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April 6, 2007

The Honorable Eric L. Lipman
Administrative Law Judge
Office of Administrative Hearings
100 Washington Square, Suite 1700
100 Washington Avenue South
Minneapolis, MN 55401-2138

RE: In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy and Dairyland Power Cooperative for a Certificate of Need for a 115 and 161 kV Transmission Line from Taylors Falls to Chisago County Substation; and

In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy and Dairyland Power Cooperative for a Route Permit for a 115 and 161 kV Transmission Line from Taylors Falls to Chisago County Substation

OAH Docket No.: 8-2500-17840-2

PUC Docket No.: E-002/CN-04-1176; E-002/IL-06-1677

Dear Judge Lipman:

I write on behalf of the Minnesota Department of Commerce (Department) to address the City of Lindstrom's Motion for Extension of Task Force, or in the Alternative, Motion for Certification to the Public Service (sic) Commission filed on March 23, 2007.¹ Specifically, the City of Lindstrom alleges that "the time frame established by the Department for the Task Force is not workable and thwarts meaningful participation by the affected local governments and the public generally." For the reasons discussed below, the Department strongly suggests that this motion be addressed directly by the Public Utilities Commission (Commission) at its earliest convenience. The Department provides the following background and discussion to explain its position.

¹ The City of Lindstrom also has an intervention petition pending in the Certificate of Need proceeding above-referenced.

First, the Department questions whether the Office of Administrative Hearings (OAH) has jurisdiction to rule on the City's motion. The Task Force process is an early part of the environmental review process which was expressly delegated to the Department's Energy Facility Permitting (EFP) staff in the Commission's February 12, 2007 Route Permit Order; it was not referred to the OAH. The Department's EFP staff is not conducting the environmental review as part of the contested case proceeding. It is preparing a combined document, the Environmental Assessment, which has dual purposes: 1) it will provide the necessary review for the Route Permit application, and 2) it can be used to support testimony relating to the certificate of need (CON) petition in the contested case proceeding.

Xcel Energy and Dairyland Cooperative have filed *two* applications relating to the transmission line from Taylor's Falls to the Chisago County substation: 1) an application for a Certificate of Need (CON), E002/CN-04-1176; and 2) an application for a Route Permit, E-002/TL-06-1677. On February 12, 2007, the Commission issued a total of three orders in these dockets that are pertinent to the question of jurisdiction.² In these orders, the Commission accepted the two applications, combined the environmental review documents and procedures for the two proceedings and authorized the public hearings on the two permits to be held jointly. Specifically, the Commission's Route Permit Order states in pertinent part:

4. The Commission hereby combines the environmental review documents and procedures in Dockets E-002/CN-04-1176 and E-002/TL-06-1677. The Department is authorized to initiate and conduct the environmental review process.
5. The Commission authorizes the public hearings to be held jointly.
6. The Commission authorizes Department and Commission Staff to request assignment of an Administrative Law Judge to schedule, notice, and preside over the joint public hearing(s) authorized in Order Paragraph 5.

² 1. ORDER ACCEPTING ROUTE PERMIT APPLICATION AS COMPLETE, AUTHORIZING SELECTION of PUBLIC ADVISOR, AND COMBINING ENVIRONMENTAL REVIEW AND PUBLIC HEARING WITH CERTIFICATE OF NEED APPLICATION (Route Permit Order)

2. ORDER ACCEPTING CERTIFICATE OF NEED APPLICATION AS SUBSTANTIALLY COMPLETE PENDING SUBMISSION OF ADDITIONAL DATA (CON Order)

3. ORDER AND NOTICE FOR HEARING (Referral Order)

7. The Commission authorizes the Department Energy Facilities Permitting staff to establish an advisory task force and develop a proposed structure and charge for the task force.

The Route Permit Order clearly authorized the Department to undertake environmental review and task force activities and clearly limited the OAH's responsibility to scheduling, noticing, and presiding over the joint public hearing(s). The Department's environmental review is required for the Route Permit, and by combining the review in the Route Permit Order, the Commission authorizes it to be used for the CON proceeding as well.

In a similar manner, the Commission's Referral Order restates this position, clarifying its intent that the public hearings in the CON and Route Permit proceedings be held jointly by the ALJ:

VII. Joint Public Hearings

The Commission has authorized the public hearings in the certificate of need docket, E-002/CN-04-1176, and the route permit application, E-002/TL-06-1677, to be held jointly. In addition, the environmental review proceedings in both the certificate of need and routing dockets have been combined. The Commission asks the Administrative Law Judge to schedule, notice, and preside over the joint public hearing(s) in both matters.

Although the referral language quoted above is quite specific as to conducting the public hearing(s), the Commission did not refer the Route Permit proceeding to the OAH for a contested case proceeding. Instead, it authorized the Department to initiate and conduct the environmental review process. The Advisory Task Force in the Route Permit proceeding is just part of the complex environmental review process being administered and conducted by the Department's EFP staff. However, this review process must be completed expeditiously in order to meet the scheduled dates for filing testimony in the CON contested case proceeding.

The partial referral to OAH in the Route Permit proceeding is limited to scheduling, noticing and presiding over joint "public hearings." The Department is responsible for preparing the joint environmental document for the two dockets and for establishing a task force to provide input into the Environmental Assessment document. The Commissioner of Commerce will consider this input for his Scoping Decision which identifies the scope of the environmental review³. There are no intervenors in the Route Permit proceeding, and the only "parties" are the applicants. Moreover, there is no mention of separate evidentiary hearings for the Route Permit Order as there is with respect to the CON in the CON Order. Although the environmental review

³ Once the Commission authorizes the Department to conduct the environmental review, the authority to determine the scope of the review rests with the Commissioner of the Department, not the Commission, according to the provisions in Minn. Stat. § 216E.03, subd. 5 (2006).

process was not referred to the OAH, the end result of that process is an environmental review document. The environmental review document in this case will be an Environmental Assessment, which will be submitted for the record during the evidentiary hearing for the CON. Both the Commissioner of Commerce and the Department's EFP staff have distinct roles in these matters, quite separate from the role of its energy staff in the CON proceeding, and the Environmental Assessment EFP staff prepares will be used by witnesses in the CON proceeding to assess the criteria required for granting a petition for a certificate of need.⁴

Finally, the Department wishes to note that it disagrees with many of the statements in the City of Lindstrom's motion. The Department is seriously concerned that the motion contains speculative assertions and allegations about the task force process in this matter that are misleading, inaccurate, or irrelevant. However, these statements will not be addressed by the Department at this time.

In conclusion, although it appears that the OAH has no jurisdiction to rule on the City of Lindstrom's motion to extend the task force, the Department recommends that this matter be placed before the Commission, whether or not the Court determines it has jurisdiction to rule on the motion. Because the EFP staff is charged with a neutral advisory role to assist the Commission and is not acting as a party advocating a position, it is appropriate that issues involving the task force should be directed to the Commission. Therefore, if the Court concludes that it has authority to rule on the motion, it should decline to rule on its merits and certify the issue to the Commission for resolution.

Respectfully submitted,

s/ Karen Finstad Hammel

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⁴ The decision on the scope of the Environmental Assessment is scheduled to be issued by the Commissioner of the Department by April 13, 2007, pursuant to Minn. Stat. § 216E.03, subd. 5 (2006) and Minn. R. 4400.2750, subp. 3. Department EFP staff will then prepare the Environmental Assessment based on the scoping decision and it will be submitted as an exhibit for the evidentiary hearing, according to the First Prehearing Order in this proceeding.

In the Matter of the Petition of Northern States
Power Company d/b/a Xcel Energy and Dairyland
Power Cooperative for a Certificate of Need for a
115 and 161 kV Transmission Line from Taylors
Falls to Chisago County Substation

OAH Docket No.: 8-2500-17840-2
PUC Docket No.E-002/CN-04-11761; E-002/IL-06-
1677
From OAH service list as of 2/26/07

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