

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Phyllis Reha  
J. Dennis O'Brien  
David Boyd  
Betsy Wergin

Acting Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Route Permit Application  
for the Hollydale 115 kV Transmission Line  
Project in the Cities of Plymouth and Medina,  
Hennepin County

ISSUE DATE: May 4, 2012

DOCKET NO. E-002/TL-11-152

NOTICE AND ORDER FOR HEARING  
UNDER MINNESOTA RULES CHAPTER 1405

**PROCEDURAL HISTORY**

On June 30, 2011, Northern States Power Company, a Minnesota corporation d/b/a Xcel Energy, and Great River Energy, a not-for profit cooperative (jointly, the Applicants), applied for a permit to route a 115 kilovolt (kV) transmission line in the cities of Medina and Plymouth in Hennepin Counties (the Hollydale project). The Applicants seek to replace approximately eight miles of existing 69 kV transmission line with 115 kV line along existing rights-of-way, add approximately 0.8 miles of new 115 kV transmission line, build a new 115 kV substation, and modify associated transmission facilities. The Applicants filed their application under the Commission's alternative permitting process rather than the full permitting process.

On August 25, 2011, the Commission accepted the route permit application as substantially complete and authorized the Minnesota Department of Commerce (the Department) to name a public advisor for the Hollydale project. Thereafter the Department's Energy Facilities Permitting staff (EFP staff) initiated the alternative permitting process.

On December 7, 2011, the Commissioner of the Department issued a decision establishing the scope of the environmental assessment for the project (scoping decision), identifying 13 route alternatives to be evaluated.<sup>1</sup> Several of these route alternatives exceed ten miles in length. Transmission lines extending at least ten miles in Minnesota with a capacity exceeding 100 kV require a Certificate of Need as well as a route permit.<sup>2</sup>

On February 6, 2012, landowners from Plymouth filed a petition asking the Commission to analyze the Applicants' proposal under the Commission's full permitting process or to modify the current process to provide greater opportunities for public participation. And on February 13, the

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<sup>1</sup> The Applicants characterize the scoping decision as including 26 alternatives because for each of the 13 routes the Applicants identify two alternative locations for a proposed substation.

<sup>2</sup> Minn. Stat. §§ 216B.2421, 216B.243.

Commission received a petition from 763 landowners from Plymouth and Medina asking the Commission to, among other things, analyze this matter in accordance with the Commission's full permitting process, including the preparation of an Environmental Impact Statement.

On February 27, 2012, the Applicants filed a petition to convert the route permit proceeding from the alternative permitting process to the full permitting process.

On March 28, 2012, the Department's EFP staff filed comments agreeing that converting the pending proceeding to a full permitting process at this stage of the proceeding would provide increased opportunity for landowner and stakeholder participation. The EFP staff recommends that the conversion to the full permitting process be done based on the information already in the docket, without the necessity of repeating steps already undertaken.

On April 5, 2012, the Commission met to consider the matter, and received comments from the Applicants, the Department, and a landowner.

## **FINDINGS AND CONCLUSIONS**

### **I. Summary**

In this order, the Commission grants the Applicants' request to have this petition governed by the Commission's full permitting process (Minn. Rules, parts 7850.2000 to 7850.2700) rather than its more streamlined alternative permitting process (Minn. Rules, parts 7850.2800 to 7850.3900). However, the Commission declines the Applicants' proposal to continue relying on the scoping decision developed within the context of the alternative permitting process.

In accordance with its general permitting rules, the Commission will refer this matter to the Office of Administrative Hearings for a contested case proceeding under Minn. Rules Chap. 1405, including the public hearing required as part of the review of the route permit application.

### **II. Background**

In Minnesota, no one may build a transmission line capable of transmitting 100 kV or more for a distance greater than 1,500 feet without first obtaining a route permit from this Commission.<sup>3</sup> As the Applicants propose building a 115 kV line extending nearly nine miles, they have applied for a route permit.

The procedures governing route permits in general are set forth at Minnesota Rules, parts 7850.2000 to 7850.2700. But an applicant for a transmission line with a capacity of no more than 200 kV may elect to be governed by the more streamlined procedures set forth at parts 7850.2800 to 7850.3900.<sup>4</sup>

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<sup>3</sup> Minn. Stat. §§ 216E.01, subd. 4; 216E.02; 216E.03, subd. 2.

<sup>4</sup> Minn. Stat. § 216E.04, subd. 2(3).

These alternative procedures differ from the general procedures in various ways:

- The full procedures require an applicant to identify at least two routes, and to identify which route the applicant prefers.<sup>5</sup> The alternative procedures merely require the applicant to disclose alternative routes the applicant considered and rejected.<sup>6</sup>
- The full procedures call for the preparation of an environmental impact statement (EIS). This involves publicly distributing a draft EIS, convening a public meeting on the draft EIS, receiving comments on the draft EIS, and issuing a final EIS in which public comments are addressed.<sup>7</sup> In contrast, the alternative process calls for the preparation of an Environmental Assessment and convening a public hearing on this assessment.<sup>8</sup>
- The full procedures call for a contested case proceeding before an administrative law judge.<sup>9</sup> The alternative procedures merely call for a public hearing.<sup>10</sup>
- Commission rules provide from 12-15 months to complete the full procedures,<sup>11</sup> but only 6 - 9 months to complete the alternative procedures.<sup>12</sup>

Because the Hollydale project would have a capacity of only 115 kV, the Applicants could – and did – elect to be governed by the alternative review process.

### **III. Positions**

#### **A. Landowners**

Landowners variously asked the Commission to do the following:

- Analyze the Hollydale project in accordance with the Commission’s full permitting process, including the preparation of an Environmental Impact Statement, or otherwise grant greater opportunity for landowner participation.

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<sup>5</sup> Minn. Rules, parts 7850.1900, subp. 2.

<sup>6</sup> Minn. Rules, part 7850.3100.

<sup>7</sup> Minn. Rules, part 7850.2500.

<sup>8</sup> Minn. Rules, part 7850.3700.

<sup>9</sup> Minn. Rules, part 7850.2600.

<sup>10</sup> Minn. Rules, part 7850.3800.

<sup>11</sup> Minn. Rules, part 7850.2700.

<sup>12</sup> Minn. Rules, part 7850.3900.

- Require specific electric and magnetic field mitigation measures.
- Require the Applicants to obtain a Certificate of Need before building the project.
- Suspended the project until any legal changes are implemented to implement the measure set forth above.

These landowners argue that a transmission line project that affects so many residents warrants the most rigorous level of review and the maximum opportunities for public participation, whether or not the line would otherwise qualify for the alternative review process. Some landowners challenge the adequacy of the notice the Applicants issued. And some landowners advocate a new route alternative that arose too late to be incorporated into the Department's scoping decision.

### **B. The Applicants**

Without addressing the landowners' substantive requests, the Applicants concede two procedural points to the landowners. First, they agree to seek a Certificate of Need for the Hollydale project from this Commission, with all the scrutiny that entails.<sup>13</sup>

Second, the Applicants recommend converting the current docket to use the full permitting process as requested by the landowners. The Applicants reason that the process is still at an early stage, facilitating the transition from the alternative review process to the full process. And the Applicants state that their application contains the information required for either the full or alternative process – including information about alternative routes, and the reasons supporting the Applicants' preferred route.

But the Applicants ask the Commission to continue relying on the Department's scoping decision rather than requiring a new scoping decision. The Applicants argue that the existing scoping decision reflected a thorough review of the record at the time it was issued, and that repeating this work would be unnecessary.

### **C. The Department**

The Department also recommends that the Commission analyze the Hollydale project under the Commission's full permitting process, including referring this matter for a contested case proceeding. But the Department joins the Applicants in recommending that the Commission continue to rely on the existing scoping decision to establish the parameters of the environmental review in this proceeding, arguing that the decision would apply equally well for an Environmental Assessment or an Environmental Impact Statement.

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<sup>13</sup> See Docket No. E-002, ET-2/CN-12-113, *In the Matter of the Application of Northern States Power Company, d/b/a Xcel Energy, and Great River Energy for a Certificate of Need for the Hollydale 115 kV Transmission Line Project in the Cities of Plymouth and Medina*.

#### **IV. Commission Action**

##### **A. Commission Jurisdiction**

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 and 216E.03, and Minn. Rules Chap. 7850.

##### **B. Appropriate Permitting Process and Referral for Contested Case Proceedings**

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 proceedings. The Commission will therefore grant the requests of all commenters and initiate review under the Commission's full permitting process – including referring this matter to the Office of Administrative Hearings for a contested case proceeding.

Moreover, it has become clear that the issue and record development conducted so far would have benefitted from the significant public engagement that has since emerged. Under these particular circumstances, and given the early stage of the proceeding, the Commission finds it prudent and administratively efficient to update the scoping decision in this docket. It is critical to have the most comprehensive record possible, and revising this decision will ensure that the record is informed from the start by the concerns raised by the commenters to date.

In referring this matter for contested case proceedings, the Commission requests that the presiding Administrative Law Judge conduct hearings as described in this Notice and submit a report to the Commission.<sup>14</sup> 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.<sup>15</sup>

##### **C. Issues to be Addressed**

In the course of contested case proceedings the parties shall address whether the proposed project meets the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. Rules Chap. 7850.

The parties may also raise and address other issues relevant to the application.

##### **D. Public Participation**

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

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<sup>14</sup> Minn. Rules, part 1405.2400, subp. 2. In 2005, the Legislature transferred jurisdiction to issue site and route permits from the Environmental Quality Board to the Public Utilities Commission; see 2005 Minn. Laws, c. 97, art. 3, §§ 17 and 19. Therefore the term “Board” appearing in Minn. Rules, Chapter 1405, now refers to the Public Utilities Commission.

<sup>15</sup> Minn. Rules, parts 1405.2500 and 7850.2700.

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.

As noted above, the Commission has authorized the Department's Energy Facility Permitting Staff to name a public advisor. 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 7850.2600, 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.<sup>16</sup>

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.<sup>17</sup>

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<sup>16</sup> Minn. Stat. § 216E.03, subd. 6.

<sup>17</sup> *Id.*

## **E. Procedural Outline**

### **1. 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.

### **2. 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](http://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.

- *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 Michael 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 Gary Cunningham, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 757-1427.

- *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 Department, and the parties.

- *Timing Considerations*

The hearings before the Administrative Law Judge must follow the Department's release of the draft Environmental Impact Statement. Consequently, the dates for hearings cannot be set until the Department completes the 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 Department 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.

### **3. Intervention**

Persons who wish to be granted permission by the Administrative Law Judge to intervene in this matter must do so in accordance with 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. Subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petitions.

The hearing process established under Minn. Rules Chap. 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, the rights to submit direct testimony and conduct cross-examination of other parties' witnesses, 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. Please refer to Minn. Rules Chap. 1405 to identify the scope of rights and authority to act given "persons" or restricted to "parties" under the various provisions of that Chapter.

### **4. Prehearing Conference**

A prehearing conference will be scheduled by the Administrative Law Judge in consultation with Commission staff. 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.

### **F. 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.

**G. 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 grants the Applicants' request to convert the pending route permit proceeding from the alternative permitting process (Minn. Rules, parts 7850.2800 to 7850.3900) to the full permitting process (Minn. Rules, parts 7850.2000 to 7850.2700).
2. The Commission hereby refers this matter to the Office of Administrative Hearings for a contested case proceeding under Minn. Rules Chap. 1405, including the public meeting required under Minn. Rules, part 7850.2300.
3. 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.
4. 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. Commission staff shall also work with the Administrative Law Judge to select a suitable location for the evidentiary hearings on the application.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary



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BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
600 North Robert St.  
P.O. Box 64620  
St. Paul, MN 55164-0620

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East Suite 350  
St. Paul, Minnesota 55101-2147

In the Matter of the Route Permit Application for MPUC Docket No. E-002/TL-11-152  
the Hollydale 115 kV Transmission Line  
Project in the Cities of Plymouth and Medina, OAH Docket No.  
Hennepin County

**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, Minnesota 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: \_\_\_\_\_