

STATE OF MINNESOTA

BEFORE THE PUBLIC UTILITIES COMMISSION

In the Matter of the Petition to Transfer a
portion of the Route Permit for the HVDC
Transmission Line System and Associated
Facilities in Minnesota

PUC Docket No. ET2/TL-21-434

CLEAN ENERGY ORGANIZATIONS' REPLY COMMENTS

On Behalf Of
Fresh Energy
Sierra Club
Clean Up The River Environment
Minnesota Center for Environmental Advocacy

August 11, 2021

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INTRODUCTION

Clean Energy Organizations¹ (“CEOs”) submit this Reply Comment in response to the Commission’s July 26, 2021 *Notice of Extended Reply Comment Period*.

I. Additional Information Is Necessary For The Commission To Review The Transfer Petition.

A. The HVDC Line is an important part of Minnesota’s transmission infrastructure.

The transmission line that is at issue in this docket, the Minnesota portion of the 435 mile High Voltage Direct Current (“HVDC”) 410kV power line running from Coal Creek Station in North Dakota to the Dickinson Substation in Rockford, Minnesota, was the subject of one of the most contentious fights in state environmental history.² Litigation over the route and related condemnation proceedings lasted years and resulted in the Minnesota Supreme Court case of *No Power Line, Inc. v. Minnesota Env’t Quality Council*, 262 N.W.2d 312, 317 (Minn. 1977), one of the first cases to review the 1973 Minnesota Power Plant Siting Act (currently Minn. Stat. Ch. 216E).

HVDC lines that link power generators and resource-rich areas to load centers are of key importance to a modern electric grid. According to the Energy Systems Integration Group (ESIG), “the nation’s transmission infrastructure must at least double to accommodate the exponential

¹ Clean Energy Organizations consist of Minnesota Center for Environmental Advocacy, Sierra Club, Fresh Energy, and Clean Up the River Environment.

² Many local farmers and others fought the line in the courts, through public protests, and by sabotage. During construction, twenty power line support towers were toppled and thousands of electric insulators were damaged by gunfire. See Mary Losure, *The towers are falling*, Minnesota Public Radio (Dec. 9, 2002), http://news.minnesota.publicradio.org/features/200212/08_losurem_powerline6/; Douglas E. Kneeland, *Minnesota Farmers Harass Surveyors for Power Lines*, N.Y. Times (Jan. 25, 1978), <https://www.nytimes.com/1978/01/25/archives/minnesota-farmers-harass-surveyors-for-power-lines.html>.

growth of wind and solar that will accompany decarbonization.”³ As part of this projected build-out, ESIG’s modeling calls for an upgraded and expanded HVDC line between central North Dakota and the Twin Cities to import wind generated power.⁴ Maintaining and making efficient use of existing transmission infrastructure is equally important in light of the region and nation’s transmission expansion needs.

B. Minn. R. 7850.5000 requires more than a bare assertion that the Transferee “Can Comply” with the terms of the Route Permit.

In order to approve the permit transfer sought in this docket, the Commission must “determine whether the new permittee can comply with the conditions of the permit.”⁵ Here, Great River Energy (GRE) has proposed transferring ownership of the HVDC line to Nexus Line, LLC (Nexus), a company formed specifically to own this particular powerline.⁶ Nexus has no assets and no experience owning or operating a power line.⁷ Nexus is an affiliate of Rainbow Energy Marketing Corp, a North Dakota-based asset management and energy trading company. Because the Permit at issue in this docket requires the permittee to maintain and operate the line, as well as to provide for the restoration of the impacted land when the line is no longer needed, Nexus’s financial stability and revenue sources are critical issues in this matter.

³ *Transmission Planning for 100% Clean Energy*, Energy Systems Integration Group (2021), <https://www.esig.energy/transmission-planning-for-100-clean-electricity/>.

⁴ Aaron Bloom et al., *Transmission Planning for 100% Clean Energy*, Energy Systems Integration Group at 17-18, Figure 7 (2021), <https://www.esig.energy/wp-content/uploads/2021/02/Transmission-Planning-White-Paper.pdf>.

⁵ Minn. R. 7850.5000, subp. 1.

⁶ *Great River Energy and Nexus Line, LLC’s Joint Request for Partial Transfer of Legacy Construction Permit*, Docket No. ET2/TL-21-434 at 2 (July 1, 2021) (“Nexus is a special purpose entity that was formed to acquire and own the HVDC System.”).

⁷ See Nexus Line, LLC and Rainbow Energy Center, LLC, *Application for Authorization Pursuant to Section 203 of the Federal Power Act and Request for Confidential Treatment*, at 4-6 (July 8, 2021) (attached as Exhibit 1) [hereinafter “FERC Filing”]. In fact, none of Nexus’s affiliates or parent companies owns any power lines or power generators. *Id.*

As support for the assertion that Nexus “can comply” with the Permit, Nexus and GRE point only to two things: 1) the affidavit of Mr. Tschider, stating that Nexus is able to comply, and 2) the existence of an Operations and Maintenance (O&M) Agreement between Nexus and GRE under which GRE would continue to operate and maintain the line.

Neither the affidavit nor the O&M Agreement is sufficient for the Commission to make the required determination in this case. An affidavit signed by an officer of a company without assets and without any prior demonstrated experience complying with any permit, much less a permit for a roughly 150 mile portion of a high voltage transmission line, cannot by itself form the basis for the Commission’s decision.⁸ And regarding the O&M Agreement, it is not part of the record and has not been submitted to the Commission for its review.⁹ At minimum, the Commission and other authorized stakeholders ought to review the Trade Secret version of the Agreement, and the public ought to be able to read a redacted version. Without review, there is no way to ascertain the scope, duration, and terms of the Agreement. Further, the fact that GRE will continue to operate and maintain the line begs the question of why is the line being sold at all.

More importantly, the adequacy of Nexus’s financial resources is unknown. Based on the information available, it appears that a line owned by GRE would be more reliably funded and

⁸ Recent instances of permit transfers under Minn. R. 7850.000 all involved experienced transferees known to the Commission and/or subject to its jurisdiction. *See, e.g. In re Route Permit for the Blazing Star 2 Wind Farm 115 Kv Transmission Line in Lincoln Cty.*, No. IP-6985/TL-17-701, 2019 WL 3002925, at *2 (July 8, 2019) (transfer to Xcel), and *In re Petition of N. States Power Co. & ITC Midwest, LLC for Approval of Transfer of Transmission Assets & Route Permit*, No. E-002/PA-10-685, 2010 WL 5462979, at *1 (Dec. 28, 2010) (transfer to ITC, a large independent transmission company).

⁹ While staff at the Department of Commerce have reviewed the Agreement, the Department has **not** taken a position on whether the Transfer request should be granted, noting only that “[i]f the Commission determines that Nexus will comply with the conditions of the construction permit, staff recommends approval of the permit transfer.” *See Comments and Recommendations on Proposed Permit Transfer*, Docket No. ET2/TL-21-434, Minn. Dep’t of Commerce at 2 (July 19, 2021).

maintained through contributions from its co-op members than would a line owned by an affiliate of a North Dakota energy trader.¹⁰

C. The Commission should require more information about Nexus’s plan for future permit compliance.

GRE and its predecessor cooperatives have owned, operated, and maintained the HVDC line for over four decades. Prior to allowing a transfer to a new, out-of-state, single-purpose entity with zero experience, the Commission should require additional information about Nexus, its owners, and their plans for future permit compliance.

First, Nexus should provide a corporate entity chart showing the corporate and financial relationships between Nexus, its affiliates, and parent companies so that the Commission can understand who the actual owners of Nexus are, and how the operation and maintenance of the line will be funded over the long term.

Second, Nexus should provide the general terms of both GRE’s new Power Purchase Agreement with Nexus’s affiliate and GRE’s Asset Purchase Agreement with Nexus. Reviewing the costs, terms, and duration of both Agreements will allow the Commission to assess the long-term funding for the maintenance of the line.

Third Nexus should provide an un-redacted version of the O&M Agreement to be included as part of the record and submit a redacted version for public review. Without reviewing the terms, and in particular, the duration of the Agreement, there is no way for the Commission or the public to determine whether the Agreement is sufficient to secure long-term compliance with the Permit.¹¹

¹⁰ See FERC Filing at 12 (“GRE recovers the costs of the HVDC [line] ... through rates it charges its members ...[while] Nexus, [would] not be guaranteed cost recovery but rather [would] be at risk for recovery of its costs associated with owning and operating the [line].”).

¹¹ One trade journal notes that the O&M Agreement will last only ten years. See Rod Walton, *1.15-GW Coal Creek Station gains reprieve as Co-op sells North Dakota coal-fired plant*, Power

Fourth, Nexus should provide a letter of credit or other type of financial assurance designed to ensure that any damage to landowners and tenants from operation or maintenance of the line is fully compensated. The requirement to fully compensate landowners and tenants is included in the permit as paragraph 1.13.

Fifth, Nexus should provide a letter of credit or other type of financial assurance designed to ensure that, if the line must be abandoned, the structures be removed and the land be returned to its original condition. The requirement is included in the permit as paragraph 3.1.

D. The Commission should require more data about the impact of the proposed transfer on the climate and on the State’s Climate goals under Minn. Stat. Ch. 216H.

In 2007, Minnesota took bold action on environmental preservation by passing the Next Generation Energy Act (“NGEA”).¹² NGEA set a goal to reduce statewide greenhouse gas emissions across all sectors by at least 80% by 2050.¹³ Statewide greenhouse gas emissions are not only those emissions produced within the state, but also those emissions “from the generation of electricity imported from outside the state and consumed in Minnesota.”¹⁴ Furthermore, the legislature outlined “emissions reductions principles” for agencies to consider, including that “all levels of government should lead by example.”¹⁵

Minnesota’s climate goals are relevant to this permit transfer because the Legislature directs the Commission to consider environmental preservation. The Commission derives its authority over this route permit transfer from Minn. Stat. § 216E. In that statute, the legislature

Engineering (Aug. 2, 2021), <https://www.power-eng.com/coal/1-15-gw-coal-creek-station-gains-reprieve-as-coop-sells-north-dakota-coal-fired-plant/#gref>. Additionally, GRE’s own materials state that the term is ten years. *See Comment of Geoffrey Tolley*, Docket No. ET2/TL-21-434, (Aug. 11, 2021), Attachment 1.

¹² Next Generation Energy Act, Minnesota Laws of 2007, ch. 136.

¹³ Minn. Stat. § 216H.02, subd. 1.

¹⁴ Minn. Stat. § 216H.01, subd. 2.

¹⁵ Minn. Stat. § 216H.07, subd. 5(5).

requires the Commission to make siting and routing permit decisions which are “compatible with environmental preservation and the efficient use of resources.”¹⁶

The Commission should require Nexus to submit basic information regarding which generation resources are currently using the HVDC line and how those utilization levels would change as a result of the proposed transfer, to allow an evaluation of how the proposed permit transfer would impact Minnesota’s climate goals. Although the proposed permit transfer may appear to be a routine administrative matter, the transfer is anything but routine. The proposed permit transfer is one piece of a larger effort to continue to operate Coal Creek Station,¹⁷ an unprofitable coal-fired power plant in North Dakota. The Commission should request this information in order to more fully understand the climate goal implications of approving the proposed permit transfer. The emissions from continuing to operate Coal Creek not only impact the climate, but also inhibit Minnesota’s ability to reach our climate goals. The proposed permit transfer has broad implications that should not be ignored in this docket.

II. Great River Energy Should Submit More Data About The Impact Of The Proposed Transfer On Ratepayers.

While the Commission does not set wholesale electric rates for Great River Energy’s member cooperatives, GRE should provide additional information about the impact of the permit transfer on member cooperatives and on individual member-owners in the interests of transparency.

¹⁶ Minn. Stat. § 216E.02, subd. 1.

¹⁷ North Dakota Office of the Governor, *Burgum, Sanford celebrate Coal Creek Station’s sale to Rainbow Energy Center as key to ND’s energy future* (July 30, 2021), <https://www.governor.nd.gov/news/burgum-sanford-celebrate-coal-creek-stations-sale-rainbow-energy-center-key-nds-energy-future>.

Last year, GRE announced that it would be closing Coal Creek Station and re-purposing the HVDC line, noting that in 2019, the plant lost \$170 million in energy sales.¹⁸ As reported in the media, GRE and its member cooperatives were expected to see millions of dollars in savings beginning in 2023 as a result of the closure.¹⁹ Despite this, GRE sought approval from its member cooperatives to sell the plant and commit to purchasing a portion of the plant's output for a period of ten years.²⁰ Although GRE claims that it will still save money under the pending deal — as opposed to retaining and operating the plant — the public, the Commission and the member-owners should not have to wade through media accounts to understand the projected impacts on rates. If this transaction as a whole is good for GRE members, then there is no reason why GRE should not be transparent about the terms of the transaction and the expected impact on its member owners.

III. Public Meetings Should Be Scheduled Both In St. Paul And Along The HVDC Line.

Maintenance and operation of the HVDC line is of high interest and importance to all Minnesotans, but especially to Minnesotans who live and work along the line. The commission should schedule at least two public meetings, one in Saint Paul and one in West Central Minnesota, along the line. The public deserves a chance to learn about and comment on the proposed transfer of the line from a Minnesota cooperative to a North Dakota Limited Liability Company.²¹

The permit at issue in this docket was originally issued pursuant to the Power Plant Siting Act. Ensuring informed public input is a key objective of the Act. As the Minnesota Supreme

¹⁸ *Plant closure, renewable plans detailed at industry event*, Great River Energy (Oct. 14, 2020), <https://greatriverenergy.com/plant-closure-renewable-plans-detailed-at-industry-event/>.

¹⁹ Dan Gearino, *Despite One Big Dissent, Minnesota Utilities Approve of Coal Plant Sale. But Obstacles Remain*, Inside Climate News (Aug. 3, 2021), <https://insideclimatenews.org/news/03082021/coal-creek-plant-north-dakota-minnesota-utilities-approval/>.

²⁰ *Id.*

²¹ “The commission shall adopt broad spectrum citizen participation as a principal of operation.” Minn. Stat. § 216E.08, subd. 2.

Court noted, “[t]he two crucial concepts that permeate the entire act are that the process should be orderly and that there should be *public participation in all stages of agency decision-making*.”²²

The permit transfer stage is no exception.

In order to ensure that “broad spectrum citizen participation”²³ is encouraged and achieved, the Commission should require that GRE publicize the meetings in local media outlets and require that GRE specifically notify each tenant and land owner along the line. Transferring the ultimate responsibility to maintain and operate a HVDC line is an important matter and the Commission should ensure that these proposed public meetings are easily accessible by the interested public.

Dated: August 11, 2021

Respectfully submitted,

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²² *No Power Line, Inc.*, 262 N.W.2d at 321 (emphasis added).

²³ Minn. Stat. § 216E.08, subd. 2.