

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: April 10, 2014Agenda Item **4

Company: Northern States Power Company, a Minnesota corporation (d/b/a Xcel Energy) and Great River Energy

Docket No. E-002/CN-12-113 and E-002/TL-11-152

In the Matter of the Application of Northern States Power Company, d/b/a Xcel Energy for a Certificate of Need and a Route Permit Application for the Hollydale 115 kV Transmission Line Project in the Cities of Plymouth and Medina, Hennepin County, Minnesota

Should the Commission allow the withdrawal of the Certificate of Need and Route Permit Application for the Hollydale Project? If so, should the Commission attach conditions to the withdrawal? Should the Commission request a summary of comments and testimony from the Office of Administrative Hearings?

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Relevant Documents

Xcel Petition to Certify Request for WithdrawalDecember 10, 2013
WPNA Response & Comments (2 parts)..... December 12 & 17, 2013
Barry Family Comments (2 parts) December 16 & 17, 2013
OAH Order Vacating ScheduleDecember 18, 2013
Xcel Proposed OrderDecember 23, 2013
Barry Family Proposed Order.....December 23, 2013
WPNA Proposed OrderDecember 23, 2013
Office of Administrative Hearings Order Granting CertificationJanuary 9, 2013
WPNA Comments (2 parts)January 29, 2014
City of Plymouth CommentsJanuary 29, 2014
Xcel CommentsJanuary 29, 2014
DOC DER Comments (Docket 12-113 only)January 29, 2014
Barry Family CommentsJanuary 29, 2014
Barry Family Reply CommentsFebruary 19, 2014
Xcel Reply CommentsFebruary 19, 2014
Note – Public comments are referenced within, refer to e-Dockets for complete public comments.

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless otherwise noted. This document can be made available in alternative formats (e.g., large print or audio) by calling 651-296-0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.

I. Statement of the Issues

Should the Commission allow the withdrawal of the Certificate of Need and Route Permit Application for the Hollydale Project? If so, should the Commission attach conditions to either of the withdrawals? Should the Commission request a summary of comments and testimony from the Office of Administrative Hearings?

II. Proposed Project Overview and Procedural History

On June 30, 2011, Northern States Power and Great River Energy (applicants) filed an application for a 115 kilovolt (kV) transmission line in the cities of Plymouth and Medina in Hennepin County (the Hollydale Project). As originally proposed, the project would include the rebuilding of approximately 8 miles of existing 69 kV line to 115 kV capacity, construction of approximately 0.8 miles of new 115 kV line, a new substation and modifications to associated transmission facilities in the area.

On June 12, 2012, the applicants filed a certificate of need application for the Hollydale Project.

On December 10, 2013, Xcel Energy and Great River Energy filed a Petition for Withdrawal of its applications for a certificate of need and route permit for the Hollydale Project.

On December 17, 2013, the Office of Administrative Hearings (OAH) convened a prehearing teleconference with parties to discuss the petition.

On December 18, 2013, the Office of Administrative Hearings issued its Eleventh Prehearing Order on the Certificate of Need docket and its Ninth Prehearing Order on the Route Permit Application. In the order, the Administrative Law Judge (ALJ)

On January 7, 2014 the ALJ issued an order certifying the matter to the Commission.

On January 10, 2014, the Commission issued a notice for comments on the matter that established the initial comment period through January 29, 2014 and reply comment period through February 19, 2014.

The Commission received over 150 separate public comments on the matter. Comments were also received from the parties Western Plymouth Neighborhood Alliance (WPNA) and the Barry Family. The Department of Commerce Division of Energy Resources (Department) also provided comments on the certificate of need docket.

III. Statutes and Rules

Minnesota Rule 1400.7600 provides that the Administrative Law Judge may suspend the procedural schedule and certify the withdrawal petition to the Commission for decision.

The Minnesota Legislature has enacted 2013 Minn. Laws Chapter 57 Section (the Hollydale Law) which provided the following:

Sec. 2. TRANSMISSION LINE; CERTIFICATE OF NEED REQUIRED AND EVIDENCE REQUIRED.

(a) A high-voltage transmission line with a capacity of 100 kilovolts or more proposed to be located within a city in the metropolitan area as defined in Minnesota Statutes, section 473.121, subdivision 2, for which a route permit application was filed between June 2011 and August 2011, and a certificate of need application was filed between June 2012 and August 2012, to rebuild approximately eight miles of 69 kilovolt transmission with a high-voltage transmission line to meet local area distribution needs, must be approved in a certificate of need proceeding conducted under Minnesota Statutes, section 216B.243. The certificate of need may be approved only if the commission finds by clear and convincing evidence that there is no feasible and available distribution level alternative to the transmission line. In making its findings the commission shall consider the factors provided in applicable law and rules including, without limitation, cost-effectiveness, energy conservation, and the protection or enhancement of environmental quality.

(b) Further proceedings regarding the routing of a high-voltage transmission line described in this section shall be suspended until the Public Utilities Commission has made a determination that the transmission line is needed.

The Commission evaluates certificate of need applications under Minn. Stat. § 216.243 and Minn. Rules Chapter 7849. The Commission evaluates route permit applications under Minn. Stat. § 216E and Minn. Rules, Chapter 7850.

IV. Petition and Comments on Withdrawal

Applicants' Petition to Withdrawal

On December 10, 2013, the applicants filed a motion to withdraw the pending Certificate of Need and Route Permit applications for the Hollydale Project with the Minnesota Office of Administrative Hearings.

In their motion, the applicants indicated that, while they believed the need for additional infrastructure in the area is necessary to reliably serve its customers, their preferred route for the project was very problematic and additional time is needed to develop alternatives. The applicants indicated that they would work collaboratively with residents and other stakeholders on a solution and would submit new certificate of need and route permit applications. The applicants stated that they intend to comply with the intention of the Hollydale Law by carrying forward the system alternatives, especially the distribution alternatives, which were developed during the proceedings. The applicants

requested that the ALJ suspend the procedural schedule and certify this withdrawal petition to this Commission for a final decision.

On December 23, 2013, the applicants submitted a proposed order granting the petition to withdraw the applications and certify the matter back to the Commission without conditions.

Western Plymouth Neighborhood Alliance Comments

The Western Plymouth Neighborhood Alliance (WPNA) filed a response to the motion on December 11, 2013. In their letter, WPNA stated that it did not object to withdrawal provided that the applicants met the need for the project by constructing a distribution-level alternative that does not require a certificate of need. WPNA stated that the record developed in these proceedings could inform any decision on the applicants' petition, and requested that the concerns of the community be addressed and communicated to the Commission as the petition moves forward. WPNA also indicated that the applicants should be required to observe the Hollydale Law on any alternative.

On December 23, 2013, WPNA filed proposed findings, conclusions, recommendations and order certifying issues to the Commission. WPNA recommended that the Commission allow withdrawal of the applications with conditions to ensure that applicants comply with the intention of the Hollydale Law, and with the other representations made in applicants' petition. WPNA further recommended that the Commission allow additional written submissions and conduct a public hearing in the area prior to ruling on applicants' petition to withdraw.

On January 29, 2014, WPNA filed Comments on the petition to withdrawal and also filed supplemental rebuttal testimony for the evidentiary hearings on the matter.¹

The Barry Family

On December 16, 17 and 23, 2013, the Barry Family submitted comments clarifying that the existing 69 kV line in the route corridor is not an active transmission line. The Barry Family asked that withdrawal of the applications be granted with prejudice and with conditions. The applicants should be prohibited from submitting another proposal to use the 69 kV corridors through Plymouth and Medina as a corridor for the transmission line, or to increase the use or capacity of the 69 kV line. In the alternative, the withdrawal should include a condition that the existing 69 kV transmission line be removed and easements returned to fee owners.

The Barry Family reiterated in their reply comments that the applicants should be precluded from submitting a variation of the project, a rebuild project, or upgrade project along the existing 69 kV corridor.

City of Plymouth Comments

The City of Plymouth provided comments to the certificate of need docket on January 29, 2014 supporting the withdrawal of the application. The City indicated that they had previously adopted a motion supporting an alternative Hollydale 115 kV Transmission Line alignment between the

¹ See Supplemental Rebuttal Testimony of Emmanuel Day, e-Dockets File # [20141-95932-04](#).

Hollydale Substation and the Pomerleau Lake substation that limits impacts to residential properties such as the TH 55 and 1-494 alignment. This remains their current position on the matter. The City Council also requested that their position be carried forward into any future proceedings regarding this or any similar projects.

Public Comments

The Commission has received numerous comments from the public. The majority of the comments generally opposed the project. During the public reply and comment periods, the Commission received approximately 161 public comments.

Many of the comments were of a similar nature and requested that the Commission take the following actions:

- Provide the opportunity to speak before the Commission on the matter.
- Allow the withdrawal of the applications, with conditions
- Requested conditions included:
 - o Approve Withdrawal only if the applicants are prohibited from filing for a high-voltage transmission line (HTVL) through any and all portions of the existing 69 kV corridor
 - o OAH should develop a summary of the public comments and hearing record.
 - o Any future applications for a project in the area must:
 - Be subject to the material provisions of the Hollydale Law
 - Be subject to the full permitting process including development of an Environmental Impact Statement
 - Include the current record of proceedings for the subject dockets in any future CN and Route Permit application(s).
 - Make necessary distribution improvements in the project area

Additionally, several commenters asserted that the applicants are seeking to avoid complying with the requirements of the Hollydale law by withdrawing the applications and that the applicants stood to gain from a withdrawal without conditions.

Department of Commerce Division of Energy Resources (Department) Comments

The Department filed comments on the petition to withdraw the certificate of need docket on January 29, 2014. The Department indicated that the applicants are entitled to withdraw their applications as a matter of right and agreed with the ALJ Order that recommended the Commission allow the withdrawal of the CN Petition. The Department also recommended that the Commission request a summary of public comments and testimony from the OAH.

Regarding whether the Commission should attach condition(s) to the withdrawal of the applications, the Department noted that the ALJ Order did not recommend that conditions be applied to the withdrawal of the CN petition and indicated its belief that no conditions should be applied to withdrawal. Finally, the Department noted that the applicants continue to have an obligation to provide reliable service to their ratepayers and members through demand-side and supply-side resources.

Applicants' Reply Comments

The applicants filed reply comments on February 19, 2014. The applicants stated that there is a general consensus that it is important to preserve the hearing record and the appropriate ways to do so would be to request that the OAH prepare a summary of comments and testimony developed during the public hearing process.

The applicants noted that there is also a consensus among parties and the vast majority of the public that the applicant should be allowed to withdraw the pending applications.

The applicants supported the ALJ's recommendation that there be no conditions attached to the withdrawal. The applicants noted that they intend to work with the community and stakeholders to develop a more widely supported electrical solution to the needs in the area. The applicants stated that they have agreed to carry forward the numerous distribution alternatives developed in the proceeding into any future certificate of need proceeding.

Regarding the proposed condition that the applicants submit compliance filing(s) demonstrating progress towards future distribution improvements in the area, the applicants stated that they are committed to providing safe and adequate electric service to their customers in Plymouth and Medina. The applicants indicated their intention to submit an informational filing on November 14, 2014 that will update the Commission on public outreach efforts, provide Xcel Energy's summer peak information, and detail any distribution improvements that are made, or being made in the area.

The applicants stated that these filings are in addition to the annual safety, reliability, and service quality report that Xcel Energy provides to the Commission each year. This annual report includes information related to the reliability performance of Xcel Energy's distribution system compared to established metrics to evaluate the reliability of service in the area.

V. Office of Administrative Hearings Order Granting Certification

On January 7, 2014, the Office of Administrative Hearings issued its Order Granting Joint Applicants' Motion for Certification. The Order recommended that the Commission allow withdrawal of the applicants' certificate of need and route permit for the Hollydale Project. The Order also asked the Commission to consider whether there was value in having a summary of comments and testimony submitted into the record and consider whether such a summary should be developed by Commission staff or the Office of Administrative Hearings.

VI. Staff Discussion

Based on the record to date, staff agrees with OAH and supports withdrawal of the certificate of need application. Because a certificate of need is required before a route permit can be granted, there is no need to further consider the route permit application if the certificate of need is withdrawn. Because of this, the Commission should also grant the joint applicants' request to withdraw the route permit.

Staff does not recommend development of a summary record because public comments and parties'

testimony have been entered as part of the official record to date. The comments received were in response to a particular proposed project and potential alternative. It does not necessarily follow that the record of these proceedings will be relevant to the next proposed solution. Staff believes it is important to be clear that the public and parties will be required to respond directly to the new proposal and not assume that their comments here will be properly interpreted and carried forward in consideration of a new and different project. The materials in this record would, however be available for comparative purposes and could be specifically brought into any future proceeding if someone so chose to do so. Similarly, staff does not believe it would be appropriate to require a condition of the withdrawal of the applications that would preclude consideration of any potential system or route alternative in the future. Staff believes that it is more equitable to avoid prejudgment of any potential solutions that may develop through the collaborative approach.

As noted above, the applicants have agreed to submit new certificate of need and route permit applications after collaborating with the public and stakeholders. The applicants stated that they intend to comply with the intention of the Hollydale Law by carrying forward all the system alternatives, including distribution alternatives developed during these proceedings into a new certificate of need application. Because of this, staff does not believe that the additional conditions requested by WPNA, the Barry Family and the public are warranted.

Applicants have indicated that they will update the Commission with a filing on November 14, 2014 on public outreach efforts. The filing will also provide Xcel Energy's summer peak information, and detail any distribution improvements that are made by Xcel Energy in the area. Staff recommends instead that the applicant be required to submit this filing within six months of the order granting withdrawal and quarterly thereafter.

Staff requests that the filing include a discussion on the status of the load-serving capacity at the Hollydale Substation and of the distribution systems serving the area. The filing should also include the impact of the larger transmission system, and of the need for increased load serving capabilities at the Hollydale substation.

Staff notes that on October 17 2013, the Federal Energy Regulatory Commission approved revisions to the Reliability Standard for transmission planning (NERC Standard TPL-001-04). In order to avoid confusion, staff requests that applicants provide analysis of both standards in any future proceedings.

Because of reliability concerns, staff also recommends that the applicants provide written notification of any reliability issues resulting in brownout, partial or full curtailment, and any unplanned outages in the project area. Notification should be made as soon as possible and within twenty-four hours.

VII. Commission Decision Alternatives

A. Should the Commission grant the petition to withdraw the Certificate of Need and Route Permit Applications for the Hollydale Project?

1. Grant the petition.
2. Deny the petition.
3. Take no action.

4. Take some other action.

B. If withdrawal is approved, should the Commission attach conditions to the withdrawal?

1. Attach certain conditions to the withdrawal.
2. Decline to attach conditions to the withdrawal.
3. Take some other action.

C. Should the Commission request a summary of comments and public testimony from the Office of Administrative Hearings?

1. Request a summary of public comments and testimony.
2. Take no action.
3. Take some other action.

D. Future Filing Requirements

1. Require the company to file a discussion on the public outreach efforts and an update on the load servicing capacity of distribution system serving the area by November 14, 2014.
2. Require the company to file a discussion on their public outreach efforts and an update on the load serving capacity of the distribution system serving the area six months from the date of the order granting withdrawal and quarterly thereafter.

Staff recommends options A.1, B.2, C.2, and D.2.