

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: November 24, 2014.....Agenda Item *8

Company: Great River Energy

Docket No. E015/CN-14-787

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

Issues: Should the Commission approve the proposed notice plan?
Should the Commission approve the exemption request?

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RELEVANT DOCUMENTS

Notice Plan Petition September 18, 2014
Exemption Request Petition..... September 24, 2014
Notice of Comment Period on Exemption Request PetitionOctober 1, 2014
Department of Commerce (EERA) Comments on Notice Plan PetitionOctober 8, 2014
Department of Commerce (DER) Comments on Notice Plan Petition.....October 8, 2014
Department of Commerce (DER) Comments on Exemption RequestOctober 14, 2014
Great River Energy Reply Comments on Notice Plan PetitionOctober 22, 2014
Department of Commerce (DER) Comments.....October 24, 2014

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STATEMENT OF THE ISSUE

1. Should the Commission approve the notice plan for the proposed Menahga Area 115 kV Transmission Line Project?
2. Should the Commission approve a variance to Minnesota Rule 7829.2550, subpart 6, on the timing of the implementation of the notice plan?
3. Should the Commission approve a variance to Minnesota Rule 7829.2500, subpart 5, which requires an applicant to publish a newspaper notice upon filing a certificate of need application?
4. Should the Commission approve the request for exemption from certain certificate of need application content requirements?

PROJECT OVERVIEW

Great River Energy and Minnesota Power (“Applicants”) propose to file 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 (“Project”). The project entails: 1) construction of new 4.5 miles of double-circuit 115 kV line and approximately 2.5 miles of single-circuit 115 kV line, 2) construction of approximately 15.5 miles of primarily new single-circuit 115 kV transmission line, and 3) construction of new distribution substations at Todd-Wadena Red Eye and Blueberry and modifications to existing Todd-Wadena Menahga Substation and the Minnesota Power Pipeline Substation.

The proposed project is a “large energy facility” as defined by Minnesota Statute, section 216B.2421, subdivision 2(3) because it is 100kV or more and is more than 10 miles in length. Pursuant to Minnesota Statute, section 216B.243, subdivision 2, no large energy facility may be sited or constructed in Minnesota without the issuance of a certificate of need by the Commission.

PROCEDURAL BACKGROUND

On September 18, 2014, GRE and MP filed a notice plan petition for their proposed 115 kV transmission line project in the Menahga Area of Hubbard, Wadena and Becker counties.¹ Initial comments on the notice plan petition were accepted until October 8, 2014, reply comments were accepted until October 28, 2014.

On September 24, 2014, GRE also filed a request for exemption from certain certificate of need application requirements of Minnesota Rules, chapter 7849.² A notice of comment period on the

¹ Great River Energy, Notice Plan Petition (September 18, 2014), eDocket ID [20149-103151-01](#).

² Great River Energy, Request for Exemption from Certain Certificate of Need Application Requirements (September 24, 2014), eDocket ID [20149-103279-01](#).

exemption request was issued by the Commission on October 1, 2014, requesting initial comments by October 15, 2014 and reply comments by October 28, 2014.

On October 8, 2014, the Minnesota Department of Commerce, Division of Energy Environmental Review and Analysis (EERA) and Division of Energy Resources (DER) separately filed initial comments on the notice plan petition.

On October 14, 2014, the Department filed initial comments on the exemption request.

On October 22, 2014, GRE filed comments in response to Department comments on the Notice Plan Petition.

NOTICE PLAN PETITION

The required certificate of need for the proposed project will be reviewed under Minnesota Statute 216B.243 and Minnesota Rules, chapter 7849.

The proposed notice plan is being reviewed in accordance with Minnesota Rule 7829.2550, which establishes criteria for evaluating notice plans when seeking a certificate of need for a high-voltage transmission line. The rule includes criteria for the types of notice, the content of the notices, and the timing for implementation of the notice plan.

A proposed notice plan must include notice of the proposed project to the following persons by the method specified:

- direct mail notice to landowners reasonably likely to be affected by the proposed project;
- direct mail notice to all mailing addresses within the area likely to be affected by the project;
- direct mail notice to tribal governments and local governmental units (towns, cities, and counties) likely to be affected by the proposed project; and
- published notice in newspapers with general circulation in the areas likely to be affected by the proposed project.

A proposed notice plan must provide the following information in all notices that are required to be distributed:

- a map showing the location of the proposed project and any existing transmission facilities in the area;
- a description of the right-of-way requirements for the proposed line(s) and a statement that the applicant intends to acquire property rights for any needed land that the proposed project will require;
- a notice that the proposed project cannot be constructed without a determination of need by the Commission;
- the Commission's mailing address, telephone number and website address;
- the website address where the applicant will post or has posted its biennial transmission projects report, if the applicant is a utility subject to Minnesota Rules, chapter 7848;

- a statement that the Minnesota Department of Commerce will be preparing an environmental report for the proposed project;
- an explanation of how to get on the Commission's mailing list for the proceeding; and
- a statement that the requested certificate of need for the proposed project is governed by Minnesota law, including specifically Minnesota Rules, chapter 7849, and Minnesota Statutes 216B.243.

In accordance with Minnesota Rule 7829.2550, subpart 6, a notice plan must be implemented within 30 days of its approval by the Commission.

Proposed Notice Plan

A notice plan is prepared as an initial step in the certificate of need regulatory process to ensure that people are informed of the proposed project and that interested persons have the opportunity to participate in the proceeding. The proposed notice plan is described in detail in GRE's filing and major components of the plan are summarized below.

Distribution of Notice Plan Petition

As required under Minnesota Rule 7829.2550, subpart 1, GRE sent the notice plan petition to the Department of Commerce, the Residential and Small Business Utilities Division of the Office of the Attorney General, and to those parties listed on the "General List of Persons Interested in Power Plants and Transmission Lines." GRE also provided copies of the petition to other state and federal agencies and each city and county within the proposed notice area.

Notice Area

GRE has proposed a notice area that is generally 1,000 feet wide or 500 feet on either side of the proposed transmission line segments. A map of the proposed notice area is included with the notice plan petition as Attachment B.

Notice Type

The proposed notice plan includes descriptions of the required types of notices and methods of delivery pursuant to Minnesota Rule 7829.2550, subpart 3.

Notice Content

Draft mail and newspaper notices are included in the proposed notice plan as Attachments C, D, and H, and generally include the information required under Minnesota Rule 7829.2550, subpart 4.

Notice Timing

Minnesota Rule 7829.2550, subpart 6, requires an applicant to implement the notice plan within 30 days of its approval by the Commission. GRE is requesting that the Commission modify the notice plan implementation rule to require implementation no more than 60 days prior to the filing of the certificate of need application to allow the notice to more closely coincide with the certificate of need filing.

In a related matter, GRE is also requesting that the Commission waive Minnesota Rule 7829.2500, subpart 5, which requires a person filing a certificate of need application to publish notice of the filing in newspapers of general circulation throughout the state.

GRE explained that it will publish newspaper notice of the certificate of need filing as part of the notice plan implementation no more than 60 days before the route permit application should the Commission grant its request to modify Minnesota Rule 7829.2550, subpart 6, as described above.

On October 8, 2014, the Department provided initial comments on GRE's notice plan petition. The Department's comments provide analysis and recommendations with regard to the types of notice, notice content, and the timing of notice described in GRE's proposed notice plan.

Notice Type - Landowner and Resident Notice

Regarding the distribution of notices, the Department (EERA) concluded that the 1,000 foot wide notice area surrounding the project, as proposed by GRE is reasonable.³

Notice Type - Government Unit Notice

The Department (EERA) concluded that GRE's proposed plan for noticing government entities needs to be expanded to include these additional units of government:

- Otter Tail County
- Paddock Township, Otter Tail County
- Shell River Township and Meadow Township, Wadena County
- Green Valley Township, Becker County

The Department's justification for expanding the list is that existing electrical infrastructure in the project area could be utilized as a route for the project. The plan includes a list of the required governments of towns, cities, and counties whose jurisdictions may be affected by the proposed project.⁴

In summary, the Department concludes that the Applicant's Notice Plan for residents, landowners, and governmental entities, as modified, is reasonable.

Notice Content

The Department (EERA) staff reviewed the applicants' proposed notice plan and finds that, in general, the plan is consistent with the requirements of Minnesota Rule 7829.2550. EERA staff recommended modifications to the notice plan (1) to complete and correct notices that will be distributed via the plan and (2) to expand the distribution of notices to governmental entities. The suggested changes are mainly editorial or stylistic in nature and do not alter the substance of the proposed notices.

³ EERA staff considers the 1,000-foot notice area surrounding the project satisfactory, as long as the subsequent route permit application is submitted with a request for a lesser route width.

⁴ Although no tribal governments were identified in the proposed notice area, GRE indicated it will provide notice to the White Earth Band of Ojibwe and the Leech Lake Band of Ojibwe.

The changes proposed by the EERA can be found in Attachment 1, titled “EERA Edits to Notice Content” that is part of the EERA’s comments submitted on October 8, 2014.⁵

Distribution of Notices

The Applicants’ notice plan petition proposed a notice area width of 1000 feet for the project – 500 feet on either side of the currently proposed alignment of the transmission line. EERA staff believes that this notice area width is acceptable provided that the route width requested in the route permit application for the project is considerably smaller. That is, those persons reasonably likely to be affected by the project must include more persons than those within the requested route width for the project. Persons very near the project, but outside of the route width, would likely be affected by the project (e.g., aesthetic impacts).

Notice Timing

Minnesota Rules 7829.2550, subp. 6, requires the applicant to implement the Notice Plan within 30 days of its approval by the Commission. Regarding the timing of the implementation of the proposed Notice Plan, the Applicants requested that the Commission modify the rule to allow implementation no more than 60 days prior to the filing of the Certificate of Need (CN) petition. The Commission has ordered a similar approach, typically a 30-day window, in several dockets.⁶ Minnesota Rules 7829.3200 governs such variance requests and establishes the following criteria:

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.

The Department recommended that the Commission approve the Applicants’ proposed Notice Plan with the modifications recommended by EERA staff.

Further, the Department recommended that the Commission grant the Applicants 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 route permit application.

EXEMPTION REQUEST

The specific provision related to the exemption request as described in Minnesota Rule 7849.0200, subpart 6, provides an applicant the opportunity to request exemption from any data requirements of Minnesota Rules 7849.0010 to 7849.0400, before submitting an application for a

⁵ DOC EERA Comments on Notice Plan Petition, Document ID [201410-103660-01](#).

⁶ Examples include:

- November 3, 2006 in Docket No. E002, ET2, et al/CN-08-1115;
- November 29, 2007 in Docket No. E017, E015, ET6/CN-07-1222;
- November 12, 2008 in Docket No. E002/CN-08-992;
- January 26, 2010 in Docket No. E002/CN-09-1390; and
- August 17, 2010 in Docket No. E002/CN-10-694.
- February 4, 2013 in Docket No. E002/CN-12-1235

certificate of need. Under the rule, a request for exemption must be filed 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 a determination on the request within 30 days of its submission.⁷

Proposed Exemption Request

GRE is requesting certain exemptions from the application content requirements of Minnesota Rules, chapter 7849. The rules and GRE's scope of exemptions are described as follows:

1. Line Losses – Minnesota Rule 7849.0260, subparts A(3) and C(6)

GRE requested to supply overall system losses information in lieu of line-specific losses.

2. System-Wide Data – Minnesota Rule 7849.0270, subparts 1 and 2

GRE requested to supply demand data for the affected load area in lieu of providing system-wide data.

3. Customer Class Information – Minnesota Rule 7849.0270, subparts 2(B) and 2(C)

GRE requested to provide historic loading and system forecast growth rates in the aggregate for the northern half of the Project instead of by separate customer classes.

4. Annual Peak Demand – Minnesota Rule 7849.0270, subpart 2(C)

GRE requested to provide data for the affected load area on an annual coincident peak basis.

5. Monthly Peak Demand – Minnesota Rule 7849.0270, subpart 2(D)

GRE requested to provide Minnesota Power substation and Great River Energy member cooperative substation demand data within the affected load area.

6. Revenue Requirements – Minnesota Rule 7849.0270, subpart 2(E)

GRE requested to provide a description of the general financial effect of the Project on Great River Energy member cooperatives and on Minnesota Power.

7. Weekday Load Factor – Minnesota Rule 7849.0270, subpart 2(F)

Full exemption requested.

⁷ The Commission will be asked to make a decision on varying the 30-day time frame for acting on Great River Energy's exemption request at the same time with Notice Plan Petition decision during the Agenda meeting on November 24, 2014.

8. Forecast Methodology – Minnesota Rule 7849.0270, subparts 3 through 5

GRE requested to provide forecast methodology for affected load area substations as reflected in the requests for certain exemptions from Minnesota Rule 7849.0270, Subpart 2.

9. System Capacity – Minnesota Rule 7849.0280 (A) and (H)

GRE requested to instead provide data for the affected load area for (A) and (H).

10. System Capacity – Minnesota Rule 7849.0280 (B) through (I)

Full exemption requested.

11. Conservation – Minnesota Rule 7849.0290

GRE requested to provide data on Minnesota Power programs and programs that Great River Energy makes available to member cooperatives serving the affected load area.

12. Consequences of Delay – Minnesota Rule 7849.0300 and No-Facility Alternative – Minnesota Rule 7849.0340

GRE requested exemption from the requirement to provide analysis using three confidence levels and proposed to provide data regarding potential impacts caused by delay and no build alternative on community service reliability in the affected load area.

Department of Commerce Comments

On October 14, 2014, the Department provided comments on the GRE's petition. In its response, the Department addressed each data request separately and agreed with all twelve exemption requests and recommended that the Commission grant the exemption conditioned upon the provision of the proposed alternative data.

Applicants Reply Comments

On October 22, 2014, the Applicants filed comments in response to DOC DER comments on the Notice Plan. In its comments, the Applicants agreed with the majority of the comments provided by the DOC-DER. Regarding the request for a waiver from Minn. Rule 7829.2500, Subp. 5 that requires newspaper notice of the filing after a certificate of need is filled, the Applicants provided further clarification in support of their request. The Applicants stated they will be filing a combined certificate of need and route permit application in one document, likely in January 2015 and proposed to publish notice of the filing in the same local newspapers within 15 days after the application. Applicants feel that a third newspaper notice is redundant and unnecessary given the second newspaper notice per Minn. Rule 7850.2100, Subp.4.

For the reasons described above, Applicants renewed their request for waiver of the notice requirement under Rule 7829.2500, Subpart 5.

Regarding the DOC-EERA comments, the Applicants agreed with their comments and suggested edits to the notices. Applicants anticipate requesting a route width of 500 feet in their route permit application and therefore, the Notice Area will be expanded from 1000 feet to 1500 feet.

DOC DER Response Letter

On October 24, 2014, DOC-DER issued a letter⁸ making their final recommendations to the Commission as outlined below:

- approve the Applicants' proposed Notice Plan with the modifications recommended by EERA staff.
- grant the Applicants' request for 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.
- grant the Applicants' request for a variance to Minnesota Rules 7829.2500, subp. 5 to eliminate the need for potentially redundant newspaper notification of the CN application upon its filing.

STAFF DISCUSSION

Notice Plan

Staff has reviewed the notice plan petition, the Department's comments and the Applicants' reply comments and believes that the notice plan, with the modifications recommended by the Department DER and EERA satisfy the requirements outlined in statute and rule.

Staff recommends that the Commission approve the Applicants' request to implement the notice plan no more than 60 days prior to the filing of the certificate of need application and to vary the requirements for publishing a separate newspaper notice for the certificate of need filing, as it will be combined with the notice plan implementation.

Exemption Request

Staff recommends that the Commission approve Applicants' exemption requests with the provision that the proposed alternative data described in its petition be provided. The Commission has granted similar requests in previous dockets proposing that affected load area data was more appropriate than system-wide data.

COMMISSION DECISION ALTERNATIVES

⁸ Department of Commerce DER Letter, Document ID [201410-104137-01](#).

A. Notice Plan Approval

1. Approve the proposed notice plan.
2. Approve the proposed notice plan as modified by the Department EERA in its comments.
3. Reject the proposed notice plan and indicate the deficiencies that need to be corrected.
4. Take some other action deemed appropriate.

B. Variance Request One

1. Approve the requested variance to Minnesota Rule 7829.2550, subpart 6, on the timing of the implementation of the notice plan.
2. Reject the requested variance to Minnesota Rule 7829.2550, subpart 6.

C. Variance Request Two

1. Approve the requested variance to waive Minnesota Rule 7829.2500, subpart 5, that requires an applicant to publish a newspaper notice upon filing a certificate of need application.
2. Reject the requested variance to waive Minnesota Rule 7829.2500, subpart 5.

D. Exemption Request

1. Grant the exemption request.
2. Deny the exemption request.
3. Take some other action deemed appropriate.

Staff Recommends: A2, B1, C1, and D1