

Appendix D Scoping Decision



In the Matter of the Application of
Detroit Lakes Public Utility for a HVTL Route
Permit for the 115 kilovolt (kV) transmission
line and substation in Becker County
PUC Docket No. E229/TL-18-755

ENVIRONMENTAL ASSESSMENT SCOPING DECISION

The above matter has come before the Assistant Commissioner of the Department of Commerce (Department) for a decision on the scope of the Environmental Assessment (EA) to be prepared for the Detroit Lakes Public Utility for a 115 kilovolt (kV) transmission line and substation in Becker County.

Project Description and Purpose

Detroit Lakes Public Utilities (DLPU), of Detroit Lakes, Minnesota owns and operates a municipal electric system that provides electric service to the citizens of Detroit Lakes and surrounding areas.

In 2017, DLPU completed an Electric System Study and Capital Improvements Plan. The study found: (1) loads on the existing system are projected to increase through 2026, (2) numerous system deficiencies and (3) an inability of the system to serve increasing loads under emergency scenarios, such as the loss of a distribution feeder or substation transformer. To address increasing loads and reliability concerns, DLPU proposes construction of a new substation and high voltage transmission line (HVTL) on the south side of the DLPU service territory (Map 1).

The proposed project involves construction of approximately 2.2 miles of overhead 115 kV transmission line and substation south of Detroit Lakes in Becker County. The northern terminus of the HVTL is the proposed substation near the intersection of US Highway 59 and CSAH 22. The southern terminus will be the tie-in to an existing 115 kV HVTL owned by Great River Energy located in Section 33, T138N, R41W of Lake View Township near US Hwy 59 and County Road 17.

DLPU proposes to place the new transmission line within the right-of-way (ROW) along US Highway 59 owned by the Minnesota Department of Transportation (MnDOT). Siting the project within the existing ROW minimizes impacts to adjacent landowners. DLPU is requesting a 200 foot right-of-way for the majority of the route based on the centerline of US Highway 59. The final right-of-way varies between 15-41 feet wide to accommodate MNDOT's clear zone requirements.

Regulatory Background

In Minnesota, no person may construct a high voltage transmission line (HVTL) without a route permit from the Commission (Minnesota Statute 216E.03). A high voltage transmission line is defined as a conductor of electric energy designed for and capable of operation at a voltage of 100 kV or more and greater than 1,500 feet in length (Minnesota Statute 216E.01, Subd. 4).

The proposed project will consist of a new 115 kV transmission line in excess of 1,500 feet and therefore requires a route permit from the Commission.

Route Permit Application and Acceptance

Minnesota Rule 7850.2800 states applicants intending to submit a project under the Commission's alternative permitting process for transmission lines are required to provide a 10-day advance notice of this intent to the Commission before submitting their route permit application. Notice was provided by DLPU on December 5, 2018¹.

The voltage of the new transmission line will be between 100 and 200 kV, thus qualifying for the Commission's alternative permitting process (Minnesota Rule 7850.2800, subp. 1C).

Route permit applications for HVTLs must provide specific information about the proposed project including, but not limited to, applicant information, route description, potential environmental impacts and mitigation measures (Minnesota Rule 7850.3100). Review under the alternative permitting process does not require the applicant to propose alternative routes in the permit application. However, if the applicant has evaluated and rejected alternative routes they must include these and the reasons for rejecting them in the route permit application.

The Commission may accept an application as complete, reject it and require additional information to be submitted, or accept it as complete upon filing of supplemental information (Minnesota Rule 7850.2000). The environmental review and permitting process begins on the date the Commission determines that a route permit application is complete. The Commission has six months from the date of this determination to reach a route permit decision; though the decision can be extended for three months for cause, or with the Applicant's agreement (Minnesota Rule 7850.3900).

In an Order dated October 28, 2019, the Commission accepted the HVTL Route Application as complete and authorized review under the alternative permitting process defined in Minn. Stat. § 216.04 and Minn. R.7850.2800 to 7850.3900 and referred the matter to the Office of Administrative Hearings for appointment of an Administrative Law Judge to prepare a Summary Report.²

Environmental Review

Applications for HVTL route permits are subject to environmental review conducted by EERA staff (Minnesota Rule 7850.3700). Projects proceeding under the alternative permitting process require the preparation of an Environmental Assessment (EA).

An EA is a document which describes the potential human and environmental impacts of the proposed project and potential mitigative measures. It is the only state environmental review document required for the Project (Minnesota Statute 216E.04, subd. 5). Staff provides notice and conducts a public scoping meeting to solicit comments on the scope of the EA.

¹ Notice of Intent to Submit a Route Permit Application under the Alternative Permitting Process, December 5, 2018, eDocket No. [201812-148292-01](#).

² Commission Order finding the application complete pending additional information and directing use of summary report review process, October 28, 2019, eDocket No. [201910-156919-01](#).

The Department of Commerce Commissioner (delegated to the Assistant Commissioner) determines the scope of the EA. The Department may include alternative routes suggested by the public in the scope of the EA if such alternatives aid the Commission's decision on the route permit application.

Under Minn. R. 7850.3700, subp. 3, the scope of the environmental assessment must be determined by the Department within ten days after the closing 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 rule's ten-day timeline for determining the scope of the environmental assessment after the close of the public comment period constrains the 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 its rules, and in this docket has chosen to vary Minn. R. 7850.3700, subp. 3, to extend the 10-day timeline.

The EA will be completed and made available prior to the public hearing for the project.

Under Minnesota Rule, 7850.3700, subp. 4, the Environmental Assessment must include the following:

- A. A general description of the proposed project;
- B. A list of any alternative sites or routes that are addressed;
- C. A discussion of the potential impacts of the proposed project and each alternative site or route on the human and natural environment;
- D. A discussion of mitigative measures that could reasonably be implemented to eliminate or minimize any adverse impacts identified for the proposed project and each alternative;
- E. An analysis of the feasibility of each alternative site or route considered;
- F. A list of permits required for the project; and
- G. A discussion of other matters identified in the scoping process.

The EA will include a discussion of the human and environmental resources potentially impacted by the proposed project. Potential impacts, both positive and negative, of the project will be described. Based on the impacts identified, the EA will describe mitigation measures that could reasonably be implemented to reduce or eliminate the identified impacts. The EA also will describe any unavoidable impacts resulting from construction and operation of the proposed Project.

Data and analyses in the EA will be commensurate with the importance of potential impacts and the relevance of the information to a reasoned decision and to the consideration of the need for mitigation measures (Minnesota Rule 4410.2300). EERA staff will consider the relationship between the cost of data and analyses and the relevance and importance of the information in determining the level of detail of information to be prepared for the EA. Less important material may be summarized, consolidated or simply referenced.

If relevant information cannot be obtained within timelines prescribed by statute and rule, or if the costs of obtaining such information is excessive, or the means to obtain it is not known, EERA staff will include

a statement that such information is incomplete or unavailable and describe the relevance of the information in evaluating potential impacts or mitigation (Minnesota Rule 4410.2500).

Scoping Summary

On November 13, 2019 Commission and EERA staff sent notice of the place, date and time of the Public Information and Scoping meeting to local government units and those persons on the Project contact/general list.³

Commission staff and EERA staff jointly held a Public Information and EA Scoping meeting at City Hall in Detroit Lakes on December 4, 2019. The purpose of the meeting was to provide information to the public about the proposed Project, to answer questions, and to allow the public an opportunity to suggest alternatives and potential impacts to be considered in the EA. A court reporter was present at the meeting to document oral statements.

The comment period closed on December 27, 2019.

Scoping Comments

Comments were received from Minnesota Department of Natural Resources (MDNR) and Minnesota Department of Transportation (MnDOT) during the comment period. There were no attendees at the public information and scoping meeting.

MDNR

MDNR comments focus on permitting and licenses issued by MDNR, rare and unique resources, use of flight diverters, and recommendations for use of the right-of-way during construction to extent practicable. The applicant will need to obtain a license to cross public waters and potentially a public waters work permit if any poles are placed in a public water wetland.

Specifically, MDNR notes the following:

- Rare and unique resources include Meadow Lake, a Lake of Moderate Biological Significance, with records of least darters (*Etheostoma microperca*), a state-listed fish species of special concern. Because this species is intolerant of turbidity and siltation, effective erosion and sediment control practices need to be implemented and maintained for the duration of the project. MDNR recommends confining activities to the west side of U.S. Highway 59 or directionally boring under these sensitive areas. Bore pits should be placed away from the water's edge and erosion control methods should be used to prevent excavation material from entering the water. Upon completion, pits should be filled, graded to preconstruction contours, and re-vegetated with native plant species.
- A portion of the project is adjacent to the Meadow Lake Aquatic Management Area (AMA). AMAs are established to protect, develop, and manage lakes, rivers, streams, and adjacent wetlands and lands that are critical for fish and other aquatic life. MDNR recommends effective erosion prevention and sediment control practices be implemented and maintained near the AMA during the duration of the project. Indirect impacts, such as the introduction or spread of invasive species, should also be considered and minimized.

³ Notice of Public Information/Scoping Meeting, November 13, 2019, eDocket no. [201911-157520-01](#).

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- Measures to avoid or minimize disturbance to the above rare features may be included as restrictions or conditions in any permits or licenses required by MDNR.
 - Installation of yellow swan type avian flight diverters across the entire line to minimize impacts to bird species. Because the project is located between Lake Melissa to the west and smaller wetland/lakes to the east, there is concern that the transmission line could impact birds moving across the area. It is recommended that the avian flight diverter be placed on the top shield wire and spaced at the manufacturer's recommended distance of 15 feet. The shield wire is typically the wire that receives the most bird strikes.
 - Use of the road right-of-way during construction and maintenance to avoid tracking by heavy equipment.

MnDOT

MnDOT's primary concern is identifying and quantifying, to the extent possible, "any impacts the proposed high voltage transmission line may have on the safety of the transportation system, the effectiveness of the operations or maintenance of the state trunk highway system and any additional costs that may be imposed on the state trunk highway fund as a result of the location of the proposed HVTL."

Specifically, MnDOT notes the following:

- Applicant must obtain permits from MnDOT since most of the proposed route is located within MnDOT's right of way. MnDOT has assisted in the development of the proposed route but anticipates that slight route adjustments will be necessary to avoid existing utility locations and to maintain compliance with MnDOT's Accommodation Policy, and current/future US 59 infrastructure and clear zone requirements.
- In addition to the Utility Accommodation on Trunk Highway Right of Way Permit (reviews are done on a pole-by-pole basis), the Applicant also may need more than one type of permit, such as oversize/overweight hauling and other highway access permitting.
- MnDOT will work to accommodate HVTLs within, or as near as feasible, to the trunk highway rights of way, based on an evaluating specific locations to ensure that appropriate clearance is maintained to preserve the safety of the traveling public and highway workers and the effective operation of the highway system now and in the foreseeable future.
- All applicable permitting, traffic control and construction coordination efforts should be done through MnDOT's District 4 Engineering Specialist.

Proposed Alternatives

No alternative routes, alternative route segments, and/or alignment modifications were put forth for consideration during the scoping comment period.

Applicant Comments

Pursuant to Minn. Rule 7850.3700, subpart 2(B), applicants have the right to review proposed alternatives. No requests for alternative routes, alternative route segments, and/or alignment modifications were received during the scoping comment period.

Commission's Consideration of Alternatives

Under Minn. Rules, part 7850.3700, subp. 3, the scope of the EA must be determined by the Department within 10 days after close of the public comment period. Minn. Stat. § 216E.04, subd. 5, anticipates Commission input into the identification of routes, in addition to the applicant's proposed route, for inclusion in the environmental review of a project. Since the rule's 10-day timeline for determining the scope of the environmental assessment after the close of the public comment period constrains the Commission's ability to provide input, the Commission varied the 10-day timeline; extending it to allow for Commission input.

Having received no alternative route suggestions during the EA scoping process, EERA staff is not recommending any alternatives routes, alternative route segments, and/or alignment modifications. Related to this finding, the EA Scoping Decision does not contain a relative merits discussion.

HAVING REVIEWED THE MATTER, consulted with Department EERA staff, and in accordance with Minnesota Rule 7850.3700, I hereby make the following Scoping Decision:

MATTERS TO BE ADDRESSED

The issues outlined below will be identified and described in the Environmental Assessment for the proposed DLPU 115 kV transmission line and substation. The EA will describe the Project and the human and environmental resources at the facility location. The EA will also provide information on the potential impacts of the proposed Project as they relate to the topics outlined in this scoping decision, including possible mitigation for identified impacts, identification of irreplaceable commitment of resources, and permits from other government entities that may be required for construction of the Project.

The EA will address and provide information on the following matters:

- 1. Project Description**
- 2. Project Purpose**
- 3. Regulatory Framework**
 - 3.1. Certificate of Need (none required)
 - 3.2. Route Permits
 - 3.3. Scoping Process
 - 3.4. Public Hearing
 - 3.5. Other Permits (discussion will include permitting and licensing required by other agencies, including MDNR and MnDOT as previously noted).
 - 3.6. Issues outside the EA
- 4. Proposed Project**
 - 4.1. Proposed Location (Route and ROW/alignment)
 - 4.2. ROW Requirements
 - 4.3. Project Design
 - 4.4. Project Construction

4.5. Project Operation and Maintenance

5. Potential Impacts of the Project

5.1. Human Settlement

- 5.1.1. Public Health and Safety (including EMF, stray voltage/induced current)
- 5.1.2. Displacement
- 5.1.3. Noise
- 5.1.4. Aesthetics
- 5.1.5. Socioeconomics (including property values, agriculture business)
- 5.1.6. Environmental Justice
- 5.1.7. Cultural Values
- 5.1.8. Recreation
- 5.1.9. Public Services and Infrastructure (including TV/internet interference, transportation, and ROW access and trespass control). Transportation concerns raised by MnDOT will include a discussion of the impacts on the transportation system, including safety, potential costs to MnDOT (if any), and maintaining the necessary MnDOT clear zone(s) along the transmission line.
- 5.1.10. Land Use and Zoning

5.2. Land Based Economies

- 5.2.1. Agriculture
- 5.2.2. Forestry
- 5.2.3. Tourism
- 5.2.4. Mining

5.3. Archaeological and Cultural Resources

5.4. Natural Environment

- 5.4.1. Air
- 5.4.2. Geology, Soils and Groundwater
- 5.4.3. Surface Water
- 5.4.4. Wetlands
- 5.4.5. Vegetation
- 5.4.6. Wildlife
- 5.4.7. Rare and Unique Natural Resources
- 5.4.8. Climate Change

6. Cumulative Impacts

- a. Other projects, if any, under construction or reasonably foreseeable projects in the area
- b. Associated actions, if any, related to construction of the project

7. Unavoidable Impacts

8. Irreversible and Irretrievable Commitments of Resources

9. Other Permits Required

The EA will include a list and description of permits or approvals from other government entities that may be required for construction of the proposed project.

10. Issues Outside the Scope of the EA

The EA for this project will not consider the following:

- Any route alternative(s) not specifically identified for study in this scoping decision.
- Any project alternative (an alternative to the proposed transmission line) not specifically identified for study in this scoping decision.
- The manner in which land owners are compensated for route easements.

SCHEDULE

The Environmental Assessment is anticipated to be completed and available by the end of May, 2020. A public hearing will be held in the Project area after the Environmental Assessment has been issued and notice served.

Signed this 26 day of February, 2020

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE



Katherine Blauvelt, Assistant Commissioner

MAP 1: PROJECT LOCATION



