

OAH 8-2500-23147-2  
MPUC E-002 / CN-12-113

OAH 8-2500-22806-2  
MPUC E-002 / TL-11-152

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION**

In the Matter of the Application for a Certificate  
Of Need for the Hollydale 115 kV Transmission  
Line Project in the Cities of Plymouth and Medina

and

In the Matter of the Route Permit Application for  
The Hollydale 115 kV Transmission Line Project  
In the Cities of Plymouth and Medina, Hennepin  
County.

**SUMMARY OF PROCEDURAL  
HISTORY, FINDINGS OF FACT,  
CONCLUSIONS,  
RECOMMENDATIONS, AND  
ORDER OF CERTIFICATION**

**STATEMENT OF ISSUES CERTIFIED TO THE COMMISSION**

**Should the Commission Order that the Applicants’ Petition to Withdraw  
Certificate of Need and Route Permit Applications be granted?**

**If the Applicants’ Petition to Withdraw the Certificate of Need and Route  
Permit Applications is granted, should there be conditions attached to the  
withdrawal, and if so, what conditions?**

Based on the evidence in the hearing record, the Administrative Law Judge makes the  
following:

**FINDINGS OF FACT**

**PROCEDURAL HISTORY - The Route Permit Proceeding**

1. On June 30, 2011, Applicants filed a route permit petition with the Commission for a 115 kilovolt (kV) transmission line project in the cities of Plymouth and Medina in Hennepin County (the Hollydale project). The Applicants’ route permit application seeks to rebuild approximately eight miles of existing 69 kV transmission line to 115 kV capacity along existing right-of-way, construct

## **BARRY FAMILY – PROPOSED ORDER**

approximately 0.8 miles of new 115 kV transmission line, construct a new 115 kV substation, and modify associated transmission facilities.

2. Applicants filed the route permit under the Commission's alternative permitting process. The Commission accepted the route permit application as substantially complete in an order issued on August 25, 2011.
3. A Scoping meeting was noticed and then held on October 26, 2011.
4. On December 7, 2011, the Department of Commerce issued a Scoping Decision for the Hollydale Project Route Permit Application which included 26 route alternatives to be evaluated in the environmental document. Several of these route alternatives are greater than 10 miles in length. If one of these routes were selected for the Project, a Certificate of Need would be required.
5. On February 6, 2012, Plymouth residents Petitioned for the Full Routing process rather than the alternate routing process.
6. On May 12, 2012, the Commission Ordered the Hollydale Application be reviewed under the full permitting process and referred the matter to Administrative Law Judge ("ALJ") Eric Lipman for a contested case proceeding.
7. Public hearings to update the scoping decision for the route permit petition were held on June 7, 2012 and June 8, 2012. Approximately 360 persons attended and 45 testified. Following the public hearings another 251 written comments were received.
8. A Draft Scoping decision was issued by the Department of Commerce on May 25, 2012, and the Scoping Decision on August 1, 2012.
9. Several parties petitioned to intervene, including Western Plymouth Neighborhood Alliance, Park Nicollet Health Service, and the City of Medina, and these Petitions were granted. The Barry Family has not intervened in the Routing docket.

### **PROCEDURAL HISTORY - The Certificate of Need Proceeding**

10. On February 3, 2012, Applicants filed a proposed Notice Plan for a certificate of need for the Hollydale project. On the same date, Applicants filed a petition requesting exemption from certain data filing requirements under Minnesota Rules, Chapter 7849.
11. On February 6, 2012, a landowner group within the proposed Hollydale project area, the Plymouth Residents Opposing the Hollydale Power Line Project, filed a notice of appearance and a Petition and Motion for a Certificate of Need

## BARRY FAMILY – PROPOSED ORDER

proceeding in response to Applicants' initial route petition filings, and two Petitions with 296 and 467 signatures.

12. On February 23, 2012, the Department filed comments recommending approval of the requests for exemption and requested that Applicants submit additional information. In addition, the Department asked the Applicants to delay filing a certificate of need application until after the ALJ report in the related route permit proceeding was filed.
13. On February 23, 2012, Commerce DER filed comments on the Applicants' request for Exemption and proposed Notice Plan, and the landowner group filed additional comments stating that the notice plan had not been distributed to all potentially affected landowners and requesting notification to all those potentially affected, with the opportunity to submit comments. On March 14, 2012, Applicants filed reply comments.
14. On April 5, 2012, the Commission met to consider the matter, and on April 18, 2012, after discussion and deliberation, the Commission granted some exemptions, approved the Notice Plan and approved variance.
15. On July 2, 2012, Applicants filed their Petition for a Certificate Of Need for a 115 KV transmission line project in Plymouth and Medina, seeking to replace approximately eight miles of existing 69 kV transmission line with 115 kV line along existing right-of-way, build approximately 0.8 miles of new 115 kV transmission line, build a new 115 kV substation, and modify associated transmission facilities.
16. The Commission has received comments on this project from the Minnesota Department of Commerce (the Department) and members of the public and neighborhood groups. The Commission also received a petition from some 428 residents of Plymouth and Medina regarding alternatives to the Applicants' proposals. The Applicants filed reply comments.
17. On September 6, 2012, the Commission met to consider the matter and received comments from the Applicants, the Department, and members of the public. In its following written Order of September 21, 2012, the Commission found the Application substantially complete, and referred this matter to the Office of Administrative Hearings for a contested case proceeding, to address the issues of whether the Applicants' proposal meets the need criteria set forth in Minn. Stat. § 216B.243 and Minn. R. Chap. 7849. The parties were granted leave to raise and address other issues relevant to those criteria. The Commission declined the Applicants' request consolidate these dockets, concluding that each docket warrants its own public hearing.

## **BARRY FAMILY – PROPOSED ORDER**

18. Since October 23, 2012, when the first Prehearing Conference was held, multiple Prehearing Conferences have been held, and eleven Pre Hearing Orders have been issued addressing procedural and scheduling matters.
19. Several parties have Petitioned to Intervene in this docket, including the Western Plymouth Neighborhood Alliance, the City of Medina, the Barry Family, which were granted. Park Nicollet Health Services has not intervened in the Certificate of Need docket.
20. Scoping meetings were noticed and then held on October 25 and 26, 2012, and on December 3, 2012, the Department of Commerce issued the Scoping decision.
21. The Environmental Report was released on February 6, 2013. The Report concluded, “A distribution alternative to the Hollydale Project is available and is feasible to construct.”
22. On February 27, 2013, Applicants requested a continuance due to pending discussions of a bill introduced regarding the Hollydale project at the Legislature.
23. Public Hearings were held on March 6 and 7, 2013, regarding the Certificate of Need, where approximately 200 people attended and testified regarding whether the proposed transmission line project is needed and in the public interest; and regarding the costs, benefits, and impacts of various alternatives to the proposed transmission line project. The Public Comment period closed on March 25, 2013.
24. Applicants’ and Intervenors Direct Testimony and Applicant’s Application Supplement, Supplemental Direct, and Second Supplemental Direct Testimony were filed as scheduled.
25. On April 24, 2013, the ALJ granted Applicants’ request for continuance in the certificate of need case and rescheduled evidentiary hearings for September 2013. The ALJ issued an order deferring further route permit scheduling for a later date.
26. On May 13, 2013, legislation that was passed pertaining to the Hollydale project was signed by the Governor:

### **TRANSMISSION LINE; CERTIFICATE OF NEED REQUIRED AND EVIDENCE REQUIRED.**

(a) A high-voltage transmission line with a capacity of 100 kilovolts or more proposed to be located within a city in the metropolitan area as defined in Minnesota Statutes, section 473.121, subdivision 2, for which a route permit application was filed

## BARRY FAMILY – PROPOSED ORDER

between June 2011 and August 2011, and a certificate of need application was filed between June 2012 and August 2012, to rebuild approximately eight miles of 69 kilovolt transmission with a high-voltage transmission line to meet local area distribution needs, must be approved in a certificate of need proceeding conducted under Minnesota Statutes, section 216B.243. The certificate of need may be approved only if the commission finds by clear and convincing evidence that there is no feasible and available distribution level alternative to the transmission line. In making its findings the commission shall consider the factors provided in applicable law and rules including, without limitation, cost-effectiveness, energy conservation, and the protection or enhancement of environmental quality.

(b) Further proceedings regarding the routing of a high-voltage transmission line described in this section shall be suspended until the Public Utilities Commission has made a determination that the transmission line is needed.

**EFFECTIVE DATE.** This section is effective the day following final enactment and applies to route permits and certificate of need applications pending on or after that date.

Minn. Laws 2013, Ch. 57, Sec. 2, the “Hollydale Law.”

27. On July 8, 2013, Applicants sought another extension of deadlines and a modification of the hearing schedule in the certificate of need proceedings.
28. On August 13, 2013, Applicants’ request for an extension in the Certificate of Need docket was granted, a supplemental public hearing set for November 7, 2013, and evidentiary hearings for November 12-15, 2013.
29. On October 25, 2013, the Department of Commerce filed a letter requesting an extension to the deadline for filing of testimony and an opportunity to discuss this project with the parties. A Prehearing Conference was held on October 30, 2013, and a Prehearing Order issued on November 6, 2013, that cancelled scheduling milestones and the evidentiary hearing scheduled for November 12 through 15, 2013.
30. On November 6, 2013, a meeting of the parties was organized by the Department of Commerce at Plymouth City Hall regarding the “Hollydale Law.” No settlement was reached. On the same day, the ALJ issued a Prehearing Order postponing filing deadlines and the evidentiary hearing.

## BARRY FAMILY – PROPOSED ORDER

31. On November 7, 2013, the supplemental Public Hearing for the Certificate of Need was held in two sessions at the Medina Ballroom. Approximately 300 people attended.
32. The parties agreed on November 7, 2013, to amend the schedule, and a Prehearing Order was issued on November 26, 2013, rescheduling the Certificate of Need evidentiary hearing to January 6 through 10, 2014.
33. On December 10, 2013, Xcel Energy filed a Petition to Withdraw Pending Certificate of Need and Route Permit Applications in both dockets and requested that the Administrative Law Judge suspend the procedural schedule and certify this withdrawal petition to the Commission for decision pursuant to Minn. R. 1400.7600.
34. In the Petition to Withdraw, Applicants stated:
  - a. The Applicants preferred route is very problematic.
  - b. There may be better alternatives to meet the Applicants' need.
  - c. Withdrawal will allow time for the Applicants to work collaboratively with residents and other stakeholders on an infrastructure solution and route for this community.
  - d. After public outreach and broader acceptance of a solution, Applicants intend to submit new Certificate of Need and Route Permit applications.
  - e. Applicants intend to comply with the intention of the Hollydale Law, 2013 Minn. Laws Chapter 57 Section 2.
  - f. Since the original Hollydale application in mid-2011, many comments were received from landowners and other interested stakeholders indicating their opposition to this route, including nearly 300 landowners and stakeholders who attended public hearings in November, 2013, to express their concerns about the project and Applicants' preferred route.
  - g. Stakeholders have invested significant time and effort in the hearings, meetings, and filings that have already taken place in these dockets.
  - h. The Applicants original preferred route is not widely supported, and additional analysis and outreach is needed before Applicants can present a more widely accepted solution and a more acceptable route alternative.
  - i. Applicants request withdrawal to promote a full and clear record, and wish to start anew with a new solution.

## **BARRY FAMILY – PROPOSED ORDER**

- j. Applicants understand their obligation to provide safe and adequate service and to address any load-serving deficiencies in the Medina and Plymouth areas.
35. Comments of parties were filed in the dockets. The Department of Commerce supported granting the Applicants' Petition to Withdraw. Intervenor Barry Family supported granting Applicants' Petition to Withdraw, with prejudice regarding submission of the 115 kV line on the 69 kV corridor. Intervenor WPNA filed comments and also requested that specific conditions be placed on Applicant's withdrawal.
36. On December 17, 2013, a Prehearing Conference was held, and on December 18, 2013, an order issued vacating the scheduling milestones and deadline, and the withdrawal held under advisement pending additional submissions from the parties.

Based on the submissions of the parties and all things in the record, and the above Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Public Utilities Commission has jurisdiction over Applicants' Route Permit and Certificate of Need Application.
2. The Public Utilities Commission referred the Certificate of Need and Route Permit dockets to Office of Administrative Hearings, and Applicants' Petition for Withdrawal of Pending Certificate of Need and Route Permit Applications is properly before the ALJ pursuant to Minn. R. 1400.7600(D).
3. This Recommendation and Report of the Administrative Law Judge is authorized under Minn. Stat. §14.50 and Minn. R. 1405.0400 and 1405.2400.
4. Applicants' pending Route Permit and Certificate of Need Application are subject to the requirements of the Hollydale Law, Minn. Laws 2013, Ch. 57, Sec. 2.
5. The Applicants preferred route is very problematic.
6. There may be better alternatives to meet the need as set forth by Applicants.
7. The Environmental Report in the Certificate of Need docket stated that distribution alternatives to the Hollydale project were feasible and available to meet Applicants' need.
8. Applicants state a need for time to work collaboratively with residents and other stakeholders on an infrastructure solution and route for this community.

## **BARRY FAMILY – PROPOSED ORDER**

9. After public outreach and broader acceptance of a solution, Applicants intend to submit new Certificate of Need and Route Permit applications.
10. Applicants intend to comply with the intention of the Hollydale Law, 2013 Minn. Laws Chapter 57 Section 2.
11. Since the original Hollydale application in mid-2011, many comments were received from landowners and other interested stakeholders indicating their opposition to this route, including nearly 300 landowners and stakeholders who attended public hearings in November, 2013, to express their concerns about the project and Applicants' preferred route.
12. Residents, landowners and stakeholders have invested significant time and effort in the hearings, meetings, and filings that have already taken place in these dockets.
13. The Applicants original preferred route is not widely supported, and both the need and route proposed have been subject to broad challenge.
14. The Applicants state that additional analysis and outreach is needed before Applicants can present a more widely accepted solution and a more acceptable route alternative.
15. Applicants request withdrawal to promote a full and clear record, and wish to start anew with a new solution.
16. Applicants understand their obligation to provide safe and adequate service and to address any load-serving deficiencies in the Medina and Plymouth areas.
17. Intervenors have requested conditions be placed on Applicants' withdrawal precluding Applicants from resubmitting the Hollydale 1115 kV transmission project or a rebuild or upgrade along the existing 69 kV corridor.

### **RECOMMENDATION**

That the Applicants be permitted to withdraw their Certificate of Need and Route Permit Applications with the following recommended conditions:

- Applicants shall be prohibited from proposing any 115 kV transmission project from the Medina Substation through the Hollydale Substation to an area in Plymouth near I-494 (as proposed in the above-captioned dockets); and



**BARRY FAMILY – PROPOSED ORDER**

- Applicants shall be prohibited from proposing any rebuild or upgrade of the existing 69 kV corridor through Plymouth and Medina for transmission infrastructure; and
- Such other conditions and relief as justice shall require.

**IT IS HEREBY ORDERED THAT:**

The Joint Applicants’ Motion for Certification of the question of withdrawal of their applications for a Certificate of Need and a Route Permit is **GRANTED** and this matter is referred to the Commission on the Findings, Conclusions and Recommendations above and the complete record herein.

Dated this \_\_\_\_ day of December, 2013

\_\_\_\_\_  
ERIC L. LIPMAN  
Administrative Law Judge