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December 23, 2013

Honorable Eric L. Lipman
Administrative Law Judge
Minnesota Office of Administrative Hearings
PO Box 64620
St. Paul, MN 55164-0620

Re: *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*
MPUC Docket No. E002, ET2/CN-12-113, OAH Docket No.: 8-2500-23147-2

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, Minnesota
PUC Docket No. E002/TL-11-152, OAH Docket No. 8-2500-22806-2

Dear Judge Lipman:

Western Plymouth Neighborhood Alliance submits the attached proposed Findings, Conclusions, Recommendations and Order Certifying Issues to the Commission in response to the request for submissions made in the Pre-Hearing Conference in these matters on December 17, 2013.

This document has been filed in the electronic docket system and served upon parties of record and a Microsoft Word version has been sent to you electronically.

Please feel free to contact me at 651-646-8890 if you have any difficulty opening the Word version of the document or any questions regarding this submission.

Sincerely yours,

Paula Goodman Maccabee
Attorney for Western Plymouth Neighborhood Alliance

**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 115kV Transmission Line Project in the Cities of Plymouth and Medina, Hennepin County

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

**FINDINGS OF FACT, CONCLUSIONS,
RECOMMENDATIONS AND ORDER
CERTIFYING ISSUES TO THE
COMMISSION**

STATEMENT OF ISSUES TO BE CERTIFIED TO THE COMMISSION

Should the Commission Grant Applicants' Petition to withdraw Certificate of Need and Route Permit Applications?

If Applicants are permitted to withdraw Certificate of Need and Route Permit Applications, should conditions be attached to withdrawal, and if so, what conditions?

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

FINDINGS OF FACT

Procedural History

1. On June 30, 2011, Northern States Power Company, doing business as Xcel Energy, and Great River Energy, a cooperative corporation (collectively "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). Applicants' route permit application sought to rebuild approximately eight miles of existing 69 kV transmission line to 115 kV capacity along existing right-of-way, construct approximately 0.8 miles of new 115 kV transmission line, construct a new 115 kV substation, and modify associated transmission facilities.

2. On August 25, 2011, the Commission accepted the route permit application as substantially complete.
3. On December 7, 2011, the Department of Commerce issued a scoping decision identifying 13 route alternatives to be evaluated. Several of these route alternatives exceed ten miles in length.
4. On May 12, 2012, the Commission issued an order converting the Hollydale route permitting process to a contested case process and referred the matter to Administrative Law Judge (“ALJ”) Eric Lipman.
5. 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 provided testimony. Following the public hearings, the record remained open and another 251 written comments were received.
6. On July 12, 2012 Applicants filed a certificate of need application for the Hollydale project. In this application, the Applicants sought 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.
7. On September 21, 2012, the Commission found the application for a certificate of need to be substantially complete and referred the matter to the Office of Administrative Hearings for contested case proceeding.
8. In its September 21, 2012 Order, the Commission denied Applicants’ motion to combine the need and route permit dockets and proposed that hearings on the need for the Hollydale project be convened before hearings on the route.
9. After pre-hearing conferences on October 23, 2012 and October 25, 2012, the ALJ issued an order on November 29, 2012 scheduling both the route permit and certificate of need proceedings. Public and evidentiary hearings on the certificate of need were scheduled for March 2013 and hearings on the route permit for May 2013.
10. In February 2013, the Department of Commerce Energy Facilities Permitting (DOC-EFP) issued an Environmental Report on the certificate of need application. The Report concluded, “A distribution alternative to the Hollydale Project is available and is feasible to construct.” (Environmental Report, p. 79).
11. On February 27, 2013, Applicants requested a continuance due to pending discussions of the Hollydale project at the Legislature.
12. On March 6, 2013 and March 7, 2013, public hearings were held on the certificate of need matter. Approximately 200 persons attended.

13. 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.

14. On May 13, 2013 Governor Mark Dayton signed a law enacted by the Minnesota Legislature pertaining to the Hollydale project:

Sec. 2. 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 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, "Hollydale Law.")

15. On July 8, 2013, Applicants sought an extension of deadlines and a modification of the hearing schedule in the certificate of need proceedings.

16. On August 13, 2013, the ALJ granted Applicants' extension in the certificate of need case, set a supplemental public hearing for November 7, 2013 and evidentiary hearings for November 12-15, 2013.

17. On October 25, 2013, the DOC-DER requested a suspension or continuance for at least 30 days in the certificate of need proceedings.

18. On November 6, 2013, the ALJ issued an order cancelling deadlines to submit supplemental rebuttal testimony and the evidentiary hearings set for November 12-15, 2013.

19. On November 7, 2013, supplemental public hearings were held on the certificate of need. Approximately 300 people attended.

20. On November 26, 2013, on agreement of the parties, the ALJ issued an order setting filing deadlines and scheduling evidentiary hearings for January 6-10, 2014 on the certificate of need application.

21. On December 10, 2013, Applicants filed a petition to withdraw the pending certificate of need and route permit applications for the Hollydale Project and requested that their withdrawal request be certified to the Commission.

22. On December 17, 2013, the ALJ conducted a pre-hearing conference on the Applicants' petition to withdraw and comments filed by intervenors WPNA and the Barry Family requesting that withdrawal only be approved with conditions.

23. The ALJ received over 200 requests from citizens that conditions be placed if Applicants were allowed to withdraw their petition.

Petition for Withdrawal

23. Applicants stated in their petition to withdraw pending route permit and certificate of need applications:

- a. Applicants' preferred route "is very problematic."
- b. "[T]here may be better alternatives" to meet the need asserted by Applicants.
- c. Additional time is needed "to develop those alternatives" and "to build a consensus around a solution."
- d. Since Applicants' filing of their preferred route along a 69kV corridor they have received comments from landowners and other stakeholders indicating their opposition to this route. "Most recently, in November 2013, nearly 300 landowners and stakeholders attended public hearings to express their concerns about the project and our preferred route alternative."
- e. Applicants' original preferred route "is not widely supported."
- f. Additional analysis and outreach is needed before Applicants "can present a more acceptable route alternative."
- g. Applicants request a withdrawal of the currently pending applications to "promote a full and clear record" and since "the information contained in

the original applications assume a route along the existing 69 kV corridor.”

- h. Applicants “fully intend to comply with the intention” of the Hollydale Law, 2013 Minn. Laws 2013, Ch. 57, Sec. 2.
 - i. Members of the community “have already invested significant time and effort in the hearings, meetings, and filings that have already taken place in these dockets.”
 - j. Applicants understand “their obligation to provide safe and adequate service” and to address “the load-serving deficiencies in the Medina and Plymouth areas.”
24. Comments of the parties were filed in the dockets and presented in the December 17, 2013 pre-hearing conference on Applicants’ petition to withdraw.
25. The Department of Commerce – Division of Energy Resources supported Applicants’ petition to withdraw.
26. Intervenor WPNA submitted comments, stating:
- a. Applicants should not be permitted “to use withdrawal to circumvent the existing Hollydale law, which disfavors a transmission solution to local distribution needs in the Plymouth area.”
 - b. “Applicants’ studies, pre-filed expert testimony, public testimony from elected officials and hundreds of citizens, and the Department of Commerce Environmental Report demonstrate that underground low-voltage feeders and new substation facilities provide a feasible and available alternative to Applicants’ transmission proposal. . . There is broad public support to meet distribution level needs in the Plymouth area with a distribution scale alternative, such as alternative A2.”
 - c. WPNA was concerned “that the hundreds of citizen comments in this record not be sacrificed in this process.”
27. WPNA asked that conditions be placed on Applicants’ withdrawal:
- a. Precluding resubmission of a variant of the Hollydale 115 kV transmission project or a rebuild or upgrade along the existing 69 kV corridor.
 - b. Requesting compliance filings to show that distribution improvements are promptly made to meet distribution needs in the Plymouth area.
 - c. Maintaining and incorporating the Hollydale route permit and certificate of need record should Applicants resubmit applications.

28. Intervenor Barry Family submitted comments clarifying that the 69 kV line in the route corridor proposed by Applicants runs through neighborhoods and next to their homes “is rarely used, and only used in emergencies. This is not currently an active transmission line.”

29. Intervenor Barry Family asked that withdrawal be granted with prejudice:

- a. Prohibiting another proposal to use the 69 kV corridor through Plymouth and Medina as a corridor for transmission expansion and/or uprate, or to increase use or capacity of the 69 kV line.
- b. In the alternative, requesting that withdrawal include a condition that the existing 69 kV transmission line be removed and easements returned to fee owners.

30. On December 18, 2013, an order issued vacating scheduling milestones and holding Applicants’ petition under advisement pending submissions from the parties.

CONCLUSIONS

1. The Public Utilities Commission and the Administrative Law Judge have jurisdiction over Applicants’ Route Permit and Certificate of Need Application.

2. 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. 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. The intent of this law was to disfavor a transmission solution for local distribution needs.

4. Applicants’ preferred route is very problematic and is not widely supported.

5. There may be better alternatives to meet the need asserted by Applicants.

6. Additional time is needed for Applicants to develop those alternatives, build a consensus around a solution, and present a more acceptable route alternative.

7. The DOC-EFP Environmental Report stated that distribution alternatives to the Hollydale project were feasible and available.

8. Since Applicants’ filing of their preferred route along a 69kV corridor they have received hundreds of comments from landowners and other interested stakeholders indicating their opposition to this route.

9. Applicants request a withdrawal of the currently pending applications to

promote a full and clear record, since the information contained in the original applications assumes a route along the existing 69 kV corridor.

10. Applicants fully intend to comply with the intention of the Hollydale Law, Minn. Laws 2013, Ch. 57, Sec. 2.

11. Citizens have already invested significant time and effort in the hearings, meetings, and filings that have taken place in these dockets.

12. Applicants understand their obligation to provide safe and adequate service and to address the load-serving deficiencies in the Medina and Plymouth areas.

13. Intervenors have requested conditions be placed on Applicants' withdrawal precluding Applicants from resubmitting the Hollydale 115 kV transmission project or a rebuild or upgrade along the existing 69 kV corridor. More than 200 citizens have sent comments making a similar request.

RECOMMENDATIONS

1. That the Commission permit Applicants to withdraw their applications for a route permit and for a certificate of need for the Hollydale Project with conditions to ensure that Applicants comply with the intention of the Hollydale Law, with other representations made in Applicants' petition, and with any other conditions that serve the interests of justice in this matter that the Commission deems just and fitting.

2. That the Commission allow additional written submissions and conduct a public hearing prior to ruling on Applicants' petition to withdraw pending applications.

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: December ____, 2013

s/Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge