

E-002/GR-87-670 AFTER REMAND DETERMINING DECOMMISSIONING COSTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Application of Northern States Power Company for Authority to Increase its Rates for Electric Service in Minnesota

ISSUE DATE: November 5, 1990

DOCKET NO. E-002/GR-87-670

ORDER AFTER REMAND DETERMINING DECOMMISSIONING COSTS

PROCEDURAL HISTORY

**Overview of this Proceeding**

On November 2, 1987, Northern States Power Company (NSP or the Company) filed the above-entitled general rate case. The Commission duly accepted the filing, suspended the proposed rates, and referred the matter to the Office of Administrative Hearings for contested case proceedings.

During contested case proceedings, five parties, including the Company, submitted a stipulation reflecting agreement on all but two of the financial issues. The stipulating parties were the Company, the Department of Public Service, the Residential Utilities Division of the Office of the Attorney General, the Minnesota Public Interest Research Group, and the Metropolitan Senior Federation. They urged the Commission to accept and adopt the stipulation's resolution of the financial issues it treated.

The Commission issued its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER on August 23, 1988. The Commission accepted the parties' stipulated position on some issues and rejected it on others. The Commission rejected the stipulated position on the expected costs of decommissioning the Company's Monticello and Prairie Island nuclear plants, choosing instead to continue using cost estimates adopted in an earlier docket, In the Matter of the Petition of Northern States Power Company for Depreciation Certification for Expected Decommissioning Costs for the Monticello and Prairie Island Nuclear Steam Generating Facilities, Docket No. E-002/D-86-604.

The Commission rejected a request for reconsideration of its decision on nuclear decommissioning costs. The Department of Public Service (the Department) and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) sought judicial review.

### **Judicial Review**

The Court of Appeals reversed and remanded. The Court found it had been improper for the Commission to decide to continue using decommissioning costs adopted in an earlier docket without placing the study supporting those costs in the record and giving all parties an opportunity to contest the study's adequacy. Application of Northern States Power Company, 440 N.W.2d 138 (Minn. App. 1989).

On July 31, 1989 the Commission issued its NOTICE AND ORDER FOR HEARING, referring the issue of nuclear decommissioning costs to the Office of Administrative Hearings for contested case proceedings. That Order also notified all parties of the Commission's intention to consider, in this case, the cost study it had relied upon in the earlier decommissioning docket, E-002/D-86-604 (the 604 docket).

### **Contested Case Proceedings on Remand**

The following parties appeared at contested case proceedings in the remand phase of this docket: the Company, the Department, the RUD-OAG, the City of St. Paul and the Board of Water Commissioners of the City of St. Paul, and the Suburban Rate Authority. The Administrative Law Judge (ALJ) previously assigned to the case, Richard L. Luis, presided on remand as well.

On August 21, 1989, the Department filed a Motion to Exclude, claiming that the Commission could not take official notice of the cost study from the 604 docket, that no party could be required to introduce the cost study, and that Commission staff should not be allowed to participate in the proceeding. The Administrative Law Judge (ALJ) denied the motion. On his own authority, he also ordered NSP to introduce into evidence the study and necessary foundational materials, and to produce the study's author for cross-examination.

On October 19, 1989, the Department moved to certify its Motion to Exclude to the Commission. The ALJ denied the motion.

In a pre-hearing conference, conducted by telephone on November 29, 1989, all parties acquiesced in admitting the cost study from the 604 docket into the record, together with foundational evidence, subject to a Commission ruling on the Department's renewed Motion to Exclude. All parties also stated they did not intend to cross-examine the study's author and saw no need for evidentiary hearings.

On January 16, 1990, the Department filed a Motion to Strike, asking the ALJ to exclude from the record and from his consideration a memorandum of law filed by Commission counsel. That memorandum asserted the Commission's authority to take official notice of the cost study at issue,

to require the study's introduction into the record, and to direct Commission staff to participate in the proceedings to ensure full development of the record. The ALJ denied the Department's Motion to Strike.

### **The ALJ's Report**

On June 25, 1990, the ALJ filed his report, presenting two issues for decision: the proper disposition of the Department's Motion to Exclude and the most reasonable estimate of the costs of decommissioning the Company's Monticello and Prairie Island nuclear plants.

The ALJ explained his rationale, and alternative rationales, for denying the Department's motion. He declined to make specific recommendations on decommissioning costs, reasoning that his observations on the sole addition to the record, a complex and lengthy document the Commission had analyzed before, was unlikely to add anything helpful to the Commission's deliberations.

### **Proceedings Before the Commission**

The matter came before the Commission on August 29, 1989. The Department, the RUD-OAG, and the Company requested and received time for oral argument. They supported the decommissioning cost estimates to which they had stipulated earlier.

## **FINDINGS AND CONCLUSIONS**

For the reasons set forth below, the Commission finds that the decommissioning cost study from the 604 docket was properly admitted to the record and that that study provides the most reasonable estimate of the costs of decommissioning the Company's Monticello and Prairie Island nuclear plants.

### **The Admissibility of the Study from the 604 Docket**

The Commission believes the cost study from the 604 docket could have been properly admitted to the record under several different theories. The ALJ placed it in the record under his own authority to manage contested case proceedings.<sup>1</sup> He believed the interests of justice and the clear language of the Court of Appeals' decision required the introduction of the study. The Commission agrees.

The Commission also believes it had the authority to take official notice of the cost study as an official document from another docket<sup>2</sup> and that it had statutory authority under the Administrative Procedure<sup>3</sup> and Public Utilities Acts<sup>4</sup> to require the introduction of the study.

Finally, the Commission agrees with NSP that the study from the 604 docket should have been admitted to the 1987 rate case record in any case, since the cost study the stipulation supports is essentially an amended version of that study.

The Commission therefore affirms the Administrative Law Judge's denial of the Department's Motion to Exclude.

### **Determination of Reasonable Decommissioning Costs**

The remaining issue is the determination of the most reasonable estimate of the cost of decommissioning the three nuclear power plants at Monticello and Prairie Island.

This is necessarily an imprecise undertaking. Nuclear decommissioning is a relatively new procedure. There is not yet such a thing as a "routine" decommissioning. Appropriate protocols and technologies are still evolving. Furthermore, these three plants are not expected to be decommissioned for approximately 20 years. Determining costs 20 years in advance is difficult when costs are well established; when they are still evolving it is more difficult still.

Decommissioning costs are expected to be high, however, and equity requires that they be collected from the ratepayers who benefitted from the plants. The Commission must therefore examine the evidence currently available and make the most fully informed judgment possible on what those costs will be.

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<sup>1</sup> Minn. Stat. § 14.50 (1988); Minn. Rules, part 1400.5500.

<sup>2</sup> The Court of Appeals noted, "We recognize that the Commission was authorized to take official notice of documents in a prior case. See, Minn. Stat. 14.60, subd. 4 (1988). . . ." NSP, at 141.

<sup>3</sup> Minn. Stat. § 14.60, subd. 2 (1988).

<sup>4</sup> Minn. Stat. §§ 216A.05, subd. 3; 216B.13, 216B.14, 216B.28, 216B.29, 216B.30, and 216B.31 (1988).

There are two cost studies in the record of this rate case. One is the initial decommissioning cost study prepared for NSP by TLG Associates. This is the study the Commission accepted and adopted in the 604 docket. It set the total cost of decommissioning at \$498 million.

The other was prepared for the Department by Dale Bridenbaugh of MHB Associates. Its starting point was the TLG cost study, which Mr. Bridenbaugh believed to be seriously flawed. Mr. Bridenbaugh claimed TLG's cost estimates were significantly higher than national averages. He also believed that, by using very conservative estimates of time and crew sizes, the study in effect built in a double contingency allowance. He therefore recommended removing the 25% stated contingency factor, for a total decommissioning estimate of \$399 million.

The Commission believes the TLG study provides a more reasonable estimate of what decommissioning costs will ultimately be than the Bridenbaugh study. The TLG study was careful, detailed, and site-specific. Its conclusions were based on original research. The Bridenbaugh study, on the other hand, was derivative, focussing primarily on the TLG findings. Similarly, the Bridenbaugh study relied heavily on comparisons between the costs of decommissioning other nuclear plants and TLG's estimated costs. The Commission believes such comparisons are of limited value, since, at this stage, each nuclear plant and each plant site are unique. Furthermore, although the Commission seeks to match estimates and actual costs, it would be less disruptive, when decommissioning occurs, to have a slight surplus in the decommissioning account than a shortfall.

Finally, the decommissioning cost estimates adopted in this case will not remain effective for the entire service lives of these plants. The Commission periodically reviews decommissioning cost estimates and fund accruals, and makes necessary adjustments in light of current evidence and recent developments. In fact, the Company has completed and filed a new decommissioning cost study, which will come before the Commission within the next few months, following review by interested parties.

The Commission will therefore approve, adopt, and incorporate in the rates set in this rate case, the decommissioning cost estimates of the TLG study.

### ORDER

1. The Order of Administrative Law Judge Richard L. Luis, denying the Department's Motion to Exclude, is affirmed.
2. The Commission approves, adopts, and incorporates into rates set in this rate case, the decommissioning cost estimates of the TLG cost study.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)