

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

In the Matter of the Application of Minnesota Power for a Route Permit for the Great Northern Transmission Line Project in Roseau, Lake of the Woods, Beltrami, Koochiching and Itasca Counties

**ORDER DENYING RRANT'S
MOTION TO INTERVENE, DENYING
MOTION TO EXTEND
INTERVENTION DEADLINE, AND
DENYING MOTION TO
SUPPLEMENT ENVIRONMENTAL
IMPACT STATEMENT**

This matter comes before Administrative Law Judge Ann O'Reilly upon the Motion for Leave to Intervene Out-of-Time, the Motion to Extend Intervention Deadline for Newly Affected Landowners, and the Motion to Supplement Environmental Impact Statement to Include New Route Alignments, filed by Residents and Ratepayers Against Not-so-Great Northern Transmission on August 12, 2015. The record for the motion closed on August 21, 2015.

David R. Moeller, Minnesota Power, and Eric F. Swanson, Winthrop & Weinstine, P.A., represent Applicant Minnesota Power (Applicant).

Linda S. Jensen, Assistant Attorney General, represents the Minnesota Department of Commerce Energy Environmental Research and Analysis (DOC-EERA).

Carol Overland, Esq., Legalectric, Inc., represents Residents and Ratepayers Against Not-so-Great Northern Transmission (RRANT).

Based upon all files and proceedings in this matter, the Administrative Law Judge makes the following:

ORDER

1. RRANT's Motion for Leave to Intervene Out-of-Time is **DENIED**.
2. RRANT's Motion to Extend Intervention Deadline for Newly Affected Landowners is **DENIED**.
3. RRANT's Motion to Supplement the Environmental Impact Statement to Include New Route Alignments is **DENIED**.

MEMORANDUM

Background

This matter arises out of the Application for a Route Permit filed by Minnesota Power on April 15, 2015 (Application).¹ The Application identified two proposed routes for the Great Northern Transmission Line Project.²

Under Minn. R. 7850.2100 (2015), when a route permit is accepted, the Public Utilities Commission (Commission) must maintain two address lists for the project: (1) a general list of persons who want to be notified of the acceptance of all applications for site permits or route permits (General List); and (2) a project contact list which contains the names of persons who want to receive notices regarding the particular project at issue (Project Contact List).³ These lists are used by the Commission, the DOC-EERA,⁴ and the applicant to comply with notice requirements set forth in statute and rule. There is no requirement in statute or administrative rule that the lists maintained by the Commission contain the names of all landowners affected by a proposed or potential route alternative or alignment variation.

Upon the filling of a route permit application, two related notice requirements are immediately triggered: the notice requirements set forth in Minn. Stat. § 216E.03, subd. 4, and the notice requirements set forth in Minn. R. 7850.2100.

Under Minn. Stat. § 216E.03, subd. 4, within 15 days after submitting a route permit application, an applicant must:

- Publish notice of the application in a legal newspaper of general circulation in each county in which routes were proposed;
- Send a copy of the application by certified mail to any regional development commission, county, incorporated municipality, and town in which any part of the site or route is proposed;
- Send a notice of the submission of the application and a description of the proposed project to each owner whose property is along any of the proposed routes for the transmission line; and
- Send a notice of the submission of the application and a description of the proposed project to all persons listed on the Commission's General List.⁵

¹ APPLICATION FOR A ROUTE PERMIT (April 15, 2014) (eDocket No. 20144-98339-02).

² *Id.*

³ Minn. R. 7850.2100, subp. 1. Both the General List and the Project Contact List are "opt-in" lists where a person/organization must affirmatively request to be included on the list. The Commission may, however, add a person or organization to the Project Contact List if it believes the person or organization would like to receive notices about a particular project.

⁴ Pursuant to Minn. Stat. § 216E.03, subd. 11 (2014), the DOC-EERA serves as the Commission's technical advisor with respect to route permit applications.

⁵ Emphasis added.

Minn. R. 7850.2100, subp. 2, contains similar requirements. Within 15 days after the submission of a route permit application, an applicant must mail written notice of the application to:

(1) the General List;

(2) each regional development commission, county, incorporated municipality and township in which any part of the site or route of any alternative is proposed to be located;⁶ and

(3) each owner whose property is within any of the proposed routes for a high voltage transmission line.⁷

In addition, Minn. R. 7850.2100, subp. 4 requires the applicant to publish notice of the application in legal newspapers of general circulation in each county in which a site, route, or proposed route may be located within 15 days after submission of the application.⁸

Under Minn. Stat. § 216E.03 (2014) and Minn. R. 7850.2100, the applicant is responsible for developing the list of persons whose property is within its proposed routes. There is no requirement that an applicant include landowners in areas that may later become route alternatives or variations because route alternatives and variations are not identified within 15 days of the initial filing of the application; the route alternatives or variations are identified much later in the process.

Within 30 days after providing the notices required by Minn. R. 7850.2100, the applicant must submit documentation to the Commission showing that all notices have been given.⁹ The rule requires the applicant to document the notices by providing “affidavits of publication or mailing,” as well as copies of the notices provided.¹⁰

To evidence its asserted compliance with the requirements of Minn. Stat. § 216E.03, subd. 4, and Minn. R. 7850.2100, subp. 2, Applicant offered Exhibits 25 and 26 into evidence at the hearing for this matter. Exhibit 25 includes affidavits of publication showing that a Notice of Application was timely published in the required newspapers. Exhibit 26 includes an “Affidavit of Mailing” stating that Applicant mailed “a letter to

⁶ A brief review of the documents filed with the Commission indicates that Applicant has not submitted any documentation that service was made upon the necessary governmental entities in conformity with Minn. Stat. § 216E.03, subd. 4, and Minn. R. 7850.2100, subp. 2B. Exhibit 75 is an affidavit of service documenting the mailing of a letter sent by Applicant to governmental entities on or about December 16, 2013, before the filing of the Application. Exhibit 75 is not evidence of Applicant’s compliance with the notice requirements for governmental entities set forth in Minn. Stat. § 216E.03, subd. 4, and Minn. R. 7850.2100, subp. 2B. Exhibit 75 evidences compliance with Minn. Stat. § 216E.03, subd. 3a. This issue will be addressed as part of the Administrative Law Judge’s Findings of Fact, Conclusions of Law, and Recommendation in this matter, but the parties are advised of this issue now so it can be briefed or addressed prior to the final recommendation in this case.

⁷ Minn. R. 7850.2100, subp. 2.

⁸ See hearing Exhibit 25.

⁹ Minn. R. 7850.2100, subp. 5.

¹⁰ *Id.*

Landowners regarding the filing of the Route Permit Application.” Exhibit 26, however, does not include the actual letter sent to the landowners. Nor does it appear to contain a list of the landowners who were served with the “letter” identified in the affidavit of mailing dated May 19, 2014.¹¹

After receipt of the Application, the Commission scheduled a public meeting to provide information to the public about the proposed project, to answer questions, and to scope the environmental impact statement. In compliance with Minn. R. 7850.2300, subp. 2 (2015), on June 20, 2014, the Commission served and published a Notice of the Public Information and Environmental Impact Statement (EIS) Scoping Meeting.¹² Presumably, the Notice was served on the Project Contact List maintained by the Commission. The Notice was also published in newspapers of general jurisdiction in the project area.¹³ The record is undeveloped regarding whether the Commission’s Project Contact List contains all landowners identified as being potentially affected by the two route alternatives identified in the Application.

Pursuant to Minn. R. 7850.2500, subp. 2 (2015), the Notice of the Public Information and EIS Scoping Meeting provided that public comments on the scope of the EIS would be accepted from June 20, 2014, to August 15, 2014.¹⁴ Public Information and Scoping Meetings occurred on July 16, 17, 23, and 24, 2014.

On July 2, 2014, the DOC-EERA served an EIS Draft Scoping Document on the Project Contact List.¹⁵ During the scoping process, there were 33 alternative route segments, five border crossing alternatives, and nine alignment modifications requests received.¹⁶

On November 13, 2014, after the close of the public comment period, the DOC-EERA reviewed the proposed alternatives and modifications, and filed its Summary Scoping Report.¹⁷

¹¹ The service list attached to Exhibit 26 appears to be the service list for the filing with the PUC on May 21, 2014, not a list of the individuals served with the letter on April 25, 2015.

¹² NOTICE OF PUBLIC INFORMATION AND ENVIRONMENTAL IMPACT STATEMENT SCOPING MEETING (June 20, 2014) (eDocket No. 20146-100639-01); NOTICE CERTIFICATE OF SERVICE AND SERVICE LIST (June 20, 2014) (eDocket No. 20146-100639-02).

¹³ AFFIDAVIT OF PUBLICATION FOR THE NOTICE ON PUBLIC INFORMATION AND ENVIRONMENTAL IMPACT STATEMENT SCOPING MEETINGS (September 23, 2014) (eDocket No. 20149-103236-01).

¹⁴ NOTICE OF PUBLIC INFORMATION AND ENVIRONMENTAL IMPACT STATEMENT SCOPING MEETING (June 20, 2014) (eDocket No. 20146-100639-01).

¹⁵ ENVIRONMENTAL IMPACT STATEMENT DRAFT SCOPING DOCUMENT (July 2, 2014) (eDocket No. 20147-101149-01); ORDER CERTIFICATE OF SERVICE AND SERVICE LIST (July 2, 2014) (eDocket No. 20147-101165-02).

¹⁶ Exhibit (Ex.) 203 (route permit hearing presentation).

¹⁷ SUMMARY OF REQUESTED ALTERNATIVE ROUTE SEGMENTS AND ALIGNMENT MODIFICATIONS (November 13, 2014) (eDocket No. 201411-104621-01).

On January 9, 2015, the DOC-EERA filed its EIS Scoping Decision.¹⁸ Pursuant to Minn. R. 7850.2500, subp. 2, within five days of the Scoping Decision, the Commissioner must mail Notice of the Scoping Decision to the individuals named on “either” the General List or the Project Contact List. There is no requirement in law or rule that the Commission, the DOC-EERA, or Applicant identify and send a notice to the landowners who may be affected by any of the route alternatives, segment options, or alignment modifications identified in the scoping process.

According to the affidavit of service filed by the DOC-EERA, the Notice of the Scoping Decision was mailed to the individuals identified in the attached service list, although it is unclear which list was used (the General List or Project Contact List).¹⁹

On January 26, 2015, the Commission issued an Order Concurring with the Scoping Decision.²⁰ The Scoping Decision included 22 alternative route segments, five border crossing alternatives, and nine alignment modifications.²¹

Although not required by statute or rule, the DOC-EERA sends a letter to all landowners who may be directly or indirectly affected by route alternatives identified during the scoping process.²² On February 9, 2015, the DOC-EERA prepared a form letter to landowners impacted by the newly-identified route segment alternatives, border crossing alternatives, and alignment modifications studied during the scoping process (Newly Identified Landowner Letter).²³ Based upon the routing alternatives and variations identified during the scoping process, the DOC-EERA created a list of 622 landowners potentially affected by the route alternatives and variations.²⁴ The mailing list was called the “New Landowner Mailing List.”²⁵ On the same day, the DOC-EERA identified 24 additional landowners who may also be affected by the route alternatives and variations identified in the scoping process.²⁶ The list of these 24 additional landowners was named by the DOC-EERA, the “ADDITIONAL New Landowners Mailing List.”²⁷ It is unclear in the record what particular route alternatives, segment variations, or alignment modifications could impact the 24 additional landowners.

Bill Storm, analyst for the DOC-EERA, prepared the February 9, 2015 Newly Identified Landowner Letter.²⁸ Mr. Storm instructed his assistant, Sharon Ferguson, to send the letter to the 622 individuals listed on the New Landowner Mailing List.²⁹

¹⁸ NOTICE OF EIS SCOPING DECISION (January 9, 2015) (eDocket No. 20151-106026-01); SCOPING DECISION MAPS (January 9, 2015) (eDocket No. 20151-106026-02); NOTICE OF SCOPING DECISION MAP (January 9, 2015) (eDocket No. 20151-106028-02).

¹⁹ NOTICE OF EIS SCOPING DECISION (January 9, 2015) (eDocket No. 20151-106028-01).

²⁰ ORDER CONCURRING IN SCOPING DECISION (January 26, 2015) (eDocket No. 20151-106641-01).

²¹ Ex. 203 (route permit hearing presentation).

²² Affidavit of Bill Storm (Storm Aff.) ¶ 2 (August 18, 2015) (eDocket No. 20158-113390-01); *see also* NEWLY AFFECTED LANDOWNER NOTICE (July 27, 2015) (eDocket No. 20157-11274-01).

²³ Ex. 113 (letter); Storm Aff. ¶ 4.

²⁴ Storm Aff. ¶ 4.

²⁵ Ex. 113 (letter); Storm Aff. ¶ 4.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Storm Aff. ¶¶ 4-5.

²⁹ Storm Aff. ¶ 4, attachment.

Ms. Ferguson complied and mailed the letter to those 622 individuals on February 9, 2015.³⁰ Later that same day, Mr. Storm instructed a different staff member, Caren Warner, to mail the same letter to the 24 individuals listed on the ADDITIONAL New Landowners Mailing List.³¹ While Mr. Storm believes Ms. Warner mailed the letter to the 24 individuals listed on the ADDITIONAL New Landowners Mailing List, and his computer files indicate the letter was prepared for the 24 additional landowners, Ms. Warner did not prepare an affidavit of service to document the mailing.³²

On June 19, 2015, the DOC-EERA filed the Draft Environmental Impact Statement (DEIS).³³ The DEIS studied the two routes proposed by Applicant (the Orange and Blue Routes) as well as the 22 alternative route segments, five border crossing alternatives, and nine alignment modifications identified in the Scoping Decision.³⁴

On June 22, 2015, pursuant to Minn. R. 7850.2500, subps. 7, 8 (2015), the DOC-EERA issued a Notice of Availability of the DEIS, State Public Information Meetings, and Federal Public Hearings.³⁵ In compliance with Minn. R. 7850.2500, subps. 7, 8, the DOC-EERA sent the Notice of Availability of the DEIS, State Public Information Meetings, and Federal Public Hearings to each person on the Project Contact List.³⁶ The DOC-EERA also published the Notice of Availability of the DEIS, State Public Information Hearings, and Federal Public Hearings in the *Minnesota Environmental Quality Board Monitor* as required by Minn. R. 7850.2500, subps. 7, 8.³⁷

In addition to the notices served by the DOC-EERA, on June 24, 2015, the Applicant sent a “letter” to “landowners” regarding the Notice of Availability of the DEIS.³⁸ The affidavit of service filed by the Applicant does not include a copy of the document actually served on the landowners, nor does it include a service list detailing which landowners were served.³⁹ The Applicant also published the Notice of Availability of the

³⁰ Ex. 113 (letter).

³¹ Storm Aff. ¶ 4.

³² Storm Aff. ¶ 4; Affidavit of Caren Warner (Warner Aff.) ¶ 5.

³³ SUMMARY OF DRAFT ENVIRONMENTAL IMPACT STATEMENT (June 19, 2015) (eDocket No. 20156-111589-01).

³⁴ *Id.*

³⁵ NOTICE OF AVAILABILITY OF DRAFT ENVIRONMENTAL IMPACT STATEMENT, STATE PUBLIC INFORMATION MEETINGS, AND FEDERAL PUBLIC HEARINGS (June 22, 2015) (eDocket No. 20156-111642-01).

³⁶ *Id.* The record is silent regarding whether the Commission or the DOC-EERA updates the Project Contact List to include landowners potentially affected by the route alternatives and variations identified during the scoping process.

³⁷ Ex. 117 (MN Environmental Quality Board Vol. 39, No. 13).

³⁸ AFFIDAVIT OF MAILING NOTICE (July 8, 2015) (eDocket No. 20157-112254-01). See also, hearing Exhibit 78. Both the cover letter and the affidavit indicate that service was done in compliance with Minn. Stat. § 216E.02, subd. 4 (2014), and Minn. R. 7850.2100, subp. 2C (2015); however, neither of the provisions relate to the Notice of the DEIS. Instead, the provisions address the notice required 15 days after the initial filing of the Application.

³⁹ AFFIDAVIT OF MAILING NOTICE (July 8, 2015) (eDocket No. 20157-112254-01). See also, hearing Exhibit 78. It appears that the Applicant may have served a copy of the Notice of Availability of the DEIS, State Public Information Meetings, and Federal Public Hearings, but this is not evidenced in the Affidavit of Service dated July 7, 2015, because the Affidavit: (1) cites inapplicable legal authority; (2) does not include a copy of the letter served; and (3) does not include a list of the individuals served.

DEIS and Notice of State Public Information Meetings and Federal Public Hearings in newspapers of general publication throughout the project area.⁴⁰

Public information meetings related to the DEIS occurred on July 15, 16, 21, and 22, 2015, in communities throughout the project area. The public information meetings were combined with the federal hearing necessary for the presidential permit required for an international border crossing.

In addition to the public meetings regarding the DEIS, Minnesota law requires the Commission to hold public hearings and the Office of Administrative Hearings to hold a contested case hearing regarding the application for a route permit.⁴¹ The parties agreed to combine the Commission's public hearings with the contested case evidentiary hearings.

The Commission referred this matter to the Office of Administrative Hearings for a contested case hearing on the Application on July 2, 2014.⁴² A First Prehearing Conference was held on July 21, 2014. The First Prehearing Order following the Prehearing Conference set an intervention deadline of February 23, 2015.⁴³ A Second Prehearing Conference was held on January 23, 2015. In the Second Prehearing Order, the Administrative Law Judge extended the deadline for intervention to April 15, 2015.⁴⁴ The Second Prehearing Order expressly provided:

Other persons who wish to intervene as parties in this proceeding must file a Petition to Intervene that complies with Minn. R. 1400.6200 (2013) with the Administrative Law Judge no later than 4:30 p.m. on **April 15, 2015**. Copies of the Petition to Intervene must be served upon the Administrative Law Judge, all existing parties, the DOC-EERA, and the Commission. A Notice of Appearance must be filed with the Petition. Petitioners shall provide an electronic mail address on the Petition or Notice of Appearance. **All intervenors will be held to the schedule set forth below. Unless extraordinary circumstances exist, the schedule will not be modified to accommodate late intervention. Therefore, parties intending to intervene should do so as early in the process as possible.**⁴⁵

On July 23, 2015, twelve days prior to the start of the hearings, the Commission issued a Notice of Public Hearings.⁴⁶ The Notice of Public Hearings was mailed to the

⁴⁰ Ex. 78.

⁴¹ Minn. Stat. § 216E.03, subd. 6; Minn. R. 7850.2600 (2015).

⁴² ORDER FINDING APPLICATION COMPLETE AND REFERRING MATTER TO THE OFFICE OF ADMINISTRATIVE HEARINGS (July 2, 2014) (eDocket No. 20147-101165-01).

⁴³ FIRST PREHEARING ORDER (August 7, 2014) (eDocket No. 20148-102112-01).

⁴⁴ SECOND PREHEARING ORDER (January 26, 2015) (eDocket No. 20151-106655-01).

⁴⁵ *Id* (emphasis added). This same deadline and provision remained in the Amended Third Prehearing Order, dated May 14, 2015, and the Fourth Prehearing Order, dated July 6, 2015, despite the fact that the date for intervention had already passed by the time that the Amended Third and Fourth Prehearing Orders were issued.

⁴⁶ NOTICE OF PUBLIC HEARINGS (July 23, 2015) (eDocket No. 20157-112684-01).

Project Contact List.⁴⁷ The record is silent regarding whether the Notice of the Public Hearings was published in newspapers in the area.⁴⁸ It appears the Commission did send copies of the Notice of Public Hearings to chief executives of the regional development commissions, counties, organized towns, townships, and incorporated municipalities in the project area.⁴⁹

While preparing for the public and evidentiary hearings, the DOC-EERA discovered it did not have an affidavit of service documenting the February 9, 2015, mailing of the Newly Identified Landowners Letter to the 24 individuals named on the ADDITIONAL New Landowners Mailing List.⁵⁰ To remedy what she believed was an error, Ms. Ferguson re-served the 24 individuals named in the ADDITIONAL New Landowners Mailing List with the Newly Identified Landowners Letter on July 27, 2015.⁵¹ Ms. Ferguson then filed an Affidavit of Service documenting her action.⁵²

On July 29, 2015, the Commission sent the Notice of Public Hearings to 12 additional individuals.⁵³ The record is silent regarding why this action occurred.

Combined public and evidentiary hearings were held in various locations throughout the project area on August 5, 6, 12, and 13, 2015.

On August 12, 2015, the third day of the combined public and evidentiary hearings, RRANT filed its Motion to Intervene, Motion to Extend Intervention Deadline, and Motion to Supplement the EIS.⁵⁴

Analysis

A. Motion for Leave to Intervene by RRANT.

RRANT brings this Motion for Leave to Intervene “Out-of-Time” on the basis that it is a “watchdog of the public process and public interest.”⁵⁵ RRANT explains that its motion is untimely because it: (1) lacked “resources” to proceed and (2) lacked commitment on behalf of its members to assert a position on routing issues.⁵⁶ Applicant

⁴⁷ CERTIFICATE OF SERVICE AND SERVICE LIST (July 23, 2015) (eDocket No. 20157-112684-02).

⁴⁸ Pursuant to Minn. Stat. § 216E.03, subd. 6, notice of the public hearings *shall be* given by the Commission at least 10 days but no earlier than 45 days prior to the commencement of the hearing. “Notice shall be by publication in a legal newspaper of general circulation in the county in which the public hearing is to be held and by certified mail to chief executives of the regional development commissions, counties, organized towns, townships, and incorporated municipalities in which a site or route is proposed.” *Id.*

⁴⁹ LGU CERTIFIED MAIL (August 24, 2015) (eDocket No. 20158-113474-01); RETURN RECEIPTS FOR CERTIFIED MAIL (August 24, 2015) (eDocket No. 20158-113474-02).

⁵⁰ Storm Aff. ¶ 5.

⁵¹ NEWLY AFFECTED LANDOWNER NOTICE (July 27, 2015) (eDocket No. 20157-11274-01).

⁵² *Id.*

⁵³ ADDITIONAL SERVICE LIST FOR 07232015 NOTICE (July 30, 2015) (eDocket No. 20157-112862-01).

⁵⁴ MOTION FOR LEAVE TO INTERVENE OUT-OF-TIME, EXTENSION OF INTERVENTION DEADLINE, AND SUPPLEMENT EIS (August 12, 2015) (eDocket No. 20158-113189-01).

⁵⁵ *Id.* at 2.

⁵⁶ *Id.* at 1-2.

timely objected to RRANT's intervention motion.⁵⁷ The DOC-EERA takes no position on the motion.⁵⁸

Intervention in administrative proceedings involving the siting of high-voltage transmission lines is governed by Minn. R. 1405.0900, subp. 1 (2015), which states:

Any person desiring to intervene in the hearings as a party shall submit a **timely petition** to intervene to the administrative law judge and shall serve the petition upon all existing parties. **Timeliness will be determined by the administrative law judge in each case based on circumstances at the time of filing.** The petition shall show how **the petitioner's** legal rights, duties, or privileges may be determined or affected by the proceedings, how those rights, duties, and privileges are not otherwise represented, and shall set forth the grounds and purposes for which intervention is sought and shall indicate petitioner's statutory or legal right to intervene, if one should exist. The administrative law judge, with the consent of all parties, may waive the requirement that the petition be in writing.⁵⁹

RRANT's Motion to Intervene was filed on August 12, 2015, nearly four months past the deadline to intervene in this case, and on the second-to-last day of the two-week-long combined public and evidentiary hearings in this case. As a result, RRANT's request to intervene is untimely, even by the most generous of standards.

At the start of this action over one year ago, the Administrative Law Judge set the deadline for intervention as February 23, 2015.⁶⁰ The deadline was subsequently extended to April 15, 2015, to ensure ample opportunity for parties to intervene.⁶¹ In fact, the Administrative Law Judge purposefully scheduled the intervention deadline late in the process -- after the completion of the scoping process -- to give landowners in the areas identified in the scoping decision the opportunity to intervene in a timely fashion.

RRANT has provided no good reason why an exception should be made to the established and already once extended intervention deadline. Arguing that its group lacked resources and coordination is not a valid basis for such an untimely request.

By its own admission, RRANT and its counsel were well aware of the intervention deadline and failed to meet it. As RRANT readily acknowledges, the group and its attorney have been involved in this project for the last three years. RRANT was a party in the Certificate of Need proceeding which began in 2012, and RRANT has been "actively participating" in this current docket since the time of Minnesota Power's Application in 2014.⁶² Therefore, the evidence shows that RRANT was well aware of the intervention deadline in this case but simply failed to file a timely motion to intervene.

⁵⁷ See Transcript of Public Hearings, August 13, 2015.

⁵⁸ LETTER BRIEF AND ATTACHMENTS (August 19, 2015) (eDocket No. 20158-113450-01).

⁵⁹ Minn. R. 1405.0900, subp. 1 (emphasis added).

⁶⁰ FIRST PREHEARING ORDER (August 7, 2014) (eDocket No. 20148-102112-01).

⁶¹ SECOND PREHEARING ORDER (January 26, 2015) (eDocket No. 20151-106655-01).

⁶² MOTION FOR LEAVE TO INTERVENE OUT-OF-TIME, EXTENSION OF INTERVENTION DEADLINE, AND SUPPLEMENT EIS at 1-2 (August 12, 2015) (eDocket No. 20158-113189-01).

In addition, intervention this late in the process would be unfair to the process itself. First, it would open up the possibility for delay in this proceeding. Second, it could infuse issues into the case that the parties did not have an opportunity to address through witness testimony during the hearings or during the extensive analysis of route alternatives and variations throughout the last two years. Third, permitting such an untimely intervention would set precedent in Commission cases that prehearing orders and deadlines are of no consequence to parties and can be ignored or easily extended, which is contrary to the realities of these types of proceedings where prehearing deadlines are critical in ensuring a fair and timely process.

Finally, RRANT has not met its burden under Minn. R. 1405.0900, subp. 1, to demonstrate that its intervention is justified, even assuming it was timely. RRANT does not assert that *its own member's* legal rights, duties, or privileges may be determined or affected by the proceedings. No information is provided in the Motion to Intervene regarding: (1) how many individuals are members of RRANT; (2) whether any of the RRANT members own property in the project area; and (3) whether any RRANT members own properties that could actually be impacted by any of the proposed route alternatives or variations identified in this proceeding. Being a “watchdog” of the public interest does not establish any interests or impacts *particular to RRANT members* to justify such an intervention request – especially one that is so untimely.⁶³

As a “watchdog” of the public interest, RRANT has the ability and opportunity to submit public commentary in this case. Such commentary can be in the form of legal argument if RRANT so chooses. There are no limitations on the type or format of the public comment RRANT can submit. However, seeking party status to avoid an impending public comment deadline is not an adequate basis for intervention.

The Administrative Law Judge has the authority -- as well as the obligation -- to set a deadline for intervention that does not delay the proceedings and yet allows all interested parties the opportunity to participate. That deadline was April 15, 2015 – a full year after the Application was filed. Because RRANT had ample opportunity to intervene and has failed to provide good cause for its failure to timely file such petition, RRANT’s Motion to Intervene is hereby **DENIED**.

B. Motion to Extend Intervention Deadline for 24 Newly Identified Landowners.

In addition to its own Motion to Intervene, RRANT requests the extension of the intervention deadline for the 24 landowners included in the ADDITIONAL New Landowners Mailing List (hereafter referred to as the “Newly Identified Landowners”). For the reasons set forth below, RRANT’s Motion is **DENIED**.

⁶³ None of the 24 landowners named on the ADDITIONAL Newly Impacted Landowners list are members of RRANT. See MOTION FOR LEAVE TO INTERVENE OUT-OF-TIME, EXTENSION OF INTERVENTION DEADLINE, AND SUPPLEMENT EIS at 4 n.7 (August 12, 2015) (eDocket No. 20158-113189-01).

A person seeking to intervene as a party in an administrative hearing must make a formal petition to do so.⁶⁴ To date, there has been no petition to intervene filed by any of the 24 Newly Identified Landowners. In addition, there has been no request by any of the 24 Newly Identified Landowners to extend the deadline to petition for intervention.

While RRANT raises an issue of notice on behalf of the 24 individuals listed on the ADDITIONAL New Landowners Mailing List, RRANT readily acknowledges that its group does not include any of those 24 individuals.⁶⁵ Therefore, neither RRANT nor its attorney represents the 24 Newly Identified Landowners or their interests; and neither RRANT nor its attorney have standing to seek relief on behalf of those parties.

The Minnesota Supreme Court has long recognized the notice of “associational standing.”⁶⁶ Under that doctrine, an organization may sue to redress injuries to itself or injuries to its members.⁶⁷ According to the U.S. Supreme Court, to assert associational standing, “The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit.”⁶⁸ Thus, a group or organization does not have standing to assert a claim or seek a remedy unless at least one of its members suffers some type of injury or threatened injury.⁶⁹

Here, none of the 24 Newly Identified Landowners are members of RRANT.⁷⁰ Therefore, RRANT has no standing to bring motions or seek relief on behalf of individuals who are not members of, or in any way affiliated with, the RRANT organization.

But even if RRANT had standing as a “watchdog of the public interest” to seek a remedy on behalf of non-member individuals, the evidence does not support the untimely extension of the intervention deadline for the 24 Newly Identified Landowners. Currently, neither the state statutes nor the administrative rules applicable to power line siting cases contain specific notice requirements for landowners who may be impacted by new route alternatives, variations, or alignment modifications identified in the EIS scoping process.⁷¹ Nevertheless, the evidence establishes that these 24 Newly Identified Landowners were, in fact, served with notice of the project so as to give them an opportunity to timely petition for intervention in this case. Such notice occurred on February 9, 2015, well in advance of the intervention deadline (April 15, 2015), the draft EIS comment period (ending

⁶⁴ Minn. R. 1405.0900, .6200 (2015).

⁶⁵ *Id.*

⁶⁶ *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 497-98 (Minn. 1996).

⁶⁷ See e.g., *No Power Line, Inc. v. Minnesota Env'tl. Quality Council*, 311 Minn. 330, 334, 250 N.W.2d 158, 160 (1976) and *Snyder's Drug Stores, Inc. v. Minnesota State Bd. of Pharmacy*, 301 Minn. 28, 221 N.W.2d 162 (1974).

⁶⁸ *Warth v. Seldin*, 422 U.S. 490, 511, 95 S. Ct. 2197, 2211-12 (1975).

⁶⁹ *Id.*

⁷⁰ See MOTION FOR LEAVE TO INTERVENE OUT-OF-TIME, EXTENSION OF INTERVENTION DEADLINE, AND SUPPLEMENT EIS at 4 n.7 (August 12, 2015) (eDocket No. 20158-113189-01).

⁷¹ The only formal requirement imposed upon Applicants to identify affected landowners is the 15-day notice requirements set forth in Minn. Stat. § 216E.03, subd. 4; Minn. R. 7850.2100. That notice only goes to the landowners impacted by the routes alternatives identified in the Application – not the alternatives, variations, or alignment modifications later developed in the EIS scoping.

August 10, 2015), the public hearing (August 5, 6, 12, 13, 2015), and the final public comment deadline (September 1, 2015). The fact that the DOC-EERA is unable to provide an Affidavit of Service for the mailing on February 9, 2015, does not negate the circumstantial evidence that such mailing did, indeed, occur. Mr. Storm attests to the preparation and mailing of the Newly Identified Landowners Letter to the 24 Newly Identified Landowners.⁷² And the Administrative Law Judge has no evidence to show such mailing did not occur.

In addition, the facts are clear and undisputed that these 24 landowners were served with a notice of the project on July 27, 2015, nine days prior to the public hearings in this case. Therefore, if the 24 Newly Impacted Landowners wished to attend the hearings or make public comment, they were given notice and the opportunity to do so before the deadline. Despite the clear notice made on July 27, 2015, none of the 24 Newly Identified Landowners has sought to intervene or to extend the deadline to intervene in this case.

The Administrative Law Judge appreciates the importance of notification to all landowners who may be potentially impacted by a large transmission project. However, RRANT does not have standing to seek relief on behalf of 24 individuals who are not members of its organization. More importantly, there is simply no evidence to support an extension of the established intervention deadline for parties who: (1) have never expressed an interest in intervening; and (2) have been provided sufficient notice of the project to allow them to file a petition to intervene or seek an extension of the time to intervene themselves. Where a motion to extend a deadline has not been made by the individual(s) who would benefit from such extension, no such extension shall be granted. Accordingly, RRANT's Motion to extend the intervention deadline for the 24 Newly Identified Landowners is **DENIED**.

C. Motion to Supplement the EIS to Include New Route Alignments.

In its Motion to Supplement the EIS, RRANT requests the opportunity to supplement the EIS to include new, unidentified route alignments on behalf of the 24 Newly Identified Landowners who are not members of its group. RRANT makes its request based upon its assertion that the 24 Newly Identified Landowners did not receive timely notice of the project and were not given the opportunity to participate in the scoping process.

First, as set forth above, RRANT lacks standing to assert claims, bring motions, or seek relief on behalf of individuals who are not members of, or affiliated with, the RRANT organization.⁷³ Second, to date, none of the 24 Newly Identified Landowners has asserted a claim of lack of notice, and none of the 24 landowners has moved to expand the scope of the EIS to include new route alignments. Therefore, there is no showing of any harm or prejudice that requires a remedy or specific relief.

⁷² See Affidavit of Bill Storm dated August 19, 2015 (eDocket No. 20158-113390-01).

⁷³ *Warth*, 422 U.S. at 511, 95 S. Ct. at 2211-12.

Third, RRANT has provided no evidence that any of the properties owned by the 24 landowners were neglected from analysis in the DEIS. The evidence establishes that the 24 Newly Identified Landowners were provided with notice of the project in sufficient time for them to provide comment on the DEIS. Even if no notice was provided to these 24 landowners in February 2015 (a fact that the Administrative Law Judge expressly rejects), it is clear and undisputed that the 24 Newly Identified Landowners were sent notice of the project on July 27, 2015. Therefore, the 24 Newly Identified Landowners would have had the opportunity to comment on the draft EIS by the August 10, 2015 deadline.

Finally, the scope of the EIS is determined exclusively by the Department of Commerce.⁷⁴ The Administrative Law Judge has no legal authority to order the DOC to expand or modify the scope of the EIS now or at any stage of the proceeding. Accordingly, for the reasons set forth above, RRANT's Motion to Supplement the EIS to Include New Route Alignments on behalf of the 24 Newly Identified Landowners is **DENIED**.

Dated: September 2, 2015

s/Ann C. O'Reilly

ANN O'REILLY
Administrative Law Judge

⁷⁴ Minn. Stat. § 216E.03, subd. 5 (2014); Minn. R. 7850.2500 (2013).



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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Voice: (651) 361-7900
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September 2, 2015

See Attached Service List

Re: In the Matter of the Application of Minnesota Power for a Route Permit for the great Northern Transmission Line Project in Roseau, Lake of the Woods, Beltrami, Koochiching and Itasca Counties

**OAH 65-2500-31637
MPUC E-015/TL-14-21**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **ORDER DENYING RRANT'S MOTION TO INTERVENE, DENYING MOTION TO EXTEND INTERVENTION DEADLINE, AND DENYING MOTION TO SUPPLEMENT ENVIRONMENTAL IMPACT STATEMENT** in the above-entitled matter.

If you have any questions, please contact my legal assistant Katie Lin at (651) 361-7911 or katie.lin@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,

s/Ann C. O'Reilly

ANN C. O'REILLY
Administrative Law Judge

ACO:kjl
Enclosure
cc: Docket Coordinator

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

CERTIFICATE OF SERVICE

In the Matter of the Application of Minnesota Power for a Route Permit for the great Northern Transmission Line Project in Roseau, Lake of the Woods, Beltrami, Koochiching and Itasca Counties	OAH Docket No.: 65-2500-31637
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Katie Lin, certifies that on September 2, 2015, 2015 she served the true and correct **ORDER DENYING RRANT’S MOTION TO INTERVENE, DENYING MOTION TO EXTEND INTERVENTION DEADLINE, AND DENYING MOTION TO SUPPLEMENT ENVIRONMENTAL IMPACT STATEMENT** by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:

Last Name	First Name	Email	Company Name	Delivery Method	View Trade Secret
Eknes	Bret	bret.eknes@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Jensen	Linda	linda.s.jensen@ag.state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Kaluzniak	Michael	mike.kaluzniak@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Moeller	David	dmoeller@allate.com	Minnesota Power	Electronic Service	No
O'Reilly	Ann	ann.oreilly@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes
Overland	Carol A.	overland@legalelectric.org	Legalelectric - Overland Law Office	Electronic Service	No
Pile	Deborah	Deborah.Pile@state.mn.us	Department of Commerce	Electronic Service	Yes
Shaddix Elling	Janet	jshaddix@janetshaddix.com	Shaddix And Associates	Electronic Service	Yes
Smetana	Tracy	tracy.smetana@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Storm	William	bill.storm@state.mn.us	Department of Commerce	Electronic Service	Yes
Swanson	Eric	eswanson@winthrop.com	Winthrop Weinstine	Electronic Service	No
Wolf	Daniel P	dan.wolf@state.mn.us	Public Utilities Commission	Electronic Service	Yes