

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application for a Certificate
of Need for the Hollydale 115 kV Transmission
Line Project in the Cities of Plymouth and
Medina

ISSUE DATE: September 21, 2012

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

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On July 2, 2012, Northern States Power Company d/b/a Xcel Energy and Great River Energy (the Applicants) petitioned the Commission to grant a certificate of need for a 115 kilovolt (kV) transmission line project in the cities of Plymouth and Medina in Hennepin County (the Hollydale project). The Applicants seek to replace approximately eight miles of existing 69 kV transmission line with 115 kV line along existing right-of-way, build approximately 0.8 miles of new 115 kV transmission line, build a new 115 kV substation, and modify associated transmission facilities.

Since that time the Commission has received comments on this project from the Minnesota Department of Commerce (the Department) and various members of the public and neighborhood groups. The Commission also received a petition from some 428 residents of Plymouth and Edina seeking further record development regarding alternatives to the Applicants' proposals. The Applicants have filed reply comments.

On September 6, 2011, the Commission met to consider the matter. The Commission received comments from the Applicants, the Department, and members of the public.

FINDINGS AND CONCLUSIONS

I. Summary

In this order the Commission finds that the application filed on July 2, 2012, substantially meets the Commission's filing requirements.

The Commission also grants the request of the Applicants and other commenters to further develop the record by referring this matter to the Office of Administrative Hearings to conduct a

contested case proceeding. However, the Commission declines the Applicants' request to combine this proceeding with the docket analyzing alternative routes for the proposed transmission line.

Finally, the Commission directs the parties to take specific steps to facilitate the review process.

II. Background and Commission Jurisdiction

The Commission has jurisdiction over the Applicants' request for a certificate of need under Minn. Stat. §§ 216B.2421 and 216B.243, and Minn. R. Chap. 7829 and 7849. Minn. Stat. §§ 216B.2421 and 216B.243 state, among other things, that anyone seeking to build more than 10 miles of transmission line in Minnesota with a capacity of 100 kV or more must first obtain a certificate of need from this Commission by demonstrating that the facilities are needed.

An application for a certificate of need must substantially meet the filing requirements of Minn. R. Chap. 7849. For example, Minn. R. 7849.0310 directs an applicant to provide environmental data for the proposed facility and for each alternative considered. However, the Commission may vary any filing requirements that it determines to be "unnecessary to determine the need for the proposed facility..."¹ The Commission has granted the Applicants' requests to modify the filing requirements in this case.²

In addition, anyone seeking to build a transmission line capable of transmitting 100 kV or more for a distance greater than 1,500 feet must obtain a route permit from this Commission.³ The Applicants have petitioned the Commission for such a permit, and proceedings on that application are underway.⁴

Where a project requires both a certificate of need and a route permit, the Commission generally requires public hearings at which both topics are addressed.⁵ But the Commission may instead convene separate public hearings for each topic if the Commission determines that "a joint hearing on siting and need ... is not feasible or more efficient, or otherwise not in the public interest..."⁶

III. The Application

The Applicants state that the proposed project would increase the capacity of the electric distribution system in the Plymouth and Medina areas, permitting the transmission grid to meet the growing

¹ Minn. R. 7849.0200, subp. 6.

² Order Granting Exemptions, Approving Notice Plan, and Approving Variance (April 18, 2012), this docket.

³ Minn. Stat. §§ 216E.01, subd. 4; 216E.02; 216E.03, subd. 2.

⁴ See Docket No. E-002/TL-11-152, *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*.

⁵ Minn. Stat. § 216B.243, subd. 4.

⁶ *Id.*

needs of current and future customers without overloading the feeder circuits in the Plymouth area. In addition, the Applicants state that the proposed project would make the distribution system more reliable by supplying an additional 115 kV connection to the Hollydale substation.

IV. Positions of the Parties

A. The Department of Commerce

Reviewing the Applicants' filings, the Department concludes that the application substantially meets the filing requirements set forth in Minn. R. Chap. 7849 as modified by the Commission's order. In particular, the Department finds that the application provides all the environmental information required by Minn. R. 7849.0310.

B. Members of the Public

Substantively, members of the public raise various arguments about the need for the proposed transmission facilities, and offer alternative proposals to the Applicants' proposal. For example, various commenters suggest that the Applicants consider relying on enhancing distribution lines rather than transmission lines, or reduce the demand for electricity by promoting conservation and efficiency. The Western Plymouth Neighborhood Alliance asks the Commission to find the application incomplete on the theory that the application fails to adequately address some alternatives.

Procedurally, members of the public generally favor referring this matter for further record development via a contested case proceeding. In particular, the Western Plymouth Neighborhood Alliance filed a resolution adopted by the Plymouth City Council recommending that the matter be referred for contested case proceedings to explore the alternative of enhancing distribution lines in lieu of enhancing transmission lines.

In addition, some commenters argue against convening joint public hearings addressing both the need for the projects and the alternative routes. They express concern that discussions of route alternatives for the proposed transmission line will take attention away from discussions about whether the proposed line is needed at all.

C. The Applicants

The Applicants state that they have already filed information addressing many of the concerns and alternatives identified by the public. Moreover, the Applicants argue that the substantive merits of these concerns and alternatives will be addressed later in the process; the only issues before the Commission currently are procedural. However, the Applicants agree with public commenters that the Commission should refer this matter for further record development via a contested case proceeding.

Given the lack of procedural objections, the Applicants ask the Commission to adopt the Department's recommendation to find that the application has fulfilled the filing requirements of Minn. R. Chap. 7849 as those requirements were modified by the Commission's order.

But the Applicants identify a procedural problem: Because the routing docket began before the need docket did, it may become appropriate to schedule a public hearing for the routing docket before scheduling the public hearing for addressing issues of need. Yet people who participate in public hearings on transmission lines often expect to address the issue of the lines' need before -- or at the same time as -- they address issues of the lines' routes. Scheduling hearings to receive comments regarding a line's route before scheduling a hearing to address the line's need may serve to confuse and frustrate the public.

To remedy this problem, the Applicants ask the Commission consolidate the current proceeding with the proceeding governing siting and routing, permitting the public hearings to address both topics.

V. Commission Action

A. Consolidation of Proceedings

First, the Commission finds that consolidating the current proceeding with the pending route permit proceeding, Docket No. E-002/TL-11-152, *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*, is not in the public interest at this time. Given the complexity of the issues involved and the interests expressed by members of the public, the Commission concludes that each docket warrants its own public hearing.

While the Applicants express concern about public frustration that can arise when a hearing addresses a proposed transmission line's route before addressing the need for the line, this problem can be mitigated by convening hearings on the need for the line before convening hearings on the route. Consequently at this time the Commission will decline the Applicants' motion to combine the two dockets.

B. Application's Completeness

Having reviewed the Applicants' filing of July 2, 2012, as well as the comments of the parties, the Commission concurs with the Applicants and the Department that the application substantially meets the filing requirements of Minn. R. Chap. 7849 as modified by the Commission.

Some commenters allege that the application fails to adequately address some alternatives to the proposed transmission line, and ask the Commission to find the application incomplete on that basis. However, the Commission finds that the application provides sufficient detail on the proposal and alternatives to permit meaningful development on the record. The better way to address the commenters' concerns is not by having the Applicants file a revised application, but by permitting all parties to participate in developing the factual record via a contested case proceeding.

C. Referral for Contested Case Procedures, and Issues to Be Addressed

While the Applicants have met the filing requirements for a certificate of need, the Commission finds that the current record is insufficient to resolve all questions regarding the merits of the

proposed transmission line and its alternatives. The Commission will therefore accept the recommendation of the Applicants and members of the public to refer the matter to the Office of Administrative Hearings for contested case proceedings.

The ultimate issues in this case are whether the Applicants' proposal meets the need criteria set forth in Minn. Stat. § 216B.243 and Minn. R. Chap. 7849. The parties may also raise and address other issues relevant to those criteria.

D. Review Process

To facilitate the review of the application, and the public's participation in that review, the Commission will do the following:

- Ask the Department to continue studying issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need to the Applicants.
- Direct the Applicants to facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff.
- Direct the Applicants to place a compact disc (CD) or hard copy of the application for review in one or more government center(s) and/or public library(ies) in the vicinity of the project.
- Direct the Commission's staff to work with the Administrative Law Judge and the Department in selecting suitable locations for a public hearing on the application.
- Direct the Applicants to work with the Administrative Law Judge and the staffs of the Commission and the Department to a) arrange to publish in newspapers of general circulation, at least ten days before the hearings, visible display advertisements giving notice of the hearings, and b) acquire from the newspapers proofs to document that the advertisements were published.
- Provide the name, telephone number, and email address of the Commission employee designated as Public Advisor to facilitate citizen participation in the process.⁷

The Commission has designated Mike Kaluzniak, Facilities Planner, to facilitate and coordinate public participation in this proceeding. He can be reached by telephone at (651) 201-2257, by fax at (651)297-7073, and by email at mike.kaluzniak@state.mn.us. His mailing address is 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147.

⁷ Minn. Stat. § 216B.243, subd. 4.

VI. Contested Case Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to the contested 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 of the Office of Administrative Hearings is P.O. Box 64620, St. Paul, Minnesota 55164-0620.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57 to 14.62; the rules of the Office of Administrative Hearings, Minn. R. 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.3200.

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.mn.gov/pubs.

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.

- *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. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. R. 1400.7000, 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.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. R. 1400.6700 to 1400.6800 or informal disposition under Minn. R. 1400.5900 should be directed to Michael Kaluzniak, Senior Energy Facilities Planner, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2257, by fax at (651) 297-7073, and by email at mike.kaluzniak@state.mn.us; or Lisa Crum, Assistant Attorney General, 1100 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 757-1262.

- *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 public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *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.

- *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.

C. Parties and Intervention

Persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission.⁸

D. Prehearing Conference

A prehearing conference will be held on October 23, 2012, at 9:30 a.m., in the Large Hearing Room at the offices of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.

⁸ Minn. R. 1400.6200.

Parties and persons intending to intervene in the matter should participate in 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.

VII. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, apply to certificate of need 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.

VIII. 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. R. 7845.7300 to 7845.7400, which all parties are urged to consult.

ORDER

1. The July 2, 2012 application for a certificate of need filed by Northern States Power Company d/b/a Xcel Energy and Great River is substantially complete.
2. This matter is hereby referred to the Office of Administrative Hearings for contested case proceedings under Minn. Stat. §§ 14.57 *et seq.*
3. The Applicants shall facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff, and shall submit a compact disc (CD) or hard copy of the application for review in one or more government center(s) and/or public library(ies) in the vicinity of the project.
4. The Applicants shall work with the Administrative Law Judge and the staffs of the Commission and the Department to –
 - arrange to publish in newspapers of general circulation, at least ten days before the hearings, visible display advertisements giving notice of the hearings, and
 - acquire from the newspapers proofs to document that the advertisements were published.

5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



This document can be made available in alternative formats (i.e., large print or audio tape) 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.

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101

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

In the Matter of the Application of for a Certificate
of Need for the Hollydale 115 kV Transmission Line
Project in the Cities of Plymouth and Medina

ISSUE DATE: September 21, 2012

MPUC Docket No. E-002, ET-2/CN-12-113

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Eric L. Lipman, Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101;
Mailing Address: Box 64620, St. Paul, Minnesota 55164-0620; Telephone Number: (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:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____