

November 30, 2016

Daniel P. Wolf, Executive Secretary
Minnesota Public Utilities Commission
127 7th Place East, Suite 350
St. Paul, MN 55101-2147

**Re: EERA Review
Application for a Partial Exemption
Xcel Energy Black Dog Natural Gas Pipeline Project
Docket No. G002/GP-16-656**

Dear Mr. Wolf:

EERA staff has reviewed the record and the proposed Findings of Fact submitted by the Applicant and provides the following comments for Commission staff's consideration.

Proposed Findings of Fact

- Under Part III of the Findings of Fact, following Finding Number 18, findings detailing the oral comments and written comments (Minnesota Pollution Control Agency, Minnesota Department of Transportation, Minnesota Department of Natural Resources, and the City of Burnsville) made during the Commission's public meeting and subsequent comment period should be developed into findings and included. There should also be a finding describing Xcel Energy's November 16, 2016, correspondence responding to oral comments made at the public meeting on how the alignment might impact landowners along the existing HVTL corridor.
- On Finding Number 55, within the third paragraph, EERA makes the following suggestion:

Vegetation maintenance of the right-of-way will comply with ~~any~~ wildlife timing windows ~~if~~ as specified in the Minnesota Department of Natural Resource's November 16, 2016 comment letter and post-permit input on the development of a vegetative restoration plan by natural resource agencies.

General Comment.

If an individual finding indicates that post permit issuance, further information (as example Report on Water Resource Impacts) or a need for consultation/approval (as example Vegetation Management Plan) from a “down-stream” permitting agency will be required, a subsequent finding should describe how this information/approval will be submitted to the Commission for review (permit compliance deliverable).

Outstanding Issues

There appear to be several outstanding issues that should be addressed prior to the Commission’s granting a partial exemption from the pipeline route selection procedures for the Black Dog Natural Gas Pipeline project.

Minnesota Department of Natural Resources

Blanding’s Turtle. The MNDNR comment letter mentions the potential for the project construction activities to encounter the Blanding’s turtle and states that the MNDNR has provided the Applicant with a fact sheet on the turtle and recommends that trenches be checked for the presence of turtles prior to backfilling. The record is lacking the Applicant’s concurrence on this issue or how the Commission’s permit would assure compliance with these concerns.

Fen Management Plan. The MNDNR comment letter states that the project has the potential to impact the designated Black Dog Calcareous fen. Any work that has the potential to adversely impact a calcareous fen must have a MNDNR approved fen management plan. This issue appears to be unresolved in the record, including how the Commission’s permit would assure compliance.

City of Burnsville.

The City of Burnsville comment letter states that it supports the project and the proposed route provided certain conditions (10 conditions) are met. The record is lacking the Applicant’s concurrence on this issue or how the Commission’s permit would assure compliance with these concerns.

Minnesota Department of Transportation

The MNDOT comment letter outlines three (3) significant concerns regarding the Applicant’s proposed route and alignment:

1. Xcel proposes to place the gas pipeline longitudinally within the highway right of way.
2. The proposed route and alignment places the new pipeline on the opposite side of the highway from an existing pipeline, which MNDOT feels constrains any future modifications or repair work to the highway.
3. The proposed alignment crosses TH 13 at a long skewed angle rather than at a right angle, which is ordinarily required of a gas pipeline under a highway.

While MNDOT's *Utility Accommodation Policy* contains a process for approving an exception from its normal requirements when a utility owner can demonstrate that extreme hardship or unusual conditions exist, it is unclear within the record how these issues will be resolved should the Applicant fail to reach the required threshold.

Minnesota Pollution Control Agency

The MPCA comment letter raises several items for the Commission to consider in the Black Dog Gas Pipeline project proceeding.

Directional Drilling. The MPCA letter states that the record does not address how the Applicant would prevent and respond to any release of drilling fluid (released into Black Dog Lake) from construction activities (i.e. blowouts, seeps, etc.). This remains unresolved in the record.

Spill Prevention Control and Counter-measure (SPCC) Plan. The MPCA letter recommends that the record should indicate that the Applicant must comply with the State's spill reporting and response requirements, as many of those may be more stringent than those of the federal SPCC Plan requirements. It is unclear within the record how the Commission's permit would assure compliance with these requirements.

Enhanced Stormwater Treatment. The MPCA comment letter states that due to the Minnesota River listing on the MPCA *Inventory of Impaired Waters* that additional stormwater treatment requirements may be imposed during construction and that the Applicant should determine whether compliance with these increased stormwater water quality treatment requirements can be achieved on the project site. It is unclear within the record whether this enhanced treatment can be met or how the Commission's permit would assure compliance with these requirements.

Partial Exemption Procedures – Minnesota Rules 7852.0600

Minnesota Rules 7852.0600 states that a person may apply to the Commission for partial exemption from the pipeline route selection procedures for the issuance of a pipeline routing permit. To apply for a partial exemption, a person must comply with the application procedures of Minn. Rules, part 7852.2000 and submit an application that contains the information identified in Minn. Rules, parts 7852.2100 to 7852.3000.

The commission shall decide whether to grant or deny the partial exemption within 90 days after Commission acceptance of the partial exemption application.

In deciding whether to grant or deny the partial exemption, the Commission shall consider any comments that are filed, the record of the public information meetings, and the information contained in the application relevant to the criteria for partial exemption.

In granting a partial exemption from the pipeline route selection procedures, the commission must determine that the proposed pipeline and associated facilities will not have a significant impact on humans or the environment. In determining whether a proposed pipeline project qualifies for partial exemption, the Commission shall consider the impact of the pipeline on the criteria listed in Minn. Rules, part 7852.0700.

If the commission grants the partial exemption, the commission must issue a pipeline routing permit in accordance with Minn. Rules, part 7852.3200.

If a partial exemption is denied, the applicant must be notified in writing of the reasons for denial. A denial is without prejudice to the applicant's right to an appearance before the Commission, filing information after revisions are made to meet objections specified as reasons for the denial, or to request that the commission continue processing its application under full pipeline route selection procedures.

EERA Recommendation

It is not clear whether some of the criteria in Minn. Rules 7852, part 0700 have been met due to the outstanding issues mentioned above. EERA staff does not feel it would be appropriate to support the granting of a partial exemption from the pipeline route selection procedures at this time.

EERA recommends that the Commission deny the partial exemption without prejudice. EERA staff encourages the Applicant to file the additional information required to resolve these outstanding issues.

Sincerely,

William Cole Storm, Environmental Review Manager
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CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

Minnesota Department of Commerce
Comments

Docket No. G002/GP-16-656

Dated this 30th day of November 2016

/s/Sharon Ferguson

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