

IP-1/CN-94-004 ORDER GRANTING CERTIFICATE OF NEED

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
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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: October 19, 1994

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

ORDER GRANTING CERTIFICATE OF
NEED

PROCEDURAL HISTORY

I. INITIAL PROCEEDINGS

On February 22, 1994, LSP-Cottage Grove, L.P. (LSP-CG), an affiliate of LS Power Corporation, filed an application for a certificate of need pursuant to Minn. Stat. §§ 216B.2421, subd. 2(a) and 216B.243. Under the statutes, LSP-CG's proposed cogeneration facility is a large energy facility and therefore requires a certificate of need prior to construction.

On March 23, 1994, the Commission issued its ORDER EXTENDING COMPLETENESS REVIEW PERIOD in this docket. In that Order the Commission varied its certificate of need filing rules to allow LSP-CG additional time to file supplemental information supporting its application. The Commission noted that LSP-CG is the first non-utility to file a certificate of need application, and as such it faces special difficulties in complying with the filing rules.

On March 29, 1994, LSP-CG filed supplemental information.

On April 20, 1994, the Commission issued its ORDER ACCEPTING FILING, DELEGATING PREPARATION OF ENVIRONMENTAL REPORT, AND AUTHORIZING EXECUTIVE SECRETARY TO VARY TIME REQUIREMENTS. In that Order the Commission accepted LSP-CG's certificate of need application as of March 29, 1994, when the applicant's supplemental information was filed.

On April 22, 1994, the Commission issued its NOTICE AND ORDER FOR HEARING. The Commission referred the matter to the Office of Administrative Hearings, which assigned Administrative Law Judge (ALJ) Steve Mihalchick to conduct contested case proceedings.

II. RELATED DOCKET

On April 12, 1993, the Commission issued its ORDER REQUIRING NEGOTIATIONS in Docket No. E-002/C-92-899, In the Matter of the Complaint of LS Power Corporation against Northern States Power Company (the LS Power complaint docket). In that Order the Commission required NSP to "negotiate immediately and simultaneously with LS Power and any other developers who are on the record in this proceeding as having submitted proposals to meet all or part of NSP's projected need for intermediate capacity before the year 2000."

On May 9, 1994, after completion of its competitive negotiation process, NSP executed a 30-year power purchase agreement with LSP-CG. The agreement was contingent upon LSP-CG's obtaining a certificate of need from the Commission (as well as other regulatory approvals).

Genoa Generating Limited Partnership (Genoa) was an unsuccessful participant in NSP's

competitive negotiation process.

On October 6, 1994, in the same meeting at which the Commission considered LSP-CG's application for a certificate of need, the Commission approved the NSP/LSP-CG agreement as a resolution of the LS Power complaint docket.

III. PARTIES AND REPRESENTATIVES

A. Petitions to Intervene

Timely petitions to intervene were filed by Genoa, Minnesota Power & Light Company (Minnesota Power), the Department of Public Service (the Department), and the Residential Utilities Division of the Office of Attorney General (RUD-OAG). Petitions to intervene were filed after the ALJ's intervention request deadline by the City of St. Paul (City) and by Northern States Power Company (NSP).

On May 23, 1994, the ALJ issued his Prehearing Order. In that Order the ALJ granted the Department and the RUD-OAG their petitions to intervene as of right. Minn. Rules, part 1400.6200; Minn. Stat. § 8.33, subd. 3.

On June 17, 1994, the ALJ issued his Order on Petitions to Intervene. In that Order the ALJ denied the City's petition on the grounds that it was untimely filed and that the City was not materially affected by the proceedings.

The ALJ denied Genoa's and Minnesota Power's petitions to intervene. The ALJ found that these applicants were not directly affected by the proceedings and therefore did not qualify as intervenors. Minn. Rules, Parts 1400.6200, subp. 1; 7830.2200; 7847.0130.

The ALJ found, however, that Genoa and Minnesota Power should be granted limited participant status in the proceedings. The ALJ noted that Genoa had lost out to LSP-CG in the competitive negotiation process to determine NSP's source of additional capacity. The ALJ also noted that Minnesota Power has a general outstanding offer to sell its excess capacity to NSP or any other electric utility. Due to these circumstances, the ALJ stated, Genoa and Minnesota Power have unique interests, not otherwise adequately represented, regarding the availability of electricity to meet the need proposed in LSP-CG's application. The ALJ therefore granted Genoa and Minnesota Power participant status, limited to the issue of existing electrical generating capacity. Genoa and Minnesota Power were allowed to file testimony on the issues they raised but were not allowed to engage in discovery or cross-examination.

On August 17, 1994, NSP filed a petition to intervene. In his report filed September 6, 1994, the ALJ denied NSP's petition. The ALJ stated that the petition was untimely and that NSP had not identified any interest not adequately represented by LSP-CG, as required by Minn. Rule, Part 1400.6200, subp. 3.

Because NSP's testimony was essential to the determination of need for the LSP-CG facility, evidence presented by NSP regarding forecasted need was considered by the ALJ.

B. Parties, Participants, and Their Representatives

The parties and participants were represented as follows:

LSP-CG was represented by Charles K. Dayton, Leonard, Street and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402, and William H. Wilson, Brown, Olson & Wilson, P.C., 501 South Street, Concord, NH 03304;

The Department was represented by Michael A. Sindt, Special Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2130;

NSP was represented by Audrey Zibelman, 414 Nicollet Mall, Minneapolis, MN 55401;

Genoa was represented by Jeffrey L. Landsman, Wheeler, Van Sickle & Anderson, Suite 801, 25 West Main Street, Madison, WI 53703-3398;

Minnesota Power was represented by Dave McMillan and Johannes Williams, Minnesota Power, 30 West Superior Street, Duluth, MN 55802.

IV. PUBLIC AND EVIDENTIARY HEARINGS

A public hearing on the need for the facility was held in Cottage Grove on July 18, 1994. Public and evidentiary hearings were held in St. Paul on July 25, 1994.

The ALJ filed his Findings of Fact, Conclusions of Law, and Recommendation on September 6, 1994.

V. PROCEEDINGS BEFORE THE COMMISSION

The matter came before the Commission for consideration on October 6, 1994.

FINDINGS AND CONCLUSIONS

I. FACTUAL BACKGROUND

LSP-CG proposes to build a natural gas-fired, combined-cycle cogeneration facility of approximately 245 megawatts (MW) located at 3M's Cottage Grove plant. The facility will serve as a dispatchable intermediate load power generation resource for NSP, and will also provide steam for 3M's Chemolite plant. The steam will allow 3M to discontinue use of its coal-fired boilers at the plant.

LSP-CG's facility is a qualifying facility (QF) pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA).

II. CERTIFICATE OF NEED CRITERIA; ALJ'S FINDINGS

The criteria for granting a certificate of need are set forth in Minn. Stat. § 216B.243 and Minn. Rules, parts 7849.0100-.0120.

Minn. Rules, part 7849.0120 provides four criteria which must be met in order to establish need for the proposed generating facility.

- A. The probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states.**

The ALJ noted that NSP had identified a need for additional power generation capacity in its 1991 and 1993 Integrated Resource Plans (IRPs), and had listed the LSP-CG facility as a committed resource in the 1993 IRP.

The Department examined NSP's 1991 and 1993 IRPs, did its own forecasts, and concluded that NSP's forecasts of peak demand and energy requirements were reasonable and appropriate for determining the need for the LSP-CG facility.

The ALJ found that additional NSP-initiated conservation programs would not provide a cost-effective substitute for the type of electric capacity provided by the proposed LSP-CG facility.

The ALJ concluded that the proposed facility will provide an efficient use of resources. The

facility's water requirements will be almost entirely satisfied by recycling cooling water from 3M's existing sources, and power will be delivered to NSP's load centers via existing transmission lines.

The ALJ concluded that the LSP-CG facility is a reliable energy source and that there are no cost-effective alternatives to the LSP-CG facility that do not require a certificate of need.

B. A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record.

The ALJ found that alternatives available to provide electricity to NSP include demand side management (DSM), other natural gas-fired technologies, coal-fired technologies, renewable technologies, and purchased power.

According to the ALJ, purchasing power from the Mid-Continent Area Power Pool (MAPP) would not be a viable alternative. No MAPP excess capacity will be available for purchase in 1997, due to an anticipated deficit and the MAPP requirement to maintain a reserve capacity.

Due to LSP-CG's status as a QF, NSP is bound by PURPA to accept LSP-CG's offer if that offer is as low or lower than competing offers.

The ALJ found that the LSP-CG proposal was less expensive than the Genoa project in nine of NSP's twelve future cost scenarios. Also, the Genoa facility would not be constructed in Minnesota and would not displace 3M's coal-fired boilers. The Genoa alternative would not provide the socioeconomic or environmental benefits of the LSP-CG proposal.

C. By a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health.

The ALJ found that replacing 3M's existing coal-fired plant with the LSP-CG facility will result in a net reduction of emissions. Although a 245 MW wind or solar/photovoltaic plant would have lower air emissions than the LSP-CG facility, these alternatives would not displace 3M's steam plant. Also, neither the wind nor solar/photovoltaic alternative is suitable for intermediate load electrical generation.

The ALJ found that the LSP-CG facility is a reliable source of electricity which will provide a greater net benefit to the socioeconomic environment than any of the reasonable alternatives.

The ALJ stated that operation of the LSP-CG facility will result in less environmental damage than if it were not constructed.

Construction of the facility will create approximately 275 temporary jobs and 20 to 25 permanent jobs.

The ALJ found that the LSP-CG facility will provide 3M's Cottage Grove plant with a cost-effective source of steam, which will help 3M lower its production costs and allow 3M to compete more effectively in the global market.

D. The record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

The ALJ found that there is no evidence in the record indicating that the LSP-CG facility fails to meet this criterion.

E. Conclusion

The ALJ found that LSP-CG's proposal meets all of the criteria in the statute and rule, and that the certificate of need should therefore be granted.

III. COMMENTS OF THE PARTIES

A. LSP-CG

LSP-CG stated that its proposed facility clearly meets the criteria of statute and rule and a certificate of need must therefore be granted.

LSP-CG argued that a more reasonable and prudent alternative to its facility had not been demonstrated by record evidence.

B. NSP

NSP provided evidence that it requires the capacity and energy to be supplied by the LSP-CG facility. NSP stated that the need for the facility cannot be met by additional energy conservation. According to NSP, there is no reasonable alternative to the proposed facility.

C. The Department

The Department stated that the LSP-CG proposal meets each of the four criteria for granting a certificate of need. The evidence does not support the contention that a more reasonable and prudent alternative exists.

D. Genoa

Genoa argued that the certificate of need should be denied because LSP-CG had failed to meet its burden of justifying the need for the facility in light of possible alternatives.

Genoa argued that its limited participant status precluded it from developing a full and complete record on the certificate of need issues. According to Genoa, the ALJ's findings are not supported by a preponderance of evidence in the record and are thus arbitrary and capricious.

E. Minnesota Power

Minnesota Power did not protest its limited participant status. Minnesota Power argued that under its limited participant status it had demonstrated by a preponderance of evidence that possible alternatives exist for satisfying NSP's energy demand from existing energy generation facilities.

Minnesota Power believed that the record was insufficient to support granting a certificate of need. According to Minnesota Power, the ALJ failed to weigh its evidence regarding purchased power alternatives.

IV. COMMISSION ANALYSIS

A. The Certificate of Need

After the Department made recommendations based upon its investigation, the ALJ conducted full contested case proceedings and issued careful and extensive findings. The Commission agrees with the ALJ's conclusion that LSP-CG meets all the statutory and rule criteria and should be granted a certificate of need.

The ALJ gave full consideration to the issues raised by Genoa and Minnesota Power. The ALJ found that Minnesota Power's hypothetical MAPP configuration was faulty. Because MAPP would be serving all participants, not just NSP, there would be no surplus that NSP could rely

upon. The Commission agrees with the ALJ's conclusion that Minnesota Power's proposed alternative could not be counted upon to meet NSP's needs.

The ALJ also made findings that the Genoa alternative was inferior to the LSP-CG facility. The proposals are nearly identical, with one important difference--there would be no cogeneration under the Genoa proposal. The need for a Wisconsin certificate of public convenience and necessity for the Genoa project would cause delay for NSP. Under most of NSP's cost scenarios, the Genoa proposal would be more expensive than the LSP-CG facility. The Commission agrees with the ALJ's conclusion that the Genoa proposal would not be a prudent alternative.

The Commission agrees with the ALJ that both Genoa and Minnesota Power were afforded every due procedural right and opportunity. Genoa was a participant throughout NSP's competitive negotiation process. Both Genoa and Minnesota Power were allowed to submit testimony in this proceeding on issues they had raised. Nothing in the process precluded them from persuading the ALJ against the LSP-CG project. After careful consideration of all the evidence, the ALJ decided against Genoa and Minnesota Power and found that substantial evidence supported the granting of a certificate of need for LSP-CG.

Having examined the full record and listened to the arguments of the parties and participants, the Commission agrees with the ALJ that a certificate of need for LSP-CG's facility is reasonable and necessary. The Commission adopts the ALJ's Findings of Fact and Conclusions of Law. The Commission will grant the Company its certificate of need.

B. Payment of Fees

Minn. Rules, part 7849.0210, subpart 3, states that no certificate of need shall be issued until all fees owed by the applicant are paid in full. At this time, it is impossible to calculate LSP-CG's fees because further cost information must be obtained from the ALJ, the Department, and the Commission.

LSP-CG has stated that a delay in granting the certificate would result in a delay in gaining site approval from the Environmental Quality Board. This would adversely affect the start of construction of the facility. In order to facilitate the certificate process, LSP-CG submitted a letter expressing its commitment to full payment of fees when their assessment is complete. The letter was filed October 7, 1994.

Minn. Rules, part 7829.3200 states that the Commission may grant a variance if the following criteria are fulfilled:

1. Enforcement of the rule would impose an excessive burden upon the applicant or other affected by the rule;
2. Granting of the variance would not adversely affect the public interest; and
3. Granting of the variance would not conflict with standards imposed by law.

The Commission finds that the criteria of Minn. Rules, part 7829.3200 have been fulfilled and a variance to Minn. Rules, part 7853.0210 should be granted. Enforcement of the rule would impose an excessive burden on LSP-CG by delaying site approval and construction of the facility. Since the Company has assured the Commission of full payment of fees, the public interest should not be adversely affected. Granting the variance would not conflict with standards imposed by law.

The Commission grants LSP-CG a variance to the fee payment provision of Minn. Rules, part 7849.0210, subpart 3. LSP-CG is required to pay all applicant's fees when they have been fully assessed.

ORDER

1. The Commission grants LSP-CG a certificate of need for its proposed cogeneration facility.
2. The Commission grants LSP-CG a variance to Minn. Rules, part 7849.0210, subpart 3, to allow the granting of the certificate of need prior to full payment of applicant's fees. LSP-CG shall pay all applicant's fees when they are fully assessed.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)