

IP-1/CN-94-004 ORDER EXTENDING COMPLETENESS REVIEW PERIOD

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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In the Matter of the Application by LSP-
Cottage Grove, L.P. for a Certificate of Need
for a Large Generating Facility

ISSUE DATE: March 23, 1994

DOCKET NO. IP-1/CN-94-004

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REVIEW PERIOD

PROCEDURAL HISTORY

On February 22, 1994 LSP-Cottage Grove, L.P. (LSP), an affiliate of LS Power Corporation, filed an application for a certificate of need to build a natural gas fired 232-megawatt cogeneration facility. On February 23, 1994 the Commission issued a notice asking interested persons to file comments on whether the filing should be accepted as substantially complete under the certificate of need filing requirements, set forth in Minn. Stat. § 216B.243 (1992) and Minn. Rules, parts 7849.0010 through 7849.0400.

On March 7, 1994 the Department of Public Service (the Department) filed comments recommending that the Commission find the application incomplete. The Department was the only party to comment on the completeness of the application.

The matter came before the Commission on March 17, 1994.

FINDINGS AND CONCLUSIONS

I. The Department's Comments

The Department stated the application demonstrated a good faith effort to comply with the filing requirements, but that the Company had failed to provide the following information required under the rules.

1. **Promotional activities** -- Minn. Rules, part 7849.0240, subp. 2 (B) requires applicants to address the role promotional activities may have played in creating the need for the facility.
2. **Effect on future development** -- Minn. Rules, part 7849.0240, subp. 2 (C) requires a discussion of the effects the facility may have on future development.
3. **System map** -- Minn. Rules, part 7849.0250 (D) requires the filing to include a map of the utility's system.
4. **Conservation programs** -- Minn. Rules, part 7849.0290 requires detailed information on the utility's demand side management programs.
5. **Peak demand and annual consumption forecast** -- Minn. Rules, part 7849.0270 requires

detailed information on historical and projected peak demand and annual consumption in the utility's service area.

6. **System capacity** -- Minn. Rules, part 7849.0280 requires a description of the existing system's ability to meet projected demand and the extent to which the proposed facility will help.
7. **Emissions estimates** -- Minn. Rules, part 7849.0320 (D) (2) requires the applicant to state the estimated range of maximum contributions to 24-hour average ground level concentrations of three emissions at specified distances from the stack under worst-case weather conditions.
8. **Outlet transmission facilities** -- Minn. Rules, part 7849.0320 (K) requires a description of the minimum number and size of transmission facilities necessary for a reliable outlet for the facility.
9. **No-facility alternative** -- Minn. Rules, part 7849.0340 requires detailed analysis of the effects of not building the facility.
10. **Transmission facilities** -- Minn. Rules, part 7849.0330 requires detailed information on each alternative to the proposed facility that would require the construction of one or more large high voltage transmission lines.
11. **Increasing the efficiency of existing facilities** -- Minn. Rules, part 7849.0250 (B) (2) requires an analysis of increasing the efficiency of existing facilities, including transmission lines, as an alternative to building the proposed facility.
12. **New transmission lines** -- Minn. Rules, part 7849.0250 (B) (3) requires an analysis of constructing new transmission lines as an alternative to building the proposed facility.
13. **Estimated service lives** -- Minn. Rules, part 7849.0250 (C) (2) requires an application to include the estimated service life of the proposed facility and of each alternative.
14. **Consequences of delay** -- Minn. Rules, part 7849.0300 requires an analysis of the consequences of delaying construction for one year, two years, three years, and indefinitely. The rule speaks in terms of consequences to the utility's system, to neighboring systems, and to the power pool. These consequences are to be measured using three different demand forecasts.

The Department noted that some of these requirements could be waived upon a showing that the information was unavailable to the applicant. Minn. Rules, parts 7839.0200, subp. 6; 7839.0310. The Department also believed many deficiencies could be cured by introducing into the record documents from NSP's 1993 integrated resource plan.

II. Commission Action

A. The Six-Month Statutory Deadline

Under the certificate of need rules, the Commission must determine within 30 days of filing whether or not an application is substantially complete. Minn. Rules, part 7849.0200, subp. 5. If the Commission does not find the application incomplete within 30 days, it is deemed substantially complete and the six-month statutory deadline for acting on the application runs from the date of the filing. Minn. Stat. § 216B.243, subd. 5 (1992). If the Commission finds the application not substantially complete, the statutory deadline runs from the date it becomes substantially complete.

The six-month statutory deadline puts the parties and the Commission under severe time constraints, given the complexity and importance of the issues raised by certificate of need filings. It is crucial, therefore, that applications be complete before the Commission and the parties take them up on the merits. Anything less than a complete application can transform an already demanding process into an untenable one.

B. LSP's Proposal

After discussing the Department's comments with Department and Commission staff, LSP proposed, as an alternative to finding the application incomplete, extending the 30-day period for determining completeness. The Company stated it planned to supplement its application within days and that a finding of incompleteness might delay action by the Environmental Quality Board on a siting permit also required for the project to proceed. The Company claimed it was critical to move the process forward, because Northern States Power Company (NSP) needs the energy the proposed plant will generate by the summer of 1997.

The 30-day deadline is set by rule, and the Commission can vary its rules upon making the following findings:

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.

C. Rule Varied

The Commission will vary its rules and extend the completeness review period as requested by the Company.

LSP, as the first non-utility to file a certificate of need application, faced special difficulties in complying with the filing rules. The rules were written before non-utilities began selling power to the grid in amounts large enough to require certificates of need. The rules therefore require much information that can only be supplied, or can only be reliably supplied, by the utility purchasing the applicant's power. LSP was understandably confused about its obligation to supply such information. The Company has apparently now agreed to supply it through the cooperation of NSP.

The Commission is sympathetic to the Company's concern that a finding of incompleteness could be construed as requiring duplication of effort and could send a stronger signal than is necessary. The Commission will therefore vary its rule requiring a completeness determination within 30 days. The Commission finds that enforcing the rule would impose an excessive burden on LSP, varying the rule will not adversely affect the public interest, and varying the rule will not violate any applicable legal requirement.

The Commission will examine the completeness of the filing as soon as possible once the Company has made the promised supplementary filing(s). The Commission will consider the Company's application substantially complete as of the first date all required information is on file.

ORDER

1. Minn. Rules, part 7849.0200, subp. 5 is varied to allow the Company to file, and the Commission to consider, information not filed with the original certificate of need application.
2. The application date for LSP's certificate of need application will be the date on which all information necessary to make the application substantially complete has been filed.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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