


Staff Briefing Papers

Meeting Date	March 8, 2018	Agenda Item # *1
Company	Xcel Energy / ITC Midwest	
Docket No.	E002 and ET6675/TL-17-184	
	In the Matter of the Application of Xcel Energy and ITC Midwest LLC for a Route Permit for the Huntley-Wilmarth 345 kV Transmission Line Project	
Issues	Should the Commission accept the certificate of need application as substantially complete? What action should the Commission take regarding other procedural items?	
Staff	Tricia DeBleeckere	Tricia.DeBleeckere@state.mn.us 651-201-2254

 Relevant Documents	Date
Commission – Order	September 1, 2017
City of North Mankato (Two Parts) Memorandum and Resolution	October 13, 2017
Xcel/ITC – Compliance Filing: Notice Plan	January 5, 2018
Xcel/ITC – Application for a Certificate of Need	January 17, 2018
DOC DER – Comments	February 2, 2018
City of North Mankato – Comments	February 6, 2018

These materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

To request this document in another format such as large print or audio, call 651.296.0406 (voice). Persons with a hearing or speech impairment may call using their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.

I. Statement of Issue

Should the Commission accept the certificate of need application as substantially complete? What action should the Commission take regarding other procedural items?

More specifically:

1. Should the Commission accept the certificate of need application 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 proceedings be combined with the route permit proceedings?
4. Should the Commission direct that the environmental documents for the certificate of need and route proceedings be combined?
5. Should the Commission vary the time limits of its rules that relate to application completeness, public meetings, and exemptions?

II. Project Overview

Xcel Energy and ITC Midwest (the Companies) intend to construct a 40- to 50-mile 345 kV transmission line between Xcel's existing Wilmarth substation north of Mankato, Minnesota and ITCM's Huntley substation, currently under construction, south of Winnebago, Minnesota (Huntley-Wilmarth Project). The Exemption Petition stated that the Project was studied, reviewed, and approved by the Midcontinent Independent System Operator, Inc.'s (MISO) Board of Directors as a Market Efficiency Project (MEP) in December 2016 as part of the annual *MISO Transmission Expansion Plan* (MTEP) report.

III. Procedural History

On June 30, 2017, the Companies filed a notice plan petition for Huntley-Wilmarth Project and on July 14, 2017, the Companies filed a request for exemption from certain certificate of need application requirements of Minn. Rules, chapter 7849. The Commission approved the notice plan and exemption request in an order issued on September 1, 2017.

On October 13, 2017, the City of North Mankato filed a memorandum and resolution the city had passed regarding the proposed routes (requesting Xcel remove certain segments from early project consideration).

On January 17, 2018, the Companies filed a certificate of need application for the construction and operation of the Huntley-Wilmarth Project. A notice of comment period on the completeness of the certificate of need application was issued by the Commission on January 19, 2018, requesting initial comments by February 2, 2018 and reply comments by February 14, 2018.

Comments concerning the completeness of the Companies' certificate of need application were filed by the Department of Commerce, Division of Energy Resources (Department) and the City of North Mankato. No reply comments were filed.

IV. Statute and Rules

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 large energy facility as defined by Minn. Stat. § 216B.2421, subd. 2(2), because it is a high-voltage transmission line with a capacity greater than 200 kV and greater than 1,500 feet in length.

Certificate of Need Application

Minn. Rules, part 7849, provides for Commission review of applications for a certificate of need. Specifically, Minn. Rules, part 7849.0200, subp. 5, requires the Commission to determine whether an application is complete and notify the applicant of the acceptance or rejection of the application within 30 days of receipt. The content requirements for a certificate of need application for a large high-voltage transmission line are described in Minn. Rules, parts 7849.0240 and 7849.0260 through 7849.0340.

Regulatory Proceeding

A determination on the appropriate 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 as described in Minn. Rules, part 7829.1200.

V. Comments

Initial comments were filed by the Department and the City of North Mankato, no response comments were received. These were the only comments received during the comment period in this matter that related to the certificate of need.²

¹ Minn. Stat. § 216B.243, subd. 2

² Some public comments were received which noted the CN docket number, however the substance of the comments was related to the routing and location of the project and therefore and not discussed further here.

Department of Commerce, Division of Energy Resources Comments

The Department conducted a completeness review of the Companies' certificate of need application and concluded that the application meets the content requirements as set out in Minn. Rules, part 7849. The Department recommended that the Commission find the application complete.

The Department recommended that the Commission utilize the contested case hearing process for processing of the certificate of need, using Minn. R. 7829.1200 as a guide. Minnesota Rules 7829.1200 provides three examples for when the Commission's comment process may be used:

- A. there are no material facts in dispute;
- B. the parties and the Commission have agreed to informal or expedited proceedings; or
- C. informal or expedited proceedings are authorized or required by statute.

The Department provided:

At this time, the Department has not identified any disputes as to material facts. However, there are circumstances surrounding the proposed Project that indicate a contested case might be of value:

- the proposed project would be of the second highest voltage in the state;
- the primary need for this Project is different than other transmission projects in Minnesota which have been reliability or generation outlet projects;¹
- the Petition requests a joint certificate of need and route proceeding; and
- public comments filed to date indicate the potential for contested issues.

Therefore, the Department recommends that the Commission refer the Petition to the Office of Administrative Hearings for a contested case proceeding.

City of North Mankato

The City of North Mankato submitted joint comments to the certificate of need and route permit docket that largely related to several of the proposed routes being in conflict with the city's Comprehensive Plan. The city expressed support for certain routes, which it argued remain economic according to Xcel's own cost benefit analysis. Staff believes these comments are related to routing, but emphasize the contested nature of the docket.

VI. Staff Discussion

Application Completeness

Staff has reviewed the certificate of need application and the comments received. Staff agrees with the recommendation of the Department that the Commission find the application complete.

Regulatory Proceeding

Staff also agrees with the recommendation of the Department that the Commission refer the matter to the Office of Administrative Hearings for a contested case proceeding. Although there appears to be no disputes as to the material facts of the proposed project at this time, the general nature of transmission projects of this length and voltage, coupled with the project's designation as an MEP by MISO will likely warrant a contested case proceeding.

In addition, if a contested case proceeding is ordered staff recommends that the Commission require a prehearing conference at a date, time, and place to be set by the administrative law judge in consultation with Commission staff.

Joint Hearings

The filing letter included with the certificate of need application requested that the Commission order the certificate of need proceeding to be coordinated with the related route permit proceeding pursuant to Minn. Stat. § 216B.243, subd. 4. In addition, the Department did not object to combining the two proceedings. The companion route permit application for the proposed project is Commission Docket No. ET-002, ET6675/TL-17-185.³

Minn. Stat. § 216B.243 subd. 4, requires the Commission to conduct joint hearings with applications of the same project for a certificate of need and a site or route permit unless it is not feasible or more efficient, or otherwise not in the public interest.

Staff believes that providing the public the opportunity to comment on all aspects of the proposed project at one hearing rather than two separate hearings is more efficient, reduces confusion, and is in the public interest. Further, the Commission has in most all cases combined the need and route proceedings of similar proposed large energy facility projects. Therefore,

³ The Companies filed a route permit application (PUC Docket No. E002, ET-6675/TL-17-185) for the project on January 22, 2018. The route permit application completeness decision is scheduled to be decided on the same day as the certificate of need application.

staff recommends that the Commission combine the hearings for need and routing in this matter.

Joint Environmental Review

Pursuant to Minn. Rules, part 7849.1200, the Department is required to prepare an environmental report for proposed 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, alternatives to the project, 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 alternatives required by Minn. Rules, part 7849.1500, in the environmental impact statement, but is not required to prepare an environmental report.

The certificate of need and route permit application were filed by the Companies concurrently, and upon the Commission's determination of application completeness, the two proceedings would proceed contemporaneously. The Department's comments on the completeness of the companion route permit application indicate its desire to combine the environmental review processes and prepare an environmental impact statement in lieu of an environmental report.⁴ In addition, ITCM requested that the two proceedings be coordinated and conducted in a joint manner and in accordance with rule and statute.⁵

Since the need and route permit applications were filed at the same time and will proceed concurrently, and because staff has also recommended combining the hearing processes of the two hearings, staff maintains that combining the environmental review processes is reasonable and that further process efficiencies may be achieved by doing so.

⁴ Minnesota Department of Commerce, Comments and Recommendations of the Department of Commerce on the Companies' Application for a Route Permit (February 12, 2018).

⁵ ITCM, Application to the Minnesota Public Utilities Commission for a Certificate of Need - Minnesota - Iowa 345 kV Transmission Project in Jackson, Martin, and Faribault Counties (March 22, 2013) , p. 1 and 10.

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 ITCM to facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff.
- Require ITCM 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 ITCM 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.

Time Variance Requests

Under Minn. Rules, part 7829.3200, the Commission is authorized to vary time periods established by its rules that are not set by statute on its own motion or at the request of a person upon showing good cause.

Completeness Review Timing Requirement

Minn. Rules, part 7849.0200, subp 5, requires the Commission to determine whether an application is complete and notify the applicant of the acceptance or rejection of the application within 30 days of receipt. In this case, a Commission decision on the completeness of the application was required on or before February 17, 2018.

Although staff tried to review the application for a certificate of need within the time period identified in rule, it appears a timeline of 30 days does not allow the necessary time to review the application, solicit comments, schedule a commission meeting and prepare a written order.

Therefore, to be in compliance with rule, staff believes there is good cause for the Commission to vary and extend the 30 day time limit of Minn. Rules, part 7849.0200, subp. 5.

Public Meeting Timing Requirement

Minn. Rules, part 7849.1400, subp. 3, requires the Department to hold a public meeting and begin the process of preparing an environmental report within 40 days after receipt of a certificate of need application. In this case, the Department is required to hold a public meeting on or before February 27, 2018.

Again, a timeline of 40 days does not allow the necessary time to review the application, solicit comments, schedule a commission meeting and prepare a written order. Staff believes there is good cause for the Commission to vary and extend the 40-day time limit of Minn. Rules, part 7849.1400, subp. 3, to ensure that the application is substantially complete and any supplemental information is provided before holding the public meeting and scoping the environmental document.

VII. Decision Options

Application Completeness

1. Accept the application as complete.
2. Reject the application and indicate the specific deficiencies.
3. Take some other action deemed more appropriate.

Regulatory Proceeding

4. Refer the matter to the Office of Administrative Hearings for a contested case proceeding. Require a prehearing conference at a date, time, and place to be set by the administrative law judge in consultation with Commission staff.
5. Direct the certificate of need application be reviewed using the information or expedited process.
6. Take some other action deemed more appropriate.

Joint Proceedings and Combined Environmental Review

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

Administrative Responsibilities

9. 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, Charley Bruce, 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 the Companies to facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff.
 - Require the Companies to place a copy of the application (print and/or electronic) 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.

Time Variance Requests

10. Vary the time period of Minn. Rules, part 7849.0200, subp. 5, and extend the 30-day time limit for Commission decision on application completeness.
11. Vary the time period of Minn. Rules, part 7849.1400, subp. 3, and extend the 40-day time limit for the Department to conduct a public meeting.
12. Take some other action deemed more appropriate.

Staff Recommendation: 1, 4, 7, and 9-12.