

E-002/CG-88-489 GRANTING PETITIONS FOR RECONSIDERATION AND VARYING RULE

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 24, 1989

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

ORDER GRANTING PETITIONS FOR RECONSIDERATION AND VARYING RULE

PROCEDURAL HISTORY

The Minnesota Public Utilities Commission's (the Commission) 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.

On August 4, 1989, the Commission received a Petition for Reconsideration from Dakota and Winona Counties (the Counties) and a Petition for Reconsideration, Rehearing and Clarification from Northern States Power Company (NSP). Replies to those petitions were due on August 14, 1989.

On August 14, 1989, NSP filed its Response to the Counties' petition and the Counties filed its Reply to NSP's petition. The Minnesota Department of Public Service (Department or DPS) filed its Answer to Petitions for Reconsideration on August 15, 1989. The Department filed a Notice of Motion and Motion for Acceptance of Late filing dated August 17, 1989. The Department asked the Commission to vary Minn. Rules, part 7830.4100 which requires answers to petitions for reconsideration and rehearing to be filed within 10 days following service of the petition.

The Commission considered these matters on August 22, 1989.

## FINDINGS AND CONCLUSIONS

### Petitions for Reconsideration

Under Minn. Stat. § 216B.27, subd. 4 (1988), any application for rehearing not granted within 20 days from the date of its filing is deemed denied. The Commission believes that NSP's and the Counties' petitions for reconsideration deserve careful review. In order to allow sufficient time for the Commission to fully review and address the parties' arguments raised in their petitions, the Commission will grant the petitions for reconsideration for purposes of examining the claims raised in the petitions.

The Commission will schedule deliberations on the merits of the petitions on Wednesday, September 6, 1989 at 9:30 a.m. in the Commission's Small Hearing Room, 780 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota.

### Variance Request

The Commission is empowered by Minn. Rules, part 7830.4400 to vary any of its rules when it appears to the Commission's satisfaction that: enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule; granting the variance would not adversely affect the public interest; and granting the variance would not conflict with standards imposed by law.

The Commission finds that enforcement of Minn. Rules, part 7830.4100 would impose an excessive burden on the Department. In its request, the Department stated that its Answer was mailed rather than delivered to the Commission on August 14, 1989. The Answer was inadvertently late-filed, the delay was minimal, and neither the Counties nor NSP object to the Commission accepting the Department's late filed Answer.

The Commission also finds that granting the variance would not adversely affect the public interest, but would, in fact, serve the public interest by allowing the Commission to consider the Department's position. Further no party is prejudiced by the acceptance of this filing as no responsive pleadings to answers to petitions for reconsideration are accepted.

Finally, the Commission finds that granting the variance would not conflict with standards imposed by law.

The Commission concludes that the requirements of Minn. Rules, part 7830.4400 have been met and will order Minn. Rules 7830.4100 varied to allow acceptance of the Department's Answer to Petitions for Reconsideration in this matter.

ORDER

1. The petitions for reconsideration filed by Dakota and Winona Counties and by Northern States Power Company are hereby granted as to the issues raised in the petitions. The Commission will deliberate the merits of the issues raised in the petitions on Wednesday, September 6, 1989 at 9:30 a.m. in the Commission's Small Hearing Room, 780 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota. The Counties and NSP shall each have 20 minutes for an oral presentation. The Department of Public Service may have 15 minutes for an oral presentation.
2. Minn. Rules, part 7830.4100 is hereby varied to allow the acceptance of the Department's late-filed Answer to Petitions for Reconsideration in this matter.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen  
Executive Secretary

(S E A L)