

E-002/CN-91-19 ORDER VARYING TIME REQUIREMENTS FOR EXCEPTIONS TO  
THE ALJ'S REPORT, ALLOWING REPLIES, AND ESTABLISHING SERVICE  
REQUIREMENTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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|----------------------|--------------|
| Don Storm            | Chair        |
| Thomas Burton        | Commissioner |
| Cynthia A. Kitlinski | Commissioner |
| Dee Knaak            | Commissioner |
| Norma McKanna        | Commissioner |

In the Matter of an Application  
for a Certificate of Need for  
Construction of an Independent  
Spent Fuel Storage Installation

ISSUE DATE: April 14, 1992

DOCKET NO. E-002/CN-91-19

ORDER VARYING TIME REQUIREMENTS  
FOR EXCEPTIONS TO THE ALJ'S  
REPORT, ALLOWING REPLIES, AND  
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**PROCEDURAL HISTORY**

On April 10, 1992 Administrative Law Judge Allan W. Klein issued his Findings of Fact, Conclusions and Recommendation (his Report) in the above-entitled certificate of need proceeding. Under Minn. Rules, part 7847.0290, parties are required to file comments or exceptions within 10 days of receiving the Report. Those rules do not provide for replies to comments or exceptions.

On April 14, 1992 the Commission met on its own motion to consider three issues: (1) whether to vary the rule to extend the period for filing comments and exceptions, (2) whether to allow parties to file replies to comments and exceptions, and (3) whether to require parties to serve their comments, exceptions, and replies in person or by overnight delivery.

**FINDINGS AND CONCLUSIONS**

**Extending the Comment/Exception Period**

The Commission may grant a variance to any of its rules upon finding that the following conditions apply:

1. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;

2. Granting the variance would not adversely affect the public interest; and
3. Granting the variance would not conflict with standards imposed by law.

Minn. Rules, part 7830.4400.

The Commission finds that the requirements for granting a variance are met in this case.

Enforcing the rules' 10-day deadline would impose an excessive burden on the Commission and would not serve the regulatory process or the public interest. This case raises complex issues of fact, law, and public policy. It is crucial that all issues be fully developed and carefully analyzed by all parties. Ten days may not be long enough for all parties to complete their analysis of the Report and prepare their comments without jeopardizing quality.

Varying the 10-day exception/comment period would not adversely affect the public interest. In fact, it would serve the public interest by ensuring that the Commission has the benefit of informed advocacy by all parties.

Finally, varying the 10-day exception period 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, part 7847.0290 varied. The Commission will establish a comment/exception period of 20 days from the date the Administrative Law Judge issued his Report, the standard comment/exception period in other contested case proceedings. Minn. Rules, part 7830.3900.

### **Replies to Exceptions**

The Commission will allow parties to file replies to comments and exceptions for the same reasons it extended the comment/exception period: the case is complex, and meaningful analysis is time-consuming. The Commission will establish a ten-day reply period, the standard reply period in other contested case proceedings. Minn. Rules, part 7830.3900.

### **Expedited Service**

Finally, given the tight time frames established above, the Commission finds that allowing service by mail would put all parties under unnecessary additional time pressure. The

Commission will therefore require parties to serve their comments, exceptions, and replies to exceptions in person or by an overnight delivery service.

**ORDER**

1. Minn. Rules, part 7847.0290 is hereby varied to require that comments on and exceptions to the Administrative Law Judge's Report be filed and served no later than 20 days from issuance, April 30, 1992.
2. Replies to exceptions and comments shall be filed and served no later than 10 days thereafter, May 11, 1992.<sup>1</sup>
3. All parties shall serve their comments, exceptions, and replies in person or by an overnight delivery service.
4. 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> Since the final day of the ten day period falls on a Sunday, replies will be due the following Monday.