

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 of Minnesota
Power for a Route Permit for the 39 Line
115 Kilovolt High Voltage Transmission Line
Project in St. Louis County

ISSUE DATE: January 16, 2013

DOCKET NO. E-015/TL-12-1123

ORDER FINDING APPLICATION
COMPLETE, REFERRING
APPLICATION TO THE OFFICE OF
ADMINISTRATIVE HEARINGS,
GRANTING VARIANCE, AND
APPOINTING A PUBLIC ADVISOR

PROCEDURAL HISTORY

On November 30, 2012, Minnesota Power filed an application for a route permit for an approximately three mile, 115 kV high voltage transmission line in St. Louis County near the city of Eveleth, known as the 39 Line Project. Minnesota Power submitted the application under the alternative permitting procedures contained in Minn. Rules, parts 7850.2800 through 7850.3900.

On December 19, 2012, the Energy Facilities Permitting staff of the Department of Commerce (EFP) filed comments recommending that the Commission: 1) accept the route permit application as substantially complete, 2) request that the Office of Administrative Hearings assign an Administrative Law Judge to conduct the public hearing, 3) appoint a public advisor, and 4) determine that an advisory task force is not warranted at this time.

On January 8, 2013, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Background

The proposed project is located in St. Louis County. The route permit application requests to construct an approximately three mile, 115 kV high voltage transmission line near the city of Eveleth. In addition, the proposed project includes the removal of a 1.9 mile section of existing 115 kV transmission line that runs through the United Taconite's north mining pit. The 39 Line Project is meant to allow the existing 115 kV line to be removed without degrading the area's high voltage transmission system.

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 all issues raised by 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 take the actions set forth below:

- Request that the ALJ assigned to the matter emphasize the statutory time frame for the Commission to make final decisions on applications and to strongly encourage the parties and participants to adhere to a schedule that conforms to the statutory time frame.
- 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 ask the parties, participants, and the public to address whether the proposed project meets the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. Rules, Chapter 7850.

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.

- Request that following the public hearing and prior to the end of the OAH public comment period, the EFP submit to the ALJ comments and recommendations on the application and the record to date, any modified or new permit conditions, and proposed findings of fact.
- Request that the ALJ prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed transmission line upgrade project, applying the routing criteria set forth in statute and rule, and provide comments, if any, on the language of the proposed permit.

IV. Rule Variance

Under the alternative review process, the Department of Commerce (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.⁴ 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 the alternative routes.⁵

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;
- (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 ability to identify alternative routes and ensure their consideration in the environmental assessment.

⁴ Minn. Rules, part 7850.3700, subp. 2, item A.

⁵ Minn. Rules, part 7850.3700, subp. 1.

- (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) Granting the variance will not conflict with standards imposed by law since the ten-day timeline is set by rule, not statute, and may therefore be waived.

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 Department's final scoping decision, to enable the Commission to provide input to the Commissioner of Commerce prior to the 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 Tracy Smetana, Public Advisor, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 5501-2147, (651) 296-0406 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 accepts the application as complete.
2. The Commission refers this case to the Office of Administrative Hearings for a summary proceeding, and requests that the OAH adapt the existing procedural framework set forth in Minn. Rule 7850.3800 to incorporate the following items:
 - A. The Commission requests that the ALJ assigned to the matter emphasize the statutory time frame for the Commission to make final decisions on applications and strongly encourage the parties and participants to adhere to a schedule that conforms to the statutory timeframe;

- B. The Commission requests that the ALJ ask the parties, participants, and the public to address whether the proposed project meets the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. Rules, Chapter 7850;
 - C. The Commission requests that following the public hearing and prior to the end of the OAH public comment period, the EFP submit to the ALJ comments and recommendations on the application and the record to date, any modified or new permit conditions, and proposed findings of fact;
 - D. The Commission requests the ALJ to 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, and to provide comments, if any, on the language of the proposed permit.
- 3. The Commission directs 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.
 - 4. The Commission hereby varies Minn. Rules, part 7850.3700, subp. 3, extending the ten day timeline to 40 days, and requests that the EFP present draft route alternatives to facilitate Commission input into the Commissioner of Commerce’s environmental assessment scoping decision.
 - 5. The Commission appoints a public advisor as described herein.
 - 6. 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.