

October 27, 2004

Honorable Allan W. Klein
Administrative Law Judge
Office of Administrative Hearings
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

Re: Route Permit for Transmission Line
EQB Docket No. 04-81-TR-Air Lake-Empire
OAH Docket No. 6-2901-16161-2

Dear Judge Klein:

On October 11, 2004, you conducted a public hearing in Farmington, Minnesota, on the application by Great River Energy and Xcel Energy for a Route Permit from the Minnesota Environmental Quality Board for a 115 kilovolt transmission line between the Air Lake Substation in Lakeville and the Empire Substation in Empire Township. You announced that the record would remain open until November 1, 2004, for the submission of written comments.

The EQB staff would like to submit the following comments into the record for your consideration in preparing your report and recommendation. The staff has submitted similar comments in other permitting proceedings, including the 161 kV Lakefield Junction transmission line, over which you presided (EQB Docket No. 03-64-TR-XCEL), the 115/230 kV double-circuit line associated with an expansion at Xcel Energy's Blue Lake Plant in Scott County, conducted by Judge Krause (EQB Docket No. 04-75-PPS-Xcel), and the 115 kV GRE line in Hennepin County that Judge Sheehy conducted (EQB Docket No. 03-65-TR- GRE PMG). We believe that it is appropriate for you to be aware of certain generic comments submitted by the staff in these other proceedings and of the actions of the EQB Board in making findings and issuing permits for those projects.

You can find the staff comment letters, the Board's findings and permit, and the administrative law judges' reports on the EQB webpage for these other projects. The webpage is www.eqb.state.mn.us.

The staff is not making a specific recommendation on a route at this time. The staff will ultimately make a recommendation to the EQB Board on what route to approve, but that will occur when the matter is brought to the Board for its final decision on a permit, after you have issued your report.

With those caveats in mind, we make the following comments to assist you in reviewing the record, preparing findings of fact, and making a recommendation.

1. Applicable Rules.

The rules of the EQB that apply to this proceeding are found in Minn. Rules chapter 4400. The particular sections are parts 4400.2000 to 4400.2950, because this project – a 115 kV transmission line – qualifies for alternative review under the Power Plant Siting Act. Minn. Stat. § 116C.575.

2. Procedural Requirements.

The statutes and rules establish a number of procedural requirements the EQB and the applicant must follow in processing the permit application. The Exhibits that the EQB staff introduced into the record contain a number of notices and affidavits of mailing demonstrating how the EQB staff completed the various procedural steps spelled out in the EQB rules. We do want to point out that the notice of the public hearing that was held on October 11 was mailed to certain local officials by regular mail, rather than by certified mail, as Minn. Stat. §§ 116C.575, subd. 6, and 116C.57, subd. 2b, require, but these officials did indeed receive notice of the hearing (see Exhibit 16), and some were in attendance at the hearing. No person has raised any question about the process that was followed in this case.

3. Environmental Assessment

The EQB has prepared an Environmental Assessment in this matter. The EQB rules provide that at the time the EQB makes a final decision on the permit, the Board should also determine whether the EA and the administrative record address the issues identified in the Chair's scoping decision. Minn. Rules part 4400.2950, subp. 2. While it is not necessary for you to make any recommendation regarding the EA, you may certainly elect to provide a recommendation on that point if you choose to do so. No person has registered any concerns about whether the Environmental Assessment addresses the matters identified in the scoping decision.

4. Route Selection

The judge's major task is to recommend a precise route for this new transmission line and to prepare findings explaining and supporting the recommendation. No alternative routes are under consideration on the Xcel Energy portion of the line – from the Air Lake Substation to the new Vermillion Substation in Farmington. No alternative route segments were considered in the Environmental Assessment, and no person has registered any concern or objection about this portion of the route. Nor are there any other sites under consideration for the new Vermillion Substation.

The GRE portion of the line can be broken down into two main parts – the segment through the City of Farmington and the segment from Highway 3 to the Empire Substation. A number of route segment alternatives, in addition to the route proposed by GRE, were evaluated for this portion of the line. It is readily apparent from the testimony at the public hearing that regardless of which route is recommended and ultimately selected by the EQB, there will be citizens who will object to the final route.

The following comments may be helpful to the judge in determining what precise route to recommend between the Vermillion Substation and the Empire Substation.

a. Route Selection Criteria. In determining what route to recommend, both the statute (Minn. Stat. § 116C.57, subd. 4) and the rule (Minn. Rules part 4400.3150) set forth a number of factors to consider in evaluating alternative routes. The administrative record, including the permit application, the Environmental Assessment, and the testimony at the hearing, contains the evidence to consider in evaluating the different alternative routes under review here.

b. Utilization of Existing Rights-of-Way. One criterion the EQB is required to take into account is the extent to which a route utilizes existing rights-of-way. Minn. Stat. § 116C.57, subd. 4(8), directs the EQB, in selecting transmission line routes, to evaluate “potential routes that would use or parallel existing railroad or highway right-of-way.” The Minnesota Supreme Court has also cautioned the EQB about designating new corridors for high voltage transmission lines. Proliferation of transmission line corridors should be avoided if possible. *See People for Environmental Enlightenment and Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council*, 266 N.W.2d 858, 868 (Minn. 1978). Utilizing existing rights-of-way is preferred over creating new corridors.

In this case, several existing rights-of-way are within the route alternatives under consideration in Empire Township. The alternative routes along 200th Street (County Highway 66), 210th Street, and 220th Street (State Highway 50) all follow existing rights-of-way. The proposed route through the farmers’ fields – the Empire Citizens No. 1 option – purportedly follows an old railroad right-of-way, but that right-of-way has been abandoned and the land is now farmed.

Through the City of Farmington, the portion of GRE’s proposed route between Highway 78 and Highway 3 does not follow an existing right-of-way. A short portion of GRE’s proposed route follows the Highway 3 right-of-way. The Rother Alternatives would require new right-of-way also, although a portion of the line could follow an existing distribution power line through Rambling River Park. The old railroad right-of-way could also be followed through the City, although this area has been developed with commercial properties.

c. Impacts on Agricultural Land. The statute also directs the EQB to take into account the impact of the project on agricultural land and agricultural operations. Minn. Stat. § 116C.57, subd. 4(5) and (9). Empire Citizens No. 1 would have the greatest impact on agricultural land and operations when compared with the other alternatives.

d. Prohibited Routes. Minn. Rules part 4400.3350 identifies some areas that are off limits for transmission lines. While wilderness areas and state and national parks are included in the list of prohibited places for transmission line routes, city parks such as Rambling River Park in the City of Farmington are not prohibited areas.

e. Route Designation. Regardless of which route you recommend, you should describe the route with specificity. If you find that one side of a road is preferable to the other, for example, you should include that limitation in your recommendation and describe in the findings the reasons why one side is preferable to another. If the line can be located on either side of a road, then it would be appropriate to indicate that in the recommendation. There is information in the record, particularly in the application and in the Environmental Assessment, that provides details of each route segment that is under consideration.

The permit issued in September 2004 to Xcel Energy for a new line in southeastern Minnesota called the Lakefield Junction 161 kV line and the permit issued in May 2004 to Great River Energy for a new 115 kV line in Hennepin County both describe the authorized route in specific detail. The judge is referred to those two permits for examples of the kind of specificity that is included in the EQB permits. They are available on the EQB webpage cited above.

d. Costs. The cost of a new transmission line is important to the applicant and to Minnesota ratepayers as well. It is certainly a factor that must be considered by you and by the EQB. It is included in the EQB rule listing factors to be considered in selecting new transmission routes. Minn. Rules part 4400.3150.L. In this case, however, Great River Energy has not claimed that any particular route option is prohibitively expensive. According to GRE, and as reported in the Environmental Assessment at page 24, the costs run between \$11.1 million and \$12.7 million for the various options under consideration.

5. Permit Conditions.

Any Route Permit issued by the EQB will contain conditions. Many of these conditions are terms that are included in all permits issued by the EQB. A review of the recent permits issued by the EQB will show the kind of general conditions that have been included in the permits recently issued by the EQB.

Not only will some of the conditions in the permit for this project be the same as the conditions in other recent permits, but the findings that the EQB made in these other permit proceedings may also be the same. For example, the findings relating to electric

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and magnetic fields in these other proceedings may be appropriate in this proceeding. In the Lakefield Junction matter, your finding on EMF (Finding No. 51, Report and Recommendation dated July 1, 2004, OAH Docket No. 6-2901-15942-2), was adopted verbatim by the EQB Board on September 16, 2004. That finding reads, "There is at present insufficient evidence to demonstrate a cause and effect relationship between EMF exposure and any adverse health effects." Your report and the Board's Findings are available on the same EQB webpage cited above.

Often, the EQB will also include certain special conditions in a Route Permit that are unique to the project being authorized. If there are any special conditions that you determine would be appropriate to include in the permit to be issued here, you can identify those in your report and explain the rationale for recommending them. For example, if GRE has committed to avoid a certain stand of trees, or to replace trees that are cut down, or to underground an existing distribution line, the permit will likely specify that obligation as a condition of the permit.

6. Certificate of Need

A Certificate of Need from the Minnesota Public Utilities Commission is required for a new 115 kilovolt transmission line that is over ten miles in length. Minn. Stat. § 216B.2421, subd. 2(3). The distance from the Air Lake Substation to the Empire Substation on the route proposed by GRE and Xcel Energy is slightly under ten miles, and therefore, the applicants did not apply for a Certificate of Need. Some of the route alternatives reviewed in the Environmental Assessment and under consideration would result in a transmission line that is over ten miles in length.

If you should recommend, and if the EQB Board should designate, a route that is over ten miles in length, a decision would have to be made by the Public Utilities Commission on whether or not a Certificate of Need would be required for that route before the EQB could issue a Route Permit. Minn. Rules part 4400.2950, subp. 5, provides that the EQB shall not make a final decision on a permit application for a project that requires a Certificate of Need until the applicant shall have obtained approval from the PUC. The question of whether a Certificate of Need is required would have to be presented to the PUC before any decision by the EQB would become final.

In conclusion, we hope that this discussion is helpful to you in reviewing the record and preparing your report and recommendation. We will post the letter on the EQB webpage as soon as possible and make it available for review by the public. Thank you.

Sincerely,

Alan Mitchell

cc: Michael Bradley, Esq.
Lisa Agrimonti, Esq.