

September 23, 2024

The Honorable Jim Mortenson  
Office of Administrative Hearings  
600 North Robert Street  
P.O. Box 64620  
Saint Paul, MN 55164-0620

RE: EERA Reply Comments  
Pilot Knob to Burnsville 115 kV Rebuild and Upgrade Project  
PUC Docket No. ET-2/TL-23-410  
OAH Docket No. 5-2500-39898

Dear Judge Mortenson,

Minnesota Department of Commerce, Energy Environmental Review and Analysis (EERA) staff submits these reply comments to the applicant's proposed findings, conclusions and recommendations (Findings) for the Pilot Knob 115 kV Rebuild and Upgrade Project.

On September 3, 2024, Great River Energy (GRE) submitted comments on the environmental assessment for the project and on the draft route permit.<sup>1</sup> On September 10, 2024, GRE submitted responses to comments submitted during the public hearing comment period and its proposed Findings.<sup>2,3</sup>

EERA staff's comments on GRE's proposed Findings are related solely to the appropriate permit conditions for the project.

### **Standard Route Permit Conditions**

1. Finding 204 notes GRE's proposed edits to select sections of the draft route permit for the project:

Great River Energy proposes revisions to Sections 1, 2, 2.2, 3, 4, 5.2, 5.3.1, 5.3.8, 5.3.11, 5.3.12, 9.1, 9.2, and 9.6 of the Draft Route Permit to reflect Project-specific details, consolidate compliance requirements, and clarify compliance obligations. The record supports the inclusion of these revisions to describe the Project and clarify and consolidate compliance obligations.

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<sup>1</sup> GRE Comments on Environmental Assessment and Draft Route Permit, September 3, 2024, eDockets Number [20249-209943-01](#) (hereinafter GRE EA Comments).

<sup>2</sup> GRE Proposed Findings of Fact, Conclusions of Law, and Recommendations, September 10, 2024, eDockets Number [20249-210094-01](#) (hereinafter GRE Findings).

<sup>3</sup> GRE Responses to Public Hearing Comments, September 10, 2024, eDockets Number [20249-210093-01](#).

EERA staff has no objections to GRE's proposed edits to Section 1, 2, 2.2, 3, and 4 of the draft route permit. These edits are necessary to appropriately describe the project. Staff notes that Sections 5 and 9 of the permit include standard permit conditions that apply to all transmission line projects permitted by the Commission. Staff believes, as discussed further here, they should apply to the proposed project.

- a. GRE proposes editing Section 5.2 of the draft permit to note that it is required to keep records of its notification to landowners when entering property:

The Permittee shall notify landowners prior to entering or conducting maintenance within their property, unless otherwise negotiated with the landowner. The Permittee shall keep records of ~~compliance with this section~~ making such notifications to landowners and provide them upon the request of the Minnesota Department of Commerce (Commerce) or Commission staff.

EERA staff finds no substantive difference between keeping "records of compliance with this section" and keeping "records of making such notification to landowners." The only requirement of this section is notification. Accordingly, staff recommends that this proposed edit not be included in the draft route permit and not be listed in Finding 204.

- b. GRE proposes editing Section 5.3.1 of the draft permit to allow notice to landowners of the field representative's contact information to be made close in time to the actual construction near these landowners:

The Permittee shall file with the Commission the name, address, email, phone number, and emergency phone number of the field representative at least 14 days prior to the pre- construction meeting. The Permittee shall provide the field representative's contact information to affected landowners, local government units and other interested persons at least 14 days prior to the pre-construction meeting. The Permittee need only provide the field representative's contact information to those landowners that are the subject of the Permittee's vegetation clearing or plan and profile submission, and additional landowners may be notified separately when the Permittees are ready to proceed with a vegetation clearing or plan and profile filing for other Transmission Facility areas. The Permittee may change the field representative at any time upon notice to the Commission, affected landowners, local government units and other interested persons. The Permittee shall file with the Commission an affidavit of distribution of its field representative's contact information at least 14 days prior to ~~the pre-construction meeting~~ commencing construction and upon changes to the field representative.

To EERA staff's understanding, if the project is constructed in sections, this edit would more clearly target notice to landowners when construction is occurring in these sections; thus, potentially, making the notice more effective. It is not clear to staff that GRE's intent (or concern) is not already addressed by the term "affected landowners" in the existing text of Section 5.3.1. Affected landowners could be read to be "those landowners that are the subject of the Permittee's vegetation clearing or plan and profile submission."

EERA staff does not object to GRE's proposed edit of Section 5.3.1 of the draft permit; however, staff believes it is not necessary. The existing text, particularly "affected landowners," appears to address the concern raised by GRE.

- c. GRE proposes editing Section 5.3.8 of the draft route permit to characterize the results of soil erosion control measures:

The Permittee shall implement those erosion prevention and sediment control practices recommended by the Minnesota Pollution Control Agency Construction Stormwater Program. If construction of the Transmission Facility disturbs more than one acre of land or is sited in an area designated by the Minnesota Pollution Control Agency as having potential for impacts to water resources, the Permittee shall obtain a National Pollutant Discharge Elimination System/State Disposal System Construction Stormwater Permit from the Minnesota Pollution Control Agency that provides for the development of a Stormwater Pollution Prevention Plan that describes methods to control erosion and runoff.

The Permittee shall implement reasonable measures to minimize erosion and sedimentation during construction and shall employ perimeter sediment controls, protect exposed soil by promptly planting, seeding, using erosion control blankets and turf reinforcement mats, stabilizing slopes, protecting storm drain inlets, protecting soil stockpiles, and controlling vehicle tracking. Contours shall be graded as required so that all surfaces provide for proper drainage, blend with the natural terrain, and are left in a condition that will facilitate re-vegetation and prevent erosion. All areas disturbed during construction of the Transmission Facility shall be returned to pre-construction conditions [to the greatest extent practicable or as otherwise agreed to by the landowner](#).

EERA staff finds that this edit does not substantively improve the text of the draft route permit. Further, staff believes that the control of soil erosion and proper re-vegetation is a concern that extends beyond the immediate landowner. Accordingly, staff recommends that this proposed edit not be included in the draft route permit and not be listed in Finding 204.

- d. GRE proposes editing Section 5.3.11 of the draft route permit to require notice to known apiaries:

The Permittee shall restrict pesticide use to those pesticides and methods of application approved by the Minnesota Department of Agriculture, Minnesota Department of Natural Resources, and the U.S. Environmental Protection Agency. Selective foliage or basal application shall be used when practicable. All pesticides shall be applied in a safe and cautious manner so as not to damage adjacent properties including crops, orchards, tree farms, apiaries, or gardens. The Permittee shall contact the landowner at least 14 days prior to pesticide application on their property. The Permittee may not apply any pesticide if the landowner requests that there be no application of pesticides within the landowner's property. The Permittee shall provide notice of pesticide application to landowners and beekeepers operating [known](#) apiaries within three miles of the pesticide application area at least 14 days prior to such application. The Permittee shall keep pesticide communication and application records and provide them upon the request of Commerce or Commission staff.

EERA staff believes this edit is appropriate and supports its inclusion in Section 5.3.11 of the draft route permit and in Finding 204.

- e. GRE proposes to edit Section 5.3.12 of the draft route permit to note that an invasive species prevention plan for the project can be part of the vegetation management plan:

The Permittee shall employ best management practices to avoid the potential introduction and spread of invasive species on lands disturbed by Transmission Facility construction activities.

The Permittee shall develop an Invasive Species Prevention Plan, [which may be part of its Vegetation Management Plan](#), and file it with the Commission at least 14 days prior to the pre- construction meeting. The Permittee shall comply with the most recently filed Invasive Species Prevention Plan.

EERA staff does not object to this edit and supports its inclusion in Section 5.3.12 of the draft route permit and in Finding 204.

- f. GRE proposes to edit Section 9.1 of the draft route permit to allow for the possibility of multiple pre-construction meetings and multiple plan and profile filings:

Prior to the start of construction, the Permittee shall participate in a pre-

construction meeting with Commerce and Commission staff to review pre-construction filing requirements, scheduling, and to coordinate monitoring of construction and site restoration activities. [Because the Project will be developed and constructed in distinct phases, multiple pre- construction meetings and submissions under Section 9.2 are allowed.](#) Within 14 days following the pre-construction meeting, the Permittee shall file with the Commission a summary of the topics reviewed and discussed and a list of attendees. The Permittee shall indicate in the filing the anticipated construction start date.

EERA staff does not object to this proposed edit. However, to make the text applicable to future projects, EERA staff recommends editing the text to note that the project may be constructed in distinct phases. Staff recommends GRE’s proposed edit be modified to:

Prior to the start of construction, the Permittee shall participate in a pre-construction meeting with Commerce and Commission staff to review pre-construction filing requirements, scheduling, and to coordinate monitoring of construction and site restoration activities. [Because the Project will may be developed and constructed in distinct phases, multiple pre- construction meetings and submissions under Section 9.2 are allowed.](#) Within 14 days following the pre-construction meeting, the Permittee shall file with the Commission a summary of the topics reviewed and discussed and a list of attendees. The Permittee shall indicate in the filing the anticipated construction start date.

- g. GRE proposes to edit Section 9.2 of the draft route permit to remove distribution of the project’s plan and profile to counties where the project will be constructed:

At least 14 days prior to the pre-construction meeting, the Permittee shall file with the Commission, and provide the Department of Commerce, ~~and the counties where the Transmission Facility, or portion of the Transmission Facility, will be constructed~~ with a plan and profile of the right-of-way and the specifications and drawings for right-of-way preparation, construction, structure specifications and locations, cleanup, and restoration for the Transmission Facility. The documentation shall include maps depicting the plan and profile including the right-of-way, alignment, and structures in relation to the route and alignment approved per this route permit.

EERA staff notes that this requirement – distribution of the plan and profile to affected counties – is consistent with permits issued by the Commission for other energy facilities, e.g., solar

farms, wind farms.<sup>4</sup> EERA staff also notes that the text of Section 9.2 does not prescribe the manner in which Permittees must provide the plan and profile. To EERA staff's understanding the plan and profile could be provided electronically. On whole, EERA staff recommends that this proposed edit not be included in the draft route permit and not be listed in Finding 204.

GRE's proposed edit to Section 9.6 of the draft route permit is related to GRE's proposed edit of Section 9.2. As staff recommends that Section 9.2 not be edited, staff also recommends that GRE's proposed edit of Section 9.6 not be included in the draft route permit and not be listed in Finding 204.

Thus, EERA staff believes GRE's propose Finding 204 should be revised to read as follows:

Great River Energy proposes revisions to Sections 1, 2, 2.2, 3, 4, 5.2, 5.3.1, 5.3.8, 5.3.11, 5.3.12, 9.1, 9.2, and 9.6 of the Draft Route Permit to reflect Project-specific details, consolidate compliance requirements, and clarify compliance obligations. The record supports the inclusion of ~~these~~ revisions to Sections 1, 2, 2.2, 3, 4, 5.3.1, 5.3.11, 5.3.12, and 9.1 (as amended by EERA staff) ~~describe for the Project. and clarify and consolidate compliance obligations.~~

### Special Route Permit Conditions

2. Findings 205 through 214 discuss proposed special permit conditions for the project.<sup>5</sup> EERA staff supports these Findings and conditions. Staff notes that GRE has substantially edited the special condition text proposed by EERA staff in the environmental assessment. However, staff finds that GRE's proposed special permit conditions will accomplish the necessary mitigation. Thus, staff supports these special permit conditions.
  - a. GRE proposes to remove a special permit condition suggested by EERA in the environmental assessment for the project:<sup>6,7</sup>

#### **Adherence to Minnesota Department of Transportation (MnDOT) Requirements**

Intersection related and roadway departure crashes are two of the leading types of fatal and serious injury crashes on Minnesota

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<sup>4</sup> See, e.g., Commission Order Issuing Site Permit, Sherco 3 Solar Project, July 31, 2024, eDockets Number [20247-209139-01](#) (see Site Permit Section 8.3, "At least 14 days prior to the pre-construction meeting, the Permittee shall file with the Commission, and provide the Department of Commerce, and the counties where the Project will be constructed with a Site Plan that includes specifications and drawings for site preparation and grading; specifications and locations of the solar energy generating system and associated facilities; and procedures for cleanup and restoration.")

<sup>5</sup> GRE Proposed Findings.

<sup>6</sup> Environmental Assessment for the Pilot Knob 115 kV Rebuild and Upgrade Project, August 1, 2024, eDockets Number [20248-209203-03](#) (see Appendix C, Draft Route Permit, Section 6.2).

<sup>7</sup> GRE Proposed Findings, Finding 108.

Roadways. Applicable and enforceable MnDOT Special Provisions are attached to all issued utility permits to minimize impacts. In addition:

- 1) The Permittee and its contractors shall understand and follow:
  - (i) MnDOT's Utility Accommodation on Highway Right of Way Policy
  - (ii) Utility Accommodation and Coordination Manual
  - (iii) MnDOT Permitting Policy and Guidance
- 2) To avoid driver sight distance impairment, the Permittee shall not place poles within sight corners of at-grade road crossings; the Permittee shall meet additional clearance requirements and clear zones relating to the state highway system as specified by MnDOT.
- 3) The Permittee shall accommodate planned and existing active transportation facilities in design and construction of the Project, and pedestrian access shall be maintained or temporarily re-routed.
- 4) The Permittee shall give MnDOT District Specialists the opportunity to participate in pre-construction meetings as they apply to MnDOT-owned property.
- 5) The Permittee shall conduct construction and restoration activities consistent with:
  - (i) Applicable sections of MnDOT Facility Design Guide
  - (ii) MnDOT Seeding Manual
  - (iii) MnDOT Approved Products List for Rolled Erosion Prevention products.
- 6) The Permittee shall coordinate with MnDOT when planning transportation of oversize loads.

The Permittee shall keep records of compliance with this section and provide them upon the request of Department of Commerce or Commission staff.

EERA staff believes a special permit condition reflective of MnDOT's concerns and participation in the permitting process is appropriate. EERA staff recommends the following special permit condition to address potential transportation impacts:

#### 6.10 Minnesota Department of Transportation Requirements

The permittee will comply with applicable Minnesota Department of Transportation (MnDOT) requirements for the project including but not limited to MnDOT's Utility Accommodation on Highway Right of Way Policy and shall obtain all applicable MnDOT permits. The Permittee shall give MnDOT district specialists the opportunity to participate in pre-construction meetings as they apply to MnDOT-owned property. The Permittee shall keep records of compliance with this section and provide them upon the request of Department of Commerce or Commission staff.

EERA staff appreciates the opportunity to submit these comments.

Sincerely,

/s/ Ray Kirsch

Ray Kirsch  
Environmental Review Manager