



Energy Facility Permitting
85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198
ph 651.296.4026 | fx 651.297.7891
<http://mn.gov/commerce/energyfacilities>

June 5, 2013

Dr. Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

RE: In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy for Approval of Competitive Resources Acquisition Proposal and Certificate of Need
Docket No. E002/CN-12-1240

Dear Dr. Haar,

Department of Commerce, Energy Facility Permitting (EFP) staff has reviewed the proposals and comments received into the docket in the above matter as well as Commission staff's briefing papers. To EFP staff's reading, there appears to be a consensus that the Commission's decision in this docket requires environmental review – specifically, the preparation of an environmental report (ER). To facilitate the development of an ER for this docket that is consistent with the Commission's selection of alternatives considered in the resource acquisition process and the Commission's anticipated timeline, EFP staff believes it would be reasonable and appropriate to vary Minnesota Rule 7849.1400, subparts 1 through 6, and Minnesota Rule 7849.1500, subpart 1, item B.

Accordingly, EFP staff suggests that the Commission consider amending decision option 3a of the Commission staff's briefing paper as follows:

- a. Request that the DOC EFP ~~compile~~ prepare an environmental report for all of the alternatives ~~proposed~~ accepted by the Commission into the competitive resource acquisition process sufficient to meet the requirements outlined in Minnesota Rule 7849, and vary Minnesota Rule 7849.1400, subparts 1 through 6, and Minnesota Rule 7849.1500, subpart 1, item B to facilitate preparation of the environmental report.

Standard Environmental Report Scoping Process

Under the standard scoping process outlined in Minnesota Rule 7849.1400, subparts 1 through 7, when EFP staff prepares an ER for a project requiring a certificate of need from the Commission, staff must prepare and issue a notice informing a wide range of citizens of the project, of a public

meeting to be held regarding the project, and of EFP staff's solicitation of comments on the scope of the ER which will be prepared for the project.¹ EFP staff would then conduct a public meeting. Based on the comments received at this meeting and during the scoping process, the Department would develop and issue the scope for the ER.² The scope would contain those alternatives required by Minnesota Rule 7849.1500, subpart 1, item B and those suggested through the scoping process that meet the stated need for the project and, in some manner, mitigate potential impacts of the project.³ The potential impacts of these alternatives would be examined in the ER including, at minimum, those impacts required by Minnesota Rule 7849.1500, subpart 2. This standard scoping process typically takes approximately six weeks – from the Commission's acceptance of an application as complete to the Department's scoping decision.

Suggested Variances

With respect to the alternatives to be evaluated in the ER, EFP staff believes that the standard, rule-defined scoping process for an ER (discussed above) has the potential to result in the inclusion of alternatives in the ER other than those accepted by the Commission into the resource acquisition process, potentially complicating the Commission's process and creating confusion for the public. These alternatives could include those suggested during the scoping process and those specified in Minnesota Rule 7849.1500, subpart 1, item B (e.g., a transmission alternative in cases where generation has been proposed).⁴

Arguably, the Commission's bidding process has effectively served to define the alternatives to be considered. If the Commission has determined the set of projects which should be considered in the resource acquisition process, it would seem unhelpful to the Commission's process and disingenuous to the public to have EFP staff's scoping process reopen and reconsider this set. For this reason, EFP staff recommends that the Commission consider varying Minnesota Rule 7849.1400, subparts 2, 4, and 6, and 7849.1500, subpart 1, item B to clarify that the alternatives to be evaluated in the ER are limited to those accepted by the Commission into the resource acquisition process and a no-build alternative for each of the alternatives accepted by the Commission.

EFP staff believes that variances to the rule-defined scoping process outlined in Minnesota Rule 7849.1400, subparts 1 through 6 would be required to better comport with the proposed timeline for the Commission's process in this docket. Additionally, if the Commission has effectively limited the alternatives under consideration to those accepted into the resource acquisition process, it is unclear what process is necessary to inform stakeholders of the alternatives under consideration and to solicit those impacts (but not alternatives) that should be considered by the Department in developing the scope of the ER.

¹ Minnesota Rule 7849.1400, Subparts 1 and 2.

² Minnesota Rule 7849.1400, Subparts 3 through 7.

³ Minnesota Rule 7849.1400, Subpart 7.

⁴ The alternatives listed in Minnesota Rule 7849.1500, subpart 1, item B are: "the no build alternatives, demand side management, purchased power, facilities of a different size or using a different energy source than the sources proposed by the applicant, upgrading of existing facilities, generation rather than transmission if a high voltage transmission line is proposed, transmission rather than generation if a large electric power generating plant is proposed, use of renewable energy resources, and those alternatives identified by the commissioner of the Department of Commerce."

EFP staff envisions two possible scenarios under variances to Minnesota Rule 7849.1400, subpart 1 through 6 and Minnesota Rule 7849.1500, subpart 1, item B:

- 1) EFP staff would not conduct a public meeting or solicit comments through a notice and comment period. The Department's scope would limit (a) the alternatives examined in the ER to those alternatives accepted by the Commission into the resource acquisition process as well as a no-build alternative for each of the alternatives accepted by the Commission, and (b) the impacts examined in the ER to those in Minnesota Rule 7849.1500, subpart 2. This scenario could shorten the scoping process by four weeks.
- 2) EFP staff would not conduct a public meeting but would solicit comments through a notice and comment period to the docket's service list for those impacts which should be considered for inclusion in the scope of the ER. The Department's scope would (a) limit the alternatives examined in the ER to those alternatives accepted by the Commission into the resource acquisition process as well as a no-build alternative for each of the alternatives accepted by the Commission, and (b) identify impacts to be examined in the ER to include those listed in Minnesota Rule 7849.1500, subpart 2 and those identified by comments received during the comment period. This scenario could shorten the scoping process by two weeks.

Of these options, EFP staff believes that scenario 2, which allows an opportunity for the public to provide scoping comments, is most appropriate.

Finally, EFP staff notes that under Minnesota Rule 7849.1400, subpart 9, the Department is directed to complete an ER within four months of submission of an application for a certificate of need and all accompanying materials. Commission staff's briefing paper correctly notes that additional environmental information beyond the information provided in the proposals submitted will be required to facilitate preparation of an ER. EFP staff anticipates that an ER could be completed within four months of receipt of the environmental information specified under Minnesota Rule 7849.0310, beyond what is contained in the proposals and supplements provided to date.

Criteria for Granting a Rule Variance

Under Minnesota Rule 7829.3200, the Commission has the authority to vary a rule if the following criteria are met:

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

EFP staff believes that these criteria are met for its suggested variances to Minnesota Rule 7849.1400, subpart 1 through 6, and Minnesota Rule 7850.1500, subpart 1, item B. With respect to item A, enforcement of the noted rules would impose a burden on the Commission's resource

acquisition process. As discussed above, having two potentially different sets of alternatives under consideration by the Commission would be a burden on the Commission's process in this docket. With respect to item B, granting the suggested variances would not adversely impact the public interest. As discussed above, there are several scenarios which could accommodate public participation and afford due process to stakeholders. Finally, with respect to item C, to EFP staff's understanding, granting the suggested variances would not conflict with other standards imposed by law.

Staff appreciates the Commission's consideration of these suggested rule variances and decision option amendments. Staff is available to answer any questions the Commission may have.

Sincerely,

A handwritten signature in black ink that reads "Deborah R. Pile". The signature is written in a cursive, flowing style.

Deborah R. Pile, Director
Energy Facility Permitting