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November 21, 2011

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 Route Permit Amendment (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 Route Permit Amendment for the Fargo to St. Cloud 345 kV Transmission Line Project

The Petition filed on September 21, 2011 by:

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

EFP recommends accepting the request for only those adjustments specified in the attached comments and recommendations.

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
OFFICE OF ENERGY SECURITY
ENERGY FACILITY PERMITTING STAFF**

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

Meeting Date: November 29, 2011

Agenda Item # 4B

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 Permit Amendment for the Fargo to St. Cloud 345 kV Transmission Line?

EFP Staff: David E. Birkholz651-296-2878

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
DNR Comments.....October 18, 2011
Public CommentsOctober 18, 2011
Permittees Clarifying Comments on Route Permit Amendment RequestNovember 1, 2011

This document can be made available in alternative formats (i.e., large print or audio) by calling 651-296-0406 (voice). Persons with hearing or speech disabilities may call us through Minnesota Relay at 1-800-627-3529 or by dialing 711.

The enclosed materials are work papers of the 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 Route Adjustments Overview Map
Proposed 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 Permit Amendment 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.

Description of Requested Amendment

On September 21, 2011, Permittees submitted a request for a Permit Amendment pursuant to Minnesota Rule 7850.4900 to accommodate expansions of the route width in 11(eleven)¹ locations along the route between Alexandria and the Quarry Substation. An overview map of that segment of the permitted route is attached to these comments.

These requests are the result of discussions between Xcel Energy and affected landowners, where the landowners have asked Xcel Energy to make accommodations to address their local concerns. The adjustments in each case have substantiated agreements with landowners in each of the new alignments for easement through their properties.

The request seeks authorization to widen the route width or relocate the transmission line outside the designated route, as follows:

1. **Adjustment 2** is west of Sauk Centre and takes the route cross country instead of crossing in front of four residential properties along CR 184.
2. **Adjustment 3** simplifies and shortens the route west of Melrose where the permitted route requires significant angle structures.
3. **Adjustment 4.1** reroutes the alignment from Rimcrest Road south of Freeport cross country to CR 11.
Adjustment 4 is an alternative to 4.1 that leaves the right-of-way (ROW) of Rimcrest Road for a short distance to move further away from one residence.
4. **Adjustment 5** is further south of Freeport where the alignment would be moved from along the CR 11 ROW in front of several residences to property lines behind them.
5. **Adjustment 6** is north of Richmond and deviates just outside the permitted route to allow an alignment that avoids a center pivot irrigation system.
6. **Adjustment 8** is just west of Melrose and was requested by the landowner to align behind his turkey barns rather than in front of them along 1-94 ROW.
7. **Adjustment 9W** shortcuts across from CR 11 to CR 117 north of Saint Martin north of the permitted alignment farther from two homes and avoiding a couple sharp angles.
8. **Adjustment 9C** is just east of 9W and realigns behind instead of in front of the residences north of CR 117, then cuts diagonally southeast to rejoin the permitted route.
9. **Adjustment 11** is on the route between Sauk Centre and Melrose, and realigns a short distance to avoid a center pivot irrigation system.
10. **Adjustment 13** is south of Sauk Centre and moves the alignment west along property lines further away from a half dozen residences along MN Hwy 71.
11. **Adjustment 15** is south of St. Joseph and realigns slightly north of the permitted route to move farther from an individual residence.

¹ The Permit Amendment Application contained requests for 12 adjustments; however, Applicants have subsequently withdrawn the request for "Adjustment 16." See "Permittees Clarifying Comments on Route Permit Amendment Request," November 1, 2011.

Regulatory Framework

On September 21, 2011, the Permittees submitted the request for a permit amendment pursuant to Minnesota Rule 7850.4900 to accommodate widening the route width or relocating the transmission line outside the designated route. Permittees submitted additional information on October 7, 2011. The Permittee has the option to request a permit amendment under Minn. Rule 7850.4900 subp. 1; and the Commission has the authority to grant that request.

On September 28, 2011, 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 October 14, 2011.

EFP Staff Analysis and Comments

Before addressing the merits of individual adjustments in this Permit Amendment request, staff wishes to address a number of comments received that speak against amendments in general. Staff received 56 communications, including a number of duplicates from some people, all making the following statement either exactly or in some similar fashion:

“Require the CapX2020 project to proceed without further amendments. CAPX2020 (docket # 09-1056, the high voltage transmission line project running through Minnesota) is trying to change its planned corridor line around the country side with the sole purpose of missing homeowners and eliminating compensation. They have 12 amendments at this time from Sauk Centre to St. Joe in which they are trying to change the route outside of their permitted corridor. These homeowners are losing the value of their homes (due to their proximity) and being forced to live under the power lines. Please, help us make our voices heard. We, the public, (not just the affected) have 14 days to comment on these amendments. Pressure on the Minnesota Public Utilities Commission to make the right decision will help ensure that the CapX2020 project follows its previously agreed upon plan and fair compensation for the local home owners is given.”²

The communications arise from complaints received by Xcel Energy pertaining to a portion of the route that is located in Stearns County along the east side of County Road (CR) 2. The complainants all reside west of CR 2 and are asserting that Xcel Energy is intentionally moving the alignment further out of the road right-of-way (ROW) in order to avoid requiring an easement from them.

On September 14, 2011, Xcel Energy sent a letter to the complainants apologizing for land agent miscommunications that occurred giving the landowners the impression the permitted alignment would result in requiring an easement from them. While the properties are located in the approved route, the anticipated alignment in this area as approved by the Commission and portrayed on the Route Permit maps does not place any portion of the 150-foot transmission line ROW on these properties; and Xcel Energy would not be seeking an easement from any of the landowners on the west side of County Road 2.

² Public Comments under “Non-specific,” especially files labeled “Require the CapX2020 project to proceed without further amendments,” October 18, 2011.

EFP staff has had numerous discussions with the complainants and with their legislative representatives. EFP's consistent response has been that Xcel Energy has not filed a Plan and Profile (PnP) to date indicating that they are anticipating an alignment adjustment. EFP has also confirmed to the residents that the official route maps appear to corroborate that their properties are not being crossed, but that the PnP will determine the actual alignment in respect to CR 2 ROW and any property lines, and will be reviewed against permit conditions when submitted.

These requests to deny all the adjustments are misguided in two ways. Contrary to the claim in the comments, in each case the Permittees have actually based their requested change in response to requests from the affected landowners. The second theme of avoiding paying landowners is also incorrect in that regardless of the final alignment, Permittees will be responsible to pay easements to landowners to cross their property. In some cases, the requested change does affect new landowners; however, Xcel Energy has supplied evidence of agreements with those new landowners to host an easement on their properties.

Adjustment 2

The Minnesota Department of Natural Resources (DNR)³ commented about this section, "It is notable that Amendment 2 moves the transmission line closer to the border of Gettel WPA." Their recommendation for mitigation is coordination with the United States Fish and Wildlife Service (USFWS) for this area.

The biggest question for the Commission in this area is the use of existing corridors. While the permitted route paralleled 43 percent along existing ROW, the requested adjustment does not parallel any existing ROW, and in stretches cuts diagonally across cultivated fields.

EFP received a supporting petition for this adjustment with 67 signatures, presumably because the adjustment moves the alignment farther from four residences along the segment. No one commented against the proposal. Even so, EFP finds the original alignment has fewer environmental impacts and recommends rejecting this adjustment.

Adjustment 3

This adjustment moves the alignment farther away from two of the three residences in this area. The adjustment is in the Permittees' interest as it shortens the line and simplifies the angles for an alignment. However, to do so requires putting three structures in National Wetland Inventory (NWI) areas. DNR has concerns with "possible impacts to a locally identified flyway and high quality habitat." DNR also recommends against additional impact to the Sauk River in this area. EFP received no public comment on this area. However, due to DNR concerns, EFP recommends rejecting this adjustment.

Adjustment 4.1

This adjustment garnered the greatest amount of public input, both pro and con, totaling 24 messages, including those where a single commenter offered more than one message. Landowners on both the original route and the adjustment have argued health risks, natural resource issues and proximity.

³ All DNR comments are from their October 14, 2011, letter filed by EFP on October 18, 2011.

The adjustment would have an impact on 20 percent more NWI wetlands and place one pole in a wetland. DNR has reported to USFWS a claim by a local landowner of an eagle's nest in the vicinity of the adjustment. EFP has not substantiated this as of this date. Staff notes that the permitted alignment has been reviewed in the Environmental Impact Statement, while the adjustment area has not.

One argument for the adjustment includes a count of fewer residences along the requested change. However, in neither the original alignment nor the adjusted alignment are any homes within 150 feet of that alignment. An extenuating circumstance may also be that Rimcrest is a small local road, whereas CR 11 is a wider ROW county highway.

However, EFP considers the crux of the issue to lie in the fact that residents along the permitted route had notice throughout the review process and opportunity to participate in the public meetings, hearings and comment periods. Residents along the adjustment did not have equal access to this due process. For this reason, EFP recommends rejecting this adjustment.

Adjustment 4

This a short segment reroute that 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, since no new landowners' property is crossed in this instance, EFP doesn't have a strong reason to make a recommendation either way, but suggests allowing the adjustment.

Adjustment 5

This adjustment would reroute the alignment to the back property lines of several residences rather than crossing their property along the CR 11 ROW.

The alignment as permitted crosses property currently held under a "Debt Cancellation Conservation Contract" with the USDA Farm Service Agency. A provision of that contract forbids that the area be used for any utility ROW or related facilities.

Given fairly equivalent environment impacts, the agreement of the landowners and the terms of the conservation contract, EFP recommends allowing this adjustment.

Adjustment 6

The adjustment has a slightly larger impact on wetlands, however the alignment specified in the route permit directly bisects a center-pivot irrigation system. As this would be a major impact on a farming operation, EFP recommends allowing this adjustment.

Adjustment 8

The landowner owns turkey barns along I-94 west of Melrose. His request to move the alignment to the back side of his property would eliminate any ROW sharing and would, according to the DNR, "result in 2 poles being placed in wetlands and places the line closer and within a large wetland complex. This amendment would also result in 3 acres of impact to wooded land." EFP recommends rejecting this adjustment.

Adjustment 9W

The permitted route follows all county road ROW, whereas the adjustment would be cross country; and as noted by DNR, would include two additional water crossings. The permitted route would have one residence within 150 feet of the alignment, whereas the adjustment would not. Considering DNR comments, EFP recommends rejecting this adjustment.

Adjustment 9C

The intent of Adjustment 9C is to move the line off CR 177 to the back property lines farther away from several residences along the road. The adjustment would not impact any homes. However, this results in the line cutting diagonally across several cultivated fields. EFP received one comment from a local resident supporting the adjusted alignment. DNR commented, “The 9C amendment brings the line farther from the Sauk River corridor and may be less detrimental to bird migration in the area.” Therefore, EFP recommends accepting this adjustment.

Adjustment 11

The permitted route and the adjustment have fairly similar impacts on native plant sites within a moderate significance MCBS and a roughly similar impact on wooded areas. However, the alignment as permitted would directly bisect a center-pivot irrigation system. The landowner had counsel submit a statement including, “Route Adjustment 11 is far superior to the Permitted Route and will cause much less impact to the Wanderscheids’ farm than the Permitted Route.” EFP recommends accepting this adjustment.

Adjustment 13

The adjustment of the alignment westward in this area was designed to move farther from six residences along the permitted route, although none of those residences would be within 150 feet of the transmission line. But the adjustment would not impact any residences. The EIS did not address this area in particular. The original alignment shared existing ROW 72 percent of the time, while the adjustment would not share any ROW. However, the DNR has commented on this adjustment favorably in that it moves the line further away from the Sauk River and “an Outstanding Central Region Regionally Significant Area, and a moderate Minnesota County Biological Survey (MCBS) Site of Biodiversity Significance.”

A letter from counsel for Mr. Virgil Fuchs contests this adjustment, claiming an implied agreement with the Permittee that they would not cross his property. EFP notes the Commission is the final arbiter of route and alignment in this proceeding. The permitted route indeed includes the noted property, although the anticipated alignment in the route permit does not encroach on that property. The adjusted alignment would also not encroach on that property. While in the case of Adjustment 4.1 EFP noted the landowners did not have due process, in this case Mr. Fuchs took full advantage of participation in public meetings, public hearings and by making public comments. As a note, there is no residence in that parcel.

However, despite DNR comments, the original route is already separated from the Sauk River area by a golf course and other development. EFP recommends rejecting this adjustment.

Adjustment 15

Neither the permitted route nor the requested adjustment would parallel any existing ROW. As noted by the DNR, the adjustment would impact less wooded area. The adjustment would also avoid an alignment within 150 feet of a residence. EFP recommends accepting this adjustment.

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

However, staff is concerned about the application of the permit amendment rule provision in several of the above cases. Staff believes that the permit amendment process should not be considered an opportunity to reopen a route permit process that legally and fully developed a record for the ALJ recommendation on a route and the Commission's Order permitting a route. The following opportunities for modest adjustments are written into the permit in Section III.A:

The designated route identifies an alignment that minimizes the overall potential impacts relating to the factors identified in Minn. Rule 7850.4100 and which was evaluated in the environmental review and permitting processes. As such, this permit anticipates that the actual right-of-way will generally conform to this proposed alignment unless changes are requested by individual landowners or unforeseen conditions are encountered, or are otherwise provided for by this permit.

Any alignment modifications within this designated route shall be located to have comparable overall impacts relative to the factors in Minn. Rule 7850.4100 as does the alignment identified in this permit. Modifications should be demonstrably comparable as supported by the record. These changes shall be specifically identified in and approved as part of the Plan and Profile submitted pursuant to Part IV.A of this permit.

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.

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 permit amendment 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. Such alternatives would have been better presented during the scoping process in order that they might have been included in the comparative analysis of the Environmental Impact Statement. Staff suggests the permit amendment provision is most appropriately used to accommodate significant complications not anticipated in the record. It should not be an opportunity for wholesale changes outside the record.

Additionally, staff notes in several instances the adjustments go against the argument against proliferation espoused regularly during compilation of the original record. However, 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. The Commission's decision in some instances, with environmental impacts being fairly equal, will be to judge between a policy of using existing corridors to determine a route and the landowners' preferences in determining an alignment.

Staff finds the Permittees have offered reasonable argument to amend the permit for only adjustment Options A3b, A4, A5, A8, A9 and A11 indicated under Commission Decision Options below. The environmental impacts for those adjustments will be similar to those in the original route permit. Staff recommends amending the route width or location in those instances as noted in the Permittees' Permit Amendment Application and as represented in the Permit Amendment Application maps.

Commission Decision Options:

- A. Approve the Permittees' request and adopt a Permit Amendment, widening the route width or relocating the transmission line outside the designated route for one or more of the following:
 - 1. Adjustment 2, as depicted on the Permit Amendment Application maps.
 - 2. Adjustment 3, as depicted on the Permit Amendment Application maps.
 - 3. Adjustment
 - a. 4.1, as depicted on the Permit Amendment Application maps.
 - b. 4, as depicted on the Permit Amendment Application maps.
 - 4. Adjustment 5, as depicted on the Permit Amendment Application maps.
 - 5. Adjustment 6, as depicted on the Permit Amendment Application maps.
 - 6. Adjustment 8, as depicted on the Permit Amendment Application maps.
 - 7. Adjustment 9W, as depicted on the Permit Amendment Application maps.
 - 8. Adjustment 9C, as depicted on the Permit Amendment Application maps.
 - 9. Adjustment 11, as depicted on the Permit Amendment Application maps.
 - 10. Adjustment 13, as depicted on the Permit Amendment Application maps.
 - 11. Adjustment 15, as depicted on the Permit Amendment Application maps.
- B. Reject the Permittees' request for any Permit Amendment to widen the route width and alter the transmission alignment.
- C. Make some other decision deemed more appropriate.

EFP Recommendation: Options A3b, A4, A5, A8, A9 and A11.

**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 (*number*) locations along the previously permitted Fargo to St. Cloud 345 kV Transmission Line Project as depicted on the attached official route adjustment maps.

Approved and adopted this _____ day of December 2011

BY ORDER OF THE COMMISSION

Burl W. Haar,
Executive Secretary

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