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May 26, 2017

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101-2147

**RE: In the Matter of Possible Amendments to Rules Governing Certificates of Need and Site and Route Permits for Large Electric Power Plants and High-Voltage Transmission Lines, Minnesota Rules, Chapters 7849 and 7850; and to Rules Governing Notice Plan Requirements for High-Voltage Transmission Lines, Minnesota Rules, Part 7829.2550  
Docket No. E-ET-IP999/R-12-1246  
Reply Comments**

Dear Mr. Wolf:

Otter Tail Power Company submits to the Minnesota Public Utilities Commission these reply comments to the numerous comments various entities submitted on or prior to the May 8, 2017 deadline. We provide these limited reply comments divided by Chapter to support or disagree with those previously submitted comments we consider substantive proposed changes.

**Draft Rule Chapter 7849**

**Primary concerns include:**

7849.0130 Subpart 3, C – Project Notice

Otter Tail Power Company would not be in a position at this point in a project to declare that we would not retain the right for eminent domain and, as such, Otter Tail Power Company supports Great River Energy's and Minnesota Power's edit to say "eminent domain is an available option" not the applicant is "retaining the option."

7849.1400 Subpart 2 – Environmental Report preparation

We support EERA in their comment and edits indicating that the public information and scoping meeting may be, but is not required to be, recorded. Additionally, we disagree with the comment from Just Change to require an Environmental Impact Statement (“EIS”) be conducted during the Certificate of Need (“CN”) process.

7849.1400 Subpart 4 – Conduct of Public scoping meeting for environmental report

We disagree with Just Change. An Environmental Report (“ER”), rather than an EIS, is appropriate for a CN.

7849.1410 and – 7849.1800 - Notice to Commission

We agree with and support EERA’s comment, the Notice should say Environmental Report rather than an Environmental Impact Statement. Similarly, we disagree with Legalectric’s comment that Part 1800 require an EIS. We support leaving the title as is and support the existing edits in the proposed rules.

**Lower priority comments include:**

7849.0200 Subpart 9 and 7849.1000 Subpart 4 – Application Form and Manner, Joint Applications and Notice and Comments: Petition to Intervene, and Process Schedule

We support EERA’s recommendation to move 7850.2140 up to 1680 and to make the corresponding changes in 7849 to clarify the Joint Applications process.

7849.0220 – Certificate of Need Content Requirement

We disagree with Just Change’s request to restore content requirements from 0120 and 0220. The review committee discussed and determined that the content requirements are fully covered in the statute referenced.

7849.0400 Subpart 2, D\_– Certificate of Need Conditions and Changes

We disagree with Just Change’s assertion that Notice should be required for changes to CN.

7849.1400 Subpart 2 – Process for Environmental Report preparation

We support EERA’s recommendation for one Notice ad rather than two.

7849.1400 Subpart 6 – Comment period

We agree with EERA, 10 days is a sufficient comment period following the Scoping Meeting.

7849.1425 Subpart 1 – Scoping decision

Otter Tail Power Company believes 20 days, after the close of public comments, is adequate time to reach a scoping decision. We are not opposed to Legalectric’s recommendation to notice any landowners impacted by routes added in Scoping, but don’t support extending the comment period.

7849.1500 – Environmental Report content

We agree with EERA that section 1500 needs clarification. We recommend the alternatives to be reviewed and included in the ER need to be limited to those specified in the Scoping Decision and not all those considered during the process.

7849.1525 – Environmental Report filing

We do not support removing the four-month deadline for filing the ER.

7849.1530 – Public comments regarding the Environmental Report and 7849.1550 Public Hearing Subpart 5 (as proposed by EERA)

We agree with EERA’s proposed changes to drop 7849.1530 and move the comments to the public hearing 7849.1550 Subpart 5.

**Draft Rule Chapter 7850**

**Primary concerns include:**

7850.1000 – Definitions

Otter Tail Power Company is opposed to attempts by some parties to propose language changes that automatically assume an EIS will be required for a Route Permit rather than an Environmental Assessment (“EA”). The “Definitions” section includes both and consideration should be made on a project by project basis.

7850.1640 Subpart 3 – Draft Route Permit for HVTL

We agree with GRE and MP. We make a good faith effort to avoid the use of eminent domain, but do not waive our right to use it. We also agree that the requirement to identify what lands along a contiguous route are eligible for Buy-the-Farm treatment is impractical at this point in the process because this would require extensive title work for properties likely not along the final route.

7850. 2400 Subparts 3 and 4 - Citizen’s Advisory Task Force responsibilities; 7850.2550 Subpart 2 – Draft EIS; and 7850. 3700 Subpart 2 – EA preparation

We oppose efforts by other parties to replace existing “Environmental Assessment” references with an automatic requirement for an EIS. The level of environmental review and reporting should continue to be determined on a project by project basis.

7850. 4400 Subpart 4 – Prohibited sites

We agree with EERA that this section needs rewording to be in agreement with the Power Plant Siting Act and to not allow local government ordinances to supersede Commission authority.

**Lower priority comments include:**

7850.1610 Subpart 1 – General List and Subpart 4 Landowner List

Otter Tail Power Company agrees with EERA’s recommendation to change “along any route” to “within the route width” for clarity.

7850.1620 Subpart 1 – Pre-Application Meetings required

We support GRE’s and MP’s request for exemptions from the requirement of a meeting in each county impacted by the project if the project is short or just crosses a county line.

7850.1640 Subpart 2, Q and R – Draft Site Permit Application

We agree with EERA regarding removing the requirement for both LEPGP and HVTL to state the amount of land applicant has obtained via contract or may obtain through condemnation. It is too early in the process to make this determination without extensive title review on all alternative sites and routes.

7850.1650 Subpart 2, F – Notice of Draft Application, Content

We agree with EERA in noting the Commission selects the site or route, where the Notice is required to say “the applicant could exercise the power of eminent domain.”

7850.1680 Subpart 2 – Draft Permit Application comments

We support Xcel’s position that the purpose of this part will be accomplished through the new notice requirements and Pre-Application Meeting so the 21-day comment period and following 10-day reply period is unnecessary. However, if the comment period remains a part of the Rule, we recommend that the deadlines be enforced as proposed.

7850.1700 Subpart 1 – Permit Application and Manner of Filing

We agree with EERA, GRE, and MP. The applicant should not be required to provide copies of Application to the entire General List. If this requirement remains, we ask for a clarification to allow electronic copies.

7850.2300 Subparts 2 and 3 – Public Information and Scoping Meeting

We support the original draft Rule language that reasonably limits the amount of time the public has to propose alternatives so that there is a deadline for adding alternative routes. We see this as necessary for the Department of Commerce to control the process and avoid ongoing submittals of additional routes.

7850.2570 Subpart 5 – Public Hearing, Issues excluded

We agree with EERA’s recommendation to keep language that prevents issues of need from being discussed during the Route Permit Public Hearing. Allowing the need discussion to happen during routing only creates confusion about the purpose of the meeting.

7850.2650 Subpart 3 – Final Environmental Impact Statement

We support the revised language in the Draft Rules requiring that comments related to adequacy of the final EIS be filed with the Administrative Law Judge and are due 25 days after the final EIS is filed.

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7850.4800 – Minor Alteration in generation plant or transmission line

We support leaving the existing Rule text of “Minor Alteration” rather than “change” and making Minor Alteration a defined term.

7850.4900 – Subpart 2 – Amendment of Permit Conditions

We agree with EERA’s recommendation to replace the term “Application” with “Amendment request” to prevent inappropriate comments on the rest of the already approved and uncontested Application.

Thank you for the opportunity to participate in this important review of Chapters 7849 and 7850 and the updating process. If you have any questions regarding this filing, please contact me at 218-739-8751 or at [ckuismi@otpc.com](mailto:ckuismi@otpc.com).

Sincerely,

*/s/ CINDY KUISMI*

Cindy Kuismi  
Land Rights Permitting Supervisor

ljh  
Enclosures  
By electronic filing  
c: Service List

## CERTIFICATE OF SERVICE

**RE: In the Matter of Possible Amendments to Rules Governing Certificates of Need and Site and Route Permits for Large Electric Power Plants and High-Voltage Transmission Lines, Minnesota Rules, Chapters 7849 and 7850; and to Rules Governing Notice Plan Requirements for High-Voltage Transmission Lines, Minnesota Rules, Part 7829.2550  
Docket No. E-ET-IP999/R-12-1246**

I, Lindsay Hauer, hereby certify that I have this day served a copy of the following, or a summary thereof, on Daniel P. Wolf and Sharon Ferguson by e-filing, and to all other persons on the attached service list by electronic service or by First Class Mail.

**Otter Tail Power Company  
Reply Comments**

Dated this **26th** day of **May, 2017**.

/s/ LINDSAY HAUER

Lindsay Hauer, Regulatory Filing Coordinator  
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