

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayner	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of Transmission Projects Reports
and Development of Certified List of
Transmission Line Projects

ISSUE DATE: December 24, 2001

DOCKET NO. E-999/TL-01-961

ORDER DENYING PETITION AND
EXPANDING THE SCOPE OF
RECOMMENDATIONS OF THE WORKING
GROUP

PROCEDURAL HISTORY

Since the mid-1970s, people building large energy facilities in Minnesota – including large lines for transmitting high-voltage electricity – had to obtain a certificate of need pursuant to Minn. Stat. § 216B.243 and Commission regulations.

On May 29, 2001, the Governor signed the Minnesota Energy Security and Reliability Act, Senate File 722, Minnesota Laws 2001, Chapter 212. Article 7 § 30 of that chapter creates Minnesota Statutes § 216B.2425, directing each electric utility to file a “transmission projects report” with the Public Utilities Commission by November 1 of odd-numbered years. By the following June 1, the Commission must rule on which projects are necessary, needed, and in the public interest. Such transmission line projects could proceed without a § 216B.243 certificate of need.

On June 28, 2001, the Commission issued a Notice of Required Filing(s), with an Attached Transmission Approval Process – Draft Staff Discussion Paper. The notice invited comments. By September 6, 2001, the Commission had received substantive comments from Communities United for Responsible Energy, the Izaak Walton League of America, the Minnesota Department of Commerce (the DOC), the Minnesota Environmental Quality Board (EQB), the Minnesota Municipal Utilities Association, the Minnesota Transmission Owners (MTO), the North American Water Office, Mr. Mark Oberg, the Overland Law Office, and the Power Line Task Force (PLTF).

On September 14, 2001, a technical conference was convened to address issues raised in the staff discussion paper and in comments. Subsequently Laura and John Reinhardt filed comments on the conference, and the MTO filed a document entitled “Interim Guidelines – Minnesota Transmission Plan.”

On October 4, 2001, the Commission noted its intent to address these matters at its October 23 meeting, and invited comments on the “Interim Guidelines.” The Commission received comments from the Department, the EQB and Mr. Oberg.

On October 8, 2001, the Reinhardts filed a petition to establish rules setting forth procedures for the November 1 filings.

On October 23 the Commission met to consider whether to adopt rules, guidelines, or other procedures to use in processing the 2001 state transmission projects reports. At the hearing, public utilities announced that they would not be proposing any transmission line projects in this year’s transmission line reports. In addition, the DOC offered to convene a working group to develop recommendations on how the Commission should implement the new statute.

On October 31, 2001, the Reinhardts filed a Petition for Rulemaking requesting that Minn. Rules, Part 7829.2500, relating to certificate of need filings, be amended to address notice and hearing procedures as they apply to potentially affected landowners and communities.

On November 19, 2001, the Commission issued its ORDER DENYING RULEMAKING PETITION AND CONVENING WORKING GROUP. In this order the Commission, among other things, denied the October 8, 2001 petition for rulemaking and accepted the DOC’s offer to convene a working group to develop recommendations on how the Commission should implement Minnesota Statutes § 216B.2425. Those recommendations are to be submitted to the Commission by January 15, 2002.

The matter came before the Commission on December 13, 2001.

FINDINGS AND CONCLUSIONS

I. The October 31 Petition for Rulemaking

The Reinhardts filed their petition for rulemaking under Minn. Stat. § 14.09¹ and Minn. Rules, Parts 1400.2040 and 1400.2500. The petition requested that the Commission amend Minn. Rules Part 7829.2500, which address the certificate of need procedural rules.

¹ Minnesota Statutes § 14.09 permits anyone to petition an agency to adopt, repeal or amend a rule. The statute grants agencies 60 days to set forth a written disposition of the request.

In support of their petition the Reinhardtts noted that transmission owners have indicated that numerous applications for certificates of need for transmission lines can be expected in the near future. They argued that the notice and hearing provisions contained in the certificate of need procedural rules fail to provide adequate notice and hearing procedures to potentially affected landowners and communities affected by certificate of need proceedings before this Commission.

The petition contains specific recommendations for notice requirements and contents that should be contained in the rules. It further contends that a contested case hearing is mandatory in a certificate of need proceeding where citizens may be deprived of property rights, and the rules should be amended to reflect that requirement as well.

II. The November 19, 2001 Order

In its November 19, 2001 ORDER DENYING RULEMAKING PETITION AND CONVENING WORKING GROUP, the Commission determined that it was not possible to complete a rulemaking process by November 1, 2001 as requested by the petitioners and found that the petitioners' allegation of harm that would accrue if this was not done was unfounded or at least premature.

The Order made no findings on the merits of the specific rulemaking recommendations made in the petition.

The Commission denied the request for rulemaking but in order to accommodate the concerns of the petitioners, it authorized the formation of a working group to make recommendations on how to implement Minn. Stat. § 216B.2425. These recommendations will be submitted to the Commission by January 15, 2002.

III. Comments of the Minnesota Transmission Owners (MTO)²

The MTO argued that the Reinhardtts' October 31, 2001 petition is essentially identical to the October 8, 2001 petition which was addressed in the Commission's November 19, 2001 Order. The MTO argued that it supported the working group as a first step in adopting rules to implement Minn. Stat. § 216B.2425 and possibly to address broader issues concerning the Commission's certificate of need rules, including the issue of landowner notification.

² The participating transmission owners include, Dairyland Power Cooperative, Great River Energy, Hutchinson Utilities Commission, Interstate Power Company, Minnesota Power, Minnkota Power Cooperative, Missouri River Energy Services, Otter Tail Power Company, Southern Minnesota Municipal Power Agency and Willmar Municipal Utilities.

IV. Commission Action

The Commission recognizes that there will most likely be certificate of need filings for transmission projects in the near future and has taken the first steps towards a course of action to develop recommendations on how to implement the new State Transmission Plan (Minn. Stat. § 216B.2425). The Commission, by its November 19, 2001 Order, convened a working group to develop recommendations on this issue and submit those recommendations by January 15, 2002.

Regarding the current petition, the Commission will decline to act on the specific proposals set forth in the petition. The issues that are raised in the current petition are essentially the same issues and concerns that the parties raised in their October 8, 2001 petition, which is the subject of the Commission's November 19, 2001 Order. The difference is that in the present petition the Reinhardts request a rulemaking to amend the certificate of need procedural rules rather than addressing the implementation of Minn. Stat. § 216B.2425.

Given that there is considerable overlap in the issues, it is reasonable that the merits of the October 31, 2001 petition be considered with consideration of procedures for implementing Minn. Stat. § 216B.2425. Furthermore, in order to do so, it is reasonable and practicable that the Commission expand the scope of the recommendations to be addressed in the January 15, 2002 report to include recommendations on whether Minn. Rules, Part 7829.2500 should be amended. The DOC has offered to include these additional recommendations to the extent practicable. The Commission will accept the DOC's offer.

ORDER

1. The petition for rulemaking is denied without prejudice.
2. The Department of Commerce will include recommendations in its January 15, 2002 report on whether Minn. Rules, Part 7829.2500 should be amended, to the extent practicable.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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