

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: November 26, 2013. Agenda Item # *8

Company: **Minnesota Power**

Docket No. **E015/TL-13-805**

In the Matter of the Minnesota Power Route Permit Application for the Canisteo HVTL Project in Itasca County

Issue(s): Should the Commission find the route permit application complete? Should the Commission refer the matter to the Office of Administrative Hearings for a contested case proceeding? Should the Commission appoint a public advisor? Should the Commission establish an advisory task force?

Staff: Michael Kaluzniak651-201-2257

Relevant Documents

ApplicationOctober 9, 2013
Department of Commerce EERA Compliance ReviewOctober 28, 2013
Department of Commerce EERA CommentsOctober 29, 2013

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.

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I. STATEMENT OF THE ISSUES

Should the Commission accept the route permit application as complete?

Should the Commission refer the matter to the Office of Administrative Hearings?

Should the Commission vary Minn. Rule 7850.3700 to facilitate the Commission's input on whether additional routes should be considered?

Should the Commission appoint a Public Advisor? Should the Commission establish an advisory task force?

II. PROJECT OVERVIEW

Minnesota Power (MP) has proposed to construct two, approximately 5.2-mile 115 kilovolt (kV) High Voltage Transmission Lines (HVTLs) and a substation near Coleraine, Minnesota. The two transmission lines would be constructed parallel to one another with an overlapping right-of-way (ROW) of 160 feet. The proposed project also includes a connection to Minnesota Power's existing 28 Line west of Scenic Highway 7, which traverses south across Reilly Beach Road to the Canisteo Pit, and then turns southwesterly where the lines would terminate at the proposed Canisteo Substation. A new Canisteo Substation would be constructed north of County Highway 61, east of County Road 325 near the western edge of the Canisteo Pit.

The proposed Canisteo Project (project) was designed to meet the power needs of the planned Magnetation plant, which is designed to produce iron ore concentrate by recovering weakly magnetic iron oxide particles from low-grade natural ore tailings, already-mined iron formation stockpiles, and newly-mined iron formation. The proposed Canisteo transmission project is located in Itasca County, Minnesota, near the cities of Coleraine and Bovey. If permitted, MP anticipates construction of the project to begin in the fourth quarter of 2014. The applicant anticipates a spring 2015 in-service date.

III. PROCEDURAL HISTORY

On September 6, 2013, Minnesota Power filed a Notice of Intent to file a route permit application under the alternative permitting process (Minnesota Statutes, section 216E.04 and Minnesota Rules, parts 7850.2800 to 7850.3900) for the Canisteo project.

A notice of comment period on the completeness of the route permit application was issued by the Minnesota Public Utilities Commission (Commission) on October 15, 2013, requesting initial comments by October 28, 2013, and reply comments by November 4, 2013.

On October 28, 2013, the Department of Commerce, Energy and Environmental Review Analysis staff (EERA) submitted a compliance review.

On October 29, 2013, EERA filed additional comments and recommendations on the completeness of the application.

IV. STATUTES AND RULES

Under Minnesota Statutes, section 216E.04, subd. 2, “[n]o person may construct a high-voltage transmission line without a route permit from the commission.” Under Minnesota Statute, section 216E.01, subd. 4, a high-voltage transmission line is defined as a “...conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 100 kilovolts or more and is greater than 1,500 feet in length,” u. The project as proposed by Minnesota Power would consist of approximately 5.2 miles of two new 115 kV circuit transmission lines and therefore, requires a route permit from the Commission.

Application Review

Minnesota Power filed its application for a route permit under the provisions of the alternative permitting process outlined in Minnesota Statutes, section 216E.04 and Minnesota Rules, parts 7850.2800 to 7850.3900. The proposed project is eligible for consideration under the alternative permitting process, because it is a proposed high-voltage transmission line between 100 and 200 kV.

Route permit applications for high-voltage transmission lines reviewed under the alternative permitting process must include specific information about the proposed project as outlined under Minnesota Rules, part 7850.1900, subp. 2. The Commission may accept an application as complete, accept it as complete upon the filing of additional information, or reject an application and advise the applicant of the deficiencies.

The permit review process begins on the date the Commission determines that an application is complete. Under the alternative permitting process, the Commission has six months to reach a final route permit decision. This time may be extended for up to three months for just cause or by agreement of the applicant.

Public Advisor

Under Minnesota Rules, part 7850.3400, upon acceptance of an application for a route permit, the Commission must designate a staff person to act as the public advisor on the project. The public advisor is available to answer questions from the public about the permitting process.

Advisory Task Force

Minnesota Rules, part 7850.3600, provides for the Commission to appoint an advisory task force, if appropriate. The Commission must determine whether to appoint a task force as early in the process as possible, but is not required to assign one. If the Commission appoints an advisory task force, it must specify the charge to the task force, and appoint its members in accordance with Minnesota Statutes, section 216E.08.

Environmental Assessment Preparation

EERA is responsible for preparing an environmental assessment for high-voltage transmission line projects reviewed under the alternative permitting process in accordance with Minnesota Rules, part 7850.3700. The environmental assessment must provide information on the human and environmental impacts of the proposed project and of alternative sites or routes, including methods to mitigate such impacts.

Public Hearing

Under Minnesota Rules, part 7850.3800, applications for high-voltage transmission line route permits require a public hearing upon completion of the environmental assessment. The rules provide for Commission appointment of a hearing examiner (Commission staff or other) to facilitate the comprehensive factual development and to ensure that the record created at the public hearing is preserved. The Commission may request the hearing examiner to provide a report and recommendations on the matter. The manner in which the public hearing must be conducted is outlined under Minnesota Rules, part 7850.3800, subp. 3, as follows:

Subp. 3. Hearing procedure. The hearing must be conducted in the following manner, although the hearing examiner may vary the order in which the hearing proceeds:

- A. the staff shall make a brief presentation to describe the project, explain the process to be followed, and introduce documents to be included in the record, including the application, the environmental assessment, and various procedural documents;
- B. the applicant shall introduce its evidence by way of testimony and exhibits;
- C. the public must be afforded an opportunity to make an oral presentation, present documentary evidence, and ask questions of the applicant and staff;
- D. the hearing examiner shall provide a period of not less than ten days for the submission of written comments into the record after the close of the hearing; and
- E. the hearing examiner shall transmit the complete record created at the hearing, including all written comments, to the commission within five days of the close of the record, unless the hearing examiner has been requested by the commission to prepare a report.

V. SUMMARY OF COMMENTS

Comments of the Department of Commerce

The Department of Commerce EERA staff conducted a completeness review of the route permit application and concluded that the application meets the content requirements of Minnesota Rules, part 7850.3100, and is substantially complete.

EERA staff also analyzed the merits of establishing an advisory task force for the proposed project. Based on project size, project complexity, known or anticipated controversy, and known sensitive resources, EERA staff concluded that an advisory task force is not warranted.

EERA staff also stated that no contested issues of fact have been identified with respect to the

representations in the Route Permit Application.

In their October 29, 2013 comments, EERA staff recommended that the Commission accept the route permit application for the Canisteo HVTL project as substantially complete. Additionally, EERA staff recommended that the Commission take no action on an advisory task force at this time. EERA staff made recommendation on the public hearing process that is most appropriate for the project.

VI. STAFF DISCUSSION

Application Completeness

Commission staff has reviewed the route permit application and agrees with EERA staff that the application contains the information required by Minnesota Rules and should therefore be accepted as complete.

Advisory Task Force

Staff agrees with the EERA's conclusion that an advisory task force is not required. Further, no person has requested that a task force be appointed for this project. Staff recommends the Commission take no action on an advisory task force at this time.

Public Advisor

Staff recommends the Commission designate Commission staff person Tracy Smetana to act as the public advisor in this matter.

Administrative Responsibilities

Staff recommends the Commission direct staff to formally contact relevant state agencies to request their participation in the development of the record and public hearings under Minnesota Statutes, section 216E.10, subd. 3, and to request that state agencies submit comments prior to the last day of the public hearing.

Referral to OAH

Staff believes the issues raised by the application are best developed in proceedings conducted by an administrative law judge. Therefore, staff recommends the Commission refer the matter to the Office of Administrative Hearings (OAH) for summary proceedings under Minnesota Rules, part 7850.3800. The issue to be addressed is whether the proposed project meets the selection standards and criteria established under Minnesota Statutes, section 216E.03, subd. 7, and Minnesota Rules, part 7850.4100. Further, staff recommends the Commission request the administrative law judge to adapt the existing procedural framework of Minnesota Rules, part 7850.3800, to include the following actions to facilitate comprehensive factual development of the record:

- Request that the administrative law judge assigned to the matter emphasize the statutory time frame for the Commission to make final decisions on applications and to strongly encourage the parties and participants to adhere to a schedule that conforms to the six-month statutory time frame.

- Request that the administrative law judge ask the parties, participants, and the public to address whether the proposed project and any alternatives to the proposed project meet the selection criteria established in Minnesota Statutes, section 216E.03, subd. 7, and Minnesota Rules, part 7850.4100.
- Request that the administrative law judge prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed project, alternatives to the proposed project, and a preferred route alternative, applying the routing criteria set forth in statute and rule; and provide comments and recommendations, if any, on the conditions and provisions of the proposed permit.

Scoping Decision and Alternative Routes

Staff also recommends an additional process step concerning the alternatives to be considered in the environmental document and at the time of public hearing. Under Minnesota Rules, part 7850.3700, subp. 3, the scope of the environmental assessment must be determined by the commissioner of the Department of Commerce within ten days after close of the public comment period. However, Minnesota Statutes, section 216E.04, subd. 5, anticipates that the Commission will have the opportunity to identify other routes for consideration prior to environmental review of a project. Therefore, staff recommends the Commission vary the ten-day timeline to facilitate the Commission's input on whether additional routes should be considered. Further, staff recommends the Commission request Department of Commerce EERA to present draft route alternatives to the Commission prior to the Department's final scoping decision, to provide for Commission input prior to the final scoping decision.

Under Minnesota Rule 7829.3200, subpart 1, the Commission is authorized to grant a variance to its rules upon determining the following conditions 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.

Staff believes the three conditions are met under the circumstances outlined in this briefing paper as follows:

- 1) Enforcement of the rule would impose an excessive burden on the public and those reasonably likely to be affected by the proposed project by limiting the Commission's ability to identify alternative routes or other issues and ensure their consideration in the environmental assessment and at the time of the public hearing;
- 2) Granting the variance would not adversely affect the public interest and would in fact serve the public interest by providing for Commission input into the scope of the environmental assessment ;
- 3) Granting the variance will not conflict with standards imposed by law since the ten-day timeline is set by rule, not statute, and may therefore be waived.

VII. COMMISSION DECISION ALTERNATIVES

A. Determination of Application Completeness

1. Accept the application as complete.
2. Accept the application as complete upon filing missing information.
3. Reject the application and indicate the specific deficiencies.
4. Take some other action deemed appropriate.

B. Public Advisor

1. Appoint a Commission staff person as public advisor.
2. Take some other action deemed appropriate.

C. Advisory Task Force

1. Authorize Commission staff to establish a task force.
2. Take no action on an advisory task force at this time.
3. Take some other action deemed appropriate.

D. Scoping Decision and Alternative Routes

1. Grant a variance to Minnesota Rules, part 7850.3700, subp. 3, to vary the ten-day timeline and request the Department of Commerce EERA present draft route alternatives to facilitate Commission input into the commissioner of the Department of Commerce's environmental assessment scoping decision.
2. Deny the request for a variance.
3. Take some other action deemed appropriate.

E. Referral to OAH

1. Refer the matter to the OAH for a summary proceeding requesting in the order that the OAH adapt the existing procedural framework set forth Minnesota Rules, part 7850.3800, to incorporate the following:
 - a. Request that the administrative law judge assigned to the matter emphasize the statutory time frame for the Commission to make final decisions on applications and to strongly encourage the parties and participants to adhere to a schedule that conforms to the statutory time frame.
 - b. Request that the administrative law judge ask the parties, participants, and the public to address whether the proposed project and any alternatives to the proposed project meet the selection criteria established in Minnesota Statutes, section 216E.03, subd. 7, and Minnesota Rules, part 7850.4100.

- c. Request that prior to the public hearing, the Department of Commerce EERA submit to the administrative law judge its environmental assessment comments and analysis of the route alternatives using the selection criteria established in Minnesota Statutes, section 216E.03, subd. 7, and Minnesota Rules, part 7850.4100; evidence of compliance with environmental review procedures; and recommended permit language or specific provisions relative to permissible routes.
 - d. Request that the administrative law judge prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed project, alternatives to the proposed project, and a preferred route alternative, applying the routing criteria set forth in statute and rule; and provide comments and recommendations, if any, on the conditions and provisions of the proposed permit.
 2. Direct staff to formally contact relevant state agencies to request their participation in the development of the record and public hearings under Minnesota Statutes, section 216E.10, subd. 3, and request that state agencies submit comments prior to the last day of the public hearing.
 3. Take some other action deemed appropriate.

Staff Recommendation: A1, B1, C2, D1, E1(a-d) and E2