

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application for a Route
Permit for the CapX2020 Hampton-Rochester-
La Crosse High Voltage Transmission Lines

ISSUE DATE: March 9, 2010

DOCKET NO. E-002/TL-09-1448

ORDER ACCEPTING APPLICATION
AS COMPLETE AND REQUESTING
PROPOSAL FOR TASK FORCES

PROCEDURAL HISTORY

On January 19, 2010, Northern States Power Company, a Minnesota corporation d/b/a Xcel Energy, (Xcel, the Company, or the Applicant) submitted an application for a Route Permit (Application) to construct the Minnesota portion of the Hampton to Rochester to La Crosse 345-kilovolt (kV) Transmission Project (Project).¹ Xcel made the Application on behalf of itself and the other anticipated co-owners of the Project, including Dairyland Power Cooperative (Dairyland), Rochester Public Utilities (RPU), Southern Minnesota Municipal Power Agency (SMMPA), and WPPI Energy. Xcel requested that the Application receive the full review process prescribed in Minn. Rules, Parts 7850.1700-2700.

On February 12, 2010, the Commission received a letter of public comment from Richard F. Brubaker stating that the Applicants' preferred route goes through the middle of Elk Run, an area that is scheduled for significant economic development. Mr. Brubaker stated that Xcel's alternative route avoids this area. Mr. Brubaker requested that the Commission consider the impact of the proposed 161 kV line on the Elk Run project in determining the best route for the proposed transmission line.

¹ Because the Hampton-Rochester-La Crosse Transmission Line (the Project) is over 200 kV, it requires a Certificate of Need as well as the Route Permit sought in the current docket. A certificate of need covering the Project has already been requested and granted.

On November 2, 2005, Great River Energy (GRE), Northern States Power Company d/b/a Xcel Energy (Xcel), and others requested a Certificate of Need for the entire CapX2020 proposal, which included the Hampton-Rochester-La Crosse transmission line. On May 22, 2009, the Commission issued an Order and granting certificates of need for the entire CAPX2020 proposal. See *In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for Certificates of Need for the CapX 345-kV Transmission*, Docket No. ET-2, E-002, et al./CN-06-1115, ORDER GRANTING CERTIFICATES OF NEED WITH CONDITIONS (May 22, 2009).

On February 17, 2010, the Office of Energy Security (the OES) filed comments recommending that the Commission accept the Application as complete and authorize the OES to process the application under the full review process in Minn. Rule 7850.1700-2700. The OES also recommended that the Commission authorize the OES to name a public advisor in this case, to establish an advisory task force, and to develop a proposed structure and charge for the task force. Finally, the OES recommended that the Commission refer the route permit application to the Office of Administrative Hearings (OAH) to conduct a contested case hearing pursuant to Minn. Rules, Chapter 1405.

On February 23, 2010, NO CAPX 2020 and United Citizens Action Network (U-CAN) filed a petition to intervene as a full party in this proceeding. They requested that the Commission declare the Application incomplete until the Applicant provides at least two separate and distinct routes. In the alternative, they asserted that the Commission should establish several Citizens Advisory Task Forces, one at each proposed terminus and at least at one point in between on the identified preferred and alternate routes.

On February 24, 2010, Xcel filed comments recommending that the Commission 1) grant the Petition to Intervene filed by NO CAPX 2020 and U-CAN; 2) find that the Route Permit Application is complete; 3) approve the OES's recommendation regarding the environmental review process; and 4) appoint as many advisory task forces as the Commission believes would facilitate development of the record.

On February 24, 2010, Paula Goodman Maccabee filed a letter of public comment with the Commission requesting that Xcel's Application be deemed incomplete until it provides an underground alternative to its proposed above-ground Mississippi River crossing at Alma, Wisconsin. In the alternative, Ms. Maccabee requested that the Commission require 1) that the environmental impact statement analyze at least one underground river crossing in cooperation with the United States Fish and Wildlife Service; 2) that the Applicants pay all costs for investigating that alternative; and 3) that the time limit for consideration of the routes for the Project not begin to run until an underground river crossing option has been thoroughly developed and analyzed.

At the hearing on this matter, Kenneth Moen, an attorney representing some landowners in the path of Xcel's preferred route, argued that Xcel's Application was incomplete because the cost information it presented for its preferred route and alternative route was based on average per mile construction costs and did not present realistic acquisition costs for the two routes. Mr. Moen stated that the actual acquisition costs for the Company's preferred route would likely be significantly larger than for the alternate route because the preferred route impacted more landowners, many of whom had not previously been impacted by transmission lines.

The Commission met on February 25, 2010 to consider this matter.

FINDINGS AND CONCLUSIONS

I. The Proposed Project

Xcel has filed an application for a route permit for the Minnesota portion of the Hampton to Rochester to La Crosse Transmission Project. The Project consists of approximately 80 miles of new 345 kV transmission line, approximately 15 miles of 161 kV line, a new North Rochester

Substation to be located between Pine Island and Zumbrota, and related transmission line interconnections. Xcel stated that a separate permit application for the Wisconsin portion of the project will be filed later with the Wisconsin Public Service Commission.

II. Completeness of Xcel's Application

A. Comments and Recommendations

Based on its review, the OES concluded that the Application meets the content requirements of Minn. Rules, Part 7850.1900. The OES noted that that the Applicant would be required to comply with requests for additional information from the Commission or the OES. The OES recommended that the Commission accept the Application as complete with the understanding that if additional information is requested by the OES, these requests will be addressed promptly.

Four parties² argued that Xcel's petition was not complete and should not be deemed complete until additional information was filed.

NO CAPX 2020 and U-CAN argued that the application was not complete because, since the two routes proposed by Xcel contained an eight mile segment that was the same for both routes, its application did not meet the requirement of Minn. Rules, Part 7850.1900 that it provide at least two separate and distinct routes.

Paula Maccabee argued that the application was not complete because it did not provide information on an underground crossing of the Mississippi River.

Kenneth Moen argued that the application was not complete because the cost information provided by Xcel for its preferred and alternate routes did not reflect realistic acquisition costs likely to be associated with each route.

B. Commission Analysis and Action

1. Objection of NO CAPX 2020 and U-CAN

Minn. Stat. § 216E.03, subd. 3 requires an applicant for a high voltage transmission line route permit under the full permitting process to propose "at least two routes." Minn. Rules, Part 7850.1900, Subpart 2(c), similarly requires that an application contain information regarding "at least two proposed routes" for the proposed high voltage transmission line, along with identification of the applicant's preferred route and reasons for the preference. Neither the statutes nor the rule provides further guidance on the meaning of "two routes."

NO CAPX 2020 and U-CAN argued that the two routes must be 100 percent mutually exclusive, i.e., contain no overlap, in order to meet the two-route requirement. The Commission believes that such an interpretation of the statute and rule is unreasonable and will not adopt it. While the

² In this Order, the Commission refers to the OES, NO CAPX2020, U-CAN, Paula Maccabee and Kenneth Moen as "parties" in the informal sense, recognizing that the OES became a formal party pursuant to Minn. Rules, Part 7829.0800, subp. 3 simply by filing comments in this matter and that NO CAPX2020 and U-CAN have petitioned to intervene as formal parties to this proceeding. Reference to Ms. Maccabee and Mr. Moen as "parties" does mean to confer or imply that they have formal party status in this matter.

proposed routes clearly must be distinct to the extent practical, reasonable overlaps may be warranted and acceptable depending on the facts of the particular project, such as geographic constraints.

In its Application, Xcel divided the Project into three geographic sections: Hampton – North Rochester (36.1 miles Preferred Route – 47.1 miles Alternate Route), North Rochester – Zumbro River (20.8 miles Preferred Route- 18.6 miles Alternate Route), and Zumbro River – Mississippi River (24 miles Preferred Route– 23.3 miles Alternate Route). The routes proposed for the Hampton-North Rochester and North Rochester – Zumbro River segments are 100 percent mutually exclusive: no overlaps. The routes proposed for the section from the Zumbro River to the Mississippi River include an eight mile common segment that follows the Chester – Alma 161 kV transmission line between north of Plainview to the Minnesota Department of Natural Resources managed McCarthy Lake Wildlife Management Area. Xcel explained that it chose this segment for both its preferred and alternate routes because there are no natural corridors in this area and, by following an existing transmission corridor through the blufflands to the Mississippi River, it avoids the creation of a new transmission corridor through that challenging and environmentally sensitive area.

Further, in Appendix E to its Application, Xcel has presented detailed information about two segment alternatives for the Zumbro River–Mississippi River section, alternatives that cross the Mississippi River at La Crosse and Winona. Xcel stated that after fully evaluating these alternatives, it determined that the proposed Alma crossing is the only prudent and reasonable Mississippi River crossing location and therefore rejected the route segment alternatives crossing at La Crosse and Winona. Xcel stated that any stakeholder wishing to propose those alternatives or to oppose Xcel’s preferred route could use this information in doing so.

In these circumstances, the Commission finds that the eight mile overlap along Xcel’s 103 mile preferred route and its 106 mile alternate route is warranted and does not run afoul of the two route requirement of Minn. Stat. § 216E.03, subd. 3 and Minn. Rules, Part 7850.1900, Subpart 2(c) as alleged by NO CAPX 2020 and U-CAN.

2. Objection of Paula Maccabee

Paula Maccabee also asserted that Xcel’s Application did not satisfy the two route requirements of Minn. Stat. § 216E.03, subd. 3 and Minn. Rules, Part 7850.1900, subp. 2(c). Ms. Maccabee argued that Xcel’s failure to provide at least two proposed routes for the high voltage transmission line to cross the Mississippi between Minnesota and Alma, Wisconsin was a substantial deviation from the two-route requirement. She maintained that until Xcel provided information on an underground alternative for the Mississippi River crossing at Alma, an alternative that she reports the United States Fish and Wildlife Service (USFWS) would like considered, the Application should be deemed incomplete.

In the alternative, Ms. Maccabee stated, the Commission should order 1) that the environmental impact statement must analyze at least one underground river crossing in cooperation with the United States Fish and Wildlife Service (SFWS); 2) that the Applicants shall pay all costs for investigating that alternative; and 3) that the time limit for consideration of the routes for the Project shall not begin to run until an underground river crossing has been thoroughly developed and analyzed.

As previously stated with respect to the similar argument made by NO CAPX 2020 and U-CAN, the Commission does not interpret Minn. Stat. § 216E.03, subd. 3 and Minn. Rules, Part 7850.1900, Subpart 2(c) as requiring the two routes proposed in an application to share no common segment. So, to the extent that Ms. Maccabee's request is based on the argument that the two-route requirement precludes Xcel from proposing routes having a segment in common (in this case, referring to an above-ground crossing of the Mississippi River at Alma), it is rejected for reasons stated above regarding the request of NO CAPX 2020 and U-CAN.

The Commission next considers whether the cited statute and rule authorize it to require the Applicant to present information on the underground river crossing alternative favored by Ms. Maccabee as a condition of finding the Company's Application to be complete. The Commission finds that the statute and rule do not require the Commission to impose such a requirement as a precondition to finding the Application complete. At this point in the route permit proceeding, the statute and rule simply require the applicant to present in its application two route options and to designate one as its preferred route and the other as its alternative route.

With respect to the river crossing concern raised by Ms. Maccabee, the Commission finds, without prejudging the merits of Xcel's Application, that the Company has presented much information about river crossing options in its application.³ Further, as Xcel has stated, any crossing of the Mississippi River would require a right of way on wildlife property owned and managed by the USFWS and a Special Use Permit from the USFWS. In addition, the Commission acknowledges the OES's response to Ms. Maccabee that the scoping process could address her request that an underground river crossing at Alma be developed and analyzed.

In light of the interest of Ms. Maccabee, NO CAPX 2020 and U-CAN, the USFWS, and potentially other parties in an underground river crossing at Alma or elsewhere, it is quite likely that Xcel will, either on its own, as part of its environmental report or in response to information requests, provide significant information regarding possible underground river crossings.

3. Objection of Kenneth Moen

Kenneth Moen argued that Xcel's Application was incomplete because the cost information presented in its Application for the preferred route and alternate route was based on average per mile construction costs that did not account for the variation in the amount of acquisition costs for these two routes.

The relevant Commission rules states:

Subp. 2. Route permit for HVTL.

An application for a route permit for a high voltage transmission line shall contain the following information:

³ See extensive discussion in Xcel's Application, for example, in the Executive Summary pages 4-5, in Section 5.1 to 5.21, and in Appendix E.

...

K. cost analysis of each route, including the costs of constructing, operating, and maintaining the high voltage transmission line that are dependent on design and route;

The Commission finds that the specific cost information identified by Mr. Moen can be requested from Xcel without substantial burden to a requesting party to the proceedings through an information request in the course of this proceeding. In these circumstances, a finding that the Application is incomplete for lack of such specificity is not warranted.

4. Summary of Commission Action Regarding Completeness of Xcel's Application

Based in the foregoing analysis, the Commission will accept the Capx2020 Hampton-Rochester-La Crosse Transmission Line Route Permit Application as complete and authorize the OES to process the application under the full review process in Minn. Rules, Part 7850.1700-2700.

As part of the full review process, a public advisor is named pursuant to Minn. Rules, Part 7850.2200. The Commission will authorize the Office of Energy Security to name a public advisor in this case. The public advisor may not act as an advocate on behalf of any person, but will be available to answer questions from the public about the permitting process and assist them in participating in that process.

III. Advisory Task Force Issues

A. The Parties' Comments and Recommendations

The OES reported that it expects controversy in the Pine Island area where the preferred and alternative routes for both the 345kV and 161 kV lines converge and a new substation is proposed. The OES stated that this area has originated more calls to OES staff than other areas along the proposed routes.

The OES recommended that the Commission authorize it to form an advisory task force in the Pine Island area with a twofold purpose: 1) to assist in determining specific impacts and issues of local concern that should be assessed in the EIS by adding detail to the draft Scoping Document; and 2) to assist in determining potential route alternatives that should be assessed in the Environmental Impact Statement (EIS). The OES further proposed that the advisory task force be composed of a representative each from Goodhue and Olmsted counties, the city of Pine Island, interested town board members from the project area, and members representing local non-governmental interest groups. The OES stated that the advisory task force would terminate when the OES Director issues an EIS scoping decision.

The OES also stated that it would investigate whether or not additional task forces are warranted for specific areas along the line, especially by contacting local governments along the route. The OES stated that it would continue to assist local landowners and other citizens in understanding the routing process and in identifying opportunities for participating in further development of alternative routes or permit conditions.

At the hearing on this matter, NO CAPX 2020 and U-CAN argued that three or four task forces were required to address the project, given its length, complexity, and demonstrated citizen interest which, they emphasized, was not unique to the Pine Island area. NO CAPX 2020 and U-CAN urged the Commission to form and charge the task forces through a formal Order.

Likewise at the hearing, Ms. Maccabee requested that the Commission form an advisory task force to directly address the Mississippi River crossing issues.

B. Commission Analysis and Action Regarding Task Force Issues

Minn. Rules, Part 7850.2400, subpt. 1 provides that the Commission has the authority to appoint a citizen advisory task force and shall determine whether to appoint such a task force as early in the process as possible. The rule states that the Commission shall establish the size of the task force and appoint its members in accordance with Minn. Stat. § 216B.08.

Minn. Rules, Part 7850.2400, subpt. 3 states that upon appointment of a citizen advisory task force, the Commission shall specify in writing the charge to the task force, which shall include the identification of additional sites or routes or particular impacts to be evaluated in the environmental impact statement. Subpart 3 also states that the Commission may establish additional charges, including a request that the task force express a preference for a specific site or route if it has one.

Minn. Rules, Part 7850.2400, subpt. 4 states that task forces expire upon completion of their charge, upon designation by the Commission of alternative sites or routes to be included in the environmental impact statement, or on the specific date identified by the Commission in the charge, whichever occurs first.

The Commission finds that the proposed transmission line warrants at least two task forces and that logistics and administrative resource practicalities may limit the number of task forces to two. The Commission also finds that the record is not adequately developed on the issue of who exactly the Commission should appoint to the task forces and what specific charges it should give to these task forces.

In these circumstances, the Commission will execute its responsibilities with respect to appointing and charging task forces pursuant to Minn. Rules, Part 7850.2400 by requesting that the OES recommend for Commission approval appropriate task forces for the proposed line, as well as a proposed structure and charge for each recommended task force.

In light of the expressed and anticipated citizen interest in the Mississippi River crossing issues and due to the sensitivity of the environmental and inter-governmental issues raised by any such crossing, the charge of at least one of the task forces should consist of or include examination of the issues surrounding the line's Mississippi River crossing to Wisconsin, above-ground, underground, at Alma, or elsewhere.

IV. Referral for Contested Case Proceeding

In view of the likely multiplicity of contested material issues of fact in this matter, the Commission will grant Xcel's request that its Application be processed using the full review process prescribed in Minn. Rules, Parts 7850.1700-2700. No party objected to subjecting Xcel's Application to the full review process.

By separate Order, therefore, the Commission will refer this matter to the Office of Administrative Hearings to appoint an administrative law judge to conduct a contested case hearing on Xcel's application pursuant to the procedures prescribed for a contested case in Minnesota Statutes, Chapter 14.

ORDER

1. The Commission accepts the CapX2020 Hampton-Rochester-La Crosse Transmission Line Route Permit Application as complete and authorizes the Office of Energy Security to process the application under the full review process in Minn. Rule 7850.1700-2700.
2. The Commission authorizes the Office of Energy Security to name a public advisor in this case.
3. The Commission requests that the Office of Energy Security recommend for Commission approval necessary task forces, as well as a proposed structure and charge for such task forces, which shall include examination of the issues surrounding the Mississippi River crossing.
4. The Commission refers the CapX2020 Hampton-Rochester-La Crosse Transmission Line Route Permit Docket E002/TL-09-1448 to the Office of Administrative Hearings to conduct the Minn. R. 1405 contested case hearing.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



(S E A L)

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