

Staff Briefing Papers

Meeting Date April 22, 2021 Agenda Item 5*

Company Minnesota Power

Docket No. **E015/CN-21-140**

In the Matter of the Application of Minnesota Power for a Certificate of Need for the Duluth Loop Reliability Project in Saint Louis County, Minnesota

- Issues
1. Should the Commission approve the notice plan proposed by Minnesota Power in its February 26, 2021 Certificate of Need Notice Plan Approval Request?
 2. Should the Commission grant the exemptions request by Minnesota Power?
 3. Should the Commission vary Minnesota Rule 7829.2500, subpart 6?

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Relevant Documents

Date

Minnesota Power Notice Plan Petition	February 26, 2021
Minnesota Power Request for Exemption from Certain Application Content Requirements	February 26, 2021
DOC DER Comments – Notice Plan Petition	March 22, 2021
DOC DER Comments – Exemption	March 22, 2021
Minnesota Power Reply Comments to DER Notice Plan Comments	April 7, 2021
Minnesota Power Reply Comments to DER Exemption Request Comments	April 7, 2021

I. Statement of the Issues

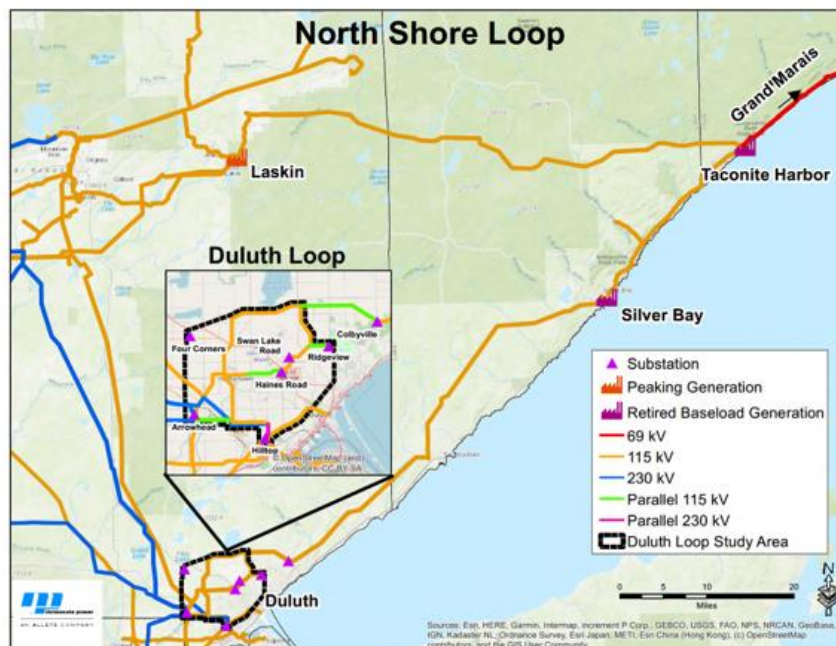
1. Should the Commission approve the notice plan proposed by Minnesota Power in its February 26, 2021 Certificate of Need Notice Plan Approval Request?
2. Should the Commission grant the exemptions request by Minnesota Power?
3. Should the Commission vary Minnesota Rule 7849.0200, subpart 6?

II. Project Description

On February 26, 2021, Minnesota Power (MP) separately filed a Notice Plan Petition and an Exemption Request from Certain Filing Requirements for the proposed Duluth Loop Reliability Project (Project) in Saint Louis County. The project includes construction of a 115 kilovolt (kV) transmission line connecting the existing Hilltop Substation, located in southwest Duluth, and the Ridgeview Substation, located in the northeast portion of Duluth; an approximately one-mile long extension of the existing Hilltop 230 kV Tap to the Arrowhead substation; expansion and transmission line reconfigurations at the Hilltop and Ridgeview substations; and associated upgrades at the existing Haines Road and Arrowhead Substations.

MP stated the Project is needed to replace the system support once provided by coal-fired baseload generators located along Minnesota’s North Shore by addressing severe voltage stability concerns, relieving transmission line overloads, and enhancing the reliability of Duluth-area transmission sources. MP stated the project was expected to be in service in 2025.

FIGURE 1: Duluth Loop Reliability Project



III. Statutes and Rules

A. Certificate of Need

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 (CN) by the Commission.

The proposed Project is a large energy facility as defined under Minn. Stat. § 216B.2421, Subd. 2(2), because the Project includes a high-voltage transmission line any high-voltage transmission line with a capacity of 200 kilovolts or more and greater than 1,500 feet in length. The proposed Project is a large energy facility as defined under Minn. Stat. § 216B.2421, Subd. 2(3), because the Project includes a high-voltage transmission line with a capacity of 100 kilovolts or more with more than ten miles of its length in Minnesota, or that crosses a state line.

B. Certificate of Need Notice Plan Requirements

A notice plan is prepared as an initial step in the certificate of need regulatory process to ensure that potentially affected persons are informed of the proposed project and of the opportunity to participate in the proceeding. Certain procedural and content requirements for the notice plan as contained in Minnesota Rule 7829.2550 must be met before the Commission can consider approving a notice plan for implementation.

Minnesota Rules 7829.2550, subp. 3 requires the following types of notice:

- direct mail notice, based on county tax assessment rolls, to landowners reasonably likely to be affected by the proposed transmission line;
- direct mail notice to all mailing addresses within the area reasonably likely to be affected by the proposed transmission line;
- direct mail notice to tribal governments and to the governments of towns, statutory cities, home rule charter cities, and counties whose jurisdictions are reasonably likely to be affected by the proposed transmission line; and
- newspaper notice to members of the public in areas reasonably likely to be affected by the proposed transmission line.

Minnesota Rules 7829.2550, subp. 4 requires the notices to provide the following information:

- a map showing the end points of the line and existing transmission facilities in the area;
- a description of general right-of-way requirements for a line of the size and voltage proposed and a statement that the applicant intends to acquire property rights for

- the right-of-way that the proposed line will require;
- a notice that the line cannot be constructed unless the Minnesota Public Utilities Commission (Commission) certifies that it is needed;
 - the Commission's mailing address, telephone number, and website;
 - if the applicant is a utility subject to chapter 7848, the address of the website on which the utility applicant will post or has posted its biennial transmission projects report required under that chapter;
 - a statement that an environmental report will be prepared on each high-voltage transmission line for which certification is requested; and
 - a brief explanation of how to get on the mailing list for the proceeding; and a statement that requests for certification of high-voltage transmission lines are governed by Minnesota law, including specifically chapters 4410 and 7849, and Minnesota Statutes, section 216B.243.

Minnesota Rule 7829.2500, Subp. 5 states that the applicant shall public notice of the CN application in newspapers of general circulation throughout the state.

C. Exemption from Application Data Requirements

Under Minn. R. 7849.0200, subp. 6, an applicant may request exemption from any data requirements of parts 7849.0010 to 7849.0400. Under the rule, a request for exemption must be filed with the Commission at least 45 days before submitting a certificate of need application. An applicant may be exempted from certain data requirements if it shows that the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by submitting alternative data. The Commission is required to make its determination on the request within 30 days of its submission.

D. Rule Variances

Under Minn. R 7829.3200, subp. 1, the Commission is authorized to grant a variance to its rules if it determines that: (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.

IV. Procedural History

A. Minnesota Power Notice Plan Petition

In its Notice Plan Petition, Minnesota Power outlined its proposal for providing notification to landowners, residents, local units of government, elected officials, tribal government contacts, and agencies within the Notice Area.

According to MP, the Notice Area is approximately 1.25 miles to 6 miles wide. In general, the Notice Area is 1.25-mile-wide (buffer of 0.625 mi on each side) centered on the existing transmission lines and pipelines within the Project area. The Notice Area east of the Duluth Airport has been widened to include an area centered on Rice Lake Road from the existing transmission line to Martin Road to allow routing flexibility from the Ridgeview Substation traveling north to the northside of the airport, while also providing ample space to develop routes from the Ridgeview Substation south towards the Swan Lake Substation. In addition, the central Hermantown area appears wide due to multiple 1.25-mile-wide areas centered on both Lavaque Road and an existing transmission line corridor.

MP noted that it had already initiated collection of stakeholder, agency, tribal, and public input on possible route alternatives for the project. MP stated it had conducted two virtual community meetings on January 28, 2021, three live virtual chats with Project team members, a virtual open house, direct mail and published notice of these events, and a Project website that includes Project information.

The proposed Notice Plan included provisions for providing direct mail notice to all landowners who own property within the Notice Area, those likely to be affected by the proposed transmission line, Tribal Government officials and local governments (towns, cities, home rule charter cities, and counties whose jurisdictions).

MP proposed publication of the following newspapers in the area that may be affected by the transmission line: *Duluth News Tribune*, *Hermantown Star* and *Proctor Journal*. MP requested a variance from the requirement an applicant publish newspaper notice of the filing in a newspaper of general circulation throughout the state (Minn. R. 7829.2500, Subp. 5) and asserted their request met the Commission's requirements for a rule variance under Minn. R. 7829.3200, Subp. 1.

MP included a sample copy of the letter for use in the direct mail distribution and provided a review of how its notice complied with the operative content requirement in Minn. R. 7829.2550, Subp. 4.

Minn. R. 7829.2550, Subp. 6, requires the applicant to implement the Notice Plan within 30 days of its approval by the Commission.

Regarding timing of the notice, Minnesota Power requested the Commission vary the Notice Plan implementation rule requirement per Minn. R. 7829.3200, to allow notice to more closely coincide with the filing of the Certificate of Need application. Specifically, MP requested that the Commission grant a variance and direct the notices identified in this Notice Plan to occur no more than 60 days and no less than two weeks prior to the filing of the Certificate of Need application. MP noted that the Commission has approved similar variance requests in other Certificate of Need dockets

Minnesota Power requested the Commission: approve its proposed Notice Plan; grant the variance from duplicative newspaper notice requirements under Minn. R. 7829.2500, Subp. 5; and grant the variance from the 30-day implementation notice contemplated in Minn. R. 7829.2550, Subp. 6, and modify the time for implementation of the Notice Plan to no more than 60 days and no less than two weeks prior to the filing of the Certificate of Need application.

**B. Department of Commerce Division of Energy Resources (DER or Department)
Comments and Recommendations on Minnesota Power's Notice Plan Petition**

In its March 22, 2021 comments on the Notice Plan Petition, DER concluded that MPC's Notice Plan for residents, landowners, and governmental entities is reasonable.

The Department reviewed the cover letters and maps provided by the Applicant and concluded that the Applicant's proposal for the resident/landowner notice, governmental notice, and newspaper notice generally contains the required information and is acceptable after any edits recommended by EERA staff.

The Department recommended the Commission approve MP's request to provide a variance so that implementation of the Notice Plan occurs no more than 60 days and no less than two weeks prior to the filing of the CN petition.

The Department concluded that approval of a variance to Minnesota Rule 7829.2500, Subp. 5 to remove the requirement that MP publish the Notice in a newspaper of general circulation throughout the state should be premised upon an evaluation of the three criteria contained in Minnesota Rule 7829.3200.

On the first criteria, the Department noted that the Applicants' did not provide evidence that compliance with the newspaper notice requirement in Minnesota Rules 7829.2500, subp. 5 would constitute an excessive burden.

On the second criteria, the Department concluded that removing a required notice opportunity is contrary to the public interest. The Department considers complete and thorough public notice to be crucial in ensuring that the public is aware of, can participate in, and can affect the outcome of a CN proceeding.

While the Department is not aware that the variance would conflict with standards imposed by law, the Department recommended that the Commission reject the Applicants' request for a variance to the newspaper notification requirement of Minnesota Rules 7829.2500, subp. 5 since the Applicants have not shown that two of the three criteria needed for a variance have been met. The Department noted that varying the timing of the statewide newspaper notification to coincide with other notifications would be reasonable.

In summary, the Department recommended that the Commission approve the Applicant's proposed Notice Plan with any modifications recommended by EERA staff. The Department recommended the Commission grant the Applicant a variance to Minnesota Rules 7829.2550, subp. 6 to allow implementation of the Notice Plan no more than 60 days prior to the filing of the CN petition. The Department recommended that the Commission reject the Applicant's request for a variance to Minnesota Rules 7829.2550, subp. 5, which requires additional newspaper notification of the CN applicant upon its filing.

C. Minnesota Power's Reply Comments on its Notice Plan Petition

In its reply comments, MP expressed disagreement with the Department's recommendation to deny its request for a variance from Minn. R. 7829.2500, Subp. 5 requiring notice to be published in a newspaper of statewide circulation after the filing of a CN application. MP asserted that publishing an additional notice in a statewide newspaper would be costly and is unlikely to reach persons impacted by or interested in the proposed regional transmission project and requested the Commission grant the variance. MP requested that If the Commission does not grant the variance, the Commission should allow MP to provide a smaller-sized notice in a statewide newspaper to reduce the costs of the ad.

D. Minnesota Power Exemption Request

In its Exemption Request, MP asserted that certain Certificate of Need application content requirements in Minnesota Rules Chapter 7849 should be modified to better address the nature of this Project; and that its petition seeks exemptions to those requirements that are not

applicable to a transmission line project. The Applicant cited examples where the Commission has previously allowed similar adjustments for other transmission line projects. MP requested that the Commission grant exemptions from certain requirements as provided under Minnesota Rule 7849.0200, Subp. 6; and allow MP to submit alternative information that it believes will better inform the Commission's decision regarding the need for the Project. An excerpt of the requested exemptions is show below.

Minnesota Rule	Scope of Exemption
Minn. Rule 7849.0260, Subp. A(3) and C(6): <i>Proposed LHVTL and Alternatives Application</i>	Request to provide substitute data in the form of overall system losses instead of line losses.
Minn. Rule 7849.0270, Subps. 1-6: <i>Peak Demand and Annual Consumption Forecast; System Revenue Requirements</i>	Request exemption from providing forecasting and capacity information for Minnesota Power's system and to provide substitute local substation load data for the Project area and forecast information from Minnesota Power's most recent Annual Forecast Report. Request exemption from providing system revenue requirements and provide explanation of how MISO spreads wholesale electricity costs and a general estimate of rate impact of Project on Minnesota Power customers.
Minn. Rules 7849.0280: <i>System Capacity</i>	Request full exemption from providing a discussion of the ability of the existing system to meet the forecasted demand for electrical energy identified in response to Minnesota Rule 7849.0270.
Minn. Rule 7849.0290: <i>Conservation</i>	Request exemption from discussing conservation programs and their effect on the forecast information required by Minn. Rule 7849.0270. Minnesota Power proposes to provide substitute information on its conservation efforts from its most recent Conservation Improvement Plan and Integrated Resource Plan filings.
Minn. Rule 7849.0300: <i>Consequences of Delay</i>	Request to be exempt from providing analysis using three confidence levels. Minnesota Power proposes to provide substitute data regarding potential impacts caused by delay in implementing the Project.
Minn. Rule 7849.0340: <i>No-Facility Alternative</i>	Request to be exempt from providing analysis using three confidence levels. Minnesota Power proposes to provide substitute data regarding potential impacts caused by no build alternative.

Minnesota Power requested the Commission grant the requested exemptions to allow Minnesota Power to provide information in its application that is relevant to determining the need for the Duluth Loop Project without imposing unnecessary filing burdens.

E. Department of Commerce Comments and Recommendations to Exemptions Request

On March 22, 2021, the Department of Commerce Division of Energy Resources filed comments on the exemption request.

The Department recommended that the Commission approve the Applicant's proposed exemption to the following rules conditioned upon the provision of the proposed alternative data:

Minnesota Rules 7849.0260 A(3) and C(6),
Minnesota Rules 7849.0270, subp. 1 and 2,
Minnesota Rules 7849.0270, subps. 2(A) through 2(F),
Minnesota Rules 7849.0270, subps. 3-5,
Minnesota Rules 7849.0280 for parts B through G and I, but require the Applicant provides data on subpart A for the applicable load area,
Minnesota Rules, 7849.0290, and
Minnesota Rules 7849.0300 and 7849.0340, but require the Applicant to only provide the required information for the peak demand level.

F. Minnesota Power's Reply Comments on its Exemption Request

In its April 7, 2021 Reply Comments, Minnesota Power expressed appreciation for the Department's thorough review of its request and agreed to provide the information as recommended in the Department's Comments in the upcoming Certificate of Need application.

V. Staff Analysis

A. Notice Plan Approval

Commission staff has reviewed the documents filed in this matter and agrees with the Applicant and Department that the Commission should approve the proposed Notice Plan and a grant a variance to Minnesota Rule 7829.2550, Subpart 6 and direct the notices identified in the Notice Plan to occur no more than 60 days and no less than two weeks prior to the filing of the CN Application.

In response to MP's request to forego publication of the Notice in a newspaper of statewide distribution, staff has included Decision Options B.1 through B.4 below. Staff agrees with the Department's analysis and conclusion that the public interest is best served by publication of the Notice in a newspaper of statewide circulation. Staff does not object a smaller sized notice in the statewide newspaper publication provided it includes references to where the reader can locate the additional information.

B. Exemption Request

Staff agrees with the Department's analysis of the Exemption Request and supports adopting MP's exemption requests as modified by the Department in its March 22, 2021 filing.

VI. Decision Options

A. Variance to Notice Plan Implementation Time Frames

1. Vary the 30-day requirement of Minn. R. 7849.0200, subp. 6.
2. Do not vary the 30-day requirement of Minn. R. 7849.0200, subp. 6.
3. Take some other action deemed appropriate.

B. Variance for Notice Publication in a Statewide Newspaper

1. Vary the requirement of Minn. R. 7829.2500, subp. 5 requiring publication of the notice in a newspaper of general circulation throughout the state.
2. Do not vary the 30-day requirement of Minn. R. 7829.2500, subp. 5 and require the Applicant to include Notice publication in a newspaper of statewide distribution.
3. Allow the Applicant to publish a smaller sized ad in a newspaper of statewide distribution.
4. Take some other action deemed appropriate.

C. Application Data Exemption Request

1. Approve the requested exemptions with modifications as provided in the Department's March 22, 2021 Comments.
2. Deny one or more of the exemptions requested by the Applicant.
3. Take some other action deemed appropriate.

Staff Recommendation: A.1, B.2, B.3 and C.1.