

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 SUPPORT FOR ROUTE SELECTION
AND EXCEPTIONS TO ALJ'S FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Avon Township supports the ultimate route recommendation of the Administrative Law Judge. Avon Township's position is that the Administrative Law Judge's findings generally represent an excellent summary of the evidence, and her findings and conclusions are, except as noted herein, sustained by the evidence and law. Our exceptions to the findings, as stated here, are not meant to detract from the ultimate route selection in the region important to Avon Township, which the Township supports. It is Avon Township's position that selection of Route G east of Sauk Centre was compelled by overwhelming evidence and should be sustained by the Commission.

The Administrative Law Judge's route choice dramatically reduces negative impacts by selecting a route east of Sauk Centre that was developed by the representatives of the local governments most closely impacted. Their route choice was supported, in turn, by the Department of Natural Resources, the Nature Conservancy, by expert testimony, and a broad array of impacted citizens and institutions. The route choice reduces impacts on farms and residences and at the same time significantly reduces environmental impacts and affords the maximum possible protection to unique environmental resources. This is a win-win choice for both human settlement and for the environment.

Because the ALJ's decision is plainly correct and supported by overwhelming evidence, Avon Township's purpose in submitting exceptions is merely to advance findings which we believe were compelled by the evidence, which if adopted would make the selection of Route G even more compelling. Avon Township supports the expeditious adoption of the route selection. In the event that the Route selection G is confirmed, the exceptions would then not be material to the outcome of the case and in that event, Avon Township does not seek procedures which would result in delay of Route G selection merely to correct findings which are not outcome determinative.

Our primary concern arises from the application of PEER to the facts of this case. Proliferation prevention is environmentally important, because "unless utility lines are limited wherever possible to existing corridors, rural areas will become islands in between ever

multiplying power line ribbons spreading with spider web affect across the open land.” Proper application of the anti-proliferation principle requires appropriate counting of the length of route which uses existing right of way. Unfortunately, the Final Environmental Impact Statement sums existing right of way and so-called “linear features” into its proliferation tables. Under this approach, for counting purposes, a power line that runs on an artificial line, such as field boundary or property boundary, is treated as if it is following existing right of way, when in fact, no right of way exists at all. This approach, when used in an EIS document can suggest that running a power line on a farmer’s property line is equivalent to running a power line on an existing highway or existing power line right of way. That would mean that a power line could be run from St. Cloud to Fargo entirely on field boundaries, but could be reported as involving no proliferation at all.

The inclusion of linear features in the proliferation tables suppressed the full extent of proliferation caused by the applicant’s preferred route. The actual proliferation exhibited by that route was 17.8 miles, but the EIS subtracted from the proliferation count 13.2 miles of field boundaries, across which the proposed line would have acquired completely new right of way, and thus reported only 4.6 miles of proliferation. The Administrative Law Judge appreciated this distinction, but we believe that the findings could more forcefully have made this distinction transparent. For this reason, we believe that the finding should have included the following findings of fact.

1. All 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.
2. G exhibits significantly less proliferation than the northerly Preferred Route option. Moreover, the Preferred Route proliferates in areas of significantly greater environmental significance.
3. 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. Route G provide such suitable and feasible alternatives.

In addition, the conclusions should contain the following.

1. 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.

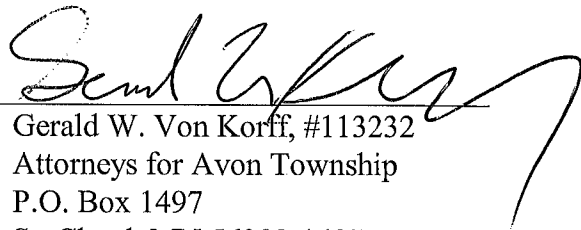
2. The evidence on the record demonstrates that the Modified Preferred Route, with Option 13 does not satisfy the route permit criteria set forth in Minnesota Statutes Section 216E.03, subdivision 7(a) and Minnesota Rule 7850.4100 based on the factors in Minnesota Statutes Section 216E.03, subdivision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

Once again, we emphasize that the Administrative Law Judge's decision evidences a painstaking and exhaustive analysis of the evidence. Our proposed findings do not change the ultimate route selection, which Avon Township strongly supports. The selection of Route G avoids what would otherwise have been unacceptable harm to the important Avon Hills Region, and at the same time actually reduces impacts on human settlement. We urge the Commission to accept the route choice of the Administrative Law Judge.

Dated: May 10, 2011

Respectfully Submitted,

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