

RE: In the Matter of the Application of Minnesota Power and Great River Energy for a Certificate of Need and Route Permit for up to an approximately 180-mile, Double Circuit 345-kV Transmission Line from Itasca County to Benton County

Minnesota PUC Docket Number: ET-2/TL-22-415

Erickson and Loehr Proposed Findings

Stan Erickson and Don Loehr respectfully request that the Administrative Law Judge receive and consider their proposed findings focused entirely on the portion of the proposed transmission line in the area east and southeast of Upper South Long Lake. In this region, the Applicant's preferred route departs from existing transmission lines, and consequently, the analysis must differ from the 80 percent of the project that follows existing transmission lines. DNR makes this point in its August 22, 2023, comments:

As provided by Minn. Stat. § 216E.04, subd. 2(5), projects with at least 80 percent of the proposed route located along existing high-voltage transmission line right-of-way have the option to follow the alternative review process. Although Minnesota Power and Great River Energy (the applicants) intend to follow the alternative review process, a project of this magnitude (180 miles/345 kV) would benefit from a thorough assessment of route alternatives that are not limited to those within the existing transmission right-of-way.

Although they comprise a small percentage of the overall project, portions of the proposed route that do not follow existing high-voltage transmission line right-of-way have the potential to impact high quality natural resources, as described in the early coordination letter our agency provided to the applicants (attached).

Considered alone, a 27-mile high-energy transmission line has the potential for significant environmental impacts, those impacts deserve the same scrutiny under MEPA's least impacts requirement as any other significant project. Recently, a group of environmental advocates urged the PUC to use the alternative review in this case, to

facilitate the prompt implementation of clean energy. But what they did not do, and explicitly disclaimed, is to argue that because the project facilitates clean energy, it should be allowed to violate section 116F.04 subdivision 6. The issue here is not whether a clean energy project will receive a certificate of need or route permit. The issue is whether the project will be allowed to damage the environment because the PUC's judgment is clouded by the importance of clean energy. One does not further the cause of clean energy by causing avoidable harm to water and forest resources. Erickson/Loehr are not urging delay in the project: they are urging that the project should be constructed in accordance with environmental principles, all of them.

The fact that this project is using the alternative review actually reinforces the importance of considering our submission at this state of the proceedings, now that an environmental review has been submitted for final approval. This is the only opportunity for impacted parties (other than GRE and DOC-EERA), to use the final environmental review to advocate submit positions to the Administrative Law Judge after the DOC-EERA submits its final review. The draft environmental review did not acknowledge the existence of Wolvert's AMA, nor did it consider whether the damage to DNR and privately managed forest preserves could be avoided. The environmental review, of course, does not grant any authority or permit. Its purpose is to provide:

usable information for project proposers, government decision makers, and members of the public about a proposed project's primary environmental effects¹.

¹ See EQB, Environmental Review Overview:
<https://www.eqb.state.mn.us/environmental-review/overview>

If there is no opportunity to advocate after the environmental review is finalized, MEPA fails one of its essential purposes: to provide citizens and impacted parties to use the results of the review to influence the decision.

As stated, this case is being administered under the alternative review procedure designed to accommodate the placement of high energy projects that follow existing power lines. The theory of the alternative review is that when a high energy transmission line follows an existing power transmission line, the environmental review should be more abbreviated. However, while MERA allows an adjustment to the environmental procedure, it provides no corresponding adjustment to the least impact principle. Minn. Stat. § 116D.04, subd. 6. The least impact requirement applies to the entirety of this project and all segments of the project. See County of Freeborn v Bryson, 210 N.W.2d 290 (1973). Subdivision 6's least impact principle states:

No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct. Minn. Stat. 116D.04 subdivision 6.

In implementing the least impact principle, one must avoid carelessly concluding that if one part of the route meets environmental standards, the environmental damage in another part of the route can be tolerated, because the overall damage is small. In County of Freeborn v Bryson, 210 N.W.2d 290 (1973), Freeborn County proposed a new county

highway, which crossed a wetland in a single location. The fact that other portions of the highway were environmentally compliant, did not excuse the County's impairment or destruction of the wetland on Bryson farm.

In this connection, the DOC-EERA's practice of totaling up environmental impacts over a large route segment, while helpful, runs the risk of inadvertently concealing the presence of an alternative to destruction or impairment of environmental resources. When the preferred route arrives at Upper South Long Lake and pivots to the south, it impacts multiple important resources. Erickson/Loehr have proposed an alternative which avoids those impacts. The fact that other impacts are minimized along other portions of the route has no bearing on whether these impacts can be avoided. As in Bryson, the fact that other parts of the proposed route may be environmentally sound, will not justify overlooking an alternative that constitutes a least impact alternative. DOC's final environmental review contains important new information, which bears on this issue. (1) It now recognizes that there are specific resources impacted by the applicant's proposed route as it passes east of Upper South Long Lake; (2) it recognizes that the issue of least impact is presented by Erickson and Loehr's evidence; and (3) neither DOC nor applicants offer evidence that Erickson/Loehr's alternatives 1 and 2 cause unacceptable impacts, nor do they assert that the alternatives are not feasible or practicable.

With that said, Erickson and Loehr respectfully offer the following proposed findings respecting the route in the area of Upper South Long Lake:

Erickson/Loehr Proposed Findings

1. Segment 1 of applicant's preferred route encompasses 140 miles of a proposed high energy transmission line. Twenty-seven miles of proposed segment 1 consists of transmission lines that do not follow existing transmission lines².
2. Installing newly disturbed and maintained corridors can fragment the landscape and habitat, and result in an additional corridor susceptible to future development and subsequent habitat loss and degradation. Habitat fragmentation is one of the largest threats to wildlife as increasing development puts pressure on what few natural areas remain intact³.
3. For this reason, where existing transmission lines cannot be followed, the DNR encourages the proposer to prioritize avoiding natural areas that would require vegetation and tree removal or ground disturbance in shoreland, wetlands, Minnesota Biological Sites of Biodiversity Significance, and DNR Native Plant Communities. Habitat preservation should also be prioritized near public lands, wildlife management areas (WMA), state parks, and county parks⁴.
4. Ecological damage resulting from fragmentation of forests include:
 - Fragmentation disrupts animal travel corridors and creates barriers that isolate populations from potential breeding opportunities.
 - Following fragmentation, habitat for forest species that favor forest interiors (such as orioles, tanagers, and wood thrushes) is lost and there is greater vulnerability to predators and nest robbers.
 - Species that cannot easily disperse, including reptiles and amphibians, are more likely than other species to be harmed by forest fragmentation.
 - Smaller remaining forests are more susceptible to invasive species, often resulting in a loss of species diversity.
 - The loss of forested lands almost certainly means the loss of recreational lands.
 - With smaller forests, the frequency of conflicts between people and wildlife increases.
 - Scenic views are lost, making the places we choose to live and visit less beautiful.

² Eighty-five percent of the 180-mile project follows existing transmission lines. Segment 1 and 2 together total 180 miles, of which segment 2 consumes 40 miles. All of segment 2 follows existing lines, so that the portion that does not follow existing lines is entirely in segment 1.

³ June 20, 2023, DNR Comments Document ID # 20238-198420-01.

⁴ June 20, 2023, DNR Comments Document ID # 20238-198420-01.

- By losing forests, we are losing the ability to clean the air and water and buffer our environment from pollution⁵.
5. GRE's preferred route approaches Upper South Long Lake diagonally from the northwest, then pivots directly south towards the Wolverter's Aquatic Management Area ("Wolverter's AMA"), then jogs diagonally a short way and then heads directly south to bypass Upper South Long Lake to the East. Here, the preferred route does not follow an existing power line. Consequently, the options provided for the Commission's decision do not involve following an existing line.
 6. GRE's preferred route east of Upper South Long Lake is depicted on Co-location Map. Pages 8-9 of Attachment B Part 2A⁶. This portion of the route cuts through multiple unfragmented contiguous forested areas privately and publicly managed for preservation.
 7. The DNR submitted Environmental Assessment Scoping Comments & Proposed Alternative Routes for the record in this matter on November 21, 2023⁷. Within the Scoping Comments document, the DNR offered two alternate routes in order to avoid impacts above described, including those to Wolverter's AMA, a DNR protected area adjacent to Upper South Long Lake, as well as DNR managed forested areas. *Id.* at 12. Wolverter's AMA was established via Order by Commissioner of the DNR, Gene Merriam on December 27, 2005⁸. DNR also warned that "Further, Applicant's proposed route goes through the middle of an intact wetland complex, a large expanse of Nokassippi Lakes and Daggert Brook MBS sites of biodiversity significance, and a 560-acre block of school trust fund lands managed by the DNR's Division of Forestry."
 8. Prior to submission of the application, the Department of Natural Resources requested a meeting with applicants to discuss route alternatives that would avoid and reduce environmental impacts. DNR was concerned that this process would not result in finding the least impact alternative required by Minnesota Statutes section 116D.04 subdivision 6. Warzecha letter, Exhibit C. (Emphasis added)⁹. DNR declined to consider these alternatives.

⁵ <https://www.dnr.state.mn.us/forestlegacy/fragmentation.html>

⁶ Document ID # 20249-210359-07.

⁷ Document ID # 202311-200866-10.

⁸ Commissioner's Orders, State Register, 30 SR 682 (Tuesday 27 December 2005) The Order is attached hereto as Exhibit D.

⁹ Document ID # 20247-208964-01.

9. The Commission’s Scoping Order found that Route H1 significantly reduces impact compared to the applicant’s proposed route and avoids all state managed School Trust Fund lands. Scoping Order P 17¹⁰.
10. Mr. Erickson owns property in Crow Wing County that is bisected by applicant’s proposed route¹¹. Mr. Loehr owns property, also in Crow Wing County, on the west edge of applicant’s proposed route¹². Both properties are enrolled in the Sustainable Forrest Incentive Act¹³. see also, Minn. Stat. § 290C. The preferred line will sever and fragment the above-described forest lands.
11. To avoid impacting these resources, Erickson and Loehr proposed two alternative combinations of DNR and Erickson proposed routes (H1, H2 and H3) each of which the Commission included in its scoping order. Those routes are illustrated on Erickson Brief Exhibit B, alternatives 1 and 2¹⁴.
12. The GRE’s preferred route will cause or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state. DOC-EERA recognizes that Erickson/Loehr’s Alternatives 1 and 2 avoid those environmental impacts and that choosing those alternatives, and determining whether the preferred route violates the section 116D.04 subdivision 6 prohibition is a “decision that the Commission must make¹⁵.” See also DOC-EERA proposed findings.
13. GRE’s responsive comments to the Erickson/Loehr Alternatives references the Long Lake Region, and in response to Erickson/Loehr’s brief merely states that: “Route Alternatives H1, H2, H3, H5, and H6 are not supported by the Applicants¹⁶.” But GRE does not claim that those alternatives are not feasible and prudent alternatives consistent with the reasonable requirements of the public health, safety, and welfare and the state’s paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Nor would the evidence sustain a conclusion that they are not feasible. Accordingly, Erickson/Loehr Alternative 1 is recommended to the Commission for selection as the route for the project as both

¹⁰ Document ID # 20243-204135-01.

¹¹ Document ID # 202311-200866-02.

¹² Document ID # 202311-200662-01

¹³ Document ID # 202311-200866-02.

¹⁴ Document ID # 20247-208964-01.

¹⁵ While noting the presence of land enrolled in the SFIA program provides useful forestry impact detail in the EA, it is up to the commission to evaluate the weight and relevance of the status. Document ID # 20249-210005-02.

¹⁶ Document ID # 20249-210359-05.

meeting the Commission's guidelines and providing the least impact alternative under Minnesota Statutes section 116D.04 subdivision 6.

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