

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the 2005 Minnesota Biennial  
Transmission Projects Report (05-1739) and  
Associated Certification Requests (05-867)

ISSUE DATE: January 5, 2006

DOCKET NOS. E-999/TL-05-1739; ET2,  
E015/TL-05-867

ORDER GRANTING VARIANCE,  
ACCEPTING CERTIFICATION REQUESTS,  
AND ACCEPTING BIENNIAL  
TRANSMISSION PLAN

**PROCEDURAL HISTORY**

This case involves two companion dockets, both arising under the biennial transmission planning process established in Minn. Stat. § 216B.2425 and governed by Minnesota Rules Chapter 7848.

The first docket is a request for certification of two high-voltage transmission lines, filed by Minnesota Power and Great River Energy (GRE) on October 31, 2005. That docket had earlier been assigned docket number ET2, E015/TL-05-867, when the two utilities had filed a request for approval of their plans to notify potentially affected persons, as required under Minnesota Rules 7848.1900. The Commission approved their proposed notice plans in an Order issued on August 25, 2005.

The utilities now requested a variance to the service requirements of Minnesota Rules 7848.2000, subp.1, which requires them to serve the entire filing on multiple entities listed in that subpart. They proposed instead to serve summaries on most of the entities listed, to provide full copies to entities and persons within the areas affected by the proposed transmission lines, to post a copy of the filing on a website referenced in the summary, and to provide full copies of the filing to anyone upon request.

The other docket is the biennial, state-wide transmission planning report required under Minn. Stat. § 216B.2425, filed by all Minnesota Transmission Owners on November 1, 2005, pursuant to Minnesota Rules 7848.1800, subp. 1. The utilities proposed to serve summaries on most of the entities listed, to post the full report on a website referenced in the summaries, and to provide full copies upon request.

On November 21, 2005, Citizens United for Responsible Energy (CURE), Community Based Energy Development and the North American Water Office filed comments challenging the biennial transmission planning report's compliance with applicable filing requirements. They did not comment on the certification requests.

On November 21, 2005, the Department of Commerce (the Department) filed comments on both the biennial transmission planning report and the certification requests. The Department asserted that both filings - the biennial transmission planning report and the certification requests - were in substantial compliance with filing requirements set by rule. It opposed the variance request made by Minnesota Power and GRE. It also offered procedural recommendations for both the transmission planning report docket and the certification docket. In both cases, it recommended informal comment and reply procedures over contested case procedures, with an Administrative Law Judge conducting the public hearings required by rule. <sup>1</sup>

On December 1, 5, and 13, 2005, the parties filed supplemental comments. On December 15, the matter came before the Commission.

## **FINDINGS AND CONCLUSIONS**

### **I. The Issues**

There are three issues before the Commission:

- (1) Does the biennial transmission planning report meet the filing requirements of Minnesota Rules 7848.1300?
- (2) Do the certification requests filed by Minnesota Power and GRE meet the filing requirements of Minnesota Rules 7848.1400 through 1500?
- (3) Should the Commission grant the requested variance of Minnesota Power and GRE to the service requirements of Minnesota Rules 7848.2000, subp. 1?

These issues will be addressed in turn.

### **II. Summary of Commission Action**

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<sup>1</sup> Minnesota Rules 7848.2000, subp. 11.

The Commission accepts the Minnesota Transmission Owners Biennial Filing as in compliance with the rules. The Commission accepts the certification requests as in compliance with the rules. The Commission finds in both the transmission planning report docket and the certification docket that a contested case proceeding is unnecessary at this time, recommending instead comment and reply procedures, and directs that an Administrative Law Judge be used to conduct the required public hearings. The Commission grants the variance to the service requirements of Minn. Rules 788.2000, subp. 1 to Minnesota Power and Great River Energy.

These actions are explained below.

### **III. The Biennial Transmission Plan's Compliance with Filing Requirements**

#### **A. Positions of the Parties<sup>2</sup>**

Citizens United for Responsible Energy & Community-Based Energy Development (Joint Commentors) have requested that the MTO be required to file additional information related to distributed generation before the Biennial Report is accepted as in compliance with Chapter 7848 by the Commission. The Commentators raised the following as issues:

- the Biennial Report does not adequately address distributed generation;
- the CapX 2020 Vision Plan does not identify inadequacies and the information provided is incomplete; and
- generation outlet facilities should not be considered inadequacies.

The MTO asserted that it attempted in the 2005 Biennial Report to provide the Commission and the public with the best information available regarding transmission planning and transmission inadequacies in the state. Major planning efforts, including the CapX 2020 work, were described. More than seventy anticipated inadequacies were described in the Report in as much detail as possible. The MTO further argued that the content of the Report is essentially for informational purposes only.

The Department took the position that the MTO was in substantial compliance with the filing requirements set by the rule.

#### **B. Commission Action**

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<sup>2</sup> An issue as to whether the Commission should grant a variance to the MTO regarding the service requirements under Minnesota Rules 7848.2000 was originally raised, but MTO cured the issue by complying with all applicable service requirements.

## 1. Compliance Issues

The issues identified by the Joint Commentors are important and should continue to be addressed during the review of the Biennial Report. However, the Commission does not believe the items raised are compliance issues under the rules.

While the discussion of distributed generation may not be as thorough as the Joint Commentors would prefer, it is nevertheless generally discussed as an alternative in Section 9.7 Generation Alternatives, of each of the certification requests. Some of the alternatives described in the 2005 Biennial Report identify distributed generation as considered alternatives. These items can and should be further developed through the planning process. The issues of REO (Renewable Energy Objective) Compliance and distributed generation should not be looked at in total isolation. Additional pending transmission studies, for example, the MISO exploratory studies and a future C-BED related study, among others, should further inform the discussions as these studies are completed.

The Commission, through its Orders on the 2003 Biennial Transmission Projects Report, has indicated that distributed generation holds promise and has been singled out by the Legislature for encouragement. In its June 24, 2004, *Order Accepting Biennial Transmission Projects Report and Requiring Further Filings* the Commission required MTOs to expand their presentation of transmission inadequacies and alternatives to include among other things, a generic discussion of the factors typically considered in determining whether local (distributed) generation is feasible and cost-effective.

While the certification requests could have more fully addressed this requirement, further discussion regarding the types of alternatives that should be required to be considered and the appropriate level of detail to be provided regarding those alternatives should be an ongoing discussion within the planning process.

With respect to the Joint Commentors' complaint regarding the CAPX 2020 data being speculative and for informational purposes only, the Commission notes that much of the information presented in the Biennial Report, short of the requests for certification, is based on informed, good-faith estimates - necessarily incomplete, although based on the best information available. These issues are not compliance requirements but instead are items for discussion during the planning process.<sup>3</sup>

## 2. Procedural Issues

Minnesota Rules 7848.2000, subp. 5 provides parties with 20 days to file comments on what procedural framework should be used to review the biennial plan and certification requests. This subpart specifically encourages commenting parties to indicate whether a contested case proceeding is required.

The Commission finds that the certification requests do not need a contested case proceeding, but could instead be appropriately handled through the standard process for comments and reply

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<sup>3</sup> The Joint Commentors also took issue with the individual generation outlet facilities listed in the Biennial Report as an inadequacy of the system. Discussion of this issue is also not a compliance item but instead is an item for further discussion during the planning process.

comments outlined in the rules. An Administrative Law Judge shall be used to conduct the public hearings required under the rules.

Under Minn. Rules 7848.2000 the deadline for comments on all issues not referred to a contested case proceeding is February 15, 2006, for initial comments and March 15, 2006, for reply comments.

#### **IV. The Certification Requests' Compliance with Filing Requirements**

##### **A. Positions of the Parties**

Minnesota Power and GRE have requested certification of two high-voltage transmission lines. The first - the Tower project - is located in St Louis County. The utilities propose to construct a 115 kV electric transmission line, approximately 15 miles in length, between a new substation in Tower and a new switching station at Embarrass in Northeastern Minnesota.

The second - the Badoura Project - is located in Hubbard, Cass and Crow Wing Counties. The utilities propose to construct a 115 kV electric transmission line, approximately 55 miles in length, to connect the Pequot Lakes substation, the Pine River Substation, the Badoura substation, the Long Lake substation and the Birch Lake substation in North Central Minnesota.

The Department took the position that the certification requests were in substantial compliance with the filing requirements.

##### **B. Commission Action**

Minnesota Rules 7848.1400, subp. 2 and 7848.1500 set out the required information to be included for certification of high-voltage transmission lines.

###### **1. Procedural Issues**

Minnesota Rules 7848.2000, subp. 5, provides interested parties with 20 days to submit comments on the procedural framework to be used to examine and act on the filing. Specifically, parties are asked to indicate whether a contested case proceeding is needed for each certification request.

The Commission finds that, given the specific facts of the Tower and Badoura projects, a contested case proceeding is not necessary. The specific facts indicate the Tower and Badoura projects are: 1) being used for local load-serving purposes; 2) not dependent upon a demand or energy forecast; 3) being constructed in order to maintain NERC (North American Electric Reliability Council) reliability standards; 4) have a planning history that has been presented to the local community; and 5) does not meet the criteria under Minn. Rules 7848.1400 subp. 1 for highly complex or controversial transmission lines.

The Tower and Badoura projects should be examined and addressed through the comment and reply comment process outlined in the rules with the use of an Administrative Law Judge from the Office of Administrative Hearings to preside over the public hearings in the specific areas of the projects

## 2. Completeness

Minnesota Rules 7848.1400, subp. 2 provides the filing requirements for a transmission projects report that seeks certification of a high-voltage transmission line. The Department indicated that the applications for certification should be found complete upon the filing of the following data regarding:

- projected line losses during peak-load conditions and during average conditions;
- induced voltages during operations; the expected depreciation and service lives of the line;
- and
- the expected depreciation and service lives of the alternatives to the proposed project.

Minnesota Power and GRE filed supplemental information to address the issues raised by the Department. The Commission finds that the information submitted by Minnesota Power and GRE is now complete and in compliance.

## V. The Variance Request

### A. Positions of the Parties

Minnesota Power and GRE requested a variance to the service requirements of Minnesota Rules 7848.2000, subp. 1. Minnesota Power and GRE requested to be allowed to send a one page summary of their certification requests to the extensive service list of persons and local governments outside the two project areas. The summaries mailed in lieu of the actual certification requests announced the filing of the certification requests, indicated the general location of the proposed projects and provided a telephone number for the party to request a full copy. The summaries also indicated a web site which contains both of the certification requests. Minnesota Power and GRE indicated that they served the full filing on persons and parties that have participated in related transmission dockets as well as the local governments in the project areas.

Minnesota Rules 7829.3200 states that the Commission shall grant a variance to its rules when the Commission determines that the following requirements are met:

1. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
2. Granting the variance would not adversely affect the public interest; and
3. Granting the variance would not conflict with standards imposed by law.

MP and GRE justify their request for a variance as follows:

1. Enforcement of the rule would burden MP and GRE because:
  - a.) the biennial plan service requirements are directed toward the overall report rather than individual certification requests;

- b.) the certificate of need rules would allow summaries of the applications to be served as long as interested persons, upon request, be provided a full copy; and
  - c.) the applicants state that they will provide a full copy upon request.
2. Granting the variance would not adversely affect the public interest since all parties will be notified of the certification request and those receiving notice only can obtain a full copy.
  3. Granting the variance would not conflict with standards imposed by law or rules governing the Commission's actions.

The Department opposed the utilities' variance requests, stating that Minnesota Rules 7848.1700 governs requests for exemptions from the filing requirements under Chapter 7848. The Department argued that Minnesota Power and GRE failed to meet the deadline for exemptions.<sup>4</sup> The Department did not dispute the merits of the variance.

Minnesota Power and GRE do not dispute that the service requirements are a subset of the "filing requirements" under Chapter 7848. However, they argued that they understood the exemption provision in the rule to apply to "data requirements."

#### **B. Commission Action**

These are the first certification requests under Chapter 7848. The Commission believes some flexibility in approach is warranted.

The service requirements under the rules generally assume the certification requests will be incorporated in the biennial report. In this instance, however, the certification requests are separate filings from the biennial report. Minnesota Power and GRE served full copies of the requests on all individuals and entities required under the rules except for counties and regional development commissions outside of the project areas. To these entities, Minnesota Power and GRE sent a summary notice with a contact person and telephone number to request a full copy.

The Commission recognizes that the service requirements under the rules are extensive and that compliance can be potentially expensive. In this instance, it is not unreasonable to require an affirmative response from a person or entity outside of the project areas before additional significant expense is incurred in providing full copies of both certification requests.

The Commission finds that the exemption provision does not necessarily preclude a request for a variance, although it may place an additional burden of proof on a petitioner requesting a variance to show why it should be granted.

The Commission will grant the variance to the service requirements found in Minnesota Rule

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<sup>4</sup> Requests for exemptions to the filing requirements are to be submitted by August 1 of the year in which the biennial transmission projects report is to be filed.

7848.2000, subp. 1. The Commission finds that enforcement of the Rule would impose an excessive burden upon the applicant; that granting the variance would not adversely affect the public interest; and that granting the variance would not conflict with standards imposed by law.

**ORDER**

1. The Commission hereby varies Minn. Rules 7848.2000, subp. 1 to permit Minnesota Power and GRE to serve summaries instead of the full filing.
2. The Commission accepts the biennial filing as in compliance as to form under the rules. The merits will be addressed at a later date.
3. The Commission accepts the certification requests as in compliance with the rules as to form. The merits will be addressed at a later date.
4. The Commission will examine this filing using the comment procedures set forth in the rules, instead of referring the case for contested case proceedings.
5. The Commission will ask the Office of Administrative Hearings to appoint an Administrative Law Judge to conduct the public hearings required under Minnesota Rules Chapter 7848. A summary of the hearings shall be filed with the Commission.
6. The Commission hereby designates Ken Wolf to facilitate and coordinate public participation in this proceeding. He may be reached by telephone at (651) 201-2257 and by fax at (651) 297-7073. His address is Suite 350, 121 7<sup>th</sup> Place East, St. Paul, Minnesota 55101-2147.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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