

OAH 8-2500-23147-2  
MPUC E-002 / CN-12-113

OAH 8-2500-22806-2  
MPUC E-002 / TL-11-152

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

In the Matter of the Application for a Certificate  
of Need for the Hollydale 115 kV Transmission  
Line Project in the Cities of Plymouth and  
Medina

**ORDER GRANTING  
MOTION FOR  
CERTIFICATION**

and

In the Matter of the Route Permit Application for  
the Hollydale 115 kV Transmission Line Project  
in the Cities of Plymouth and Medina, Hennepin  
County

These matters came before Administrative Law Judge Eric L. Lipman for a  
Prehearing Conference on December 17, 2013.

The Prehearing Conference was called to hear argument from the parties on the  
Joint Applicants' earlier Motions to Withdraw and for Certification of Issues to the  
Minnesota Public Utilities Commission.

During the conference, the following parties noted their appearance:

Valerie T. Herring and Lisa Agrimonti, Briggs & Morgan, LLP, Mara N. Koeller,  
Xcel Energy, and Marsha Parlow and Carole Schmidt, Great River Energy, appeared on  
behalf of the Joint Applicants, Xcel Energy and Great River Energy (the Joint  
Applicants).

Paula Maccabee, Just Change Law Offices, appeared on behalf of the Western  
Plymouth Neighborhood Alliance, Incorporated (WPNA).

Carol A. Overland, Legalectric - Overland Law Office, appeared on behalf of Amy  
and Chris Barry (the Barry Family).

Julia Anderson, Assistant Attorney General, appeared on behalf of the Minnesota  
Department of Commerce – Division of Energy Resources (DOC-DER).

Michael Kaluzniak, Scott Ek, and Hwikwon Ham, appeared on behalf of the Minnesota Public Utilities Commission (the Commission).

### **STATEMENT OF ISSUES**

1. Should the Commission grant the Joint Applicants' Petition to Withdraw Certificate of Need and Route Permit Applications?
2. Should the Commission condition the withdrawal of the applications for a Certificate of Need and Route Permit?

Based upon submissions of the parties and the contents of the hearing record, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

#### **Procedural History**

1. On June 30, 2011, the Joint Applicants filed an application for a route permit. The permit sought authorization for the routing of a 115 kilovolt (kV) transmission line project in the cities of Plymouth and Medina in Hennepin County (the Hollydale Project).
2. The Joint Applicants' route permit application sought to upgrade approximately eight miles of existing 69 kV transmission line to 115 kV capacity. Additionally, the Joint Applicants sought to construct approximately 0.8 miles of new 115 kV transmission line, construct a new 115 kV substation, and modify associated transmission facilities.
3. On August 25, 2011, the Commission accepted the route permit application as substantially complete.
4. On May 12, 2012, the Commission issued a Notice and Order for Hearing referring the route permit matter to the Office of Administrative Hearings for contested case proceedings.
5. Public hearings to update the scoping decision for the route permit petition were held on June 7, 2012 and June 8, 2012. Approximately 360 persons attended the hearing and 45 persons provided testimony. Following the public hearings, the record remained open and another 251 written comments were received.
6. On July 12, 2012, the Joint Applicants filed a Certificate of Need application for the Hollydale Project.

7. On September 21, 2012, the Commission found the application for a Certificate of Need to be substantially complete and referred the matter to the Office of Administrative Hearings for contested case proceedings.

8. In its September 21, 2012 Order, the Commission denied the Joint Applicants' motion to consolidate the Certificate of Need and route permit dockets. It proposed that proceedings on the Certificate of Need occur before hearings on the route permit.

9. A series of scheduling conferences were held on October 23, 2012 and October 25, 2012. Following those conferences and discussions, public and evidentiary hearings on the Certificate of Need were scheduled for March 2013 and hearings on the route permit were set for May 2013.

10. On February 27, 2013, following the introduction of Senate File 716, the Joint Applicants requested a continuance of the evidentiary hearings in the Certificate of Need matter. In part, Senate File 716 proposed to modify the standard for review the Commission would use to assess the Certificate of Need application in this case. The bill reads:

**Sec. 2. TRANSMISSION LINE; CERTIFICATE OF NEED REQUIRED AND EVIDENCE REQUIRED.**

(a) A high-voltage transmission line with a capacity of 100 kilovolts or more proposed to be located within a city in the metropolitan area as defined in Minnesota Statutes, section 473.121, subdivision 2, for which a route permit application was filed between June 2011 and August 2011, and a certificate of need application was filed between June 2012 and August 2012, to rebuild approximately eight miles of 69 kilovolt transmission with a high-voltage transmission line to meet local area distribution needs, must be approved in a certificate of need proceeding conducted under Minnesota Statutes, section 216B.243. The certificate of need may be approved only if the commission finds by clear and convincing evidence that there is no feasible and available distribution level alternative to the transmission line. In making its findings the commission shall consider the factors provided in applicable law and rules including, without limitation, cost-effectiveness, energy conservation, and the protection or enhancement of environmental quality.

(b) Further proceedings regarding the routing of a high-voltage transmission line described in this section shall be suspended until the Public Utilities Commission has made a determination that the transmission line is needed.

**EFFECTIVE DATE.** This section is effective the day following final enactment and applies to route permits and certificate of need applications pending on or after that date.

11. On March 6, 2013 and March 7, 2013, public hearings were held on the Certificate of Need matter. Approximately 200 persons attended these hearings.

12. On April 4, 2013, the Minnesota Senate added the text of Senate File 716 to Senate File 521. The Senate then approved the modified Senate File 521 and remitted to the Minnesota House of Representatives for review.

13. On April 24, 2013, the Administrative Law Judge issued an Order rescheduling the evidentiary hearings in the Certificate of Need matter for September 2013.

14. On May 8, 2013, the Minnesota Senate received a version of Senate File 521 as further amended by the House of Representatives. Approving of the changes made to the bill by the House, the Senate re-passed Senate File 521 and presented it to Governor Dayton for his signature.

15. On May 13, 2013 Governor Dayton signed Senate File 521 into law as Chapter 57 of the 2013 Laws of Minnesota.

16. On July 8, 2013, the Joint Applicants sought an extension of deadlines and a modification of the hearing schedule in the Certificate of Need proceedings.

17. On August 13, 2013, the Administrative Law Judge granted the Joint Applicants' extension in the Certificate of Need, set a supplemental public hearing for November 7, 2013 and evidentiary hearings for November 12-15, 2013.

18. On October 25, 2013, following the submission of supplemental direct testimony from the Joint Applicants, the DOC-DER requested a continuance of the Certificate of Need proceedings.

19. On November 6, 2013, the Administrative Law Judge issued an Order cancelling the deadline for submission of supplemental rebuttal testimony and cancelling the evidentiary hearings that were set for November 12 through 15, 2013.

20. On November 7, 2013, supplemental public hearings were held on the certificate of need. Approximately 300 people attended.

21. On November 26, 2013, on agreement of the parties, the Administrative Law Judge issued an order re-setting filing deadlines and scheduling an evidentiary hearing on the Certificate of Need for January 6 through 10, 2014.

22. On December 10, 2013, the Joint Applicants filed a petition to withdraw the Certificate of Need and route permit applications. The Joint Applicants further requested that their withdrawal request be certified to the Commission.

23. On December 17, 2013, the Administrative Law Judge conducted a prehearing conference on the Joint Applicants' petition to withdraw. WPNA and the Barry Family expressed concern that concerned "that the hundreds of citizen comments in this record not be sacrificed" following a withdrawal of the applications.

24. WPNA asked that conditions be placed upon the withdrawal of the applications – namely, that:

a. the Joint Applicants be precluded from resubmitting a variant of the Hollydale 115 kV transmission project, a rebuild project or an upgrade project along the existing 69 kV corridor.

b. the Joint Applicants submit compliance filings to show that distribution improvements are promptly made to meet distribution needs in the Plymouth area.

c. the record of submissions in MPUC Dockets No. 11-153 and 12-113 be maintained for use and inclusion in any record on follow-on applications for Certificate of Need or Route Permits in this same transmission line corridor.

24. The Barry Family concurred with WPNA's requests and further requested, in the alternative, that the Commission Order that the existing 69 kV transmission line be removed and that the underlying easements be returned to the fee owners.

30. On December 18, 2013, the Administrative Law Judge issued an Order vacating scheduling milestones and holding Applicants' petition under advisement pending submissions from the parties.

### **CONCLUSIONS OF LAW**

1. The Public Utilities Commission and the Administrative Law Judge have jurisdiction over the Joint Applicants' Route Permit and Certificate of Need Application.

2. The Joint Applicants' Motion for Certification is properly before the Administrative Law Judge pursuant to Minn. R. 1400.7600.

3. Because there is no limitation in Minnesota statute or rule on the right to withdraw an application before the evidentiary hearing, the Joint Applicants are entitled to withdraw their applications as a matter of right.<sup>1</sup>

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<sup>1</sup> See also, *Thomas Hodgson & Sons, Inc. v. F.E.R.C.*, 49 F.3d 822, 824 and n.4 (1st Cir. 1995).

4. The hearing record does not support a requirement that Great River Energy be directed to return its easements to the adjoining fee owners along the 69 kV transmission line corridor.

5. Because the Joint Applicants' withdrawal will result in termination of the two proceedings, it is appropriate to certify this motion to the Commission for a final decision.<sup>2</sup>

6. The Joint Applicants' proposal of a transmission line route along the existing 69kV corridor was controversial and a matter of intense public interest.

7. Interested persons invested significant time and effort in order to develop the public hearing record with relevant comments, analyses and assessments.

8. This record from the public hearings could inform future decision-making on any resubmitted applications in this area. Additionally, retaining key features of the public hearing record could assure members of the public that their analyses and feedback will not be lost if the Joint Applicants modify their proposal.

**IT IS HEREBY ORDERED THAT:**

1. The Joint Applicants' Motion for Certification is **GRANTED**.

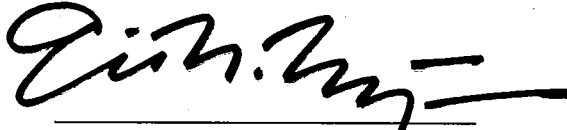
**IT IS HEREBY RECOMMENDED THAT:**

1. The Commission allow withdrawal of the Joint Applicants' applications for a Certificate of Need and a route permit for the Hollydale Project.

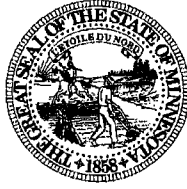
2. The Commission consider the costs and benefits of developing a summary of the comments and testimony submitted to date through the public hearing process.

3. The Commission consider requesting Commission Staff or the Office of Administrative Hearings to develop a summary of the comments and testimony developed through the public hearing process.

Dated: January 7, 2014

  
ERIC L. LIPMAN  
Administrative Law Judge

<sup>2</sup> See, Minn. R. 1400.7600 (B) and (D).



## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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January 7, 2013

See Attached Service List

**Re: In the Matter of the Route Permit Application for the Hollydale 115kV  
Transmission Line Project in the Cities of Plymouth and Medina,  
Hennepin County**

**OAH 8-2500-22806  
MPUC E-002 / TL-11-152**

To All Persons on the Attached Service List:

Enclosed herewith and served upon you is the Administrative Law Judge's  
**ORDER GRANTING MOTION FOR CERTIFICATION** in the above-entitled matter.

Sincerely,

s/Eric L. Lipman

ERIC L. LIPMAN  
Administrative Law Judge

ELL:ry

Enclosure

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE LAW SECTION  
PO BOX 64620  
600 NORTH ROBERT STREET  
ST. PAUL, MINNESOTA 55164

**CERTIFICATE OF SERVICE**

In the Matter of the Route Permit Application for the Hollydale 115 kV Transmission Line Project in the Cities of Plymouth and Medina, Hennepin County	OAH Docket No.: 8-2500-22806
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Rachel Youness, certifies that on January 7, 2013 she served a true and correct copy of the attached **ORDER GRANTING MOTION FOR CERTIFICATION** by eService, and U.S. Mail, (in the manner indicated below) 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 Center 80 South 8th Street Minneapolis, MN 55402	Electronic Service	No
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes
Raelynn	Asah	raelynn.asah@xoelenergy.com	Xoel Energy Services, Inc.	Transmission FL 8 250 Marquette Ave Minneapolis, MN 55402	Electronic Service	No
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Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	No
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