

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Dan Lipschultz	Commissioner
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
John A. Tuma	Commissioner

In the Matter of the Application of Detroit Lakes Public Utilities for a High-Voltage Transmission Line Route Permit in Becker County

ISSUE DATE: October 28, 2019

DOCKET NO. E-229/TL-18-755

ORDER ACCEPTING APPLICATION AS COMPLETE PENDING ADDITIONAL INFORMATION AND DIRECTING USE OF SUMMARY REPORT REVIEW PROCESS

**PROCEDURAL HISTORY**

On July 9, 2019, Detroit Lakes Public Utilities (DLPU) filed a route permit application under the alternative review process for a proposed 115 kilovolt (kV) high-voltage transmission line and a new substation in Becker County.

On July 10, 2019, the Commission issued a notice requesting comments on the application’s completeness, any contested issues of fact, and procedural recommendations. Initial comments were accepted until July 24 and reply comments until July 31.

On July 24, 2019, the Department of Commerce Energy Environmental Review and Analysis unit (DOC EERA or the Department) filed comments.

On September 4, 2019, DLPU filed information to supplement the route permit application, modifying the anticipated right-of-way.

On September 5, 2019, the Commission met to consider the matter.

**FINDINGS AND CONCLUSIONS**

**I. Jurisdiction**

Before building a high-voltage transmission line in Minnesota, a utility must get a route permit from the Commission.<sup>1</sup> The term “high-voltage transmission line” includes any transmission line

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<sup>1</sup> Minn. Stat. § 216E.03, subd. 2.

longer than 1,500 feet that is capable of operating at a voltage of at least 100 kV.<sup>2</sup> DLPU's proposed transmission line qualifies as a high-voltage transmission line, triggering the route-permit requirement.

High-voltage transmission lines that operate at a voltage between 100 and 200 kV are eligible for review under the alternative permitting process under Minn. Stat. § 216E.04 and Minn. Rules, parts 7850.2800 to 7850.3900. Because it will operate at 115 kV, the project is eligible for the alternative permitting process.

## **II. DOC EERA Comments**

DOC EERA submitted comments explaining its completeness review of the route permit application and offered recommendations on procedures going forward. DOC EERA recommended that:

- The Commission accept the route permit application as substantially complete;
- DLPU provide additional information and clarification on the project right-of-way;
- The Commission request that the Administrative Law Judge provide a Summary Report of the hearing; and
- The Commission take no action on an advisory task force at this time.

## **III. Application Completeness and Commission Review Process**

Under the alternative review process, an application for a high-voltage transmission line must be submitted under Minn. Rules, part 7850.3100; the applicant must submit the items required under the full permitting process, except that the applicant is not required to propose alternative routes.<sup>3</sup> As noted above, DOC EERA reviewed the route permit application for completeness and initially concluded that it met the requirements of Minn. Rules, part 7850.3100. DLPU subsequently filed supplemental information to the route permit application at DOC EERA's request, modifying the proposed right-of-way and providing additional details.

At the Commission meeting, DOC EERA stated that it did not believe the application was complete with respect to the newly filed right-of-way information; however, the Department was confident that it would be able to work with DLPU to complete the application with a small amount of additional information before any public meetings.

The Commission has examined the record and concurs with DOC EERA that the application is complete under Minn. R. 7850.3100, except for the updated right-of-way information. The Commission would prefer to have one route permit application that includes all of the relevant information rather than an initial application with updates in separate filings; a unified and complete application will be easier for the public to locate and understand. The Commission believes that the application will be complete once it incorporates the updated information from DLPU.

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<sup>2</sup> Minn. Stat. § 216E.01, subd. 4.

<sup>3</sup> Minn. R. 7850.3100.

Consequently, the Commission will accept DLPU's route permit application as complete on the date DLPU provides an updated and corrected application that incorporates the supplemental information from the September 4 filing and additional information correcting the width of the right-of-way. The Commission's finding of completeness is as to form only; it implies no judgment on the merits of the application.

Under the alternative permitting process, the Commission still asks the Office of Administrative Hearings (OAH) to conduct at least one public hearing, scheduled in conjunction with Commission staff.<sup>4</sup> The Commission will therefore refer this matter to the OAH for preparation of a Summary Report, as recommended by DOC EERA. A Summary Report includes a summary of the public comments received at the hearing and during the public comment period. An Administrative Law Judge will preside over the public hearing, which should be conducted upon completion of an environmental assessment.<sup>5</sup>

The Commission will also take the steps listed in ordering paragraph 3 to ensure adequate development of the record.

#### **IV. Rule Variance**

Under the alternative review process, DOC EERA is required to prepare an environmental assessment of the Project; prior to that step, the Department is required to provide the public with an opportunity to participate in the development of the scope of the environmental assessment by holding a public meeting and by soliciting public comments.<sup>6</sup> If alternative routes are identified through the scoping process, the environmental assessment must contain information on the human and environmental impacts of both the proposed project and alternative routes.<sup>7</sup>

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.

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<sup>4</sup> The hearing is not a contested case proceeding under Minn. Stat. 14.57 to 14.62 and Minn. R. 1405.0200 to 1405.2700, but instead a procedural step necessary to facilitate the alternative review process under Minn. R. 7850.3800.

<sup>5</sup> Minn. R. 7850.3800.

<sup>6</sup> Minn. R. 7850.3700, subp. 2.

<sup>7</sup> Minn. R. 7850.3700, subp. 4.

Under Minn. Rules, part 7829.3200, the Commission will vary a rule if the following criteria are met:

1. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
2. Granting the variance would not adversely affect the public interest; and
3. Granting the variance would not conflict with standards imposed by law.

In this case, the Commission finds that the criteria for granting a variance to the ten-day timeline in Minn. R. 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 serve the public interest by enabling a more comprehensive evaluation of public comment at the outset of the review process.
3. Granting the variance would not conflict with standards imposed by law, since the ten-day timeline is set by rule, not statute, and may therefore be varied.

The Commission will therefore vary the ten-day timeline to facilitate the Commission's input on whether additional routes should be considered.

### **ORDER**

1. The Commission hereby accepts the route permit application as complete on the date DLPU provides an updated and corrected application that includes the supplemental information from their September 4<sup>th</sup> filing and the additional information correcting the width of the right-of-way.
2. The Commission directs the use of the Summary Report review process to develop the record for the route permit and requests that the Office of Administrative Hearings compile a Summary Report of the comments received regarding the route permit application.
3. Regarding administrative responsibilities, the Commission:
  - a. Delegates administrative authority to the Executive Secretary.
  - b. Identifies Charley Bruce as the Commission's Public Advisor who will facilitate citizen participation in the process.
  - c. Requests that DOC EERA continue to study issues and indicate during the hearing process its position on the reasonableness of granting a route permit.
  - d. Requires DLPU to facilitate in every reasonable way the continued examination of the issues by DOC EERA and Commission staff.

- e. Requires DLPU to place a copy of the application (printed or compact disc) for review in at least one government center or public library in each county where the proposed transmission line project is located.
  - f. Directs Commission staff to work with the Administrative Law Judge and Department staff in selecting a suitable location for the public hearing on the application.
  - g. Directs DLPU to work with Commission staff to arrange for publication of the notice of public hearings in newspapers of general circulation at least ten days prior to the hearing(s). Such notice must be in the form of visible display ads and DLPU must provide proof of publication to the Commission.
4. The Commission requests that DOC EERA present comments on the environmental assessment scope to the Commission for its input prior to the issuance of the final scoping decision by the Department of Commerce.
  5. The Commission takes no action on an advisory task force at this time.
  6. The Commission grants a variance to the time period of Minn. R. 7850.3700, subp. 3, for good cause to extend the 10-day time limit for the Department to issue its scoping decision in order to allow for Commission review.
  7. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf  
Executive Secretary



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