

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of Xcel Energy and Great River Energy's Application for a Certificate of Need for the Hollydale 115-kV Transmission-Line Project in the Cities of Plymouth and Medina

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In the Matter of Xcel Energy and Great River Energy's Application for a Route Permit for the Hollydale 115-kV Transmission-Line Project in the Cities of Plymouth and Medina

ORDER PERMITTING WITHDRAWAL
WITH CONDITIONS

PROCEDURAL HISTORY

I. The Initial Filing

On June 30, 2011, Xcel and Great River Energy (the Applicants) filed an application for a route permit to build a 115-kilovolt (kV) high-voltage transmission line in the cities of Plymouth and Medina (the Hollydale project). Applicants sought to rebuild approximately eight miles of existing 69-kV transmission line to 115-kV capacity, construct approximately 0.8 miles of new 115-kV transmission line, construct a new 115-kV substation, and modify associated transmission facilities.

On August 25, 2011, the Commission accepted the route-permit application as substantially complete and authorized the Minnesota Department of Commerce (the Department) to process the application under the alternative permitting process of Minn. R. 7850.2800 to .3900.

The Department received some 450 written comments and held a public scoping meeting that was attended by 250 to 300 people.

On December 7, 2011, the Department issued a scoping decision that included 26 route alternatives to be evaluated in the environmental assessment. Several of these route alternatives were longer than ten miles.

On February 13, 2012, a group of 763 Plymouth and Medina residents filed a petition to convert the route-permit proceeding to the full permitting process under Minn. R. 7850.2000 to .2700. Applicants made the same request later that month.

On May 4, 2012, the Commission granted Applicants' request and referred the Hollydale route-permit application to the Office of Administrative Hearings (OAH) for contested-case proceedings.

An Administrative Law Judge (ALJ) held public hearings on June 7 and 8, 2012, to update the Department's scoping decision. Approximately 360 members of the public attended the hearing. Following the hearing, the ALJ received 251 written comments.

II. The Certificate of Need Filing

A new high-voltage transmission line longer than ten miles generally requires a certificate of need.¹ Because some of the route alternatives identified in the Department's scoping decision were longer than ten miles, Applicants decided to apply for a certificate of need for the Hollydale project.

Applicants filed their certificate-of-need application on July 2, 2012. Applicants also requested that the Commission consolidate the certificate-of-need and route-permit proceedings.

The Commission received comments from neighborhood groups and individual residents, including a petition from some 428 residents of Plymouth and Medina seeking further record development regarding alternatives to the Hollydale project.

On September 21, 2012, the Commission found the certificate-of-need application substantially complete and referred it to the OAH for contested-case proceedings. The Commission declined Applicants' request to consolidate the certificate-of-need and route-permit proceedings and suggested that the ALJ conduct hearings on need before holding hearings on the route.

On March 6 and 7, 2013, the ALJ held public hearings on the certificate-of-need application. Approximately 200 people attended the hearings.

III. The Hollydale Law

In May 2013 the Legislature enacted the Hollydale law. The law suspends the Hollydale route-permit proceedings until the Commission determines that the project is needed. The Hollydale law further provides that the Commission may grant a certificate of need for the project only after finding "by clear and convincing evidence that there is no feasible and available distribution level alternative to the transmission line."²

¹ See Minn. R. 7849.0030 and .0010, subp. 14; Minn. Stat. § 216B.2421, subd. 2(3).

² 2013 Minn. Laws ch. 57, § 2.

The ALJ continued the evidentiary hearings on the certificate-of-need application, originally set for March, to September 2013. These hearings would later be continued to January 2014 as the parties continued to grapple with the implications of the Hollydale law.

On November 7, 2013, the ALJ held public hearings on the certificate-of-need application. Approximately 300 people attended these hearings.

IV. Petition to Withdraw

On December 10, 2013, Applicants filed a petition to withdraw the certificate-of-need and route-permit applications. Applicants stated that withdrawal would give them time to work with stakeholders to build consensus around an alternative route.

The ALJ received comments from two intervenors—the Western Plymouth Neighborhood Alliance (WPNA) and the Barry family—and approximately 170 comments from individual residents. The majority of these commenters supported withdrawal with conditions, including the following:

- Preclude Applicants from proposing new transmission along the existing 69-kV corridor;
- Subject any future proposal for new transmission to the full certificate-of-need and permitting processes, including the Hollydale law’s heightened standard of need;
- Forbid Applicants to delay building distribution infrastructure in order to coerce community support for a transmission line; and
- Include the record of the current proceedings in any future dockets.

On January 7, 2014, the ALJ issued an order certifying Applicants’ withdrawal request to the Commission. The ALJ concluded that Applicants were entitled to withdraw their applications as a matter of right and recommended that the Commission allow Applicants to withdraw their applications without condition. The ALJ also recommended that the Commission consider requesting its staff or the OAH to develop a summary of the comments and testimony developed through the public hearing process to assure residents that their feedback would not be lost.

The Commission solicited comments on the following three issues:

- Should the Commission allow the withdrawal of Applicants’ certificate-of-need and route-permit applications?
- Should the Commission ask the OAH to summarize comments and testimony developed through the public hearing process?
- If withdrawal is approved, should the Commission attach conditions to withdrawal?

The Commission received comments from Xcel, the Department, WPNA, the Barry family, Senator Terri Bonoff, and Representative Sarah Anderson. The Commission also received some 214 public comments. Similar to the previous round of comments, most of the public commenters recommended that the Commission allow withdrawal with conditions to prevent Applicants from advancing a similar proposal in the future.

On April 10, 2014, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Legal Standard

Any person proposing to construct a high-voltage transmission line with a capacity of 100 kV or more and with more than ten miles of its length in Minnesota must apply to the Commission for a certificate of need and a route permit.³

No statute or Commission rule makes specific provision for the withdrawal of certificate-of-need or route-permit applications. However, the Commission is a quasi-judicial body with inherent authority to govern the conduct of proceedings before it.⁴ The Commission requires parties seeking to withdraw filings without prejudice to demonstrate that withdrawal would not contravene the public interest, would not prejudice any party, and would not raise issues requiring Commission action.⁵ The authority to deny withdrawal necessarily includes the authority to attach conditions to withdrawal, when necessary to protect the public interest.

II. Applicants' Petition

Applicants claim that withdrawing their applications would serve the following purposes:

1. Withdrawal would allow Applicants time to develop a new solution in collaboration with stakeholders without the time pressure presented in the current proceedings;
2. Withdrawal would promote a full and clear record; and
3. Withdrawal would allow Applicants to update the original application with current load data and a more recent engineering analysis.

³ Minn. Stat. §§ 216B.2421, subd. 2(3), .243, subd. 4.

⁴ See Minn. Stat. §§ 216A.02, subd. 4 (defining “quasi-judicial function” as “the promulgation of all orders and directives of particular applicability governing the conduct of the regulated persons or businesses”); 216.18 (granting the Commission authority to subpoena witnesses and documents); 216A.05, subd. 2 (enumerating additional Commission powers).

⁵ See, e.g., *In the Matter of CenterPoint Energy's Petition for Approval of a Miscellaneous Tariff Change*, Docket No. G-008/M-13-333, Order Permitting Withdrawal of Filing (Nov. 13, 2013) (articulating standard).

Applicants oppose placing any conditions on withdrawal. However, Applicants state that they intend to comply with the intention of the Hollydale law by carrying forward the system alternatives, including distribution alternatives, that were developed during this proceeding.

III. The Positions of the Parties

A. The Western Plymouth Neighborhood Alliance

WPNA described its participation in these dockets in some detail, stating that residents had invested significant resources to find a solution that would meet local distribution needs without a transmission upgrade. Specifically, WPNA had supported Alternative A2, an option that entailed constructing a new substation and underground feeder lines. WPNA fears that Applicants will use withdrawal to circumvent the Hollydale law and will repackage and resubmit the Hollydale project after the community has been drained of resources.

WPNA recommends that the Commission place the following conditions on withdrawal to protect the public interest:

- Preclude Applicants from resubmitting a variation of the Hollydale project, a rebuild project, or an upgrade project along the existing 69 kV corridor;
- Require Applicants to submit compliance filings to show that distribution improvements are being promptly made to meet distribution needs in the Plymouth area; and
- Require Applicants to use the full certificate of need process and meet the “clear and convincing evidence” test in the Hollydale law before building transmission in Plymouth or Medina.

Finally, WPNA supports the ALJ’s suggestion that the OAH prepare a summary of public comments and testimony developed through the public hearing process and further requests that the records of public hearings and comments be preserved in their entirety.

B. The Barry Family

The Barry family recommends that withdrawal be granted under essentially the same conditions recommended by WPNA. In the alternative, the Barrys request that withdrawal be granted on the condition that the existing 69-kV transmission line be removed and that Applicants return their easements to the property owners.

C. The Department

The Department recommends that the Commission allow Applicants to withdraw the certificate-of-need application⁶ and request a summary of public comments and testimony from the OAH. Deferring to the ALJ’s analysis, the Department does not recommend imposing any conditions on withdrawal, noting that Applicants are already obligated to provide reliable service to their ratepayers and members.

⁶ The Department did not comment on the route-permit application.

D. Applicants' Reply Comments

Applicants oppose restrictions on future route proposals, stating that they do not want to prejudice the outcome of their outreach efforts. Applicants reiterate that they intend to carry forward the various distribution alternatives developed in this proceeding in any future certificate-of-need application. Applicants also plan to submit an informational filing in November 2014 updating the Commission on public outreach efforts, providing summer peak information, and detailing any distribution improvements they have made in the area. And Applicants support the ALJ's suggestion to have the OAH prepare a summary of the comments and testimony developed during these proceedings.

IV. Commission Action

The Commission concurs with the parties that forcing Applicants to proceed with a proposal they no longer support would serve no useful purpose. At the same time, the Commission shares residents' concerns that unconditional withdrawal could allow Applicants to circumvent the Hollydale law and could compromise the public interest in the thorough examination of any future substitute proposal by having exhausted—or at least severely depleted—the resources of the stakeholders who appeared in this case. To address both concerns, the Commission will condition withdrawal on Applicants' demonstrating the need for any transmission they propose for the project area in the future.

With the withdrawal of the Hollydale applications, these proceedings will come to an end. However, issues with the Hollydale area's distribution system remain to be addressed. To help ensure that distribution needs are met expeditiously, the Commission will require Applicants to file quarterly updates on their public outreach efforts and on the load-serving capacity of, and any improvements made to, the distribution system. This filing should include a report on demand-side management (DSM) and other resources for addressing the reliability issues in the area.

Residents have invested substantial time and resources in these proceedings, submitting comments, attending hearings, and retaining attorneys and an expert witness to provide testimony. The Commission will request that the ALJ prepare a summary of the public comments and testimony in this case to aid public participation and agency decision-making in any future proceedings.

ORDER

1. The Commission hereby grants Applicants' petition to withdraw the certificate-of-need and route-permit applications for the Hollydale project, subject to the requirement that Applicants demonstrate the need for any new transmission they propose for the Plymouth or Medina project area.

2. Applicants shall file a discussion of their public outreach efforts and an update on the load-serving capacity of, and any improvements made to, the distribution system serving the area six months from the date of this order and quarterly thereafter. This filing shall include a report on DSM and other resources available to address the reliability issues in the area.
3. The Commission requests a summary of public comments and testimony from the Office of Administrative Hearings.
4. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



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