

Appendix E

Order Approving Exemption Request

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Acting Chair
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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

ISSUE DATE: April 18, 2012

DOCKET NO. E-002, ET-2/CN-12-113

ORDER GRANTING EXEMPTIONS,
APPROVING NOTICE PLAN, AND
APPROVING VARIANCE

PROCEDURAL HISTORY

I. The Route Permit Proceeding

On June 30, 2011, Applicants filed a route permit petition with the Commission for a 115 kilovolt (kV) transmission line project in the cities of Plymouth and Medina in Hennepin County (the Hollydale project). The Applicants' route permit application seeks to rebuild approximately eight miles of existing 69 kV transmission line to 115 kV capacity along existing right-of-way, construct approximately 0.8 miles of new 115 kV transmission line, construct a new 115 kV substation, and modify associated transmission facilities.¹

Applicants filed the route permit under the Commission's alternative permitting process.² The Commission accepted the route permit application as substantially complete in an order issued on August 25, 2011.

On December 7, 2011, the Commissioner of the Department of Commerce issued a scoping decision for the proposed project, which included 26 route alternatives to be evaluated in the environmental assessment.³ Several route alternatives identified in the scoping decision were greater than ten miles in length.

¹ Applicants anticipate an in-service date for the Hollydale project of mid-2013.

² Docket No. E-002/TL-11-152.

³ The 13 route alternatives terminate at one of the two substation sites.

II. The Certificate of Need Proceeding

On February 3, 2012, Applicants filed a proposed notice plan for a certificate of need for the Hollydale project. On the same date, Applicants filed a petition requesting exemption from certain data filing requirements under Minnesota Rules, Chapter 7849.

On February 6, 2012, a landowner group within the proposed Hollydale project area, the Plymouth Residents Opposing the Hollydale Power Line Project (the landowner group), filed a notice of appearance and a petition for a certificate of need in response to Applicants' initial route petition filings.

On February 23, 2012, the Department filed comments recommending approval of the requests for exemption, but also requested that the Applicants submit additional information in their certificate of need application. In addition, the Department asked the Applicants to delay filing a certificate of need application until such time as an Administrative Law Judge in the related route permit proceeding has issued his/her report.

On February 23, 2012, the landowner group filed additional comments on the exemption request. The landowner group stated that the notice plan had not been distributed to all potentially affected landowners and residents within the proposed project area, and requested notification to all those potentially affected, with the opportunity to submit comments.

On March 14, 2012, Applicants filed reply comments.

On April 5, 2012, the Commission met to consider the matter.⁴

FINDINGS AND CONCLUSIONS

I. Certificate of Need Requirements

Minn. Stat. § 216B.2421, subd. 2(3) states that a high-voltage transmission line with a capacity of 100 kV or more with more than 10 miles of length in Minnesota is a large energy facility. Several of the route alternatives identified in the Commissioner's scoping decision are longer than 10 miles in length. If one of these routes were selected for the project, a certificate of need would be required.

Minn. Rule, Part 7849.0400, subp. 2(G) states that if at some time in a transmission routing process it becomes apparent that the Commission may approve a route that meets the definition of a large high voltage transmission line, the utility may apply for a certificate of need as soon as possible after that time.

⁴ On the same date, the Commission considered the request of Applicants in the related route permit docket to convert the pending process under the alternative permitting process to a full permitting process.

After the issuance of the Department of Commerce Commissioner's December 7, 2011 scoping decision, Applicants determined that it had become apparent that the Commission might approve a route of greater than 10 miles in length. This proceeding followed.

II. Exemption Requests

A. In General

Commission rules list the types of information that might be useful for evaluating the need for a large energy facility, and direct utilities to file this information with their certificate of need applications. But not every type of information listed is relevant or appropriate to every type of large energy facility. Consequently, the rules provide for applicants to seek exemptions from these rules whenever "the data requirement is unnecessary to determine the need for the proposed facility. . . ."⁵ In this manner, the certificate of need filing requirements are tailored to the circumstances of each proposal.

B. Applicants' Request

Applicants requested exemption from providing data relevant to the following portions of Minnesota Rules:

- Minn. Rules, part 7849.0260, subp. A(3) and C(6) – Proposed High Voltage Transmission Facilities and Alternatives Application;
- Minn. Rules, part 7849.0270, subdp. 2 (A-D and F) and Subp. 3-5 -- Forecasting;
- Minn. Rules, part 7849.0280, (B) through (I) – System Capacity; and
- Minn. Rules, part 7849.0290 -- Conservation;
- Minn. Rules, part 7849.0300 – Consequences of Delay; and
- Minn. Rules, part 7849.0340 – Alternative of No Facility.

Applicants stated that in accordance with Minn. Rules, part 7849.0200, subp. 6, the Commission could grant an exemption from providing certain information as part of a certificate of need application if the applicant requested an exemption in writing that showed that the data requirement was either unnecessary to determine the need for the proposed facility or that the requirement could be satisfied by submitting another document. With respect to each rule from which it seeks exemption, Applicants have undertaken to make such a showing.

C. The Department's Comments and Recommendations

The Department submitted a detailed analysis of each of the Applicants' exemption requests. The Department concluded that the Commission should grant the requested exemptions, but

⁵ Minn. Rules, part 7849.0200, subp. 6.

recommended certain modifications that would require that additional information be included in the certificate of need application.

The Department further requested Applicants to refrain from filing a certificate of need application at least until an Administrative Law Judge's report evaluating the route permit alternatives in Docket No. E-002/TL-11-152 has been issued.

D. Commission Action

Minnesota Rules 7849.0200, subp. 6 states:

Before submitting an application, a person is exempted from any data requirement of this chapter if the person (1) requests an exemption from specified rules, in writing to the commission and (2) shows that the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document.

The Commission has reviewed the Department's detailed examination of Applicants' exemption requests and agrees that the requests should be granted in part, as set forth in the Department's February 23 comments. The Commission will also require Applicants to provide or otherwise evaluate the availability of the following information in Applicants' certificate of need application:

- Monthly numbers of customers, by class, served by each substation (both actual and proposed);
- Monthly energy consumption data for each individual customer served by each substation (both actual and proposed), subsequently aggregated by class;
- Any, and all, development plans within, and directly surrounding, the load study area (*e.g.*, City of Plymouth master development plan, City of Medina master development plan);
- Number of building permits issued by building type, year, and respective permitting agency, within, and directly surrounding, the load study area over the last 10 years;
- Number of households, on an annual basis, within the load study area over the last 10 years;
- Total number of lots available for development, by zoning code and zoning authority, for the load study area and immediately adjacent area;
- Any, and all, demographic information projections for the load study and adjacent area as provided by the county, Metropolitan Council, and State Demographic Center;
- List of customers participating in the Applicants' direct load control and/or load management program, by utility, served by each substation (actual and proposed);

- Monthly historical load control data served by each substation imputed to each Applicant's respective system peak forecast;
- List of customers, on an annual basis, that received Conservation Improvement Program (CIP) rebates, by type and Applicant, served by each substation over the last 10 years; and
- Any, and all, data used by the Applicants to predict future demand within the load study area.

III. Notice Plan

On February 3, 2012, Applicants submitted a notice petition in connection with the certificate of need proceeding. The notice petition provided a plan to notify potentially affected members of the public about the proposal under Minnesota Rules, part 7829.2550.

The Department reviewed the Applicants' notice plan under Minnesota Rules, part 7829.2550, subp. 3, which requires an applicant to file a proposed notice plan for providing notice to all persons reasonably likely to be affected by the proposed line. The major components of the proposed notice plans include direct mail notice to residents, landowners, community groups, local governments and other governmental entities, as well as to all mailing addresses within the area reasonably likely to be affected by the line. Applicants also proposed a general notice by publishing ads in two statewide and two local newspapers with circulation within the notice corridor.⁶ Finally, Applicants submitted a proposed map showing the preferred and alternative routes and substations for the project.

Applicants also requested a variance to Minn. Rules 7829.2550, subp. 6, which requires applicants to implement a notice plan within 30 days of the Commission's approval of the plan. Applicants requested that the Commission modify the notice implementation requirement to allow the notice to more closely coincide with the actual filing of the certificate of need.⁷

In its evaluation of the proposed notice plan, the Department determined that the Applicants had identified those reasonably likely to be affected by the project and that the proposal for notification to landowners, residents, and local governments is reasonable and should be approved. The Department recommended that Applicants include a description of general right-of-way requirements for a 115 kV line, and that Applicants provide a copy of the map in reply comments or as a compliance filing. With those changes, the Department concluded that the notice contains the information required under the rule, and recommended that the notice plan be approved.

⁶ Applicants' petition (at Attachment C to the petition, page 4) stated that the certificate of need application, the notices and other related materials will be made available on the Xcel Energy website (www.xcelenergy.com) (Minnesota-Company-Transmission-Transmission Projects-Hollydale Project).

⁷ Applicants have not proposed a specific timeframe within which to file their certificate of need application, and have requested flexibility with respect to same.

The Commission concurs with the Department that with the Department's proposed changes, the proposed notice plan meets the requirements contained in Minnesota Rules, part 7829.2550. The Commission will approve the notice plan, with the requirement that Applicants add the landowner group (the signatories to the Plymouth Residents Petition) to the direct mail notice list.

IV. Variance Request

The Applicants requested that the Commission grant a variance to Minn. Rules, part 7829.2550, subp. 6, which requires the applicant to implement the proposed notice plan within 30 days of approval by the Commission. The Applicants have instead requested to implement the notice plan 30 days prior to submitting an application for a certificate of need to ensure that notice of the project more closely coincides with their certificate of need filing, which they plan to submit later this year.

Under Minn. Rules, part 7829.3200, the Commission is authorized to vary any of its rules upon making the following findings:

- (1) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- (2) granting the variance would not adversely affect the public interest; and
- (3) granting the variance would not conflict with standards imposed by law.

The Department supported varying the rule, stating that enforcement of the rule would burden all parties involved by separating the provision of notice from the start of the proceeding. The Department also stated that granting the variance would not adversely affect the public interest since the Applicants' proposal better ties the implementation of the notice plan to the beginning of the certificate of need proceeding. Finally, the Department stated that it does not believe that the variance would conflict with standards imposed by law.

The Commission concurs with the parties and will vary the 30-day time line of Minn. Rules, part 7829.2550, subp. 6, making the following findings:

- (1) Enforcing the 30-day time line would impose an excessive burden upon the public and upon parties to the proceeding by causing an undue delay between implementation of the notice plan and the start of the certificate of need proceeding.
- (2) Varying the 30-day time line would not adversely affect the public interest and would in fact serve the public interest by ensuring a more orderly process consistent with enhancing public participation.
- (3) Varying the 30-day time line would not conflict with any other standards imposed by law.

ORDER

1. The Commission grants the Applicants' exemption requests in part, as set forth herein.
2. Applicants shall provide or otherwise evaluate the availability of the following data as part of their certificate of need application:
 - Monthly numbers of customers, by class, served by each substation (both actual and proposed);
 - Monthly energy consumption data for each individual customer served by each substation (both actual and proposed), subsequently aggregated by class;
 - Any, and all, development plans within, and directly surrounding, the load study area (*e.g.*, City of Plymouth master development plan, City of Medina master development plan);
 - Number of building permits issued by building type, year, and respective permitting agency, within, and directly surrounding, the load study area over the last 10 years;
 - Number of households, on an annual basis, within the load study area over the last 10 years;
 - Total number of lots available for development, by zoning code and zoning authority, for the load study area and immediately adjacent area;
 - Any, and all, demographic information projections for the load study and adjacent area as provided by the county, Metropolitan Council, and State Demographic Center;
 - List of customers participating in the Applicants' direct load control and/or load management program, by utility, served by each substation (actual and proposed);
 - Monthly historical load control data served by each substation imputed to each Applicant's respective system peak forecast;
 - List of customers, on an annual basis, that received Conservation Improvement Program (CIP) rebates, by type and Applicant, served by each substation over the last 10 years; and
 - Any, and all, data used by the Applicants to predict future demand within the load study area.
3. The Commission adopts Applicants' proposed notice plan as modified by the Department's recommendation to include the general right-of-way requirements for a 115 kV line and a copy of the map to include in the notice letters.
4. Applicants shall incorporate the signatories to the landowner group (listed in the Plymouth Residents Petition) into the direct mail notice list.

5. The Commission grants the requested variance to Minnesota Rule, part 7829.2550, subp. 6 for the purpose of changing the timing requirements of the implementation of the notice plan.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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