7-2500-20283-2
PUC Docket No. ET-2/TL-08-1474

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

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.

FIRST PREHEARING ORDER ON REMAND

A prehearing conference was held before Administrative Law Judge Richard C. Luis (ALJ) on August 16, 2010, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota, pursuant to a notice issued by the Office of Administrative Hearings on August 12, 2010.

Appearances:

Lisa M. Agrimonti, Attorney at Law, Briggs and Morgan, P.A., 80 South Eighth Street, 2200 IDS Center, Minneapolis, MN 55402, and Dan Lescher, Great River Energy, 12300 Elm Creek Boulevard, Maple Grove, MN 55369, on behalf of the Applicants.

Karen Finstad Hammel, Assistant Attorney General, 445 Minnesota Street, Suite 1500, St. Paul, MN 55101, on behalf of the Office of Energy Security (OES) of the Minnesota Department of Commerce (Department). Scott Ek, Planning Director, appeared on behalf of the Department's Energy Facilities Permitting staff (EFP).

Joyce Osborn, P.O. Box 1165, Burnsville, MN 55337, on behalf of United Citizens Action Network (U-CAN).

Carol Overland, Attorney at Law, Overland Law Office, P.O. Box 176, Red Wing, MN 55066, on behalf of No CapX 2020 and U-CAN.

Staff Members Robert Cupit and Mike Kaluzniak appeared for the Commission Staff.

Background

On December 29, 2008, Great River Energy, a Minnesota cooperative corporation, and Northern States Power Company, a Minnesota corporation

(Xcel Energy), (collectively, the Applicants), filed a route permit application for a 345 kV transmission line and associated facilities between the existing Brookings County substation near White, South Dakota, and a newly proposed substation to be located near Hampton, Minnesota.

On February 5, 2009, the Commission issued a Notice and Order for Hearing setting this matter on for contested case hearing before the ALJ. Public and evidentiary hearings were held, public comment was received by the ALJ, and the parties extensively briefed the issues regarding the proposed transmission line, including issues arising from the need for that line to cross the Minnesota River. On April 22, 2010, the ALJ issued his Findings of Fact, Conclusions and Recommendation recommending that an aerial crossing of the Minnesota River be sited at LeSueur, Minnesota.

On June 10, 2010, the U.S. Fish and Wildlife Service (USFWS) wrote to the Applicants indicating that, in light of their discussions, the USFWS had concluded that:

1. Transmission lines crossing the Minnesota River at Le Sueur is likely to result in take of bald eagles. If such take does occur, the project applicant will need to have first obtained a permit to avoid violating federal law (BGEPA) [the Bald and Golden Eagle Protection Act].

2. BGEPA permits are only available when the take cannot practicably be avoided and the applicant has minimized the impacts to eagles to the extent practicable.

3. You have concluded that a non-aerial crossing (at either available crossing location) is not practicable. Thus, we have focused our analysis on other alternatives to avoid or minimize eagle impacts.

4. Crossing the Minnesota River at Belle Plaine is a practicable alternative which would avoid and minimize impacts to bald eagles (relative to the Le Sueur site). The existence of this alternative makes it unlikely that a BGEPA permit would be available for an aerial crossing at Le Sueur. If an aerial crossing is built at Le Sueur, any take of eagles would be in violation of law.

5. We recommend that OES condition any future authorization relative to this project as follows; I) applicant will utilize the available Belle Plaine crossing, and 2) applicant will develop and implement an Avian Protection Plan (APP) for the Belle

> Plaine crossing. This plan will form the basis of any necessary BGEPA permit.[1]

In light of the USFWS letter, on July 27, 2010, the Commission issued an order remanding this matter to the ALJ, specifically requesting that the ALJ:

> ... 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.[2]

The Commission also requested that the ALJ "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."[3]

Based on the proceedings herein, the Administrative Law Judge makes the following:

ORDER

Intervention

1. The parties to this remand proceeding remain as those who were admitted during the matter in chief. No further Petitions to Intervene have yet been filed with the Administrative Law Judge. Because the focus of the remand differs from the earlier proceeding, it is appropriate to allow for additional intervention. Because this is a narrowly-focused proceeding, any person seeking to intervene must demonstrate that the interest sought to be represented falls within the geographic limitations of this remanded contested case.

2. The deadline to intervene as a party is **September 2, 2010**. Petitions to Intervene received after September 2, 2010, will be considered, but the scope of participation may be limited.[4]

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[1] USFWS Letter, June 10, 2010 (eDocket No. 20106-51560-01).
[2] Commission Remand Order, July 27, 2010 (eDocket No. 20107-52970-01).
[3] *Id.*
[4] Minn. R. 1400.6200, subp. 3

3. Any party objecting to the petition shall file its objection within seven days of receipt.

4. Persons who are not parties may, upon request, be granted the opportunity for limited participation, including the opportunity to testify, offer exhibits and question other party's witnesses, but will not be deemed a party by reason of such participation.[5] Persons who are not parties are encouraged to provide their testimony and exhibits at the public hearings.

Schedule

5. The following schedule is adopted:

Intervention Deadline	September 2, 2010
Direct Testimony Filed – All Parties	September 10, 2010
Rebuttal Testimony– All Parties	September 28, 2010
Surrebuttal Testimony (if any)	At the Evidentiary Hearing
Conference Call – Witnesses and hearing preparation	TBD
Public/Evidentiary Hearings – (Belle Plaine, LeSueur, Arlington, St. Paul*, locations and times TBD) *If needed, to finish evidentiary hearing.	October 4-6, 2010 October 20-22, 2010 (If necessary to finish evidentiary hearing in St. Paul)
Public Comment Deadline	October 18, 2010
Briefs/OES Comments	TBD
ALJ Report	TBD
Exceptions	TBD
Argument before the Commission	TBD
Commission Order	TBD

[5] Minn. R. 1400.6200, subp. 5.

6. The parties shall file and serve a list of proposed hearing exhibits, and the anticipated order that their witnesses will be called to testify by the time of the conference call for that purpose. Any party needing to call a previously unidentified witness shall supplement the witness and exhibit lists as soon as practicable.

7. As time permits, the Evidentiary Hearing will be held in the Public Hearing locations. If necessary, the remainder of the Evidentiary Hearing will be held at the Public Utilities Commission in St. Paul, at times to be announced October 20-22, 2010. Parties that intend to offer exhibits into the hearing record shall discuss the numbering and other matters with the court reporter prior to the start of that day's Evidentiary Hearing.

Discovery

8. A party may serve requests for information on any other party. All requests for information shall be made in writing by e-mail and, upon request, a copy of the request shall be sent by regular U.S. mail or other delivery service to all parties.

9. If the request for information or the response contains material designated as Trade Secret or Nonpublic information under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, the providing party may seek a Protective Order and require that the requesting party comply with the terms of the Protective Order before the information is provided.

10. To the extent that a request includes material designated as Trade Secret or Nonpublic, an e-mail request is required only between the requesting and responding party. Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by e-mail after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday is considered received on the next business day.

11. Requests to the Applicants for information shall be directed to the Applicants' outside counsel, Ms. Agrimonti.

12. The party responding to the request shall provide the requested information to the requesting party within eight business days of receipt of the request. A business day does not include weekend days and Minnesota state holidays. In accordance with Minn. R. 1400.6100, subp. 1, the day that the information request is received is not counted in the eight-day period. If the request is received after 4:30 on a business day, the following business day is also not counted in the calculation of the response period.

13. Responses to information requests shall be submitted by e-mail, and, upon request, the responding party shall follow the e-mail with a copy of the response sent by regular U.S. mail or other delivery service. To the extent that a response includes material designated as Trade Secret or Nonpublic, an e-mail

response is required only between the requesting party and the responding party. Any response received before 4:30 p.m. on a business day is considered to be received on the same day. Any response that is received after 4:30 on a business day is considered to be received the following business day.

14. In the event that due to the volume or nature of information included in a response, the responding party is unable to send the response by e-mail, the responding party shall send the response by facsimile, regular U.S. mail or other delivery service so that the requesting party receives the entire response including any material designated as Trade Secret or Nonpublic by the date due. Responding parties may utilize CD-ROMs or DVD-ROMs to convey large volumes of data. The documents so conveyed must be readable using readily available software applications. If the response is sent by facsimile, the responding party shall, upon request, follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

15. A party that wishes to receive e-mail copies of requests or responses shall notify the requesting/responding party, who shall provide the information in that format.

16. In the event the information cannot be supplied within eight business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party.

17. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Hearings on such motions may be conducted by telephone conference call.

Prefiled Testimony

18. All prefiled testimony shall be eFiled with the using the eFile system of the Public Utilities Commission, the Department and the Office of Administrative Hearings. The eFile system is accessed through the Internet at: https://www.edockets.state.mn.us/EFiling/security/login.do?method=showLogin. Each party shall bring a hard copy of their documents to marked as exhibits and offered for admission into the record at the Hearing. The offering party will mark the hard copy with the unique eFile identifying number. The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the Hearing.

19. Prefiled testimony that is amended, or not offered into the record, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three days prior to the commencement of the Evidentiary Hearing.

Order of Testimony at the Evidentiary Hearing

20. Unless the parties agree otherwise, the order of testimony shall be: Applicants, U-CAN, No CAPX 2020, other intervenors (in order of intervention), and OES. Questioning of the witnesses shall proceed in the same order, subject to change by agreement of the parties or further order of the Administrative Law Judge.

21. If a witness needs a day certain to offer testimony, the sponsoring party should submit a request to the Administrative Law Judge and other parties.

Examination of Witnesses at the Evidentiary Hearing

22. Witnesses shall be allowed ten minutes to summarize their prefiled testimony or to present their Surrebuttal Testimony.

23. Where a witness has provided prefiled testimony, the witness will identify that testimony, including the unique document number of that testimony in the eFiling system. Where changes are made to that testimony at the hearing, the changes will be provided in a separate document, or noted directly on the hard copy of that testimony available at the hearing. Where changes are made on the hard copy, each change will be tagged for later eFiling.

24. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

25. Except for good cause shown, objections by any party relative to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, and serves a copy of such objections on the parties, no later than the beginning of the hearing on September 24, 2010. Objections to rebuttal testimony shall be filed and served no later than October 4, 2010, at the beginning of the evidentiary hearing.

Procedure

26. The rules of the Office of Administrative Hearings govern the conduct of the hearings, and the Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

Filing of Documents (Excluding Information Requests and Responses)

27. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

28. The parties, including intervenors, shall file all documents, including prefiled testimony, using the eFile system. Such eFiling constitutes service on those offices and upon any other party that has agreed to accept eFiling as service.

29. The original document shall be filed using the eFile system wherever feasible. Otherwise, the original document shall be filed by delivery or mail with the Administrative Law Judge.

30. The effective date of filing shall be the date the document is eFiled, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the eFiling system must retain the unique document identifier as proof of service through that system. Proof of service shall be filed with each document or within three business days thereafter.

31. With the exception of Trade Secret and other Nonpublic data, copies of all documents that are filed shall be served by e-mail according to the attached service list by 3:00 p.m., and a hard copy shall also be mailed or delivered that day to the persons so indicated on the official service list. The list will be revised as necessary by the Office of Administrative Hearings.

32. Hard copies of Trade Secret and other Nonpublic data shall be transmitted by U.S. Mail or courier to the parties who have agreed to comply with the Protective Agreement and Order. Such documents may be served on the next business day following the filing of the public version.

33. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission.

34. If Trade Secret or Nonpublic data is filed with the Administrative Law Judge, it shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures may be viewed at: http://www.puc.state.mn.us/portal/groups/public/documents/pdf_files/000671~2.pdf. Access to nonpublic data shall be governed by the Protective Agreement and Order issued in this proceeding.

Public Comment

35. Public hearings will be scheduled, and public notice given. Any proposed notice shall be approved by the ALJ prior to publication. In order to be considered, written public comments should be filed with the Administrative Law Judge on or before **4:30 p.m.** on **October 18, 2010**. Comments may be filed by U.S. Mail, fax, or e-mail to capx.oah@state.mn.us. Consistent with the Commission's limited grant of jurisdiction on remand, public comments must address the topics identified on remand (appropriate crossing points, impact on wildlife) or impacts arising from the necessary changes to the route arising from changing the Minnesota River crossing point.

Court Reporter

36. The Office of Administrative Hearings will arrange to have a court reporter present at the hearing. Parties must make arrangements with the Court Reporter to obtain a copy of the transcript. The Court Reporter should receive copies of all filings that address the schedule in this matter, and copies of the prefiled testimony. The Information Requests and Responses should not be sent to the Court Reporter or the Administrative Law Judge.

Request for Accommodation

37. No person has requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly if either an accommodation or interpreter is needed.

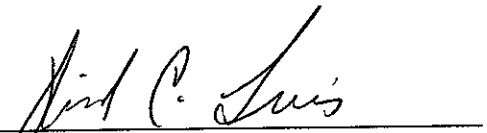
Subpoenas

38. Requests of subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the Administrative Law Judge pursuant to Minn. R. 1400.7000. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at *www.oah.state.mn.us*.

Modification of Order

39. The terms of this Order may be modified, for good cause shown, on motion of any party or at the discretion of the Administrative Law Judge.

Dated this 18 th day of August, 2010.



RICHARD C. LUIS
Administrative Law Judge

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
P. O. BOX 64620
ST. PAUL, MINNESOTA 55164-0620

CERTIFICATE OF SERVICE

Case Title: ***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**

Mary Osborn certifies that on the 18th day of August, 2010, she served a true and correct copy of the First Prehearing Order on Remand; by electronic mail (or as indicated on the Service List) to the following individuals:

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
Lisa	Agrimonti	lagrimonti@briggs.com	Briggs And Morgan, P.A.	2200 IDS Center80 South 8th Street Minneapolis, MN 55402	Electronic Service	No
Julia	Anderson	Julia.Anderson@state.mn.us	Office of the Attorney General-DOC	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Paper Service	Yes
Kenn	Barnaby	kenn.barnaby@wellsfargo.com	Cushman and Wakefield of MN	2701 Wells Fargo Way MAC: X9901-02T Minneapolis, MN 55467	Electronic Service	No
Robert	Bauer	BauerR@seversonsheldon.com	Severson, Sheldon, Dougherty & Molenda, P.A.	7300 West 147th Street, Suite 600 Apple Valley, MN 55124	Electronic Service	No
Bob	Cupit	bob.cupit@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012198	Electronic Service	Yes

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
Scott	Ek	scott.ek@state.mn.us	Department of Commerce	N/A	Electronic Service	No
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	Yes
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes
Karen Finstad	Hammel	Karen.Hammel@state.mn.us	Office of the Attorney General-DOC	1400 BRM Tower 445 Minnesota Street St. Paul, MN 551012131	Paper Service	Yes
Valerie	Herring	vherring@briggs.com	Briggs and Morgan, P.A.	2200 IDS Center 80 S. Eighth Street Minneapolis, MN 55402	Paper Service	No
Michael	Kaluzniak	mike.kaluzniak@state.mn.us	Public Utilities Commission	Suite 350 121 Seventh Place East St. Paul, MN 55101	Paper Service	No
Michael	Klemm	KlemmM@seversonsheldon.com	Severson, Sheldon, Dougherty & Molenda, P.A	7300 West 147th Street, Suite 600 Apple Valley, MN 55124	Electronic Service	No
Phillip R.	Krass	Pkrass@krassmonroe.com	Krass Monroe, P.A.	Suite 1000 8000 Norman Center Drive Minneapolis, MN 554371178	Paper Service	No
Michael	Krikava	mkrikava@briggs.com	Briggs And Morgan, P.A.	2200 IDS Center80 South 8th Street Minneapolis, MN 55402	Electronic Service	No
John	Lindell	agorud.ecf@state.mn.us	Office of the Attorney General-RUD	900 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Paper Service	Yes
Richard C.	Luis	Richard.Luis@state.mn.us	Office of Administrative	PO Box 64620	Paper Service	Yes

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
			Hearings	St. Paul, MN 551640620		
Paula	Maccabee	Pmaccabee@visi.com	Just Change Law Offices	1961 Selby Avenue St. Paul, MN 55104	Paper Service	No
Russell	Martin	bens@integra.net		11600 270th Street Elko, MN 55020	Electronic Service	No
Joyce H.	Osborn			PO Box 1165 Burnsville, MN 55337	Paper Service	No
Carol	Overland	overland@legalectric.org	Legalectric, Inc.	P.O. Box 176 Red Wing, MN 55066	Electronic Service	No

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
Priti R.	Patel	priti.r.patel@xcelenergy.com	Xcel Energy	5th Floor 414 Nicollet Mall, 5th Flr Minneapolis, MN 554011993	Paper Service	No
Deborah	Pile	Deborah.Pile@state.mn.us	Department of Commerce	Suite 50085 7th Place East St. Paul, MN 551012198	Electronic Service	No
Craig	Poorker	cpoorker@grenergy.com	Great River Energy	12300 Elm Creek Boulevard Maple Grove, MN 55369	Paper Service	No
Pamela J.	Rasmussen	pamela.jo.rasmussen@xcelenergy.com	Xcel Energy	PO Box 8 1414 West Hamilton Avenue Eau Claire, WI 54701	Paper Service	No
Laureen	Ross McCalib	lrossmccalib@grenergy.com	CapX2020/Great River Energy	12300 Elm Creek Boulevard Maple Grove, MN 553694718	Electronic Service	No
Carole	Schmidt	cschmidt@grenergy.com	Great River Energy	12300 Elm Creek Boulevard Maple Grove, MN 553694718	Paper Service	No

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	Ste 122 9100 W Bloomington Frwy Bloomington, MN 55431	Electronic Service	Yes
Donna	Stephenson	dstephenson@grenergy.com	Great River Energy	12300 Elm Creek Boulevard Maple Grove, MN 55369	Paper Service	No

MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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August 18, 2010

To: All Participants on the ALJ's Service List

Re: ***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*;**
MPUC Docket No. ET-2/TL-08-1474
OAH Docket No. 7-2500-20283-2

The document listed below has been filed with the E-Docket system and served as specified on the attached service list.

First Prehearing Order on Remand

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: (651) 361-7843

RCL:mo