

Minnesota Public Utilities Commission

Staff Briefing Paper

Meeting Date: **May 10, 2012** Agenda Item # * 2A

Company: Northern States Power, doing business as Xcel Energy

Docket No. E002/TL-11-948

In the Matter of the Application of Northern States Power d/b/a Xcel Energy for the Southwest Twin Cities (“SWTC”) Scott County – Westgate 115 kV Transmission Line Rebuild Project

Issue(s): Should the Commission accept the Route Permit Application for the Project as complete?

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Relevant Documents

Xcel Energy Initial Filing (16 Parts) April 12, 2012
Department of Commerce EFP Comments April 30, 2012
Department of Natural Resources Reply Comments May 4, 2012

The attached materials are work-papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless otherwise noted.

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Statement of the Issue

Should the Commission accept the Route Permit Application for the Project as complete?

Project Overview

The proposed Project includes converting or upgrading approximately 20 miles of 69 kilovolt (kV) transmission line to 115 kV capacity between the Scott County Substation and the Westgate Substation and modifying the associated substation facilities located near the cities of Shakopee, Chaska, Chanhassen, Shorewood, Excelsior, Greenwood, Deephaven, Minnetonka, and Eden Prairie in Scott, Carver, and Hennepin Counties.

Xcel Energy anticipates a late 2014 in-service date for the Project. Construction is expected to start in late 2013.

Procedural History

On March 9, 2012, Xcel Energy submitted an Application to the Commission for a Certificate of Need (CN) for the proposed transmission line upgrade of the 69 kV Scott County-Westgate system to 115 kV. The docket number for the CN proceedings is E002/CN-11-332.

On April 12, 2012, Northern States Power, a Minnesota Corporation (Applicant) filed an application for a route permit for the Southwest Twin Cities Scott County - Westgate 115 kV Transmission Line Rebuild Project (Project). The Applicant has stated that the Project qualifies for review under the Alternative Permitting Process.

On April 30, 2012, the Minnesota Department of Commerce, Energy Facilities Permitting Unit (“Department” or “DOC EFP”) submitted comments and recommendations on the application acceptance, appointment of a Public Advisor and establishment of an Advisory Task Force.

Statutes and Rules

Minnesota Statute §216E.03, subd. 2 states that no person may construct a high voltage transmission line without a Route Permit from the Commission. A High Voltage Transmission Line (HVTL) is defined as a transmission line of 100 kV or more and greater than 1,500 feet in length in Minnesota Statute §216E.01, subd. 4. The proposed transmission lines are HVTLs and therefore a Route Permit is required prior to construction. The Application was submitted pursuant to the provisions of the Alternative Permitting Process outlined in Minnesota Rules 7850.2800 to 7850.3900.

Minnesota Statute §216B.243, subd. 2 states that no Large Energy Facility shall be sited or constructed in Minnesota without issuance of a Certificate of Need by the Commission. The 115 kV single-circuit and 115/69 kV double-circuit transmission lines proposed for the Scott County-

Westgate project is a “large energy facility” because it has a capacity in excess of 100 kV and is more than 10 miles long.

The provisions for the alternative permitting process review are contained in Minnesota Rules 7850.2800 to 7850.3900. Minnesota Rule 7850.3200 provides that the Commission may accept an application as complete, reject an application and require additional information to be submitted, or accept an application as complete upon filing of supplemental information.

The proposed project qualifies for review under the alternative permitting process authorized by Minnesota Statute §216E.04, subd. 2(3) and Minn. Rule 7850.2800, subp. 1(C) because the proposed HVTLs are between 100 and 200 kV. Under this rule, the Applicant can elect to follow the procedures under Minn. Rule 7850.2800 to 7850.3900 rather than the procedures for a full process under Minnesota Rules 7850.1700 to 7850.2700. Xcel Energy has chosen to follow the alternative permitting process.

Minnesota Rule 7850.1300 identifies the application information requirements for route permit applications including, but not limited to, applicant information, route description, environmental impacts, alternatives, and mitigation measures. Minnesota Rule 7850.3200 provides that the Commission may accept an application as complete, reject an application and require additional information to be submitted, or accept an application as complete upon filing of supplemental information.

Minnesota Rule 7829.1000 provides that if a proceeding involves contested material facts and there is a right to a hearing under statute or rule, or if the commission finds that all significant issues have not been resolved to its satisfaction, the commission shall refer the matter to the Office of Administrative Hearings (OAH) for contested case proceedings, unless: all parties waive their rights to contested case proceedings and instead request informal or expedited proceedings, and the commission finds that informal or expedited proceedings would be in the public interest; or a different procedural treatment is required by statute.

Minnesota Rule 7850.2200 states that the Commission shall designate a public advisor upon acceptance of application for a route permit.

Minn. Rule 7849.1900, Subpart 1, provides that in the event an applicant for a certificate of need for a HVTL applies to the Commission for a route permit prior to the time the Department completes the environmental report, the Department may elect to prepare an Environmental Assessment in lieu of the required environmental report. If combining the processes would delay completion of the environmental review, the Applicant and the Commission must agree to the combination.

Department of Commerce Comments

The Department recommended that the Commission accept the Application as complete and authorize their staff to process the application under the alternative review process and appoint a public advisor. In addition, the Department recommended the Commission determine that, based

on the available information, an advisory task force is not warranted at this time.

Acceptance of the Application allows initiation of the environmental review process. The Department suggests that process efficiencies may be gained by coordinating the environmental review of the corresponding certificate of need docket for the project.

The Department notes in its Comments and Recommendations that the Project involves converting the existing double-circuit 115/69 kV transmission line to 115/115 kV operation from Scott County Substation, through Chanhassen Substation, to Structure #57 north of Bluff Creek Substation. This section of double-circuit line was permitted locally for 115/115 kV operation, however neither the Applicant nor any local government were able to locate a copy of the local permit and are therefore applying for the upgrade to the 115/115 kV line in this Application. Conversion to 115/115 kV operation will not require the rebuilding or replacement of any existing structures. The Department states that the Proposed Route for the 115/69 kV conversion follows the existing transmission right-of-way for its entire 5.3 mile length.

In assessing the merits of establishing an Advisory Task Force for the project, the Department EFP staff considered the project's size, complexity, known or anticipated controversy and sensitive resources. Upon conclusion of its analysis, the Department concluded that, based on the existing record, an Advisory Task Force is not warranted at this time.

Because the proposed route necessarily connects with four substations, replaces the transmission line within existing rights-of-way, and that a primary alternative route has already been introduced into the proceedings, the Department staff concludes that an advisory task force is not warranted at this time. In the event the Commission chooses to authorize the Department to employ an advisory task force at this time, the Department has created and includes a proposed structure and charge.

The permitting process should provide adequate opportunities for the public to identify issues and route alternatives to be addressed in the environmental assessment. Staff can also assist local landowners and governmental units in understanding the siting and routing process and identifying opportunities for participating in further development of alternative routes or permit conditions.

Department of Natural Resources - Reply Comments

The Department of Natural Resources (DNR) provided reply comments on May 4, 2012. In their Comments, DNR provided guidance on preparation of the Application and the environmental review. DNR noted that the Applicant should provide DNR a means to access Geographic Information System (GIS) shapefiles for the project. The DNR also stated that the Application should note the existence of two state-listed fish species of special concern and a state-listed threatened species in the project area, along with potential mitigative measures to avoid and minimize impacts to these species (Section 6.6, Rare and Unique Natural Resources). The DNR comments also noted the need to evaluate the potential use of bird diverters. Finally, the DNR identified the need for Invasive Species Management (Section 6.5.2, Water Quality), vegetative

management, and the license and permit requirements for crossing public waters and wetlands.

Staff Discussion

Under Minnesota Rule 7850.3200, the Commission may accept an application as complete, reject an application and require additional information to be submitted, or accept an application as complete upon filing of supplemental information.

Generally, staff agrees with the Department's Comments and Recommendations on application completeness, on selection of a public advisor and on prudence of an advisory task force.

Staff notes that the CN Application is still undergoing a completeness review. Commission consideration of the CN Application acceptance is preliminarily scheduled for the May 31, 2012 Agenda Meeting.

Contested Case Hearing on an Alternative Process Route Permit

Under the alternative review process for a route permit application, the Commission has six months (from the date the application is determined to be complete) to reach a final decision on the route permit application. The Commission may extend this limit for up to three months for just cause or upon agreement of the applicant.

Staff believes that the record would benefit from the thorough evaluation of the project that a contested case proceeding can provide. Staff also believes that a contested case hearing proceeding is compatible with the construction and in-service dates proposed by the Applicant.

Staff notes that although the proposed route for the transmission line uses existing transmission rights-of-way for the Project's entire length, the project itself is somewhat complex. In addition to the unknown provenance of the 115 kV locally-issued permit, the existing 69 kV transmission path traverses a mix of wetland areas, recreational areas (including paralleling a bike path along Lake Minnetonka) and dense commercial and residential areas. The Department states that there are currently 12 homes and three businesses within 25 feet of the existing line; and that population densities may make it difficult to significantly move the existing centerline.

In addition, the Commission has recently notified the Department that it is implementing operational changes in order to improve the review process, to clarify the separate roles of the Department and the Commission and to establish a process of record development and review similar to the record development and review process used by the Commission's other jurisdictional areas. In implementing these changes, staff is recommending the use of contested case proceedings for energy facilities dockets. Contested case proceedings will ensure that a more comprehensive record on proposed projects are developed, and will provide a structure to establish practices that more clearly define and separate the respective roles and responsibilities of the agencies.

Staff notes that Minnesota Rule 7829.1000 provides for the referral of an application for a

contested case proceeding and reads as follows:

If a proceeding involves contested material facts and there is a right to a hearing under statute or rule, or if the commission finds that all significant issues have not been resolved to its satisfaction, the commission shall refer the matter to the Office of Administrative Hearings for contested case proceedings, unless:

- A. all parties waive their rights to contested case proceedings and instead request informal or expedited proceedings, and the commission finds that informal or expedited proceedings would be in the public interest; or
- B. a different procedural treatment is required by statute.

Staff believes that the use of contested case proceeding is warranted and recommends referral of the matter to the Office of Administrative Hearings.

Referral to the Office of Administrative Hearings (OAH)

Staff recommends that in the Order referring the matter to the OAH, that the Commission request:

1. The Administrative Law Judge (ALJ) assigned to this matter emphasizes the statutory time frame for the Commission to make final decisions on applications and the ALJ strongly encourage the Applicant and others to adhere to a schedule that conforms to the statutory timeframe.
2. The OAH, in consultation with Commission staff, should formally contact relevant state agencies and request their participation in the development of the record and public hearings pursuant to Minn. Stat. §216E.10, subpart 3.
3. Through the course of the contested case proceedings the parties, participants and the public shall address whether the proposed project meets the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. Rules Chap. 7850.
4. In addition to the OAH analysis of the merits and record associated with this project, the following question(s) should be evaluated:
 - a. Does a route alternative along Highway 7 in Segments 4-8 of the proposed Project more closely meet the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. Rules Chap. 7850?
 - b. Have other issues raised by parties, participants and the public, that are relevant to the Application been adequately addressed?

Other Issues

Staff recommends that the Commission direct the Department EFP Unit to provide its input and define its position for the record, including comments, recommendations and a draft permit, permit language, or specific permit provisions, prior to the public and evidentiary hearings on this matter.

Also, staff proposes to establish an additional process step regarding the alternatives to be considered in the environmental document and at the time of public and evidentiary hearings. After the Department Commerce has issued the Scoping Decision on the Environmental Document for the project, staff intends to bring the question of alternative routes back before the Commission for acceptance. Staff believes this is the most appropriate and efficient method to recognize the Commission's role under Minn. Stat. §216E.03 Subd. 5:

The commissioner shall study and evaluate any site or route proposed by an applicant and any other site or route the commission deems necessary that was proposed in a manner consistent with rules concerning the form, content, and timeliness of proposals for alternate sites or routes.

Staff notes that the timing and procedural recommendations above are intended to implement the operational changes the Commission has requested. Staff suggests that this is an evolving process that will continue to adapt as applications are evaluated and processed.

Last, staff agrees with the comments provided by the Department of Natural Resources and believes that a request to the Applicant to provide the information entreated will be sufficient.

Commission Decision Alternatives

A. Determination of Completeness and Review Process

1. Accept the Application as complete as filed.
2. Accept the Application as complete, as of the date of the Order, and direct the applicant to file additional information requested by the Department of Natural Resources
3. Reject the Application as incomplete and specify the information necessary to address the shortcomings.
4. Take some other action deemed appropriate.

B. Contested Case

1. Send the matter to the OAH for a contested case proceeding:
 - a. Request the OAH to strongly encourage parties and participants to adhere to a schedule which allows the Commission to reach its statutory deadline for a decision on the project;
 - b. Direct PUC staff to contact state agencies on their participation;
 - c. Direct the DOC to submit comments on the merits of the Application and the record, as well as any recommendation(s), draft permit language or specific permit provisions into the record prior to the public and evidentiary hearings.
 - d. Direct the OAH to address the additional merit-related questions, identified in the briefing paper above as a. and b., in addition to its analysis of the merits and record.
2. Decline to send the matter to the OAH for a contested case proceeding; or
3. Take some other action deemed appropriate.

C. Public Advisor

1. Authorize OES EFP staff to name a public advisor in this case.
2. Appoint a Commission staff person as public advisor.
3. Make another decision deemed more appropriate.

D. Advisory Task Force

1. Authorize OES EFP staff to establish an advisory task force and develop a proposed structure and charge for the task force.
2. Take no action on an advisory task force at this time.
3. Determine that an advisory task force is not necessary.
4. Make another decision deemed more appropriate.

Staff Recommendation: Options A2, B1, C1 and D2.