

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange  
Dan Lipschultz  
Matthew Schuerger  
Katie J. Sieben  
John A. Tuma

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application of Xcel  
Energy and ITC Midwest LLC for a  
Certificate of Need for the Huntley-Wilmarth  
345 kV Transmission Line Project

ISSUE DATE: March 28, 2018

DOCKET NO. E-002,ET-6675/CN-  
17-184

In the Matter of the Application of Xcel  
Energy and ITC Midwest LLC for a Route  
Permit for the Huntley-Wilmarth 345 kV  
Transmission Line Project

DOCKET NO. E-002,ET-6675/TL-  
17-185

ORDER FINDING APPLICATIONS  
COMPLETE AND NOTICE OF AND  
ORDER FOR HEARING

**PROCEDURAL HISTORY**

On January 17, 2018, Xcel Energy and ITC Midwest (the Applicants) filed an application for a certificate of need for construction of a 345 kilovolt (kV) high-voltage transmission (the proposed Project) between Xcel's existing Wilmarth substation in Mankato and ITC Midwest's Huntworth substation south of Winnebago.

On January 22, 2018, the Applicants filed a route permit for the proposed Project.

On February 2 and 6, 2018, the Department of Commerce, Division of Energy Resources (the Department) and the City of North Mankato respectively filed comments on the certificate of need application. The Department recommended that the Commission find the certificate of need application substantially complete and refer the case to the Office of Administrative Hearings for contested case proceedings. The City of Mankato commented on the merits of the application, particularly potential routes and recommended that Applicants avoid portions of routes to avoid adverse impacts.

And on February 6 and 12, 2018, the City of North Mankato and the Department of Commerce, Energy Environmental Review and Analysis staff (EERA) respectively filed comments on the route permit application. The City of Mankato commented on the merits of the application, particularly potential routes and recommended that Applicants avoid portions of routes to avoid adverse impacts. The EERA recommended that the Commission find the permit application complete and authorize the EERA to appoint an advisory task force.

The Commission also received comments from members of the public, some of whom voiced opposition to portions of the proposed routes identified in the route permit application.

On February 22, 2018, the Applicants filed reply comments concurring with the comments of the Department to refer the matter to the Office of Administrative Hearings for contested case proceedings and with the comments of the EERA to establish an advisory task force.

On March 8, 2018, the applications came before the Commission.

## **FINDINGS AND CONCLUSIONS**

### **I. Application Completeness**

#### **A. Certificate of Need Application**

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.” The proposed Project is a large energy facility under Minn. Stat. § 216B.2421, subd. 2(2), because it is a high-voltage transmission line with a capacity greater than 200 kV and length greater than 1,500 feet.

Under Minn. R. 7849.0200, subp. 5, the Commission must determine whether a certificate of need application is substantially complete and notify the applicant within 30 days of the filing if the application is not substantially complete. The Commission has reviewed the application content requirements of Chapter 7849 and concurs with the Department that the certificate of need application is substantially complete.

The Department must hold, within 40 days of the application filing, a public information meeting under Minn. R. 7849.1400, subp. 3, to afford the public with the opportunity to present comments on the merits of the application and potential project alternatives.

Under Minn. R. 7829.3200, the Commission must vary its rules upon making the following findings:

- (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 Commission finds that the requirements for a variance to Minn. R. 7849.0200, subp. 5, and to 7849.1400, subp. 3, in this case are met. Enforcement of the 30-day completeness determination and enforcement of the 40-day public meeting requirement would impose an excessive burden on those affected by the rule by unreasonably limiting the time period for comments on the completeness of the application and on potential impacts and alternatives. Further, granting the variance would not adversely affect the public interest and would, in fact, further the public interest by ensuring sufficient time for interested persons to develop and provide input. Further, granting a variance would not conflict with standards imposed by law.

For these reasons, the Commission will grant a variance to Minn. R. 7849.0200, subp. 5 and to Minn. R. 7849.1400, subp. 3.

## **B. Route Permit Application**

Under Minn. Stat. § 216E.03, subd. 2, construction of a high-voltage transmission line requires a permit from the Commission. A high-voltage transmission line is a conductor of electric energy designed for and capable of operation at a voltage of 100 kV or more and that is greater than 1,500 feet in length.<sup>1</sup>

The application must contain the information required under Minn. R. 7850.1900. The Commission has reviewed the application and concurs with the EERA that the application is complete.

## **II. Environmental Review and Joint Proceedings**

Under Minn. R. 7849.1900, subpart 2, the Commission has authority to conduct joint proceedings on a certificate of need and a route permit application, following the procedures of Minn. R. 7850.1000 to 7850.5600, including combining environmental review by conducting an environmental impact statement on both applications (in lieu of a separate environmental report on the certificate of need application). In this case, the Commission concurs with the Applicants that it is reasonable to conduct concurrent review of both applications by combining environmental review and holding joint proceedings.

To facilitate joint proceedings, the Commission will delegate administrative authority to the Executive Secretary and will take the following steps:

- Appoint the Commission's public advisor, Charley Bruce, as the public advisor in this case;
- 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;
- Require the Applicants to facilitate in every reasonable way the continued examination of the issues raised by the Department and Commission staff;
- Require the Applicants to place a copy of the application (print and/or electronic) for review in at least one governmental center or public library in each county where the proposed Project would be located;
- 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;
- Request that the administrative law judge assigned to the matter emphasize the statutory time frame for the Commission to make final decisions on the applications and to strongly encourage the parties and participants to adhere to a schedule that conforms to the statutory time frame;
- Direct Commission staff to formally contact relevant state agencies to request their participation in the development of the record and at 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;

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<sup>1</sup> Minn. Stat. § 216E.01, subd. 4.

- Request that the administrative law judge ask the parties, participants, and the public to address whether the proposed Project and any alternatives meet the selection criteria established under Minn. Stat. § 216E.03, subd. 7, and Minn. R. 7850.4100;
- Request that prior to the public hearing, the EERA file with the administrative law judge its comments and analysis on the relative merits of the route alternatives using the selection criteria under Minn. Stat. § 216E.03, subd. 7, and Minn. R. 7850.4100, and based on the record at that point, its environmental impact statement; evidence of compliance with environmental review procedures; and recommended permit language or specific provisions relative to permissible routes;
- Request that the administrative law judge prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed Project, alternatives to the proposed Project, and a preferred route alternative, applying the routing criteria set forth in statute and rule; provide comments and recommendations, if any, on the conditions and provisions of the proposed permit.

The Commission will also request that the Department present draft route alternatives to facilitate Commission input on the scope of the environmental impact statement prior to issuance of the EERA's scoping decision.

The Commission will also authorize the EERA to establish an advisory task force consistent with the EERA's proposed structure and charge for the task force.

### **III. Jurisdiction and Referral for Contested Case Proceedings**

The Commission finds that it cannot resolve the issues raised in the applications on the basis of the record before it. The issues turn on specific facts that are best developed in formal evidentiary hearings. The Commission will therefore refer the matters to the Office of Administrative Hearings for contested case proceedings.

The Administrative Law Judge assigned to this matter will conduct hearings as described in this Notice and submit a Report to the Commission. Following receipt of the Administrative Law Judge's report, the Commission will proceed to make its final decision in accordance with Minn. Stat. Ch. 14 and 216B.

### **IV. Issues to be Addressed**

The Commission expects that in the course of this case the parties will develop a full record addressing issues raised that are relevant to the Commission's certificate of need and route permit decisions.

### **V. Procedural Outline**

#### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Barbara Case. Her address is as follows: Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101. Her mailing address is P.O. Box 64620, St. Paul, Minnesota 55164-0620. She can be reached through his legal assistant, Lisa Armstrong at 651-361-7888.

## **B. Hearing Procedure**

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. R. 1405.0200 to 1405.2800. Regarding any issue on which Chapter 1405 is silent, the provisions of Minn. R. 1400.5100 to 1400.8400 regarding contested cases shall apply, and to the extent they are not superseded by those rules, the Commission's rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.4000. Hearing may be recessed and reset by the Administrative Law Judge pursuant to Minn. R. 1405.1400 to 1405.3200.

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](http://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. R. 1405.1300, 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. R. 1400.6700 to 1400.6800 or informal disposition under Minn. R. 1400.5900 should be directed to Tricia DeBleeckere (651) 201-2254, Minnesota Public Utilities Commission, 121 7<sup>th</sup> Place East, Suite 350, St. Paul, Minnesota, 55101-2147.

- *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 neutral interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of 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 to this case are the Applicants and the Department. Other persons wishing to become formal parties must do so pursuant to Minn. R. 1405.0900. Subpart 1 of that rule prescribes the timing and contents of a petition to intervene. Subpart 2 prescribes the timing and content of any objection to the petition, and subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petition.

The hearing process established under Chapter 1405 is designed to facilitate public participation, and persons need not intervene as parties to participate. All public participants have significant procedural rights, including but not limited to, the right to be present throughout the proceeding, to offer direct testimony in oral or written form, to question all persons who testify, and to submit comments to the Administrative Law Judge and the Commission.

Persons who intervene and are granted party status have additional rights and responsibilities, including, but not limited to, the right to object to another's petition for intervention, the right to submit direct testimony and conduct cross-examination of other parties' witnesses, and the duty to submit prefiled testimony, comply with discovery requests, produce witnesses, file briefs, and serve all documents on all other parties.

The description of rights in this section is summary in nature, as required by Minn. R. 1405.0500, subpar 1(I), and is not intended to be comprehensive. Interested parties are encouraged to review Chapter 1405 to identify the scope of rights and authority to act given "persons" or restricted to "parties" under the various provisions of that chapter.

#### **D. Prehearing Conference**

A prehearing conference will be held on Monday, May 7, 2018 at 10:00 a.m. in the Large Hearing Room at the office of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.

#### **VI. 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 in Minn. R. 7845.7300 – 7845.7400, which all parties are urged to consult.

### **ORDER**

1. The Commission hereby accepts the certificate of need application as substantially complete.
2. The Commission hereby accepts the route permit application as complete.
3. The Commission hereby authorizes joint hearings and combined environmental review of the certificate of need and route proceedings.
4. The Commission hereby takes steps to facilitate record development as described herein.
5. The Commission hereby authorizes the Department to establish an advisory task force consistent with the EERA's proposed structure and charge for the task force.
6. The Commission hereby grants variances to Minn. R. 7849.0200, subp. 5, and 7849.1400, subp. 3.
7. The Commission hereby refers the applications to the Office of Administrative Hearings for contested case proceedings.
8. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Daniel P. Wolf  
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 or email [consumer.puc@state.mn.us](mailto:consumer.puc@state.mn.us) for assistance.

OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Application of Xcel  
Energy and ITC Midwest for a Certificate  
of Need and a Route Permit for the  
Huntley-Wilmarth 345 kV Transmission  
Line Project

**NOTICE OF APPEARANCE**

TO: Administrative Law Judge Barbara Case, 600 North Robert Street, PO Box 64620,  
St. Paul, MN 55164

**PLEASE TAKE NOTICE that:**

1. The party named below will appear at the prehearing conference and subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the party named below hereby acknowledges that it has read and agrees to the terms of the Office of Administrative Hearings' e-Filing policy and chooses to opt into electronic notice from the Office of Administrative Hearings with respect to this matter.

**Note: Provision of an email address DOES NOT constitute the party's consent to electronic service from the opposing party/ies in this proceeding.**

3. The party named below agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel and to advise the Office of Administrative Hearings of any change in all parties' email address(es).

**Party's/Agency's Name:** \_\_\_\_\_

Email: \_\_\_\_\_ Telephone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

**Party's/Agency's Attorney:** \_\_\_\_\_

Firm Name: \_\_\_\_\_

Email: \_\_\_\_\_ Telephone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

**Respondent's/Opposing Party's Name:** \_\_\_\_\_

Email: \_\_\_\_\_ Telephone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Dated: \_\_\_\_\_