

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

MEMORANDUM OF THE MINNESOTA OFFICE  
OF ENERGY SECURITY RESPONDING TO CLAIMS  
CONCERNING CITIZENS ADVISORY TASK FORCE REQUESTS

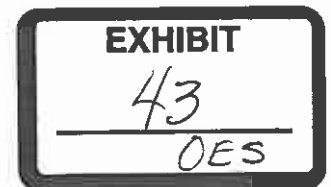
INTRODUCTION

The Minnesota Office of Energy Security (“OES”) respectfully submits this Memorandum and attachments to the Administrative Law Judge (“ALJ”) and the Minnesota Public Utilities Commission (“Commission”) to respond to certain assertions made by citizens during the recent public hearings in this proceeding.

I. ADVISORY TASK FORCE SUMMARY.

A. Minnesota Legal Requirements for Citizen Advisory Task Forces.

Minnesota Statute § 216E.08, subd. 1 (2008) provides that the Commission may appoint one or more task forces to assist it in carrying out its duties to evaluate sites or routes to be considered for designation in applications for route and site permits. Section 216E.08, subd. 1 provides that the composition of task forces is to be determined by the Commission, but it requires at least one representative from each of the following:



- 1) Regional development commissions,
- 2) Counties and municipal corporations, and
- 3) One town board member from each county in which a site or route is proposed to be located.

Task forces expire upon completion of their charge, upon issuance of the scoping decision for the project's environmental impact statement ("EIS"), or upon a specific date identified by the Commission, whichever occurs first. Minn. Stat. § 216E.08 (2008).

Citizens may petition the Commission to appoint a task force. Minn. R. 7850.2400. Upon appointing a task force, the Commission must specify its charge, which must include the identification of additional sites or routes or particular impacts to be evaluated in the EIS. Minn. R. 7850.2400. The Commission is directed to adopt broad spectrum citizen participation as a principal of operation, which must not be limited to public hearings and advisory task forces and be consistent with the Commission's rules and guidelines as provided for in Minn. Stat. § 216E.16.

The Commission may adopt public participation measures beyond public hearings and advisory task forces. Minn. Stat. § 216E.08. However, the Commission is not required to appoint an advisory task force[s].

**B. Designation of Advisory Task Forces in this Proceeding.**

The Office of Energy Security, Energy Facility Permitting ("OES EFP") staff reviewed the route permit application for the Brookings County to Hampton 345 kV transmission line project and provided comments and recommendations to the Commission for its January 27, 2009 meeting. The OES EFP staff comments are included as Attachment A.

In summary, the OES's comments and recommendations included an analysis of the need for advisory task forces for the project and, more generally, public participation tools appropriate for the project. OES EFP staff considered four characteristics in analyzing the need for advisory task forces: project size, project complexity, known or anticipated controversy, and potential impacts to sensitive resources. *Id.* Based on this analysis the OES EFP staff concluded that additional public participation measures were warranted for this proceeding.

OES EFP staff noted that a single task force for the project would be unwieldy and inappropriate considering the length of the transmission line and the diversity of concerns for certain segments of the line. *See* Att. B, Affidavit of Scott Ek. Thus, the OES EFP staff concluded that multiple task forces spread along the project would provide better input into the EIS scoping decision.

OES EFP staff noted, however, that advisory task forces have limitations in their composition and their duration. Accordingly, staff suggested the creation of multiple "focus" groups in lieu of advisory task forces. Staff concluded that such groups could provide several advantages including greater ease in integrating citizen and local government input and the ability to engage focus groups throughout the draft EIS comment period. Att. A at 5-6. The OES EFP staff presented a Draft Public Participation Plan for the Commission's consideration. *See* Att. C.

Reaction to the OES EFP staff's proposed focus groups was mixed. The Commission ultimately concluded that it did not wish to go beyond the statutory ATFs. The Commission indicated approval of one task force for the Lake Marion to Hampton area and delegated to the OES the decision as to other task forces to establish, along with determining the charge for the task forces. Att. E. *See also* Att. D (Transcript of Jan. 27, 2009 agenda meeting).

**C. The OES Appropriately Established Task Forces in this Proceeding.**

The OES canvassed the project area west of the Minnesota River at Henderson and Belle Plaine. Of the 75 letters sent to LGUs in that area, 63 did not respond. Of the 12 LGUs that responded to the OES letters, eight declined. Three responses from Lyon County showed interest in an ATF, with two of these responses requesting an ATF and one possibly interested in an ATF. *See* Att. B. In addition, the OES received one positive response to its canvass letters from a citizen of a township, who the OES EFP staff determined is not a township board member. *See* Att. B, Ex. 4 (Harold Dieken response). The responses to the canvassing letters are not petitions to the Commission for an alternative task force. They are responses to the OES's request to determine if there is sufficient interest in establishing task force[s] in the area west of the Minnesota River.

The three positive responses from Lyon County were the following:

- Lyon County Planning Dept., John Biren – An ATF would possibly help.
- Grandview Township, Brian Buysse – Yes to ATF.
- Westerheim Township, Ross Thompson – Yes to ATF.

*See* Att. B, Ex. 4.

The Southwest Regional Development Commission did not respond, nor did any of the five Lyon County District Commissioners. Att. B at 2-3. Since Minn. Stat. § 216E.08 requires at least one representative from each of the applicable regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is proposed to be located, the responses did not meet the statutory requirements for advisory task forces in the areas west of the Minnesota River, and in Lyon County.

## II. PUBLIC COMMENTS FROM THE MARSHALL PUBLIC HEARING.

The OES does not take lightly the comments made at the December 1, 2009 public hearing in Marshall, Minnesota. The OES has sincerely attempted to encourage public participation in this proceeding within the constraints of Minn. Stat. § 216E.08 and the directives of the Commission limiting organized citizen participation to the task force process. As demonstrated by the statements made in the NO CAPX 2020/U-CAN/Overland Petition for Citizen Advisory Task Force, criticism of the OES and the manner that it has conducted task forces is not new from those who believe that the OES EFP staff has used a flawed process. Much of the criticism arises because the Minnesota Legislature changed the process during the 2001 legislative session. However, the OES must work within the constraints of the legal requirements clearly expressed by the Legislature.

At the time of the transfer of the energy permitting staff to the Department of Commerce and the authority to grant route and site permits to the Commission in 2005, the authority to determine the scope of the EIS and to prepare the EIS was delegated by the Legislature to the Commissioner of Commerce. Minn. Stat. § 216E.03, subd. 5. Once the Commission has addressed the preliminary issue of advisory task forces, the only remaining decision for the Commission with respect to the EIS is to determine whether the EIS is adequate. *See* Minn. R. 7850.2700, subp. 2. Minnesota Rule 7850.2500, subp. 10 includes the requirements for making this adequacy determination, as follows:

The Public Utilities Commission shall determine the adequacy of the final environmental impact statement. The commission shall not decide the adequacy for at least ten days after the availability of the final environmental impact statement is announced in the EQB Monitor. The final environmental impact statement is adequate if it:

A. addresses the issues and alternatives raised in scoping to a reasonable extent considering the availability of information and the time limitations for considering the permit application;

B. provides responses to the timely substantive comments received during the draft environmental impact statement review process; and

C. was prepared in compliance with the procedures in parts 7850.1000 to 7850.5600.

If the commission finds that the environmental impact statement is not adequate, the commission shall direct the staff to respond to the deficiencies and resubmit the revised environmental impact statement to the commission as soon as possible.

One of the complaints expressed in Ms. Overland's Petition for Citizen Advisory Task Force is the complaint about the way the OES has facilitated the task forces in the past. For the task force process in this proceeding, however, the OES EFP staff arranged for the meetings to be facilitated by a facilitator from the Department of Administration. This is only one example of the ways in which the OES has tried to encourage meaningful public participation.

The criticisms and accusations targeted at OES EFP staff members during this proceeding are at best unfortunate. It appears that some of the terms used during the meetings triggered angry outbursts by some members of the public, perhaps understandably with regard to the personal impacts from a transmission line across their properties. The March 30, 2009 transcript from the 1:00 p.m. scoping meeting illustrates that while Mr. Ek attempted to answer the questions that arose, his explanations were simply not what the public wanted to hear. *See* Att. D at 21.

## CONCLUSION

In summary, the OES has conducted the task force process appropriately. The decision made by the OES EFP staff not to establish an advisory task force in the area from Brookings to the Lyon County substation is supported by the facts and the law.

Dated: December 18, 2009

Respectfully Submitted,

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