

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
J. Dennis O'Brien
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Great River Energy for a Certificate of Need for a 115-kV Transmission Line Project in the Elko, New Market, and Cleary Lake Areas in Scott and Rice Counties

ISSUE DATE: September 5, 2013

DOCKET NO. ET-2/CN- 12-1235

ORDER FINDING APPLICATION COMPLETE, INITIATING INFORMAL REVIEW PROCESS, AND OTHER ACTIONS

PROCEDURAL HISTORY

On June 20, 2013, Great River Energy filed a combined certificate of need and route permit application for construction of 5.4 miles of new double circuit 115-kV transmission line, and the rebuilding of approximately 11.3 miles of existing 69-kV transmission line to 115-kV standards in the Elko, New Market, and Cleary Lake areas of Scott and Rice Counties.¹ The project is to connect with the nearby Scott-Faribault 69-kV transmission system, located to the west of the proposed project, by building a double circuit line between the two transmission lines in order to alleviate identified deficiencies on the Scott-Faribault system.

On July 1, 2013, the Commission issued a notice requesting comments on the completeness of the filing.

On July 15, 2013, the Minnesota Department of Commerce Division of Energy Resources (the Department) filed comments recommending that the Commission find the application substantially complete. The Department further recommended that the Commission order a contested case proceeding only if a party requests such a proceeding and provides reasonable grounds to do so.

On August 22, 2013, the Commission met to consider the matter.

¹ See also *In the Matter of the Application of Great River Energy for a Route Permit for a 115-kV Transmission Line Project in the Elko, New Market, and Cleary Lake Areas in Scott and Rice Counties*, Docket ET-2/TL-12-1245.

FINDINGS AND CONCLUSIONS

I. Regulatory Background

Before building a large energy facility in Minnesota, a utility must secure a certificate of need based on a finding that the facility is needed.² The term large energy facility includes any transmission line of at least 100 kV with at least ten miles in Minnesota.³ Great River Energy's project qualifies as a large energy facility, triggering the certificate of need requirement. The information required in a certificate of need application, as well as the ultimate criteria for demonstrating need, are set forth at Minnesota Rules chapter 7849.

II. Completeness and Commission Review Process

The Commission has examined the record and concurs with the Department that Great River Energy's application is substantially complete. The Commission's finding of substantial completeness is as to form only; it implies no judgment on the merits of the application. Further, comments more closely related to the merits of the application, rather than its completeness, can be most effectively addressed as the record is developed.

At this time, there are no contested material facts; future factual disputes appear unlikely; and there are no other factors pointing to a need for contested case proceedings. The Commission will therefore authorize staff to develop the record and prepare this case for Commission action without contested case proceedings under Minn. Stat. §§14.57 *et seq.*, unless those proceedings are later determined to be necessary. Accordingly, the Commission will require that the application be reviewed using the informal review process authorized under Minn. Rules, part 7829.1200.

Under the informal review process, the Commission still asks the Office of Administrative Hearings to hold at least one public hearing, scheduled in conjunction with Commission staff. The Commission will also take the steps listed below to ensure adequate development of the record:

- Designate Tracy Smetana, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147. (651) 296-0406, to act as the staff member to facilitate citizen participation in the process;
- Request that the Department continue to study issues and indicate during the hearing process its position on the reasonableness of granting a certificate to Great River Energy;
- Require that Great River Energy facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff;
- Request that Great River Energy place a CD or hard copy of the application for review in a government center and/or public library in the vicinity of the project;
- Direct Commission staff to work with the administrative law judge to select a suitable location for a public hearing on the application; and

² Minn. Stat. § 216B.243, subd. 2.

³ Minn. Stat. § 216B.2421, subd. 2(3).

- Direct Great River Energy to work with the staff of the Commission and the Administrative Law Judge to arrange for publication of the notice of the hearings in newspapers of general circulation at least ten (10) days prior to the hearings, that the notice be in the form of visible display ads, and proof of publication of the ads be obtained from the newspapers selected.

Finally, the Commission will delegate the authority to establish or vary time periods to the Executive Secretary as provided in Minn. Rules, part 7829.3100.

III. Joint Proceedings and Combined Environmental Review

A. Joint Proceedings

Minn. Stat. § 216B.243, subd. 4 requires the Commission to conduct joint hearings on applications for a certificate of need and a site or route permit unless it is not feasible or more efficient, or otherwise in the public interest. In its combined application for a certificate of need and route permit for this project, Great River Energy stated that it preferred to have a joint hearing process.

B. Combined Environmental Review

Under Minn. Rules, part 7849.1200, the Commissioner of the Department of Commerce is required to prepare an environmental report as part of the certificate of need process for a high voltage transmission line. If, as here, a route permit application for the project has been filed prior to completion of the environmental report, and the project qualifies for alternative review under Minn. Rules, part 7850.2800, a combined environmental review for the certificate of need and route permit may be conducted.⁴ The combined review – an environmental assessment of the project – must be conducted under Minn. Rules, part 7850.3700 and is filed in both the certificate of need and route permit proceedings.

In this proceeding, the Commission has determined that the alternative permitting process under Minn. Rules, parts 7850.2800 to 7850.3900 applies and referred the route permit application to the Office of Administrative Hearings.⁵ The Commission therefore requests that the Department of Commerce Energy Facilities Permitting staff prepare an environmental assessment for the certificate of need and route permit applications, instead of conducting two separate environmental reviews.

By separate order, the Commission has referred the route permit application to the Office of Administrative Hearings for proceedings before an Administrative Law Judge. The Commission concurs that coordinating these proceedings with those of the associated route-permit docket is in the public interest. Providing the public an opportunity to comment on all aspects of the proposed project at one hearing rather than two separate hearings is more efficient, reduces confusion, and is in the public interest. The Commission will therefore order joint proceedings and combined environmental review for Great River Energy's certificate-of-need and route permit applications.

⁴ Minn. Rules, part 7849.1900, subp. 1.

⁵ See *Order Finding Application Complete, Granting Variance, and Referring Application to the Office of Administrative Hearings*, Docket No. 12-1245.

IV. Variances Requested

A. Legal Standard for Varying Rules

Under Minn. Rules, part 7829.3200, the Commission is authorized to vary any of its rules upon making the following findings:

- (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.

B. Time Line for Acting on Completeness Review Extended

The rules require the Commission to act within 30 days of filing if it determines that a certificate of need application is not substantially complete.⁶ The Commission found that careful consideration of the completeness of this application required more than 30 days, and accordingly, it will vary the 30-day time line of Minn. Rules, part 7849.0200, subp. 5, making the following findings:

- (1) Enforcing the 30-day time line would impose an excessive burden upon the public, upon parties to the proceeding, and upon the Commission, by jeopardizing the thoroughness of the Commission's decision-making process.
- (2) Varying the 30-day time line would not adversely affect the public interest and would in fact serve the public interest by protecting the Commission's decision-making process.
- (3) Varying the 30-day time line would not conflict with any other standards imposed by law.

C. Time Line for Holding Public Meeting Extended

The rules require the Department to hold a public meeting within 40 days of a certificate of need filing.⁷ Enforcing the time line would have required the meeting to be held before the Commission's determination on the filing's completeness. Such an outcome would contravene the public interest and jeopardize a careful and thorough development of the case. The Commission will therefore extend the time line for holding the meeting making the following findings:

- (1) Enforcing the 40-day time line would impose an excessive burden on the public, upon parties to the proceeding, and upon the Commission, by jeopardizing the thoroughness of the Commission's decision-making process and a thorough development of the case.
- (2) Varying the 40-day time line would not adversely affect the public interest and would in fact serve the public interest by furthering a careful and thorough development of the record.
- (3) Varying the 40-day time line would not conflict with any other standards imposed by law.

The public meeting will be promptly scheduled as the case proceeds.

⁶ Minn. Rules, part 7849.0200, subp. 5.

⁷ Minn. Rules, part 7849.1400, subp. 3.

ORDER

1. The Commission accepts Great River Energy's application for a certificate of need as complete.
2. The Commission directs the use of the informal review process described above to develop the record.
3. The Commission delegates to the Executive Secretary the authority to set time lines necessary for the proper development of the record.
4. The Commission varies Minn. Rules, part 7849.0200, subp. 5 to extend the 30-day time period in which to determine that the application is complete.
5. The Commission varies Minn. Rules, part 7849.1400, subp. 3 to extend the 40-day time limit to conduct a public hearing.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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