

E-002/CG-88-489EXTENDING COMMENT PERIOD

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of the Joint Petition of Dakota County and Winona County for an Order Resolving Disputes Relating to Purchases by Northern States Power Company of Electric Power from the Operation of Solid Waste Recovery Facilities Located in Dakota and Winona Counties, Minnesota

ISSUE DATE: August 3, 1989

DOCKET NO. E-002/CG-88-489

ORDER EXTENDING COMMENT PERIOD

PROCEDURAL HISTORY

The Commission's ORDER RESOLVING DISPUTES REGARDING TERMS OF CONTRACT BETWEEN UTILITY AND QUALIFYING FACILITIES in this matter was issued on July 7, 1989. On July 14, 1989, the Commission re-served the Order, establishing August 4, 1989, as the date on which petitions for rehearing were due.

The Order directed the parties to file comments on the issue of attorneys' fees and costs at the same time as petitions for rehearing and reconsideration.

On July 21, 1989, the Commission received a letter from Counsel for Dakota and Winona Counties, requesting an amendment to require filing of written comments on the costs and attorneys' fee issue within 21 days after the Commission's final disposition of any petitions by the parties for rehearing, or by August 25, 1989, in the event no petitions for rehearing are filed. The letter noted that Northern States Power Company had no objection to this proposal.

FINDINGS AND CONCLUSIONS

The Commission must determine whether to extend the period for filing comments.

Minn. Stat. § 216B.164, subd. 5 (1988) directs the Commission to "...require payments to the prevailing party of the prevailing party's costs, disbursements, and reasonable attorneys' fees, except that the qualifying facility will be required to pay the costs, disbursements, and attorneys' fees of the

utility only if the commission finds that the claims of the qualifying facility in the dispute have been made in bad faith, or are a sham, or frivolous."

The Commission finds that the question of which party prevailed may not be answerable until the Commission has made any final determination on petitions for rehearing which may be received. Extension of the time allowed for comments on the attorneys' fees issue may, therefore, eliminate the potential need for parties to file supplemental briefs after the Commission's action on reconsideration petitions.

The Commission also finds that no party objected to the request of the Counties.

The Commission concludes that the period for filing written comments on the attorneys' fees issue should be extended to 21 days after the Commission's final disposition of any petitions by the parties for rehearing or by August 25, 1989, if no petitions are filed.

ORDER

1. The period for filing written comments on the attorneys' fees issue is extended to 21 days after the Commission's final disposition of any petitions by the parties for rehearing or by August 25, 1989, if no petitions are filed.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)