

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

In the Matter of the Application of Minnesota Power for a Certificate of Need for the HVDC Modernization Project in Hermantown, Saint Louis County

ISSUE DATE: November 29, 2023

DOCKET NO. E-015/CN-22-607

In the Matter of the Application of Minnesota Power for a Route Permit for a High Voltage Transmission Line for the HVDC Modernization Project in Hermantown, Saint Louis County

DOCKET NO. E-015/TL-22-611

ORDER IDENTIFYING
ALTERNATIVE PROPOSAL FOR
ENVIRONMENTAL ASSESSMENT
SCOPE, GRANTING VARIANCE, AND
NOTICE OF AND ORDER FOR
HEARING

PROCEDURAL HISTORY

On August 8, 2023, the Commission issued an Order accepting as complete Minnesota Power's combined application for a certificate of need and high voltage transmission line (HVTL) route permit. The Commission approved joint informal processes for the matters, including summary proceedings before an administrative law judge (ALJ). The Commission requested that the Department of Commerce, Energy Environmental Review and Analysis unit (DOC EERA) prepare an environmental assessment (EA) regarding the certificate of need and route permit.

On August 9, 2023, American Transmission Company LLC, by its corporate manager ATC Management Inc. (ATC, collectively) petitioned to intervene as a party to the proceeding.¹

Public Information and EA Scoping Meetings were held 1) in person in the City of Cloquet on August 29, 2023, and 2) virtually on August 30, 2023.²

By September 23, 2023, the Commission received written comments on the EA scope from the following:

¹ MP responded to ATC's petition, noting that it did not object to ATC's intervention.

² Transcripts of the August 29 and 30 public meetings were filed on September 12, 2023.

- ATC
- the Department of Natural Resources (DNR)
- the Solway Town Board of Supervisors
- four members of the public

By October 3, 2023, the Commission received responsive and reply comments from the following:

- Minnesota Power
- ATC

On October 5, 2023, DOC EERA filed comments and recommendations on the scope of the EA.

On November 9, 2023, this matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

In this Order, the Commission identifies the scope of the EA. Specifically, DOC EERA should include the project proposed by Minnesota Power—including Minnesota Power’s September 13, 2023 expansion of the route width—and the alternative proposed by ATC. The EA should also incorporate the DNR’s September 22, 2023 comments and Minnesota Power’s commitments in response to the DNR. Relatedly, the Commission will grant DOC EERA’s request to vary Minn. R. 7850.3700, subp. 3, allowing additional time to issue the scoping decision. The Commission will also refer this matter to the Office of Administrative Hearings (OAH) for contested case proceedings. The Commission requests that the ALJ produce his report by June 2024 and that the ALJ focus the proceedings on the viability of ATC’s alternative.

II. Minnesota Power’s Proposed Project

Minnesota Power seeks to modernize and upgrade its existing high-voltage direct-current (HVDC) terminal near the Arrowhead Substation located in Hermantown. Specifically, Minnesota Power proposed constructing approximately 40 acres of new buildings and infrastructure on new sites near its current HVDC terminals, including 1) a new HVDC terminal; 2) a new St Louis County 345 kilovolt (kV)/230 kV substation; 3) less than one mile of new 345 kV large high-voltage transmission line (LHVTL) to connect the new HVDC terminal to the new St Louis County Substation; and, 4) two new parallel 230 kV LHVTLs less than one mile in length to connect the new St Louis County Substation to Minnesota Power’s existing Arrowhead Substation. Minnesota Power also proposed reconfiguring and decommissioning portions of the existing ± 250 kV HVDC line near the site.

Minnesota Power stated that the proposed project would update aging electric infrastructure, increase the ongoing energy transfer capability, enhance regional grid reliability and resiliency, and enable Minnesota Power to better meet the state’s decarbonization goals.

III. Scope of the Environmental Assessment (EA)

Prior to preparing the EA, the Commission and DOC EERA must solicit—and have solicited—public comments on the scope of the EA.³ Generally, any person may suggest an alternative site or route to evaluate in the EA. Additionally, any person may identify human or environmental impacts that should be included in the scope of the EA. DOC EERA shall include any suggested site or route in the scope of the EA if evaluation of the proposed site or route will assist in the ultimate decision on the application. Once the scope of the EA is confirmed, DOC EERA will proceed with preparing the EA.

IV. Comments and Proposals

A. ATC

ATC recommended an alternative for inclusion in the scope of the EA. ATC proposed that Minnesota Power forgo constructing its new Saint Louis County 345/230-kV Substation and the associated transmission lines to connect thereto. Instead, ATC proposed interconnecting Minnesota Power's new HVDC terminal directly to ATC's existing 345/230 kV ATC Arrowhead Substation—which adjoins Minnesota Power's existing Arrowhead Substation—through two approximately one-mile 345 kV HVTLs. ATC maintained that its proposed alternative would 1) achieve the same purpose and need as Minnesota Power's proposal; 2) cost less than Minnesota Power's proposed project; and 3) reduce the environmental impacts associated with the project.

B. DNR

For both Minnesota Power's project and ATC's alternative, the DNR recommended that the EA evaluate measures to avoid or minimize impacts to the West Rocky Run—a designated trout stream—including route alternatives to avoid stream crossings. The DNR further recommended that the EA describe the decommissioning portions of the project, specifically any portions that cross the trout stream. Additionally, the DNR recommended that the EA confirm that there will be no disturbance below the ordinary high-water level of the West Rocky Run or, if such a disturbance is anticipated, that Minnesota Power coordinate with the DNR on the need for a public waters work permit.

The DNR further recommended that the EA address several additional concerns, including: 1) whether the project will require dewatering; 2) how future mining exploration and/or development would be addressed, including a recommendation that Minnesota Power arrange for geophysical data collection prior to project development; 3) the concerns identified in the Natural Heritage Review letter, including a discussion related to any impacts on the northern goshawk; 4) measures to avoid or reduce wildlife impacts related to lighting; 5) measures to control dust; and 6) measures to control erosion without harming wildlife.

³ See Minn. Stat. § 216E.04; Minn. R. 7850.3700, subp. 2.

C. Public Comments

The Commission received public comments from the Solway Town Board of Supervisors and individuals residing near the proposed project area. These commenters generally raised concerns about the project's footprint, lighting, and noise levels, asking that they be kept as minimal as possible so as to preserve the rural aesthetic of the community. One public commenter specifically asked that the EA scope include ATC's alternative.⁴

D. Response and Reply Comments

1. Minnesota Power

Minnesota Power recommended that the EA omit ATC's alternative. Minnesota Power argued that ATC's alternative 1) was more complicated than it appeared; 2) would not address the same needs as Minnesota Power's project; 3) would result in more significant environmental impacts; and 4) would be more costly to Minnesota Power and Minnesota Power's customers. Minnesota Power identified a variety of concerns associated with ATC's alternative. For example, Minnesota Power explained that interconnecting to ATC's substation would introduce complex new regulatory and technical hurdles due to historical issues with the interface between northern Minnesota and northwestern Wisconsin. Minnesota Power further explained that interconnecting to ATC's substation would introduce more practical hurdles, including significant cost increases and project delays.

Minnesota Power responded to the DNR's comments by requesting that the EA include the following commitments. Minnesota Power would 1) obtain a public waters work permit if needed; 2) share its geotechnical reports with the DNR when the surveys were performed; 3) schedule tree clearing activities during the northern goshawk's inactive season; 4) install shielded/downward facing lighting; 5) not use chloride products for dust mitigation or control; and, 6) use wildlife-friendly erosion control measures during construction, including no plastic mesh netting. Minnesota Power also committed to working with the DNR on removal of the existing ± 250 kV transmission line components that cross the West Rocky Run trout stream, and generally stated that it was willing to work with the DNR to balance electrical safety and reliability with mitigation measures related to the trout stream crossings.

2. ATC

ATC disagreed with Minnesota Power's assertions. ATC asserted that its alternative would not undermine the purpose of Minnesota Power's project, *i.e.*, modernizing the HVDC converter station. Instead, ATC characterized its proposal to connect Minnesota Power's new HVDC terminal to ATC's existing Arrowhead Substation as a more cost effective and less impactful alternative.

⁴ Although not addressed in this Order, DOC EERA noted its intent to address the concerns related to noise and lighting in the EA. Also, several comments went to matters beyond the scope of the issue presently before the Commission, *i.e.*, the scope of the EA. The Commission will address whether the project is ultimately necessary and whether to establish conditions on the project's construction and operation in future proceedings.

V. DOC EERA Recommendations

DOC EERA recommended including within the scope of the EA both Minnesota Power's proposal, as amended, and ATC's alternative. DOC EERA determined that including both would aid the Commission's ultimate decision. DOC EERA specifically noted Minnesota Power's concerns with ATC's alternative, and supported further record development regarding ATC's alternative and Minnesota Power's concerns therewith. Lastly, DOC EERA recommended including a discussion of the DNR's comments, and Minnesota Power's commitments thereto.

DOC EERA also asked the Commission to vary Minn. R. 7850.3700, subpart 3, to allow additional time to issue the scoping decision. DOC EERA argued that 10 days was insufficient to follow the procedural steps prior to issuing a scoping decision. DOC EERA argued that a variance was in the public interest because additional time would allow DOC EERA to develop an informed and robust scoping decision without imposing an excessive hardship on Minnesota Power. Further, DOC EERA argued that a variance would not conflict with any standards imposed by law.

VI. Commission Action

The Commission will require inclusion of Minnesota Power's proposal, as modified in its September 13, 2023 filing, in the scoping decision for the EA. The Commission will further require discussion of the DNR's comments, and Minnesota Power's commitments to the DNR's comments, in the EA. The Commission appreciates Minnesota Power's thorough project proposal, Minnesota Power's responsiveness to public comments, and Minnesota Power's willingness to cooperate with the DNR. Further study of Minnesota Power's project, and the DNR's comments, will assist the Commission in making its ultimate decision in these matters.

The Commission will also require inclusion of ATC's alternative in the EA scoping decision. Although Minnesota Power contests the viability of ATC's proposal, the record is simply insufficient, at this time, to definitively exclude ATC's proposal from consideration. Accordingly, further study of ATC's proposal will also assist the Commission in its ultimate decision herein.

Because of the limited record concerning the workability of ATC's proposal, the Commission will discontinue the informal certificate of need process and ALJ summary proceedings. The Commission will instead refer this matter to the OAH for contested case proceedings. A matter may be referred for contested case proceedings if significant issues have not been resolved to the Commission's satisfaction.⁵ The feasibility of ATC's alternative is a significant issue because, before granting a certificate of need, the Commission must consider whether a more reasonable and prudent alternative has been demonstrated.⁶ Thus, the feasibility of ATC's alternative could directly influence the Commission's certificate of need analysis. Despite Minnesota Power's detailed response to ATC's proposal, the issue of the alternative's feasibility has not been fully

⁵ Minn. R. 7829.1000. *Cf.* Minn. R. 7829.1200, subp. 1 (noting that informal or expedited proceedings "may" be used).

⁶ Minn. R. 7849.0120.

resolved to the Commission's satisfaction. The Commission will require a more robust record before making its ultimate decision in this case via contested case proceedings. In an abundance of caution, the Commission also notes that the public interest supports contested case proceedings because contested case proceedings will allow the Commission to make a thorough, informed, and well-reasoned decision.

Lastly, the Commission will grant DOC EERA's request to vary Minn. R. 7850.3700, subp. 3, to allow additional time to issue the scoping decision. The Commission varies its rules when it determines that 1) enforcement of the rule would not impose an excessive burden upon the applicant or others affected by the rule; 2) granting the variance would not adversely affect the public interest; and 3) granting the variance would not conflict with standards imposed by law.⁷

To ensure sufficient time for DOC EERA to determine the scope of the EA and issue a scoping decision, the Commission will vary Minn. R. 7850.3700, subp. 3, to extend the 10-day timeline, finding that the conditions for a variance are met. The Commission finds that enforcement of the rule would impose an excessive burden on those affected by the rule by limiting the amount of time available to DOC EERA to determine the scope of the EA. Further, granting the variance would not adversely affect the public interest, and would, in fact, serve the public interest by providing DOC EERA with sufficient time to determine the scope of the EA. And finally, granting the variance would not conflict with standards imposed by law.

VII. Referral for Contested Case Proceedings

The Commission finds that it cannot resolve the issues raised in the applications on the basis of the record before it. The issues turn on specific facts that are best developed in formal evidentiary hearings. The Commission will therefore refer the applications to the Office of Administrative Hearings (OAH) for contested case proceedings.

The Administrative Law Judge (ALJ) assigned to this matter will conduct hearings as described in this notice and order, and submit a report to the Commission. The Commission specifically requests that the ALJ submit his report by June 2024. The Commission further requests that the ALJ focus record development on the viability of ATC's alternative, and Minnesota Power's concerns therewith. The Commission expects that in the course of this case the parties will develop a full record addressing issues that are relevant to the Commission's certificate of need and permit decisions.

Following receipt of the ALJ's report, the Commission will proceed to make its final decision in accordance with Minn. Stat. Ch. 14, 216B, and 216E.

VIII. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is James Mortenson. His address is as follows: Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101.

⁷ Minn. R. 7829.3200, subp. 1.

His mailing address is P.O. Box 64620, St. Paul, Minnesota 55164-0620. He can be reached through his legal assistant, Michelle Severson, at 651-361-7874.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57–14.62; the rules of the OAH, Minn. R. 1405.0200 to 1405.2700. Regarding any issue on which Chapter 1405 is silent, the provisions of Minn. R. 1400.5100 to 1400.8400 regarding contested cases shall apply, and to the extent they are not superseded by those rules, the Commission’s rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.4000. Hearings may be recessed and reset by the ALJ pursuant to Minn. R. 1405.1400 to 1405.2300.

These rules and statutes appear on the State of Minnesota’s website at www.revisor.mn.gov/pubs.

The OAH conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. R. 1405.1300, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. R. 1400.6700 to 1400.6800 or informal disposition under Minn. R. 1400.5900 should be directed to Michael Kaluzniak (651) 201-2257, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the ALJ if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified neutral interpreter if necessary. Persons must promptly notify the ALJ if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary hearings in this matter will be set by order of the ALJ after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the ALJ within 20 days of the date of this notice and order for hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the ALJ, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are the Applicant (Minnesota Power), DOC EERA, ATC, and Large Power Intervenors (LPI).⁸ Other persons wishing to become formal parties must do so pursuant to Minn. R. 1405.0900. Subpart 1 of that rule prescribes the timing and contents of a petition to intervene. Subpart 2 prescribes the timing and content of any objection to the petition, and subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petitions.

The hearing process established under Rule chapter 1405 is designed to facilitate public participation, and persons need not intervene as parties to participate. All public participants have significant procedural rights, including but not limited to, the right to be present throughout the proceeding, to offer direct testimony in oral or written form, to question all persons who testify, and to submit comments to the ALJ and the Commission.

⁸ See Minn. R. 7829.0800, subp. 5. LPI filed its petition to intervene on November 7, 2023. LPI consists of Blandin Paper Company; Boise Paper, a Packaging Corporation of America company, formerly known as Boise, Inc.; Cleveland-Cliffs Minorca Mine Inc.; Enbridge Energy, Limited Partnership; Gerdau Ameristeel US Inc.; Hibbing Taconite Company; Northern Foundry, LLC; Sappi Cloquet, LLC; USG Interiors, Inc.; United States Steel Corporation (Keetac and Minntac Mines); and United Taconite, LLC.

Persons who intervene and are granted party status have additional rights and responsibilities, including, but not limited to, the right to object to another’s petition for intervention, the right to submit direct testimony and conduct cross-examination of other parties’ witnesses, and the duty to submit testimony, comply with discovery requests, produce witnesses, file briefs, and serve all documents on all other parties.

The description of rights in this section is summary in nature, as required by Minn. R. 1405.0500, subpart 1(I), and is not intended to be comprehensive. Interested parties are encouraged to review Chapter 1405 to identify the scope of rights and authority to act given to “persons” or restricted to “parties” under the various provisions of that chapter.

D. Prehearing Conference

A prehearing conference will be held on Thursday, November 30, 2023, at 9:00 a.m. in the Small Hearing Room at the office of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

IX. Ex Parte Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth in Minn. R. 7845.7300 to 7845.7400, which all parties are urged to consult.

ORDER

1. The Commission determines that Minnesota Power’s proposed route, as modified in its September 13, 2023 filing, and the ATC alternative should be evaluated in the environmental assessment (EA).
2. The Commission determines that the items raised in the DNR’s September 22, 2023 comments should be addressed in the EA.
3. The Commission determines that Minnesota Power’s commitments in response to the DNR’s comments should be included in the EA.
4. The Commission grants DOC EERA’s request to vary Minn. R. 7850.3700, subp. 3, to allow additional time to issue the scoping decision.

5. The Commission discontinues the informal certificate of need process and ALJ summary proceeding and refers the matter to the Office of Administrative Hearings for contested case proceedings. The Commission requests that the ALJ produce a report by June 2024 and further requests that the ALJ focus the contested case proceedings on the impact of ATC's alternative.
6. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert
Executive Secretary



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Attachment A

OAH Docket Number: 5-2500-39600

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Application of Minnesota Power for a
Certificate of Need for the HVDC Modernization Project in
Hermantown, Saint Louis County

NOTICE OF APPEARANCE

In the Matter of the Application of Minnesota Power for a Route
Permit for a High Voltage Transmission Line for the HVDC
Modernization Project in Hermantown, Saint Louis County

PLEASE TAKE NOTICE that:

1. The party/agency named below (Party/Agency) will appear at the prehearing conference and all subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the Party/Agency acknowledges that it has read and agrees to the terms of the Office of Administrative Hearings' e-Filing policy and chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter. **Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.**⁹

3. The Party/Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

Party's/Agency's Name: _____
Email: _____ Telephone: _____
Mailing Address: _____

Party's/Agency's Attorney: _____
Firm Name: _____
Email: _____ Telephone: _____
Mailing Address: _____

Respondent's/Opposing Party's Name: _____
Email: _____ Telephone: _____
Mailing Address: _____

Dated: _____

Signature of Party/Agency or Attorney

⁹ In order to opt in to electronic notice, this form must be emailed to OAH.efiling.support@state.mn.us. If the party does not wish to opt in to electronic notice, this form may be filed with the Office of Administrative Hearings via facsimile, U.S. Mail, or personal service. See Minn. Stat. § 14.58, Minn. R. 1400.5550, subps. 2-5.