

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: February 26, 2015 Agenda Item *4

Company: Great River Energy and Minnesota Power

Docket No. ET2, E015/CN-14-787 (Certificate of Need)
ET2, E015/TL-14-797 (Route Permit)

In the Matter of the Applications of Great River Energy and Minnesota Power
for a Certificate of Need and a Route Permit for the Menahga Area 115 kV
Transmission Line Project in Hubbard, Wadena and Becker Counties

Issues: Should the Commission accept the need application as complete?

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

Application for Certificate of Need and Route Permit January 15, 2015
Notice of Comment Period on Application Acceptance January 21, 2015
Supplement to Application for a Certificate of Need January 30, 2015
Department of Commerce (DER) Comments on Application February 4, 2015
Department of Commerce (EERA) Comments on Application February 4, 2015

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Statement of the Issues

NEED

1. Should the Commission accept the certificate of need and route permit applications as complete?
2. Should the Commission direct that the certificate of need application be reviewed using the informal or expedited process or refer the matter to the Office of Administrative Hearings for a contested case proceeding?
3. Should the Commission direct that the certificate of need and route permit proceedings be combined where practicable?
4. Should the Commission direct that the environmental review for the certificate of need and route permit proceedings be combined?

Project Overview

Great River Energy and Minnesota Power (“Applicants”) filed a combined certificate of need (CN) and Route Permit (RP) application in January 2015, for their proposed 115 kV transmission line project in Hubbard, Wadena and Becker counties, known as the Menahga Area Project. The project entails: 1) construction of 4.5 miles of double-circuit 115 kilovolt (kV) transmission and approximately 2.5 miles of single-circuit 115 kV transmission, 2) construction of approximately 15.5 miles of primarily single-circuit 115 kV transmission, and 3) construction of the new Todd-Wadena Electric Cooperative Red Eye Distribution Substation (to serve the proposed Minnesota Pipe Line Company (MPL) Sebeka pump station); construction of the Minnesota Power Straight River Substation, and the construction of the Great River Energy Blueberry Substation; relocation of the existing Todd-Wadena Menahga Substation to the Blueberry Substation site and convert the voltage from 34.5 kV to 115 kV; and modify the existing Great River Energy Hubbard Substation and Minnesota Power Pipeline Substation.

The Applicants stated need for the project is to address transmission system overload issues in the Menahga area and to serve a new substation and a new pump station proposed by Minnesota Pipe Line Company as part of the Minnesota Pipe Line Reliability Project (see MPUC Docket No. PL-5/CN-14-320). The applicants indicated that the existing transmission system serving this area of the state has reached its maximum peak load-serving capability and is not sufficiently robust to serve the new pump station.

Procedural Background

On September 18, 2014, GRE and MP filed a notice plan petition for the project. The Commission approved the notice plan on December 8, 2014.

On September 24, 2014, GRE and MP filed a request for exemption from certain certificate of need application requirements of Minnesota Rules, chapter 7849. The Commission granted the exemption requests on December 8, 2014.

On January 15, 2015, GRE and MP filed a combined certificate of need and route permit application for the project.

The Commission issued a notice of comment period on the completeness of the certificate of need and route permit application on January 21, 2015, requesting initial comments by February 4, 2015 and reply comments by February 11, 2015.

On January 30, 2015, GRE and MP filed a supplement as Corrected Appendix J to their application to correct the landowner list within the proposed route.

Comments concerning the completeness of GRE and MP's application were filed by the Department of Commerce, Division of Energy Resources (DER) and separate comments were filed by the EERA on February 4, 2015.

Statutes and Rules

The proposed project is a large energy facility as defined by Minn. Stat. § 216B.2421, subd. 2(3), because it is a high-voltage transmission line with a capacity greater than 100 kV and greater than ten miles in length. Under Minn. Stat. § 216B.243, Subd. 2, no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the Commission.¹

The proposed project is a high-voltage transmission line as defined in Minn. Stat. § 216E.01, Subd. 4, because it is a conductor of electric energy designed for and capable of operation at avoltage of 100 kV or more and is greater than 1,500 feet in length. Under Minn. Stat. § 216E.03, Subd. 2, no person may construct a high-voltage transmission line without a route permit from the Commission.²

The proposed project is a 22.5-mile 115 kV transmission line and therefore requires both a certificate of need and a route permit before it can be constructed.

Certificate of Need Regulatory Proceeding

A determination on the appropriate certificate of need proceeding for the proposed project must also be made by the Commission. Under Minn. Rules, part 7829.1000, the Commission may elect to refer the matter to the Office of Administrative Hearings for a contested case proceeding, or the Commission may authorize the use of the informal or expedited review process authorized in Minn. Rules, part 7829.1200. The informal or expedited proceedings may be used when contested case proceedings are not required, for example, when:

1. there are no material facts in dispute;
2. the parties and the commission have agreed to informal or expedited proceedings; or
3. informal or expedited proceedings are authorized or required by statute.

Route Permit Application

¹ Minn. Stat. § 216B.2421, subd. 2(3) and Minn. Stat. § 216B.243, subd. 2.

² Minn. Stat. § 216E.03, subd. 2.

Route permit applications for high-voltage transmission lines must include specific information about the proposed project as provided under Minn. Rules, part 7850.1900. The Commission may accept an application as complete, accept an application as complete upon filing missing information, or reject an application and advise the applicant of the deficiencies.

The permit review process begins on the date the Commission determines that an application is complete.³

Minnesota Statutes Section 216E.04, subdivision 2(3) provides for an Alternative Review Process for transmission lines between 100 and 200 kilovolts; therefore, this Project qualifies for alternative review. The permitting timeline for the Alternative Review Process is 6 months, a shorter than the timeline required for transmission lines over 200 kV.

Under the alternative review process, an applicant is not required to propose any alternative routes, but must discuss any other routes that were rejected by the applicant. Further, an Environmental Impact Statement is not required under the alternative review process. Instead, the Department of Commerce shall prepare an environmental assessment (EA).

The Commission has one year from the time a CON Application is submitted to reach a final decision. A route permit under the Alternative Permitting Process can be issued in six months after the Commission's determination that the Application is complete; however, Minnesota Rule 7850.2700, Subpart 3 prohibits the Commission from making a final decision on a route permit until the CON is approved.

Summary of Comments on Application Completeness

Department of Commerce, Division of Energy Resources (DER) Comments

The Department's DER conducted a completeness review of GRE and MP's certificate of need application and concluded that the contents met the completeness requirements. Based on the information available at the time of its comments, the Department concluded there were no disputes as to material facts and, therefore, did not request the Commission to order a contested-case proceeding.

The Department recommended that the Commission accept the application as substantially complete, and order a contested case only if a party requests such a proceeding and provides reasonable justification to do so.

Department of Commerce, Energy Environmental Review and Analysis (EERA) Comments

The Department's EERA evaluated the application against the requirements of Minnesota Rule 7850.1900. EERA concluded that the application meets the content requirements of the rule and should be considered substantially complete.

Joint Environmental Review

³ Minn. Rules, part 7850.2000, subp. 4.

The Department EERA staff is proposing to prepare one environmental review document for the project, an EA to address both the route permit and the certificate of need requirements. The EA will include an analysis of the system alternatives to the project to satisfy the Minnesota Rule 7849.1200. The EA will be developed in lieu of an Environmental Report (ER) typically prepared in a certificate of need proceeding. The EERA suggested that a combined EA will be more efficient, will facilitate public participation and will not delay the process.

Contested Issues of Fact

EERA staff stated that there does not appear to be any contested issues of fact with respect to the representations made in the application, but that issues may be identified later during the EA scoping process.

Advisory Task Force

EERA staff analyzed the merits of establishing an advisory task force for the proposed project. Based on four characteristics: project size, project complexity, known or anticipated controversy and sensitive resources EERA concluded that a task force is not warranted for the project.

EERA recommended the Commission accept the application as complete and take no action on an advisory task force at this time.

Public Comments

Five comments were received from residents and landowners in the project area potentially affected by the proposed transmission line. The public comments did not address the completeness of the application, but rather addressed the impacts and merits of the project. The comments pertain to the visual impact to residences, adverse impacts to farming operations such as irrigation and the potential for stray voltage and currents, potential EMF interference to TV and radio reception, the presence of the Pink-and-White Lady Slipper in the project area. One commenter expressed opposition to the project in general. Another commenter proposed a route alternative that would potentially move the line away from 5-6 existing residences and one business, without impact to other homes. Another proposed route was made which follows the existing Minnesota Pipe Line easement down to the Sebeka Pump Station.

Staff Discussion

Application Completeness

Staff has reviewed the certificate of need and the route permit application and the comments received from the Department's DER and EERA. Staff agrees with the Department's recommendation to find the applications substantially complete.

Regulatory Proceeding

Staff also agrees with the position expressed by the Department that no contested issues of material fact have been identified at this time. Staff recommends the Commission order the use of the informal review process for the development of the record for the certificate of need.

Joint Hearings

The cover letter to the application stated that the certificate of need and route permit proposals were being submitted as a combined application for the construction of the 22.5 mile 115 kV transmission line and associated substations.

Minn. Stat. § 216B.243 subd. 4, encourages the Commission to conduct joint hearings for projects requiring both a certificate of need and route permit unless it determines that doing so is not feasible, more efficient, or otherwise not in the public interest.

Staff recommends that the Commission combine the hearings for need and routing in this matter because it will likely be more efficient, reduce confusion, and is in the public interest.

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 when it evaluates the Department's scoping recommendations. At that time, the Commission should be better able to evaluate the project's complexity, the level of public interest or controversy and the identification of disputed material facts.

Joint Environmental Review

Pursuant to Minn. Rules, part 7849.1200, the Department is required to prepare an environmental report for high-voltage transmission projects that come before the Commission for a determination of need. The environmental report describes the human and environmental impacts of the proposed project, potential system alternatives, and methods to mitigate anticipated adverse impacts.

Minn. Rules, part 7849.1900, subp. 2, provides that in the event an applicant for a certificate of need for a high-voltage transmission line applies to the Commission for a route permit prior to the time the Department completes the environmental report, the Department may elect to prepare an environmental impact statement in lieu of the required environmental report. If combining the processes would delay completion of the environmental review, the applicant and the Commission must agree to the combination. If the documents are combined, the Department must include the analysis of system alternatives required by Minn. Rules, part 7849.1500, in the environmental impact statement, but is not required to prepare an environmental report.

Pursuant to Minn. Rules 7850.3700, subp. 1, the Department is required to prepare an environmental assessment for transmission route permit applications under the Alternative Review Process. The EA must contain information on the human and environmental impacts of the proposed project and alternative routes and shall address mitigating measures for all routes considered.

In the case of the proposed project the certificate of need application and the route permit application were filed by GRE and MP as a combined application. As filed, and upon a Commission determination of completeness, the two applications would proceed concurrently.

The Department's EERA comments on the completeness of the route permit application indicated a desire to combine environmental review and prepare an environmental assessment in lieu of an environmental report.⁴ In addition, the Applicants requested that the two proceedings be coordinated and conducted in a joint manner and in accordance with rule and statute as indicated in section 2.3 Regulatory Process of their application.⁵

Since the need and route permit applications were filed as one document, staff recommends combining the environmental review processes as practicable. Staff believes that a joint environmental review is reasonable, more efficient, should reduce public confusion and is in the public interest.

Administrative Responsibilities

To facilitate the review process staff recommends that the Commission delegate administrative authority to the Executive Secretary and include the following additional items in the appropriate orders issued in this matter:

- Provide the name, telephone number, and email address of the staff person designated as public advisor to facilitate citizen participation in the process.
- Request that the Department continue to study issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need.
- Require Applicants to facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff.
- Require Applicants 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.
- Direct Commission staff to work with the Administrative Law Judge and the staff of the Department in selecting a suitable location for the public hearings on the application.
- Direct Applicants to work with Commission staff to arrange for publication of the notice of hearings in newspapers of general circulation at least ten days prior to the hearings, that such notice be in the form of visible display ads, and that proof of publication be obtained from the newspapers selected.

Commission Decision Alternatives

A. Application Completeness

1. Accept the need and route permit application as complete.

⁴ Minnesota Department of Commerce, EERA, Comments and Recommendations on Application Completeness (February 4, 2015), p. 5, document ID: [20152-107017-01](#).

⁵ GRE and MP Application, Part 2 of 6, Application Text, document ID: [20151-106222-02](#).

2. Reject the need and route permit application and indicate the specific deficiencies.
3. Take some other action deemed more appropriate.

B. Regulatory Proceeding

1. Refer the matter to the Office of Administrative Hearings for an Administrative Law Judge to preside over the public hearing.
2. Require a prehearing conference at a date, time, and place to be set by the administrative law judge in consultation with Commission staff.
3. Direct the use of the informal review process to develop the record for the certificate of need.
4. Take some other action deemed more appropriate.

C. Joint Proceedings and Combined Environmental Review

1. Approve joint hearings and combined environmental review for the certificate of need and route proceedings.
2. Take some other action deemed more appropriate.

D. Administrative Responsibilities

1. Delegate administrative authority to the Executive Secretary and include the following additional items in the appropriate orders issued in this matter:
 - a. Provide the name, telephone number, and email address of the staff person designated as Public Advisor (Tracy Smetana) to facilitate citizen participation in the process.
 - b. Request that the Department continue to study issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need and a route permit.
 - c. Require GRE and MP to facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff.
 - d. Require GRE and MP 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.
 - e. Direct Commission staff to work with the Administrative Law Judge and the staff of the Department in selecting a suitable location for the public hearings on the application.

f. Direct GRE and MP to work with Commission staff to arrange for publication of the notice of hearings in newspapers of general circulation at least ten days prior to the hearings, that such notice be in the form of visible display ads, and that proof of publication be obtained from the newspapers selected.

2. Take some other action deemed more appropriate.

E. Advisory Task Force

1. Authorize the Commission staff to establish an advisory task force and develop a proposed structure and charge for the task force.

2. Take no action on an advisory task force at this time.

3. Take some other action deemed appropriate.

Staff Recommendation: A1, B3, C1, D1 (a-f), and E2.