



Energy Environmental Review and Analysis

85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198
ph 651.539.1855 | fax 651.539.0109
<http://mn.gov/commerce/energyfacilities>

December 3, 2013

Dr. Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

RE: Exceptions to Administrative Law Judge's Report
Energy Environmental Review and Analysis Staff
Docket No. E002/TL-12-1151

Dear Dr. Haar,

Attached are exceptions of Department of Commerce, Energy Environmental Review and Analysis (EERA) staff to the Administrative Law Judge's report in the following matter:

In the Matter of the Application of Northern States Power Company (Xcel Energy) for a Route Permit for the Kohlman Lake to Goose Lake 115 kV Transmission Line Upgrade Project in Ramsey County, Minnesota

The route permit application was filed on January 17, 2013, by:

Sage Tauber
Xcel Energy
414 Nicollet Mall
Minneapolis, MN 55401

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

Sincerely,

A handwritten signature in black ink that reads "Ray Kirsch". The signature is written in a cursive, flowing style.

Ray Kirsch
EERA Staff

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**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

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

In the Matter of the Application of Northern States Power Company (Xcel Energy) for a Route Permit for the Kohlman Lake to Goose Lake 115 kV Transmission Line Upgrade in Ramsey County

PUC Docket No. E002/TL-12-1151
OAH Docket No. 11-2500-30809

**DEPARTMENT OF COMMERCE
ENERGY ENVIRONMENTAL REVIEW
AND ANALYSIS STAFF
EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S REPORT**

I. INTRODUCTION

Minnesota Department of Commerce, Energy Environmental Review and Analysis (EERA)¹ staff respectfully submits the following exceptions to the Findings of Fact, Conclusions of Law, and Recommendation (report) issued by Administrative Law Judge Barbara Nielson (ALJ) for the proposed Kohlman Lake to Goose Lake 115 kV transmission line project (project). Overall, the report provides a comprehensive analysis of the record evidence. EERA staff recommends that the Minnesota Public Utilities Commission (Commission) approve a route permit for the project including the ALJ's recommended permit conditions as modified below.

Additionally, EERA staff discusses here comments by the Minnesota Department of Natural Resources (DNR) and EERA staff regarding the Commission's generic route permit template during the hearing process, their treatment in the report, and their treatment in general. EERA staff recommends that a consultation process for addressing comments on the

¹ Subsequent to the hearing in this matter, the EERA unit within the Department changed its name from Energy Facility Permitting (EFP) to Energy Environmental Review and Analysis (EERA).

Commission's generic route permit template be defined such that these comments provide the basis for continual improvement of the template.

II. THE GENERIC ROUTE PERMIT TEMPLATE IN THIS DOCKET

A. GENERIC ROUTE PERMIT TEMPLATE

On June 20, 2013, the Commission authorized issuance of a generic route permit template (template) for the Kohlman Lake to Goose Lake project.² The Kohlman Lake to Goose Lake project is the first project for which Commission staff entered a template into the permitting proceedings. At the June 20, 2013, Commission meeting, EERA staff inquired as to how comments on the template would be handled. That is, if agencies or citizens perceived that the template could be improved, how could improvements be suggested to the Commission such that the template could be modified? To EERA staff's understanding, the Commission's guidance was that comments on the template would be handled on a project-by-project basis through the environmental review and hearing process (permitting process). To EERA staff's understanding, though the comments would be raised in the permitting process, they would not necessarily be addressed in the permitting process, but rather could be addressed by Commission staff outside of the permitting process.

B. COMMENTS ON GENERIC ROUTE PERMIT TEMPLATE

The DNR³ and EERA staff⁴ provided comments on the template during the permitting process. DNR's comments included proposed language regarding landowner input into remediation, the use of native seed mixes, the cleaning of equipment, avoiding impacts potentially associated with temporary work spaces, and the inclusion of a placeholder in the

² ALJ Report, Finding 17.

³ ALJ Report, Finding 64.

⁴ Initial Arguments and Analysis, Department of Commerce, Energy Environmental Review and Analysis, October 8, 2013, eDockets Number [201310-92256-01](#) [hereinafter EERA Initial Arguments and Analysis].

template for the use of bird diverters.⁵ EERA staff's comments included proposed organizational changes to the template, references to Minnesota Pollution Control Agency and Department of Commerce guidance documents, and language regarding guidance to permittees for the handling of archaeological and historic resources.⁶ EERA staff's comments also concurred with DNR's proposed changes to the template.⁷ EERA staff provided an edited (underline and strikethrough) version of the template reflecting its comments and those of DNR.⁸

C. TEMPLATE COMMENTS IN ALJ REPORT

EERA staff understands that the ALJ in this matter was not explicitly charged to address possible changes to the template based on comments received during the hearing.⁹ Indeed the ALJ was charged with providing, "findings, conclusions, and recommendations on the merits of the [p]roject" – as opposed to the merits of the template and comments received on the template.¹⁰ Nonetheless, EERA staff believes that comments on the project and comments on the template are interdependent, such that comments on both will occur during the permitting process. The charge to the ALJ specifically requests that EERA staff provide recommended permit language during the hearing process,¹¹ and presumably does not preclude agencies or citizens from also recommending permit language for the project. Additionally, the template and an example of a previous Commission route permit were included in the environmental assessment (EA) for the project and were referenced in the EA's discussion of mitigation measures for potential impacts of the project. Accordingly, EERA staff believes that the

⁵ ALJ Report, Finding 64.

⁶ EERA Initial Arguments and Analysis.

⁷ Id.

⁸ Id.

⁹ ALJ Report, Finding 11.

¹⁰ Id.

¹¹ Id.

template forms part of the background upon which comments about the project are made – thus making the template and project interdependent.

The ALJ addresses the comments of the DNR during the permitting process in Findings 63 to 65 of the report. Finding 63 discusses DNR’s comments on the scope of the EA.¹² Finding 64 discusses several concerns of the DNR with respect to potential impacts of the project and DNR’s suggested edits to the template.¹³ Finding 65 discusses possible ways to implement DNR’s suggested edits to the template with respect to landowner input.¹⁴ The report does not address EERA staff’s suggested edits to the template. Conclusion 14 of the report notes that it would be appropriate for the Commission’s route permit to, among other things, require that the applicant “comply with the conditions set forth in Finding 63 above, as modified in Finding 64.”¹⁵

III. PROPOSED MODIFICATIONS TO ALJ REPORT

EERA staff believes that the recommendation provided in the last bullet of Conclusion 14 is unclear. EERA staff believes it could be read to incorporate all of DNR’s comments into the route permit for this project and into all future versions of the template. Alternately, it could be read to address solely DNR’s concerns in Findings 63 and 64 related to this project, without incorporating any of DNR’s suggested edits regarding future versions of the template. Although EERA staff supports DNR’s suggested edits to the template (for inclusion in all future versions of the template), EERA staff believes Conclusion 14 is intended to incorporate DNR’s suggested edits related to this project and as supported by the record. Thus, EERA staff suggests the following edit to Conclusion 14:

¹² ALJ Report, Finding 63.

¹³ ALJ Report, Finding 64.

¹⁴ ALJ Report, Finding 65.

¹⁵ ALJ Report, Conclusion 14.

14. It is appropriate for the Route Permit to require the Company to:
- consult and coordinate with local governments concerning the preferred finish – galvanized or self-weathering – of transmission line structures;
 - consult and coordinate with Ramsey County and the Regional Railroad Authority to ensure that it has the proper land rights to construct the Project;
 - consult and coordinate with the Metropolitan Council to avoid and mitigate potential impacts to the Council’s sewer lines in the Project area;
 - apply the erosion control measures identified in the MPCA’s Stormwater Best Management Practices manual;
 - construct the Project consistent with MnDNR recommendations for minimizing impacts to the Blanding’s Turtle and for utilizing wildlife-friendly erosion control materials;
 - comply with ~~the~~ those conditions related to the Project and supported by the record set forth in Finding 63 above, as modified in Finding 64.

If the Commission believes that it is appropriate for the report to recommend edits to the template, EERA staff recommends that separate findings be developed to address these edits, and EERA staff respectfully requests that EERA staff’s recommended edits to the template be incorporated. These edits are not repeated here; they can be found in EERA staff’s initial arguments and analysis.¹⁶

IV. HANDLING OF COMMENTS ON THE GENERIC ROUTE PERMIT TEMPLATE

If the Commission believes that it is not appropriate to have edits to the template – i.e., edits that will be incorporated into all future versions of the template – as part of the permitting process for an individual docket, then the question remains how to close the loop, so to speak, on edits suggested during the permitting process. That is, how are suggested edits to the template going to be handled such that commenters know if and how their comments will be incorporated into future versions of the template?

¹⁶ EERA Initial Arguments and Analysis.

EERA staff believes that the template could be improved through an on-going consultation process with state agencies. For example, the technical representatives designated by each agency for directing their agency's comments in the permitting process, could be canvassed on a regular basis for their input on the template. It is likely that, as here, comments on the template will be suggested during a hearing process. Such comments could be circulated to agencies for their input – e.g., is this something that should be incorporated into the template?

EERA staff recommends that the Commission authorize Commission staff to conduct an on-going consultation process with state agencies to address comments on the template and to provide for continual improvement of the template. EERA staff recommends DNR's and EERA staff's suggested edits to the template as a starting point for this consultation, and recommends that these edits be incorporated into the next version of the template.¹⁷

EERA staff appreciates the opportunity to submit these exceptions. EERA staff respectfully requests that the Commission adopt the ALJ report with the suggested modifications herein.

Dated: December 3, 2013

Respectfully submitted,



Ray Kirsch
Environmental Review Manager
Minnesota Department of Commerce
Energy Environmental Review and Analysis

85 7th Place East, Suite 500
St. Paul, MN 55101-2198
Telephone: (651) 539-1841
Email: raymond.kirsch@state.mn.us

¹⁷ See EERA Initial Arguments and Analysis.

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Exceptions to ALJ's Report**

Docket No. E002/TL-12-1151

Dated this 3rd day of **December, 2013**

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_12-1151_Official CC Service List
Kodi	Church	kchurch@briggs.com	Briggs & Morgan	2200 IDS Center 80 South Eighth Street Minneapolis, Minnesota 55402	Electronic Service	No	OFF_SL_12-1151_Official CC Service List
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_12-1151_Official CC Service List
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_12-1151_Official CC Service List
Valerie	Herring	vherring@briggs.com	Briggs and Morgan, P.A.	2200 IDS Center 80 S. Eighth Street Minneapolis, MN 55402	Electronic Service	No	OFF_SL_12-1151_Official CC Service List
Linda	Jensen	linda.s.jensen@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota Street St. Paul, MN 551012134	Electronic Service	No	OFF_SL_12-1151_Official CC Service List
Ray	Kirsch	Raymond.Kirsch@state.mn.us	Department of Commerce	85 7th Place E Ste 500 St. Paul, MN 55101	Electronic Service	No	OFF_SL_12-1151_Official CC Service List
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_12-1151_Official CC Service List
Barbara L.	Neilson	Barbara.Neilson@state.mn.us	Office of Administrative Hearings	PO Box 64620 St. Paul, MN 551640620	Electronic Service	No	OFF_SL_12-1151_Official CC Service List
Deborah	Pile	Deborah.Pile@state.mn.us	Department of Commerce	Suite 50085 7th Place East St. Paul, MN 551012198	Electronic Service	No	OFF_SL_12-1151_Official CC Service List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Jamie	Schrenzel	jamie.schrenzel@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road Saint Paul, MN 55117	Electronic Service	No	OFF_SL_12-1151_Official CC Service List
Sage	Tauber	Sage.Tauber@xcelenergy.com	Xcel Energy	414 Nicollet Mall, MP-8 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_12-1151_Official CC Service List