BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
David C. Boyd	Commissioner
J. Dennis O'Brien	Commissioner
Phyllis A. Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Application of Xcel Energy and Great River Energy for a Route Permit for the Upgrade of the Southwest Twin Cities Chaska Area 69 kV Transmission Line to 115 kV Capacity	ISSUE DATE: September 11, 2012 DOCKET NO. E-002/TL-12-401 ORDER FINDING APPLICATION COMPLETE, REFERRING APPLICATION TO THE OFFICE OF ADMINISTRATIVE HEARINGS, GRANTING VARIANCE, AND APPOINTING A PUBLIC ADVISOR

PROCEDURAL HISTORY

On July 11, 2012, Northern States Power Company d/b/a Xcel Energy and Great River Energy (the Applicants) jointly filed an application for a route permit to upgrade the Chaska area 69 kilovolt (kV) transmission line to 115 kV (the Project) under the alternative permitting procedures contained in Minn. Rules, parts 7850.2800 through 7850.3900.

On July 25, 2012, the Energy Facilities Permitting Unit of the Department of Commerce (EFP) filed comments recommending that the Commission accept the route permit application as substantially complete, request that the Office of Administrative Hearings assign an Administrative Law Judge to conduct the public hearing, appoint a public advisor, and determine that an advisory task force is not warranted at this time.

On August 14, 2012, the application came before the Commission.

FINDINGS AND CONCLUSIONS

I. Background

The proposed Project is located in Carver and Scott Counties. Specifically, the route permit application requests to upgrade approximately 6.1 miles of existing single circuit 69 kV transmission line to a single circuit 115 kV transmission line, to change the operating voltage of

approximately 2.9 miles of existing Great River Energy 69 kV transmission line to operate at 115 kV, to construct two segments of a new 115 kV single circuit transmission line totaling approximately 2.4 miles, and to modify five substations. The Project would also abandon in place (meaning de-energize) approximately one mile of existing 69 kV transmission line and would remove approximately 0.39 miles of existing 69 kV transmission line.

Because the Project is greater than 100 kV, a route permit is required.[1] Further, because the Project is between 100 and 200 kV, it is eligible for the alternative permitting process under Minn. Rules, part 7850.2800, subp. 1, item C. Under alternative review, the applicant is not required to propose alternative routes; under the full permitting process, the applicant must propose at least two routes. Further, projects under the alternative review process are subject to an environmental assessment rather than an environmental impact statement, which is required under the full permitting process.[2] And although the alternative review process does not require contested case proceedings under Minn. Stat., Chapter 14, the Project is subject to Commission procedures under Minn. Rules, part 7850.3800.

II. Application Completeness

Under the alternative review process, an application for a high-voltage transmission line must be submitted under Minn. Rules, part 7850.3100, which requires the applicant to submit the items required under the full permitting process, except that the applicant is not required to propose alternative routes.[3] The EFP reviewed the route permit application for completeness and concluded that it meets the requirements of Minn. Rules, part 7850.3100. The Commission has examined the record and concurs with the EFP that the application contains the information required and is therefore complete under Minn. Rules, part 7850.3200. The Commission's finding of completeness is as to form only; it implies no judgment on the merits of the application.

III. Referral to the Office of Administrative Hearings

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 proceedings conducted by an Administrative Law Judge (ALJ). The Commission will therefore refer the matter to the Office of Administrative Hearings (OAH) for summary proceedings under Minn. Rules, part 7850.3800, adapting the existing procedural framework to facilitate further factual development of the record in the following manner. Specifically, the Commission will:

- Request that the ALJ assigned to the matter strongly encourage the parties and participants to adhere to a schedule that allows the Commission to meet its statutory deadline for a decision on the Project.[4]

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[1] Minn. Stat. § 216E.01, subd. 4 and Minn. Stat. § 216E.03, subd. 2.

[2] Minn. Rules, part 7850.3100 and Minn. Rules, part 7850.3700.

[3] Minn. Rules, part 7850.3100.

[4] Minn. Stat. § 216E.04, subd. 7.

- Direct Commission staff to formally contact relevant state agencies to request their participation in the development of the record and public hearings under Minn. Stat. § 216E.10, subd. 3.

- Request that the ALJ , the parties, participants, and the public address whether the proposed project meets the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. Rules, Chapter 7850.

- Request that the EFP submit any post-hearing comments on the merits of the application and the record, as well as any recommendation, draft permit language, or specific permit provisions, under timelines established by the OAH. If the Department submits additional comments and those comments choose in and among competing alternatives, the EFP shall identify the competing alternatives and clearly indicate why it made those choices.

- Ask that the ALJ prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed transmission line project applying the routing criteria set forth in statute and rule.

IV. Rule Variance

Under the alternative review process, the Department is required to prepare an environmental assessment of the project; prior to that step, the Department is required to provide the public with an opportunity to participate in the development of the scope of the environmental assessment by holding a public meeting and by soliciting public comments.[5] If alternative routes are identified through the scoping process, the environmental assessment must contain information on the human and environmental impacts of both the proposed project and alternative routes.[6]

Under Minn. Rules, part 7850.3700, subp. 3, the scope of the environmental assessment must be determined by the Department within ten days after close of the public comment period. Minn. Stat. § 216E.04, subd. 5 anticipates, however, that the Commission will have the opportunity to identify other routes for consideration prior to environmental review of a project. The statute states that the environmental assessment must contain information on the proposed project, as well as on other routes *identified by the Commission*. The rules' ten-day timeline for determining the scope of the environmental assessment after the close of the public comment period constrains the Commission's ability to evaluate public input and identify other possible routes prior to environmental review.

Under Minn. Rules, part 7829.3200, the Commission has the authority to vary a rule if the following criteria are met:

(1) Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;

[5] Minn. Rules, part 7850.3700, subp. 2, item A.

[6] Minn. Rules, part 7850.3700, subp. 1.

(2) Granting the variance would not adversely affect the public interest; and

(3) Granting the variance would not conflict with standards imposed by law.

In this case, the Commission finds that the criteria for granting a variance to Minn. Rules, part 7850.3700, subp. 3 are met.

(1) Enforcement of the rule would impose an excessive burden on the public and those reasonably likely to be affected by the proposed Project by limiting the Commission's input on and consideration of other route alternatives prior to the environmental review of the Project.

(2) Second, granting the variance would not adversely affect the public interest and would in fact serve the public interest by enabling a more comprehensive evaluation of public comment at the outset of the review process.

(3) And finally, the Commission finds that granting the variance will not conflict with standards imposed by law.

The Commission will therefore vary the ten-day timeline to facilitate the Commission's input on whether additional routes should be considered. The Commission will extend the ten-day timeline to 40 days, subject to the Executive Secretary's authority to seek additional time from the Commission. Further, the Commission will ask the EFP to present draft route alternatives to the Commission prior to the EFP's final scoping decision.

V. Public Advisor

Upon acceptance of an application for a route permit, the Commission is to designate a staff person to act as the public advisor on the project under Minn. Rules, part 7850.3400. The public advisor is available to answer questions from the public about the permitting process. In this role, the public advisor may not act as an advocate on behalf of any person.

The Commission will designate Michael Kaluzniak, Facilities Planner, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 5501-2147, (651) 201-2257 to act as the public advisor in this matter.

VI. Advisory Task Force

The EFP evaluated several factors in analyzing whether an advisory task force should be appointed by the Commission under Minn. Rules, part 7850.3600. The Department analyzed the Project's size, its complexity, the anticipated controversies, and sensitive resources and concluded that an advisory task force is not warranted at this time. Further, no person has requested that a task force be appointed for this Project.

The Commission concurs with the EFP's analysis and will decline to appoint an advisory task force at this time.

ORDER

1. The Commission hereby accepts the application as complete.

2. The Commission hereby refers the matter to the Office of Administrative Hearings for summary proceedings as described herein.

3. The Commission hereby varies Minn. Rules, part 7850.3700, subp. 3 to extend the ten-day timeline for determining the scope of the environmental assessment.

4. The Commission requests that the EFP present draft route alternatives to the Commission prior to the Department's final scoping decision.

5. The Commission hereby appoints a public advisor as described herein.

6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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