
STAFF MEMORANDUM

TO: COMMISSIONERS AND ADVISORS

FROM: AMANDA REISS, DARREN KEARNEY & JON THURBER

RE: **EL17-031- IN THE MATTER OF BLACK HILLS POWER, INS. DBA BLACK HILLS ENERGY'S PETITION FOR DECLARATORY RULING REGARDING WHETHER A PERMIT IS REQUIRED FOR A REBUILD OF A 230 KV TRANSMISSION LINE CONSTRUCTED IN 1963**

DATE: August 28, 2017

Background

On August 1, 2017, the Public Utilities Commission ("Commission") received a petition for a declaratory ruling filed by Black Hills Power, Inc., d/b/a Black Hills Energy ("Black Hills"). Specifically, Black Hills requested the Commission issue a declaratory ruling, finding that: A permit is not required for the rebuild of a 230kV transmission line constructed in 1963 that: 1) involves no change in the line's nameplate carrying capacity or definition as a transmission facility and 2) will occur within the line's existing rights-of-way.

According to the petition, the 230kV transmission line at issue was constructed in 1963 and is currently in need of replacement. Black Hills indicated that there has been an increased rate of outages based on the mechanical and structural failure of the line due to age and condition. Given that the Commission's authority to permit lines was not granted until 1979, the line was not permitted prior to construction and has not been permitted to date.

Black Hills indicated in the petition that the rebuild of the line will occur within the line's existing right-of-way and the nameplate carrying capacity of the line will not be increased.

Authority

In 1977, the Legislature passed a statutory scheme that provides that "no utility may begin construction of a facility in the state on or after July 1, 1979, without first having obtained a permit issued with respect to such facility by the Public Utilities Commission pursuant to this chapter." SDCL 49-41B-2(5) defines "construction" as "any clearing of land, excavation, or other action that would affect the environment of the site for each land or rights of way upon or over which a facility may be constructed or modified, but not including activities incident to preliminary engineering or environmental studies. This term includes modifications to facilities as defined in § 49-41B-2.2." SDCL 49-41B-2.2 further defines a modified facility as "(2) an electric transmission line that does not meet the definition of a transmission facility prior to building the line is to be modified in such a way that the line will meet the definition of a transmission facility after the modification is complete or the nameplate carrying capacity of an electric transmission facility is to be increased by an additional twenty kilovolts or greater."

The Legislature's stated purpose for the scheme is included in SDCL 49-41B-1 stating that "the Legislature also finds that by assuming permit authority, that the state must also ensure that these facilities are constructed in an orderly and timely manner so that the energy requirements of the people of the state are fulfilled. Therefore, it is necessary to ensure that the location, construction, and operation of facilities will produce minimal adverse effects on the environment and upon the citizens of this state."

Analysis

It is Staff's position that under the current statutes a permit is not required. The statutory scheme appears to only require a permit for new facilities where construction begins after the effective date of the statutes and to modified facilities where there is a significant change in the carrying capacity of the line. In this case, there is no increase in the carrying capacity of the line. Additionally, the line will remain in the same right of way as the original line. Based on this, there should be no significant change in the environmental impact of the line, and no significant change to any effects to the citizens of this state.

It seems that requiring a permit in this instance would be overly burdensome and not in line with Legislature's stated intent for the law. As such, staff supports Black Hills request for a declaratory ruling that a permit is not required for the rebuild of a 230kV transmission line constructed in 1963 that: 1) involves no change in the line's nameplate carrying capacity or definition as a transmission facility and 2) will occur within the line's existing rights-of-way.