

E-002/C-92-228 ORDER ADVANCING THE TIME FOR FILING ANSWER AND HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Cynthia A. Kitlinski  
Dee Knaak  
Norma McKanna

Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Complaint  
of Arkla, Inc. and Minneapolis  
Energy Center, Inc. Against  
Northern States Power Company

ISSUE DATE: March 31, 1992

DOCKET NO. E-002/C-92-228

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**PROCEDURAL HISTORY**

On March 24, 1992, Arkla, Inc. (Arkla) and Minneapolis Energy Center, Inc. (MEC) filed a complaint against Northern States Power Company (NSP).

Along with their complaint, Arkla and MEC filed a motion requesting that the Commission adopt an expedited process to resolve the issue of NSP's interpretation of its Standby Service rate schedule prior to the meeting of the Board of Regents of the University of Minnesota on April 10, 1992. The complainants explained that NSP's interpretation would severely prejudice the chances of their heating proposal being selected by the Regents on April 10, 1992.

On March 25, 1992, the Commission issued notice to the complainant, the respondent, the Minnesota Department of Public Service (the Department) and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) and other potentially interested persons announcing that at its March 31, 1992 meeting the Commission would consider whether to vary its rules to expedite consideration of this matter. The notice also stated that on April 9, 1992 the Commission would meet to consider the issues raised in the complaint.

The Commission met to consider this matter on March 31, 1992.

**FINDINGS AND CONCLUSIONS**

The pre-hearing process following receipt of a formal complaint such as was filed by Arkla and MEC is set forth in Minn. Rules, parts 7830.1900, 7830.3000, and 7830.3100. The purpose of the rules is to establish an orderly process for responding to

complaints that provides all parties fair notice and adequate time to prepare for the hearing.

According to Minn. Rules, part 7830.1900, the respondent (in this case NSP) has 20 days following receipt of the complaint to file an answer. Then, after the respondent serves its answer or fails to file an answer within the 20 day answering period, the Commission proceeds to assign a time and place for a hearing on the complaint. Minn. Rules, part 7830.3000, subp. 4. Written notice of the hearing is served upon the parties at least 30 days before the hearing date unless the Commission for good cause orders a longer or shorter period of notice. Minn. Rules, part 7830.3100.

In the normal course prescribed by the rules, therefore, a hearing on Arkla and MEC's complaint would not be scheduled until long after April 10, 1992. The expedited handling requested by Arkla and MEC (a hearing on the matter prior to April 10, 1992) is possible only if the Commission agrees to vary the requirements of Minn. Rules, parts 7830.1900 and 7830.3000 and finds good cause to shorten the pre-hearing notice period.

#### Variance of the Complaint Process

The Commission may grant variances from its own rules pursuant to Minn. Rules, part 7839.4400 upon finding 1) that enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule, 2) that granting the variance would not affect the public interest, and 3) that granting the variance would not conflict with standards imposed by law.

The heart of this complaint is the contention that NSP's interpretation of its Standby Rider Service and its avowed policy to assess demand charges under its General Service or General Time-of-Day Service rates violate the provisions of Minn. Stat. § 216B.23 (1990) and contravene the pro-cogeneration policies embodied in Minn. Stat. §§ 216B.164 and 216B.166 (1990). The matter is of concern to complainants because, according to complainants, NSP's interpretation and policy would significantly increase the cost of a proposal that complainants have submitted to the University of Minnesota to design, construct, and operate improvements to the steam heating plants at the University Minneapolis campus.

The complainants contend that the matter requires swift resolution because the Board of Regents of the University of Minnesota is scheduled to make its final decision with respect to competing proposals for campus heating (including complainants' proposal) on April 10, 1992. Complainants contend that without resolution of this matter prior to April 10, the Board of Regents will be unable to accurately compare the competing proposals. If complainants' challenge to NSP's interpretation is merely pending on April 10, the Board of Regents will be forced to make a decision without full information.

The Commission finds that these unusual circumstances warrant varying the rules to allow expedited consideration of this complaint. Maintaining the schedule prescribed by the rule would deny complainants a meaningful hearing on their complaint. After April 10, 1992, even if they prevail on the merits of their complaint, it will be impossible to grant them the relief they seek, i.e. the opportunity to have their proposal evaluated by the Board of Regents without the cloud of NSP's interpretation hanging over it. Early resolution of this issue is also desirable from the Regents' point of view. For example, if the Regents proceeded on April 10 to select complainants' proposal in the belief that the complaint would ultimately be sustained and it was not, the Regents would have selected a proposal that was much more costly than they had believed. If, on the other hand, they rejected complainants' proposal in the belief that NSP's interpretation would be upheld and it was not, they would have missed an opportunity that they may have otherwise found more desirable. NSP will not be prejudiced by expediting this matter.

In these circumstances, the Commission finds that enforcing the rules' time sequence would place an unreasonable burden upon the complainants and that granting the variance would promote the public interest. The final variance requisite is also present: granting the variances does not conflict with standards imposed by law.

Accordingly, the Commission will vary Minn. Rules part 7830.1900 and require that NSP file an answer to this complaint within 13 rather than 20 days following service of the complaint, i.e. on or before April 6, 1992. Further, rather than waiting until such answer is filed to set the time and place of the hearing pursuant to Minn. Rules, part 7830.3000, subp. 4, the Commission will vary that process and set the time and place in this Order.

#### Good Cause for Less Than Thirty Days Notice

The analysis presented above as the basis for varying the timing requirements of Minn. Rules, parts 7830.1900 and part 7830.3000, subp. 4 also constitutes the "good cause" required by Minn. Rules, part 7830.3100 to decrease the time for the hearing notice to fewer than 30 days.

In this case, the Commission's March 25, 1992 notice to the parties informed the parties that the Commission would consider the merits of the complaint at a hearing held April 9, 1992. This date will allow the Commission to consider this matter

before the Regents meet to make their final decision on the heating proposals. The Commission will affirm that meeting date in this Order and adopt as adequate notice thereof the March 25 document.<sup>1</sup>

**ORDER**

1. On or before April 6, 1992, the respondent Northern States Power Company (NSP) shall file its answer to the complaint filed by Arkla, Inc. (Arkla) and Minnesota Energy Center, Inc. (MEC) and serve a copy on all parties.
2. The hearing on this complaint shall be held on April 9, 1992 at 9:30 a.m. Notice of this hearing given to the parties on March 24, 1992 is affirmed and adopted.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)

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<sup>1</sup> The Commission also has the discretion, under Minn. Rules, part 3100 to prescribe by order the form and extent of notice to be given.