating the transmission line outside the designated route as follows:
 1. Adjustment 4, as depicted on the Minor Alteration Application map.
 2. Adjustment 4.1, as depicted on the Minor Alteration Application map.
 3. Adjustment 4.2, as depicted on the Minor Alteration Application map.
- B. Reject the Permittees' request for any Minor Alteration to locate the transmission line outside the designated route.
- C. Make some other decision deemed more appropriate.

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

PERMIT AMENDMENT

**TO THE ROUTE PERMIT FOR CONSTRUCTION
OF A HIGH VOLTAGE TRANSMISSION LINE
AND SUBSTATION**

**IN CLAY, WILKIN, OTTER TAIL, GRANT,
DOUGLAS, TODD AND STEARNS COUNTIES**

**ISSUED TO
NORTHERN STATES POWER COMPANY
AND GREAT RIVER ENERGY**

PUC DOCKET No. E002, ET2/TL-09-1056

In accordance with the requirements of Minnesota Rules Chapter 7850.4900, this route permit amendment is hereby issued to:

NORTHERN STATES POWER COMPANY AND GREAT RIVER ENERGY

Northern States Power Company, dba Xcel Energy, and Great River Energy are authorized by this permit amendment to alter the route and alignment in Oak Township in Stearns County along the previously permitted Fargo to St. Cloud 345 kV Transmission Line Project as depicted on the attached official route adjustment map.

Approved and adopted this _____ day of March 2012

BY ORDER OF THE COMMISSION

Burl W. Haar,
Executive Secretary

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