

E-002/RP-91-682 ORDER DECLINING TO APPROVE OR DISAPPROVE STANDARD
CONTRACT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Marshall Johnson	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner

In the Matter of the Petition of
Northern States Power Company
for Approval of its 1991
Resource Plan

ISSUE DATE: August 17, 1993

DOCKET NO. E-002/RP-91-682

ORDER DECLINING TO APPROVE OR
DISAPPROVE STANDARD CONTRACT

PROCEDURAL HISTORY

I. Proceedings to Date

On May 19, 1993 the Commission issued its ORDER APPROVING MODIFIED WIND DEVELOPMENT PLAN in this docket, which deals with Northern States Power Company's 1991 resource plan proceeding. In that Order the Commission approved the Company's three-stage plan to add at least 50 megawatts of wind generation to its system by 1997. The first stage of the plan called for the Company to contract with an independent developer for 25 megawatts of wind capacity to be generated at a wind farm at Buffalo Ridge in Lincoln County. On April 15, 1993 the Company issued a Request for Proposals inviting interested developers to submit proposals to provide this Stage One capacity.

On May 24, 1993 the Company filed the standard contract it intended to use in future dealings with wind developers. The Company requested Commission approval of both the standard contract and the specific contract it would eventually negotiate with its Stage One developer. Commission staff permitted interested parties, including developers, 30 days to comment on the standard contract. The Department of Public Service, the Residential Utilities Division of the Office of the Attorney General, Northern Natural Power, New World Power, two parties who requested anonymity for business reasons, and a law firm (Nelson, Mullins, Riley & Scarborough) representing an unidentified developer filed comments.

The matter came before the Commission on July 22, 1993.

FINDINGS AND CONCLUSIONS

II. Comments of the Parties

The standard contract filed by the Company is necessarily long and complex, and the parties' comments are extensive. The most controversial provisions of the contract, however, appear to be as follows: (1) the contract conditions the Company's duty to perform on Commission approval of the rates it agrees to pay the developer; (2) the contract grants significant penalty and termination rights to the Company without granting similar rights to the developer; (3) an arbitration clause requires qualifying facilities to waive their statutory rights to Commission adjudication of disputes and potential recovery of costs and attorney's fees; (4) penalty provisions and pricing structures place nearly all the risk of adverse wind conditions on the developer.

Northern Natural Power also raised objections to the Company's acceptance of "best and final" offers from finalists in the Stage One bidding process, arguing such acceptance constituted an unfair change in the terms and conditions announced in the Request for Proposals.

III. Commission Action

The Company's request for advance approval of its standard contract, including price terms, is highly unusual. The Commission usually examines the prudence, reasonableness, and rate recoverability of purchased power contracts in general rate cases, for three reasons. First, issues such as the reasonableness of decisions to purchase specific amounts of power, to contract with specific vendors, and to accept specific terms and conditions are usually so fact-intensive they require the full evidentiary development of contested case proceedings. Second, the Commission generally rejects single issue ratemaking as an inefficient use of resources and a poor substitute for the comprehensive examination of total revenue requirements in a general rate case. Third, the Commission is reluctant to limit, or attempt to limit, the ratemaking options of future Commissions. The Commission sees no compelling reason to depart from general practice in this case.

On the other hand, the regulatory environment is changing. One of the issues state commissions are required to examine under the national Energy Policy Act of 1992 is whether they should implement procedures for the advance approval or disapproval of utility purchases of particular long-term wholesale power supplies. The Commission has begun an investigation into that and other issues raised by the Act and has requested comments

from interested parties.¹ That proceeding should yield valuable information on the advantages and disadvantages of approving wholesale power purchases in advance. The Commission therefore does not rule out the possibility of eventually granting advance approval of this or similar contract(s).

The Commission believes it would be inappropriate to take any action today on Northern Natural Power's allegations of irregularities in the Stage One bidding process. Those allegations are peripheral to this proceeding at best. Their factual basis is still unclear. Interested parties have not had adequate opportunity to determine what is at issue and to respond. Any examination of the issues raised by Northern about Stage One bidding would have to be addressed another time in another proceeding.

Finally, the Commission notes that the commenting parties invested significant resources in analyzing the standard contract filed by NSP and that all these parties have expertise in energy matters. The Commission urges NSP to give the most careful consideration to the parties' comments, understanding the Company will eventually have to prove the prudence and reasonableness of all contracts for wholesale power purchases and the process it used to obtain them.

ORDER

1. The Commission declines to approve or disapprove the standard contract filed by Northern States Power Company on May 24, 1993.
2. The Commission urges Northern States Power Company to give careful consideration to the comments on its standard contract filed by the parties to this proceeding.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

¹ In the Matter of an Investigation into Standards Regarding Long-term Wholesale Purchased Power Under Section 712 of the Energy Policy Act of 1992, Docket No. E-999/CI-93-207, ORDER ESTABLISHING COMMENT PERIOD (June 17, 1993).