

April 27, 2011

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

Re: Reply to Comments of the Minnesota Office of Energy Security
Docket No. E002/CN-10-694

Dear Dr. Haar:

The City of Minneapolis (City) and Hennepin County (County) are parties to the route permit litigation but have not intervened in the certificate of need proceedings and are not taking a position on the issue of need. The City and the County object, however, to the discussion starting on page 15 of the comments of the Minnesota Office of Energy Security to the extent that they suggest that there is some factual analogy between this matter and “the Chisago Project” (Docket No. E002/CN-04-1176). In the routing docket in this matter (PUC No. EP2/TL-09-38) Administrative Law Judge Beverly Heydinger conducted extensive public hearings followed by an extensive contested case hearing with over a dozen parties being represented at the contested case hearing. She conducted evidentiary hearings over approximately 15 days. She then made detailed Findings of Fact, Conclusions and Recommendations before coming to a recommendation that the line should be undergrounded along Route D.

These Findings and Conclusions show the very unique circumstances of the “Hiawatha Project” and show that it is factually not comparable to the “Chisago Project.” The findings of

fact and conclusions also make clear that Route D is the only reasonable route under the circumstances and that the undergrounding of this particular line is appropriate due to unique local conditions that make underground placement of the transmission line good utility practice and a standard facility for the purposes of rates.

The City and County disagree with the OES inference that it may be necessary to open a separate rate case and to determine which set(s) of customers Xcel proposes to charge. The City and County argue that based on the evidence in the route permit evidentiary hearing and the Findings and Conclusions of the Administrative Law Judge, further proceedings on rates are not necessary.

The City and County are highlighting a few of the Findings and Conclusions that are relevant to this issue. Clearly with the voluminous findings present in this case, there are many other Findings that should also be considered.

The Hiawatha Project is unique in that it is planned for an area that is extremely densely populated and houses a number of facilities which serve the upper Midwest as a whole. These include the Abbott Northwestern Hospital campus and associated hospitals and medical facilities and the extensive facilities of the Wells Fargo campus, along with the Midtown Exchange and others. It also includes a regional recreational and transit facility known as the Midtown Greenway.

In Conclusion 9, the Administrative Law Judge Heydinger explained that the selection of Route D will minimize impact on historical resources, future transit and the health, safety and welfare of the people living and working in the project area. She stated:

Based on an evaluation of the routing factors, set forth in Minn. Stat. Section 216E.03, Subd 7(a) and 7(b) and Minn. R. 7850.4000 and 7850.4100, Route D is a feasible and prudent alternative to the Applicants' preferred Route A. Route D does not present a

potential for significant adverse environmental effect. Route D will minimize the effects on natural resources, including historic resources and on persons living and working within the project area, and will better serve the public health, safety and welfare. Route D will not hinder future transit development and will follow an existing transportation right-of-way. Although the cost of Route D is greater than the other alternatives, the factors favoring an underground transmission line in an urban area as densely populated as the project area justify the added expense to offset the human and environmental impact of the overhead alternatives.

The Chicago, Milwaukee and Saint Paul Railroad Grade Separation Historic District encompasses the Midtown Greenway. The Administrative Law Judge found and concluded in Conclusion 7 the following:

The CM&St.P Railroad Grade Separation Historic District is a protected natural resource. Construction of Route A either overhead or underground has the potential to impair that resource. Although it is the least expensive alternative, cost, convenience and efficiency are not sufficient reasons to select a route that has the potential to impair a protected resource.

In reaching Conclusion 7, the Administrative Law Judge cited to the record and to case law authority under *Powderly v. Erickson*, 285 NW 2d 84, 87-88 (Minn. 1979), and *Archabal v. County of Hennepin*, 495 NW 2d 416, 421, 423, 426 (Minn. 1993). See also, *Minnesota Public Interest Research Group v. White Bear Rod and Gun Club*, 257 N.W.2d 762, 783 (Minn. 1977) (No permit can be issued that violates the Minnesota Environmental Rights Act.)

The ALJ also concluded in Conclusion 8 that “Route B, Route C and Route E2 are not feasible or prudent alternatives to Route A.”

In Factual Finding 256 the ALJ noted that a disproportion number of people in the project area that would be impacted by the transmission lines are minority groups and persons at low income levels: She stated:

The neighborhoods within the Project Area are some of the City's most challenged for housing, economic development, poverty and contamination. The Project Area has become increasingly ethnically diverse, and has low per capita income. The area contains arsenic contamination, and high rates of lead poisoning and asthma hospitalizations, tied to environmental contamination.

In Conclusion of Law 10, the ALJ stated that "Route D is the best alternative on the record."

On page 5 of its comments, the OES argues that the Hiawatha Project is not a transmission project for reliability purposes for a certificate of need analysis. For clarification, Minnesota Statute 216E.01, Subdivision 4, however, defines a High-voltage transmission line as:

A conductor of electric energy and associated facilities designed for and capable of operation at nominal voltage of 100 kilovolts or more and is greater than 1,500 feet in length.

Administrative Law Judge Heydinger made three factual findings regarding the additional cost of undergrounding the transmission line in the Hiawatha Project. She stated in paragraphs 414 through 416 that:


The Applicant acknowledged that if underground installation was dictated by local conditions, it would ordinarily be treated as standard construction and not subject to the surcharge. In this instance, if the Commission determined that an underground alternative was the best alternative, the applicant would not expect the cost to be treated as a special facility.

The Applicant has not sought cost recovery for the incremental costs of previously installed underground transmission lines in Minnesota, including an underground transmission line in the Cedar-Riverside area of Minneapolis.

If an underground alternative is selected, treatment as standard facilities will reduce the negative impact on the low-income persons over-represented in the Project Area.

The City and the County agree with the factual findings of the ALJ and support a finding that the project including the undergrounding of the transmission line should be treated as a standard facility for the purposes of rates and be charged to the entire rate base through general rates.

Sincerely,



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