

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 ITC
Midwest LLC for a Certificate of Need for
the Minnesota-Iowa 345 kV Transmission Line
Project in Jackson, Martin, and
Faribault Counties

ISSUE DATE: June 27, 2013

DOCKET NO. ET-6675/CN-12-1053

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On March 22, 2013, ITC Midwest LLC (ITC) filed an application for a certificate of need for a 345-kilovolt, approximately 75-mile transmission line in Jackson, Martin, and Faribault Counties. ITC requested that the certificate-of-need review proceedings be coordinated with the associated route-permit proceedings for the project.¹

On May 1, 2013, the Minnesota Department of Commerce filed comments recommending, among other things, that the Commission refer ITC's application to the Office of Administrative Hearings for a contested-case proceeding. The Department stated that it had no objection to combining the certificate-of-need and route-permit proceedings.

On May 23, 2013, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over ITC's application. Before building a large energy facility in Minnesota, a utility must get a certificate of need from the Commission based on a finding that the facility is needed.² The term "large energy facility" includes any transmission line of at least 100 kilovolts with at least ten miles in Minnesota.³ ITC's proposed transmission line qualifies as a large energy facility, triggering the certificate-of-need requirement.

¹ *In the Matter of the Application of ITC Midwest LLC for a Route Permit for the Minnesota-Iowa 345 kV Transmission Line Project in Jackson, Martin, and Faribault Counties*, Docket No. T-6675/TL-12-1337.

² Minn. Stat. § 216B.243, subd. 2.

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

The Commission concurs with the Department that ITC's application should be referred to the Office of Administrative Hearings for contested case proceedings. The circumstances, including the size, uniqueness, and regional importance of the proposed transmission line, call for comprehensive development of the record. ITC does not object to referral. The Commission will therefore refer the matter for contested case proceedings to be presided over by an Administrative Law Judge.

The Commission concurs with ITC that coordinating these proceedings with those of the associated route-permit docket is in the public interest. The Commission will therefore order joint proceedings and combined environmental review for ITC's certificate-of-need and route-permit applications.

ITC should facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff. The Commission will ask the Department to continue to study the issues and to provide a recommendation on the reasonableness of granting the requested certificate of need.

II. Issues to be Addressed

Minnesota Rules part 7849.0120 sets forth criteria that must be met to establish need for proposed large electric facilities, including the projects at issue. Additionally, the Commission must consider factors set forth at Minnesota Statutes sections 216B.2422, subdivision 4, and 216B.243, subdivisions 3 and 3a. The parties to this proceeding should address whether the proposed project meets these criteria and address these factors. They may also raise and address other issues relevant to the application.

III. Public Participation

Minnesota Statutes section 216B.243, subdivision 4, encourages public participation in certificate-of-need proceedings. The statute requires at least one hearing to obtain public opinion on the application and requires the Commission to designate an employee to facilitate public participation in the hearing process.

The Commission has designated the following staff member to facilitate and coordinate public participation in this proceeding:

Tracy Smetana, Public Advisor
Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147
(651) 296-0406, or
1-800-657-3782
consumer.puc@state.mn.us

The staff member will assist the Administrative Law Judge in identifying suitable times and places for the public and evidentiary hearings.

The Commission will require ITC to work with Commission staff to publish notice of the public and evidentiary hearings in newspapers of general circulation at least ten days before the hearings. The notice shall be in the form of a visible display ad. ITC must obtain proof of publication from the

newspapers selected. The Commission will further require ITC to place a copy of the application, either printed or on a compact disc, in at least one government center or public library in each county where the proposed transmission line project will be located for public review.

Members of the public need not become formal parties to participate in the hearing process. They are encouraged to attend the public hearings and to submit testimony and exhibits. People who cannot attend the public hearings and wish to comment may submit written comments to the Administrative Law Judge.

IV. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is James LaFave, Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, St. Paul, MN 55164-0620; (651) 361-7848.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minnesota Statutes sections 14.57 to .62; the rules of the Office of Administrative Hearings, Minnesota Rules parts 1400.5010 to .8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minnesota Rules parts 7829.0100 to .3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross examination, and make written and oral argument. Under Minnesota Rules part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minnesota Rules parts 1400.6700 to .6800, or informal disposition under Minnesota Rules part 1400.5900, should be directed to Scott Ek. He can be reached at the Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147; (651) 201-2255; scott.ek@state.mn.us.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if they offer not-public data into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minnesota Statutes section 14.60, subdivision 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consulting with Commission staff and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are ITC and the Department. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of the petitions on all current parties and on the Commission.

D. Prehearing Conference

A prehearing conference will be held in this case at a date, time, and place to be set by the Administrative Law Judge in consultation with Commission staff.

Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Other matters which may be discussed

include the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

V. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minnesota Statutes chapter 10A, apply to certificate-of-need cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in the Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148 or (800) 657-3889, with any questions.

VI. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding ex parte communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minnesota Rules parts 7845.7300 to .7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers ITC's certificate-of-need application to the Office of Administrative Hearings for contested case proceedings to be conducted jointly with the contested case review of ITC's site-permit application (Docket No. T-6675/TL-12-1337).
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
P.O. Box 64620
St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

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MPUC Docket No. ET-6675/CN-12-1053

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address, and Telephone Number of Administrative Law Judge: James LaFave, Office of
Administrative Hearings, 600 North Robert Street, P.O. Box 64620, St Paul, MN 55164-0620;
(651) 361-7848

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____