BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
David C. Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Application of Minnesota Power for a Route Permit for the Great Northern Transmission Line Project in Roseau, Lake of the Woods, Beltrami, Koochiching, and Itasca Counties

ISSUE DATE: July 2, 2014

DOCKET NO. E-015/TL-14-21

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

PROCEDURAL HISTORY

On April 15, 2014, Minnesota Power (or the Applicant) filed a petition for a route permit for its Great Northern high voltage transmission line project in northern Minnesota. The proposed project is a 500 kilovolt (kV) transmission line to be located between the province of Manitoba in Canada and the Blackberry Substation in Itasca County (approximately 225 to 300 miles). The transmission line is intended to provide delivery of and access to power generated by Manitoba Hydro's hydroelectric stations in Manitoba.

On April 18, 2014, the Commission issued a notice seeking comments on whether Minnesota Power's application was complete and whether an advisory task force should be appointed for the project.

On May 16, 2014, the Minnesota Department of Commerce Energy Environmental Review and Analysis (EERA) filed comments recommending that the Commission accept the route-permit application as substantially complete and authorize the Department to establish three advisory task forces.

On May 28, 2014, Minnesota Power filed reply comments supporting the Department's recommendations.

On June 19, 2014, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Summary

In this Order the Commission finds that Minnesota Power's application is substantially complete, triggering the next phase of review for the application.

As part of this next phase, the Commission will do the following:

- Adopt a proposed structure and charge for the advisory task force, as set forth more fully in this Order.
- Delegate authority to the Executive Secretary to approve the advisory task force membership.
- Request the EERA to begin the environmental review process and the route selection process.
- Authorize the EERA to prepare an analysis of draft route alternatives to facilitate Commission input to the Commissioner of Commerce on the scope of the environmental impact statement prior to its issuance.
- Refer this matter for contested case proceedings, and request that the procedural steps recommended herein be incorporated into the existing procedural framework.

II. Regulatory Background

Before building a high-voltage transmission line in Minnesota, a utility must get a route permit from the Commission.[1] The term "high-voltage transmission line" includes any transmission line longer than1,500 feet that will operate at a voltage of at least 100 kilovolts.[2] Minnesota Power's proposed transmission line qualifies as a high-voltage transmission line, triggering the route permit requirement.[3]

High-voltage transmission lines that are longer than five miles and operate at a voltage greater than 200 kilovolts are subject to the full permitting process prescribed in Minn. R. 7850.1700 to .2700.[4] Because the project is longer than five miles and will operate at a voltage greater than 200 kilovolts, it is subject to the full permitting process, including the requirement of a contested case proceeding before an Administrative Law Judge.[5]

III. Application Completeness

Having reviewed the application and the comments, the Commission concurs with the parties that the application is substantially complete under the route-permit statute and rules. The Commission will therefore accept the application as complete and authorize the Department to process the application using the procedures set forth in Minn. R. 7850.1700 to .2700, and the guidelines set forth herein.

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[1] Minn. Stat. § 216E.03, subd. 2.

[2] Minn. Stat. § 216E.01, subd. 4.

[3] The Commission has jurisdiction over applications for route permits for large energy facilities. Minn. Stat. § 216E.02, subd. 2.

[4] *See* Minn. R. 7850.2800, subp. 1.

[5] Because of its size, the proposed Great Northern transmission line requires a certificate of need as well as the route permit sought in this docket. Minnesota Power applied to the Commission for a certificate of need on October 21, 2013 (Docket No. E-015/CN-12-1163). The Commission issued a Notice and Order in the certificate of need docket referring that matter for contested case proceedings on January 8, 2014.

IV. Citizens Advisory Task Force

The Commission has the authority to appoint a citizen advisory task force to, among other possible duties, identify additional routes or impacts to be evaluated in the environmental impact statement.[6] The Commission must decide as early as possible in the permitting process whether to appoint a task force.[7] When appointing a task force, the Commission gives it a written charge.[8]

The Commission finds that the proposed transmission line warrants the use of an advisory task force. Further, due to the size and complexity of the project, crossing an international boundary,[9] as well as its proximity to areas of sensitive physical resources, and the potential for controversy in the permitting process, the Department recommended the appointment of three advisory task forces – one to be located in each of the west, central, and east thirds of the project area. Having reviewed the Department's comments, the Commission agrees that the size and complexity of this project justify the appointment of three advisory task forces.

In addition, the Department recommended a proposed structure and charge for the advisory task forces to use. The Commission has considered the Department's filing, and incorporates many of the Department's recommendations in adopting the following structure and charge for the Department to use in connection with the advisory task forces in this proceeding:

A. The Department has proposed the composition of each of the three ATFs. Once the Department has finalized the names and affiliations of each ATF's members, it should submit the lists to the Commission. The Commission delegates the authority to approve task force membership, or changes to that membership, to the Executive Secretary.

B. When submitting the list of members of the ATFs, the Department should document that it contacted all local and tribal governments along the proposed route, provide the names of other agencies and organizations that it contacted in developing its list of ATF members, and identify the interests that are represented by the proposed membership.

C. The Department should prepare a schedule that includes the number and approximate dates of the ATF meetings, and file it with the Commission. The Department should assure that discussion of mitigation is incorporated into the ATF meeting schedule.

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[6] Minn. R. 7850.2400, subps, 1, 3.

[7] *Id*., subp. 1.

[8] *Id*., subp. 3.

[9] Minnesota Power is required to obtain a Presidential Permit for a Border Crossing from the United States Department of Energy (DOE). Minnesota Power filed an application for a Presidential Permit on April 15, 2014. DOE is required to consider the environmental effects of the project, and reasonable alternatives to the project, pursuant to the National Environmental Policy Act and DOE's implementing regulations.

D. The Department should file with the Commission its plan to assure that appropriate state agencies are invited to participate in ATF meetings; that the public has the opportunity to submit information to the ATF; that the minutes and reports of all ATF meetings are available for review prior to the next meeting; that at the initial ATF meetings there is a discussion of the relationship between the state and federal environmental impact statements, that ATF members receive written information that clearly identifies the applicable criteria for selecting alternatives to be included in the project scoping; that ATF members understand the role of the ATF and their role as ATF members; and the projected date for the completion of the advisory task force reports, including additional routes and impacts, which must be prior to the Department EERA filing its recommendation on scoping with the Commission.

E. The final ATF reports should include all routes brought forward by ATF members and reasons for their selection or rejection; the preference, if any, of individual members on specific routes or impacts; and proposed mitigation related to the route alternatives.

In addition, the Commission encourages the Department to:

- Ask ATF members to regularly communicate with their constituencies and seek their input and feedback; and
- Conduct public information meetings in each of the three ATF areas following the release of the final ATF report to accept comment and answer questions.

Finally, as referenced in these guidelines, the Commission delegates authority to the Executive Secretary to approve advisory task force membership.

V. Preparation of Draft Route Alternatives

Under the full permitting process, the Department must prepare for the Commission's consideration an environmental impact statement studying the impacts of both Minnesota Power's proposed route and alternative routes.[10] Before preparing this document, the Department will conduct a scoping process to determine the routes and impacts to be addressed.[11]

The Commission requests that the Department promptly begin the environmental review process and route selection process, including identifying alternative sites or routes. The Commission also asks that the Department conduct public scoping meetings, issue notices required in that process, and perform related administrative tasks, including coordinating the three advisory task forces.

Finally, the Commission requests that, before issuing its scoping decision under Minn. R. 7850.2500, the Department present draft route alternatives to the Commission to facilitate its input on the scope of the environmental impact statement.

[10] Minn. Stat.§ 216E.03, subd. 5.

[11] Minn. R. 7850.2500, subp. 2,4.

VI. Issues to be Addressed -- Whether the Project Meets Statutory and Regulatory Criteria

Minn. Stat. § 216E.03, subd. 10 states that no route permit shall be issued in violation of the route selection standards and criteria established in Minn. Stat. § 216.03, subd. 7, and in rules adopted by the Commission. Section 216E.03, subd. 7 provides a list of considerations in designating routes. The Commission rules applicable to applications for route permits are found in Minn. R. 7850.1000 to .5600.

The Commission requests that the Administrative Law Judge assigned to this matter ask the parties, participants, and public to address whether the proposed project meets these criteria. Participants may also raise and address other issues relevant to the application.

VII. Referral for Contested Case Proceedings

The full permitting process requires that a contested case hearing be held before an Administrative Law Judge from the Office of Administrative Hearings.[12] The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings before an Administrative Law Judge, adapting the existing procedural framework to facilitate further factual development of the record. Specifically, the Commission will take the actions set forth below:

a. Request that the Administrative Law Judge 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 time frame.

b. 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, and request that state agencies submit comments prior to the last day of the public hearing.

c. Request 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. R. 7850.4100.

d. Request that the Administrative Law Judge prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed project and a preferred route alternative, applying the routing criteria set forth in statute and rule; and provide comments and recommendations, if any, on the conditions and provisions of the proposed permit.

[12] Minn. Stat. § 216E.03, subd. 6.

Additionally, the Commission requests that prior to the public hearing in this matter, the Department submit to the Administrative Law Judge its comments on the merits of the application, and based on the record at that point, its environmental impact statement; evidence of compliance with environmental review procedures; and recommended permit language or specific provisions relative to permittable routes. The environmental impact statement must include an analysis of the relative merits of the route alternatives using the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. R. 7850.4100.

This "relative merits" analysis will examine each route alternative in relation to every other route alternative, based on the factors in the statute and rule. It will identify routes with fatal flaws. It will identify routes with common or similar impacts relative to the factors. And where factors differ among routes, it will sort the routes, identifying those needing no mitigation, those to which there are negative impacts that would need mitigation, alternatives for how mitigation might be addressed, and those with unavoidable impacts that cannot be mitigated.

The relative merits analysis is intended to be a tool to assist the public and agencies in understanding the impacts of the alternatives and to facilitate opportunities for greater public input into the process.

During the comment period, other agencies and the public provide information that is needed but otherwise not available to the Department on the relative importance of the factors. After the close of the comment period, and before the Administrative Law Judge issues a decision on the preferred route, the Department will provide its conclusion as to the most appropriate route or routes.

The conclusion will assist the Administrative Law Judge in reaching a recommendation for the Commission's consideration.

VIII. 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. R. 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, Saint Paul, Minnesota 55101-2147, (651) 296-0406, to act as the public advisor in this matter.

IX. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to the contested case is Ann O'Reilly. Her address and telephone number are: Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101; (651) 361-7844. The mailing address of the Office of Administrative Hearings is P.O. Box 64620, St. Paul, Minnesota 55164-0620.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57 to 14.62; the rules of the Office of Administrative Hearings, Minn. R. 1405.0200 to .2700. Regarding any issue on which Chapter 1405 is silent, the provisions of Minn. R. 1400.5100 to 1400.8400 regarding contested cases shall apply and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.3200. Hearings may be recessed and reset by the Administrative Law Judge pursuant to Minn. R. 1405.1400 to 2300.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at: www.revisor.mn.gov/pubs.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law judge within 20 days of the date of this Notice and Order for Hearing.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. R. 1405.1300, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Michael Kaluzniak, Senior Energy Facilities Planner, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2257, by fax at (651) 297-7073, and by e-mail at mike.kaluzniak@state.mn.us.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission, the Department's Energy Facility Permitting staff, and the parties.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties, Persons, and Intervention

Currently, parties in this case are the Applicant and the EERA. Other persons who wish to be granted permission by the Administrative Law Judge to intervene in this matter must do so under Minn. R. 1405.0900. Subpart 1 of that rule prescribes the timing and contents of a petition to intervene. Subpart 2 prescribes the timing and content of any objection to the petition, and subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petitions.

The hearing process established under Minnesota Rules chapter 1405 is designed to facilitate public participation, and persons need not intervene as parties to participate. All public participants have significant procedural rights, including, but not limited to, the right to be present throughout the proceeding, to offer direct testimony in oral or written form, to question all persons who testify, and to submit comments to the Administrative Law Judge and the Commission.

Persons who intervene and are granted party status have additional rights and responsibilities, including, but not limited to, the right to object to another's petition for intervention, the right to submit direct testimony and conduct cross-examination of other parties' witnesses, and the duty to submit prefiled testimony, comply with discovery requests, produce witnesses, file briefs, and serve all documents on all other parties.

The description of rights in this section is summary in nature, as required by Minn. R. 1405.0500, subpart 1(I), and is not intended to be comprehensive. Interested parties are encouraged to review chapter 1405 to identify the scope of rights and authority to act given "persons" or restricted "parties" under various provisions of that chapter.

D. Prehearing Conference

A prehearing conference will be held in this case on Monday, July 21, 2014, at 9:00 a.m. in the Large Hearing Room at the offices of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

E. Timing Considerations

Minnesota Statutes § 216E.03, subd. 9, requires the Commission to make its final decision on a route-permit application within one year after the Commission determines that the application is complete. The Commission may extend this period for up to three months for just cause or upon agreement of the applicant.

The Commission requests that the Administrative Law Judge emphasize the statutory time frame for the Commission to make its final decision and strongly encourage the parties and participants to adhere to a schedule that conforms to the statutory time frame.

F. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat., chapter 10A, apply to power-line routing cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, or (800) 657-3889 with any questions.

G. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. R. 7845.7300 to 7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby accepts the application as complete.

2. The Commission hereby adopts the Advisory Task Force structure and charge according to the guidelines set forth herein.

3. The Commission delegates authority to the Executive Secretary to approve advisory task force membership.

4. The Commission hereby refers Minnesota Power's route-permit application to the Office of Administrative Hearings for contested case proceedings.

5. The Commission appoints a public advisor as set forth 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 (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.

Attachment A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Request of Minnesota Power for a Route Permit for the Great Northern Transmission Line Project in Roseau, Lake of the Woods, Beltrami, Koochiching, and Itasca Counties	MPUC Docket No. E-015/TL-14-21 OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge: Ann O'Reilly, Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101; Mailing Address: Box 64620, St. Paul, Minnesota 55164-0620; Telephone Number: (651) 361-7844.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

E-MAIL ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY:_____

DATE: