

MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 No. Robert Street
St. Paul, Minnesota 55101

FOR THE

MINNESOTA PUBLIC UTILITIES COMMISSION

Suite 350, 121 Seventh Place East
St. Paul, Minnesota 55101-2147

**In the Matter 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.**

**OAH Docket No. 7-2500-20283-2
PUC Docket No. ET-002/TL-08-1474**

AFFIDAVIT OF SCOTT EK

SCOTT EK, being first duly sworn, deposes and says:

1. My name is Scott Ek. I am employed by the Minnesota Department of Commerce, Office of Energy Security ("OES"), as a State Planning Director in the Energy Facility Permitting ("EFP") unit.

2. I am the Project Manager for this proceeding. As Project Manager, my responsibilities include processing Great River Energy and Xcel Energy's application for a route permit, developing the Environmental Impact Statement ("EIS"), and assisting in developing the record for the Minnesota Public Utilities Commission ("Commission"). My responsibilities include advising the Commission concerning the designation of a route.

3. The OES EFP staff filed comments for the Commission's January 27, 2009 agenda meeting, recommending that the Commission allow the OES the flexibility to develop multiple focus groups as a means to allow greater input from citizens than is permitted with the statutory task forces under Minn. Stat. § 216E.08. The OES believed the proposed focus groups

would allow for a more robust public participation plan in this matter due to the size of this project and the variety of concerns that might arise in different areas along the proposed route. With focus groups, the OES could target specific areas of local concern along the route, and in addition, could continue to work with the groups beyond the time that a task force ends (i.e., when the alternatives are determined, which in this case was when scoping order is issued). The OES EFP Staff's intent was that focus groups could facilitate and encourage citizen participation beyond the limits of a statutory task force.

4. Since the Commission chose not to approve the focus groups, the OES EFP staff worked within the constraints of Minn. Stat. § 216E.08. The OES received responses sufficient to establish only one task force (Minnesota River to New Prague) in addition to the task force discussed during the Commission agenda meeting on January 27, 2009 (the Lake Marion to Hampton area). *See Ex. 1. See also* Memorandum Att. D (Official Transcript from January 27, 2009 Agenda meeting).

5. The Commission received three specific requests for task forces: (1) Various Parties submitted a request e-filed on February 4, 2009; (2) Jeff Otto submitted a request e-filed on January 29, 2009 requesting a task force; and (3) Carol Overland submitted a request individually and also on behalf of NO CAPX 2020 and United Citizens Action Network that was e-filed on January 27, 2009. *See Ex. 1.* (The request identified as from "Various Parties" is an unsigned copy of the Otto request.)

6. On February 10, 2009, the OES sent 75 letters to local government units ("LGUs") in the counties affected by the proposed route. Exhibit 3 to this Affidavit includes a list of these LGUs and copies of the letters sent to them. The OES received only 12 responses from LGUs, and only four responses indicated interest in a task force. *See Ex. 3 and Ex. 4.*

Eight of these responses indicated no interest in establishing a task force. Ex. 3. Of the four expressing interest, one stated a task force could possibly help, two favored creating a task force, and one was not from an LGU. All four positive responses concerned the Brookings to Lyon County substation area. *See* Ex. 4.

7. The response sent by Harold Dieken was submitted on an LGU comment form requested by Mr. Dieken of Fairview Township. Mr. Dieken did not indicate which LGU he represented. *See* Ex. 3. I determined from checking the Lyon County website that Mr. Dieken was not a Fairview Township officer, and, thus, I did not consider his response in determining whether the responses met the requirements in Minn. Stat. § 216E.08. If interest from the area had been sufficient to meet the statutory requirements, Mr. Dieken's response could have been considered in selecting task force members. The other three positive responses were submitted by Brian Buysee, clerk of Grandview Township in Lyon County; Ross Thompson, Chairman of Westerheim Township in Lyon County; and John Biren on behalf of Lyon County. *Id.*

8. Based on the limited response as compared to other route proceedings previously processed by the OES and in other areas along the proposed route, OES EFP staff concluded that there was little interest in establishing task forces for the areas west of the Minnesota River crossings. In Lyon County specifically, the statutory requirements for an advisory task force were not met because the Southwest Regional Development Commission did not express interest in a task force. Furthermore, only three of the 12 townships in Lyon County that would be affected by the proposed route, responded to the OES's canvassing letters.¹ In contrast to the approximately 10-20 calls per day from concerned citizens in the Dakota County area, the OES EFP staff received few if any calls from the Lyon County area. I do not remember specifically

¹ The 12 Lyon County townships potentially impacted are Eidsvold, Westerheim, Vallery, Lucas, Nordland, Grandview, Fairview, Stanley, Island Lake, Lynd, Lake Marshall, and Clifton.

any telephone conversations with either Messrs. Boerboom, Dieken, or Buysee. I recall one conversation with Mr. John Biren, but I believe it was not in reference to this proceeding.

9. With regard to selecting members of the task forces, the OES EFP staff used the following criteria:

- The OES EFP staff selected task force members based on geographic distribution. If there was an area of the ATF that was not represented by a Local Government Unit (“LGU”) the OES EFP staff looked for a citizen member from that area. Likewise, if there were a number of applicants from one area, the OES EFP staff looked to diversify by adding citizens from another area.
- The OES EFP staff selected members based on their experience (“Job Function” on the candidate form) and their interest (“Interest in the Project” on the candidate form). In addition, The OES EFP staff received numerous calls from citizens, some of whom applied to be on the task force. The OES EFP staff took these conversations into account when weighing experience/interest.
- Finally, if there were no clear persons to select after criteria #1 and #2, the OES EFP staff chose randomly to include both female and male task force members.

10.. I conducted scoping meetings in Marshall, Minnesota on March 30, 2009 to obtain public comments on the scope of the EIS. Although there is no requirement for a transcript of these public information meetings, the OES arranged for a court-reporter to be present rather than to tape-record the meetings, which often results in an unintelligible recording. A court reporter from Shaddix & Associates recorded comments and provided them to the OES. The recorded comments are not an official transcript of the meetings and are not certified by the court reporter recording them as a “full, true, and complete transcript” of the meeting. They were recorded in order to assist the OES in designing the scope of the EIS.

11. At the first scoping meeting in Marshall on March 30, 2009, several citizens questioned the rationale for not creating a task force for their area, emphasizing that they had specifically requested one. *See Ex. 5 at 13-15, 18-21 (Transcript)*. Some of the people attending

the meeting were notably upset and I was not able without interruption to adequately explain to them the reasons why the OES chose not to establish a task force in this area. *Id.*

12. The OES received nearly 999 comments on the scope of the EIS recommending 297 route alternatives. From these comments, OES EFP staff determined that 51 route segment recommendations and 21 alignment alternatives should be addressed in the draft EIS. The 297 recommended route alternatives were narrowed to 51 route alternatives and 21 alignment alternatives since many were duplicative, non-feasible, or otherwise unacceptable.

13. One recommended alternative was submitted by Grandview Township, and was signed by 16 members of the Grandview Township Board and other concerned citizens. Mr. Harold Dieken was one of the signators to this comment. This requested alternative route was included in the draft EIS. *See Ex. 6.* Scoping comments were received from Lynd Township as well. *Id.*


14. The OES EFP staff concluded that the responses from the LGUs were insufficient to meet the statutory requirements, and, thus, according to the delegation of authority from the Commission in its January 29, 2009 Order, determined that a task force could not be created for the Lyon County area.

Further, your affiant sayeth not.

Dated: December 18, 2009



Scott Ek


Dec. 18, 2009

