March 6, 1995

DOCKET NOS. E-002/D-93-504
E-002/D-94-635

ORDER GRANTING RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
Dee Knaak	Commissioner

In the Matter of the Petition of Northern States Power for Depreciation Certification for Expected Decommissioning Costs for the Monticello and Prairie Island Nuclear Steam Generating Facilities and Depreciation Proposals for the Monticello and Prairie Island Nuclear Plants	ISSUE DATE: March 6, 1995 DOCKET NOS. E-002/D-93-504 E-002/D-94-635 ORDER GRANTING RECONSIDERATION

PROCEDURAL HISTORY

On January 25, 1995, the Commission issued its ORDER ACCEPTING FILING, REQUIRING ANNUAL LETTER, AND EXTENDING DATE FOR NEXT TRIENNIAL FILING in this matter.

On February 14, 1995, the North American Water Office (NAWO) filed a petition for reconsideration of that Order with the Commission but did not serve a copy of that petition on Northern States Power Company (NSP or the Company).

On February 15, 1995, the Commission issued a notice to the parties authorizing the filing of comments on or before March 6, 1995.

On February 22, 1995, NSP filed a letter with the Commission requesting that NAWO's petition be denied for failure to properly serve the Company. In the alternative, NSP requested a minimum ten day period to reply to the petition beginning from the date it would receive formal service of the petition.

On February 23, 1995, NAWO filed a letter reporting its service of the petition on the Company on that date (February 23, 1995) and acknowledging lack of service on NSP prior to that date. NAWO explained how the service error was made and agreed to the Company's request for a minimum of ten days to respond.

On February 23, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. Timeliness of Service

Timely service of a petition for reconsideration on all parties to the matter is required to perfect the petition. Minn. Rules, Part 7829.3000, subp. 3 requires that a petition for rehearing, amendment, vacation, reconsideration, or reargument must be served on the parties and participants in the proceeding to which the petition relates. Minn. Rules, Part 7829.0400, subp. 5 requires that a document (such as NAWO's petition for reconsideration) must be served on persons listed on the appropriate service list *the same day* it is filed with the Commission. Absent the required service upon NSP, NAWO's petition is defective and is subject to dismissal.

The Commission will not dismiss NAWO's petition on this ground as requested by NSP but will instead grant NAWO a variance from the rules' service deadline requirement. The Commission concludes that the variance is warranted because the three standards set forth for a variance in Minn. Rules, Part 7829.3200 are met in this case.

Excessive Burden: NAWO served a copy of the petition on Attorney Sam Hanson of the Briggs & Morgan law firm the same day it filed the petition with the Commission. NAWO explained that it incorrectly believed that Mr. Hanson represented NSP in this matter. If NAWO had been correct in believing that Mr. Hanson did in fact represent NSP in this matter, service on NSP would have been accomplished. Minn. Rules, Part 7829.0400, subp. 5 states that when a party is represented by an attorney, service upon the attorney is considered service upon the party.

In this case, however, Mr. Hanson did not represent NSP so service upon him did not constitute service upon the Company. It is now too late for NAWO to refile its petition and properly serve the parties with a refiled petition. The time for filing petitions for reconsideration has expired.[1] Accordingly, dismissal of NAWO's petition for defective service would preclude NAWO from obtaining review of the merits of its petition.

Under the circumstances of this case, which include the fact that NSP was served only 10 days later than it should have been (February 23, 1995) and will still have a full 10 days following formal service (until March 6, 1995) to reply to the petition, dismissal appears to be too onerous a consequence for a mistake which the Commission believes NAWO will not repeat.

Public Interest: The Commission believes that it is in the public interest to dispose of matters on the merits rather than on procedural grounds unless substantial countervailing interests have been jeopardized. In this case, NSP's ability and time to respond has not been compromised. The Company will have until March 6, 1995 to file an answer to NAWO's petition.

Standards Imposed by Law: The service requirement in question is created by rule

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[1] Minn. Rules, Part 7829.3000 authorizes the filing of petitions for reconsideration only within the 20 day period following the date the decision or Order is served by the Executive Secretary.

rather than by law. As such, it is properly subject to variance, as expressly provided for in Minn. Rules, Part 7829.3200.

B. Petition for Reconsideration

Under Minn. Stat. § 216B.27, subd. 4 (1992), any petition for reconsideration or application for rehearing not granted within 20 days of filing is deemed denied. The Commission finds that adequate review of NAWO's petition for reconsideration will require more than 20 days. The Commission, therefore, will grant the petitions for purposes of tolling the statute and allowing an opportunity for meaningful review. This Order makes no determination regarding the merit of the party's petition. Deliberations on the merits of the petition will be scheduled at a later date.

NSP's answer to NAWO's petition will be due March 6, 1995, ten days following NAWO's service of its petition on NSP, as requested by the Company.[2] Comments by other parties on NAWO's petition will also be due on March 6, 1995, as announced in the Commission's February 15, 1995 Notice.

ORDER

1. The Commission hereby grants NAWO a variance from the rule requirement that NAWO's petition for reconsideration be served upon all parties on the same day it was filed with the Commission, February 14, 1995. NSP's request that the Commission deny the petition for lack of proper service is rejected. In short, the Commission will consider the petition as if it had been duly filed and served.

2. NSP and any interested party shall have until March 6, 1995 to reply to NAWO's petition.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

[2] This ten day period is also consistent with the time period provided for the Company to file an answer by Minn. Rules, Part 7829.3000, subp. 4.