

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Application for a
Certificate of Need for the Mud
Lake-Wilson Lake 115kV High Voltage
Transmission Line

ISSUE DATE: February 12, 2007

DOCKET NO. ET-2/CN-06-367

ORDER GRANTING CERTIFICATE OF
NEED

PROCEDURAL HISTORY

On February 28, 2006, Great River Energy (GRE or the Company) filed a notice plan for this project and an exemption petition for certain filing requirements.

On May 15, 2006, the Commission issued its ORDER GRANTING AND DENYING EXEMPTIONS, APPROVING A NOTICE PLAN AS MODIFIED, AND CONSOLIDATING DOCKETS.

On July 14, 2006, GRE filed a compliance filing substantiating the implementation of the notice plan as required by the May 15, 2006 Order.

On August 1, 2006, GRE filed an application for a certificate of need.

On September 7, 2006, the Commission issued its ORDER ACCEPTING THE APPLICATION AS SUBSTANTIALLY COMPLETE, REQUIRING ADDITIONAL INFORMATION AND ADOPTING REVIEW PROCESS.

On November 1, 2006, the Minnesota Department of Commerce (the Department) filed its comments on the Application recommending that a certificate of need be granted.

On November 21, 2006, GRE filed a reply to the Department.

On November 28, 2006, the Department's Facilities Permitting Unit filed an Environmental Assessment (EA) on the project.

On January 16, 2007, the Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) filed a summary of testimony received during the public hearings on this project.

The Commission met on January 25, 2007 to consider this matter.

FINDINGS AND CONCLUSIONS

I. GRE's Proposed Project

GRE filed a certificate of need application for a proposed transmission project in central Minnesota in Crow Wing County, from Mud Lake, which is just east of Brainerd, to Wilson Lake, near the shores of Lake Mille Lacs, on August 1, 2006. The Company stated that economic growth in the area has caused a considerable increase in electrical use in the region, particularly on the northwest side of the lake.

GRE stated that it has studied power service to the region and determined that a new 115kV transmission line and associated facilities are needed to meet existing and future load requirements. The proposed project includes the following three facility additions:

- a new 12 mile 115kV transmission line that would run between Minnesota Power's Mud Lake Substation on the west to the Mille Lacs Energy Cooperative's Wilson Lake Substation on the east;
- modification of the Mud Lake Substation to accommodate the new line; and
- a rebuilt and expanded Wilson Lake Substation including a new 115/69kV substation.

The total capital cost of the proposed project is approximately \$8.3 million.

II. The Legal Standard

A. The Initial Certificate of Need Statutory Factors

As initially enacted, the certificate of need statute identified eight factors for the Commission to consider in evaluating the need for a proposed large energy facility¹ and directed the Commission to "adopt assessment of need criteria to be used in the determination of need for large energy facilities pursuant to this section."² In 1983, the Commission adopted rules establishing criteria as directed.³

¹ Minn. Stat. § 216B.243, subd. 3.

² Minn. Stat. § 216B.243, subd. 1.

³ See Minn. Rules, Part 7849.0120.

The statute also prohibited the Commission from granting any certificate of need unless the applicant demonstrates that the need for electricity cannot be met more cost effectively through energy conservation and load-management measures.⁴

B. The Rules

In 1983, to comply with its statutory obligation to establish assessment of need criteria, the Commission adopted the certificate of need rules, Minnesota Rules Chapter 7849. One of those rules, Minn. Rules, Part 7849.0120, addresses the eight factors identified in the statute and directs the Commission to issue a certificate of need when the applicant demonstrates four things:

- (A) the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states;
- (B) a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record;
- (C) by a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health; and
- (D) the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

C. Additional Statutory Requirements

Subsequent to the adoption of the rules, the statute was amended to add four additional factors for the Commission to evaluate in assessing need:

(9) with respect to a high-voltage transmission line, the benefits of enhanced regional reliability, access, or deliverability to the extent these factors improve the robustness of the transmission system or lower costs for electric consumers in Minnesota;

(10) whether the applicant or applicants are in compliance with applicable provisions of sections 216B.1691 and 216B.2425, subdivision 7, and have filed or will file by a date certain an application for certificate of need under this section or for certification as a priority electric transmission project under section 216B.2425 for any transmission facilities or upgrades identified under section 216B.2425, subdivision 7;

⁴ Minn. Stat. § 216B.243, subd. 3.

(11) whether the applicant has made the demonstrations required under subdivision 3a; and

(12) if the applicant is proposing a nonrenewable generating plant, the applicant's assessment of the risk of environmental costs and regulation on that proposed facility over the expected useful life of the plant, including a proposed means of allocating costs associated with that risk.

The statute was also amended after the rules were adopted to prohibit the Commission from granting a certificate of need for any large energy facility that transmits electric power generated by means of a nonrenewable energy source, unless the applicant demonstrates that it has explored using renewable resources and that the total costs of the project it proposes, including environmental costs, are lower than the cost of using renewables.⁵

III. The Department's Comments and Environmental Assessment

A. Comments

In its comments filed November 1, 2006, the Department examined GRE's application with respect to criteria established in statute and rule and explained why it believed the Company's application met those criteria. An itemization of the criteria addressed and the Department's recommendations regarding them follows:

| Statutory Criteria: Minn. Stat. § 216B.243 | Where Addressed | Department Statement |
|---|-----------------|--|
| Subdivision 9 | Pages 3-4 | This subcriterion has been met. |
| Subdivision 10 | Pages 14-15 | This subcriterion has been met. |
| Subdivision 11 | Pages 6-7 | This subcriterion has been met. ⁶ |
| Subdivision 12 | Page 15 | This subcriterion does not apply. ⁷ |

⁵ Minn. Stat. § 216B.243, subd. 3a.

⁶ The Department's comments do not mention Subdivision 3(11) as such but since Subdivision 3(11) simply requires the applicant to meet the requirements of Minn. Stat. § 216B.243, Subd. 3a, the Department's analysis and finding on page 7 that GRE's application meets that requirement of Subdivision 3a is the equivalent of finding that it meets the requirement of Subdivision 3(11).

⁷ This criterion applies to generating plants only, not to GRE's proposal which is to construct a transmission line.

The criteria established in Minn. Stat. § 216B.243, subd. 3, (1) to (7) were not addressed as such. Instead, the Department addressed the criteria established in Minn. Rules, Part 7849.0120, Subparts A-D, which effectively cover the criteria established in Minn. Stat. § 216B.243, subd. 3, (1) to (8), see below.

Turning to the standards established in Minn. Rules, Part 7849.0120, the Department recommended that the Commission find that GRE has met the four basic criteria established by the rule: Subparts A-D. Specific subcriteria considered in the Department’s comments are as follows:

| Regulatory Criteria: Minn. Rules, Part 7849.0120 | Where Addressed | Department Statement |
|---|-----------------|---|
| Subpart A (1) | Pages 3-4 | This subcriterion has been met. |
| Subpart A (2) | Pages 7- 8 | This subcriterion has been met. |
| Subpart A (3) | Pages 13-14 | This subcriterion has been met. |
| Subpart A (4) | Page 9 | This subcriterion has been met. |
| Subpart A (5) | Page 12 | To be discussed in the Environmental Report. |
| Subpart B (1) | Pages 5-6 | This subcriterion has been met. |
| Subpart B (2) | Page 10 | This subcriterion has been met. |
| Subpart B (3) | Page 10 | To be discussed in the Environmental Report. |
| Subpart B (4) | Page 10 | This subcriterion has been met. |
| Subpart C (1) | Page 4 | This subcriterion has been met. |
| Subpart C (2) | Page 12 | To be discussed in the Environmental Report. |
| Subpart C (3) | Page 12 | Concluded the project would not induce future development. |
| Subpart D | Page 13 | Found the record does not signal future compliance failure. |

B. The Department's Environmental Assessment⁸

1. Fulfillment of Certificate of Need Standards

In its Environmental Assessment filed November 28, 2006 the Department addressed the criteria established in Minn. Rules, Part 7849.0120, Subparts B(3) and C(2).

Regarding Subpart B(3), the Environmental Assessment extensively addressed the effects of the proposed facility and its alternatives upon the natural and socioeconomic environments compared to the effects of the identified alternatives.

- As to the impact upon the natural environment, the Department examined several factors (including air quality, water quality, soils and geology, groundwater and wetlands, fish and wildlife resources, and vegetation) and concluded that the proposed route and route alternative will have minimal impacts.⁹
- As to social impacts, the Department examined factors such as displacement, noise, aesthetics, human health and safety, and electric and magnetic fields, concluding that the proposed route and route alternative will have minimal impacts on human settlement.¹⁰
- Finally, examining economic impacts (including such subjects as recreation, prime farmland, transportation, mining and forestry, economic development, and archeological and historic resources) the Department concluded that the proposed route and route alternative will have minimal impacts on land-based economics.¹¹

Regarding Subpart C(2), the Environmental Assessment examined the no build alternative and concluded that this alternative was feasible but not viable since it would not achieve GRE's stated need to provide reliable electricity to the region and would place customers at significant risk of

⁸ Pursuant to Commission rules, the Department is to issue an Environmental **Report** regarding a petition for a certificate of need and an Environmental **Assessment** for a petition for a route permit. However, when the Commission acting pursuant to Minn. Rules, Part 4410.7060 directed combined consideration of GRE's two petitions (need and routing), it authorized the Department to file a combined environmental analysis entitled "Environmental Assessment." See the Commission's September 7, 2006 ORDER ACCEPTING FILING AS SUBSTANTIALLY COMPLETE, REQUIRING ADDITIONAL INFORMATION, AND ADOPTING REVIEW PROCESS, Order Paragraph 2, page 5.

⁹ See Environmental Assessment, pages 28-31.

¹⁰ See Environmental Assessment, pages 18-25.

¹¹ Environmental Assessment, pages 25-28.

frequent, costly, and prolonged service disruptions and outages.¹² In support of its conclusion that the no build alternative was not a viable alternative, the Department's examination found that the Company's projected load could not be met by conservation or by the existing transmission line or system improvements.¹³

2. Compliance With Scoping Decision

On October 19, 2006 and pursuant to Minn. Rules, Part 4400.2750, Glenn Wilson, Commissioner of the Minnesota Department of Commerce, issued a decision determining the scope of the Environmental Assessment to be prepared by Department staff on GRE's proposed Mud Lake to Wilson Lake High Voltage Transmission Line (HVTL) Project.

In response to that decision, Department staff prepared and filed an Environmental Assessment (EA) on November 28, 2006, portions of which have been discussed above in Section III, B (1) of this Order.

IV. The Commission's Analysis and Action

A. Scoping Decision

Minn. Rules, Part 4410.7050, subd. 2 requires the Commission to determine, at the time it makes a final decision on a Certificate of Need application, whether the environmental **report** and the record created in the matter address the issues identified by the Chair of the Environmental Quality Board (EQB) in his order (scoping decision) issued pursuant to Minn. Rules, Part 4410.7030, subpart 7. Subsequent legislation has transferred the responsibility to issue the scoping decision from the EQB chair to the Commissioner of the Department of Commerce.

Having reviewed the Environmental Assessment, the Commission finds that it and the record as a whole do in fact adequately address the Certificate of Need issues identified in Commissioner Wilson's scoping decision.

B. Certificate of Need

The Commission, having taken into consideration all the factors identified in statute and rule, finds that GRE has proven the need for its proposed HVTL between Mud Lake and Wilson Lake and will issue the Company a Certificate of Need to construct it.

No party opposed granting the Certificate of Need to GRE and the Department recommended, after lengthy analysis, that the Commission should grant it. In support of its recommendation, the Department examined each of the four criteria listed in Minn. Rules, Part 7849.0120. Having reviewed the Department's comments, augmented by its Environmental Assessment and the record as a whole, the Commission makes findings on these four points.

¹² Environmental Assessment, page 13.

¹³ Environmental Assessment, pages 13-16.

First, the probable result of denial of GRE's petition would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, taking into account the five factors listed in Minn. Rules, Part 7849.0120, A(1)-(5).

Second, a more reasonable and prudent alternative to GRE's proposed facility has not been demonstrated by a preponderance of the evidence on the record, considering the four factors listed in Minn. Rules, Part 7849.0120, B(1)-(4).

Third, by a preponderance of the evidence on the record, the Company's proposed facility will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health, considering the four factors Minn. Rules, Part 7849.0120, C(1)-(4).

Fourth, the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments. See Minn. Rules, Part 7849.0120, D.

In its thorough and well-founded Comments, the Department has also discussed GRE's assertion of need in light of the applicable additional statutory factors listed in Minn. Stat. § 216B.243, Subd. 3 (9) - (11).¹⁴ The Commission agrees with the Department's analysis that consideration of these statutory criteria support granting the Certificate of Need.

Finally, the Department has found as discussed above and the Commission agrees that Minn. Stat. § 216B.243, Subd. 3(a) presents no bar to granting the Certificate of Need since renewables are not an alternative to the project. The need for GRE's project is created by the forecast peak demand, and wind generation cannot be relied upon at any given time to meet peak requirements due to the variability of wind.¹⁵

ORDER

1. The Commission accepts the Environmental Assessment provided in this case as adequately addressing the Certificate of Need issues identified in the Environmental Assessment Scoping Decision issued by the Commissioner of the Department of Commerce in this matter.

¹⁴ Minn. Stat. § 216B.243, Subd. 3 (12), which applies when the petitioner is proposing a nonrenewable generating plant is inapplicable since GRE is proposing a transmission line, not a nonrenewable generating plant.

¹⁵ Department's Comments, page 7.

2. The Commission hereby approves GRE's petition and grants the Company a certificate of need for the Mud Lake - Wilson Lake 115 kV High Voltage Transmission Line.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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