

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Great River Energy
230 kV Transmission Line-Grand Forks – Devils Lake
Siting Application**

Case No. PU-12-398

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

December 6, 2012

Appearances

Patrick J. Ward, Administrative Law Judge, Substantive Hearing Officer, Zuger Kirmis & Smith, PO Box 1695, Bismarck, ND 58502.

Donna Stephenson, Associate General Counsel, Great River Energy, 12300 Elm Creek Blvd, Maple Grove, MN 55369, on behalf of Great River Energy.

Mark Gruman, Legal Counsel, Public Service Commission, State Capitol, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

Preliminary Statement

Under North Dakota Century Code, Section 49-22-07, a utility may not begin construction of a transmission facility in the state without first having obtained a route permit. The facility must be constructed, operated, and maintained in conformity with the permit and any terms, conditions, or modifications of the permit.

On June 25, 2012, Great River Energy (GRE) filed a Letter of Intent (LOI) with the Public Service Commission notifying the Commission of GRE's intent to construct a proposed reroute of two segments along its Stanton Station to Grand Forks 230 kV Transmission Line totaling approximately 4 miles in length and located in Nelson and Ramsey Counties near the North Dakota communities of Lakota and Crary. GRE also requested the Commission shorten the one-year notice period required between filing a Letter of Intent and the filing of an Application.

On August 1, 2012 the Commission acknowledged the LOI, shortened the one-year waiting period for filing an application to 45 days and assessed a filing fee of \$14,450 due upon filing of an application.

On September 4, 2012, GRE filed its application for a certificate of corridor compatibility and a route permit to authorize construction of the reroute segments. On September 25, 2012, GRE amended its application to include a request for waiver of procedures and time schedules to allow consolidated corridor and route proceedings.

On September 27, 2012 the Commission deemed the application complete and acknowledged a September 14, 2012 request for appointment of a substantive hearing officer that was granted on September 17, 2012 with the appointment of ALJ Patrick J Ward.

On October 3, 2012 Judge Ward issued a Notice of Filing and Notice of Hearing, scheduling a public hearing to begin November 20, 2012 at 11 a.m. CT in the Basement Meeting Room at the Ramsey County Courthouse, 524 4th Ave NE, Devils Lake, North Dakota 58301. The Notice identified the following issues to be considered:

1. Will the location, construction, and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility locations minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?
4. Is it appropriate for the Commission to waive procedures and time schedules as requested, including the request for a single consolidated application for corridor certificate and route permit?

On November 9, 2012 GRE filed an amendment to its application to update right-of-way and pole structure locations along the reroute segments.

On November 20, 2012 a public hearing was held as scheduled. Nine exhibits were filed at the hearing on November 20, 2012. Thereafter, GRE late-filed Exhibit 10, which is a drawing accurately depicting methods of removal of existing pole structures located in flooded locations which will be replaced by the reroute.

Having allowed all interested persons the opportunity to be heard and having reviewed and considered all testimony and evidence presented, the Hearing Officer makes the following:

Recommended Findings of Fact

1. Great River Energy ("GRE") is a not-for-profit generation and transmission electric cooperative headquartered in Maple Grove, Minnesota. GRE owns and operates generating and transmission facilities in the State of North Dakota, including the Stanton generating station ("Stanton Station") and a 230 kilovolt ("kV") transmission line that serves as the outlet for the power generated at Stanton Station.

2. The 230 kV transmission line runs from Stanton Station to Grand Forks, and includes substations near Minot, Devils Lake, and Grand Forks. In addition to serving as the outlet for Stanton Station, the transmission line is part of an integrated electric transmission system that supplies power to the region, including to the consumers of other utilities who provide service in North Dakota. The transmission line was originally constructed in 1966, before the adoption of Chapter 49-22, N.D.C.C. (the "Siting Act").

3. Since construction of the transmission line in 1966, wetter than normal hydrologic conditions have created high water in a number of wetland basins along the transmission line route between the Ramsey Substation near Devils Lake and the Prairie Substation near Grand Forks (the segment of line known as the "GD Line"). As a consequence of the high water conditions, several transmission line structures along the GD Line are in standing water. The high water levels around the transmission structures cause (1) safety concerns due to the loss of minimum National Electric Safety Code ("NESC") clearance between the transmission line conductor and the surface of the water during certain operating conditions, and (2) reliability concerns due to GRE's inability to perform regular maintenance on the structures located in deep water, except during frozen conditions. During 2011-12, GRE performed a survey and engineering analysis recommended by the North American Electric Reliability Corporation ("NERC"). The results of the survey and engineering analysis identified, among other things, two short sections within Segments 7 and 8 of the GD Line with compromised clearances due to increased water elevations.

Project Route, Design, Construction and Schedule

4. To address the compromised clearances and ensure the continued reliable operation of the transmission line, GRE proposes to reroute two sections of the GD Line out of the high water (the "Project"). The first section involves the relocation of approximately 1.4 miles of transmission line, including 11 transmission structures, to the south of the high water in Jones Lake in the area of Lakota (referred to herein as the "Segment 7 Relocation"). The second section involves the relocation of approximately 1.8 miles of transmission line, including 13 transmission structures, to the north of the high water near the City of Crary (referred to herein as the "Segment 8 Relocation").

5. The majority of the rerouted sections of the GD Line will be constructed using wood H-frame structures of similar design as the existing transmission line. As indicated in the Application, GRE will also construct access roads as part of the Project.

6. The width of the right-of-way of the rerouted sections of line will be 150 feet.

7. The total cost for the project is estimated at \$2.9 million.

8. GRE intends to proceed with construction of the rerouted sections of the GD Line as expeditiously as permitting, right-of-way acquisition, material procurement and weather conditions allow. GRE's goal is to complete the construction of the rerouted sections by April of 2013.

9. The rerouted segments of the GD Line will be designed and constructed to meet or surpass all relevant state codes and standards, as well as the codes and standards of the National Electric Safety Code, the Institute of Electrical and Electronics Engineers, the American Society of Civil Engineers, and the Avian Power Line Interaction committee suggested practices for raptor-safe design. Upon completion of construction, the rerouted sections of the GD Line will conform to the clearance requirements of the NESC.

Route Study and Mitigation Measures

10. The Commission has established criteria pursuant to Section 49-22-05.1 of the North Dakota Century Code to guide the Commission in evaluating the suitability of granting a Certificate of Corridor Compatibility and Route Permit. The criteria, as set forth in Section 69-06-08-02 of the North Dakota Administrative Code, are classified Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria.

11. In the case of each reroute area, GRE studied a 1000 foot wide route corridor ("Project Corridor"). The Project Corridor for the Segment 7 Relocation is located to the south of the existing centerline of the transmission line. The Project Corridor for the Segment 8 Relocation is to the north of the existing centerline of the transmission line. The Project Corridors are the most direct routes for the rerouted sections of transmission line that minimize impacts associated with the criteria set forth in Section 69-06-08-02 of the North Dakota Administrative Code.

12. GRE's Application to the North Dakota Public Service Commission for a Transmission Facility Certificate of Corridor Compatibility and Route Permit, dated August 31, 2012 ("Application"), included the specific proposed route alignment for the Segment 7 Relocation and the Segment 8 Relocation, including the proposed locations of the transmission line structures. As a consequence of further study of the Project Corridors, including discussions with landowners and the U.S. Fish and Wildlife Service ("USFWS"), GRE filed an amendment to the Application on November 9, 2012. The amendment included adjustments to the alignment and transmission structure locations. The maximum offset of the rerouted line from the centerline of the existing transmission line is less than one mile.

13. The areas in the vicinity of the rerouted sections of transmission line are characterized by a rolling topography of cultivated land on the higher ground and a prairie pothole wetland ecosystem in the lower areas. The areas are rural with sporadic homesteads, with wooded wind breaks and groves surrounding the homes and along some fence lines.

14. GRE conducted a hydrologic analysis, using methodologies developed by the North Dakota Department of Transportation, to determine the maximum water levels in the vicinity of the Segment 7 Relocation and Segment 8 Relocation to appropriately locate the new transmission structures in areas that would not be subject to future flooding.

15. GRE evaluated a proposed 1000 foot-wide transmission facility corridor.

16. N.D.A.C. §69-06-08-02 provides that Exclusion and Avoidance Areas may be located within a corridor, but at no given point shall such an area encompass more than 50 percent of the corridor width, unless there is no reasonable alternative.

17. N.D.A.C. §69-06-08-02 provides that a transmission facility route must not be sited within an Exclusion Area. A transmission facility route must also not be sited within an Avoidance Area unless the Applicant shows under the circumstances there are no reasonable alternatives.

18. No Exclusion Areas have been identified within the proposed corridor. Potential cultural resources identified within the corridor are described in paragraph 20. The transmission line structures are located to avoid impact to the potential cultural resources.

19. At no point within the proposed corridor does an Avoidance Area encompass more than 50 percent of the Corridor width.

20. A Class III Pedestrian survey was conducted over a 1,000 foot-wide corridor along the proposed reroutes. The survey identified three prehistoric mounds and one historic homestead. The sites are significantly disturbed and would not be eligible for designation by the National Register of Historic Places. The transmission line structures are located to avoid impact to the sites.

21. There are four residences within a half mile of the Project Corridor associated with the Segment 7 Relocation. Of those residences, two are near the edge of the corridor, but are not within the corridor and none are within 500 feet of the proposed route.

22. A large water body to the south of the Segment 8 Relocation is located within the Cray State Wildlife Management Area, however no part of this 311-acre wildlife management area is within the Project Corridor for the Segment 8 Relocation.

23. There are USFWS wetland conservation easements and jurisdictional wetlands within the Project Corridors. Structures will be placed to avoid or minimize impacts to the USFWS easements and jurisdictional wetlands. Impacts to jurisdictional wetlands and easement wetlands will be mitigated as required by applicable federal regulations such that no habitat or wetland function or service loss will occur.

24. GRE has analyzed the impact of the Project in relation to all the relevant Selection Criteria. GRE selected reroute alignments along existing rights-of-way and field edges where practical to minimize the impact to cultivated land. GRE also worked with the landowners and the tenants designated by the landowners to further optimize the structure locations, including guy wire anchors, to minimize impacts to cultivated land. The reroutes attempt to minimize the permanent impact on agricultural land due to the placement of the new transmission structures.

25. In accordance with the Commission's Selection Criteria, a corridor or route may be approved if it is demonstrated that any significant adverse impacts that will result from the location, construction, and maintenance of the transmission facility will be of an acceptable minimum or managed at an acceptable minimum.

26. GRE submitted information in its application and through testimony that any significant adverse effects from the location, construction and maintenance of the transmission facility as they relate to the Selection Criteria listed at N.D.A.C. §69-06-08-02(3) will be at an acceptable minimum or will be managed and maintained at an acceptable minimum.

27. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits from the adoption of certain policies and practices.

28. GRE submitted information in its application and through testimony demonstrating its commitment to maximize the benefits of the proposed transmission facility to meet the Policy Criteria set forth in N.D.A.C. §69-06-08-02(4).

29. N.D.C.C. §49-22-16.3 provides that an applicant for a route permit from the Commission shall obtain all permits that may be required to construct and operate the transmission facility.

30. GRE contacted a number of agencies regarding the Project. The following agencies supplied written comments: the North Dakota Department of Health, the North Dakota Department of Transportation, the North Dakota Game and Fish Department, the State Historical Society of North Dakota, the North Dakota State Water Commission, the Department of the Army Corps of Engineers, and the U.S. Fish and Wildlife Service.

31. In its comments, USFWS made recommendations concerning migratory birds and bald and golden eagles. GRE will design the rerouted sections of the transmission line considering the suggested guidance regarding prevention of raptor electrocutions contained in the publication entitled *Suggested Practices for Raptor Protection on Power Lines: the State of the Art in 1996*. GRE will also work with the USFWS to identify areas where the rerouted sections of the transmission line will be marked consistent with the recommendations in the publication entitled *Migrating Bird Collisions with Power Lines: The State of the Art in 1994*. With respect to migratory birds and eagles, construction activities are planned to take place in the winter months of 2012-2013, therefore impacts to migration or the breeding season are not anticipated.

32. Consistent with past transmission reroutes due to high water in the vicinity of Devils Lake, GRE will remove the abandoned transmission structures located in the standing water at the level just above the existing rock piles or foundations supporting and protecting the structures. GRE will perform the removal as soon as frozen conditions allow access to the abandoned transmission structures.

33. GRE made other representations and agreements as contained in the Certification Relating to Order Provisions – Electric Transmission Line Siting executed by GRE and filed with the Commission, which is incorporated in these Findings of Fact.

Recommended Conclusions of Law

1. The Commission has jurisdiction over this proceeding under N.D.C.C. Chapter 49-22.
2. GRE is a utility as defined in Section 49-22-03(13) of the North Dakota Century Code.
3. The 230 kV transmission line reroutes proposed by GRE are transmission facilities as defined in N.D.C.C. §49-22-03(12).
4. The location, construction, and operation of the proposed transmission facilities will produce only minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

5. The Application submitted by GRE meets the corridor and route evaluation criteria required by Chapter 49-22 of the North Dakota Century Code.
6. The proposed transmission facility corridor and route will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.
7. The proposed transmission facilities are compatible with the environmental preservation and the efficient use of resources.
8. The requested waivers of procedures are appropriate and justified based upon: the minimal impacts on the environment and the welfare of the citizens of North Dakota; the lack of objection to the proposed transmission facility by federal, state and local government bodies and agencies, or by landowners along the route; and the objective to maintain a reliable integrated transmission system in North Dakota.
9. The proposed transmission facilities are of such length, design, location, and purpose that it will produce minimal adverse effects in accordance with Section 49-22-07.2 of the North Dakota Century Code.

From the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer issues the following:

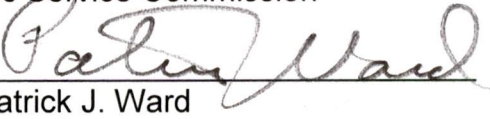
Recommended Order

1. GRE's Application for a Waiver of Procedures and Time Schedules be granted.
2. That a Certificate of Corridor Compatibility be issued to GRE, designating a 1,000 foot-wide Corridor for its proposed transmission facility as described in GRE's Application and presented at the hearing.
3. That a Route Permit be issued to GRE, granting authority to relocate two portions of its 230 kV electric transmission line in Nelson and Ramsey Counties, North Dakota, as indicated in the Amended Application, one near Lakota and the other near Crary, North Dakota.
4. That the Certification Relating to Order Provisions – Electric Transmission Line Siting executed by GRE with accompanying Tree and Shrub Mitigation Specifications be incorporated by reference and attached to the order issued by the Commission, except that GRE may clear cut the entire width of the right-of-way through windbreaks, shelterbelts and all other wooded areas and GRE may extend the time requirement for the filing of as-built drawings to be within six (6) months of the completion of construction.
5. That GRE shall obtain SHPO concurrence with the Class III transmission line ROW cultural resource survey recommendation of "no historic properties affected" and

file a copy of the concurrence with the Commission prior to beginning construction in those surveyed ROW areas.

Dated: 12/6, 2012

State of North Dakota
Public Service Commission

By: 

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