

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Request of Mark Zehms for a Route Permit Amendment to the Xcel Energy 161 kV High Voltage Transmission Line in Jay Township in Martin County, Minnesota

ISSUE DATE: February 6, 2006

DOCKET NO. E,PT-6479/MC-05-1328

ORDER DENYING REQUEST FOR ROUTE PERMIT AMENDMENT

**PROCEDURAL HISTORY**

On November 25, 2003, Xcel Energy filed an application with the Environmental Quality Board (EQB) for a Route Permit for a large high voltage transmission lines (LHVTL) and associated facilities (EQB Docket No. 04-64-TR-XCEL) pursuant to the provisions of the Power Plant Siting Act, Minn. Stat. §§ 116C.51 to 116C.69.

On January 12, 2004, Xcel mailed a document entitled “Notice of Xcel Energy Filing of Route Permit Application with EQB” to, among others, owners of property within any of the proposed routes for the proposed high voltage line, as required by Minn. Rules, Part 4400.1350, subd. 2. Recipients of that notice included Richard Zehms. Among other things, the Notice stated:

Any person may request to have his or her name or an organization’s name placed on the project contact list by contacting [EQB staff].

On March 1, 2004, the EQB mailed a copy of the EQB Chair’s Environmental Assessment Scoping Decision to a number of people, including Richard Zehms.

On May 20, 2004, the EQB mailed a “Notice of Availability of Environmental Assessment” and a “Public Hearing Notice” to several people, including Richard Zehms. Among other things, the Notice of Public Hearing stated

**Mailing List** Any person may add his or her name to the mailing list maintained by the EQB for future mailings regarding this project, including notice of the EQB’s final decision in this matter. Names can be added to the list by contacting [EQB staff] or electronically by visiting the EQB webpage cited above.

On July 2, 2004, Administrative Law Judge (ALJ) Allan Klein filed his Report and

Recommendation with the EQB.

On September 16, 2004, the EQB adopted the ALJ's report, with six amendments, and issued its Findings of Fact, Conclusion and Order Issuing a Route Permit for Construction of a 161 kV Transmission Line and Associated Facilities to Xcel Energy along a route from the Lakefield Junction to Fox Lake. Among the Permit Conditions imposed as part of the Route Permit is the requirement that Xcel file with the EQB a plan and profile of the right-of-way (ROW) and the specifications and drawings for ROW preparation, construction, and cleanup, and restoration of the transmission line at least 14 days before ROW preparation and construction begins.<sup>1</sup>

On September 18, 2004, the EQB mailed Notice of Board action to persons on the EQB distribution and project list. The list of persons receiving that Notice did not include Richard Zehms or Mark Zehms.

On September 27, 2004, Notice of Board action in this matter was published in the *State Register* (Volume 29, Number 13), pages 364-365 and in the *EQB Monitor* (Volume 28, No. 20).

On June 24, 2005, the EQB received a letter from Mark Zehms, requesting a route permit amendment that would relocate a small portion of the permitted transmission line alignment. Mr. Zehms is the current owner of property (formerly owned by his father, Richard Zehms) crossed by the alignment proposed by Xcel for its Lakefield Junction Substation to Fox Lake 161 kV transmission line. Mr. Zehms specifically requested that a pole be relocated west of his windbreak and that the line cross Interstate 90 to the northeast instead of going through his windbreak.

On July 1, 2005, legislation went into effect transferring siting authority from the EQB to the Commission. 2005 Minn. Laws, c. 97, art. 3, § 17.

On July 13, 2005, Xcel filed a letter stating that in response to Mr. Zehms' concerns the Company agreed to move the pole (structure 229) to the west approximately 42 feet, out of Mr. Zehms' honeysuckle grove. The Company included a drawing from its plan and profile for the transmission route in question, incorporating that change. The Company stated that it did not support Mr. Zehms' request to have the transmission line cross Interstate 90 to the northeast at the relocated pole to avoid crossing his windbreak altogether.

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<sup>1</sup> The "route" for a proposed transmission line is generally several hundred feet wide. The route designated for Xcel's transmission line in the EQB's September 16, 2005 Order ranges from 200 to 100 feet wide. The EQB's Order authorized Xcel to construct the actual transmission line within the route, but required the Company to file a plan and profile stating the exact "alignment" of the transmission line (i.e., where the poles and lines would actually be located within the route) at least 14 days before beginning construction.

On August 17, 2005, Xcel, in compliance with Permit Condition A of the September 16, 2004 Route Permit, filed with the Commission the plan and profile drawings showing the specific alignment of (location of) the transmission line structures and poles within the route that had been approved and designated in the EQB's September 16, 2004 decision.

On August 25, 2005, the Department issued a notice to interested persons regarding Mark Zehms' request for a route permit amendment, announcing a comment period to end on September 9, 2005. Comments were filed by Marguerite Burmeisteri, Joel Burmeisteri, James A. Foxx of the Minnesota Department of Transportation, Shirleen Zehms, Richard W. Zehms and Judith A. Zehms, Marlys Hackbarth, and Xcel. All commenting parties except Shirleen Zehms, Richard W. Zehms and Judith A. Zehms opposed Mark Zehms' request.

On November 10, 2005, the Commission met to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **I. Route Permit Amendment Rules Inapplicable to Zehms Request**

Petitioner Mark Zehms is the son of Richard Zehms, who owned the land affected by the transmission line during the time Xcel's request was pending before the EQB. Mark Zehms is now the owner of the land in question. He has requested that the Commission amend the route permit issued to Xcel by the EQB as part of its Order dated September 16, 2004. Specifically, he requested that the Commission alter the alignment of the proposed transmission line in a manner that would not go through his windbreak.

Minn. Rules, part 4400.3840 authorizes the Commission, upon request of any person, to amend any of the conditions in a site permit for a large electric power generating plant or in a route permit for a high voltage transmission line issued by the EQB.

However, the Site Permit conditions do not establish the specific alignment of the line, which is what Mr. Zehms is objecting to. The plan and profile filed August 17, 2005, a separate document from the Site Permit, does that. The Commission finds that Minn. Rules. Part 4400.3840 does not apply to Mr. Zehms' request because what he has not asked for is not in fact an amendment to a condition in the site permit, but is a change in the location of the transmission line itself.

### **II. Minor Alteration Rule Does Not Authorize Zehms' Request**

In the alternative, the Commission has considered whether Mr. Zehms' request is authorized under another potentially applicable rule. Minn. Rules, part 4400.3820 provides a way for certain persons to obtain minor alterations of a high voltage transmission line.

Subpart 2 of the rule states in part

A person seeking authorization to *make* a minor alteration in a large electric power generating plant or high voltage transmission line shall apply . . . [Emphasis added.]

The Commission concludes that Mr. Zehms is not one of the persons authorized under the rule to seek a minor alteration because the only persons that the rule authorizes to apply for a minor alteration are those who already have the capacity but simply lack the authority to make the minor alteration.

The rule limits the group of persons authorized to apply to the Commission for a minor alteration to those who can “make” the minor alterations. Affected landowners cannot make the alterations; only Route Permit holders (transmission line owners) have the capacity to make the alterations in question. Accordingly, since Mr. Zehms is not a person who has the capacity to make minor alterations to the transmission line, he is not authorized to request one under this rule.

**ORDER**

1. The request of Mark Zehms for a Route Permit Amendment is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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