

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David C. Boyd
J. Dennis O'Brien
Thomas Pugh
Phyllis A. Reha
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Route Permit Application
for a 345 kV Transmission Line from Brookings
County, South Dakota to Hampton, Minnesota

ISSUE DATE: July 27, 2010

DOCKET NO. ET-2/TL-08-1474

ORDER REMANDING TO OFFICE OF
ADMINISTRATIVE HEARINGS

PROCEDURAL HISTORY

On December 29, 2008, Great River Energy, a Minnesota cooperative corporation, and Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy (collectively, the Applicants), filed a route permit application under the full permitting process for 237 – 264 miles of 345 kV transmission line and associated facilities between the existing Brookings County substation near White, South Dakota, and a newly proposed substation near Hampton, Minnesota.

On January 21, 2009, the Office of Energy Security's (OES's) Energy Facility Permitting staff filed comments and recommendations.

On January 27, 2009, NO CAPX 2020 and United Citizens Action Network (U-CAN) requested to intervene in this matter as full parties and further requested that the Commission appoint a Citizen Advisory Task Force, under Minn. Rules, Part 7850.2400. subp. 2.

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 in Minn. Rules, Parts 7850.1700 et seq., to name a public advisor in this case, and to establish an advisory task force or task forces and develop a structure and charge for them.

On February 5, 2009, the Commission issued its Notice and Order for Hearing, referring this matter to the Office of Administrative Hearings (OAH) for a contested case proceeding, including the public hearing required as part of the review of the route permit application.

On April 22, 2010, the Administrative Law Judge (ALJ) assigned to conduct the public hearing and contested case proceeding issued his FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION. On the issue of which route should be approved to cross the Minnesota River, the ALJ recommended that the Commission approve crossing the river at Le Sueur, though he also found that the crossing at Belle Plaine would be acceptable if a crossover route in Sibley County was used.

On June 15, 2010, the OES filed a letter and attachment it had received from the U.S. Fish and Wildlife Service (USFWS) dated June 10, 2010.

On July 2, 2010, the OES filed Comments and Recommendations. On the issue of which route should be approved to cross the Minnesota River, the OES stated, based on the USFWS's letter, that an aerial crossing of the Minnesota River at Le Sueur was no longer a viable alternative and recommended that the Commission select a route crossing the Minnesota River at Belle Plaine.

The Commission met on July 13 and 15, 2010 to hear oral argument and to consider this matter.

FINDINGS AND CONCLUSIONS

One of the principal contested issues in this matter is whether the transmission line should cross the Minnesota River at Le Sueur or at Belle Plaine. After the ALJ had issued his report and recommendation favoring the crossing at Le Sueur, the U.S. Fish and Wildlife Service (USFWS) filed a letter on this issue dated June 10, 2010. The letter stated in part:

. . . an aerial crossing [of the Minnesota River] at Le Sueur is more likely to harm bald eagles than an aerial crossing at Belle Plaine. Again, since the Belle Plaine option is practicable, it appears unlikely that a BGEPA [Bald and Golden Eagle Protection Act] permit would be issued for an aerial crossing at Le Sueur.

Since the USFWS's letter bears directly on the river crossing issue, since the ALJ and the parties had no opportunity to address the letter in the contested case process, and since there appears to be adequate time¹ to examine the letter by the ALJ in a tightly-focused contested case proceeding, the Commission will remand the ALJ's recommendation regarding whether the crossing at Le Sueur or Belle Plaine is preferable.

Further, in anticipation of the Commission's possible ultimate selection of the river crossing at Belle Plaine, the Commission will also request that the ALJ consider which of the crossover routes to the river crossing at Belle Plaine is preferable, and to alter his April 22, 2010 findings of fact, conclusions of law and recommendation, if necessary, accordingly. The Commission clarifies

¹ The Applicants did not object to a remand to consider the USFWS letter and its implications, provided the additional process be contained within the Cedar Mountain substation and the Helena substation and that a permit be granted for the rest of the route. The Applicants clarified at the hearing on this matter that under its revised timetable for the construction phase of this line, its first contact with property owners to address right-of-way acquisition would not begin before January 2011.

that the objective of this request is simply to have complete the set of ALJ recommendations regarding the options before the Commission and in no way indicates a prejudgment that the river crossing at Belle Plaine is preferable.

On remand, the ALJ is requested to schedule a hearing on the USFWS's letter and give the parties adequate opportunity to develop the record with respect to that letter. The ALJ will then consider and report to the Commission whether and to what extent, in light of the USFWS's letter and the record developed with respect to it, he wishes to modify or augment his findings of fact, conclusions of law, and recommendations with respect to both the river crossings and the crossover routes to the river crossing at Belle Plaine.

The ALJ is requested to conduct this further, narrowly-focused proceeding in a timely manner, consistent with the construction time frame indicated by the Applicants, i.e., consistent with an ultimate Order from the Commission prior to January 2011.

In a separate Order to be issued subsequent to this Order, the Commission will address its approval of other segments of the transmission line, i.e., all segments between Brookings County, South Dakota to Hampton, Minnesota except for the segment affected by the issue remanded to the OAH in this Order. That segment is denominated "CH" in the Overview Map provided by the OES. On the Overview Map, the "CH" segment connects the Cedar Mountain Substation in Renville County on the west to the Helena Substation in Le Sueur County in the east.

ORDER

1. The issue of which route is preferable for crossing the Minnesota River (a crossing at Le Sueur or a crossing at Belle Plaine) is remanded to the ALJ for further contested case proceedings as discussed above in this Order.

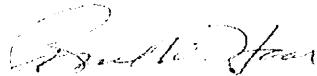
The ALJ is requested to hold a hearing regarding the U.S. Fish and Wildlife Service's June 10, 2010 letter and give the parties adequate opportunity to develop the record with respect to that letter and then to determine whether, in light of that letter and the record developed with respect to it, the ALJ wishes to modify or augment his findings of fact, conclusions of law, and recommendations.

The Commission also requests that the ALJ address which crossover route to the Belle Plaine crossing would be preferable and to make findings of fact, conclusions of law, and recommendations in that regard.

The Commission requests that the contested case proceedings on remand be conducted thoroughly but expeditiously, consistent with the discussion provided above in the text of this Order.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



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STATE OF MINNESOTA)
COUNTY OF RAMSEY)
)SS

AFFIDAVIT OF SERVICE

I, Margie DeLaHunt, being first duly sworn, deposes and says:

That on the 27th day of July, 2010 she served the attached

ORDER REMANDING TO OFFICE OF ADMINISTRATIVE HEARINGS.

MNPUC Docket Number: ET-2/TL-08-1474

- XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid
- XX By personal service
- XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

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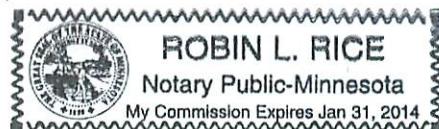
Margie DeLaHunt

Subscribed and sworn to before me,

a notary public, this 27th day of

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Robin L. Rice
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