

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 Xcel Energy  
for a Route Permit for the Kohlman Lake to  
Goose Lake 115 kV Transmission Line Upgrade  
Project in Ramsey County

ISSUE DATE: March 15, 2013

DOCKET NO. E-002/TL-12-1151

ORDER FINDING APPLICATION  
COMPLETE, REFERRING  
APPLICATION TO THE OFFICE OF  
ADMINISTRATIVE HEARINGS,  
GRANTING VARIANCE, AND  
APPOINTING A PUBLIC ADVISOR

**PROCEDURAL HISTORY**

On January 17, 2013, Xcel Energy (Xcel) filed an application for a route permit to upgrade an existing transmission line running between the Kohlman Lake substation and the Goose Lake substation in Ramsey County in White Bear Lake Township and the cities of Maplewood, Vadnais Heights, and White Bear Lake. Xcel submitted the application under the alternative permitting procedures contained in Minn. Rules, parts 7850.2800 through 7850.3900.

On February 15, 2013, the Energy Facilities Permitting staff of the Department of Commerce (EFP) filed comments recommending that the Commission accept the route permit application as substantially complete. The EFP also recommended that the Commission take no action on an advisory task force at this time. Finally, the EFP made no recommendation on the public hearing process for the project

On March 7, 2013, the Commission met to consider the matter.

**FINDINGS AND CONCLUSIONS**

**I. Background**

Xcel proposed to upgrade an existing 115 kV transmission line with a new double circuit 115 kV line between the Kohlman Lake substation and the Goose Lake substation in northeast Ramsey County. The proposed route for the project is approximately 2.8 miles in length and follows an

existing transmission line and railroad corridor. The new double circuit 115 kV line will be built, to the extent possible, on the same alignment as the existing line which it will replace.

Because the project is greater than 100 kV, a route permit is required.<sup>1</sup> Further, because the project is between 100 and 200 kV, it is eligible for the alternative permitting process under Minn. Rules, part 7850.2800, subp. 1, item C. Under alternative review, the applicant is not required to propose alternative routes; under the full permitting process, the applicant must propose at least two routes.

Further, projects under the alternative review process are subject to an environmental assessment rather than an environmental impact statement, which is required under the full permitting process. And although the alternative review process does not require contested case proceedings under Minn. Stat. Chapter 14, the project is subject to Commission procedures under Minn. Rules, part 7850.3800.

## **II. 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. 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 7850.3200. The Commission's finding of completeness is as to form only; it implies no judgment on the merits of the application.

## **III. Scope of the Environmental Assessment – Variance of Time**

Under the alternative review process, the Department of Commerce (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.<sup>2</sup> 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 the alternative routes.<sup>3</sup>

Under Minn. Rules, part 7850.3700, subp. 3, the scope of the environmental assessment must be determined by the Department within ten days after close 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 rules' ten-day timeline for determining the scope of the environmental assessment after the close of the public comment period constrains the

---

<sup>1</sup> Minn. Stat. § 216E.01, subd. 4 and Minn. Stat. § 216E.03, subd. 2.

<sup>2</sup> Minn. Rules, part 7850.3700, subp. 2, item A.

<sup>3</sup> Minn. Rules, part 7850.3700, subp. 1.

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 ability to identify alternative routes and ensure their consideration in the environmental assessment.
- (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.

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 EFP draft route alternatives for review and consideration by the Commission so that it can provide input into the environmental assessment scoping decision of the Commissioner of Commerce.

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

The Commission finds that it cannot resolve all issues raised by 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 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.

- Direct Commission staff to formally contact relevant state agencies to 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 prior to the last day of the public hearing.
- Request that prior to the public hearing, and based on the record at that point, the EFP submit to the ALJ and file its comments on the merits of the application; its environmental assessment; evidence of compliance with environmental review procedures; and recommended permit language or specific provisions relative to permissible routes. The environmental assessment should include an analysis and preliminary ranking of the route alternatives using the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. Rules, part 7850.4100.
- 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 the ALJ prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed transmission project and a preferred route alternative, applying the routing criteria set forth in statute and rule, and provide comments, if any, on the language of the proposed permit.

## **V. 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, Public Advisor, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 5501-2147, (651) 296-0406 to act as the public advisor in this matter.

## **VI. 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 Department analyzed the project's size, its complexity, the anticipated controversies, 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.

The Commission concurs with the EFP's analysis and will decline to appoint an advisory task force at this time. The Commission may reconsider whether to appoint an advisory task force if circumstances arise that may warrant it or it receives timely requests to do so.

## ORDER

1. The Commission accepts the application as complete.
2. The Commission appoints a public advisor as described herein.
3. The Commission hereby varies Minnesota Rules, part 7850.3700, subp. 3, to vary the ten-day timeline. The Commission requests the EFP to present draft route alternatives for review and consideration by the Commission so that it can provide input into the environmental assessment scoping decision of the Commissioner of Commerce.
4. The Commission refers this case to the Office of Administrative Hearings (OAH) for a summary proceeding, and requests that the OAH adapt the existing procedural framework set forth in Minn. Rule 7850.3800 to incorporate the following items:
  - A. The Commission requests that the Administrative Law Judge (ALJ) assigned to the matter emphasize the statutory time frame for the Commission to make final decisions on applications and strongly encourage the parties and participants to adhere to a schedule that conforms to the statutory timeframe;
  - B. The Commission requests that prior to the public hearing, and based on the record at that point, the EFP submit to the ALJ and file its comments on the merits of the application; its environmental assessment; evidence of compliance with environmental review procedures; and recommended permit language or specific provisions relative to permissible routes. The environmental assessment should include an analysis and preliminary ranking of the route alternatives using the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. Rules, part 7850.4100.
  - C. The Commission requests 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.
  - D. The Commission requests that the administrative law judge prepare a report setting forth findings, conclusions, and recommendations on the merits of 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.
5. The Commission directs staff to formally contact relevant state agencies to request their participation in the development of the record and public hearings under Minn. Stat. § 216E.10, subd. 3, and requests that state agencies submit comments prior to the last day of the public hearing.

6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

*Mark E. Overlander for*

Burl W. Haar  
Executive Secretary



This document can be made available in alternative formats (i.e., large print or audio tape) by calling 651.296.0406 (voice). Persons with hearing or speech disabilities may call us through Minnesota Relay at 1.800.627.3529 or by dialing 711.