

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
J. Dennis O'Brien
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Route Permit Application
for the Canisteo HVTL Project in Itasca County

ISSUE DATE: December 17, 2013

DOCKET NO. E-015/TL-13-805

ORDER FINDING APPLICATION
COMPLETE AND REFERRING
MATTER TO THE OFFICE OF
ADMINISTRATIVE HEARINGS

PROCEDURAL HISTORY

On October 9, 2013, Minnesota Power filed a route permit application to construct two approximately 5-mile 115 kilovolt (kV) high-voltage transmission lines (HVTLs) and a substation near Coleraine (the Project). The two transmission lines would be constructed parallel to one another with an overlapping right-of-way of 160 feet.¹

On October 28, 2013, the Department of Commerce Energy Environmental Review and Analysis staff (EERA) submitted a compliance review; on October 29, 2013, the EERA filed comments on the completeness of the application.

On November 26, 2013, the Commission met to consider the matter.

¹ The key features of the proposed project are:

- The proposed HVTLs would connect to Minnesota Power's existing 28 Line west of Scenic Highway 7, traverse south across Reilly Beach Road to the Canisteo Pit, and then turn southwest, terminating at the proposed Canisteo Substation.
- The new Canisteo Substation would be constructed north of County Highway 61 and east of County Road 325, near the western edge of the Canisteo Pit.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

Before building a high-voltage transmission line in Minnesota, a utility must get a route permit from the Commission.² The term “high-voltage transmission line” includes any transmission line longer than 1,500 feet that will operate at a voltage of at least 100 kilovolts.³ Minnesota Power’s project qualifies as a high-voltage transmission line, triggering the route-permit requirement.

High voltage transmission lines that operate at a voltage between 100 and 200 kilovolts are eligible for review under the alternative permitting process under Minn. Rules, parts 7850.2800 to 7850.3900. Because it will operate at 115 kilovolts, the project is eligible for the alternative permitting process.

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.⁴ The EERA 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 EERA that the application contains the information required and is therefore complete under Minn. Rules, part 7850.3100. The Commission’s finding of completeness is as to form only; it implies no judgment on the merits of the application.

III. Scope of the Environmental Assessment – Varying Timeline

Under the alternative review process, 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. 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 alternative routes.

Under Minn. Rules, part 7850.3700, subp. 3, the scope of the environmental assessment must be determined by the Department within ten days after the closing 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 rule’s ten-day timeline for determining the scope of the environmental assessment after the close of the public comment

² Minn. Stat. § 216E.03, subd. 2.

³ Minn. Stat. § 216E.01, subd. 4

⁴ Minn. Rules, part 7850.3100.

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 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) Granting the variance would 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 request that the EERA draft route alternatives for the Commission's consideration so that it can provide input into the Department's environmental assessment scoping decision.

IV. Referral to the Office of Administrative Hearings

While no person has identified contested issues of material fact or recommended that the case be referred to the Office of Administrative Hearings for contested case proceedings, 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. The Commission will therefore refer the matter to the Office of Administrative Hearings for summary proceedings under Minn. R. 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 Administrative Law Judge assigned to this matter emphasize the statutory time frame within which the Commission must make a final decision on the application

- and strongly encourage the applicant and others to adhere to a schedule that conforms to this timeframe.⁵
- Direct 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, subd. 3, and request that state agencies submit comments before the last day of the public hearing.
- Request that the Administrative Law Judge ask the parties, participants, and the public to address whether the proposed project and any alternatives to the proposed project meet the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. Rules, part 7850.4100.
- Request the Administrative Law Judge to prepare a report setting forth findings, conclusions, and recommendations on proposed permit conditions and the merits of the project, and a preferred route alternative, applying the criteria set forth in statute and rule, and provide comments and recommendations, if any, on the conditions and provisions of the proposed permit.

Additionally, the Commission requests that, prior to the public hearing in this matter, the Department submit to the Administrative Law Judge its environmental assessment comments and analysis on the relative merits of the route alternatives, using the selection criteria established in section 216E.03, subd. 7, and Minn. Rules, part 7850.4100, evidence of compliance with environmental review procedures, and recommended permit language or specific provisions relative to permissible routes.

The Commission will also request that the Administrative Law Judge prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed project, alternatives to the proposed project, and a preferred route alternative, applying the routing criteria set forth in statute and rule. Finally, the Commission requests that the Administrative Law Judge provide comments and recommendations, if any, on the conditions and provisions of the proposed permit.

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 as the public advisor. Her contact information is: Tracy Smetana, Public Advisor, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 5501-2147. She can be reached by telephone at (651) 296-0406 and by email at consumer.puc@state.mn.us.

VI. Advisory Task Force

The EERA evaluated several factors in analyzing whether an advisory task force should be appointed by the Commission under Minn. Rules, part 7850.3600. The EERA analyzed the project's size, its complexity, the anticipated controversies, and sensitive resources and concluded

⁵ Minn. Rules, part 7850.3100 and Minn. Rules, part 7850.3700.

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 EERA's analysis and will decline to appoint an advisory task force at this time.

ORDER

1. The Commission hereby accepts the application as complete.
2. The Commission hereby refers the matter to the Office of Administrative Hearings for a summary proceeding to develop the record. The Commission requests that the agency adapt the existing procedural framework to incorporate the items set forth in part IV of this Order.
3. The Commission hereby varies Minn. Rules, part 7850.3700, subp. 3 to extend the ten-day timeline for determining the scope of the environmental assessment and requests that the Department's Energy Environmental Review and Analysis staff present draft route alternatives for the Commission's consideration to enable it to provide input into the Department's environmental-assessment scoping decision.
4. The Commission hereby appoints a public advisor as described herein.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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