

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of ITC
Midwest LLC for a Route Permit for
the Minnesota-Iowa 345 kV Transmission
Line Project in Jackson, Martin, and
Faribault Counties

ISSUE DATE: June 27, 2013

DOCKET NO. ET-6675/TL-12-1337

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On March 28, 2013, ITC Midwest LLC (ITC) filed an application for a route permit for a 345-kilovolt, approximately 75-mile transmission line in Jackson, Martin, and Faribault Counties. ITC submitted the application under the full permitting process prescribed in Minnesota Rules parts 7850.1700 to .2700.

On April 22, 2013, the Minnesota Department of Commerce filed comments recommending that the Commission accept the route-permit application as substantially complete.

On May 23, 2013, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over applications for route permits for large energy facilities. Minnesota Statutes section 216E.02, subdivision 2, gives the Commission authority to “provide for site and route selection for large electric power facilities,” including high-voltage transmission lines, and requires the Commission to “issue permits for large electric power facilities in a timely fashion and in a manner consistent with the overall determination of need for the project.”

Minnesota Statutes section 216E.03, subdivision 2, requires utilities to get a route permit from the Commission before building high-voltage transmission lines. The term “high-voltage transmission line” includes any transmission line longer than 1,500 feet that will operate at a voltage of at least 100 kilovolts.¹ ITC’s proposed 345-kilovolt transmission line qualifies as a high-voltage transmission line, triggering the route-permit requirement.

¹ Minn. Stat. § 216E.01, subd. 4.

High-voltage transmission lines that are longer than five miles and operate at a voltage greater than 200 kilovolts are subject to the full permitting process prescribed in Minnesota Rules parts 7850.1700 to .2700.² The full permitting process requires that a contested-case hearing be held before an Administrative Law Judge from the Office of Administrative Hearings.³

Because the project is longer than five miles and will operate at a voltage greater than 200 kilovolts, it is subject to the full permitting process, including the requirement of a contested case hearing. The Commission will therefore refer this matter to the Office of Administrative Hearings for contested case proceedings before an Administrative Law Judge.⁴

The Administrative Law Judge assigned to this matter will conduct hearings as described in this Notice and submit a report to the Commission.⁵ The Commission requests that the report include findings, conclusions, and recommendations on the merits of the proposed project and a preferred route alternative, applying the routing criteria set forth in statute and rule, and that the report provide comments and recommendations, if any, on the conditions and provisions of the proposed permit.

After receiving the Administrative Law Judge's report, the Commission will make its final decision in accordance with Minnesota Statutes chapters 14 and 216E.⁶

II. Issues to be Addressed

A. Whether the Project Meets Statutory and Regulatory Criteria

Minnesota Statutes section 216E.03, subdivision 10, states that no route permit shall be issued in violation of the route selection standards and criteria established in Minnesota Statutes section 216E.03, subdivision 7, and in rules adopted by the Commission. Section 216E.03, subdivision 7, provides a list of considerations in designating routes. The Commission rules applicable to applications for route permits are found in Minnesota Rules parts 7850.1000 to .5600.

The Commission requests that the Administrative Law Judge assigned to this matter ask the parties, participants, and public to address whether the proposed project meets these criteria. Participants may also raise and address other issues relevant to the application.

² See Minn. R. 7850.2800, subp. 1.

³ Minn. Stat. § 216E.03, subd. 6.

⁴ Because of its size, the proposed transmission line requires a certificate of need as well as the route permit sought in this docket. ITC applied to the Commission for a certificate of need on March 22, 2013 (Docket. No. ET-6675/CN-12-1053). The Commission took up both dockets at its May 23 agenda meeting. Simultaneously with this Notice and Order, the Commission is issuing a Notice and Order in the certificate-of-need docket referring that matter for contested case proceedings. Pursuant to ITC's request in the certificate-of-need docket, the Commission has ordered joint proceedings and combined environmental review for the two dockets.

⁵ Minn. R. 1405.2400.

⁶ Minn. R. 1405.2500.

B. Relative Merits of the Route Alternatives

Minnesota Statutes section 216E.03, subdivision 5, requires the Department to prepare an environmental impact statement studying the impacts of the applicant's proposed route and of alternative routes. This document is a valuable tool for the Commission, the parties, the public, and the Administrative Law Judge in evaluating the alternative routes. To facilitate public participation in developing the environmental impact statement, and to ensure as complete a record as possible, the Commission requests that the Department address the relative merits of the route alternatives in the following manner:

Prior to the public hearing in this matter, the Department should submit to the Administrative Law Judge with its environmental impact statement comments and analysis on the relative merits of the route alternatives, as well as its best effort to afford some ranking, whether numerical or qualitative, using the selection criteria established in section 216E.03, subdivision 7, and Minnesota Rules part 7850.4100; evidence of compliance with environmental review procedures; and recommended permit language or specific provisions relative to permissible routes.

This "relative merits" analysis will examine each route alternative in relation to each other, based on the factors in the statute and rule. It will identify routes with fatal flaws. It will identify routes with common or similar impacts relative to the factors. And where factors differ among routes, it will generally group the routes, identifying those needing no mitigation, those to which there are negative impacts that would need mitigation and alternatives for how mitigation might be addressed, and those with unavoidable impacts that cannot be mitigated.

The relative merits analysis is intended to be a tool to assist the public and agencies in understanding the impacts of the alternatives and to facilitate opportunities for greater input into the process.

During the comment period, other agencies and the public provide information through the public comment process that is needed but otherwise not available to the Department on the relative importance of the factors. After the close of the comment period, and before the Administrative Law Judge issues a decision on the preferred route, the Department will provide its conclusion as to the most appropriate route or routes.

The conclusion will assist the Administrative Law Judge in reaching a recommendation for the Commission's consideration.

III. Public Participation

Minnesota Statutes section 216E.08 encourages public participation in route-permit proceedings. The statute requires at least one hearing to obtain public opinion on the application.⁷ At least a portion of the public hearing must be held in the area where the proposed high voltage transmission line would be located.⁸ Public notice must be given by newspaper publication in the county where the hearing is held and by certified mail to the executives of political subdivisions in

⁷ Minn. Stat. § 216E.03, subd. 6

⁸ *Id.*

which the route is proposed.⁹ Any person may appear at the hearings and offer testimony and exhibits without having to intervene as a formal party, and the Administrative Law Judge may allow any person to ask questions of other witnesses.¹⁰

The Commission must also designate a staff person to facilitate public participation in the route proceedings.¹¹ The Commission designates the following staff person to serve as public advisor in these proceedings:

Tracy Smetana, Public Advisor
Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147
(651) 296-0406, or
1-800-657-3782
consumer.puc@state.mn.us

The public advisor may not act as an advocate on behalf of any person but will be available to answer questions from the public about the permitting process and to help them participate in that process.

Finally, pursuant to Minnesota Statutes section 216E.10, subdivision 3, the Commission will direct its staff to formally ask relevant state agencies to help develop the record by submitting written comments and participating in the public hearing. Agencies should submit their comments before the last day of the public hearing.

IV. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is James LaFave, Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, St Paul, MN 55164-0620; (651) 361-7848.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minnesota Statutes sections 14.57 to .62, and the rules of the Office of Administrative Hearings, Minnesota Rules parts 1405.0200 to .2800. Regarding any issue on which Chapter 1405 is silent, the provisions of Minnesota Rules parts 1400.5100 to .8400 regarding contested cases shall apply and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minnesota Rules parts 7829.0100 to .3200. Hearings may be recessed and reset by the Administrative Law Judge pursuant to Minnesota Rules parts 1405.1400 to .2300.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Minn. Stat. § 216E.08, subd. 3.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minnesota Rules part 1405.1300, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minnesota Rules parts 1400.6700 to .6800, or informal disposition under Minnesota Rules part 1450.5900, should be directed to Scott Ek. He can be reached at the Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147; (651) 201-2255; scott.ek@state.mn.us.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minnesota Statutes section 14.60, subdivision 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary and public hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission, the Department's Energy Facility Permitting staff, and the parties.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties, Persons, and Intervention

Currently, the parties to this case are ITC and the Department. Other persons who wish to be granted permission by the Administrative Law Judge to intervene in this matter must do so pursuant to Minnesota Rules part 1405.0900. Subpart 1 of that rule prescribes the timing and contents of a petition to intervene. Subpart 2 prescribes the timing and content of any objection to the petition, and subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petitions.

The hearing process established under Minnesota Rules chapter 1405 is designed to facilitate public participation, and persons need not intervene as parties to participate. All public participants have significant procedural rights, including, but not limited to, the right to be present throughout the proceeding, to offer direct testimony in oral or written form, to question all persons who testify, and to submit comments to the Administrative Law Judge and the Commission.

Persons who intervene and are granted party status have additional rights and responsibilities, including, but not limited to, the right to object to another's petition for intervention, the right to submit direct testimony and conduct cross-examination of other parties' witnesses, and the duty to submit prefiled testimony, comply with discovery requests, produce witnesses, file briefs, and serve all documents on all other parties.

The description of rights in this section is summary in nature, as required by Minnesota Rules part 1405.0500, subpart 1(I), and is not intended to be comprehensive. Interested parties are encouraged to review chapter 1405 to identify the scope of rights and authority to act given "persons" or restricted to "parties" under the various provisions of that chapter.

D. Prehearing Conference

A prehearing conference will be scheduled by the Administrative Law Judge. The Office of Administrative Hearings will notify all parties of its time, date, and place.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

E. Timing Considerations

Minnesota Statutes section 216E.03, subdivision 9, requires the Commission to make its final decision on a route-permit application within one year after the Commission determines that the application is complete. The Commission may extend this period for up to three months for just cause or upon agreement of the applicant.

The Commission requests that the Administrative Law Judge emphasize the statutory time frame for the Commission to make its final decision and strongly encourage the parties and participants to adhere to a schedule that conforms to the statutory time frame.

V. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minnesota Statutes chapter 10A, apply to power-line routing cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

VI. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding ex parte communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minnesota Rules parts 7845.7300 to .7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers ITC's route-permit application to the Office of Administrative Hearings for contested case proceedings.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



This document can be made available in alternative formats (i.e., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through Minnesota Relay at 1.800.627.3529 or by dialing 711.

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
P.O. Box 64620
St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Application of ITC
Midwest LLC for a Route Permit for
the Minnesota-Iowa 345 kV Transmission
Line Project in Jackson, Martin, and
Faribault Counties

MPUC Docket No. ET-6675/CN-12-1337

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address, and Telephone Number of Administrative Law Judge: James LaFave, Office of
Administrative Hearings, 600 North Robert Street, P.O. Box 64620, St Paul, MN 55164-0620;
(651) 361-7848

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____