

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application of Great River Energy and Otter Tail Power Company for a Route Permit for the Frazee to Erie 115 kV Transmission Line Project in Becker and Otter Tail Counties

ISSUE DATE: September 22, 2020

DOCKET NO. ET-2/TL-20-423

ORDER ACCEPTING APPLICATION AS COMPLETE AND AUTHORIZING USE OF ALTERNATIVE PERMITTING PROCESS

**PROCEDURAL HISTORY**

On June 22, 2020, Great River Energy and Otter Tail Power Company (the Applicants) filed a route permit application to construct a 230 kilovolt (kV) to 115 kV substation (the Erie Substation) and a 115 kV high voltage transmission line that would be approximately 9.4 miles in length between the Erie Substation and the existing Frazee Substation (the project). The project would be located in Becker and Otter Tail Counties.

On July 15, 2020, the Department of Commerce, Energy Environmental Review and Analysis (EERA) filed comments recommending that the Commission find the application complete and develop the record using the informal review process.

On July 22, 2020, the Applicants filed reply comments concurring with the EERA's recommendation.

On August 13, 2020, the matter came before the Commission.

**FINDINGS AND CONCLUSIONS**

**I. Jurisdiction**

No person may construct a high voltage transmission line without a route permit from the Commission.<sup>1</sup> A high voltage transmission line includes any transmission line longer than 1,500

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<sup>1</sup> Minn. Stat. § 216E.03, subd. 2.

feet that will operate at a voltage of at least 100 kilovolts.<sup>2</sup> The Applicants have proposed constructing a 115 kV transmission line longer than 1,500 feet, requiring them to obtain a permit.

The Applicants filed their application under Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900, which govern the alternative review process for eligible projects, including transmission lines that will operate at a voltage between 100 and 200 kilovolts.

## **II. Application Completeness**

The EERA reviewed the permit application under Minn. R. 7850.3100 to analyze whether it contained the required information. Based on its analysis, the EERA recommended that the Commission accept the application as complete. The Commission concurs with the EERA that the application meets the requirements of Minn. R. 7850.3100 and will accept the application as complete.

## **III. Referral to Office of Administrative Hearings**

To facilitate development of the record on route permit issues, the Commission will authorize use of the alternative permitting process set forth in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900. Under this process, the Commission asks the Office of Administrative Hearings to hold at least one public hearing, scheduled in conjunction with Commission staff. The Commission will also request that the Administrative Law Judge in this case prepare findings of fact, conclusions of law, and recommendation on a preferred route and on permit conditions. The Commission will also request that the Administrative Law Judge determine the schedule for any testimony and post-hearing briefing in consultation with interested parties.

The Commission will also take the steps listed below to ensure adequate development of the record:

- Designate Scott Ek to act as the public advisor to facilitate public participation in the process.
- Request that the EERA continue to study issues and indicate during the hearing process through testimony or comment its position on the reasonableness of issuing a route permit.
- Require the Applicants to facilitate in every reasonable way the continued examination of the issues requested by the EERA and Commission staff.
- Require the Applicants to place a copy of the route permit application in the Frazee City Hall.
- Direct the Applicants to work with Commission staff and the Department to arrange for publication of the notices related to public information meetings and public hearings in newspapers of general circulation under the timelines prescribed in rule and statute, that such notice be in the form of visible display ads, and require that proof of publication be obtained and filed with the Commission.

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<sup>2</sup> Minn. Stat. § 216E.01, subd. 4.

- Authorize Commission staff to file a sample route permit in e-dockets.
- Request that the EERA present draft route alternatives to the Commission for its input prior to the issuance of the final scoping decision.

Finally, the Commission will delegate administrative authority over this case to the Executive Secretary.

#### **IV. Rule Variance**

Under Minn. R. 7850.3700, subp. 3, the Department of Commerce is required to prepare an environmental assessment that evaluates the potential human and environmental impacts of the proposed project and any alternatives identified. Under the rule, the Department is required to hold a public scoping meeting where members of the public are given the opportunity to provide comments. After the close of the public scoping meeting, the Department is required to provide a written comment period of at least seven days. Within 10 days of the close of the comment period, the Department must determine the scope of the environmental assessment.

Under Minn. R. 7829.3200, the Commission must vary its rules upon making the following findings:

- 1) enforcement of the rule would 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.

To ensure that the Commission has sufficient time to evaluate any alternatives to the project, the Commission will vary the rule to extend the 10-day timeline for determining the scope of the environmental assessment.

The Commission finds that enforcement of the rule would impose an excessive burden on those affected by the rule by jeopardizing the Commission's ability to fully consider comments and make an informed decision on any alternatives to be examined in the environmental assessment. Under the circumstances, granting the variance would not adversely affect the public interest. Finally, granting the variance would not conflict with standards imposed by law, since the time frame is set by rule and not by statute.

#### **ORDER**

1. The Commission hereby accepts the application as complete and authorizes review under the alternative permitting process under Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900.
2. The Commission requests appointment of an Administrative Law Judge to serve as the hearing examiner and requests preparation of findings of fact, conclusions of law; recommendation of a preferred route; and permit conditions. The Commission requests

that the Administrative Law Judge determine the schedule for any testimony and post-hearing briefing in consultation with interested parties, as necessary.

3. The Commission hereby takes the following administrative actions for developing the record:
  - a. Designate Scott Ek to act as the public advisor to facilitate public participation in the process.
  - b. Request that the EERA continue to study issues and indicate during the hearing process through testimony or comment its position on the reasonableness of issuing a route permit.
  - c. Require the Applicants to facilitate in every reasonable way the continued examination of the issues requested by the EERA and Commission staff.
  - d. Require the Applicants to place a copy of the route permit application in the Frazee City Hall.
  - e. Direct the Applicants to work with Commission staff and the Department to arrange for publication of the notices related to public information meetings and public hearings in newspapers of general circulation under the timelines prescribed in rule and statute, and require that such notice be in the form of visible display ads and that proof of publication be obtained and filed with the Commission.
  - f. Authorize Commission staff to file a sample route permit in e-dockets.
  - g. Request that the EERA present draft route alternatives to the Commission for its input prior to the issuance of the final scoping decision.
  - h. Delegate administrative authority to the Executive Secretary, including the authority to set timelines.
4. The Commission hereby varies Minn. R. 7850.3700, subp. 3, to extend the 10-day timeline for filing the scoping decision.
5. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert  
Executive Secretary



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