

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
J. Dennis O'Brien
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Request of Minnesota
Power for a Certificate of Need for the Great
Northern Transmission Line Project

ISSUE DATE: January 8, 2014

DOCKET NO. E-015/CN-12-1163

ORDER ACCEPTING FILING,
VARYING TIME LINES, AND
NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On October 21, 2013, Minnesota Power (or the Applicant) filed a petition for a certificate of need for the construction of its Great Northern High Voltage Transmission Line project in northern Minnesota.¹ The proposed project is a 500 kilovolt (kV) transmission line to be located between the province of Manitoba in Canada and the Blackberry Substation in Itasca County (approximately 225 to 300 miles). The transmission line is intended to provide delivery of and access to power generated by Manitoba Hydro's hydroelectric stations in Manitoba.

On November 19, 2013, the Large Power Intervenors filed comments, recommending that the Commission find the application complete and refer the case for contested case proceedings.² Xcel Energy, Otter Tail Power Company, Great River Energy, and Missouri River Energy Services (the Regional Utilities) also filed comments on that date, recommending additional record development through use of a contested case proceeding.

On November 19, 2013, the Minnesota Department of Commerce (the Department) filed comments stating that the application was complete and recommending that the Commission refer the petition to the Office of Administrative Hearings for contested case proceedings.

¹ On October 22, 2013, Minnesota Power filed additional materials related to Part 3 of Appendix O to its petition.

² The Large Power Intervenors consist of the following: ArcelorMittal USA (Minorca Mine); Boise, Inc.; Enbridge Energy, Limited Partnership; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; NewPage Corporation; PolyMet Mining, Inc.; Sappi Cloquet, LLC; UPM – Blandin Paper Company; USG Interiors, LLC; United States Steel Corporation (Keewatin Taconite and Minntac Mine); and United Taconite, LLC.

Some 25 public comments, including a petition with approximately 271 signatures, were filed during the initial comment period following Minnesota Power's notice plan petition for the project. The comments, for the most part, focused on routing and environmental issues.

On December 3, 2013, Minnesota Power filed reply comments.

On December 19, 2013, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Summary

In this Order the Commission finds that the application filed on October 21 and 22, 2013, substantially meets the Commission's filing requirements.

The Commission also grants the request of the Department, the organizations, members of the public, and the Company to further develop the record by referring the matter to the Office of Administrative Hearings to conduct a contested case proceeding.

Finally, the Commission varies the time line to hold a public meeting and begin the process of preparing the environmental report, and directs the parties to take specific steps to facilitate the review process.

II. The Project

According to the petition, the Great Northern Transmission Line Project includes high voltage connections between the province of Manitoba in Canada and the Blackberry Substation in Itasca County, to enable additional deliveries from Manitoba Hydro to meet existing and future energy needs. Minnesota Power has proposed to construct a 500 kV transmission line from the border that would terminate at the Blackberry Substation (approximately 225 to 300 miles).³

The petition states that the Great Northern Transmission Line is intended to provide delivery and access to power generated by Manitoba Hydro's hydroelectric stations in Manitoba, Canada. Minnesota Power states that it needs this line to deliver at least 250 MW of energy and capacity by June 1, 2020 under a Power Purchase Agreement (PPA) approved by the Commission in Docket No. E015/M-11- 938.

Minnesota Power also states that several other considerations drive the need for the proposed transmission line. These include access to renewable energy for Minnesota Power and the region, increased industrial load growth on the Iron Range, and strengthening regional reliability. The Project is intended to facilitate increased imports from Manitoba of up to 1,100 MW to support the regional transmission system and to serve load.

³ In its application, Minnesota Power removed the 345 kV double circuit portion between the Blackberry Substation and the Arrowhead Substation near Hermantown, citing a lack of sufficient transmission requests.

III. Application Accepted

Having reviewed the Minnesota Power's initial filing, the Commission concurs with the Applicant and the parties that the application substantially meets the filing requirements of Minn. Rules Chapter 7849.

Some members of the public claimed that the application was deficient, and opposed particular route(s) for the project, citing environmental impacts of the project and/or proposed alternative sources of energy.

The Commission finds that the application provides sufficient detail to proceed to a contested case proceeding where all parties can participate in developing a full and robust factual record.

IV. Environmental Report – Varying Time Lines

Minn. Rules, Part 7849.1200 requires that the commissioner of the Department of Commerce prepare an environmental report on a proposed high voltage transmission line at the certificate of need stage. Minn. Rules, Part 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 receipt of a certificate of need application. The 40-day time period ended during the first week of December 2013.

Under Minn. Rules, part 7829.3200, the Commission has the authority to vary a rule if the following criteria are met:

- (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.

In this case, the Commission finds that the criteria for granting a variance to Minn. Rules, part 7849.1400, subp. 3 are met:

- (1) Enforcement of the rule would impose an excessive burden on the public and those reasonably likely to be affected by the proposed project.
- (2) Granting the variance would not adversely affect the public interest and would in fact serve the public interest by enabling a more comprehensive evaluation of public comment at the outset of the review process.
- (3) Granting the variance would not conflict with standards imposed by law, since the 40-day timeline is set by rule, not statute, and may therefore be waived.

The Commission will therefore vary the 40-day timeline to accommodate the scheduling of the public meeting and the preparation of an environmental report in this case.

V. Jurisdiction and Referral for Contested Case Procedures

The Commission has jurisdiction over Minnesota Power's request for a Certificate of Need under Minn. Stat. § 216B.243 and Minn. Rules, Chapters 7849 and 7829.

The Commission finds that it cannot satisfactorily resolve all questions regarding the prudence of the proposed transmission line project on the basis of the current filings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

VI. Issues to be Addressed

The ultimate issue in this case is whether the Applicant's proposed transmission line project meets the need criteria set forth in Minn. Stat. § 216B.243 and Minn. Rules Chapter 7849. This issue turns on numerous factors that are best developed in formal evidentiary proceedings. The parties to this proceeding should address whether the proposed project meets these criteria and address these factors. The parties may also raise and address other issues relevant to the application.

VII. Review Process

To facilitate the review of the application, and the public's participation in that review, the Commission will do the following:

- Ask the Department to continue studying issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need to the Applicant.
- Direct the Applicant to facilitate in every reasonable way the continued examination of the issues by the Department.
- Direct the Applicant to place a CD and/or hard copy of the Application for review in a Government Center and/or public library in each of the counties traversed by the pipeline of the Project.
- Direct the Applicant to place all materials submitted on a publicly available website.
- Direct the Applicant to work with the staff of the Commission and the Department to publish notice of the hearings in newspapers of general circulation, in the form of visible display ads, at least ten days before the hearings. Further direct that proofs of publication of such ads be obtained from the newspapers selected, and that the Applicant consult with Commission staff on the timing, text, and distribution of such ads prior to publication, and e-file confirmation of their publication.
- Provide the name, telephone number, and email address of the Commission employee designated as Public Advisor to facilitate citizen participation in the process.⁴

⁴ Minn. Stat. § 216B.243, subd. 4.

VIII. Public Participation

Minn. Stat. § 216B.243, subd. 4 encourages public participation in certificate-of-need proceedings. The statute requires at least one hearing to obtain public opinion on the application and requires the Commission to designate an employee to facilitate public participation in the hearing process.

The Commission has designated the following staff member to facilitate and coordinate public participation in the proceeding:

Tracy Smetana, Public Advisor
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147
(651) 296-0406, or 1-800-657-3782
Consumer.puc@state.mn.us

IX. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to the contested case is Ann O'Reilly. Her address and telephone number are as follows: Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101; (651) 361-7844. The mailing address of the Office of Administrative Hearings is P.O. Box 64620, St. Paul, Minnesota 55164-0620.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57 to 14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at: www.revisor.mn.gov/pubs.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Michael Kaluzniak, Senior Energy Facilities Planner, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2257, by fax at (651) 297-7073, and by e-mail at mike.kaluzniak@state.mn.us.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties in this case are the Applicant and the Department. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission.

D. Prehearing Conference

A prehearing conference will be held in this case on January 17, 2014, at 10:00 a.m. in the Small Hearing Room at the offices of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.

Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

X. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., apply to certificate of need cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, or (800) 657-3889 with any questions.

XI. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300 to 7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby accepts Minnesota Power's certificate of need application as substantially complete.
2. The Commission hereby refers this matter to the Office of Administrative Hearings for contested case proceedings under Minn. Stat. § 14.57 *et seq.* as described herein.

3. The Commission hereby varies Minn. Rules, part 7849.1400, subp. 3 to extend the 40-day timeline in which the Department of Commerce is to hold a public meeting in preparation for preparing the environmental report.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



This document can be made available in alternative formats (e.g., 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.

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Request of Minnesota Power
for a Certificate of Need for the Great Northern
Transmission Line Project

MPUC Docket No. E-015/CN-12-1163

OAH Docket No. 65-2500-31196

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge: Ann O'Reilly, Office of
Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101; Mailing Address:
Box 64620, St. Paul, Minnesota 55164-0620; Telephone Number: (651) 361-7844.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____