

September 2, 2022

VIA eDOCKETS

Mr. Will Seuffert
Executive Secretary
Public Utilities Commission
121 Seventh Place East, Suite 350
Saint Paul, MN 55101-2147

RE: Frazee to Erie Transmission Line Project
Route Permit Section 6.6 Showy Lady's Slipper
Docket No. ET2,E017/TL-20-423

Mr. Seuffert:

On August 26, 2022, Great River Energy (GRE or company) requested the Public Utilities Commission (Commission) confirm "that the work associated with transplanting the Showy Lady's Slipper is authorized under the Route Permit" (eDocket No. [20228-188613-01](#)). The Commission subsequently issued a *Notice of Comment Period* concerning the company's efforts to comply with Section 6.6 of the route permit issued for the project (eDocket No. [20228-188672-01](#)).

Section 6.6 of the route permit states:

Permittees must coordinate with landowners regarding the identification of any showy lady's slipper. To the extent showy lady's slipper is identified, Permittees will coordinate with landowners to avoid or transplant plants. At least 14 days prior to submitting the plan and profile, the Permittees must file with the Commission documentation of landowner coordination that includes the location of identified showy lady's slipper and negotiated avoidance measures.

It is Energy Environmental Review and Analysis (EERA) staff's understanding that GRE intends to begin construction of its portion of the permitted project beginning in January 2023 with necessary tree clearing. Section 9.1 of the route permit requires filings and notices prior to the start of construction, including a plan and profile that depicts "the right-of-way and the specifications and drawings for right-of-way preparation, construction, structure specifications and locations, cleanup, and restoration for the transmission line." Before construction can begin, the Commission must determine that the planned construction is consistent with the route permit.

In its August 26, 2022, letter, the company explained efforts to comply with Section 6.6. GRE explained it sent letters to landowners along the permitted route asking them to identify and report the location of showy lady's slipper plants on their property in May of this year. It was not until a company representative made a site visit in July that GRE became aware of showy lady's slipper plants within the permitted right-of-way at the relevant properties.

GRE then coordinated with both the landowners and the Minnesota Department of Natural Resources (DNR). As explained by the company,¹ this coordination resulted in identification of a significant number of showy lady's slipper plants at the two properties. The three parties (landowners, DNR, and GRE) developed a plan to remove, transport, and transplant these plants to other locations. The DNR recommended these activities occur in mid- to late-September. DNR further recommended an excavator be used to ensure a large cut of native soil is transferred along with the plants to increase the likelihood of transplant success. To facilitate use of an excavator, the company indicated that trees must be cleared.

EERA staff provides the following comments concerning the Commission's August 30, 2022, notice.

1. What action, if any, should the Commission take on GRE's letter dated August 26, 2022, filed in docket ET2,E017/TL-20-423?

Staff believes the Commission should amend the route permit.

2. Does GRE's request to transplant Showy Lady's Slipper using an excavator constitute "construction" under Minn. Stat. § 216E.01, Subd. 3?

Should the Commission amend the route permit as proposed by EERA, whether transplanting plants using an excavator meets the definition of "construction" in law is moot.

3. Does GRE's request to transplant the Showy Lady's Slipper require a permit amendment? If so, how should the permit be amended? If not, what procedural treatment is appropriate?

Commission route permits require a plan and profile be submitted and approved prior to construction occurring within the right-of-way. Staff did not, however, anticipate the unique circumstances associated with the timing and the methods of successfully transplanting showy lady's slipper that emerged from coordination with landowners and the DNR as required by Section 6.6 of the route permit.

Therefore, given this unique circumstance, staff believes the Commission should amend the December 17, 2021, route permit to allow GRE to transplant showy lady's slipper as requested by landowners and in the manner desired by DNR in advance of submitting their plan and profile and the Commission's associated determination that the planned construction is consistent with the route permit as required by Section 9.1.

Section 6.6 Showy Lady's Slipper Permittees must coordinate with landowners regarding the identification of any showy lady's slipper. To the extent showy lady's slipper is identified, Permittees will coordinate with landowners to avoid or transplant plants. At least 14 days prior to submitting the plan and profile, the Permittees must file with the Commission documentation of landowner coordination that includes the location of identified showy lady's slipper and negotiated avoidance measures.

¹ Staff communicated with DNR. DNR confirmed that GRE's explanation accurately reflects coordination with the agency.

Notwithstanding Section 9.1 herein, the Permittees may take actions that would otherwise constitute construction to comply with landowner requests to transplant showy lady's slipper plants. This includes necessary clearing and excavation. The Permittee must coordinate these actions with the Third-Party Monitor identified in Section 6.10 and the Department of Natural Resources.

Staff notes that such a permit modification would not affect the portion of the project currently under construction by Otter Tail Power Company because preconstruction documents have already been submitted by Otter Tail Power and approved by the Commission. Furthermore, no showy lady's slipper plants were identified on the affected parcels. Lastly, staff believes the third-party monitor and DNR staff need not be present when transplant activities occur but should be kept informed about transplant activities.

Staff is available to answer any questions the Commission might have.

Sincerely,



Andrew Levi
Energy Environmental Review and Analysis

cc: Charley Bruce, Public Utilities Commission
Bret Eknes, Public Utilities Commission
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