

**Minnesota Public Utilities Commission**  
*Staff Briefing Papers*

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Meeting Date: June 10, 2010..... Agenda Item # 1

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Company: Great River Energy, Northern States Power Company & Others

Docket No. ET-2, E-002 et al/CN-06-1115

SUBJECT: In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for Certificates of Need for the Three CapX 345-kV Transmission Projects

□□□□ (□): Should the Commission vary Minn. Rules, parts 7849.0400, subp. 2, (H) to allow more time to consider the notice of timing change for the Brookings to Hampton project?

Should the Commission establish an additional round of comments on the Notice?

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**Relevant Documents**

Minn. Rules, 7849.0400: Conditions and Changes

Minn. Rules, 7829.3200: Other Variances

Applicant's Notice of Change in Timing..... May 17, 2010

The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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### ***Statement of the Issue***

1. Should the Commission vary Minn. Rules, parts 7849.0400, subp. 2, (H) to allow more time to consider the notice of timing change for the Brookings to Hampton project?
2. Should the Commission establish an additional comment period on the Notice?

### ***Background***

On May 22, 2009 the Commission issued an *Order Granting Certificates of Need With Conditions*, and on August 9, 2009 issued an *Order Granting and Denying Motions for Reconsideration and Modifying Conditions* in this docket. These Orders addressed the three 345 kV high-voltage transmission lines known as CapX2020 Group 1 projects. Specifically, the Order established an in-service date for the final sections of the Brookings to Hampton transmission line of 2<sup>nd</sup> Quarter 2013.

On May 17, 2010 the Minnesota Public Utilities Commission (Commission) received a notice of a change in timing (Notice) from Applicants Great River Energy, Northern States Power Company and Others regarding the Brookings to Hampton transmission project. The Applicants indicated that due to the current uncertainty surrounding the cost allocation methodology which may be applied to the Brookings Project by the Midwest Independent Transmission System Operator, Inc. ("MISO"), the expected in-service date of the Project will shift to 2015. The shift is a delay of more than a year from the date established by the Commission in its Order.

Minnesota Rules 7849.0400, subp. 2, (A) suggests that a change in the in-service date of an approved project of more than one year requires review and approval by the Commission and reads as follows:

A delay of one year or less in the in-service date of a large generation or transmission facility previously certified by the commission is not subject to review by the commission.

Minn. Rules 7849.0400, subp. 2, (H) establishes the procedures by which a notice of change will be considered and determined. This section of the rules reads as follows:

If an applicant determines that a change in size, type, timing, or ownership other than specified in this subpart is necessary for a large generation or transmission facility previously certified by the commission, the applicant must inform the commission of the desired change and detail the reasons for the change. A copy of the applicant's submission to the commission must be sent to each intervenor in the certificate of need hearing proceeding on the facility. Intervenors may comment on the proposed change within 15 days of being notified of the change. The commission shall evaluate the reasons for and against the proposed change and, within 45 days of receipt of the request, notify the applicant whether the change is acceptable without recertification. The commission shall order further

hearings if and only if it determines that the change, if known at the time of the need decision on the facility, could reasonably have resulted in a different decision under the criteria specified in part 7849.0120.

### **Staff Comment**

Staff is proposing a variance with respect to the timing requirement in this rule. Specifically, staff is proposing that the Commission vary the 45 day timing requirement for a Commission decision in order to allow sufficient time to solicit additional comments, review the merits of the Notice, hold a Commission meeting and provide a written order.

In addition, the Applicant requested in its filing that it be allowed an opportunity to respond to any comments received from parties on the merits of the delay to the in-service date. Staff supports the Applicant request and recommends that the Commission allow for an additional round of comments. Additional comments may provide additional information and clarification that would facilitate a better discussion of the relevant issues at the time of deliberation. NOTE: In a preliminary review of comments by parties on the merits of the Notice, there appears to be support for an addition comment period.

#### Staff's Variance Request

##### *Variance to 45 day Determination*

Staff believes that an extension of time to consider the merits of a delay to the in-service date is reasonable. Staff believes the Notice of a change in timing is, in this case, sufficiently complicated that comments from the applicants and parties will be helpful to the Commission in determining whether to accept a delayed in-service date. In addition, the Applicant has requested, and others appear to agree, that an additional round of comments would further the discussion and improved the record for the deliberation and determination of the issues related to the Notice by the Commission. As a result, 45 days is insufficient to facilitate due process, evaluate the filing and comments, schedule a Commission meeting, and prepare a written order.

##### *Criteria for a Variance*

Minnesota Rules, part 7829.3200 provides that the Commission shall grant a variance to a given rule when it determines that the following three conditions are met:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.

##### *Support For a Variance*

Staff believes these three conditions are met under the circumstances outlined above. First,

enforcement of the rule would impose an excessive burden on the Commission, its staff, the Applicants, the OES, and the parties because of the short time available for comments, a Commission meeting and a written order.

Second, the public interest would be poorly served by inadequate consideration of the Notice of a timing change. As suggested above, an additional round of comments and time for a thorough and careful evaluation of the merits of the Notice is important. Furthermore, additional comment and clarification at this time could facilitate an improved decision by the Commission.

Third, staff is unaware of any way by which an extension would conflict with any other standards imposed by law.

NOTE: Commission staff did not specifically solicit comments on the time extension issue. While staff believes there is no opposition to tolling the time, the Commission may wish to provide parties an opportunity to comment on the need for additional time and the wisdom of an additional round of comments at the hearing.

### ***Decision Alternatives***

1. Grant a variance to Minnesota Rules, part 7849.040, subp. 2, (H) to extend the period for Commission consideration of the notice of timing change and the request for an additional comment period.
3. Make some other decision deemed more appropriate than the aforementioned alternatives.
4. Deny the request for a variance.

### ***Recommendation***

Staff recommends alternative #1 above, to allow for additional comment and to ensure that there is sufficient time to review the Notice, hold a meeting and prepare a written order.