



March 22, 2012

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Minneapolis, MN 55414

Tim Magnusson  
Clay County Planning and Zoning  
Clay County Courthouse – 3<sup>rd</sup> Floor  
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Moorhead, MN 56560

**Re: Local Review of Tamarac 115 kV Transmission Line Project  
Commission Docket Number: ET6887/LR-12-206**

Dear Mr. White and Mr. Magnusson,

Greetings. This letter confirms that the Minnesota Public Utilities Commission (Commission) has received notification that Tamarac Line, LLC (Tamarac) intends to seek local review to construct a new 8.5 mile long, 115 kilovolt (kV) transmission line. The line would facilitate interconnection of the Lakeswind wind power plant. The project would be located in Clay County and Otter Tail County.

Under the Power Plant Siting Act, a permit from the Commission is required for transmission line projects over 100 kV (Minn. Stat. § 216E). However, local review and permitting is possible for eligible projects (Minn. Stat. § 216E.05). For such projects, a utility may apply to a local unit of government instead of the Commission for a permit to build the project. This letter confirms that Tamarac's proposed project is eligible for local review.

***Review and Authorization of the Project***

Based on the proposed location of the project, Clay County and Otter Tail County are the local units of government (LGUs) with jurisdiction to permit the project. Though LGUs may collaborate on the environmental review for the project, each LGU with jurisdiction over the project must have "ordinances or other provisions for reviewing and authorizing" the project (Minn. Rules 7850.5300, Subp. 6). Tamarac indicates that Clay County has such ordinances, and that Tamarac submitted a conditional use permit application to the county on February 29, 2012. Department of Commerce, Energy Facility Permitting (EFP) staff notes that Clay County has previously reviewed projects through the local review option.

It is unclear whether Otter Tail County has ordinances or provisions for reviewing and authorizing the project. Through independent discussion with county staff, EFP staff has learned that Otter Tail

County does not have permitting authority outside of shoreland districts. The county does have a highway use permit, which must be obtained from the county by a transmission line developer if the proposed transmission line will share right-of-way (ROW) with an Otter Tail County road. A large portion of the Tamarac 115 kV line is proposed to follow County Road 2 and County Road 23 in Otter Tail County. If the route for the transmission line follows these roads, then Otter Tail County may have a provision for authorizing the proposed Tamarac project along this portion. There are, however, caveats to this authority.

First, there is a section of the proposed route for the Tamarac 115 kV line that is not along an Otter Tail County road. This is the section (approximately 0.75 miles in length) along Minnesota State Highway 34. For this small section, Otter Tail County has no provision for authorizing the project. Second, if an alternative route were proposed during scoping of the environmental assessment for the project – a route which does not follow an Otter Tail County road – and if this route were considered superior such that it became the preferred route, then the county would not have a provision for authorizing this portion of the project.

Finally, the right-of-way (ROW) required for the Tamarac 115 kV line is unclear. The transmission line is required by the National Electric Safety Code to have a specific ROW width. It is unclear what this width is and how the transmission line ROW will be accommodated in the Otter Tail County road ROW. It is unclear whether the transmission line ROW will fit completely within the road ROW, or, as is more likely the case, a portion of the transmission line ROW will fit within the road ROW with a separate ROW (easement) being required from private landowners along the route.

In sum, it is unclear whether Otter Tail County's highway use permit for that portion of the project proposed to share county road ROW constitutes "other provisions for reviewing and authorizing" the project under Minn. Rules 7850.5300, Subp. 6. The Commission is currently reviewing another project in Otter Tail County, Great River Energy's upgrade of a 2.1 mile transmission line along County Road 6, that EFP staff understood the county had determined it could not review through the local review option because it lacked an ordinance.<sup>1</sup> Nonetheless, consistent with Minn. Rules 7850.5300, Subp. 6, EFP staff leaves interpretation of county ordinances and authorities to the county.

Clay County or Otter Tail County may relinquish its permitting jurisdiction by requesting that the Commission assume jurisdiction within 60 days of the filing of an application with a local unit of government (Minn. Rules 7850.5300, Subp. 4).

### ***Environmental Assessment***

An environmental review process, including the development of an environmental assessment (EA), must be conducted by a local unit of government with jurisdiction over the project (Minn. Rules 7850.5300). Tamarac indicates that Clay County will be responsible for the environmental review process for the proposed Tamarac 115 kV project. Otter Tail County has independently indicated its agreement that Clay County will lead the environmental review process.

Specific requirements with regard to the environmental review process include (Minn. Rules 7850.5300, Subp. 5; see enclosed local review guide):

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<sup>1</sup> There may be differences between the Great River Energy project and Tamarac's proposed project which distinguish the projects, e.g., Tamarac's lack of eminent domain power and Clay County's willingness to assume responsibility for the environmental review process. EFP staff takes no position on whether these differences are relevant to Otter Tail County's interpretation of its ordinances and authorities.

- (1) Providing an opportunity for the public to participate in the development of the scope of the environmental assessment before it is prepared,
- (2) Publishing notice in the EQB Monitor when the assessment is available for review and the procedure for commenting on the assessment, and
- (3) Withholding a final decision on the project until at least ten days after the notice appears in the EQB Monitor.

Clay County must provide a copy of the environmental assessment to the Commission when it is completed (Minn. Rules 7850.5300, Subp. 5). Electronic filing (eFiling) of the environmental assessment is encouraged (<https://www.edockets.state.mn.us/EFiling>).

EFP staff suggests that the environmental assessment for the project include discussion of the issues noted above:

- (1) A discussion of that section of the proposed route along Minnesota State Highway 34 and how the Tamarac 115 kV line will be accommodated (or not) within the highway right-of-way, including all correspondence with the Minnesota Department of Transportation.
- (2) A discussion of all alternative routes raised during scoping and whether these routes would proceed along an Otter Tail County road.
- (3) A discussion of how the ROW for the Tamarac 115 kV line will be accommodated within Otter Tail County road rights-of-way. The discussion should include the width of the 115 kV transmission line ROW, the width of the county road ROW, and drawings illustrating the accommodation of the transmission line and any ROW (easement) required from private landowners along the route.

This letter confirms that Tamarac has sent the required notice to those persons on the Commission's general notification list that a permit has been applied for from a local unit of government (Minn. Rules 7850.5300, Subp. 3).

Please contact me with any questions.

Sincerely,



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enclosure

cc: Burl Haar, Commission  
Bob Cupit, Commission  
Leland Rogness, Otter Tail County Board of Commissioners  
David Hauser, Otter Tail County Attorney