

November 17, 2021

VIA ELECTRONIC FILING

Mr. William Seuffert
Executive Secretary
Minnesota Public Utilities Commission
1221 Seventh Place East, Suite 350
Saint Paul, MN 55101-2147

Re: In the Matter of Possible Amendments to Rules Governing Certificates of Need and Site and Route Permits for Large Electric Power Plants and High-Voltage Transmission Lines, Minnesota Rules, Chapters 7849 and 7850; and to Rules Governing Notice Plan Requirements for High-Voltage Transmission Lines, Minnesota Rules, Part 7829.2550

MPUC Docket No. E,ET,IP-999/R-12-1246

Dear Mr. Seuffert:

Enclosed please find these comments concerning amendments to Minn. R. Chs. 7829, 7849, and 7850 in response to the Commission's September 30, 2021 which has been e-filed today on behalf of Northern States Power Company, doing business as Xcel Energy, ITC Midwest LLC, and Minnesota Power through www.edockets.state.mn.us.

A copy of this filing has also been served upon the persons on the attached Certificate of Service. Please let me know if you have any questions regarding this filing. Thank you.

Sincerely,

FREDRIKSON & BYRON, P.A.

/s/ Lisa M. Agrimonti

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

Katie Sieben
Valerie Means
Matthew Schuerger
Joseph Sullivan
John Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Possible Amendments to Rules Governing Certificates of Need and Site and Route Permits for Large Electric Power Plants and High-Voltage Transmission Lines, Minnesota Rules, Chapters 7849 and 7850; and to Rules Governing Notice Plan Requirements for High-Voltage Transmission Lines, Minnesota Rules, Part 7829.2550

MPUC Docket No. E,ET,IP-999/R-12-1246

**UTILITIES' COMMENTS ON
PROPOSED REVISIONS TO MINN. R.
CHS. 7849 AND 7850**

INTRODUCTION

Northern States Power Company, doing business as Xcel Energy (“Xcel Energy”), ITC Midwest LLC (“ITC Midwest”), and Minnesota Power (together, the “Utilities”) submit to the Minnesota Public Utilities Commission (“Commission”) these comments concerning amendments to Minn. R. Chs. 7829, 7849, and 7850 in response to the Commission’s September 30, 2021 notice. The Utilities, who have collectively permitted thousands of miles of transmission lines in Minnesota under the existing rule framework, submit these comments to highlight specific areas where the proposed rules can or should be further revised or clarified. These comments are organized to first address overarching issues and then individual parts of Minn. R. Ch. 7849 and Minn. R. Ch. 7850.

COMMENTS

I. PROCESS.

The Utilities appreciate the Commission’s effort to address the need for predictability in the permitting processes and deadlines for regulatory milestones. The Utilities support the

proposed rule revisions which are intended to establish a process schedule that adheres, to the extent practicable, to applicable statutory timeframes. The Utilities believe further improvements could be made in the rules to create efficiencies in the permitting process by consolidating some actions.

With respect to proposed Rule 7850.1640 (Draft Permit Application Required), the Utilities have been following the informal process of submitting a draft application for review by the Department of Commerce, Energy Environmental Review and Analysis (“DOC-EERA”) approximately 30 days prior to filing. This process routinely results in substantive changes to applications and has been useful in resolving DOC-EERA’s content concerns and clarifying information for the public prior to formal submission to the Commission.

The proposed rule, however, requires applicants to publicly file on eDockets complete versions of draft applications that would then result in a notice and comment period (proposed Minn. R. 7850.1680, subp. 2). The Utilities respectfully submit that these requirements would not meaningfully add to public participation and would, instead, prematurely commence the public review process. Members of the public will have notice of project and a potential application through the pre-filing public meetings contemplated in Rule 7850.1620. Providing a full draft application for public comment is likely to result in confusion and additional burden on the public, who will then have to review two versions of the application because changes in a project or an application are often made prior to filing the final version of the application. In fact, presumably a goal of formalizing the pre-filing outreach meetings reflected in proposed Rule 7850.1620 would be to facilitate some of those early changes. Therefore, the Utilities recommend that the current, successful practice be retained and that the final rules not include the e-filing and public comment

requirements on the draft application to avoid the unintended consequence of causing confusion and additional burden on the participating members of the public.

Further, to the extent the Commission decides to establish the draft application review process in rule, the Utilities recommend clarifying the timeframe for public comment and adopting the 30-day timeframe for DOC-EERA's review of draft applications. This timeframe is generally consistent with existing practice and would help to provide additional certainty in the regulatory process.

II. SPECIFIC RULE COMMENTS.

A. Chapter 7849.

1. Rule 7849.0010 Definitions.

For clarity, the Utilities recommend that the definition of associated facilities in subpart 6a be revised to include "substation" and that subpart 12a be revised to refer to "associated facilities" instead of enumerating the types of facilities included.

For further clarity, the Utilities recommend adding the definition of "transmission company" reflected in Minn. Stat. § 216B.02, subd. 10, to this rule.

2. Rule 7849.0110 Alternatives Considered.

The Utilities recommend retaining "only" within this rule. The Commission should not consider alternatives that are not supported by substantial evidence.

3. Rule 7849.0120 Certificate of Need Criteria.

With respect to subpart C, the revisions lack clarity concerning which "proposed alternatives" would be considered for the purposes of demonstrating compliance with this subpart. Because this lack of clarity could lead to uncertainty in the permitting and appeal processes, the Utilities recommend retaining this rule as currently effective. In the alternative, the Utilities recommend further revising subpart C to clarify that a proposed project must be more reasonable

and prudent than any alternative for which there exists substantial evidence on the record with respect to each of the other criteria listed in Rule 7849.0120, consistent with Rule 7849.0110.

4. Rule 7849.0125 Notice Lists.

In subpart 2, the reference to “proposed site or route permit” should be corrected to “certificate of need.”

In subpart 5(A), for the purposes of consistency, the Utilities recommend revising to “for an HVTL, landowners whose proposed property is located within shaded-in areas provided in the map provided pursuant to Rule 7849.0130, subp. 3(A)(1)(b).” The Utilities recommend the same revision to Rule 7849.1400, subp. 3a(A)(3).

5. Rule 7849.0130 Project Notice.

In subpart 3(C)(4), the phrase “a utility” should be deleted because both utilities and transmission companies are subject to the biennial plan requirement.

In subpart 3(C)(9), the phrase should be revised to read “and whether ~~that~~ the applicant may use eminent domain proceedings” The Utilities recommend the same revision to all related rules, including Minn. R. 7850.1640, subp. 2(S) and subp. 3(W); 7850.2300, subp. 2(N); 7850.2570, subp. 2(B). This change is needed to account for the fact that some projects are proposed and constructed without the use of eminent domain.

In subpart 7, the Utilities recommend deleting the final sentence as duplicative because the antecedent sentence provides the Commission with discretion to address any issue as it deems appropriate.

6. Rule 7849.0200 Application Form and Manner of Filing.

In subpart 3, the Utilities recommend clarifying that only those who have elected to receive paper copy service must receive paper copies of changed or corrected copies.

7. Rule 7849.0220 Application Contents.

Proposed subpart 2 requires all applicants to provide information regarding regional planning information that support need for the project. This data will only apply to a portion of applications. Rather than requiring the vast majority of applicants to seek an exemption from this requirement, the Utilities suggest adding “if applicable” or similar language to indicate that this information does not need to be included with every application.

8. Rule 7849.1150 Record Development.

The Utilities suggest adding language here indicating that the Commission will also determine whether joint applications will be processed jointly at this time to facilitate streamlining in the process. For this same reason, the Utilities recommend that the Commission address whether to appoint a task force at this time.

9. Rule 7849.1400 Process for Environmental Report Preparation.

Proposed subpart 3a requires two newspaper notifications be published prior to the scoping meeting – one 30 days before and another 14 days before the meeting. Dual notices seem unnecessary to provide sufficient notice, and the lead time to publish both of these notices has the potential to create unnecessary delay, especially considering the periodic nature of most local newspaper publications. The Utilities suggest removing the proposed dual notice requirements and instead reinstating the requirement that notice be published at least 10 days prior to the meeting. This notice requirement has functioned well, and the Utilities are unaware of any instance where the 10-day notice period was determined to be inadequate.

10. Rule 7849.1900. Joint Proceeding.

Proposed subpart 4 appears to erroneously transfer the decision on whether to approve joint hearings from the Commission to the Department. The Utilities recommend correcting this section to clarify that the Commission will decide if joint hearings are appropriate.

B. Chapter 7850.

1. Rule 7850.1000 Definitions.

For clarity, the Utilities recommend that the definition of associated facilities in subpart 3 be revised to include “substation” and that subpart 9 be revised to refer to “associated facilities” instead of enumerating the types of facilities included.

For further clarity, the Utilities recommend adding the definition of “transmission company” reflected in Minn. Stat. § 216B.02, subd. 10, to this rule.

2. Rule 7850.1400 Exempt Projects.

In subpart 1, the Utilities support the revisions to this rule because the revisions make the rule consistent with Minn. Stat. § 216E.01, subd. 4.

3. Rule 7850.1500 Exceptions to Permitting Requirement for Certain Existing Facilities.

In subpart 2, “substation” should be deleted because a substation is not Commission-jurisdictional unless it is an associated facility of a high voltage transmission line.

4. Rule 7850.1610 Notice Lists.

In subpart 5, for consistency and clarity, the Utilities recommend changing “along” to “on or adjacent to.”

5. Rule 7850.1620. Preapplication Meetings; Transmission Lines.

This rule attempts to codify the widespread practice of project proponents doing extensive public outreach prior to filing an application for a new generator or transmission line. The Utilities do not believe formalizing the requirement is necessary given current practices, but if the Commission adopts this rule, the Utilities recommend a change to subpart 4, which mandates that a summary of each meeting and comment be provided in the application. The Utilities believe it

would be more appropriate to summarize the issues raised at the preapplication meetings to avoid speaking for any particular commentator.

6. Rule 7850.1640 Draft Permit Application Required.

As discussed in Section I above, if this section is retained, the Utilities recommend that the rule be revised such that DOC-EERA will complete its review of draft applications within 30 days. This is largely consistent with existing practice and would serve to add additional clarity and predictability to the rules. The Utilities also note that this section suggests that a docket number be requested when the draft is filed. However, to provide the information at the pre-application meetings suggested by proposed Rule 7850.1620, a docket number would be helpful. It is likely that applicants will request a docket number at that earlier stage, or at a minimum, before filing the draft application.

Proposed subpart 4(H) requires applicants to describe measures that might be implemented to mitigate potential impacts and to provide the costs of implementing such mitigation measures. The Utilities believe additional information, including feasibility and aspects in addition to cost should be provided and suggest modifying this subpart to include “...and the feasibility and estimated costs of implementing the identified mitigation measures.”

7. Rule 7850.1680 Comments and Process.

As noted above, the Utilities believe that requesting public comments on the draft application is duplicative and potentially confusing to the public. Receiving informal feedback from the Department has worked well to ensure that all required content is available to the public once a formal application is filed. The Utilities believe this existing practice should continue and that public comments should begin once the final application has been submitted.

8. Rule 7850.2120 Commission Referral.

The Commission could consider allowing for delegation to the Executive Secretary under this rule. Further, the Utilities recommend adding a timeframe to this rule to provide greater predictability.

9. Rule 7850.2530 Scoping.

In subpart 3, notice of scoping decision to landowners, the Utilities recommend adding a requirement that a map be provided so that newly affected landowners will understand why they are receiving notice.

10. Rule 7850.2550 Draft EIS.

Proposed subpart 4 requires a separate environmental review meeting after the Draft EIS is available. The rule suggests this meeting may occur just prior to the public hearing. Having separate meetings, close in time, has the potential to stretch the resources and attention of landowners and other participants. Given that the Draft EIS must be available prior to the public hearing, the Utilities recommend that one meeting be held and that the notice be clear that comments on both the Draft EIS and applications will be received at this time. This, too, will help avoid overlapping and inconsistent written comment deadlines following these meetings. Most importantly, this change would reduce confusion and simplify public involvement process.

11. Rule 7850.2675 Procedure after Administrative Report.

The Utilities support subpart 2 of this revised rule and recommend that the Commission consider adding a similar requirement to Chapter 7849.

12. Rule 7850.3800 Public Hearing.

In recent years, the Commission has routinely requested that, even during informal proceedings, the Office of Administrative Hearings prepare a full report, including proposed findings and recommendations, to assist the Commission in developing the record and reaching

decision. In contrast, subpart 2 of this proposed rule continues to suggest that the “summary report” would be the default in informal proceedings. The Utilities suggest the Commission revise this section to make the full report and recommendations option the default to reflect current practice.

13. Rule 7850.4300 Prohibited Routes.

The Utilities note that this rule appears to have been inadvertently excluded from the proposed rules and recommend that the rule be retained as currently written.

14. Rule 7850.4400 Prohibited Sites.

This section retains the existing prime farmland exclusion language. Given the State of Minnesota’s and many utilities’ goals to increase the amount of solar energy in the state, it would seem prudent for the Commission to revisit this section and address the prime farmland issue through this rulemaking, rather than continuing to have it arise on a case-by-case basis in individual site permit application dockets.

15. Rule 7850.4800 Minor Alteration in Generating Plan or Transmission Line.

In subpart 1, this rule adds language to reference a “site or route approved by the commission” but later notes that it also applies to facilities that were not previously permitted by the Commission. Similarly, subpart 2 refers only to “permittees” being authorized to seek a minor alteration, despite the fact that subpart 1 indicates that the rule applies to projects not previously permitted by the Commission. The Utilities recommend clarifying the rule to state that a “permittee” or “facility owner” may seek authorization to make a minor alternation. This change would more clearly indicate who may seek a minor alteration.

16. Rule 7850.4950 Reports.

The Utilities recommend that this rule be revised to clarify that reports of complaints relating construction of the project are required until “construction” is complete. The rule currently states until the “project” is complete which is ambiguous and potentially indefinite.

17. Rule 7850.5000 Permit Transfer.

Subpart 2 includes a new requirement that the Commission be notified of ownership changes. As written, the revision appears to apply to the change in the entity owning a project. If this is the Commission’s intention, the Utilities recommend clarifying that the rule does not require notice when there is merely a change in control of an entity. Additionally, the revised rule requires the Commission to approve the transfer if the new permittee *complies* with the conditions of the permit. The Utilities recommend retaining the previous language indicating that the new permittee “will comply” since the transfer will not have occurred at the time of the approval.

18. Rule 7850.5300 Local Review of Proposed Facilities.

The Utilities support removing substations of 100 kV or more from this rule because it is consistent with the scope of the Commission’s jurisdiction.

CONCLUSION

The Utilities appreciate the opportunity to provide these comments and respectfully request that the Commission incorporate the revisions identified by the Utilities to further clarify the rule revisions.

Dated: November 17, 2021

Respectfully submitted,

/s/ Lisa Agrimonti

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CERTIFICATE OF SERVICE

Breann L. Jurek certifies that on the 17th day of November 2021, on behalf of Northern States Power Company, doing business as Xcel Energy, ITC Midwest LLC, and Minnesota Power (collectively, "Utilities"), she e-filed a true and correct copy of the following document:

1. UTILITIES' COMMENTS ON PROPOSED REVISIONS TO MINN. R. CHS. 7849 AND 7850

with the Minnesota Public Utilities Commission via eDockets (www.edockets.state.mn.us). Said documents were also served on the Official Service List of record on file with the Minnesota Public Utilities Commission and as attached hereto.

Executed on: November 17, 2021

Signed: /s/ Breann L. Jurek

Fredrikson & Byron, P.A.

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Randy	Anderton	randerton@rpu.org	Rochester Public Utilities	4000 East River Road NE Rochester, MN 55906	Electronic Service	No	OFF_SL_12-1246_Official
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Board	Chair	N/A	Sherburne County Board of Commissioners	13880 Business Center Sherburne County Government Center Elk River, MN 55330-1692	Paper Service	No	OFF_SL_12-1246_Official
Jean	Christoffels	jchristoffels@co.murray.mn.us	Murray County Environmental Services	2500 28th Street P.O. Box 57 Slayton, MN 56172	Electronic Service	No	OFF_SL_12-1246_Official
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_12-1246_Official
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Carol A.	Overland	overland@legalectric.org	Legalelectric - Overland Law Office	1110 West Avenue Red Wing, MN 55066	Electronic Service	No	OFF_SL_12-1246_Official
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_12-1246_Official
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