

## 2.0 Regulatory Framework

ITCM's project requires two approvals from the Minnesota Public Utilities Commission (Commission) – a certificate of need (CN) and a route permit. Additionally, the project will require approvals from other state and federal agencies with permitting authority for actions related to the project. These agencies and their approvals are summarized in Section 2.3.

### 2.1 Certificate of Need

No person may construct a large energy facility in Minnesota without a CN from the Commission (Minnesota Statutes, section 216B.243). ITCM's project, a 345 kilovolt (kV) transmission line with a length of approximately 73 miles, qualifies as a large energy facility and thus requires a CN. ITCM submitted a CN application to the Commission on March 22, 2013. After accepting the application as complete, the Commission referred the application to the Office of Administrative Hearings (OAH) for a contested case hearing, to be conducted jointly with the hearings for ITCM's route permit application (discussed below).

#### 2.1.1 Environmental Review

CN applications to the Commission are subject to environmental review by Department of Commerce (Department) Energy Environmental Review and Analysis (EERA) staff (Minnesota Rules, part 7849.1200). EERA staff is required to prepare an environmental report (ER) for high voltage transmission lines (HVTLS) needing a CN. An ER is a document which describes the potential human and environmental impacts of the project, particularly those impacts associated with the size, type and timing of the project. The ER also addresses alternatives to the project. Minnesota Rules, part 7849.1500 lists alternatives that are required to be evaluated in an ER.

When there are two applications before the Commission for a single transmission line project – a CN and a route permit application – the Department may elect to combine the environmental reviews required for each application. In this instance, the Department may prepare an environmental impact statement (EIS) in lieu of an ER (Minnesota Rules, part 7849.1900). For ITCM's project, the Department has elected to combine the environmental reviews required for the project and issue one EIS to address the CN and route permit applications.

EERA staff solicited public comments on alternatives to ITCM's proposed project (commonly known

as "system alternatives") to study in the EIS. Commission staff and EERA staff held joint public information and EIS scoping meetings on July 16, 17 and 18, 2013, in the cities of Fairmont, Jackson and Blue Earth. A comment period, ending on August 2, 2013, provided the public an opportunity to propose system alternatives for consideration in the scope of the EIS.

No comments were received during the scoping process that proposed an alternative to ITCM's transmission line project that could meet the project's stated need. Accordingly, the system alternatives evaluated in this EIS are those required by Minnesota Rules, part 7849.1500. These alternatives are included in the Department's scoping decision for this EIS, issued on October 14, 2013 (Appendix A).

#### 2.1.2 Public Hearing

Upon completion of a draft EIS, public hearings **are** held in the project area. The hearings **are** presided over by an administrative law judge (ALJ) from the OAH. In accordance with the Commission's order in this matter, the hearings on the CN will be held jointly with those for the route permit (discussed below).

Public hearings, **were held in the project area the week of May 12, 2014. Interested persons were afforded an opportunity at the hearings to ask questions**, submit comments **and** present evidence. An evidentiary hearing **was held the week of May 19, 2014**, in St. Paul, Minnesota. The ALJ will submit a report to the Commission with findings of facts, conclusions of law and recommendations regarding a CN for the project. A decision by the Commission on ITCM's CN application is anticipated in the fall of 2014.

#### 2.1.3 Certificate of Need Decision

In making a decision on ITCM's CN application, the Commission must determine whether ITCM's project is needed, or whether some other project would be more appropriate for the State of Minnesota, e.g., a project of a different type or size. The Commission must consider whether the need for the project can be better met through conservation measures or through the use of renewable resources (Minnesota Statutes, section 216B.2422 and Minnesota Statutes, section 216B.243). Minnesota Rules, part 7849.0120 provides the following criteria that must be met in order for a CN to be granted for ITCM's proposed project:

- A. The probable result of denial would be an adverse effect upon the future adequacy, reliability or efficiency of energy supply to the applicant, to the applicant's customers or to the people of Minnesota and neighboring states;
- B. A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record;
- C. By a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health; and
- D. The record does not demonstrate that the design, construction or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules and regulations of other state and federal agencies and local governments.

Within 12 months of the submission of a CN application, the Commission must approve or deny a CN for the proposed facility (Minnesota Statutes, section 216B.243). The Commission may extend this time if it has good cause.

### 2.2 Route Permit

In Minnesota, no person may construct an HVTL without a route permit from the Commission (Minnesota Statutes, section 216E.03). An HVTL is defined as a conductor of electric energy and associated facilities designed for and capable of operation at a voltage of 100 kV or more and greater than 1,500 feet in length (Minnesota Statutes, section 216E.01). Associated facilities of a transmission line may include buildings, equipment and other physical structures that are necessary to the operation of an HVTL.

ITCM's proposed project would consist of approximately 73 miles of new 345 kV HVTL and therefore requires a route permit from the Commission. ITCM submitted a route permit application to the Commission on March 28, 2013. After accepting the application as complete, the Commission: (1) authorized an advisory task force for the project; (2) requested that the Department provide an opportunity for Commission to comment

on route alternatives being considered for study in the EIS; and (3) referred the application to the OAH for a contested case hearing, to be conducted jointly with the hearings for ITCM's CN application.

#### 2.2.1 Environmental Review

Applications for transmission line route permits are subject to environmental review conducted by Department EERA staff (Minnesota Rules, part 7850.2500). Projects proceeding under the full permitting process, such as ITCM's, require the preparation of an EIS. An EIS is a document which describes the potential human and environmental impacts of the project and possible mitigation measures, including route, alignment and site alternatives. The Department determines the scope of the EIS. The Department may include alternatives suggested by the public in the scope of the EIS if such alternatives are otherwise permissible and will assist in the Commission's decision on the route permit.

EERA staff solicited public comments on potential impacts and mitigation measures to study in the EIS (a process known as "scoping"). Commission staff and EERA staff held joint public information and EIS scoping meetings in July 16, 17 and 18, 2013, in the cities of Fairmont, Jackson and Blue Earth. A comment period, ending on August 2, 2013, provided the public an opportunity to propose impacts and mitigation measures – including route, alignment and site alternatives – for consideration in the scope of the EIS. EERA staff also solicited comment on the project through an advisory task force, which met in June and July 2013.

During the scoping comment period, comments were received from three agencies, three local units of government and from approximately 220 citizens. Of the comments received, 22 of them proposed a route or alignment alternative to mitigate potential impacts of the project. The advisory task force identified seven route alternatives for evaluation in the EIS. EERA staff provided a summary of the scoping process to the Commission and an opportunity for Commission comment on the alternatives to study in the EIS.

After consideration of the route permit application, the comments received during the scoping process, and the Commission's review of the scoping process, the Department issued a scoping decision for the EIS on October 14, 2013 (Appendix A). The scoping decision identifies the route, alignment and site alternatives that are evaluated in this EIS and

those alternatives that were not carried forward for evaluation. EERA staff provided notice of the scoping decision to those persons on the project mailing list and to all landowners along alternatives newly proposed during the scoping process.

EERA staff **issued a draft EIS on March 21, 2014**. EERA staff **sought** public comments on **the** draft EIS through public meetings and a public comment period. **Comments on the draft EIS were accepted through May 9, 2014. All comments received on the draft EIS and responses to these comments are** included in **this final EIS (Appendix M)**. The draft and final EIS will be entered in the records for these proceedings, so that they can be used by the ALJ and the Commission in making decisions about ITCM's project.

### 2.2.2 Public Hearing

Upon completion of the draft EIS, public hearings **are** held in the project area. The hearings **are** presided over by an ALJ from the OAH. The hearings will be held jointly with those for the CN.

Public hearings **were held in the project area the week of May 12, 2014. Interested persons were afforded** an opportunity **at the hearings to ask questions**, submit comments **and** present evidence. An evidentiary hearing **was held the week of May 19, 2014**, in St. Paul, Minnesota. The ALJ will submit a report to the Commission with findings of facts, conclusions of law and recommendations regarding a route permit for the project. A decision by the Commission on ITCM's route permit application is anticipated in the fall of 2014.

### 2.2.3 Route Permit Decision

The Commission is charged with selecting routes that minimize adverse human and environmental impacts while ensuring continuing electric power system reliability and integrity. Route permits issued by the Commission include a permitted route and anticipated alignment, as well as conditions specifying construction and operation standards. The Commission's generic route permit template and an example route permit previously issued by the Commission are included in Appendix B to provide the reader with a better understanding of the Commission's route permits.

Minnesota Statutes, section 216E.03, subdivision 7 identifies considerations that the Commission must take into account when designating transmission lines routes, including minimizing environmental

impacts and minimizing human settlement and other land use conflicts. Minnesota Rules, part 7850.4100 lists 14 factors for the Commission to consider when making a decision on a route permit:

- A. Effects on human settlement, including, but not limited to, displacement, noise, aesthetics, cultural values, recreation and public services;
- B. Effects on public health and safety;
- C. Effects on land-based economies, including, but not limited to, agriculture, forestry, tourism and mining;
- D. Effects on archaeological and historic resources;
- E. Effects on the natural environment, including effects on air and water quality resources and flora and fauna;
- F. Effects on rare and unique natural resources;
- G. Application of design options that maximize energy efficiencies, mitigate adverse environmental effects, and could accommodate expansion of transmission or generating capacity;
- H. Use or paralleling of existing right-of-way (ROW), survey lines, natural divisions lines and agricultural field boundaries;
- I. Use of existing large electric power generating plant sites;
- J. Use of existing transportation, pipeline and electrical transmission systems or ROWs;
- K. Electrical systems reliability;
- L. Costs of constructing, operating and maintaining the facility which are dependent on design and route;
- M. Adverse human and natural environmental effects which cannot be avoided; and
- N. Irreversible and irretrievable commitments of resources.

The Commission must make specific findings that it has considered locating a route for a new HVTL along an existing high voltage transmission line

ROW or parallel to existing highway ROW and, to the extent these are not used for the route, the Commission must state the reasons why (Minnesota Statutes, section 216E.03, subdivision 7). Before the Commission makes a final decision on a route permit, the Commission must determine whether the EIS for the project is adequate (Minnesota Rules, part 7850.2700). Additionally, the Commission may not grant a route permit for a project that requires a CN until a CN has been approved by the Commission (though these approvals may occur consecutively at the same Commission meeting).

The Commission is charged with making a final decision on a route permit within 60 days after receipt of the ALJ's report. A final decision must be made within one year after the Commission's determination that a route permit application is complete. The Commission may extend this time limit for up to three months for just cause or upon agreement of the applicant.

**Typically, when** issued a route permit by the Commission, **the permittee** may exercise the power of eminent domain to acquire land for its project. See Section 3.8.1 for further discussion of the eminent domain process.

### 2.3 Other Permits and Approvals

A route permit from the Commission is the only state permit required for the routing of ITCM's project (i.e., the Commission's route permit determines where the line will be located). The Commission's route permit supersedes local planning and zoning and binds state agencies (Minnesota Statutes, section 216E.10). Thus, state agencies are required to participate in the Commission's permitting process to aid the Commission's decision-making and to indicate routes that are not permissible.

However, various federal, state and local approvals may be required for activities related to the construction and operation of the project. All permits subsequent to the Commission's issuance of a route permit and necessary for the project (commonly referred to as "downstream permits") must be obtained by a permittee. Table 2-1 lists permits and approvals that could be required for the project, depending on the final design and layout. For further discussion of these permits, see ITCM's route permit application (Reference 1).

### 2.4 Electric Safety Codes

ITCM's project must meet the requirements of the National Electrical Safety Code (NESC). Utilities must comply with the most recent edition of the NESC, as published by the Institute of Electrical and Electronics Engineers, Inc., and approved by the American National Standards Institute, when constructing new facilities or reinvesting capital in existing facilities (Minnesota Statutes, section 326B.35, Minnesota Rules, part 7826.0300).

The NESC is designed to protect human health and the environment. It also ensures that the transmission line and all associated structures are built from high quality materials that will withstand the operational stresses placed upon them over the expected lifespan of the equipment, provided that routine maintenance is performed.

**Utilities must also comply with North American Electric Reliability Corporation (NERC) standards (Appendix B; see the Commission's generic route permit template, part 4.8.1). NERC standards define the reliability requirements for planning and operating the electrical transmission grid in North America.**

**Select portions of NESC and NERC standards are included in Appendix C.**

### 2.5 Issues Outside the Scope of the Environmental Impact Statement

In accordance with the scoping decision for this EIS (Appendix A), the following topics are not addressed in this document:

- Any route or site alternative not specifically identified for study in the scoping decision
- Any system alternative not specifically identified for study in the scoping decision
- Policy issues concerning whether utilities or local governments should be liable for the cost to relocate utility poles when roadways are widened
- The manner in which landowners are paid for transmission ROW easements

Table 2-1 List of Potential Permits and Approvals

Permit and Approvals	Responsible Agency
<b>Federal Permits and Approvals</b>	
Clean Water Act Section 404 Permit	U.S. Army Corps of Engineers
Part 7460 Review	Federal Aviation Administration
Special Use Permit	U.S. Fish and Wildlife Service
Endangered Species Act – Permits and/or Coordination	U.S. Fish and Wildlife Service
Spill Prevention, Control and Countermeasure Plan	U.S. Environmental Protection Agency/ Minnesota Pollution Control Agency
<b>Minnesota Permits and Approvals</b>	
Wetland Conservation Act	Board of Water and Soil Resources, County, Township, City
License to Cross Public Waters or State Lands	Minnesota Department of Natural Resources
General Permit No. 1997-0005; Temporary Water Appropriations	Minnesota Department of Natural Resources
Endangered Species Statutes	Minnesota Department of Natural Resources
Utility Permit on Trunk Highway ROW	Minnesota Department of Transportation
Driveway Access	Minnesota Department of Transportation
Oversize/Overweight Load Permits	Minnesota Department of Transportation
National Pollutant Discharge Elimination System Permit	Minnesota Pollution Control Agency
Clean Water Act Section 401 Permit	Minnesota Pollution Control Agency
Agricultural Impact Mitigation Plan Approval	Minnesota Department of Agriculture
<b>Local Permits and Approvals</b>	
Land Use Permits	County, Township, City
Overwidth/Overweight Load Permits	County, Township, City
Road Crossing or ROW Permits	County, Township, City
Driveway/Access Permits	County, Township, City

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