

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application for a
Route Permit for the Fargo to St. Cloud
345 kV Transmission Line Project

OAH 15-2500-20995-2
PUC No. ET-2,E-002/TL-09-1056

**AVON TOWNSHIP'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATION ¹**

A public hearing was held before Beverly Jones Heydinger, Administrative Law Judge (“ALJ”), commencing on November 16, 2010, at the Barnesville Assumption Church in Barnesville, Minnesota and continued at dates and places more specifically set forth below. The evidentiary hearing was held from December 6, 2010 to December 15, 2010 at the Minnesota Public Utilities Commission (“Commission”) offices in St. Paul, Minnesota.

Lisa M. Agrimonti and Elizabeth M. Brama, Briggs and Morgan, P.A., 80 South Eighth Street, 2200 IDS Center, Minneapolis, MN 55402, appeared for Northern States Power Company, a Minnesota corporation (“Xcel Energy”), on behalf of itself and its co-applicant, Great River Energy, a Minnesota cooperative corporation (“Applicants”).

Karen Finstad Hammel, Assistant Attorney General, and David Birkholz, State Permit Manager, 445 Minnesota Street, Suite 1500, St. Paul, MN 55101, appeared on behalf of the Department of Commerce, Office of Energy Security (“OES”).

Carol A. Overland, Overland Law Office, P.O. Box 176, Red Wing, MN 55066, appeared on behalf of NoCapX 2020, United Citizens Action Network, and North Route Citizen’s Alliance (collectively, “NoRCA”).

Gerald W. Von Korff and John C. Kolb, Rinke Noonan, P.O. Box 1497, St. Cloud, MN 55302, appeared on behalf of Avon Township.

Michael J. Ford and Cally R. Kjellberg, Quinlivan & Hughes, P.A., 400 South First Street, Suite 600, St. Cloud, MN 56301 and Richard L. Pemberton, Stephen F. Rufer, H.

¹ These proposed findings are not intended to comprehensively address the entire route. Instead, as explained in our closing Brief, we have offered findings targeted to the route options in the region studied by the ATF. By footnote, we have cross referenced applicant’s proposed findings where our finding is intended to correct or supplement a specific finding.

Morrison Kershner, and Chad R. Felstul, Pemberton, Sorlie, Rufer & Kershner, P.L.L.P, P.O. Box 866, 110 North Mill, Street, Fergus Falls, MN 56538, appeared on behalf of St. John's Abbey/University ("St. John's").

Bret Eknes and Bob Cupit, Energy Facilities Permitting Unit, 121 Seventh Place East, Suite 350, Saint Paul, MN 55101 appeared on behalf of the Commission.

STATEMENT OF ISSUE

Have Applicants satisfied the criteria set forth in Minnesota Statutes Section 216E.031 and Minnesota Rules Chapter 7850 for a Route Permit for the Minnesota portion of the Fargo to St. Cloud 345 kV Transmission Line Project, and which route segments best meet the criteria of Chapter 216E and Minnesota's environmental laws².

RECOMMENDATIONS

1. That the Commission conclude that all relevant statutory and rule criteria necessary to obtain a Route Permit for Route G with Option 11 have been satisfied and that there are no statutory or other requirements that preclude granting a Route Permit based on the record.
2. That the Commission grant a Route Permit to Applicants on behalf of themselves and the participating CapX2020 utilities authorizing:
 - A. Construction of the Project along Route G with Option 11 with a route width of up to 1,000 feet, provided that within that route the applicant shall take all reasonable and necessary steps to minimize damage to the environment and human settlement.
 - B. Modifications and additions at the Quarry Substation.
 - C. Modifications and additions to the Alexandria Switching Station.
3. That the applicants proposed Preferred Route would cause significant and unacceptable environmental harm and results in route proliferation which must be avoided if a suitable and feasible route alternative exists, and that Route G is such a suitable and feasible route alternative.
4. That Applicants be required to take those actions necessary to implement the Commission's orders in this proceeding.

Based on the evidence in the hearing record, the ALJ makes the following findings of fact and conclusions:

² Statement of Issue corrected to make it clear that the central issue is to determine which route is the best route, independent of applicant's initial route designation.

FINDINGS OF FACT

PROCEDURAL SUMMARY

1. Applicant's preferred routing alternative, which traverses Avon Township, has been specifically identified by OES staff as "difficult." In attempting to traverse the terrain north of I-94, Xcel's route designers confronted significant environmental obstacles, including rolling hilly terrain, a road system that provides no ready direct east-west connection, significant stretches in which there is no suitable existing right-of-way at all, and forest systems of significant value.
2. To respond to these difficulties, the Commission created the Citizens Advisory Task Force (ATF)³. The ATF was composed primarily of representatives of local government with planning and zoning responsibilities for the impacted areas. The ATF designed Route G and other route options in an effort to find an alternative to Xcel's proposed routes that would reduce the negative impacts of the previously proposed routes.
3. The ATF assessed a number of route-impact criteria, but the consensus of the ATF was that the highest priority to route selection should be afforded to minimization of route proliferation, that is the placement of the route in locations where there is no previously existing right-of-way.
4. The preferred route generally runs through an region characterized by smaller land parcels than Route G, and the ATF believed that the larger parcels would have significantly more room to accommodate right-of-way. In addition, the ATF designed Route G to avoid the negative environmental impacts in the Albany and Avon area.

ROUTES ORIGINALLY PROPOSED BY APPLICANTS

5. Route A⁴ is approximately 169 miles in length in Minnesota, and from the Quarry Substation to an area west of St. Stephen, Route A follows the same alignment as the RPA Preferred Route. West of St. Stephen, Route A diverges from the Preferred Route near Sauk Centre and over a 47 mile stretch seeks to follow

³ Compare Applicant's Findings 10 and 11. Our proposed findings recognize the ATF's role in creating Route G and the ATF's overwhelming consensus that use of existing rights-of-way should receive the highest priority of all routing factors.

⁴ Compare Applicant's Finding 59. Finding is revised primarily to repair the Applicant's practice of including property boundaries and section boundaries along with existing rights-of-way, such that the amount of proliferation is not transparent. Our reading of Applicant's brief is that its support for Route A is essentially withdrawn.

smaller roads and streets, but because of the difficulty of terrain, 16 miles of the proposed route departs entirely from existing rights-of-way.

ROUTES SUPPORTED BY PARTIES

6. In its intervention petition and testimony, Intervenor Avon Township⁵ supported Route G, and identified Routes H and E as potential alternatives superior to the Applicant's Preferred Route and Route A. Avon Township's closing position, after the evidence was submitted is that Route G is plainly superior to the other Route alternatives, and that Route E, while inferior, is the next best route alternative.

ROUTING CRITERIA AND FACTORS TO BE CONSIDERED

7. All⁶ parties have accepted that the principles articulated in People For Environmental Enlightenment and Responsibility (PEER), Inc v. Northern States Power, 266 N.W.2d 858 (Minn. 1978) are applicable to this case. Under the PEER decision in order to make the route-selection process comport with Minnesota's commitment to the principle of nonproliferation, the Commission must, as a matter of law, utilize pre-existing rights-of-way unless there are extremely strong reasons not to do so. In addition, where a route significantly impairs the environment, the Commission must avoid that impairment if a feasible and suitable alternative exists.
8. Both Route G and Route E are improved by utilizing Option 11, and throughout these findings, the designate Route G and Route E include Option 11, unless the context specifically otherwise indicates.

Human Settlement

9. According to Final EIS, the Preferred Route impacts 10,000 acres of agriculturally zoned land, while Routes E and G each impact about 6,000. The Preferred Route impacts about 700 acres of commercial/industrial zoned land, whereas Routes E and G would impact 200 and 140 respectively. The impacts on residential zoning are not materially different. Moreover, Route G was specifically designed to reduce impact on farmsteads by running through regions where farms are larger, and thus have significantly more room to accommodate right-of-way.
10. The Modified Preferred Route impacts fewer residences within 500 feet of the

⁵ Compare Applicant's Finding 103. Added to correct suggestion that Avon Township supported or supports Route A.

⁶ See Finding 106. Added to recognize PEER principles' impact on this case.

anticipated alignment than does Route A⁷. Applicant's Preferred Route impacts more residences within 500 feet of the alignment than either Route E or Route G. According to EIS Table 3.6-2, the Preferred Route impacts almost 200 residential structures within the route area, whereas Routes E and G impact about 90 and 100 respectively. The Preferred Route impacts over 400 non-residential structures within 500 feet of the route areas, whereas Routes E and G impact about 275 and 250 respectively.

11. Based on the current alignment, it appears that there will be no displacement of homes along the Modified Preferred Route or Routes G and Route E, unless farms and homes make use of the "buy the farm" option under law.

Summary of Other Factors Considered

12. More of the Preferred Route is located in the 100-year floodplain than Routes E or G.
13. MnDNR has stated a preference for Route A for the North Dakota to Alexandria segment of the Project based on potential migratory bird issues, and has stated a preference for Route G west of Sauk Centre⁸.
14. Route G utilizes more robust County road rights-of-way, whereas the northerly Preferred Route and Route E are more frequently on smaller streets and back-roads.
15. Route E⁹, which is approximately 35 miles long, deviates from the RPA Preferred Route corridor between the new Quarry Substation to an area west of Freeport to accommodate site-specific routing, permitting, or design considerations. Route E mostly parallels existing road rights-of-way. It is superior to both Route A and the applicant's northern Preferred Route in terms of route proliferation, and it reduces the extent of route proliferation by 10 and 7 miles respectively.
16. The two Southerly Routes, Route G and E exhibit far less impact on significant biodiversity sites. Both impact about one half the number of acres of native plant communities in comparison to the Preferred Route, which bisects a biologically significant area which connects with the St. Wendel's Bog Complex. Route E exhibits modest impact in that it abuts a Legacy Marsh Wildlife Management Area,

⁷ Correcting Finding 151 to show that Route E and Route G are superior to Preferred Route.

⁸ See Finding 126. Corrected to include DNR's preference for Route G.

⁹ Compare Applicant's finding 62. Our finding makes actual route proliferation transparent.

whereas Route G avoids directly impacting significant natural areas. The Preferred Right-of-Way impacts significantly more acres of the Avon Hills Important Bird Area (IBA) than either Route E (160 acres) or Route G.

17. Both Routes E and G exhibit significantly less proliferation than the northerly Preferred Route option. The Preferred Route engages in 17.8 miles of proliferation, as compared to 11.4 miles and 12.0 miles for Routes E and G respectively. Moreover, the Preferred Route proliferates in areas of significantly greater environmental significance.
18. The Avon Hills region, which is impacted by Applicant's Preferred Route, has been specifically recognized as deserving of special protection by both the Township and by Stearns County's Comprehensive plan as a priority area for natural resource protection. The Avon Hills region is characterized by rolling hills of the St. Croix Moraine, deposited by the glaciers 10,000 years ago, and is dotted with wet depressions, pot holes and lakes. Within the Avon Hills region is located the Avon Hills Forest Scientific and Natural Area (SNA). The SNA contains large tracts of oak forest, forested swamp, marsh, and sedge meadow native plant communities. It is home to two species of rare birds that only inhabit large forests, cerulean warblers and red-shouldered hawks. It is known for hills, lakes and streams, lovely scenery and diverse wildlife habitat.
19. Applicant's Preferred Route impacts that portion of the Avon Hills Region that has been selected for protection in the Stearns County overlay district with planning and zoning controls that offer unique protection to this important ecosystem.
20. The applicant's Preferred Route imposes significant environmental impact on important environmental resources which must be avoided if a suitable and feasible alternative route exists. Both Routes E and G provide such suitable and feasible alternatives.
21. The Preferred Right-of-Way impacts significantly more acres of the Avon Hills Important Bird Area (IBA) (275 acres) than either Route E or Route G.
22. Route G utilizes more robust County road rights-of-way, whereas the northerly Preferred Route and Route E are more frequently on smaller streets and back-roads.
23. The Preferred Route impacts 10,000 acres of agriculturally zoned land, while Routes E and G each impact about 6,000. The Preferred Route impacts about 700 acres of commercial/industrial zoned land, whereas Routes E and G would impact 200 and 140 respectively. The impacts on residential zoning are not materially different. Moreover, Route G was specifically designed to reduce impact on farmsteads by running through regions where farms are larger, and thus have significantly more room to accommodate right-of-way.

24. Route G is equal to, or better than the other routes with respect to its effects on human settlement, including, but not limited to, displacement, noise, aesthetics, cultural values, recreation, and public services and effects on public health and safety, as well as its effects on archaeological and historic resources.
25. Route G is superior to the other routes with respect to its effects on land-based economies, including, but not limited to, agriculture, forestry, tourism, and mining.
26. Route G is superior to the other routes with respect to its effects on the natural environment, including effects on air and water quality resources and flora and fauna; and as well as its effects on rare and unique natural resources.
27. Route G is approximately equal to Route E with respect to its paralleling of existing rights-of-way and both are significantly superior to the northerly routes.

CONCLUSIONS OF LAW

1. The Commission must select a single route for the Project. Xcel argues that route proliferation and other factors should adopt an "end-to-end" analysis under which the Commission would compare such factors only in the context of the total route from one end to another. The impact of this approach would be to authorize the choice of inferior route segments, simply because the route segment is a small percentage of the overall route. Where the Commission is evaluating two route segment options, the Commission should, and the law requires, that the Commission choose the option that is superior based on a comparison of the factors as they apply to the options themselves. The law does not allow the Commission to choose the Preferred Route west of Sauk Centre if Route G is superior¹⁰.

2. Xcel urges that human settlement tends to be concentrated along roads and other existing corridors and that therefore a transmission line may need to be routed away from an existing road. However, under the PEER decision, proliferation into open spaces and environmentally sensitive areas may not be authorized if a reasonable and suitable alternative exists. PEER explicitly rejects Xcel's approach to proliferation¹¹.

3. While the Final EIS is generally acceptable, it is flawed in two major respects. First, it improperly conflates proliferation with field boundaries and artificial boundaries that are not to be considered in connection with the proliferation decision.

¹⁰ Compare Applicant's finding 171, to correct the legally erroneous assertion that the Commission can authorize an inferior route segment, simply because it is a small percentage of the overall route.

¹¹ See Finding 176. Corrects erroneous interpretation of PEER.

4. Second, the Final EIS does not fully recognize the extent and importance of the Avon Hills Region and the significant negative environmental impacts that the Preferred Route would visit on that region.

5. The evidence on the record demonstrates that the Modified Preferred Route with Option 13 present a potential for significant adverse environmental effects pursuant to the Minnesota Environmental Rights Act, Minnesota Statutes Sections 116B.01-116B.13, and Minnesota Environmental Policy Act, Minnesota Statutes Sections 116D.01-116D.11. Based on the testimony as well as the comments of the Department of Natural Resources, the Modified Preferred Route clearly causes significant adverse environmental effects, and those effects can be avoided by a suitable and feasible alternative.

6. The evidence on the record demonstrates that the Modified Preferred Route, with Option 13 does not satisfy the route permit criteria set forth in Minnesota Statutes Section 216E.03, subdivision 7(a) and Minnesota Rule 7850.4100 based on the factors in Minnesota Statutes Section 216E.03, subdivision 7(b) and Minnesota Rule 7850.4000.

7. The evidence on the record demonstrates that Route G is the route that minimizes environmental impact, has the least impact on human settlement, and the Commission should select Route G in preference to all other routes.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED
HEREIN. THE MINNESOTA PUBLIC UTILITIES COMMISSION WILL ISSUE THE
ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING
RECOMMENDATION.

Based on the foregoing Findings of Fact, Conclusions of Law, and the record in this proceeding, the Administrative Law Judge makes the Recommendations set forth above in this Report.

Dated: _____, 2011

Beverly Jones Heydinger
Administrative Law Judge