

**Minnesota Public Utilities Commission**  
***Staff Briefing Papers***

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Meeting Date: **January 8, 2013** ..... **Agenda Item # 5\***

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Company: Minnesota Power

Docket No. E015/TL-12-1123

In the Matter of the Application of Minnesota Power for a Route Permit for the 39 Line 115 Kilovolt (kV) High Voltage Transmission Line Project in St. Louis County.

Issue(s): Should the Commission accept the route permit application as complete? Should the Commission refer the matter to the Office of Administrative Hearings? Should the Commission appoint a Public Advisor? Should the Commission establish an advisory task force?

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**Relevant Documents**

Minnesota Power – Application for a Route Permit ..... November 30, 2012  
Department of Commerce EFP Comments and Recommendations..... December 19, 2012  
Minnesota Power – Reply Comments..... December 26, 2012

The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless otherwise noted.

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***Statement of the Issue***

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Should the Commission accept the route permit application as complete? Should the Commission refer the matter to the Office of Administrative Hearings? Should the Commission appoint a Public Advisor? Should the Commission establish an advisory task force?

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***Project Overview***

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Minnesota Power has proposed to construct an approximately three mile, 115 kV high voltage transmission line (HVTL) in St. Louis County near the city of Eveleth, known as the 39 Line Project (or Project). In addition, the proposed Project includes the removal of 1.9 miles section of existing 115 kV HVTL that runs through United Taconite's north mining pit. The 39 Line Project is to allow the existing 115 kV line to be removed without degrading the area's high voltage transmission system.

Minnesota Power anticipates construction to commence in the summer of 2013 and an in-service date in late 2013.

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***Procedural History***

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On October 10, 2012, the Applicant submitted a Notice of Intent to file a route permit application pursuant to Minnesota Rule 7850.2800, subpart 2.

On November 30, 2012, Minnesota Power submitted an application for a route permit for the 39 Line Project following the alternative permitting procedures outline in Minnesota Rules 7850.2800 to 7850.3900.

On December 12, 2012, the Commission issued a notice of comment period on the completeness of the application.

On December 19, 2012, the Department of Commerce, Energy Facilities Permitting unit (DOC EFP) submitted comments and recommendations.

On December 26, 2012, Minnesota Power filed reply comments.

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***Statutes and Rules***

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***Route Permit Process***

Minnesota Statute § 216E.03, subd. 2 states that no person may construct a HVTL without a Route Permit from the Commission. A HVTL is defined as a transmission line of 100 kV or more and greater than 1,500 feet in length in Minnesota Statute §216E.01, subd. 4. The proposed transmission line is a HVTL and therefore a Route Permit is required prior to construction.

The Application was submitted pursuant to the provisions of the alternative permitting process outlined in Minnesota Rules 7850.2800 to 7850.3900. Minnesota Rule 7850.1300 identifies the application information requirements for route permit applications including, but not limited to, applicant information, route description, environmental impacts, alternatives, and mitigation measures. Minnesota

Rule 7850.3200 provides that the Commission may accept an application as complete, reject an application and require additional information to be submitted, or accept an application as complete upon filing of supplemental information. Minnesota Rule 7850.3900 provides that once the Commission finds the application complete the Commission has six months to reach a final decision (allowing that this may be extended for up to three months for just cause or by an agreement with the applicant).

### *Public Hearing*

Among other things, Minn. Rule 7850.3800, subp. 3 outlines the procedure and timing for the public hearing, indicates that the Commission can appoint a hearing examiner (Commission staff or other) and item (E) provides that the Commission may request the hearing examiner provide a report and recommendation on the matter.

Subp. 3. Hearing procedure. The hearing must be conducted in the following manner, although the hearing examiner may vary the order in which the hearing proceeds:

- A. the staff shall make a brief presentation to describe the project, explain the process to be followed, and introduce documents to be included in the record, including the application, the environmental assessment, and various procedural documents;
- B. the applicant shall introduce its evidence by way of testimony and exhibits;
- C. the public must be afforded an opportunity to make an oral presentation, present documentary evidence, and ask questions of the applicant and staff;
- D. the hearing examiner shall provide a period of not less than ten days for the submission of written comments into the record after the close of the hearing; and
- E. the hearing examiner shall transmit the complete record created at the hearing, including all written comments, to the commission within five days of the close of the record, unless the hearing examiner has been requested by the commission to prepare a report.

### *Public Advisor*

Minnesota Rule 7850.2200 states that the Commission shall designate a public advisor upon acceptance of application for a route permit.

### *Advisory Task Force*

Minnesota Rule 7850.3600 indicates that the Commission may appoint a citizen advisory task force, should do so as early in the process as possible and must establish the size of the task force and appoint its members in accordance with Minn. Stat. § 216E.08. If the Commission does not appoint an advisory task force, a member of the public may request the Commission do so and the Commission must then consider the request as soon as possible.

### *Certificate of Need*

Minnesota Statute § 216B.243, subd. 2 states that no Large Energy Facility shall be sited or constructed in Minnesota without issuance of a Certificate of Need by the Commission. The 115 kV transmission line proposed for the 39 Line Project is not a “large energy facility” because it is not more than 10 miles long and it does not cross a state line.

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***Department of Commerce – Energy Facilities Permitting Unit Comments***

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***DOC EFP Background***

The DOC EFP December 19, 2012 comments provided a summary and recommendations on the alternative permitting process and application completeness, the environmental review to be conducted on this project (an environmental assessment), the public hearing under the alternative review process and the requirements and background on the appointment of an advisory task force.

The DOC EFP comments discussed the appointment of a public advisor (that the DOC EFP had historically been appointed as the public advisor) but made no recommendation to the Commission.

***DOC EFP Analysis***

The DOC EFP conducted a completeness review of the route permit application, noted the applicant's inclusion of a Completeness Checklist (Table 1 of the Route Permit Application) and DOC EFP concluded that the application meets the content requirements of Minnesota Rule 7850.3100 and is substantially complete.

Regarding the public hearing, DOC EFP believes that the Commission need not request an Administrative Law Judge (ALJ) report with findings and recommendation due to the limited scope of the project (a 3.0 mile transmission line) and that the DOC EFP believes that any issues can be resolved by the ALJ preparing a Summary of Public Testimony and the DOC EFP supplying the Commission with a report that details findings, conclusions, recommendations and a proposed permit for the project.

In assessing the merits of establishing an Advisory Task Force for the project, the DOC EFP considered the project's size, complexity, known or anticipated controversy and sensitive resources. Upon conclusion of its analysis, the DOC EFP concluded that, based on the existing record, an Advisory Task Force is not warranted.

***DOC EFP Recommendation***

The DOC EFP concluded that the application meets the content requirements of Minn. Rules, part 7850.3100, is substantially complete and recommended acceptance.

Further the DOC EFP recommended: 1) the Commission request the Office of Administrative Hearings (OAH) assign an ALJ to preside over the public hearing and submit a Summary of Public Testimony, 2) the DOC EFP submit a report to the Commission setting forth findings, conclusions, recommendations and a proposed permit for the project, and 3) find that based on the record, an advisory task force is not warranted at this time.

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***Minnesota Power Reply Comments***

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On December 26, 2012, Minnesota Power filed reply comments which indicated agreement with the DOC EFP recommendations.

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## ***Staff Discussion***

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Generally, staff agrees with the DOC EFP Comments and Recommendations on application completeness and on prudence of an advisory task force. Staff has further comments regarding the referral to the OAH, the assignment of a public advisor, and Commission input regarding project alternatives.

### *1. Referral to OAH*

The Commission recently has requested a more thorough approach to the processing of energy facility siting cases to provide a better and more transparent framework for the processing of applications. Staff believes that the record would benefit from the thorough evaluation that an ALJ can provide. Staff recommends that the Commission refer the matter to the OAH under the alternative hearing process set forth in Minn. Stat. 7850.3800; the issue to be addressed is whether the proposed project meets the selection criteria established in Minn. Stat. 216E.03, subd. 7, and Minn. Rules Chapter 7850.

Further staff recommends that the Commission request the ALJ to adapt the existing procedural framework set forth in Minn. Rule 7850.3800 to include the following features, which will facilitate comprehensive factual development and informed decision-making:

1. The ALJ assigned to this matter emphasizes the statutory time frame for the Commission to make final decisions on applications and the ALJ strongly encourage the Applicant and others to adhere to a schedule that conforms to the statutory timeframe.
2. The Commission directs Commission staff to formally contact relevant state agencies, and request their participation in the development of the record and public hearings under Minn. Stat. § 216E.10, subp. 3.
3. Throughout the course of the proceedings, the Commission asks that the Administrative Law Judge 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.
4. The Commission requests that the DOC EFP submit any post-hearing comments on the merits of the application and the record, as well as any recommendation(s), draft permit language, or specific permit provisions, under timelines established by the OAH.
5. The Commission requests the Administrative Law Judge to prepare a report setting forth findings, conclusions, and recommendations on the merits of the transmission line upgrade project, applying the routing criteria set forth in statute and rule.

### *2. Public Advisor*

Staff recommends the Commission's Public Advisor, Tracy Smetana, be assigned as the Public Advisor in this matter.

### *3. Route Alternatives*

Also, staff proposes to establish an additional process step regarding the alternatives to be considered in the environmental document and at the time of public and evidentiary hearings. Staff recommends the Commission request the Department present the route alternatives identified during the scoping process so that it may provide input to the DOC Commissioner in the Final Scoping Decision on the Project. Staff believes this is an appropriate step to recognize and facilitate the Commission's role under Minn. Stat. §216E.03 Subd. 5.

The commissioner shall study and evaluate any site or route proposed by an applicant and any other site or route the commission deems necessary that was proposed in a manner consistent with rules concerning the form, content, and timeliness of proposals for alternate sites or routes.

To accommodate this procedural step, the Commission would need to vary Minnesota Rule 7850.3700, subp. 3 which requires that the scope of the environmental assessment must be determined by the DOC 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 the environmental review of a project. 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, staff recommends the Commission find 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) 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) The Commission finds that granting the variance will not conflict with standards imposed by law.

Staff requests that the Commission vary the ten-day timeline to facilitate the Commission's input on whether additional routes should be considered to 40 days, subject to the Executive Secretary's authority to seek additional time from the Commission. Further staff recommends that the Commission request that the DOC EFP present draft route alternatives to the Commission prior to the EFP's final scoping decision.

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***Commission Decision Alternatives***

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- A. Determination of Completeness
  - 1. Accept the application as complete.
  - 2. Reject the application and specify the information necessary to address the deficiencies.
  - 3. Take some other action.
  
- B. Public Hearing and the Office of Administrative Hearings
  - 1. Send the matter to the OAH for a summary proceeding, requesting in the referral order that the OAH adapt the existing procedural framework to incorporate the items outlined above in Section 1, Items 1-5 of the staff discussion
  - 2. Request the OAH provide an ALJ to act as the hearing examiner and prepare a Summary of Public Testimony.
  - 3. Take some other action.
  
- C. Route Alternatives
  - 1. Vary Minn. Rule 7850.3700, subp. 3, and request that the DOC EFP present draft route alternatives in order for the Commission to provide input to the DOC Commissioner prior to the Final Scoping Decision.
  - 2. Take some other action.
  
- D. Public Advisor
  - 1. Appoint Tracy Smetana, of the Commission staff, as public advisor.
  - 2. Take some other action.
  
- E. Advisory Task Force
  - 1. Take no action on an advisory task force at this time.
  - 2. Take some other action.

***Staff Recommendation***

Staff recommends A1, B1, C1, D1 and E1.