

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
John A. Tuma
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Minnkota Power Cooperative, Inc. for a Route Permit for the Clearbrook-Clearbrook West 115 kV Transmission line and Substation Project in Clearwater County

ISSUE DATE: January 25, 2016

DOCKET NO. ET-6/TL-14-665

ORDER FINDING APPLICATION COMPLETE AND INITIATING ALTERNATIVE REVIEW PROCESS

PROCEDURAL HISTORY

On November 25, 2015, Minnkota Power Cooperative, Inc. (Minnkota) filed an application for a route permit to build a 115 kilovolt (kV) transmission line of 5.3 miles in length in Leon and Pine Lake Townships and a new substation in Pine Lake Township.

On December 16, 2015, the Department of Commerce Energy Environmental Review and Analysis staff (EERA) filed comments recommending that the Commission find the application complete and request a summary report of public hearings from an Administrative Law Judge.

On January 14, 2016 the application came before the Commission.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

No person may construct a high voltage transmission line without a route permit from the Commission.¹ A high voltage transmission line is defined as a “conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 100 kilovolts or more and is greater than 1,500 feet in length.”² Minnkota has proposed construction of a 115 KV transmission line greater than 1,500 feet in length, requiring the company to obtain a route permit.

¹ Minn. Stat. § 216E.03, subd. 2.

² Minn. Stat. § 216E.01, subd. 4.

II. Application Completeness

The EERA reviewed the route permit application under Minn. R. 7850.3100 to analyze whether the application contains the required information. Based on its analysis, the EERA stated that the application contains the required information and recommended that the Commission accept the application as complete. The Commission concurs with the EERA that the application meets the requirements of Minn. R. 7850.3100 and will accept the application as complete.

III. Commission Action

To facilitate development of the record on route permit issues, the Commission will authorize use of the alternative permitting process set forth in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900. Minnkota had requested review under the alternative permitting process, which is applicable to projects including high voltage transmission lines between 100 and 200 kilovolts.

Under this process, the Commission asks the Office of Administrative Hearings to hold at least one public hearing, scheduled in conjunction with Commission staff. The Commission will ask that the Administrative Law Judge in this case prepare a summary report of the comments received during the public hearing comment period.

The Commission will also take the following steps listed below to facilitate development of the record:

- Designate Tracy Smetana, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 296-0406, to act as the public advisor.
- Grant a variance to Minn. R. 7850.3700, subp. 3, to vary the ten-day time limit for the Department to issue its scoping decision to allow for Commission review and input on route alternatives.
- Request the EERA to present draft route alternatives to the Commission for input prior to the issuance of the final scoping decision by the EERA.
- Delegate administrative authority to the Executive Secretary, including the authority to establish or vary time periods under Minn. R. 7829.3100.
- 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 their comments prior to the last day of the public hearings.
- Direct Commission staff to work with the Administrative Law Judge and Department staff in selecting suitable locations for public hearings on the application.
- Direct Commission staff to enter a route permit template and proposed process schedule into the record following this decision.

- Direct the applicant to work with Commission staff to arrange for publication of the notice of hearing in newspapers of general circulation at least ten days prior to the hearing. Notice should be in the form of visible display ads and proof of publication should be e-filed.
- Require the Applicant to place a printed and electronic copy of the application and any supplements in at least one government center or public library in each of the counties where the project is located.

IV. Rule Variance

Under Minn. R. 7850.3700, subp. 3, the Department of Commerce is required to prepare an environmental assessment that evaluates the potential human and environmental impacts of the proposed project. Under the rule, the Department is required to hold a public scoping meeting where members of the public have the opportunity to provide comments. After the close of the public scoping meeting, the Department is required to provide a written comment period of at least seven days. Within 10 days of the close of the comment period, the Department must determine the scope of the environmental assessment.

Under Minn. Stat. § 216E.04, subd. 5, the environmental assessment must contain information on the human and environmental impacts of the proposed project and on other routes identified by the Commission. The ten-day timeline for determining the scope of the environmental assessment after the close of the public comment period strains the Commission's ability to evaluate public input and to identify other possible routes prior to environmental review.

Under Minn. R. 7829.3200, the Commission must vary its rules upon making the following findings:

- (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.

To ensure that the Department has sufficient time to evaluate comments and make a determination, the Commission will vary the rule to extend the 10-day timeline for determining the scope of the environmental assessment.

The Commission finds that enforcement of the rule would impose an excessive burden on those affected by the rule by limiting the Commission's input on and consideration of other route alternatives prior to environmental review of the project. Further, 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. And finally, granting the variance would not conflict with standards imposed by law, since the time frame is set by rule and not by statute.

ORDER

1. The Commission hereby accepts the route permit application as complete and authorizes review under the alternative permitting process as set forth in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900.
2. The Commission designates Tracy Smetana of Commission staff to serve as the public advisor.
3. The Commission directs use of the summary report review process to develop the record for the route permit and requests that the Office of Administrative Hearings prepare a summary report of the comments received regarding the route permit application.
4. The Commission will also take the actions set forth below:
 - a. Grant a variance to Minn. R. 7850.3700, subp. 3, to vary the ten-day time limit for the Department to issue its scoping decision to allow for Commission review and input on route alternatives.
 - b. Request EERA to present draft route alternatives to the Commission for input prior to the issuance of the final scoping decision by the EERA.
 - c. Delegate administrative authority to the Executive Secretary, including the authority to establish or vary time periods under Minn. R. 7829.3100.
 - d. Direct 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.
 - e. Direct staff to work with the Administrative Law Judge and the Department staff in selecting a suitable location for public hearings on the application.
 - f. Direct Commission staff to enter a route permit template and proposed process schedule into the record following this decision.
 - g. Direct the applicant to work with Commission staff to arrange for publication of the notice of hearing in newspapers of general circulation at least ten days prior to the hearing. Notice should be in the form of visible display ads and proof of publication should be e-filed.

- h. Require the applicant to place a printed and electronic copy of the application and any supplements in at least one government center or public library in each city where the proposed project is located.
- 5. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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