

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of the
Route Permit Application by Great River
Energy and Xcel Energy for a 345 kV
Transmission Line from Brookings
County, South Dakota to Hampton,
Minnesota.

FIRST PREHEARING ORDER

A prehearing conference was held before Richard C. Luis, Administrative Law Judge, on May 7, 2009, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota, pursuant to a notice issued by the Public Utilities Commission on April 22, 2009.

Appearances:

Lisa M. Agrimonti, Catherine A. Biestek, and Michael C. Krikava, Attorneys at Law, Briggs and Morgan, P.A., 80 South Eighth Street, 2200 IDS Center, Minneapolis, MN 55402, Priti R. Patel, Assistant General Counsel, Northern States Power Company, 414 Nicollet Mall, Minneapolis, Minnesota 55401, and Lauren Ross McCalib, Manager for Regional Transmission Regulation, Great River Energy, 17845 East Hwy. 10, P.O. Box 800, Elk River, MN 55330-0800, on behalf of the Applicants.

Karen Finstad Hammel, Assistant Attorney General, 445 Minnesota Street, Suite 1500, St. Paul, MN 55101, on behalf of the Office of Energy Security (OES) of the Minnesota Department of Commerce (Department).

Joyce Osborn, P.O. Box 1165, Burnsville, MN 55337, on behalf of United Citizens Action Network (U-CAN).

Paula Maccabee, Attorney at Law, 1961 Selby Avenue, St. Paul, MN 55104, on behalf of Robert and Patricia Johnson (the Johnsons).

Carol Overland, Attorney at Law, Overland Law Office, P.O. Box 176, Red Wing, MN 55066, on behalf of No CapX 2020 and U-CAN (participated by telephone).

Robert Cupit and Mike Kaluzniack, Commission Staff, were also in attendance.

Background

On December 29, 2008, Great River Energy, a Minnesota cooperative corporation, and Northern States Power Company, a Minnesota corporation (Xcel Energy), (collectively, the Applicants), filed a route permit application for 237 miles of 345 kV transmission line and associated facilities between the existing Brookings County substation near White, South Dakota, and a newly proposed substation to be located near Hampton, Minnesota.

On January 29, 2009, the Commission issued an Order in this docket accepting the Applicants' Route Permit Application as substantially complete. The Order also authorized the OES's Energy Facilities Permitting staff to process the application under the full permitting process as set out in Minn.Rules, Parts 7849.5200 to 7849.5330, to name a public advisor in this case, and to establish an advisory task force or task forces.

On February 5, 2009, the Commission issued a Notice and Order for Hearing setting this matter on for contested case hearing before the ALJ. At the prehearing conference held on this matter on May 7, 2009, discussion was held among the participants concerning the proposed schedule and other matters. Based on those discussions and the filings in this matter, the Administrative Law Judge makes the following Prehearing Order.

IT IS HEREBY ORDERED:

Intervention

1. The parties to this matter as named in the Commission's Notice and Order for Hearing issued on February 5, 2009, were the Applicants and OES. OES clarified its role at the prehearing conference, noting that its participation was limited to that of the Energy Facilities Permitting staff (EFP), which performs designated functions in these proceedings. EFP takes no position in this proceeding. Petitions to intervene were filed with the Administrative Law Judge by No CAPX 2020, United Citizens Action Network (U-CAN), and the Johnsons. The Petitions for Intervention of U-CAN, No CAPX 2020, and the Johnsons are **GRANTED**.

2. The deadline to intervene as a party is **October 7, 2009**. Petitions to Intervene received after October 7, 2009, will be considered, but the scope of participation may be limited.¹

3. Any party objecting to the petition shall file its objection within seven days of receipt.

4. Persons who are not parties may, upon request, be granted the opportunity for limited participation, including the opportunity to testify, offer

¹ Minn. R. 1400.6200, subp. 3

exhibits and question other party's witnesses, but will not be deemed a party by reason of such participation.² Persons who are not parties are encouraged to provide their testimony and exhibits at the public hearings.

Schedule

5. The following schedule is adopted:

Environmental Impact Statement (EIS) Scoping Document Released	June 22, 2009
Second Prehearing Conference	July 2009 (TBD)
Draft EIS Available	October 1, 2009
Intervention Deadline	October 7, 2009
Direct Testimony Filed – All Parties	October 13, 2009
Draft EIS Public Meetings	October 26 – November 2, 2009
Rebuttal Testimony/OES Comments	November 9, 2009
Draft EIS Comment Period Deadline	November 16, 2009
Surrebuttal/and OES Comments	November 18, 2009
Public/Evidentiary Hearings in Project Area	November 23, - December 14, 2009
Evidentiary Hearing (Saint Paul)	December 17-18, 2009
Final EIS Available	January 8, 2010
Public Comment Deadline	January 15, 2010 (Tentative deadline)
Initial Briefs/OES Comments	January 22, 2010

² Minn. R. 1400.6200, subp. 5.

	(Tentative deadline)
Reply Briefs/OES Comments	TBD
ALJ Report	TBD
Exceptions	TBD
Argument before the Commission	TBD
Commission Order	TBD

6. The parties shall file and serve a list of proposed hearing exhibits, and the anticipated order that their witnesses will be called to testify by November 18, 2009. Should the surrebuttal filing create a need for a party to call previously unidentified witnesses, that party shall supplement the witness and exhibit lists as soon as practicable.

7. Portions of the Evidentiary Hearing will be held in each of the Public Hearing locations. The remainder of the Evidentiary Hearing will be held at the Public Utilities Commission. Parties that intend to offer exhibits into the hearing record shall discuss the numbering and other matters with the court reporter prior to the start of that day's Evidentiary Hearing.

8. Reply Briefs may be filed by any party to address the issues raised in the Responsive Briefs, and should not raise any new issue. In the event that a party raises any new matter or misstates the record in a Reply Brief, the other parties may have five business days to respond.

Extension of Deadline for Commission Action

9. The parties have generally concurred with the schedule adopted in this Order. The parties are in agreement that, in light of the size of the project, there is good cause to extend the timeline for the Commission's action on the Application beyond one year, as permitted pursuant to Minn. Stat. § 216E.03, subd. 9.

Discovery

10. A party may serve requests for information on any other party. All requests for information shall be made in writing by e-mail and, upon request, a copy of the request shall be sent by regular U.S. mail or other delivery service to all parties.

11. If the request for information or the response contains material designated as Trade Secret or Nonpublic information under the Minnesota Government Data Practices Act, Chapter 13, the providing party may seek a Protective Order and require that the requesting party comply with the terms of the Protective Order before the information is provided.

12. To the extent that a request includes material designated as Trade Secret or Nonpublic, an e-mail request is required only between the requesting and responding party. Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by e-mail after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday is considered received on the next business day.

13. Requests to the Applicants for information shall be directed to the Applicants' outside counsel, Mr. Krikava, Ms. Agrimonti and Ms. Biestek.

14. The party responding to the request shall provide the requested information to the requesting party within eight business days of receipt of the request. A business day does not include weekend days and Minnesota state holidays. In accordance with Minn. R. 1400.6100, subp. 1, the day that the information request is received is not counted in the eight-day period. If the request is received after 4:30 on a business day, the following business day is also not counted in the calculation of the response period.

15. Responses to information requests shall be submitted by e-mail, and, upon request, the responding party shall follow the e-mail with a copy of the response sent by regular U.S. mail or other delivery service. To the extent that a response includes material designated as Trade Secret or Nonpublic, an e-mail response is required only between the requesting party and the responding party. Any response received before 4:30 p.m. on a business day is considered to be received on the same day. Any response that is received after 4:30 on a business day is considered to be received the following business day.

16. In the event that due to the volume or nature of information included in a response, the responding party is unable to send the response by e-mail, the responding party shall send the response by facsimile, regular U.S. mail or other delivery service so that the requesting party receives the entire response including any material designated as Trade Secret or Nonpublic by the date due. Responding parties may utilize CD-ROMs to convey large volumes of data. The documents so conveyed must be readable using readily available software applications. If the response is sent by facsimile, the responding party shall, upon request, follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

17. A party that wishes to receive e-mail copies of requests or responses shall notify the requesting/responding party, who shall provide the information in that format.

18. In the event the information cannot be supplied within eight business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party.

19. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Hearings on such motions may be conducted by telephone conference call.

Prefiled Testimony

20. All prefiled testimony shall be eFiled with the using the eFile system of the Public Utilities Commission, the Department and the Office of Administrative Hearings. The eFile system is accessed through the Internet at: <https://www.edockets.state.mn.us/EFiling/security/login.do?method=showLogin>. Each party shall bring a hard copy of their documents to marked as exhibits and offered for admission into the record at the hearing. The offering party will mark the hard copy with the unique eFile identifying number. The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.

21. Prefiled testimony that is amended, or not offered into the record, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three days prior to the commencement of the evidentiary hearing.

Order of Testimony at the Evidentiary Hearing

22. Unless the parties agree otherwise, the order of testimony shall be: Applicants, the Johnsons, U-CAN, No CAPX 2020, other intervenors (in order of intervention), and OES. Questioning of the witnesses shall proceed in the same order, subject to change by agreement of the parties or further order of the Administrative Law Judge.

23. If a witness needs a day certain to offer testimony, the sponsoring party should submit a request to the Administrative Law Judge and other parties.

Examination of Witnesses at the Evidentiary Hearing

24. Witnesses shall be allowed ten minutes to summarize their prefiled testimony.

25. Where a witness has provided prefiled testimony, the witness will identify that testimony, including the unique document number of that testimony in the eFiling system. Where changes are made to that testimony at the hearing, the changes will be provided in a separate document, or noted directly on the hard copy of that testimony available at the hearing. Where changes are made on the hard copy, each change will be tagged for later eFiling.

26. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

27. Except for good cause shown, objections by any party relative to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony (except surrebuttal testimony) shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, and serves a copy of such objections on the parties, no later than October 22, 2009. Objections to rebuttal testimony shall be filed and served no later than November 12, 2009. Objections to surrebuttal testimony shall be filed and served no later than the beginning of the evidentiary hearing.

Procedure

28. The rules of the Office of Administrative Hearings govern the conduct of the hearings, and the Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

Filing of Documents (Excluding Information Requests and Responses)

29. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

30. The parties, including intervenors, shall file all documents, including prefiled testimony, using the eFile system. Such eFiling constitutes service on those offices and upon any other party that has agreed to accept eFiling as service.

31. The original document shall be filed using the eFile system wherever feasible. Otherwise, the original document shall be filed by delivery or mail with the Administrative Law Judge.

32. The effective date of filing shall be the date the document is eFiled, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the eFiling system must retain the unique document identifier as proof of service through that system. Proof of service shall be filed with each document or within three business days thereafter.

33. With the exception of Trade Secret and other Nonpublic data, copies of all documents that are filed shall be served by e-mail according to the attached service list by 3:00 p.m., and a hard copy shall also be mailed or delivered that day to the persons so indicated on the official service list. The list will be revised as necessary by the Office of Administrative Hearings.

34. Hard copies of Trade Secret and other Nonpublic data shall be transmitted by U.S. Mail or courier to the parties who have agreed to comply with the Protective Agreement and Order. Such documents may be served on the next business day following the filing of the public version.

35. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission.

36. If Trade Secret or Nonpublic data is filed with the Administrative Law Judge, it shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures may be viewed at: http://www.puc.state.mn.us/portal/groups/public/documents/pdf_files/000671~2.pdf. Access to nonpublic data shall be governed by the Protective Agreement and Order issued in this proceeding.

Public Comment

37. Public hearings will be scheduled, and public notice given. In order to be considered, written public comments should be filed with the Administrative Law Judge on or before **4:30 p.m. on January 8, 2010**. Comments may be filed by U.S. Mail, fax, or e-mail to capx.oah@state.mn.us.

Court Reporter

38. The Office of Administrative Hearings will arrange to have a court reporter present at the hearing. Parties must make arrangements with the Court Reporter to obtain a copy of the transcript. The Court Reporter should receive copies of all filings that address the schedule in this matter, and copies of the prefiled testimony. The Information Requests and Responses should not be sent to the Court Reporter or the Administrative Law Judge.

Request for Accommodation

39. No person has requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly if either an accommodation or interpreter is needed.

Subpoenas

40. Requests of subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the Administrative Law Judge pursuant to Minn. R. 1400.7000. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at www.oah.state.mn.us.

Modification of Order

41. The terms of this Order may be modified, for good cause shown, on motion of any party or at the discretion of the Administrative Law Judge.

Dated this 5th day of June, 2009.

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge



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June 5, 2009

To: All Participants on the ALJ's Service List

**Re: *In the Matter of the Application of the Route Permit Application
by Great River Energy and Xcel Energy for a 345 KV
Transmission Line from Brookings County, South Dakota to
Hapton, Minnesota; MPUC Docket No. ET-2/TL-08-1474
OAH Docket No. 7-2500-20283-2***

The document listed below has been filed with the E-Docket system and served as specified on the attached service list.

First Prehearing Order

Very truly yours,

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Telephone: (651) 361-7843

RCL:mo

ALJ's Service List as of June 5, 2009

Serve one copy of the document or item, unless otherwise indicated, on the following persons. If you E-file a document on the PUC E-filing system, persons with the E-file notation (**EF**) below need not be served a paper copy, unless otherwise indicated.

Re: *In the Matter of the Application of the Route Permit Application by Great River Energy and Xcel Energy for a 345 kV Transmission Line from Brookings County, South Dakota to Hampton, Minnesota*

Commission and ALJ

Dr. Burl W. Haar
Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147
(**EF** or Orig + 14 paper copies)

Hon. Richard C. Luis
Office of Administrative Hearings
P. O. Box 64620
St. Paul, MN 55164-0620
(1 paper copy)

Parties

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In addition to E-filing or paper service, electronic copies should also be e-mailed to the following persons:

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CERTIFICATE OF SERVICE

Case Title: In the Matter of the Application of the Route Permit Application by Great River Energy and Xcel Energy for a 345 KV Transmission Line from Brookings County, South Dakota to Hapton, Minnesota	OAH Docket No. 7-2500-20283-2 MPUC Docket No. ET-2/TL-08-1474
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Mary Osborn certifies that on Friday, June 05, 2009, she served a true and correct copy of the attached **First Prehearing Order**; by electronic mail or by placing it in the United States mail with postage prepaid, addressed to the following individuals:

All Participants on the ALJ's Service List	