

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: February 26, 2015Agenda Item *5

Company: Minnesota Power

Docket No. E015/TL-14-977
In the Matter of the Application of Minnesota Power for a Route Permit for
the Line 16 Reroute Project in St. Louis County, Minnesota

Issue(s): Should the Commission accept the route permit application as complete?
What action should the Commission take regarding other procedural items?

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Relevant Documents

Minnesota Power ApplicationJanuary 16, 2015
Department of Commerce EERA CommentsFebruary 3, 2015
Minnesota Power Reply CommentsFebruary 6, 2015

The attached materials are work papers of the Minnesota Public Utilities Commission staff. They are intended for use by the Commission and are based upon information already in the record unless noted otherwise.

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Statement of the Issues

1. Should the Commission accept the route permit application as complete?
2. Should the Commission appoint a public advisor?
3. Should the Commission establish an advisory task force?
4. Should the Commission take additional procedural steps?

Procedural History

On November 17, 2014, Minnesota Power an operating division of ALLETE, Inc. (applicant) filed a notice of intent to file a route permit application under the alternative permitting process.

On January 16, 2015, Minnesota Power submitted an application for a route permit for the Line 16 Reroute Project under the alternative permitting process.

A notice of comment period on the completeness of the route permit application was issued by the Commission on January 26, 2015, requesting initial comments by February 2, 2015, and reply comments by February 9, 2015.

On February 3, 2015, the Department of Commerce, Energy and Environmental Review Analysis staff (EERA) submitted a compliance review including comments and recommendations.

On February 6, 2015, Minnesota Power filed reply comments supporting the Department's recommendations.

Statutes and Rules

Minnesota Power filed its application for a high-voltage transmission line (HVTL) route permit under the provisions of the alternative permitting process outlined in Minnesota Statutes, section 216E.04 and Minnesota Rules, parts 7850.2800 to 7850.3900.

Under Minnesota Statutes, section 216E.01, subd. 4, a high-voltage transmission line is defined as a "...conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 100 kilovolts or more and is greater than 1,500 feet in length". Under Minnesota Statutes, section 216E.04, subd. 2, "[n]o person may construct a high-voltage transmission line without a route permit from the commission."

Minnesota Rule 7850.1900, Subp. 2 identifies the information requirements for route permit applications. The requirements include, but are not limited to, information about the applicant, a description of the proposed route, environmental impacts of the project, potential mitigation measures, and a discussion and analysis of alternatives to the project.

Route permit applications for high-voltage transmission lines reviewed under the alternative permitting process must include the same information about the proposed project as is required under the full permitting process as set out in Minnesota Rules, part 7850.1900, subpart 2. However, Minnesota Rule 7850.3100 provides that, unlike applications submitted under the full permitting process, the applicant need not propose any alternative routes, but must identify any rejected alternative routes and include an explanation for rejecting them.

Minnesota Rule 7850.3200 provides that the Commission may accept an application as complete, reject an application and require additional information to be submitted, or accept an application as complete upon filing of supplemental information.

Minnesota Rules, part 7850.3400 states that upon acceptance of an application for a route permit, the Commission must designate a staff person to act as the public advisor on the project. The public advisor is available to answer questions from the public about the permitting process.

Minnesota Rules, part 7850.3600, provides for the Commission to appoint an advisory task force, if appropriate. The Commission must determine whether to appoint a task force as early in the process as possible, but is not required to assign one. If the Commission appoints an advisory task force, it must specify the charge to the task force, and appoint its members in accordance with Minnesota Statutes, section 216E.08.

EERA staff is responsible for preparing an environmental assessment for high-voltage transmission line projects reviewed under the alternative permitting process in accordance with Minnesota Rules, part 7850.3700. The environmental assessment must provide information on the human and environmental impacts of the proposed project and of alternative sites or routes, including methods to mitigate such impacts. Minnesota Rule 7850.3700, subp. 3 states that the Department of Commerce must determine the scope of the environmental assessment within 10 days after the close of the public comment period.

Under Minnesota Rules, part 7850.3800, applications for high-voltage transmission line route permits require a public hearing upon completion of the environmental assessment. The rules provide for Commission appointment of a hearing examiner (Commission staff or other) to facilitate the comprehensive factual development and to ensure that the record created at the public hearing is preserved. The Commission may request the hearing examiner to provide a report and recommendations on the matter. Minnesota Rules, part 7850.3800, subp. 3 establish the procedural steps for conducting the public hearing.

Minnesota Rule 7850.3900 provides that once the Commission finds the application complete the Commission has six months to reach a final decision, however this may be extended for up to three months for just cause or by an agreement with the applicant.

Minnesota Power Application

Minnesota Power applied to the Commission for a route permit to construct an approximately 3-mile 115 kilovolt (kV) alternating current high-voltage transmission line (HVTL) located south of Fayal Township in Saint Louis County. As part of the project, three miles of existing 115-kV transmission line would be taken out of service and removed. The proposed HVTL would connect to Minnesota Power's existing 16 Line on the east side of United Taconite's existing tailings basin and proceed southeast, parallel to an existing railroad grade for approximately 1.25 miles. The line would then proceed southwest for approximately 1.75 miles where it would connect to the existing 16 Line. The applicant has requested a 500-foot route width and a right-of-way width of 100 feet.

Minnesota Power stated in its application that the project is required to accommodate United Taconite's planned expansion of its existing tailings basin area on their property in 2016. The existing line is located on land leased from United Taconite and the proposed project would be located on land owned by United Taconite, the State of Minnesota, St. Louis County, and one private landowner

Department of Commerce EERA Comments and Recommendations

The Department of Commerce EERA staff conducted a completeness review of the route permit application, and concluded that the application meets the content requirements of Minnesota Rules, part 7850.3100. Department of Commerce EERA staff recommended that the Commission accept the application as complete.

EERA staff stated that the alternative permitting process would provide adequate opportunities for the public to identify issues and route alternatives to be addressed in the environmental assessment.

EERA Staff agreed to assist local landowners and governmental units in understanding the siting and routing process and identifying opportunities for participating in further development of alternative routes or permit conditions

EERA staff also analyzed the merits of establishing an advisory task force for the proposed project. Based on project size, project complexity, known or anticipated controversy, and known sensitive resources, EERA staff concluded that an advisory task force is not warranted and recommended that the Commission take no action on an advisory task force at this time.

EERA staff also stated that no contested issues of fact have been identified with respect to the representations in the Route Permit Application.

Staff Discussion

The project as proposed by Minnesota Power would consist of approximately 3 miles of 115 kV high-voltage transmission line and therefore, requires a route permit from the Commission.

The proposed project is eligible for consideration under the alternative permitting process, because it is a proposed high-voltage transmission line between 100 and 200 kilovolts.

Because the project is not classified as a large energy facility under Minnesota Statutes Section 216B.2421 and 216B.243, a certificate of need is not required for the project.

The applicant indicated in their application that Minnesota Rules 7850.3100 was not applicable to the project¹. Section 4.3 of the application indicates that the range of potential routes was constrained by a need to connect to existing infrastructure and the small geographic area of the proposed project. The application states that there was no need for the applicant to consider routes other than the one proposed because of engineering constraints associated with achieving proper clearances around existing and proposed infrastructure. Staff believes that the rule remains applicable for this project, but that the requirement can be considered later in the permitting process. Because of this, staff believes that no action on route alternatives is required at this time. Staff has reviewed the route permit application and agrees with the Department that the application meets the content requirements, and the Commission should consider the application substantially complete under Minn. Rules, part 7850.1900.

Staff recommends the Commission designate Commission staff person Tracy Smetana to act as the public advisor in this matter.

Staff agrees with the EERA's conclusion that an advisory task force is not required. Further, no person has requested that a task force be appointed for this project. Staff recommends the Commission take no action on an advisory task force at this time.

Staff recommends the Commission direct staff to formally contact relevant state agencies to request their participation in the development of the record and public hearings under Minnesota Statutes, section 216E.10, subd. 3, and to request that state agencies submit comments prior to the last day of the public hearing.

Staff recommends the Commission vary Minnesota Rules, part 7850.3700, subp. 3, to provide additional time to facilitate the Commission's input on whether additional routes should be considered in the environmental assessment.

In this case, staff recommends the Commission find 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

¹ Application, e-Filing document number [20151-106265-01](#), at page 5.

serve the public interest by enabling a more comprehensive evaluation of public comment at the outset of the review process.

- (3) Staff believes that granting the variance will not conflict with standards imposed by law.

Staff requests that the Commission extend the ten-day timeline to facilitate the Commission's input on whether additional routes should be considered to 40 days, subject to the Executive Secretary's authority to extend the comment period as appropriate. Staff recommends that the Commission request that the DOC EERA present draft route alternatives to the Commission prior to the EERA's final scoping decision.

Staff proposes to electronically file a generic route permit template into the record of this proceeding. The permit template is designed to provide interested parties, persons and governmental agencies an opportunity to review standard permit language early in the review process, to facilitate greater discussion of the proposed terms and conditions, and to allow additional time for the development of recommendations of different or additional permit language or special conditions specific to the proposed project. The generic permit template can also provide the administrative law judge with a foundation to build on during the hearing process and when preparing the final hearing report and recommendations if one is requested.

The Commission may request the administrative law judge to provide a full report of the public hearing including recommendations on the proposed project. As a procedural matter, staff recommends that the Commission make its determination on the need for a full report at the time at it evaluates the Department's scoping recommendations. By doing so, the Commission would be better able to evaluate the project's complexity and level of public interest when evaluating any potential alternative routes.

COMMISSION DECISION ALTERNATIVES

A. Determination of Application Completeness

1. Accept the application as complete.
2. Accept the application as complete upon filing missing information.
3. Reject the application and indicate the specific deficiencies.
4. Take some other action deemed appropriate.

B. Public Advisor

1. Appoint a Commission staff person as public advisor.
2. Take some other action deemed appropriate.

C. Advisory Task Force

1. Authorize Commission staff to establish a task force.
2. Take no action on an advisory task force at this time.

3. Take some other action deemed appropriate.

D. Additional Procedural Steps

1. Grant a variance to the ten-day timeline to facilitate the Commission's input on whether additional routes should be considered to 40 days, subject to the Executive Secretary's authority to seek additional time from the Commission.
2. Direct staff to formally contact relevant state agencies to request their participation in the development of the record and public hearings under Minnesota Statutes, section 216E.10, subd. 3 and request that state agencies submit comments prior to the last day of the public hearing.
3. Direct staff to electronically file a generic route permit template into the record of this proceeding.
4. Request that the Department begin the environmental review process and route selection, including identifying alternative sites or routes; to conduct public scoping meetings and issue notices required in that process; and to perform related administrative tasks, including coordinating advisory task forces
5. Request that the Department present draft route alternatives to facilitate Commission input to the Commissioner of Commerce on the scope of the environmental assessment prior to its issuance.
6. Take some other action deemed appropriate.

Staff Recommendation: A1, B1, C2, D1, D2, D3, D4, and D5.