

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David C. Boyd
J. Dennis O'Brien
Thomas Pugh
Phyllis A. Reha
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of an Application of Northern
States Power Company d/b/a Xcel Energy for a
Certificate of Need for Two 115kV
Transmission Lines in Minneapolis

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DOCKET NO. E-002/CN-10-694

ORDER FINDING APPLICATION
COMPLETE AND INITIATING
INFORMAL REVIEW PROCESS

PROCEDURAL HISTORY

On November 29, 2010, Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) filed an application for a certificate of need for construction of two 115kV transmission lines and two new distribution substations in the Midtown area of South Minneapolis.

On December 1, 2010, the Commission issued a notice requesting comments on the completeness of the filing. On December 22, 2010, the Commission issued an Order extending the 30-day period set by rule for determining the completeness of the application, to ensure adequate opportunity to consider those comments.

The following organizations filed formal comments on the completeness of the filing, using the Commission's electronic filing system:

- The Office of Energy Security of the Minnesota Department of Commerce (OES)
- Hennepin County, the City of Minneapolis, and the Midtown Greenway Coalition, filing jointly
- The Midtown Phillips Neighborhood Association, Inc.
- The East Phillips Improvement Coalition

The OES recommended that the Commission find the application complete upon Xcel's submission of two additional items of information. The agency also stated that it did not have any disputes as to material facts and did not expect any to develop and therefore did not recommend contested case proceedings, unless another person requested them and provided reasonable grounds to do so.

The three joint commentors stated that they did not intend to intervene in the certificate of need proceeding and cautioned that the case should focus solely on need issues and should not reexamine issues unrelated to need that were fully developed in the route permit case.

The Midtown Phillips Neighborhood Association and East Phillips Improvement Coalition also had no plans to intervene but expressed concern about the adequacy of the application's treatment of conservation, of new transmission technologies, and of the role of the proposed project in future transmission development.

Numerous individuals, businesses, community groups, and a member of the Minnesota House of Representatives, Representative Karen Clark, filed public comments by e-mail or through the interactive comment feature of the Commission's website. These comments generally echoed and expanded on the issues raised in the formal comments.

On January 6, and 7, 2011, Xcel submitted a supplemental filing in response to the OES's request for additional information, as well as reply comments.

On January 27, 2011, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

Before building a large energy facility – including any high-voltage transmission line longer than one mile with a capacity of 100 kV or more that is located in a city of the first class - a person must apply for a certificate of need demonstrating that the facility is needed.¹ Because Xcel's project qualifies as a large energy facility, Xcel must apply for a certificate of need as set forth in Minn. Rules, Chapter 7849.

Minn. Rules, Chapter 7849 sets forth the requirements for making an application for a certificate of need, as well as the ultimate criteria for demonstrating need. The Commission determines whether an application is substantially complete and may grant exemptions to filing requirements.

Where material facts are in dispute, the Commission refers cases to the Office of Administrative Hearings for a contested case proceeding under Minn. Rules, part 7829.1000. Otherwise, the Commission may elect to address matters via informal proceedings under Minn. Rules, part 7829.1200.

II. Application Completeness

The OES reviewed Xcel's application to determine the extent to which it fulfilled the requirements of Minn. Rules, parts 7849.0220, 7849.0240, and 7849.0260 through 7849.0340. The OES

¹ Minn. Laws, 2010, chapter 361, article 5, section 19 extends the certificate of need requirements under Minn. Stat. § 216B.243 to “any high-voltage transmission line longer than one mile with a capacity of 100 kilovolts or more that is located in a city of the first class in a zone within one mile of the transmission line in which population density exceeds 8,000 persons per square mile and that runs parallel to and is within one-half mile of a below-grade bike and walking path that connects with other bike paths along a river.”

recommended that the Commission find the filing complete upon the submission by Xcel of the additional information requested by the OES on December 27, 2010.²

The Commission has examined the record and concurs with the OES that with the supplemental information submitted by Xcel on January 6, 2011, the application is substantially complete. The Commission's finding of substantial completeness is as to form only; it implies no judgment on the merits of the application. Further, comments more closely related to the merits of the application, rather than its completeness, can be most effectively addressed as the record is developed.

In addition, Xcel stated that it does not intend to debate the merits of design options or routes in this proceeding and that it included material in its certificate of need application to comply with the certificate of need content rules, not to re-raise issues from the route proceeding.

III. Process for Reviewing the Merits

The Commission has the discretion to evaluate certificate of need requests using either contested case proceedings or an informal notice and comment process.³ The informal process is a less formalized method of developing the record and provides an opportunity for the identification of contested issues, which would shape the scope of contested case proceedings, should they later be determined to be necessary. At this juncture, no person has alleged that there are contested material facts for which a contested case proceeding is needed; no person has requested a contested case proceeding; and there are no other factors pointing to a need for contested case proceedings.

The Commission will therefore authorize staff to develop the record and prepare this case for Commission action without contested case proceedings under Minn. Stat. §§ 14.57 *et seq.*, unless those proceedings are later determined to be necessary. Staff will manage the development of the case record by establishing necessary comment periods and ensuring compliance with statutory requirements such as the submission of an Environmental Report and the holding of one or more public hearings.

Under the informal review process the Commission still asks the Office of Administrative Hearings to hold at least one public hearing, scheduled in conjunction with Commission staff. The Commission will also take the steps listed below to ensure adequate development of the record:

- Direct the Applicant to cooperate with the OES and with Commission staff to develop the record.
- Ask that the Applicant place a compact disc or hard copy of the application for review in a government center and/or public library in the vicinity of the project.
- Ask the OES to examine the application and other materials submitted in the case and to submit its analysis of the reasonableness of granting a certificate of need.

² The OES requested supplemental information from Xcel under Minn. Rules part 7849.0280 (H) and (I) regarding monthly adjusted net demand and monthly adjusted net capability, and on determining system reserve margins.

³ Minn. Rules, part 7829.2500, subp. 9.

- Direct Commission staff to work with the Administrative Law Judge and the staff of the OES in selecting suitable locations for a public hearing on the application.
- Direct the Applicant to work with the OES and with Commission staff to arrange for publication of the notice of the hearings in newspapers of general circulation at least ten days prior to the hearings; direct that such notice be in the form of visible display ads; and direct that proofs of publication of such ads be obtained from the newspapers selected.

Finally, the certificate of need statute encourages public participation in certificate of need proceedings, requiring at least one hearing to obtain public opinion and requiring the Commission to designate an employee to facilitate citizen participation in the hearing process.⁴

The Commission has designated Bret Eknes, Facilities Planner, to facilitate and coordinate public participation in this proceeding. He may be reached by telephone at (651) 201-2236, by fax at (651) 297-7073, and by email at bret.eknes@state.mn.us. The mailing address is 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147.

ORDER

1. Xcel's certificate of need application is accepted as substantially complete as of January 6, 2011.
2. The Commission directs use of the informal review process to develop the record.
3. The Commission delegates to the Executive Secretary administrative authority for the proper development of the record.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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⁴ Minn. Stat. § 216B.243, subd. 4.