

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger  
Nancy Lange  
Dan Lipschultz  
Matthew Schuerger  
John A. Tuma

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application of  
Minnkota Power Cooperative, Inc. for a  
Route Permit for the Clearbrook-Clearbrook  
West 115 kV Transmission Line and Substation  
Project in Clearwater County

ISSUE DATE: May 24, 2016

DOCKET NO. ET-6/TL-14-665

ORDER REOPENING AND AMENDING  
JANUARY 25, 2016 ORDER, ADAPTING  
PROCEDURAL FRAMEWORK, AND  
INCLUDING ADDITIONAL ROUTES  
FOR SCOPING

**PROCEDURAL HISTORY**

On January 25, 2016, the Commission issued an order accepting as complete Minnkota Power Cooperative, Inc.'s (Minnkota) application for a route permit to build a 115 kV transmission line of 5.3 miles in length in Leon and Pine Lake townships and a new distribution substation in Clearwater County. The order directed use of the alternative permitting process outlined in Minn. R. 7850.2800 - 3900, and asked the Department of Commerce Energy Environmental Review and Analysis staff (EERA) to prepare draft route alternatives for Commission input prior to the issuance of the final scoping decision.

On February 22, 2016, the Commission and the EERA held a public information and Environmental Assessment scoping meeting in Clearbrook. Comments were accepted through March 7, 2016.

In addition to comments filed by Minnkota and the EERA, comments were filed by the Minnesota Department of Natural Resources (DNR), the Minnesota Department of Transportation (DOT), the Erie-Bourdeaux Revocable Family Trust (the Trust), and two members of the public.

DNR filed comments on March 3, 2016, addressing the Natural Heritage Information System review performed for this project and other DNR permits. The DNR also listed issues it recommended be included in the Environmental Assessment.

DOT filed comments on March 7, 2016, requesting that the Environmental Assessment identify and quantify impacts that the project might have on the safety of the transportation system, as well as the effectiveness of the operations and maintenance of the state highway system and any additional costs to the system as a result of the placement of the transmission line.

On March 7, 2016, the Trust filed comments on procedural issues in scoping and its recommended variations on the alternative routes initially considered by Minnkota, including alternative routes 2A, 2B, and 3A, B, and C. Alternative routes 2A and 2B vary the proposed route by following County Road 73 west of Erie Lake instead of following Minnkota's crossing east and north of Erie Lake. One member of the public also supported including alternative route 2A in scoping. The other Trust alternatives (3A, B, and C) are variations on Minnkota's alternative route 4, that goes north to CSAH4 east of Clearbrook, and west, for a portion of each variation, along MNTH 92.

The Trust subsequently limited its request, asking the Commission to include two of the northern route alternatives, along Minnesota County Road 92 (alternative routes 3A and B). The Trust stated its alternatives were designed to address, avoid, and/or mitigate impacts to the trust lands.

On March 15, 2016, Minnkota filed comments on the proposed additional route alternatives, including its own four alternatives plus the variation to the alternatives submitted by the Trust.<sup>1</sup> Minnkota selected alternative route 2 as its preferred route in its application.

On April 12, 2016, the EERA filed comments regarding the scoping process for the Environmental Assessment, responding to comments filed, and identifying and preliminarily assessing alternative routes it intended to recommend be considered in the Environmental Assessment. The EERA recommended that the environmental scoping decision include a review of Minnkota's preferred route alternative 2, alternative route 2A as proposed by the Trust and a member of the public, and alternative route 3B, if a northerly route is selected by the Commission.

On April 14, 2016, the trust filed comments objecting to the EERA's proposed alternatives.

On May 5, 2016, the Commission met to consider the matter.

## **FINDINGS AND CONCLUSIONS**

### **I. Environmental Assessment**

Under the energy-facilities permitting statute, the Commission is to participate in identifying the routes to be examined in the Environmental Assessment.<sup>2</sup> To ensure a robust routing analysis, the Commission will ask that preferred route 2 proposed by Minnkota and alternative routes 2A, 3A and 3B, proposed by the Trust, be included in the Environmental Assessment prepared by the EERA.

### **II. Referral to the Office of Administrative Hearings**

The Commission's January 25, 2016 order states at Ordering Point 3 that:

The Commission directs the use of the summary report review process to develop the record for the route permit and requests that the Office of Administrative Hearings prepare a summary report of the comments received regarding the route permit application.

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<sup>1</sup> E-filed on April 26, 2016.

<sup>2</sup> Minn. Stat. § 216E.04, subd. 5.

The Commission will revise Ordering Paragraph 3 to provide additional procedural clarification, as set out below.

### ORDER

1. The Commission identifies for inclusion in the EERA's scoping decision and environmental assessment Minnkota's preferred route 2, and alternatives 2A, 3A and 3B. These four alternatives shall be included in the scoping decision for the Environmental Assessment.
2. The Commission's January 25, 2016 *Order Finding Application Complete and Initiating Alternative Review Process* Ordering Point 3 is hereby amended under Minn. Stat. § 216B.25 to read:

#### Ordering Point 3

The Commission hereby refers the matter to the Office of Administrative Hearings (OAH) for findings and a recommendation, and requests the Administrative Law Judge adapt the existing procedural framework set forth in Minn. R. 7850.3800 to incorporate the following:

- A. Emphasize the statutory time frame for the Commission to make final decisions on applications and to strongly encourage the parties to adhere to a schedule that conforms to the statutory time frame.
- B. Ask the parties, the public, and the Administrative Law Judge to address whether the proposed project and any alternatives meet the selection criteria established in Minn. Stat. § 216E.04, subd. 7, and Minn. R. 7850.4000 – Minn. R. 7850.4200. Issues that need not be addressed include the need for the proposed project (no certificate of need is required pursuant to Minn. Stat. §§ 216B.2421, subd. 3 and 216B.243, subd. 2), and the type of environmental review to be conducted for the proposed project (an Environmental Assessment is required pursuant to Minn. Stat. § 216E.04, subd. 5).
- C. Prepare a report setting forth findings and recommendations on the merits of the proposed project and alternatives, applying the criteria set forth in statute and rule; and provide comments and recommendations, if any, on the conditions and provisions of the proposed permit.
- D. Conduct the proceedings in accordance with Minn. R. 7850.3800, and the following Minnesota Rules as the Administrative Law Judge determines appropriate: Minn. R. 1405.0500, 1405.0600, 1405.0800, 1405.1100, 1405.1900 (to be filed electronically or as required by the ALJ at the prehearing conference), and 1405.2200.
- E. Apply the following to the hearing process:
  - Intervention as a party is not required. Parties to the proceeding are the EERA and the Applicant. Other persons may participate as public participants or as otherwise prescribed.

- State agencies shall participate in accordance with Minn. Stat. § 216E.10, subd. 3.
- The sequence of the hearing is left to the discretion of the Administrative Law Judge as provided in Minn. R. 7850.3800, subp. 3.
- The hearing record will be maintained through the Commission's electronic e-Dockets filing system.

3. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf  
Executive Secretary



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