

March 22, 2021

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E015/CN-21-140

Dear Mr. Seuffert:

Attached are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

Notice Plan Petition for the Application of Minnesota Power for a Certificate of Need for the Duluth Loop Reliability Project.

The Petition was filed on behalf of Minnesota Power on February 26, 2021 by:

David R. Moeller
Senior Attorney and Director of Regulatory Compliance
30 West Superior Street
Duluth, MN, 55802

The Department recommends that the Minnesota Public Utilities Commission (Commission) **approve the Company's proposed notice plan**. The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ MICHAEL N. ZAJICEK
Rates Analyst

MNZ/ja
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E015/CN-21-140

I. INTRODUCTION

On February 26, 2021 Minnesota Power (MP or the Applicant) filed a *Notice Plan Petition for the Application of Minnesota Power for a Certificate of Need for the Duluth Loop Reliability Project* (Notice Petition). The Notice Petition provides the Applicant's proposed Notice Plan to communicate its intent to construct: a 115 kilovolt (kV) transmission line connecting the existing Hilltop Substation, located in southwest Duluth, and the Ridgeview Substation, located in the northeast portion of Duluth; an approximately one-mile long extension of the existing Hilltop 230 kV Tap to the Arrowhead substation; expansion and transmission line reconfigurations at the existing Hilltop and Ridgeview substations; and associated upgrades at the existing Haines Road and Arrowhead Substations.

According to MP, the project is required to provide reliable service to Duluth and will replace the energy and system support from local coal-fired baseload generators that are closing in the area. The Company states that the project is necessary to address voltage stability concerns, relieve transmission line overloads, and enhance reliability of the Duluth-area transmission system due to the closure of the North Shore coal-fired baseload generators. The Notice Petition includes a draft notice for landowners and residents, elected officials, tribal government contacts, and agencies within the Notice Area.

Below are the Comments of the Minnesota Department of Commerce, Division of Energy Resources, Energy Regulation and Planning (Department) on the Notice Petition.

II. DEPARTMENT ANALYSIS

The Department's Energy Environmental Review and Analysis Staff (EERA) may provide its own recommendations regarding the content of the notice letter; the following comments are the Department's Division of Energy Resources, Energy Regulation and Planning analysis on whether the Applicant's notice plan meets the statutory requirements.

A. TYPES OF NOTICE

Minnesota Rules 7829.2550, subp. 3 requires the following types of notice:

- direct mail notice, based on county tax assessment rolls, to landowners reasonably likely to be affected by the proposed transmission line;
- direct mail notice to all mailing addresses within the area reasonably likely to be affected by the proposed transmission line;

- direct mail notice to tribal governments and to the governments of towns, statutory cities, home rule charter cities, and counties whose jurisdictions are reasonably likely to be affected by the proposed transmission line; and
- newspaper notice to members of the public in areas reasonably likely to be affected by the proposed transmission line.

Regarding landowner and resident notice, the Applicant proposed to provide notice to landowners in the notice area via names and addresses obtained using County GIS data, which includes tax record information. The Department concludes that this is reasonable.

Regarding newspaper notice, the Applicant listed and selected three local newspapers to the newspaper notice list. The Department concludes that the Applicant's proposed plan for newspaper notice is reasonable. The Company also proposes a variance to the rule requiring publication of the notice in a statewide email. The Department addresses that request below.

Regarding governmental notice, the Department's review of the Applicant's list of governments proposed to receive notice complies with the requirements of the rule.

Regarding tribal governments, the Department's review of the Applicant's list of tribal governments proposed to receive notice complies with the requirements of the rule.

In summary, the Department concludes that the Applicant's Notice Plan for residents, landowners, and governmental entities is reasonable after any recommended additions by EERA staff.

B. CONTENT OF NOTICE

Minnesota Rules 7829.2550, subp. 4 requires the notices to provide the following information:

- a map showing the end points of the line and existing transmission facilities in the area;
- a description of general right-of-way requirements for a line of the size and voltage proposed and a statement that the applicant intends to acquire property rights for the right-of-way that the proposed line will require;
- a notice that the line cannot be constructed unless the Minnesota Public Utilities Commission (Commission) certifies that it is needed;
- the Commission's mailing address, telephone number, and website;
- if the applicant is a utility subject to chapter 7848, the address of the website on which the utility applicant will post or has posted its biennial transmission projects report required under that chapter;

- a statement that the Environmental Quality Board¹ will be preparing an environmental report on each high-voltage transmission line for which certification is requested;
- a brief explanation of how to get on the mailing list for the Environmental Quality Board's proceeding; and
- a statement that requests for certification of high-voltage transmission lines are governed by Minnesota law, including specifically chapters 4410 and 7849, and Minnesota Statutes, section 216B.243.

The Department reviewed the cover letters and maps provided by the Applicant and concludes that the Applicant's proposal for the resident/landowner notice, governmental notice, and newspaper notice generally contains the required information and is acceptable after any edits recommended by EERA staff.

C. 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 Applicant requested that the Commission modify the notice implementation rule in order to allow implementation no more than 60 days and no less than two weeks prior to the filing of the Certificate of Need (CN) petition. The Commission has ordered a similar approach, in several dockets.²

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 concludes that enforcement of the rule would burden all parties involved by separating the provision of notice from the start of the proceeding. Granting the variance would not adversely affect the public interest since the Applicant's proposal would more closely tie the

¹ The Department notes that while the statutes have changed regarding routing authority and location of the staff preparing the environmental report, Minnesota Rules have not yet been updated to reflect these changes.

² 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
- January 15, 2021 in Docket No. IP-7041/CN-20-764

implementation of notice to the beginning of the CN proceeding. The Department is not aware that the variance would conflict with standards imposed by law. Therefore, the Department recommends that the Commission approve the Applicant's request to implement the notice plan no more than 60 days and no less than two weeks prior to the filing of the CN petition.

D. NEWSPAPER NOTIFICATION REQUIREMENTS

Minnesota Rules 7829.2500, subp. 5, requires the applicant to publish newspaper notice of the filing in a newspaper of general circulation throughout the state after the filing of a CN application. The Applicant has requested a variance to this rule due as the Applicant states that publishing in an additional statewide newspaper would pose an excessive burden on the applicant and would likely not reach many additional people not already reached by the local papers through which the Applicant proposes to provide notice.

As noted above, the criteria in Minnesota Rules 7829.3200 governs whether a variance is reasonable. As more fully discussed below, the Department concludes that the Applicant's request fails the criteria set forth in Minnesota Rules.

First, the Department notes that the Applicants' did not provided any evidence that compliance with the newspaper notice requirement in Minnesota Rules 7829.2500, subp. 5 would constitute an excessive burden. It is unclear why the addition of a statewide newspaper to the notice plan would prove an excessive burden to the Applicant.

Second, removing a required notice opportunity is contrary to the public interest. The rules provide for newspaper notice three months prior to an application being filed and again once the application is filed. The Department considers complete and thorough public notice to be crucial in ensuring that the public is aware of, can participate in, and can affect the outcome of a CN proceeding. Thus, additional newspaper notification is beneficial to the public as it increases the likelihood that affected parties become aware of, or remain aware of, the CN proceeding, and have the opportunity to participate. Thus, the Department concludes that granting a variance to remove an instance of required newspaper notification would fail the second criteria of Minnesota Rules 7829.3200.

While the Department is not aware that the variance would conflict with standards imposed by law, the Department recommends that the Commission reject the Applicants' request for a variance to the newspaper notification requirement of Minnesota Rules 7829.2500, subp. 5 since the Applicants have not shown that two of the three criteria needed for a variance have been met. The Department does note that varying the timing of the statewide newspaper notification so as to be at the same time as other notifications would be reasonable.

III. DEPARTMENT RECOMMENDATIONS

As discussed above, the Department recommends that the Commission approve the Applicant's proposed Notice Plan with any modifications recommended by EERA staff.

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Analyst assigned: Michael N. Zajicek

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Further, the Department recommends that the Commission grant the Applicant 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.

Finally, the Department recommends that the Commission reject the Applicant's request for a variance to Minnesota Rules 7829.2550, subp. 5, which requires additional newspaper notification of the CN applicant upon its filing.

/ja

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

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Dated this 22nd day of March 2021

/s/Sharon Ferguson

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Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-140_CN-21-140
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