

E-002/GR-91-001 ORDER GRANTING RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner
Darrel Peterson	Commissioner

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

ISSUE DATE: January 6, 1992

DOCKET NO. E-002/GR-91-001

ORDER GRANTING RECONSIDERATION

PROCEDURAL HISTORY

On November 27, 1991, the Commission issued its FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER in this matter.

On December 17, 1991, Northern States Power Company (NSP), the Minnesota Department of Public Service (the Department) and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) filed petitions for reconsideration of various issues decided in the November 27, 1991 Order.

On December 18, 1991, Mankato Citizens Concerned with Preserving Environmental Quality (Mankato) filed a petition for reconsideration of the refuse derived fuel (RDF) issue decided in the November 27, 1991 Order.

On December 24, 1991, the Commission issued a Notice to all parties in this matter announcing that the Commission would consider whether it would toll the 20-day time period for reconsideration to permit a more thorough review of the petitions and responses and what status to grant Mankato's petition.

On December 26, 1991, Mankato filed a motion and argument in support of the timeliness of its petition.

On December 30, 1991, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

Petitions of the Department, NSP and the RUD-OAG

Petitions for reconsideration of the Commission's November 27, 1991 Order were filed by the Department, NSP, and the RUD-OAG on December 17, 1991. These petitions were timely filed, i.e. within the 20 days from the date of mailing of the Commission's Order allowed by Minn. Rules 7830.4100 for the filing of such petitions.

Under Minn. Stat. § 216B.27, subd. 4 (1990), any petition for reconsideration not granted within 20 days of filing is deemed denied. The Commission believes that adequate review of these petitions will require more than 20 days. The Commission, therefore, will grant the petitions for the purpose of allowing careful review of the issues they raise. Deliberations on the merits will be scheduled at a later date, following receipt of any answers that parties may timely file in response to the petitions, as provided by Minn. Rules 7830.4100.

Mankato's Petition

Mankato filed its petition for reconsideration of the November 27, 1991 Order on December 18, 1991, outside the 20 day period provided for such petitions by Minn. Rule 7830.4100. As such, it is untimely and, in the ordinary course, ineligible for consideration by the Commission.

In its December 26, 1991 filing, Mankato argued that a petition may be filed in the same manner as service may be effected, i.e. by depositing the petition in the first class mail. Therefore, it urged the Commission to find that when it placed its petition, addressed to the Commission, in the first class mail on December 17, 1991 it had effected "filing."

Mankato's argument is without merit. The difference between filing and service is clear and well understood. Documents are "filed" with the Commission and "served" upon parties. The different requirements for effecting filing as opposed to service are also well understood. Mankato alleges that the Commission's rule (Minn. Rules 7830.2600) makes no distinction between filing and serving. To the contrary, the rule explicitly reinforces that distinctions, stating that

Service of all documents shall be made upon other parties in proceedings before the commission by deposit in the first class mail.....The date of service shall be the day the document served is deposited in the mail.... (Emphasis added.)

The rule is quite clear that the provision allowing service to become effective upon deposit in the mail applies strictly to serving parties and Commission is not a "party" in proceedings that come before it for decision.

Filing, as opposed to serving, is effected on the date the document is received by the Commission. The Commission has consistently applied this requirement through the years and finds nothing in Mankato's argument to justify departing from this well established course.

On its own motion, however, the Commission will grant Mankato a variance from the time requirement of Minn. Rules 7830.4100 and consider its petition for reconsideration of the RDF issue. The Commission will do so pursuant to Minn. Rules 7830.4400, based on finding 1) that dismissal of the citizen group's petition for exceeding the time limit by one day to the prejudice of no other party would be excessive, 2) that granting Mankato the variance with an explicit caveat to abide by established rules of practice before the Commission would not adversely affect the public interest and 3) that granting such a variance would not conflict with standards imposed by law.

ORDER

1. The three (3) timely-filed petitions for reconsideration, i.e. those filed by the Department of Public Service (the Department), the Residential Utilities Division of the Office of the Attorney General (RUD-OAG), and Northern States Power Company (NSP), are accepted for purposes of tolling the statute to permit a more thorough review of the petitions and replies at later date.
2. The requirements of Minn. Rules 7830.4100 are hereby varied to permit consideration of Mankato's petition which is also accepted for purposes of tolling the statute to permit a more thorough review of the petition and replies at later date.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)