



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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December 22, 2009

To All Parties and Counsel on the Service
List

**BY U.S. MAIL AND
eSERVICE**

RE: ITMO 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; MPUC Docket No. ET-2/TL-08-1474

Chief Administrative Law Judge Raymond Krause received a request from Ms. Overland for the issuance of a subpoena compelling the appearance of Tony Sullins or Charles Blair of the US Fish and Wildlife Service (USFWS) at the hearings in this matter. This request was passed on to me [pursuant to the usual practice of the OAH] for consideration.

I have considered Ms. Overland's subpoena request. After review of the oral argument on this issue at the end of the proceedings on December 18, and the filings (public comments) on record to date from the USFWS, I conclude that compelling the personal testimony of either potential witness would be unduly burdensome and is unnecessary to the development of a complete record in this case.

In addition, it appears that the subpoena authority of the Minnesota Office of Administrative Hearings does not extend to compelling the appearance of a federal official, as Ms. Overland has requested. Under the doctrine established by *United States ex rel. Touhy v. Ragen* 340 U.S. 462 (1951) and applied by the Eighth Circuit in *In Re Charges of Unprofessional Conduct Against 99-37, An Attorney at Law of the State of Minnesota*, 249 F3d 821 (8th Cir. 2001), federal agencies and their personnel are not subject to state subpoenas.

For these reasons, Ms. Overland's December 18, 2009 request for a subpoena of Tony Sullins or Charles Blair is DENIED.

The position taken by the USFWS on crossings of the Minnesota River is clear, as stated in its letter to PUC Chair David Boyd on April 30, 2009. Ms. Overland argued that the USFWS's position on the crossings needs further clarification. The public comment period, which will run at least through January 29, 2010 (assuming release of the Final Environmental Impact Statement on January 22) affords the USFWS, or any other commentator, ample time to clarify its position further, should it choose to do so.

Very truly yours,

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Telephone: 651-361-7843

Enclosure

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OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
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CERTIFICATE OF SERVICE

<p>Case Title: ITMO the Applications to the Minnesota Public Utilities Commission for Two Certificates of Need and Site Permit for the Prairie Island Nuclear Generating Plant for Extended Power Uprate and Additional Dry Cask Storage;</p>	<p>OAH Docket No. 7-2500-19797-2 MPUC Docket Nos. E002/CN-08-509 and 08-510, GS-08-690</p>
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Michael Lewis certifies that on the 22nd day of December, 2009, he served a true and correct copy of the **attached letter**; by eFiling, and U.S. Mail, (in the manner indicated below) to the following individuals:

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Service List Information

Service List Type: Official Service List
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Description: Official Service List
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Created By: michael.lewis@state.mn.us
Created On: 07/01/2009
Modified By: michael.lewis@state.mn.us
Modified On: 11/30/2009

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