

3.0 Agency Actions and Regulatory Approvals

This section summarizes the federal and state regulations affecting the permitting process and the required environmental documentation for the Project. Additional federal and state permits and local coordination is summarized in Table 3-1.

3.1 Federal Process

The Department of Energy (DOE) is the lead federal agency for the Project. Pursuant to Executive Order (EO) 10485 of 1953, as amended by EO 12038, and 10 Code of Federal Regulations (CFR) Section 205.320, a Presidential Permit is required for the Project since it will cross the international boundary between Minnesota and Manitoba, Canada. In accordance with EO 12038, DOE must determine whether issuance of a Presidential Permit for the construction, operation, maintenance, or connection, of facilities for the transmission of electric energy between the U.S. and a foreign country is consistent with the public interest. The Project must also obtain favorable recommendations from the Secretary of State and the Secretary of Defense (EO 10485 Section 1). Prior to issuance of a Presidential Permit, if the Project constitutes a Major Federal Action, the Project must be reviewed by DOE pursuant to the National Environmental Policy Act (NEPA). NEPA requires federal agencies to consider the environmental impacts and reasonable alternatives to Major Federal Actions. An Environmental Impact Statement (EIS) will be prepared in compliance with NEPA and DOE's implementing regulations pursuant to 10 CFR Part 1021.

The Applicant understands that DOE and the Minnesota Department of Commerce - Energy Environmental Review and Analysis (DOC-EERA) intend to jointly develop one EIS that meets both agencies' environmental review requirements to minimize duplication of effort.

The following provides a summary of the federal environmental review process under DOE regulations:

- Hold public scoping meetings to determine the scope of the EIS.
- Develop and publish the Draft EIS.
- Solicit comments from the public and agencies on the Draft EIS.
- Develop and publish the Final EIS.
- Issue Record of Decision (ROD) on potential environmental impacts of the Project and identify mitigation measures to minimize these impacts.
- Issue Presidential Permit

3.2 State Process

3.2.1 Minnesota Public Utilities Commission

The Minnesota Public Utilities Commission (PUC) regulates transmission line construction in Minnesota. PUC determines whether there is a need for a transmission line through its Certificate of Need process. PUC determines the route and any conditions it will require for the construction, operation, and maintenance of the transmission line through its route permitting process.

Certificate of Need

Pursuant to Minnesota Statute Section 216B.243, Subdivision 2, the Applicant filed a Certificate of Need application for the Project with PUC on October 21, 2013. PUC Docket Number E015/CN-12-1163. The Certificate of Need establishes the size, type, and required end points of the Project and must be issued prior to the issuance of a Route Permit.

Route Permit

Minnesota Statute Section 216E.03, Subdivision 2, provides that “[n]o person may construct a high-voltage transmission line without a Route Permit from the [Public Utilities] Commission. A high-voltage transmission line may be constructed only along a route approved by the Commission.” Per Minnesota Statute Section 216E.01, Subdivision 4, “High-voltage transmission line means a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 100 kilovolts [kVs] or more...” The Project is a 500 kV line that will be approximately 220 miles long, regardless of the Route Alternative chosen. Therefore a Route Permit from PUC is required.

Once this Route Permit Application (Application) is filed, it will be reviewed by PUC for completeness (Minnesota Rule 7850.2000, Subpart 1). PUC and DOC will hold public scoping meetings on the Project within 60 days (or longer if PUC grants a variance) of finding the Application complete (Minnesota Rule 7850.2300). The purpose of the public meetings is to obtain public input on (1) the Route Permit for the Project; (2) the Route Alternatives and Segment Options; and (3) the appropriate scope of the EIS that DOC-EERA will prepare for the Project (which in this case will be prepared jointly with DOE). The DOC-EERA will then prepare a Draft EIS for the Project (Minnesota Statute Section 216E.03, Subdivision 5 and Minnesota Rule 7850.2500).

Once the Draft EIS is published, the DOC-EERA will hold an informational meeting to obtain comments on the Draft EIS (Minnesota Rule 7850.2500 Subpart 8). An administrative law judge (ALJ) will also hold public hearings and an evidentiary contested case hearing on the Application, during which interested persons can submit evidence supporting or challenging the Project as proposed. Upon closing the record, the ALJ will submit a report and recommendation to PUC on the Application (Minnesota Statute Section 216E.03, Subdivision 6 & 9 and Minnesota Rule 7850.2600). PUC will consider the ALJ’s report and recommendation in reaching its determination whether to grant the Route Permit with or without modifications, or deny them (Minnesota Rule 7850.2700).

3.2.2 Department of Commerce - Energy Environmental Review and Analysis

Pursuant to Minnesota Statute Section 216E.03, Subdivision 5, DOC-EERA must prepare an EIS for proposed high-voltage transmission lines. Generally, an EIS considers issues relating to routing, including the use of existing rights-of-way (ROWs) and the impacts of line construction, operation, and maintenance on environmental features and human settlement. Under Minnesota law, the EIS does not address the need for the Project because that determination is handled through the Certificate of Need process. In this instance, need will be addressed in the joint state and federal EIS as part of the federal process.

DOC-EERA uses the EIS to disclose potential environmental impacts of the Project and to identify any mitigation measures required to minimize impacts of construction, operation, and maintenance of the Project. The Applicant anticipates that the EIS will be prepared jointly by DOC-EERA and DOE so that one environmental document will be developed for the Project.

The following provides a summary of the state environmental process for the route permit. As noted above, this process is expected to be coordinated with the federal NEPA process.

- Review Application documenting Route Alternatives for the Project and their potential environmental impacts.
- Hold joint public scoping meetings to obtain public and agency input on the Application and the scope of the EIS.
- Issue decision on the scope of the EIS.
- Develop and publish the Draft EIS.
- Hold informational meetings to obtain comments from public and agencies on the Draft EIS.
- Hold contested case hearing before an Administrative Law Judge (ALJ).
- Develop and publish the Final EIS.
- Issue recommendation on adequacy of Final EIS (to be completed by ALJ).
- Determine the adequacy of the Final EIS, and designate the Route Alternative for the Project, which will include any conditions required for construction, operation, and maintenance to minimize environmental impacts (to be determined by PUC).

3.3 Agency Decisions

3.3.1 Federal Agency Decisions

DOE will use the Presidential Permit application and the Final EIS to make a decision on whether the issuance of a Presidential Permit is consistent with the public interest.

3.3.2 Minnesota Public Utilities Commission Decisions

Decisions Being Considered in this Application

PUC will use the Application process to identify an approved Route Alternative and develop a Route Permit with appropriate conditions.

Decisions Not Being Considered in this Application

PUC will not use the Application to determine the need for the Project (Minnesota Statutes Section 216E.02, subdivision 2). PUC will use the Certificate of Need application, and subsequent contested case process, to determine Project need (Minnesota Statutes Sections 216B.243 and 216E.03, subdivision 1). The Applicant anticipates that the joint state and federal EIS will include information on both the project need and routing issues, to comply with the federal environmental review process (Minnesota Statutes Section 216E.02, subdivision 3).

3.4 Other Permits, Approvals, Decisions

In addition to the state Certificate of Need, Route Permit, and the joint state and federal EIS, the Applicant is actively working with local, state, and federal agencies to ensure that all other permits, approvals, and decisions that may be required for the Project are identified (see Table 3-1).

Table 3-1. Other Potential Permits and Approvals

Permit/Decision	Jurisdiction
Federal Reviews/Approvals	
Section 106 Consultation	U.S. Department of Energy
Section 10 Permit	U.S. Army Corps of Engineers
Section 404 Permit	U.S. Army Corps of Engineers
Section 7 Consultation/Biological Assessment	U.S. Department of Energy and U.S. Fish and Wildlife Service
Wildlife Permits	U.S. Fish and Wildlife Service
Permit to Cross Federal Aid Highway	U.S. Federal Highway Administration
Farmland Protection Policy Act/Farmland Conversion Impact rating	U.S. Department of Agriculture
Special Use Permit/ROW Permit or Easement	U.S. Forest Service U.S. Bureau of Land Management U.S. Fish and Wildlife Service
Obstruction Evaluation	Federal Aviation Administration
Minnesota State Reviews/Approvals	
Cultural and Historic Resources Review	State Historic Preservation Office
Utility Permit	Department of Transportation
Endangered Species Consultation/Wildlife Permits	Department of Natural Resources Ecological Services
License to Cross Public Lands and Waters	Department of Natural Resources Lands and Minerals
Public Waters Work Permit	Department of Natural Resources Waters
Water Appropriation/Dewatering Permit	Department of Natural Resources Waters
Wetland Conservation Act Permit	Board of Water and Soil Resources and/or Local Government Units
Section 401 Water Quality Certification	Pollution Control Agency
National Pollutant Discharge Elimination System Permit	Pollution Control Agency
Agricultural Mitigation Plan (part of Route Permit)	Department of Agriculture
Noxious Weed Management Plan	Department of Agriculture
Local Coordination	
Road Crossing/Right-of-Way	County, Township, City
Public Lands	County, Township, City
Overwidth Load	County, Township, City
Driveway Access	County, Township, City

3.4.1 Federal Approvals

In addition to the federal NEPA process (10 CFR 1021), the Applicant is actively working with federal agencies with respect to the following approvals that may be needed:

- Section 106 Consultation – Section 106 of the National Historic Preservation Act, 16 United States Code (USC) Section 470f, and its implementing regulations, 36 CFR Sections 800.1–800.16, require federal agency consultation with Indian Tribes that may be affected by the Project, other appropriate parties, and the State Historic Preservation Officer (SHPO). DOE will lead this effort to the extent that it involves government-to-government consultation with Indian Tribes or the SHPO. The Applicant will complete appropriate studies and provide information and assistance to DOE, as requested.
- Section 10 Permit – U.S. Army Corps of Engineers (USACE) regulates impacts on navigable waters of the U.S. pursuant to Section 10 of the Rivers and Harbors Act of 1899, 33 USC Section 403. The Big Fork River is classified by USACE as navigable water, and the Applicant will apply for a permit for the Project to cross it.
- Section 404 of the Clean Water Act Permit – USACE regulates discharges of dredged or fill material into waters of the U.S. under Section 404 of the Clean Water Act, 33 USC Section 1344. The Applicant will seek a Section 404 Permit at the appropriate time.
- Section 7 Consultation – The Applicant has initiated preliminary communications with the U.S. Fish and Wildlife Service (USFWS) regarding compliance with the Endangered Species Act (16 USC Sections 1531–1534) to assess the potential impact of the Project on protected species. DOE, as the lead federal agency for this Project, will prepare a Biological Assessment (BA), with assistance from the Applicant, to document the potential effects on protected species and consult with USFWS as required by Section 7 of the Endangered Species Act.
- Bald and Golden Eagle Protection Act (BGEPA) – USFWS oversees compliance with BGEPA (16 U.S.C. 668-668c), which prohibits anyone from “taking” birds, nests or eggs without a permit from the Secretary of the Interior. The Applicant will work with the USFWS to avoid and mitigate potential impacts to bald eagles.
- Migratory Bird Treaty Act (MBTA) – USFWS oversees compliance with the MBTA (16 USC 703-712). The statute makes it unlawful without a waiver to pursue, hunt, take, capture, kill or sell birds listed as migratory birds. The Applicant will work with the USFWS to avoid and mitigate potential impacts to migratory birds.
- Permit to Cross Federal Aid Highway – Transmission line crossings of a federal highway require a use and occupancy agreement under 23 CFR Section 645.213. The Applicant will work with the Minnesota Department of Transportation (DOT) (responsible for administering the agreements) to obtain the required approvals.
- Farmland Protection Policy Act and Farmland Conversion Impact Rating – The U.S. Department of Agriculture (USDA) oversees farmland conversions under 7 USC Sections 4201–4208. The Applicant will complete Form AD-1006 Farmland Conversion Impact Rating and provide it to the Natural Resource Conservation Service (NRCS) for review.

- Special Use Permit – the USFWS, U.S. Forest Service (USFS), and Bureau of Land Management (BLM) require a Special Use Permit or a ROW Permit/Easement if the Project crosses land under their jurisdictions. The USFWS oversees permits across their lands under 16 USC 668dd. The USDA oversees special use permits for the USFS under 36 CFR 214 Subpart B. The U.S. Department of the Interior oversees right-of-way regulations for the BLM under 43 CFR 2800/2880. The Applicant will work with these agencies to obtain the required permit if a crossing is required.
- Obstruction Evaluation – The Federal Aviation Administration (FAA) requires that Projects located near regulated airports evaluate their potential to obstruct air traffic. The FAA must receive prior notification regarding construction of a structure under 14 CFR Part 77. Minnesota DOT Aeronautics Division requires a permit for tall structures that penetrate imaginary surfaces; primary, horizontal, conical, approach, or transitional surfaces, as well as certain height encroachments.

3.4.2 State Approvals

Based on the proposed Project, the Applicant is actively working with state agencies with respect to the following approvals as may be required:

- Cultural and Historic Resources Review – Minnesota Statute designates the director of the Minnesota Historical Society as the State Historic Preservation Officer (Minnesota Statute Section 138.081) and places responsibility for the historic preservation program with the Minnesota Historical Society. Coordination with program staff has been initiated on the Project regarding historic and archaeological resources.
- Utility Permit – A permit from Minnesota DOT is required under Minnesota Rule 8810.3300 for construction, placement, or maintenance of utility lines adjacent or across highway ROW. The Applicant is coordinating with Minnesota DOT as they review the Project's Route Alternatives and Segment Options for possible permitting.
- Endangered Species Consultation – The Minnesota Department of Natural Resources (DNR) Natural Heritage and Nongame Research Program collects, manages, and interprets information about nongame species (Minnesota Statute Section 84.0895; Minnesota Rule 6134.0100-0400 and 6212.1800-2200). Consultation with program staff has been initiated on the Project regarding rare and unique species.
- License to Cross Public Lands and Water – Minnesota DNR's Division of Lands and Minerals regulates utility crossings over, under, or across any state land or public water identified on the Public Waters and Wetlands Maps. A license to cross public waters is required under Minnesota Statute Section 84.415 and Minnesota Rule Chapter 6135. There are areas where either the Route Alternatives or Segment Options cross public waterways, this will require a public water crossing license. The Project Route Alternatives and Segment Options will also cross state lands that will require a public land crossing license. The Applicant is coordinating with Minnesota DNR to determine necessary crossing permits.
- Public Waters Work Permit – The purpose of this program is to regulate development activities below the ordinary high water mark of wetlands, streams, and lakes in Minnesota. Under Minnesota Statute Section 103G.245, Subdivision 1, a Public Waters

Work Permit is required for any action taken by the state, political subdivision of the state, or corporation or person that alters or develops any obstruction to public waters or changes the course of a public waterway or body. The Applicant will apply for this permit as necessary.

- Wetland Conservation Act Permit – The Minnesota Board of Water and Soil Resources administers the state Wetland Conservation Act pursuant to Minnesota Rule Chapter 8420. The transmission line portion of the Project is expected to be exempt under Minnesota Rule 8420.0420 Subpart 6. The Applicant anticipates that impacts related to the Blackberry 500 kV Substation will require a permit. The Applicant will apply for this permit (which is applied for jointly with a Section 404 Clean Water Act Permit from USACE) as necessary.
- Section 401 Water Quality Certification – Minnesota Pollution Control Agency regulates water quality under Section 401 of the Clean Water Act (33 USC Section 1344). The Applicant will apply for this Certification (which is applied for jointly with a Section 404 Clean Water Act Permit from USACE).
- National Pollutant Discharge Elimination System (NPDES) Permit – A NPDES permit from the Minnesota Pollution Control Agency (MPCA) is required for stormwater discharges associated with construction activities disturbing an area of 1 acre or more (Minnesota Rule 7090.0030). A requirement of the permit is to develop and implement a Stormwater Pollution Prevention Plan (SWPPP), which includes best management practices (BMPs) to minimize discharge of pollutants from the site. The Applicant will apply for this permit once the design is complete, prior to initiation of construction.
- Agricultural Mitigation Plan – The Minnesota Department of Agriculture is the lead agency for development of an agricultural mitigation plan, if necessary (Minnesota Statute Section 216B.243, Subdivision 7). The objective of an Agriculture Mitigation Plan is to identify measures that can be taken to avoid, mitigate, repair, and/or provide compensation for impacts caused by the transmission line construction on agricultural lands.
- Noxious Weed Management Plan – Under Minnesota Statute Section 18G.04, the Minnesota Department of Agriculture has the responsibility for eradication, control, and abatement of nuisance plant species. The local County Agricultural Inspector administers the program. The Applicant will develop a vegetation maintenance and management plan for the Project.

3.4.3 Local Actions

In accordance with Minnesota Statute Section 216E.10, the Project is exempt from regional, county, local, and special purposed government route approvals. However, the Applicant has provided notice to local units of government in compliance with Minnesota Statutes Section 216E.03, subdivision 3a and anticipates coordination with local government units (LGUs) regarding the following issues:

- Road crossing/ROW – Coordination might be required to cross or occupy county, township, and city road ROWs.

- Public lands – Coordination would be required to occupy county, township, and city lands such as forest lands, parklands, watershed districts, and other properties owned by these entities.
- Over-width load – Coordination might be required to move over-width or heavy loads on county, township, or city roads.
- Driveway access – Coordination might be required to construct access roads or driveways from county, township, or city roads.