

Minnesota Public Utilities Commission

Staff Briefing Papers

*Meeting Date: April 30, 2015 *Agenda Item #3

Companies: Great River Energy and Minnesota Power

Docket No. **ET2, E015/CN-14-853 and TL-15-204**

In the Matter of the Application of Great River Energy and Minnesota Power for a Certificate of Need and Route Permit for the Motley Area 115 kV Project in Morrison, Cass and Todd Counties

Issues: Should the Commission accept the joint certificate of need and route permit application as complete? What action should the Commission take regarding other procedural items?

Staff: Tricia DeBleeckere 651-201-2254

Relevant Documents

GRE and MP – Certificate of Need and Route Permit Application (3 Parts)..... March 19, 2015
DOC DER – Comments on Certificate of Need Application Completeness..... April 2, 2015
DOC EERA – Comments on Application Completeness April 6, 2015

The attached materials are workpapers 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.

This document can be made available in alternative formats (i.e., large print or audio) by calling (651) 296-0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.

Statement of the issues

Should the Commission accept the joint certificate of need and route permit application as complete? What action should the Commission take regarding other procedural items?

Project Overview

Great River Energy, on behalf of itself and Minnesota Power (the Applicants), are proposing to construct an approximately 16-mile, 115 kilovolt (kV) transmission line and construct and modify substations in Morrison, Cass, and Todd counties (the Motley Project, or the Project). The Project is required to serve a proposed new Minnesota Pipe Line Company pumping station and to capture load-serving needs in the project area.¹

Regulatory Overview

Certificate of Need

The proposed project is a large energy facility as defined by Minn. Stat. § 216B.2421, subd. 2(3), because it is a high-voltage transmission line with a capacity greater than 100 kV and greater than ten miles in length. 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 by the Commission.¹

Route Permit

The proposed project is a high-voltage transmission line as defined in Minn. Stat. § 216E.01, Subd. 4, because it is a conductor of electric energy designed for and capable of operation at a voltage of 100 kV or more and is greater than 1,500 feet in length. Under Minn. Stat. § 216E.03, Subd. 2, no person may construct a high-voltage transmission line without a route permit from the Commission.

The proposed project is an approximately 16-mile 115 kV transmission line and therefore requires a certificate of need and a route permit before it can be constructed.

Background

In 2014, Great River Energy and Minnesota Power submitted both its proposed Notice Plan and a request for exemptions from certain certificate of need requirements. Both were approved by the Commission in January 2015.

The Applicants filed the combined certificate of need and route permit application with the Commission on March 19, 2015.

¹ Commission Docket No. PL-5/CN-14-320

The Commission issued a notice of comment period on the completeness of the application on March 23, 2015. Both the Department of Commerce Division of Energy Resources (DOC DER) and the Energy Environmental Review and Analysis staff (EERA) submitted comments.

The DOC DER recommended that the Commission find the (CN) application substantially complete and order a contested case if a party requests such and provides reasonable grounds to do so.

The DOC EERA staff recommended the Commission find the (route permit) application complete and that no action be taken on an advisory task force at this time.

Issues for Consideration

1. Certificate of Need Completeness

Minn. Rules, part 7849.0200, subp. 5, provides for Commission review of applications for a certificate of need. The rule 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, part 7849.0240 and 7849.0260 through 7849.0340.

The DOC DER reviewed the certificate of need application for completeness and did not find any deficiencies. The DOC DER recommended the Commission accept the application as complete.

Staff has reviewed the certificate of need application and the DOC DER comments – and agrees with the recommendation of the DOC DER that the Commission find the application substantially complete.

2. Certificate of Need Process

Contested Case or Informal/Expedited Proceedings

A determination on the appropriate certificate of need proceeding for the proposed project must be made by the Commission. Under Minn. Rules 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 described in Minn. Rules, part 7829.1200. The Commission has twelve months to issue a decision on a certificate of need.²

The Commission often utilizes the informal/expedited certificate of need process, which consists of an initial and reply comment period on the merits of the proposed project, an environmental

² Minn. Stat. § 216B.243, Subd. 5

report completed by the DOC EERA, a public hearing, and a report from an Administrative Law Judge (ALJ) summarizing the comments received at the public hearing.

The DOC DER's comments noted that it does not have any disputes as to material facts and therefore does not recommend the Commission order a contested-case proceeding. Staff agrees.

Joint Hearings

The Applicants have requested that the certificate of need and route permit application be coordinated pursuant to Minn. Stat. § 216B.243, subd.4, which requires the Commission conduct joint hearings unless it determines that holding joint hearings is not feasible or more efficient.

Staff believes providing the public the opportunity to comment on all aspects of the proposed project at one hearing rather than two is more efficient, reduces confusion, and is in the public interest. In response to most joint need and route permit applications, the Commission has combined the need and route permit hearings with success. Staff recommends joint proceedings be conducted in these dockets.

Joint Environmental Review

An environmental report (ER) is required for a certificate of need and an environmental assessment (EA) is required for the route permit.³ Both are prepared by the DOC EERA staff. These environmental documents can be combined upon approval by the Commission.

Minn. Rule 7849.1900 JOINT PROCEEDING. Subpart 1. Environmental assessment. In the event an applicant for a certificate of need for a LEPGP or a HVTL applies to the commissioner of the Department of Commerce for a site permit or route permit prior to the time the commissioner completes the environmental report, and the project qualifies for alternative review by the commissioner under part 7850.2800, the commissioner may elect to prepare an environmental assessment in accordance with part 7850.3700 in lieu of the environmental report required under part 7849.1200. If combining the processes would delay completion of environmental review under parts 7849.1000 to 7849.2100, the commissioner can combine the processes only if the applicant and the Public Utilities Commission agree to the combination. If the processes are combined, the commissioner shall include in the environmental assessment the analysis of alternatives required by part 7849.1500, but is not required to prepare an environmental report under parts 7849.1000 to 7849.2100.

The DOC EERA comments noted that it anticipates preparing a combined environmental review document that includes the information sufficient for certificate of need and route permit purposes and that the applicants support the combination.

³ Minn. Rule 7849.1200 (ER) and Minn. Rule 7850.3700 (EA).

Staff agrees this approach is reasonable and recommends that the Commission encourage the combination of the environmental review documents.

3. Certificate of Need Procedural Items

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 order issued in this matter:

- a) Provide the name, telephone number, and email address of the staff person designated as Public Advisor (Tracy Smetana) to facilitate citizen participation in the process.
- b) 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 and a route permit.
- c) Require GRE and MP to facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff.
- d) Require GRE and MP to place a copy of the application (printed or disc-format) for review in at least one government center or public library in each county where the proposed transmission line project is located.
- e) 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.
- f) Direct GRE and MP to work with Commission staff to arrange for publication of the notice of hearings in newspapers of general circulation at least 10 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.

Under Minn. Rules, part 7829.3100, 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. Staff believes the following time periods should be varied:

- a) Completeness Review Timing Requirement – Minn. Rules, part 7849.0200, subp. 5, provides for Commission review of applications for a certificate of need. The rule requires the Commission determine whether an applicant 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 April 19, 2015. Thirty days does not allow for the review of the application, solicitation of comments, the scheduling of the matter on a Commission agenda and the preparation of 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.

- b) Public Meeting Timing Requirement – Minn. Rules 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 the receipt of a certificate of need application. In this case, the Department is required to hold a public meeting on or before April 29, 2015. At this time, staff understands that the public meeting is likely to be held in mid-May.

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 on completeness. Staff believes there is good cause to vary and extend the 40-day time limit.

4. Route Permit Completeness

Route permit applications for high-voltage transmission lines must include specific information about the proposed project pursuant to Minn. Rules 7850.3100. The Commission may accept an application as complete, accept an application as complete upon filing missing information, or reject an application and advise the applicant of the deficiencies.⁴

The permit review process begins on the date the Commission determines that an application is complete.⁵ The Commission has six months to reach a final decision on the route permit application and the timeframe can be extended for up to three months for just cause or by agreement of the applicant – however, for cases that require a certificate of need – the Commission cannot issue a route permit prior to the issuance of a certificate of need.⁶

The DOC EERA conducted a completeness review of the application and concluded that the application met the content requirements of Minn. Rules, part 7850.3100 and recommended the Commission find the application substantially complete. Staff agrees.

5. Route Permit Process

A. Commission Input into Alternatives considered in the Environmental Assessment

Recently, the Commission has requested the DOC EERA staff provide to the Commission (prior to the release of the Department's Environmental Assessment Scoping Decision) a summary of the comments received during scoping and the alternative routes it proposes to be considered in the Environmental Assessment. This provided the Commission the opportunity to add alternatives to be considered in the Department's Environmental Assessment pursuant to Minn. Stat. § 216E.04, Subd. 5.

⁴ Minn. Rules, part 7850.3200.

⁵ Id.

⁶ Minn. Rules, part 7850.3900.

Due to the relatively non-controversial nature of this project, among other considerations, staff believes similar input could be achieved in a shorter, but similar, negative check-off process. In most cases, the Commission has not added routes for consideration (and in almost all, if not all, non-complex proceedings). To facilitate this, staff proposes that:

1) The Commission request:

EERA present draft comments on the scope of the Environmental Assessment to the Commission for its input prior to the issuance of the final scoping decision by the Commission of the Department of Commerce, and,

2) upon receipt of the draft comments, the Commission and Commission staff will review the information provided and either:

- a) issue a letter, within seven days, notifying the Applicant and the DOC EERA that the Commissioner may have route alternatives it wishes to be considered in the EA, and therefore the matter will be scheduled for the next available Commission meeting, or,
- b) if no additional routes are flagged for consideration, allow the seven day period to lapse and consider the Commission's input into the scoping alternatives complete.

Staff believes, in most instances, this process would save several weeks in the route permit process as the DOC EERA staff could begin their EA without waiting for the matter to be scheduled on the Commission's agenda – and DOC EERA could potentially begin development of the EA upon their completion of comments to the Commission.

Additionally, if routes *are* flagged by a Commissioner for consideration, staff does not believe the process would be unduly delayed (beyond the current processing timeframe) as the matter could be scheduled for a Commission meeting shortly after receipt of the DOC EERA comments, as is currently the practice.

B. Process Type - Referral to OAH for Summary *Proceedings* or Summary *Report*

Historically, alternative review route permit dockets utilized an ALJ to compile a 'summary report' of the comments received at a public hearing. This summary *report* process includes the following features.

- The final ALJ report is of summary nature only.
- The report does not include ALJ analysis, finding(s) or recommendation.
- The hearing process consists of a public hearing and one comment period (closing 10 days following the public hearing)
- The hearing process does not permit a reply comment period.
- No exceptions are permitted following the ALJ report (as no findings are made).

However, more recently, the Commission has requested more thorough proceedings (referred to as ‘summary *proceedings*’) that request the ALJ provide a hearing report that includes findings, a recommendation and proposed permit conditions.⁷ The summary *proceeding* process:

- Culminates in an ALJ report that includes factual analysis, finding(s) and a recommendation on a route alternative and permit conditions.
- The hearing process consists of a public hearing, an initial comment period (closing 10 days following the public hearing) and a reply comment period.
- Exceptions to the ALJ Report are permitted pursuant to Minn. Rule.

The Department addressed these options in their comments [with staff notes added]:

There are two options to proceed in regard to the public hearing. In either option, the Commission's regular course [summary *report* process] is to have an Administrative Law Judge (ALJ) preside at the hearing. In complicated proceedings, [summary *proceedings*] the Commission forwards the docket to OAH to conduct the hearing and prepare comments and recommendations. In other cases, the Commission more simply chooses to have the ALJ preside at the hearing and transfer the record back to the Commission.

Whether there are competing alternatives or a significant number of human and environmental issues in dispute are two determinants for electing to have the ALJ create a report and recommendation. Requesting an ALJ report can extend the length of the proceeding significantly, potentially adding 45 days to the permit issuance process. This would require the Commission to extend the expected six month timeframe for a final decision up to three months for just cause (Minn. Statute § 216B.03, subd. 7).⁸

Staff has reviewed both process types to ensure conformance with statutory timeframes. Staff has included (not-project specific) draft schedules for both types of processes as attachments to this briefing paper for reference.

Staff agrees that the summary *report* process could be utilized in (relatively) non-complicated proceedings and staff believes that process may be appropriate here. However, at this time, and considering that the project has a concurrent certificate of need proceeding, staff is not certain that the summary *report* process (and slightly shorter timeframe) would provide benefits that outweigh the transparency and benefits the summary *proceeding* may provide.⁹

⁷ Staff believes the use of the phrase ‘summary *proceedings*’ was used since it utilized a more complex proceeding process versus the summary report.

⁸ Reference should be [216E.04, Subd. 7].

⁹ Staff does not see utilizing the less complex summary *report* process as avoiding significant extensions in the permit proceedings.

The Applicants (and potentially, the DOC EERA staff) may wish to weigh in on the process options. Commission staff is continually looking for ways to improve transparency, efficiencies and timeliness of the permitting process and is open to variations on the process outlined.

Staff provides Commission Decision Option B3 if the Commission would like to request the ALJ provide findings and a recommendation. Option B3 includes the procedural direction the Commission has always included in this OAH referral.

Decision Option B4 is provided if the Commission would like to request a summary report only.

C. Advisory Task Force

The Commission has the authority to appoint an advisory task force under Minn. Stat. § 216E.08. The Commission must determine whether to appoint a task force as early in the process as possible. If the Commission does not establish an advisory task force, a member of the public may request one, and the Commission must promptly consider the request. Upon appointment of an advisory task force, the Commission must specify the charge to the task force, and appoint its members in accordance with Minn. Stat. § 216E.08, subd. 1.

The DOC EERA analyzed the merits of establishing an advisory task force with respect to the representations in the application and concluded that a task force is not warranted at this time. EERA staff considered four factors (project size, complexity, known or anticipated controversy and sensitive resources). Staff agrees that a task force is not warranted at this time.

6. Route Permit Procedural Items

As discussed above, staff recommends the Commission appoint Tracy Smetana as the Public Advisor for this project.

Decision Options

A. Application Completeness

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

B. Regulatory Proceeding

1. Approve joint hearings and combined environmental review for the certificate of need and route proceedings.
2. Direct the use of the informal review process to develop the record for the certificate of need. Request the OAH compile a summary report of the comments received during the public hearing comment period regarding the certificate of need.
3. Direct the use of the summary *proceeding* process to develop the record for the route permit. Request that the OAH adapt the existing procedural framework set forth in Minnesota Rules, part 7850.3800, to incorporate the following and request the assigned administrative law judge:
 - a. Emphasize the statutory time frame for the Commission to make final decisions on applications and to strongly encourage the parties to adhere to a schedule that conforms to the statutory time frame.
 - b. Ask the parties, participants, and the public to address whether the proposed project and any alternatives to the proposed project meet the selection criteria established in Minnesota Statute, section 216E.03, subd. 7, and Minnesota Rules, part 7850.4100.
 - c. Prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed project and alternatives to the proposed project applying the criteria set forth in statute and rule; and provide comments and recommendations, if any, on the conditions and provisions of the proposed permit.
4. Direct the use of the summary *report* process to develop the record for the route permit. Request the OAH compile a summary report of the comments received regarding the route permit application.

The Commission should select either Option B3 OR B4

C. Advisory Task Force

1. Authorize the Commission staff to establish an advisory task force and develop a proposed structure and charge for the task force.
2. Take no action on an advisory task force at this time.

D. Variances and Other Procedural Items

1. Vary the time period of Minn. Rules for good cause:

- a. Part 7849.0200, Subp. 5, and extend the 30-day time limit for the Commission to consider application completeness.
 - b. Part 7849.1400, Subp. 3, and extend the 40-day time limit for the Department to conduct a scoping meeting.
 - c. Part 7850.3700, Subp. 3, to vary the 10-day time limit for the Department to issues its scoping decision (*to allow for the seven-day (or greater) Commission review*).
2. Delegate administrative authority to the Executive Secretary (including the varying of timelines) and include the following additional items in the order issued in this matter:
- a. Provide the name, telephone number, and email address of the staff person designated as Public Advisor (Tracy Smetana) to facilitate citizen participation in the process.
 - b. 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 and a route permit.
 - c. Require GRE and MP to facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff.
 - d. Require GRE and MP 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.
 - e. 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.
 - f. Direct GRE and MP 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.
3. Request the DOC EERA present comments on the EA scope to the Commission for its input prior to the issuance of the final scoping decision by the Commissioner of the Department of Commerce.
4. Notify DOC EERA that if no letter has been issued from the Commission indicating its intent to schedule the matter at an agenda meeting within seven-days of submittal of the DOC EERA EA comments, that the Commission will have concluded its review and input.
5. Direct staff to formally contact relevant state agencies to request their participation in the development of the need and route permit records and public hearings under Minn. Stat. § 216E.10, subd. 3, and request that state agencies submit comments prior to the last day of the public hearing.

Staff recommendation: A1, B1, B2, B3 or B4, C2, D1 (a-c), D2 (a-f), D3, D4, and D5.

Attachment – Procedural Steps in Alternative Review

For (simple) projects the summary proceeding process has routinely followed this outline. Items listed in grey are pre-hearing process steps.

Day/Month	Process Step	Notes
Day 0	Commission Accepts Application	
Month 1	Public Information and DOC Scoping Meeting	
Month 2	Close of Scoping Comment Period and Submittal of Comments to Commission on Alternatives	Staff proposes with this docket to provide a revised approach to this process step (negative check-off)
Month 3	Commission Input on Alternatives and DOC Issuance of Scope	
Month 6	DOC Issuance of EA	Allow 4 months for EA Issuance
Between Month 3 to 6	OAH Holds Prehearing Conference	

Summary Proceeding Process		
(Month 7) Day X	Public Hearing	Overview provided by ALJ, agency staff and applicant. Applicant and agencies answer questions.
X + 10 days	Close of Public Hearing Comment Period and Close of Factual Record	<ul style="list-style-type: none"> • General public and agencies submits comments by close of the public comment period • Applicant submits responses to questions about the project received at the public hearing. • Applicant submits comments, proposed Findings of Fact (with recommended route and permit conditions) and maps.
X + 5 days	OAH files transcripts and comments	
X + 25 days (Month 8)	Reply Comments/Finding of Fact Modifications	<ul style="list-style-type: none"> • EERA responds to public comments on the EA. • EERA file comments/briefs and submits revisions to Applicant's proposed Findings of Fact, including conclusions as to the most appropriate route or routes and proposed permit conditions. • Applicant submits revisions to proposed Findings of Fact, if necessary to address comments received during the Public Hearing Comment Period.

X + 55 (Month 9)	ALJ Report (Varies between 15 and 30 days)	
X + 70 (Month 9.5)	Exceptions to ALJ Report	<ul style="list-style-type: none"> •Applicant and EERA file Exceptions, if any, consistent with Minn. Rule 7829.2700, including exceptions to mitigations measures and permit conditions.
X + 90 (Month 10-10.5)	Commission (Verbal) Decision on Route Permit	

Summary Report Process		
(Month 6) Day X	Public Hearing (Immediately following issuance of the EA and the DOC EERA's technical analysis)	Overview provided by ALJ, agency staff and applicant. Applicant and agencies answer questions.
X + 10 days	Close of Public Hearing Comment Period and Close of Factual Record	<ul style="list-style-type: none"> • General public and agencies submits comments by close of the public comment period • Applicant submits responses to questions about the project received at the public hearing. • Applicant submits comments, proposed Findings of Fact (with recommended route and permit conditions) and maps.
X + 40 days (Month 7.5)	OAH files Summary Report	DOC EERA may amend their technical analysis submitted with the EA
Month 8.5-9.5	Commission (Verbal) Decision on Route Permit	Commission staff processing time will likely depend to some degree on whether revisions to the DOC EERA's technical analysis are deemed necessary by the DOC EERA staff.