

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
J. Dennis O'Brien
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

ISSUE DATE: September 9, 2013

DOCKET NO. ET-2/TL-12-1245

ORDER FINDING APPLICATION COMPLETE, GRANTING VARIANCE, AND REFERRING APPLICATION TO THE OFFICE OF ADMINISTRATIVE HEARINGS

PROCEDURAL HISTORY

On June 20, 2013, Great River Energy (or the Company) 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.²

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

On July 15, 2013, the Energy Facility Permitting staff of the Department of Commerce (EFP), the Three Rivers Park District, and Scott County submitted comments.

On July 18, 2013, Great River Energy filed reply comments.

¹ See also *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*, Docket ET-2/CN-12-1235.

² The Company filed the route permit application under the alternative permitting process. Minn. R., part 7850.2800-3900.

On July 31, 2013, Three Rivers Park District and Scott County filed reply comments.

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

FINDINGS AND CONCLUSIONS

I. Background

Before building a high-voltage transmission line in Minnesota, a utility must get a route permit from the Commission.³ The term “high-voltage transmission line” includes any transmission line longer than 1,500 feet that will operate at a voltage of at least 100 kilovolts.⁴ Great River Energy’s project qualifies as a high-voltage transmission line, triggering the route-permit requirement.

High voltage transmission lines that operate at a voltage between 100 and 200 kilovolts are eligible for the alternative permitting process under Minn. Rules, parts 7850.2800 to .3900.⁵ Because it will operate at 115 kilovolts, the project is eligible for the alternative permitting process.

II. Comments of Three Rivers Park District and Scott County

The Three Rivers Park District and Scott County filed comments stating that the Company had omitted a letter it had submitted during the scoping phase of this proceeding in its application. The park district stated that the letter addressed its concerns with the possible expansion of utility easements on its property. Further, the park district stated that the Company did not provide the documentation on easements requested by the park district staff.

The Company stated that the comments had been inadvertently omitted from the application filing, but will be included for consideration in the environmental assessment. The Company also provided the documentation on easements requested, and stated that it would continue to work with Three Rivers Park District and Scott County to address their concerns.

III. Application Completeness

Under the alternative review process, an application for a high-voltage transmission line must be submitted under Minn. Rules, part 7850.3100, which requires the applicant to submit the items required under the full permitting process, except that the applicant is not required to propose alternative routes.⁶ The EFP reviewed the route permit application for completeness and concluded that it meets the requirements of Minn. Rules, part 7850.3100.

The Commission has examined the record and concurs with the EFP that the application contains the information required and is therefore complete under Minn. Rules, part 7850.3100. The Commission’s finding of completeness is as to form only; it implies no judgment on the merits of the application.

³ Minn. Stat. § 216E.03, subd. 2.

⁴ Minn. Stat. § 216E.01, subd. 4.

⁵ Minn. Rules. 7850.2800, subp. 1.

⁶ Minn. Rules, part 7850.3100.

IV. Scope of the Environmental Assessment – Variance of Time

Under the alternative review process, the Department is required to prepare an environmental assessment of the project; prior to that step, the Department is required to provide the public with an opportunity to participate in the development of the scope of the environmental assessment by holding a public meeting and by soliciting public comments.⁷ If alternative routes are identified through the scoping process, the environmental assessment must contain information on the human and environmental impacts of both the proposed project and alternative routes.⁸

Under Minn. Rules, part 7850.3700, subp. 3, the scope of the environmental assessment must be determined by the Department within ten days after the closing of the public comment period. Minn. Stat. § 216E.04, subd. 5 anticipates, however, that the Commission will have the opportunity to identify other routes for consideration prior to environmental review of a project. The statute states that the environmental assessment must contain information on the proposed project, as well as on other routes identified by the Commission. The rule's ten-day timeline for determining the scope of the environmental assessment after the close of the public comment period constrains the Commission's ability to evaluate public input and identify other possible routes prior to environmental review.

Under Minn. Rules, part 7829.3200, the Commission has the authority to vary a rule if the following criteria 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.

In this case, the Commission finds that the criteria for granting a variance to Minn. Rules, part 7850.3700, subp. 3 are met:

- (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 input on and consideration of other route alternatives prior to the environmental review of the project.
- (2) Granting the variance would not adversely affect the public interest and would in fact serve the public interest by enabling a more comprehensive evaluation of public comment at the outset of the review process.
- (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.

⁷ Minn. Rules, part 7850.3700, subp. 2, item A.

⁸ Minn. Rules, part 7850.3700, subp. 1.

The Commission will therefore vary the ten-day timeline to facilitate the Commission's input on whether additional routes should be considered. The Commission will request that the Department's Energy Facility Permitting staff draft route alternatives for the Commission's consideration so that it can provide input into the Department's environmental assessment scoping decision.

V. Referral to the Office of Administrative Hearings

The Commission finds that it cannot resolve all issues raised in the application on the basis of the record before it. Those issues turn on specific facts that are best developed in proceedings conducted by an Administrative Law Judge (ALJ). The Commission will therefore refer the matter to the Office of Administrative Hearings (OAH) for summary proceedings under Minn. Rules, part 7850.3800, adapting the existing procedural framework to facilitate further factual development of the record in the following manner.

Specifically, the Commission will take the actions set forth below:

- Request that the ALJ assigned to the matter emphasize the statutory time frame within which the Commission must make final decisions on the application and strongly encourage the applicant and others to adhere to a schedule that conforms to this timeframe.⁹
- Direct Commission staff to formally contact relevant state agencies, and request their participation in the development of the record and public hearings under Minn. Stat. § 216E.10, subd. 3, and request that state agencies submit comments before the last day of the public hearing.
- Request that the ALJ ask the parties, participants, and the public to address whether the proposed project meets the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. Rules, Chapter 7850.4100.
- Request that EFP also include recommended permit language or specific provisions relative to permissible routes.
- Request that the ALJ prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed transmission line 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.

Additionally, the Commission requests that, prior to the public hearing in this matter, the Department submit to the Administrative Law Judge with its environmental assessment comments and analysis on the relative merits of the route alternatives, as well as its best effort to afford some ranking, whether numerical or qualitative, using the selection criteria established in section 216E.03, subdivision 7, and Minn. Rules, part 7850.4100; evidence of compliance with environmental review procedures; and recommended permit language or specific provisions relative to permissible routes.

⁹ Minn. Rules, part 7850.3100 and Minn. Rules, part 7850.3700.

This “relative merits” analysis will examine each route alternative in relation to each other, based on the factors in the statute and rule. It will identify routes with fatal flaws. It will identify routes with common or similar impacts relative to the factors. And where factors differ among routes, it will generally group the routes, identifying those needing no mitigation, those to which there are negative impacts that would need mitigation and alternatives for how mitigation might be addressed, and those with unavoidable impacts that cannot be mitigated.

The relative merits analysis is intended to be a tool to assist the public and agencies in understanding the impacts of the alternatives and to facilitate opportunities for greater input into the process.

During the public comment process, other agencies and the public provide information that is needed but otherwise not available to the Department on the relative importance of the factors. After the close of the comment period, and before the Administrative Law Judge issues a decision on the preferred route, the Department will provide its conclusion as to the most appropriate route or routes.

The conclusion will assist the Administrative Law Judge in reaching a recommendation for the Commission’s consideration.

VI. Public Hearing

To facilitate public participation and encourage members of the public to express their views on the application, the Commission will hold a public hearing on the route permit application. The hearing will be held jointly with the public hearing required under Minn. Stat. § 216B.243, subd. 4 on the certificate of need application.¹⁰

VII. Public Advisor

Upon acceptance of an application for a route permit, the Commission is to designate a staff person to act as the public advisor on the project under Minn. Rules, part 7850.3400. The public advisor is available to answer questions from the public about the permitting process. In this role, the public advisor may not act as an advocate on behalf of any person.

The Commission will designate Tracy Smetana as the public advisor. Her contact information is: Tracy Smetana, Public Advisor, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 5501-2147. She can be reached by telephone at (651) 296-0406 and by email at consumer.puc@state.mn.us.

VIII. Advisory Task Force

The EFP evaluated several factors in analyzing whether an advisory task force should be appointed by the Commission under Minn. Rules, part 7850.3600. The EFP analyzed the project’s size, its complexity, the anticipated controversies, and sensitive resources and concluded that an advisory task force is not warranted at this time. Further, no person has requested that a task force be appointed for this project.

¹⁰ Docket ET-2/CN-12-1235.

The Commission concurs with the EFP's analysis and will decline to appoint an advisory task force at this time

ORDER

1. The Commission hereby accepts the application as complete.
2. The Commission hereby refers the matter to the Office of Administrative Hearings for a summary proceeding to develop the record. The Commission requests that the agency adapt the existing procedural framework to incorporate the items set forth in part V of this Order.
3. The Commission hereby varies Minn. Rules, part 7850.3700, subp. 3 to extend the ten-day timeline for determining the scope of the environmental assessment and requests that the Department's Energy Facilities Permitting staff present draft route alternatives for the Commission's consideration so that it can provide input into the Department's environmental-assessment scoping decision.
4. The Commission hereby appoints a public advisor as described herein.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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