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**STATE OF MINNESOTA
IN COURT OF APPEALS
C4-01-1022**

In the Matter of the Exemption
Application by Minnesota Power for a
345/230 kV High Voltage Transmission
Line Known as the Arrowhead Project

**Filed January 15, 2002
Affirmed
Stoneburner, Judge**

Environmental Quality Board
File No. 0113EAWSPC

Carol A. Overland, Overland Law Office, 402 Washington Street South, Northfield, MN 55057 (for relator World Organization for Landowner Freedom)

Mike Hatch, Attorney General, Dwight S. Wagenius, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, MN 55101-2127 (for respondent Minnesota Environmental Quality Board)

Michael C. Krikava, Michael Nordskog, Briggs and Morgan, P.A., 2400 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402; and

Deborah Amberg, ALLETE, Inc., 30 West Superior Street, Duluth, MN 55802 (for respondent Minnesota Power)

Considered and decided by Halbrooks, Presiding Judge, Shumaker, Judge, and Stoneburner, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Relator World Organization of Landowner Freedom (WOLF) challenges respondent Minnesota Environmental Quality Board's decision to grant respondent Minnesota Power (MP) an exemption from the Power Plant Siting Act for MP's Arrowhead project, alleging that (1) the board failed to make a "need" determination; (2) the board's reliability determination was not supported by the evidence; (3) the board did not sufficiently review the record; and (4) the landowners' due-process rights were violated by insufficient notice of the effect of exemption on eminent-domain rights. Because we determine that the record supports the board's decision, we affirm.

FACTS

MP applied to the board for an exemption from Minn. Stat. §§ 116C.51-.69 (2000), known as the Minnesota Power Plant Siting Act, for MP's Arrowhead project. The project includes (1) upgrading approximately 12 miles of transmission line between the Arrowhead substation and the St. Louis River and (2) making additions to the Arrowhead substation. The new transmission line will continue into Wisconsin to approximately six miles south of Wausau.

The upgraded line will be placed within an existing 115kV right-of-way, but the first 3.2 miles will require an additional 20 feet of right-of-way on the west side of the existing corridor. The project will also require relocation of 0.8 miles of the existing route and construction of a new transmission line within a new 100-foot wide right-of-

way, sharing an existing DM&IR railroad right-of-way. The project is one part of a larger project “Plan 3j” that encompasses the Wisconsin portions of the project as well as the Arrowhead project. Claimed benefits for the entire project are set out in the Wisconsin Reliability Assessment Organization (WRAO) and Wisconsin Interface Reliability Enhancement (WIRE) reports generated by Wisconsin utilities. MP presented evidence that the line will help prevent blackout and brownout conditions in Minnesota.

MP notified affected landowners and others of its application for exemption pursuant to notice requirements contained in the siting act. After objections were filed, the board referred the matter to the Office of Administrative Hearings for a contested hearing. The administrative law judge granted WOLF’s petition to intervene and conducted a hearing at which many witnesses for the parties testified and an extensive number of exhibits were admitted on behalf of the parties. Members of the public also testified and submitted comments and documents to the ALJ during the public hearings and public-comment period. The ALJ received post-hearing briefs from the parties and issued a 32-page report including findings of fact, conclusions, a recommendation, and a supporting memorandum. The ALJ found that the project “will not create significant human or environmental impact” and recommended that the board grant the exemption.

Five parties submitted exceptions to the ALJ’s report to the board and three parties responded to the exceptions. The board’s counsel submitted a memorandum advising board members on the decision-making process and familiarity with the record. The staff prepared a memorandum of advice to board members based on the record, with attached

proposed findings of fact, conclusions, an order granting the exemption, a proposed resolution, the ALJ's report, the exceptions and replies, and other documents.

The board heard oral arguments from the parties, debated the issues, and received input from an absent board member proposing an operating condition. The board issued the exemption and adopted the ALJ's report by reference, after amending some findings, inserting additional findings, and adding a condition.

Three parties, including WOLF, moved to reopen the hearing for more evidence and for reconsideration. MP responded to the motions, and WOLF replied. The board denied the motions for reconsideration and rehearing, and WOLF sought this review by writ of certiorari.

D E C I S I O N

1. Standard of review

We may reverse or modify an administrative decision if substantial rights of the parties have been prejudiced by administrative findings, or decisions that are unsupported by substantial evidence in the record, or arbitrary and capricious, but we recognize the need to exercise judicial restraint and to restrict judicial functions to a narrow area of responsibility so that the court is not substituting its judgment for that of the agency. We are guided in our review by the principle that the agency's conclusions are not arbitrary and capricious so long as the agency has articulated a rational connection between the facts found that the choice made has been articulated. *In re Excess Surplus Status of Blue*

Cross and Blue Shield of Minn., 624 N.W.2d 264, 277 (Minn. 2001) (citation and quotation omitted).

The court may affirm the decision of the board as long as its findings and conclusions are supported “by substantial evidence in view of the entire record as submitted.” Minn. Stat. § 14.69 (2000). “Substantial evidence” includes

1. Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion;
2. More than a scintilla of evidence;
3. More than some evidence;
4. More than any evidence; and
5. Evidence considered in its entirety.

Cable Communications Bd. v. Nor-West Cable Communications P’ship, 356 N.W.2d 658, 668 (Minn. 1984). “[D]eference should be shown by courts to the agencies’ expertise and their special knowledge in the field of their technical training, education, and experience.” *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977).

The siting act sets out the requirements for locating “large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources.” Minn. Stat. § 116C.53, subd. 1 (2000). The act provides that a utility may apply to the board to exempt the construction of any proposed high-voltage transmission line from the requirements of the act. If the board determines that the proposed high voltage transmission line will not create significant human or environmental impact, it may exempt the proposed transmission line with any appropriate conditions. Minn. Stat. § 116C.57, subd. 5 (2000).

2. Determination of need

WOLF agrees that the Arrowhead project did not require a certificate of need issued by the public utilities commission (PUC) but notes that the board was informed of an anticipated legislative change (that has since occurred) that would bring this project within the definition of projects requiring a PUC certificate of need.¹ The board was not bound by a potential change in the law that was not in effect at the time of the board's decision. WOLF correctly points out that Minn. R. 4400.1310, subp. 1(I) (1999), required the board to address the need for the line to improve "electrical system reliability," and the board sufficiently addressed need in this context as discussed further below. There is no authority to support, and no merit in, WOLF's argument that the board was required to make a determination of need equivalent to a PUC certificate of need in the context of the board's evaluation of whether the project is exempt from the siting act.

WOLF argues that the board was required to make a determination of need because, otherwise, MP's "acquisition of property rights through the use of eminent domain under its public service corporation status [is] subject to challenge" in eminent-domain proceedings. MP agrees that need may be challenged in individual eminent-domain proceedings but argues that the board's authority to determine whether a proposed high-voltage transmission line should be exempt from the siting act is unrelated

¹ The parties don't dispute that, at the time of the board's decision in this case, a certificate of need from the PUC was not required for the Arrowhead project. Minn. Stat. §§ 216B.243, subd. 2, .2421, subd. 2(2) (2000).

to eminent-domain proceedings. We agree. Nothing in the board's determination prevents a landowner from challenging need in eminent-domain proceedings. The fact that acquisition of property may be challenged in eminent-domain proceedings does not affect the correctness of the board's determination that MP is entitled to an exemption from requirements of the siting act.

3. Reliability determination

The board is required to consider "electrical system reliability" in evaluating an application for exemption. Minn. R. 4400.1310, subp. 1(I), .3900, subp. 1a (1999). WOLF argues that the board did not address reliability and was not aware of the necessity of addressing reliability under the Minnesota Rules. WOLF complains that the entire extent of the ALJ's findings regarding reliability consisted of one paragraph. WOLF ignores approximately two pages of discussion of reliability in the ALJ's memorandum.

The ALJ found that the Arrowhead project will increase electrical system reliability for consumers in both Minnesota and Wisconsin. The ALJ found that:

The existing system of distribution has only one major source of electricity for western Wisconsin from Minnesota * * *. The [source] experienced a significant failure on June 25, 1998 that adversely affected electricity consumers in both Wisconsin and Minnesota. Other situations have arisen over the past few years that could have resulted in failures similar to that on June 25, 1998. Adding a second 345 kV connection to the Wisconsin transmission and distribution systems will reduce the likelihood of such failures and improve the reliability of the electrical system for both Minnesota and Wisconsin consumers.

The ALJ's memorandum discusses evidence in the record detailing how the proposed upgrade of the transmission line will result in an increase in electrical system reliability by reducing interruptions and disturbances in the electrical grid. The evidence in the record relied on by the ALJ amounts to much more than "a scintilla of evidence" that electrical system reliability will improve with the Arrowhead project. The board's adoption of the ALJ's finding on reliability is supported by substantial evidence.

WOLF next argues that the board improperly relied on the WRAO and WIRE reports' conclusions regarding reliability of Plan 3j that are not applicable to the Arrowhead project, and that the reports provide no basis for the board's findings regarding reliability of the Arrowhead project. MP concedes that the reliability conclusions that do not relate to the Arrowhead project are not relevant. The Arrowhead project and Plan 3j are overlapping, but they are not identical, and they serve different purposes. But, as discussed above, evidence in the record supports the board's conclusion that the Arrowhead project reduces the risk of blackouts in Minnesota regardless of whether the Wisconsin portion of Plan 3j is completed. There is no merit to WOLF's argument that the board relied on irrelevant portions of the WRAO and WIRE reports to determine reliability of the Arrowhead project.

Finally, WOLF argues that reliability problems with the existing transmission lines are the result of MP "pushing through increased power flows in an effort to complete record numbers of wholesale transactions" and that MP will continue, due to market pressures, to increase power flows on the improved line, resulting in the same

problems in the future. Even if WOLF's speculation has merit, substantial evidence supports the board's determination that the project will increase electrical system reliability at this time.

4. Board's review of the record

An administrative agency determination may be reversed if the determination was arbitrary and capricious. Minn. Stat. § 14.69. "An agency decision is arbitrary and capricious when it is an exercise of that agency's will, rather than its judgment." *In re Friedenson*, 574 N.W.2d 463, 467 (Minn. App. 1998) (citation omitted), *review denied* (Minn. Apr. 30, 1998). "Where there is room for two opinions on the matter, such action is not arbitrary and capricious." *Id.* (quotation omitted).

WOLF argues that the Arrowhead project exemption must be remanded because WOLF calculates that board members only had a few days to review the materials sent to them, an insufficient time according to WOLF, for board member's to become familiar with the record. WOLF also contends that (1) the packet of information submitted to the board members was "sparse"; (2) the board members were not familiar with the transcript, the exhibits, or the parties' briefs; (3) one member did not receive a copy of the proposed resolution; and (4) no board members affirmatively answered WOLF's question regarding whether any of them had read the entire record. Although it is improper "to permit discovery of the mental processes by which an administrative decision is made," a party must be allowed to "elicit from agency members sufficient information to establish that the problem had been addressed and that agency functions

have been performed properly.” *People for Envl. Enlightenment and Responsibility (PEER), Inc. v. Minn. Envl. Quality Council*, 266 N.W.2d 858, 873 (Minn. 1978).

An agency determination must “be based on the record.” Minn. Stat. § 14.62 (2000); Minn. R. 4405.1200, subp. 1 (1999) (requiring that the “board’s decision * * * be based solely on the record from the hearing” when the law so requires). An agency must make an independent conclusion after reviewing the evidence and findings of the ALJ. *PEER*, 266 N.W.2d at 873. The record comprises the following:

[A]ll pleadings, motions, and orders; evidence offered or considered; offers of proof, objections, and rulings thereon; the judge’s findings of fact, conclusions, and recommendations; all memoranda or data submitted by any party in connection with the case; and the transcript of the hearing, if one was prepared.

Minn. R. 1400.7400, subp. 1 (1999).

“[T]he legislature clearly intended agency members to read the material presented to it prior to reaching their decision.” *PEER*, 266 N.W.2d at 873. But board members are not required to read the entire transcript of a proceeding to conduct an adequate review of the record. *See In re Hutchinson*, 440 N.W.2d 171, 176 (Minn. App. 1989) (holding that commission’s review of record was more than adequate despite fact that most of panel failed to read entire transcript because panel heard argument, read briefs, and reviewed findings of ALJ), *review denied* (Minn. Aug. 9, 1989).

In this case the board (1) reviewed the issues before submitting the case for a contested hearing; (2) reviewed issues prior to the contested hearing in the context of defining the scope of the hearing; (3) reviewed a staff memorandum and attached

documents; (4) heard oral arguments; (5) discussed the issues; and (6) reviewed and modified the ALJ's findings and conclusions. There is no merit to WOLF's contention that the board was insufficiently familiar with the record to make a decision.

5. Due process challenge to notice to landowners

In eminent-domain proceedings for projects subject to the siting act, landowners can elect condemnation and compensation for owner's entire fee interests. *See* Minn. Stat. §116C.63, subd. 4 (2000) ("take-the-whole-farm option"). WOLF argues that due process requires that notice to landowners should have included notice that if an exemption is granted, the take-the-whole farm option will not be available to them. The siting act is unambiguous, however, and provides all the notice required that the take-the-whole-farm option does not apply to projects exempted from the act. MP complied with the specific application-for-exemption notice requirements in the siting act. *See* Minn. Stat. §116C.57, subd. 5 (2000). No one challenged the sufficiency of notice to landowners in the proceedings before the board. We find WOLF's argument on this issue meritless.

Affirmed.

Dated: January 9, 2002