

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: **October 11, 2007** Agenda Item # _____

Company: Otter Tail Power Company; Central Minnesota Municipal Power Agency; Great River Energy; Heartland Consumers Power District; Montana-Dakota Utilities Co.; Southern Minnesota Municipal Power Agency; and Western Minnesota Municipal Power Agency (collectively, the "Applicants")

Docket No. ET-6131, ET-2, ET-6130, ET-10, ET-6444; E-017; ET-9/CN-05-619
In the Matter of the Application of Otter Tail Power Company and Others for Certification of Transmission Facilities in Western Minnesota

Issue(s): What procedural actions should the Commission take at this time, given the apparent change in participation by two of the Applicants?

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Relevant Documents

- *Minn. Stat. § 216B.243; Minn. Rules, Chapter 7849
- *Applicants' Certificate of Need Application, received October 3, 2005
- *Applicants' Letter of September 18, 2007
- *Applicants' Letter of September 28, 2007

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Statement of the Issue

What procedural actions should the Minnesota Public Utilities Commission (Commission) take at this time, given the apparent change in participation by two of the Applicants?

Background Information

On October 3, 2005, Otter Tail Power Company (OTP) and six other utilities (collectively, the "Applicants") filed a Certificate of Need Application for a proposed transmission project in western Minnesota. According to the Applicants, the proposed facilities are needed to provide transmission outlet capacity for a new coal-fired unit at the Big Stone Power Plant in South Dakota and to strengthen the regional power grid.

The proposed transmission facilities fall under the definition of "large energy facility" in Minn. Stat. § 216B.2421, subd. 2 (2). Therefore, in accordance with Minn. Stat. § 216B.243, subd. 2, the facility cannot be constructed or sited in Minnesota unless the Commission issues a Certificate of Need to the Applicants.

The Certificate of Need rules pertinent to this filing are Minn. Rules, parts 7849.0010 to 7849.0400. More specifically, the application requirements for large high voltage transmission facilities are given by parts 7849.0240 and 7849.0260 to 7849.0340.

The percentage ownership and resulting nominal megawatt (MW) allocations from the planned Big Stone II generating unit were as follows: Central Minnesota Municipal Power Agency (CMMPA), 5.0%, 31.5 MW; Great River Energy (GRE), 19.33%, 121.8 MW; Heartland Consumers Power District (Heartland), 4.2%, 26.25 MW; Montana-Dakota Utilities (MDU), 19.33%, 121.8 MW; Otter Tail Power Company (OTP), 19.33%, 121.8 MW; Southern Minnesota Municipal Power Agency (SMMPA), 7.8%, 49.35 MW; and Western Minnesota Municipal Power Agency represented by Missouri River Energy Services (MRES), 25.0%, 157.5 MW.¹ The percentages for the proposed transmission project were the same as indicated above.

On November 4, 2005, the Applicants submitted comments as well as some information to supplement the application.

On November 29, 2005, the Commission issued its ORDER AGREEING TO COMBINING THE ENVIRONMENTAL REPORT AND THE ENVIRONMENTAL IMPACT STATEMENT DOCUMENTS.

On December 19, 2005, the Commission issued its ORDER ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE AND REQUIRING ADDITIONAL INFORMATION, as well as the NOTICE AND ORDER FOR HEARING for the Certificate of Need process. On

¹The numbers for MRES include amounts for Hutchinson Utilities Commission under a power supply contract.

January 12, 2006, the Commission issued an ERRATUM NOTICE correcting two errors in the NOTICE AND ORDER FOR HEARING.

Several public hearings were held in or near the affected area and in St. Paul during the period October 9-16, 2006.

Evidentiary hearings were held at the Commission's offices during the period December 5-22, 2006.

Briefs and/or reply briefs were submitted by: the Applicants; the Department of Commerce (Department); the Joint Intervenors (i.e., a coalition consisting of the Minnesota Center for Environmental Advocacy, the Union of Concerned Scientists, the Izaak Walton League, Fresh Energy, and Wind on the Wires); the Midwest Independent System Operator (MISO); Excelsior Energy, Inc. (Excelsior); the South Dakota Governor's Office of Economic Development (GOED); and the Minnesota Municipal Utilities Association (MMUA).

The FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION of Administrative Law Judges Steve M. Mihalchick and Barbara L. Neilson (the ALJs' Report) was issued on August 16, 2007

Exceptions to the ALJs' Report (on the need issues) were submitted by the Applicants, Excelsior, and the Joint Intervenors. Replies to exceptions were submitted by the Applicants, Excelsior, and the Joint Intervenors.

Additional procedural history is given in the ALJs' Report.

On September 18, 2007, the Applicants submitted a letter describing "two significant developments affecting the Big Stone project." On September 28, 2007, the Applicants submitted a letter proposing further proceedings in this docket.

Summary of the September 18 Letter

The Applicants noted that September 21, 2007 was the date set by the Applicants' Participation Agreement for a vote on termination of participation and withdrawal from the Big Stone II generation and transmission project.

GRE had indicated to Otter Tail that it would withdraw from the project on September 21, 2007, citing factors specific to its resource planning. The Applicants' letter indicated that GRE would inform the Commission of its plans in a filing related to its upcoming integrated resource plan filing.

In addition, SMMPA had decided it is unable to make a long-term commitment to the project until it resolves its current litigation with its largest member, Rochester Public Utilities. The letter indicated that SMMPA and the project are currently evaluating options that would allow SMMPA to remain as a participant in some capacity, if not as a direct owner.

The Applicants suggested that possible project modifications could include downsizing of the Big Stone II generating unit and/or combining the unit with significant amounts of wind energy at or close to the Big Stone interconnection point to take full advantage of the project's MISO interconnection rights.

The Applicants suggested that the Commission retain the October 11 meeting date (originally scheduled for deliberations) to discuss procedural options.

Summary of the September 28 Letter

The Applicants indicated that they have made no decision as yet regarding downsizing of the generation project or adding other partners. They stated that none of the options being discussed would change the need for the proposed transmission lines or the appropriateness of the proposed routes.

The Applicants acknowledged the likely need for additional resource planning analysis and noted that a change in the procedural schedule is therefore necessary. The Applicants indicated that their analysis will look at the need for base-load resources, updated costs for a supercritical pulverized coal facility and for viable base-load alternatives, the impact of Minnesota's new legislation on utilities with Minnesota load, reasonable assumptions regarding future carbon dioxide regulation, and information from transmission experts regarding continued appropriateness of the transmission facilities. The Applicants noted their belief that their professional judgment must be a factor in the analysis.

The Applicants stated that further proceedings should be limited to the submission of the results of the supplemental resource planning information conducted by each of the owners. They indicated that an important issue is how this information should be entered into the record and suggested that it could be accomplished through written comments received by the Commission. They noted that the credibility of the witnesses has already been addressed in the prior evidentiary hearings before the administrative law judges (ALJs).

The Applicants also suggested a procedural schedule, which would culminate with deliberations by the Commission late in January 2008.

Finally, the Applicants also requested that GRE and SMMPA be removed as "Applicants."

Procedural Options and Staff Comments

Staff does not pretend to know what all the nuances of possible options may be for Commission action at this or a future meeting. However, without being overly specific on wording and possible conditions, some of the options are:

1. Proceeding forward with the transmission line certification based on the existing record, conditional on the Applicants moving forward with the Big Stone II generating unit.

2. Suspending the proceeding for a period of time to give the remaining Applicants time to find other partners or to make other adjustments to the project; and refraining from deciding upon future procedural requirements until the remaining and new partners have refined the project and/or the utilities participating in it.
3. Suspending the proceeding for a period of time to give the remaining Applicants time to find other partners or to make other adjustments to the project; at this meeting, deciding what future procedural requirements are necessary; and selecting to:
 - a. Refer the case back to the ALJs with specific directions on scope of additional evidentiary proceedings; or
 - b. Continue the case with written comments coming directly to the Commission.
4. Dismissing the application without prejudice, requiring the Applicants to file a new application if they wish to proceed with a revised project.

Staff does not believe that either option 1 or option 4 is appropriate for this meeting. Before either of those options was selected, staff believes the Commission would want to hear oral arguments and have more time to examine the existing record. However, theoretically, the Commission could indicate that it wants to examine those two options at a future meeting.

Staff notes that a tremendous amount of resources has already been expended on this proceeding and that the process has already taken much longer than it should have. (Staff recognizes that reasonable people could argue about the reasons for the protracted proceeding.) This case should not be looked at as merely a battle between attorneys; there are serious issues of reliability, cost of service, and environmental impacts to evaluate. Many thousands of ratepayers in several states will be affected by the final outcome of this docket and the companion routing docket. Staff believes the Commission must give serious consideration to whether the passage of time has left some or all of the remaining partners without any cost-effective and otherwise reasonable alternatives. Further, as pointed out in the Applicants' September 18 letter, in abandoning the project, the utilities would be giving up substantial interconnection rights.

Despite its earlier suggestion that the Commission could act on the current record, staff does not take issue with the need for a certain amount of additional analysis and procedural follow-up. Staff believes a compelling case could be made that the appropriate procedural action depends upon what the Applicants decide to do. For example, the scope of required additional review for a downsizing of the generating unit might differ from the scope of required additional review for adding one or more partners.

As pointed out by the Applicants, a key question is whether the proceeding should be referred back to the ALJs to conduct additional hearings. While one could argue that there will be continuing disputes over "facts," the Applicants are correct in their contention that other significant issues have been handled by the Commission without referral to the Office of Administrative Hearings (OAH). Staff believes, however, that if referral to OAH takes place, it should be done only with very strict guidelines on scope, procedures, and timing. Unfortunately, staff is not prepared to provide much guidance in those areas, except to reinforce that notion that this proceeding must be brought to an end as quickly as is reasonably possible.

Finally, staff believes that all of the parties recognize that GRE and SMMPA have withdrawn from the project, at least as far as ownership goes. Staff is not of the opinion that it is necessary for the Commission to change the caption for this proceeding or to take any particular action at this time with respect to GRE or SMMPA.