

April 12, 2016

Daniel P. Wolf, Executive Secretary
Minnesota Public Utilities Commission
127 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: EERA Comments on EA Scoping
Clearbrook-Clearbrook West 115 kV Transmission Project
Docket No. ET6/TL-14-665

Dear Mr. Wolf:

Attached are the review and comments of the Minnesota Department of Commerce Energy Environmental Review and Analysis (EERA) staff in the following matter:

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

EERA staff herein provides a summary of the Environmental Assessment (EA) scoping process and informs the Commission that it intends to recommend one route alternative, as described in the attached comments, to the Deputy Commissioner of Commerce for the Scoping Decision for the Environmental Assessment.

EERA staff is available to answer any questions the Commission may have.

Sincerely,



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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS AND RECOMMENDATIONS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
ENERGY ENVIRONMENTAL REVIEW AND ANALYSIS**

DOCKET NO. ET6/TL-14-665

Date April 12, 2015
EERA Staff: David Birkholz.....(651) 539-1838

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

Issues Addressed: Summary of the scoping process for the Environmental Assessment (EA) including a summary of comments and potential alternatives.

Attachments: Proposed and Potential Alternative Route Maps

Additional documents and information can be found on <http://mn.gov/commerce/energyfacilities/Docket.html?Id=33970> or on eDockets <http://www.edockets.state.mn.us/EFilin/search.jsp> (14-665).

This document can be made available in alternative formats; i.e. large print or audio tape by calling (651) 539-1530.

Introduction and Background

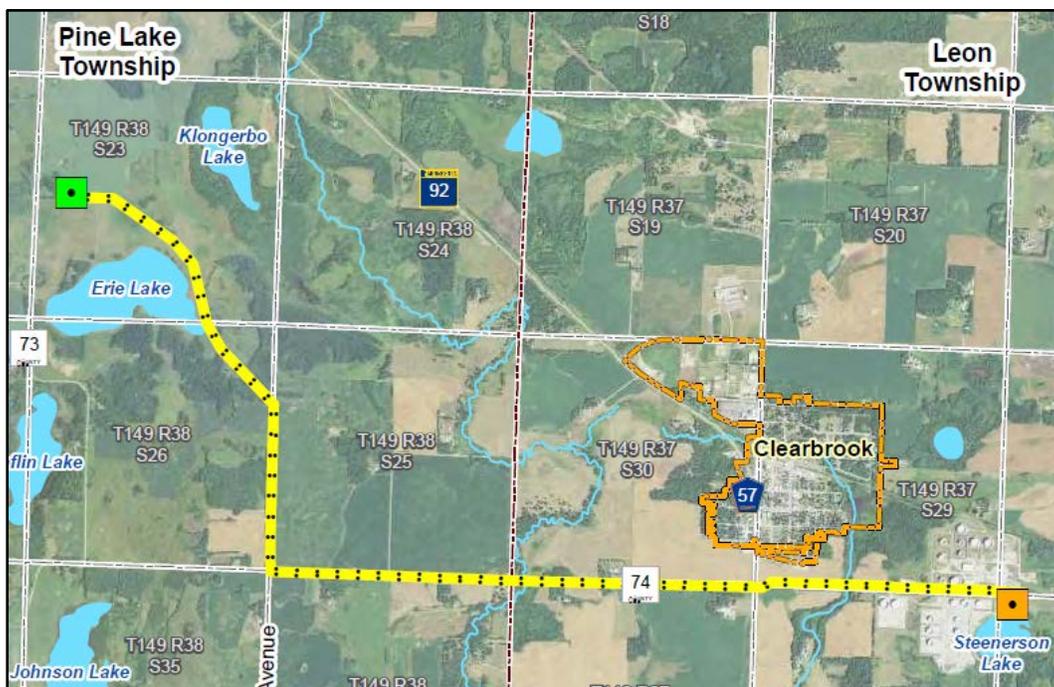
These comments are intended to advise the Commission on the scoping process for the Clearbrook-Clearbrook West 115 kilovolt (kV) High Voltage Transmission Line (HVTL) and Substation Project (Project). The final scoping decision will identify the issues and alternatives that the Department of Commerce (DOC) and the Public Utilities Commission (Commission) have determined are appropriate for inclusion in the environmental review document.

Minnkota submitted a Route Permit Application (RPA)¹ for the Project to the Commission on November 25, 2015. The Application was accepted as complete on January 25, 2015. Minnkota expects the Project to be operational by the end of 2017.

Project Description and Purpose

The proposed 115 kV HVTL starts in Leon Township by tapping an existing 115 kV line and ends in Pine Lake Township at the proposed 115/4.16 kV Substation (**Figure 1**). The proposed HVTL will be constructed within a 100-foot wide right-of-way (ROW). The proposed Clearbrook West Substation will have a 150-foot by 100-foot footprint.

Figure 1. Project Overview



The proposed route follows existing road ROW along County Road 74 for approximately three miles, then turns north to follow existing roadway ROW along 149th Avenue for approximately one mile. Where 149th Avenue terminates, the proposed HVTL would extend northwest along a new ROW for approximately one mile before turning west to connect to the proposed substation location. Where the proposed Project parallels the south side of County Road 74 (west of Minnesota Highway 92), existing low-voltage distribution lines would be removed and buried by Clearwater-Polk Electric Cooperative.

¹ "Application to the Minnesota Public Utilities Commission for a Route Permit," Minnkota, November 25, 2015, <http://mn.gov/commerce/energyfacilities/resource.html?Id=34349>

Project Need

North Dakota Pipeline Company, LLC has requested electric service for a pumping station from Clearwater-Polk Electric, a distribution cooperative and member-owner of Minnkota. To serve this load, Minnkota will design, procure, and construct the 5.3 miles of 115 kV HVTL and an industrial substation to be located directly adjacent to the pumping station.

Regulatory Process

The Project is 115 kV, but under 10 miles, so it does not qualify as a Large Energy Facility under Minnesota Statute 216B.2421, Subd. 2 (3). Therefore, it does not require a Certificate of Need under Minnesota Statute 216B.243, Subd. 2.

Minnesota Statute 216E.04, Subd. 2 (3), qualifies 115 kV high-voltage transmission lines as eligible for review under the Alternative Permitting Process. Minnkota submitted the Application for the proposed transmission line and substation pursuant to the provisions of the Alternative Permitting Process as outlined in Minnesota Rule 7850.2800-3900. The Alternative Permitting Process includes environmental review and public hearings, and typically takes six to nine months to complete.

Environmental review under the alternative permitting process includes public information/scoping meetings and the preparation of an EA. The Environmental Assessment is a written document that describes the human and environmental impacts of the project (and any selected alternative sites) and methods to mitigate such impacts. The EA must be completed and made available prior to the public hearing.

Under Minnesota Rule, 7850.3700, subp. 4, the Environmental Assessment must include the following:

- A. A general description of the proposed project;
- B. A list of any alternative sites or routes that are addressed;
- C. A discussion of the potential impacts of the proposed project and each alternative site or route on the human and natural environment;
- D. A discussion of mitigative measures that could reasonably be implemented to eliminate or minimize any adverse impacts identified for the proposed project and each alternative;
- E. An analysis of the feasibility of each alternative site or route considered;
- F. A list of permits required for the project; and
- G. A discussion of other matters identified in the scoping process.

Scoping Summary

On January 26, 2016, Commission and EERA staff sent notice of the place, date and time of the Public Information and Scoping meeting to local government units and those persons on the Project contact list.² Commission staff and EERA staff jointly held a public information and scoping meeting in Clearbrook on February 22, 2016, proximate to the facility location identified by Minnkota. The purpose of the meeting was to provide information to the public about the proposed Project, to answer questions, and to allow the public an opportunity to suggest alternatives and impacts (i.e., scope) that should be considered during preparation of the environmental review document. A court reporter was present at the meeting to document oral statements.³

Scoping Comments

Three individuals contributed comments at the scoping meeting. Three written comments were received from the public by the end of the scoping comment period on March 7, 2016. Two letters came in from state government agencies.⁴

The Minnesota Department of Natural Resources (MNDNR) noted that the Clearbrook-Clearbrook West Transmission Project is ultimately dependent on the separate outcome of the upcoming alternatives analysis for the North Dakota Pipeline Sandpiper Project. As such, it should include potential cumulative and "associated" impacts.

MNDNR also would like the EA to address winter construction and maintenance as wetlands and rare species mitigation, reducing risks to birds by using diverters, and wire zone/border zone mitigation for forest and habitat encroachment. MNDNR also points out new records have been added to the NHIS for a calcareous fen near Steenerson and Deep Lakes. Finally, MNDNR informs the record that a License to Cross Public Lands and Waters will be required along the proposed route.

The Minnesota Department of Transportation (MnDOT) requests the EA identify and quantify any impacts of the proposed Project on the safety of the transportation system, the effectiveness of the operations or maintenance of the state trunk highway system and any potential costs to the state trunk highway fund.

One resident spoke to the economic boost of construction and permanent jobs the Project would bring to the area in support of the Sandpiper Project. Another raised questions about "lost" electricity and the tradeoff of taking crop land out of production.

² Notice of Public Information/Scoping Meeting, January 26, 2016, eDocket no. [20161-117679-01](#)

³ Oral Comments Received During Scoping Meeting, eDocket no. [20163-118986-01](#)

⁴ Written Comments through March 7, 2016 Close of Comment Period (Written Comments)
<http://mn.gov/commerce/energyfacilities/resource.html?Id=34430>

Another resident, with particular concerns about the effects of the pipeline project on their property, also expressed concerns about the effects of the power line crossing as well, especially if the power line follows the proposed route across their agricultural and wetland acreage.

Carol Overland of Legalectric, Inc., representing the landowner trust, made additional comments at the public meeting and in scoping comments. Ms. Overland presented a self-described "laundry list" of issues to be included in the scope or addressed in the EA.⁵ She also asserted that the transmission is "phased and connected" with the Sandpiper Project, and pointed out the importance of reviewing cumulative impacts. She stressed the timing of the Project should be reviewed in the EA, and that issues such as size, type and timing should not be excluded. Along with this concept, she argued the EA should look at system alternatives as well as route alternatives.

System Alternatives

Ms. Overland argued that the environmental review must include the no-build alternative and other system alternatives. She noted that when a Certificate of Need (CN) has been issued for a project, the Commission must not consider questions of need, such as size, type, timing and other system configurations, in deciding whether to issue a route permit (Minnesota Rule 7850.4200).⁶ This Project does not require a CN. Therefore, she reasoned that "system alternatives, and the no-build alternative must be incorporated into the environmental review and be considered."⁷ Ms. Overland argued for a number of alternatives to be considered, including a no-build option, on-site generation instead of transmission and transmission systems reviewed in other load-growth studies.

Route Alternatives

Minnkota originally had four routes under consideration before finally electing the proposed route in the Application.⁸ During the scoping process, Ms. Overland and the Erie-Bourdeaux Trust (OET) submitted five variations on those original routes. Two of these alternatives vary the proposed route (Route 2) by following Cty 73 west of Erie Lake instead of following the Applicant's crossing east and north of Erie Lake. This recommendation was also received from local resident Robert Johnson. The other OET route alternatives are variations on an Applicant route alternative (Route 4) that goes north to CSAH 4 east of Clearbrook, and west, for at least a portion of each variation, along MNTH 92.

⁵ Overland Written Comments at 8-11

⁶ The corresponding reference in this alternative review process would be 7850.3700, subp. 7, which reads, "When the Public Utilities Commission has issued a Certificate of Need ... the environmental assessment shall not address questions of need, including size, type, and timing..."

⁷ Overland Written Comments at 3

⁸ Application at 13

Pursuant to Minn. Rule 7850.3700, subpart 2(B), applicants have the right to review proposed alternatives. Minnkota submitted comments on March 15, 2015, and provided other data requested by EERA on March 22, 2015. Minnkota evaluated its four alternatives and the five OET alternatives by comparing the following criteria for each:

1. Wetland area to be crossed,
2. Area of trees to be removed,
3. Cropland and pastureland area crossed,
4. Use of existing distribution line ROW,
5. Total line route length, and
6. Estimated cost to build

Minnkota did not provide a "fatal flaw" for any of the route alternatives. However, they offered the opinion that according to their analysis and weighting, Route 2 (proposed route) "is the most favorable in terms of minimizing potential environmental impacts and project cost."

EERA Staff Analysis and Comments

The scoping process for environmental review in Minnesota is designed to identify and analyze "only those potentially significant issues relevant to the proposed project" and alternatives to the project.⁹

System Alternatives

Ms. Overland argued that the EA should include a review of system alternatives, as is the requirement in an Environmental Review for a Certificate of Need application.

EERA agrees the provision in 7850.3700 to exclude certain issues when a CN is issued does allow for the EA to consider important issues that may come up in a smaller project. For instance, in this case, the issue of "timing" raises a number of questions. As the pipeline project the Proposed Project is designed to support has not been approved at this time, questions of timing might legitimately be considered in this case.

EERA does not agree that the rule anticipates the EA will cover all the system alternatives called for in an Environmental Report under 7849.1500. An ER is not required in this case, since the Proposed Project falls below the threshold for requiring a CN. A rule that states certain issues need not be excluded does not mean a CN level review must be performed in a case where a CN is not required. Issues of size, type and timing are relevant as they pertain to review of the actual route proposal and route alternatives.

⁹ Minnesota Rule 4410.2100, Subp. 1

Route Alternatives

With respect to route alternatives, the Department is charged with including those alternatives which will "assist in the [Commission's] ultimate decision on the permit application."¹⁰ In assessing which route alternatives proposed during the scoping process should be carried forward for evaluation in the environmental review document for a project, EERA staff considers five criteria:

- Was the alternative submitted within the scoping period, i.e., prior to the end of the public comment period for scoping?
- Does the alternative contain the information required in Minnesota Rule 7850.3700, including "an explanation of why the site or route should be included in the environmental assessment?" EERA staff interprets this text to require that a commenter not only identify the route or site alternatives to be included in the scope of the environmental review document, but also identify the potential impacts of the proposed project the alternative is intended to address. The commenter need not provide extensive supporting data for their alternative, but must provide enough explanation such that the potential impact addressed by the site alternative is clear and understandable.
- Is the alternative outside of areas prohibited in Minnesota Rule 7850.4300, e.g., wilderness areas, state and national parks, scientific and natural areas?
- Does the alternative fit the purpose of the project?
- Is the alternative feasible?

Finally, EERA staff analyzes any alternative advancing through this review process to determine if its evaluation in the EA would aid the Commission in making its determination on the Application. This includes comparing the alternative with the proposed Project to determine the comparative impacts on the routing factors in Minn. Rule 7850.4100.

EERA applied the above criteria to analyze the OET alternatives. Each of the proposed alternatives was received prior to the close of the scoping period; none of the proposed alternatives are located in an area that is prohibited by Minnesota Rule 7850.4300; each alternate appears to meet the purpose; and each is feasible.

According to Ms. Overland, each OET alternative was proposed "to address, avoid, and/or mitigate significant impacts to Erie-Bourdeaux Family Trust lands," including wetlands, farming and socio-economic impacts; although her comments were not clear how any of the alternatives addressed specific impacts. According to EERA analysis:

¹⁰ Minnesota Rule 7850.3700, Subp. 2.

- Route 2A has somewhat greater impacts than Route 2 as far as crossing wetlands, agricultural lands and forested areas. However, more of these impacts occur along existing road ROW, where Route 2 crosses open area and creates more new ROW. Therein, Route 2A achieves the OET goals stated above. EERA feels this is a valid alternative to the proposal and warrants further examination in the EA.
- Route 2B is a slight variation on 2A. Whatever improvements it offers in less agricultural land or forested land are offset in moving away from existing ROW. It also impacts more wetlands, Minnkota's stated primary avoidance areas. EERA doesn't see enough variation or improvement from Route 2A to include this alternative in the scope.
- Routes 3A-C are variations on the Applicant's Route 4 alternative. These routes are longer than Routes 2 or 2A and would cost more to construct. They also each have more acreage of wetland crossing. EERA also infers that these alternatives would have greater opportunity to cross or parallel pipeline ROW, potentially creating cumulative impacts. EERA does not believe examining these alternatives would assist the Commission in making a route decision.

Comments on preparing an Environmental Assessment

The review for this Project will be an Environmental Assessment. Ms. Overland claims "An Environmental Assessment is not sufficient under MEPA for a high voltage transmission line." That is not an accurate reading of MEPA, alternative environmental review or the Power Plant Siting Act. The requirements for review under the alternative review process are clear:

No additional environmental review.

An environmental assessment must be the only state environmental review document required to be prepared by the commissioner of the Department of Commerce on a project qualifying for review under the alternative review process. No environmental assessment worksheet or environmental impact statement shall be required. (Minnesota Rule 7850.3700, subp. 8)

Environmental review.

For the projects identified in subdivision 2 and following these procedures, the commissioner of the Department of Commerce shall prepare for the commission an environmental assessment. The environmental assessment shall contain information on the human and environmental impacts of the proposed project and other sites or routes identified by the commission and shall address mitigating measures for all of the sites or routes considered. The environmental assessment shall be the only state environmental review document required to be prepared on the project. (Minnesota Statute 216E.04, Subd. 5)

EERA does agree an EA should address connected actions and cumulative impacts if and where they occur. It is important to be clear that the Proposed Project is a connected action of the Sandpiper Pipeline. The pipeline does not need to be included in the scope of this project's environmental review, since this Project is not intended to be built unless the pipeline has been fully evaluated and is authorized. The Sandpiper Project is currently undergoing a thorough EIS on its own that does not require redundant review in the Clearbrook Project. The EA for the Proposed Project will stand as environmental review of a connected action of the Sandpiper Project. However, where the impacts of the two projects might overlap, or create "cumulative impacts," those will be reviewed in the Clearbrook Project EA.

EERA Recommendation

EERA is drafting a scope for an Environmental Assessment for a transmission project under the alternative review process. The scope will include all the items required under Minnesota Rule 7850.3700 subp. 4. EERA appreciates the scoping comments submitted and will consider the issues raised during the preparation of the EA.

EERA staff plans to recommend to the Deputy Commissioner of the Department that the EA Scoping Decision include review of Route 2 as proposed by Minnkota in its Route Permit Application and Route 2A as proposed by OET and Mr. Johnson. If the Commission chooses to consider a northern route alternative, EERA recommends reviewing Route 3B.

ATTACHMENTS

1. ROUTE 2 MAP
2. ROUTE 2B MAP

CLEARBROOK PROPOSED ROUTE 2



Legend

-  PROPOSED 115KV ROUTE 2
-  Clearbrook Switch
-  Clearbrook West Substation



CLEARBROOK PROPOSED ROUTE 2A



Legend

-  PROPOSED ROUTE 2A
-  Clearbrook Switch
-  Clearbrook West Substation