

E-002/M-92-246 ORDER EXEMPTING NORTHERN STATES POWER COMPANY FROM THE REQUIREMENTS OF MINN. STAT. § 216B.243 FOR THE ADDITION OF TWO DIESEL GENERATORS AT ITS PRAIRIE ISLAND PLANT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of
Northern States Power Company
for an Exemption from
Certificate of Need Requirements

ISSUE DATE: January 11, 1993

DOCKET NO. E-002/M-92-246

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PRAIRIE ISLAND PLANT

PROCEDURAL HISTORY

In 1973 and 1974 Northern States Power Company (NSP or the Company) obtained the necessary licenses from the federal Nuclear Regulatory Commission (NRC) to operate Prairie Island, a two-unit nuclear generating plant. Since it came on-line, Prairie Island has been subject to the NRC's regulation of issues concerning safe operation and maintenance. Prairie Island is under the Minnesota Public Utilities Commission's jurisdiction for questions of additional generating capacity, type of generating facilities to be licensed, land use and ratemaking.

In the 1970's the nuclear industry and the NRC began investigating emergency responses to a possible "station blackout" (SBO) at a nuclear generating plant. An SBO is a complete loss of offsite power, concurrent with the failure of onsite emergency power systems. Providing a second level of emergency power is of extreme importance, because the capability of cooling the nuclear reactor core is dependent on the ability to restore power in a timely fashion.

In June, 1988, the NRC issued a final rule on the SBO issue. Among other things, the rule required all nuclear facilities to be able to cope with an SBO for a specified acceptable duration, selected on a plant-specific basis. All nuclear generating plants were required to respond to the final rule within nine months of its issuance.

After evaluating its Prairie Island facility in light of the new regulations, NSP determined that changes would be necessary to comply with the NRC's new rule. NSP decided that it must add two new emergency generators to the two existing emergency generators

which are shared by the two units. The new generators would allow two generators to be dedicated to each of Prairie Island's units. The new emergency generators, which would be fueled by diesel fuel oil, would each have capacity of 5400 kw(e). After NSP submitted the emergency generator proposal to the NRC, the NRC responded that the two new generators would bring NSP in conformance with the SBO response rule.

On March 27, 1992, NSP petitioned the Commission for an exemption from Minn. Stat. § 216B.243, the certificate of need statute. NSP cited two reasons that it did not need a certificate of need from the Commission in order to operate its new emergency generators: state certification laws are preempted by federal law because the NRC has exclusive jurisdiction over nuclear facility construction, operation and safety issues; and the generators will not be used to provide retail electric service to NSP customers.

On April 17, 1992, the Department of Public Service (the Department) and the Residential Utilities Division of the Office of Attorney General (RUD-OAG) filed comments in response to the Company's request for exemption. Although both agencies disagreed with the arguments presented by the Company, they recommended that the Commission not require a certificate of need. Both the Department and the RUD-OAG felt that this particular set of facts did not fall within the statutory purpose for a certificate of need proceeding.

The matter came before the Commission for consideration on December 10, 1992.

FINDINGS AND CONCLUSIONS

I. Governing Statutes and Rules

Determination of the issue before the Commission starts with an examination of relevant statutes and rules. The certificate of need statute, Minn. Stat. § 216B.243, provides in part that "no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the commission..." A large energy facility is defined in part in Minn. Stat. § 216B.2421, subd. 2 (a) as "any electric power generating plant or combination of plants at a single site with a combined capacity of 80,000 kilowatts or more or any facility of 5,000 kilowatts or more which requires oil, natural gas, or natural gas liquids as a fuel..."

Minn. Rules, part 7849.0030 determines the scope of Chapter 7849, Public Utilities Commission - Power Plants and Transmission Lines. The rule states that

A certificate of need is required for a new [large electric generating facility], a new [large high voltage transmission line], and for expansion of either facility when the expansion is itself of sufficient size to come within the definition of "large electric generating facility" or "large high voltage transmission line" in part 7849.0010.

Minn. Rules, part 7849.0010 refers back to Minn. Stat. § 216B.2421, subd. 2 (a) for the definition of large electric generating facility.

Minn. Rules, part 7849.0030 also says that the "nominal generating capacity" of a large electric generating facility is considered its size. Nominal generating capacity is explained in Minn. Rules, part 7849.0010, subp. 20 as "the average output power level, net of in-plant use, that a proposed [large electric generating facility] is expected to be capable of maintaining over a period of four continuous hours of operation."

II. Comments of the Parties

NSP

NSP argued that the emergency diesel generators were chosen and put in place at Prairie Island in response to NRC requirements. The Prairie Island generating station is under the exclusive jurisdiction of the NRC for matters of safe operation. NSP therefore concluded that questions of implementing the diesel generators were preempted by federal law.

NSP next argued that a certificate of need requirement does not apply because the diesel generators are not intended to provide retail electric service to consumers. NSP cited the Commission's enabling legislation, Minn. Stat. § 216B.01, as authority for this argument.

The Department

The Department argued that the Company chose the method of responding to the NRC's rule requirement when it decided upon designing and building diesel generators. According to the Department, decisions such as the selection of a type of plant equipment fall under the jurisdiction of the Commission, not the NRC.

The Department disagreed with the Company's argument that there is no need for a certificate because the generators will not serve retail customers. The Department pointed out that the certificate of need statutes do not distinguish retail sale situations from wholesale or other sale situations.

The Department argued that a certificate of need requirement for the NSP emergency diesel generators would be contrary to legislative intent. The addition of the generators falls outside the legislative concerns behind the certificate of need process,

as expressed in Minn. Stat. § 216C.05. Those concerns include increases in energy demand and the need for additional electrical generating plants.

The RUD-OAG

The RUD-OAG agreed with the Department that the selection of a piece of plant equipment falls under the traditional Commission authority over economic questions such as the need for additional generating capacity, the type of generating facility, land use, and rate making. The RUD-OAG concluded that issues surrounding the selection of the diesel generators were not federally preempted.

The RUD-OAG argued against NSP's statement that it was exempted from the certificate of need process because the diesel generators would not provide service to retail customers. The RUD-OAG asserted that this contention limits too narrowly the concept of electrical service to customers. The RUD-OAG also argued that the diesel generators must be considered part of the provision of electric service to retail customers if the generators were to eventually be found "used and useful in rendering service to the public" as required for rate recovery under Minn. Stat. § 216B.16, subd. 6.

III. Commission Analysis

Necessity of a Certificate of Need Proceeding

NSP's nuclear generating facility at Prairie Island clearly comes under the certificate of need parameters of Minn. Stat. §§ 216B.243 and 216B.2421, as discussed above. Although the Prairie Island plant was constructed prior to the enactment of the certificate of need statutes, it would be subject to the need process if it were constructed today. The question now before the Commission is the necessity of a certificate proceeding for the addition of two emergency backup diesel generators.

As previously stated, Commission rules (Minn. Rules, part 7849.0030) state that a certificate of need is required for expansion of a large energy generating facility "when the expansion is itself of sufficient size to come within the definition of 'large electric generating facility'..." Size, or nominal generating capability, is explained in Minn. Rules, part 7849.0010, subp. 20 as "the average output power level, net of in-plant use, that a proposed [large electric generating facility] is expected to be capable of maintaining over a period of four continuous hours of operation."

The application of the Commission rules becomes clear when they are read together. An addition to a large electrical generating facility is considered an expansion for which a certificate is required if the addition is expected to be capable of maintaining a certain average output power level, net of in-plant use, over a period of four continuous hours.

Applying these rules to the particular set of facts now before the Commission, the Commission finds that the implementation of the diesel emergency generators does not require a certificate of need proceeding. In this case, the addition to the large electrical generating facility (Prairie Island) is in the form of two emergency diesel generators. These generators will be a backup to the existing emergency diesel generators. The new generators will not be connected to the transmission grid for the purpose of generating power. Rather, they will supply an alternative source of ac power in the case of one particular event, an SBO. This alternative power source would be used within the plant to cool the nuclear reactor core until the plant's normal in-plant power source was restored. The diesel generators are not therefore expected to be capable of maintaining any output power level, net of in-plant use, for any period of time. Pursuant to the relevant Minnesota rules, this particular proposed addition to Prairie Island's nuclear power plant, for the particular emergency use proposed by the Company, is not an expansion to the plant for which a certificate of need proceeding is necessary.

The Commission notes that the construction and installation of the emergency diesel generators will be subject to the Commission's examination of prudence if rate recovery is sought in a future rate case.

Federal Preemption

NSP argued that Minnesota certificate of need statutory requirements are preempted by federal law. Having applied the Commission rules to NSP's proposed addition to its Prairie Island plant, the Commission has found that a certificate of need proceeding is not required. The Commission therefore need not reach NSP's arguments regarding federal preemption, and will not discuss them in this Order.

ORDER

1. Northern States Power Company's request for an exemption from the requirements of Minn. Stat. § 216B.243 for the addition of two emergency diesel generators at its Prairie Island plant is granted.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)