

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Marshall Johnson
LeRoy Koppendraye
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Great River
Energy for a Certificate of Need for a High
Voltage Transmission Line

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ORDER GRANTING AND DENYING
EXEMPTION REQUESTS AND
CLARIFYING FILING REQUIREMENTS

PROCEDURAL HISTORY

On April 15, 2002, Great River Energy, a generation and transmission cooperative, filed a petition stating that it intended to submit an application for a certificate of need to construct a 115 kilovolt (kV) transmission line through the municipalities of Plymouth and Maple Grove. The petition requested exemptions from or clarifications of six filing requirements in the certificate of need rules,¹ stating that these requirements were not relevant to determining need for the proposed line.

On April 17, 2002, the Commission issued a Notice of Comment Periods, asking interested persons for comments on the petition.

Three parties filed comments: the Department of Commerce (the Department), the staff of the Environmental Quality Board (the EQB staff), and Communities United for Responsible Energy (CURE). The Department recommended granting all but two of the requested exemptions/clarifications. The EQB staff recommended denying all but one. CURE recommended denying all.

On May 23, 2002, the petition came before the Commission.

FINDINGS AND CONCLUSIONS

I. The Proposed Transmission Line

Great River Energy (GRE or the cooperative) is a generation and transmission cooperative providing generation, transmission, and related services to its distribution cooperative members.

¹ Minn. Rules, parts 7849.0010 *et seq.*

GRE proposes to build a 13-mile, 115 kV transmission line through Plymouth and Maple Grove to meet increased demand for electric power in those communities; those communities are served by GRE member Wright-Hennepin Cooperative Electric Association. The proposed line would run from Xcel Energy's Elm Creek substation to its Parkers Lake substation, probably in the vicinity of the western 494 corridor.

The new line would be constructed by GRE to serve Wright-Hennepin customers in the Plymouth/Maple Grove area, and the request for a certificate of need will be based on that need alone. The line would incidentally benefit some Xcel customers, however, by improving the reliability and efficiency of Xcel service in the areas served by the two substations it would link.

Xcel Energy therefore proposes that it own the terminal equipment within the two substations and some of the poles supporting the transmission line. The two utilities are also exploring the possibility of siting transmission structures on existing Xcel rights-of-way, in which case Xcel might have to take an ownership interest in the line itself under the terms of existing easements. A portion of the new line would also replace an existing Xcel 115 kV line along County Road 81 in Maple Grove with a double circuit 115 kV line; GRE and Xcel would each own one circuit of this portion of the line.

The proposed line would also incidentally benefit some customers of Connexus Energy, since it would, by necessity, replace the 69 kV line currently serving the Connexus Hennepin substation. This upgrade to a 115kV source would improve reliability for customers served by the Hennepin substation.

II. The Legal Standard

Because the certificate of need rules apply to a broad range of projects, those rules explicitly permit applicants to request exemptions from filing requirements that are inappropriate in individual cases. The Commission is to grant exemptions when the data requirements at issue (1) are unnecessary to determine need in a specific case; or (2) can be satisfied by submitting documents other than those required in the rules.²

GRE requested exemptions from or clarifications of six rules, explaining each request in detail. Those requests will be addressed individually below, along with the recommendations of the Department and the EQB staff.

III. CURE's Recommendations, Commission Action

CURE filed objections to granting any exemptions or clarifications at this point, arguing that the need for public confidence in the certificate of need process militated against limiting the amount of information in the initial application and for standardizing the Commission's handling of certificate of need applications. The Commission does not agree that rejecting GRE's petition would further these goals.

² Minn. Rules, part 7849.0200, subp. 6.

First, the Commission believes that addressing GRE's petition and granting any appropriate exemptions from or clarifications of filing requirements will actually enhance public confidence in the process by making the process more coherent and focused. Second, the Commission has in fact standardized its process for handling certificate of need applications by promulgating its certificate of need rules, and exemption petitions such as the one filed by GRE are part of that standardized process.³

Further, while maintaining public trust is one of the Commission's highest goals and duties, the Commission also has a duty to manage the process of determining need or lack of need for this proposed transmission line in a fair, orderly, timely, and cost-effective manner. One part of this management process is to act on GRE's exemption petition. Not only does the petition fall squarely within certificate of need procedures set by rule, but acting on it will simplify the adjudicatory process by avoiding an application cluttered with irrelevant information.

For all these reasons, the Commission declines to postpone action on GRE's petition or to reject it for reasons of public perception.

IV. Action on Exemption/Clarification Requests

A. Joint Ownership or Joint Use of Proposed Facilities – 7849.0220, subp. 3

1. The Request

The rules require each joint owner of a proposed line to file the same information as a single or primary applicant. They also require the same information from any utility for whom the line is designed to provide more than 80 megawatts of transmission over the long term.

GRE sought confirmation that Connexus need not file under the rule, since the proposed line would carry only six megawatts of Connexus load in the near term and no significant load growth was expected.

GRE also sought an exemption for Xcel on grounds that Xcel's ownership interest was purely incidental, that the sole reason for the line's construction was to fulfill GRE's transmission obligations, and that the only reason Xcel would benefit from the line and own part of it was the interconnected and interdependent nature of the transmission grid. GRE emphasized that the only need its application would allege and attempt to prove would be the need for additional transmission to serve the Wright-Hennepin customers in Plymouth and Maple Grove.

2. Positions of the Parties

The Department concurred with GRE that Connexus was not required to file any information under the certificate of need rules. The Department also concurred that requiring Xcel to comply with full certificate of need data requirements for this line would be unnecessary, unhelpful, and

³ Minn. Rules 7849.0200, subp. 6.

a mis-allocation of resources. At the same time, the Department stated that the line's benefits to Xcel's system could affect the need equation and that the application should therefore include information on the value of the proposed line to Xcel.

The EQB staff opposed as premature any finding that Connexus need not comply with the certificate of need rules' filing requirements. The agency's staff also opposed exempting Xcel, pointing out that the company would benefit from the line and hold partial ownership.

3. Commission Action

The Commission concurs with the Department that the application should provide information about how the proposed line will affect service to other utilities' customers. The transmission grid is an integrated whole, and these effects can be factors in the need equation.

At the same time, however, it is clear that requiring Xcel or Connexus to file all the information required under the certificate of need rules would be onerous and unnecessary. The direct, substantial, and everyday effects of the proposed line will be felt only in the Wright-Hennepin Plymouth/Maple Grove load center, and it is on that load center that the application should focus. The Commission will therefore require neither Xcel nor Connexus to make a certificate of need filing for this line, while requiring GRE to file information on the line's probable effects on these utilities and their customers.

B. Peak Demand and Annual Electric Consumption Forecasts – 7829.0270

1. The Request

The rules require extensive information about peak demand, annual consumption, and the effect of energy conservation on the need for the proposed line. GRE requested confirmation that this information should be provided for the Wright-Hennepin load center only, as opposed to the GRE system as a whole, under Minn. Rules 7849.0220, subp. 2. That rule provides

. . . . If, however, a proposed LHVTL [large high voltage transmission line] is designed to deliver electric power to a particular load center within the applicant's system, the application shall contain the information required by part 7849.0270 for that load center rather than for the system as a whole.

2. Positions of the Parties

The Department recommended granting the requested clarification. The EQB staff recommended denying the request pending further development of the facts.

3. Commission Action

The information required in part 7849.0270 is both detailed and comprehensive; its usefulness for any load center other than the one the line will benefit directly and substantially would be marginal at best. At the same time, a clear picture of the effects, benefits, and drawbacks of the proposed line will require a baseline understanding of how it would affect the customers of other utilities in the immediate vicinity.

The Commission will therefore grant the requested clarification with the reminder that the application should also address and develop the effect of the proposed line on the Connexus and Xcel systems.

C. System Capacity – 7849.0280

1. The Request

The rules require extensive information about the applicant's ability to meet current and future need for electrical power, including detailed descriptions of its historical load levels, its processes for forecasting future demand, its firm and contingent sources of supply, and its reserve margins.

GRE requested an exemption from all portions of this rule except paragraph H, which requires graphs comparing monthly demand with monthly generation and transmission capability, and monthly generation and transmission capability with capability losses due to scheduled outages for maintenance. The cooperative argued that only section H was relevant to transmission issues.

2. Positions of the Parties

The Department concurred in the cooperative's analysis and recommended granting the requested exemption. The EQB staff recommended further factual development before acting on the request.

3. Commission Action

The Commission agrees with GRE that most of the information in 7849.0280 relates to generation and is therefore unnecessary to the need determination that must be made in this case. The Commission also agrees that item H, which specifically refers to transmission data, should be addressed in the application.

The Commission also finds, however, that item A, requiring data on the applicant's planning processes and programs, is relevant in this case to the extent that those processes and programs deal with transmission capability and planning. The Commission will therefore require compliance with item A, as applied to transmission planning processes.

D. Description of Conservation Programs and their Effects – 7849.0290

1. The Request

The rules require detailed descriptions of the structure, content, current effects, and anticipated effects of the applicant's energy conservation, demand-side management, and energy efficiency programs. GRE requested clarification that the application should discuss only those conservation, demand-side management, and energy efficiency programs available within the Wright-Hennepin load center for which the proposed line would be built.

2. Positions of the Parties

The Department recommended granting GRE's request, with the clarification that GRE shares responsibility for Wright-Hennepin's conservation initiatives and should respond to item C (which requires an account of conservation programs considered) with information about its own conservation planning processes and programs, especially as they relate to the Wright-Hennepin load center.

The EQB staff recommended deferring action on this request pending further factual development.

3. Commission Action

The Commission concurs with GRE that the information provided under 7849.0290 generally should relate to the Wright-Hennepin load center. The Department is correct, however, in pointing out that GRE has a statutory responsibility to invest in conservation improvement programs to serve its members, and GRE should therefore respond to item C on the basis of its own conservation planning processes and programs, especially as they relate to the Wright-Hennepin load center.

E. Generating Facility Alternatives – 7849.0320

1. The Request

GRE requested confirmation that it need not comply with part 7849.0320, which requires detailed information on any large generating facility that might serve as an alternative to the facility proposed in the application. The cooperative contended that this requirement applied only to applications seeking certificates of need for generating facilities.

2. Positions of the Parties

The Department recommended denying the request, pointing out that local generation can often serve as a substitute for new transmission and that GRE should provide data on any generating facilities considered in lieu of building the proposed transmission line. The EQB staff recommended granting the request.

3. Commission Action

The Department is correct in pointing out that local generation is often an alternative to new transmission; GRE's application should provide the data required under 7849.0320 for all generation projects considered as alternatives to the proposed transmission line. The request for confirmation of the rule's non-applicability will be denied.

F. Description of Proposed Facilities and their Probable Locations, Including Areas Within Three Miles of Their Endpoints – 7849.0330, G

1. The Request

The rules require comprehensive data on the facilities proposed and the land on which they would likely be built, with special emphasis and detail provided in regard to the areas within three miles of the facilities' endpoints. GRE stated that the purpose of the three-mile rule was to ensure adequate consideration of the different effects of different possible endpoints; since here there were only two possible endpoints – the two Xcel substations the line would link – this requirement should not apply.

2. Positions of the Parties

Both the Department and the EQB staff opposed this exemption, stating that until the merits of the case had been developed, it was impossible to rule out the possibility that a different alternative, with different endpoints, might not better serve the public interest.

3. Commission Action

The Commission concurs with the Department and the EQB staff that it would be inappropriate to limit the development of the evidentiary record on the issue of endpoints, especially at this stage in the case. The exemption request will be denied.

V. Effect of this Order

Finally, the Commission clarifies that this Order is procedural. It is intended to relieve GRE of filing requirements that appear, at this stage of the case, to be unnecessary to determining need. It is not intended to decide substantive issues and does not guarantee that any of the information GRE has been exempted from providing will not ultimately prove essential to determining need. Such substantive findings would require careful examination of the merits of the application.

While this Order does affect what GRE must file to have its application accepted as substantially complete, it does not determine what GRE must prove to show need for the proposed facility. Neither does it limit the scope of discovery that might reasonably be pursued by the parties.

In short, the exemptions and clarifications granted in this Order relate to filing requirements only. The burden of proving need for the proposed transmission line remains with GRE.

ORDER

1. Great River Energy's Petition for Exemption from or Confirmation of Certain Filing Requirements is granted in part and denied in part as set forth above.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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