

IP-1/CN-94-004 NOTICE AND ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

ISSUE DATE: April 22, 1994

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

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

I. The Application

On February 22, 1994 LSP-Cottage Grove, L.P. (LSP or the Company), an affiliate of LS Power Corporation, filed an application for a certificate of need to build a natural gas fired 232-megawatt cogeneration plant in Cottage Grove. The plant is intended to supply energy to Northern States Power Company and is scheduled to come on line in the summer of 1997.

On March 29, 1994 the Company made a supplementary filing. On April 20, 1994 the Commission accepted the supplemented application as being in proper form and substantially complete.

A copy of the Company's application is on file in the offices of the Department of Public Service, Suite 200, 121 Seventh Place East, St. Paul, Minnesota 55101-2145 and is open for public inspection during regular office hours.

FINDINGS AND CONCLUSIONS

II. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over applications for certificates of need for large generating facilities under Minn. Stat. § 216B.243 (1992). The statute requires the Commission to hold at least one public hearing under the Administrative Procedure Act before acting on this or any other application for a certificate of need. Minn. Stat. § 216B.243, subd. 4 (1992).

The Commission finds that it cannot satisfactorily resolve all issues raised by the Company's application on the basis of its filing and the single public hearing required under the statute. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

III. Issues to be Addressed

A. Substantive Issues

Minn. Stat. § 216B.243 (1992) and Minn. Rules, parts 7849.0010- 7849.0400 set forth criteria which must be met to establish need for proposed large energy facilities, including the proposed cogeneration plant. Parties to this proceeding shall address whether the proposed facility meets these criteria.

B. Case Management Issue

Because this case is subject to a six-month statutory deadline, and because construction must begin soon if the proposed plant is to meet NSP's projected energy needs, the Commission has referred this application for contested case proceedings as soon as it was substantially complete. The Commission is concerned, however, by the fact that LSP and Northern States Power Company have not yet signed a contract. At present, LSP is not bound to build the proposed plant and NSP is not bound to buy the energy the plant will produce.

If these parties do not reach an agreement, the three state agencies currently involved in this case will have spent significant amounts of public resources for no significant public benefit. Any parties intervening after issuance of this Notice and Order for Hearing would be similarly harmed. To protect the resources of the parties and the credibility of the certificate of need process, the Commission conveys its concern to the Administrative Law Judge and urges him to set limits on how far this case may proceed without a signed contract.

IV. Public Participation

Minn. Stat. § 216B.243, subd. 4 (1992) encourages public participation in certificate of need proceedings. The statute requires at least one hearing to obtain public opinion on the application and requires the Commission to designate an employee to facilitate citizen participation in the hearing process.

The Commission has designated statistical analyst David L. Jacobson to facilitate and coordinate public participation in this proceeding. He may be reached by telephone at (612) 297-4562 and by FAX at (612) 297-7073. His address is Suite 350, 121 7th Place East, St. Paul, Minnesota 55101-2147.

Members of the public need not become formal parties to participate in the hearing process. They are encouraged to attend the public hearing(s) and to submit testimony and exhibits. Persons who cannot attend the public hearing(s) and wish to comment may submit written comments to the Administrative Law Judge. The Commission will require the Company to publish notice of the public and evidentiary hearings in newspapers throughout the state, to encourage public participation.

V. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Steve M. Mihalchick. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2145.

B. Hearing Procedure

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 (1992); the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7830.0100 to 7830.4400 and Minn. Rules, parts 7849.0010 to 7849.0400. Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, (612) 297-3000.

Under these rules formal parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents. Any person intending to appear at the hearing as a formal party must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2 (1992).

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Anu Seam, Special Assistant Attorney General, Suite 350, 121 7th Place East, St. Paul, Minnesota 55101-2147, (612) 296-0413.

The times, dates, and places of public and evidentiary hearings will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

C. Parties and Intervention

Current parties to this proceeding are LSP and the Department of Public Service. NSP, whose system configuration and energy needs are central issues, has appeared for purposes of providing information and will continue to play that role. NSP will be subject to information requests on the same terms as a party, whether or not the company chooses to become a party.

Other persons wishing to become formal parties to this proceeding shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held on Monday, May 16, 1994 at 9:30 a.m. in the Small Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147.

All parties and persons intending to intervene should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the scope of the hearing, the locations and dates of hearings, discovery procedures, and similar issues.

E. Time Constraints

Under Minn. Stat. § 216B.243, subd. 5 (1992), the Commission is required to act on the Company's application within six months of receipt of a substantially complete filing. The Commission asks the Administrative Law Judge to conduct contested case proceedings in light of these time constraints. Parties should note the six-month statutory time frame at the outset and be prepared for the expedited hearing schedule that time frame requires.

F. Application of Lobbying Provisions

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq. (1992), apply to certificate of need proceedings. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Minnesota Ethical Practices Board, telephone number (612) 296-1720, with any questions.

G. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300 to 7845.7400, which all parties are urged to consult.

ORDER

1. A contested case proceeding shall be held on the Company's certificate of need application.
2. The contested case proceeding shall begin with a prehearing conference on Monday, May 16, 1994, at 9:30 a.m. in the Small Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147.
3. At least one public hearing shall be held in this matter at a time and place determined by the Administrative Law Judge after consultation with the Commission.
4. All parties to this proceeding may serve information requests on any other party and on Northern States Power Company. Information requests shall be answered within ten days of receipt.
5. The Company shall publish notice of the public and evidentiary hearings at least 10 days in advance in newspapers of general circulation throughout NSP's service area. The Company shall work with staff to develop a plan to meet this requirement, including a proposed text, a list of the newspapers it proposes to use, and proposed publication dates. The Commission authorizes staff to approve the plan, with the Company retaining the right to Commission review.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
Suite 1700
100 Washington Square
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
Suite 350
121 Seventh Place East
St. Paul, Minnesota 55101-2147

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MPUC Docket No. IP-1/CN-94-004

OAH Docket No.

NOTICE OF APPEARANCE

Name and Telephone Number of Administrative Law Judge:

Steve M. Mihalchick
(612) 349-2145

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____