

April 19, 1995

DOCKET NO. E-002/CN-94-795

ORDER GRANTING CERTIFICATE OF NEED

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 Application of
Northern States Power Company for a
Certificate of Need for Approximately 100
Megawatts of Wind Generation

ISSUE DATE: April 19, 1995

DOCKET NO. E-002/CN-94-795

ORDER GRANTING CERTIFICATE OF
NEED

PROCEDURAL HISTORY

I. INITIAL PROCEEDINGS

In May, 1994, the Minnesota legislature enacted legislation requiring Northern States Power Company (NSP or the Company) to add 225 megawatts (MW) of wind power by the end of 1998 and another 200 MW by the end of 2002. The statute requires NSP to have 100 MW of wind power under contract by the end of 1996.

On October 6, 1994, the Commission issued its ORDER GRANTING EXEMPTION FROM CERTAIN FILING REQUIREMENTS AND VARIANCE in the above-captioned matter. In that Order the Commission partially granted NSP's request for exemption from certain certificate of need filing requirements, in light of the statutory mandates.

On September 23, 1994, NSP filed a certificate of need application for approximately 100 MW of wind conversion generating capability. The application was filed pursuant to the statutes governing certification for large energy facilities, Minn. Stat. § 216B.2421, subd. 2(a) and Minn. Stat. § 216B.243.

On October 20, 1994, the Commission issued its ORDER ACCEPTING FILING AND DELEGATING PREPARATION OF ENVIRONMENTAL REPORT and NOTICE AND ORDER FOR HEARING. The Commission referred the matter to the Office of Administrative Hearings, which assigned Administrative Law Judge (ALJ) Allan W. Klein to conduct contested case proceedings.

On February 28 and March 21, 1995, NSP filed letters expressing a commitment to pay all fees payable under Minn. Rules, part 7849.0210.

II. PARTIES AND REPRESENTATIVES

NSP was represented in these proceedings by Jeffrey C. Paulson, 414 Nicollet Mall, Fifth Floor, Minneapolis, Minnesota 55401.

The Department of Public Service (the Department) was represented by Ellen Gavin, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101.

The Residential Utilities Division of the Office of the Attorney General (RUD-OAG) was represented by Eric Swanson, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101.

III. STIPULATED FINDINGS

On January 30, 1995, NSP, the Department, and the RUD-OAG jointly filed Proposed Findings of Fact and Conclusions of Law with the ALJ.

IV. PUBLIC AND EVIDENTIARY HEARINGS

A public hearing on the need for the wind generation facility was held in Lake Benton on January 12, 1995, and a public and evidentiary hearing was held in St. Paul on January 19, 1995.

No opposition to the proposed facility was expressed at the hearings.

The ALJ filed his Findings of Fact, Conclusions of Law and Recommendation on February 23, 1995. The ALJ essentially adopted the parties' stipulated Findings of Fact and Conclusions of Law in his filing.

V. PROCEEDINGS BEFORE THE COMMISSION

The matter came before the Commission for consideration on March 30, 1995.

FINDINGS AND CONCLUSIONS

I. FACTUAL BACKGROUND

NSP's proposed wind project will be located in an area known as Buffalo Ridge near the city of Lake Benton, Minnesota. NSP has identified two potential sites, which are subject to approval by the Minnesota Environmental Quality Board (MEQB).

The wind project will be developed by a bidder or bidders selected through a competitive bidding process implemented by NSP. NSP will own and operate the substation, feeder system and wind easements for use by the winning bidder; the bidder will provide all turbines, towers and related facilities.

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 stated that this is a unique certificate of need proceeding, because the legislature in this case has determined the necessity for adding the 100 MW of wind generation. Issues of future adequacy, reliability, and efficiency of energy supply have been superseded to some extent by the legislative mandate.

The ALJ noted that the wind project will make a contribution to NSP's system reliability, although the contribution will be minimal due to wind's inherent variability and the size of the project.

According to the ALJ, the bidders will have strong incentives to operate the wind project as efficiently as possible in order to maximize production and thus their revenues.

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

As the ALJ noted, NSP's non-wind generating resources cannot be used to satisfy the wind mandates. While other wind alternatives might be possible, pursuit of those alternatives would create a risk that the statutory deadline might not be met, increased regulatory and administrative

costs, difficulties of system integration, and the possibility of higher cost due to holdout pricing by developers.

- 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 stated that the proposed wind project will generate no emissions or waste, and is thus preferable to all non-renewable generating resources. According to the ALJ, the project will have no significant impact on wildlife, historical sites, archeological sites, or other environmental concerns.

The ALJ found that the proposed project will displace other sources on NSP's system which do produce air emissions.

The ALJ stated that the other potential environmental impacts of the project--including increased noise levels, increased avian mortality, removal of land from existing agricultural uses, and aesthetic considerations--will be addressed and minimized by NSP and are not expected to occur at a significant level.

The ALJ stated that the wind project will create two substantial socioeconomic benefits: landowners will receive increased income through the purchase of their wind rights by NSP or developers; and the project will create a substantial number of temporary construction jobs and five to seven permanent jobs.

- 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 polices, rules, and regulations of other state and federal agencies and local governments.**

According to the ALJ, the record evidence establishes that the project will comply with relevant policies, rules and regulations of the MEQB, other state and federal agencies, and local governments. The issuance of a certificate of need will not conflict with any other regulatory requirements, including those associated with NSP's bidding process.

E. Conclusion

The ALJ found that NSP's proposed 100 MW wind project meets all of the criteria in the statute and rule, and that the certificate of need should therefore be granted.

III. COMMISSION ANALYSIS

A. The Certificate of Need

The Minnesota legislature passed specific legislation mandating NSP's addition of 100 MW of wind generation by the end of 1996. The proposed project conforms to the requirements of the legislation.

The parties to this proceeding, the Company, the Department, and the RUD-OAG, agreed that the terms of the proposal are appropriate. They developed proposed Findings of Fact and Conclusions of Law and submitted them to the ALJ.

The ALJ conducted public hearings and full contested case proceedings. After examining the record and all testimony and comments, the ALJ adopted Findings which were like in form and substance to the parties' stipulated Findings. The ALJ thoroughly analyzed the proposal under relevant statute and rule criteria and recommended that the Commission approve the wind proposal.

Having examined the full record, the Commission agrees with the ALJ that a certificate of need for NSP's 100 MW wind generation project is reasonable and appropriate. The Commission adopts the ALJ's Findings of Fact, Conclusion and Recommendation. The Commission will grant NSP its certificate of need.

B. Payment of Fees

Minn. Rules, part 7849.0210, subp. 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 NSP's final fees because further cost information must be obtained from the Office of Administrative Hearings, the Department, the RUD-OAG, and the Commission.

NSP's siting application is currently before the MEQB, which will not give final approval until a certificate of need is obtained from the Commission. In addition, NSP is under time pressure to begin the project so that it can meet the 1996 statutory deadline. These factors make waiting for the final cost information problematic.

NSP submitted two letters expressing its commitment to full payment of fees when their assessment is complete.

NSP is under a time constraint which is not of its own creation. In this case, Commission consideration of a variance to Minn. Rules, part 7849.0210, subp. 3 is appropriate.

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

1. Enforcement of the rule would impose an excessive burden upon the applicant or others 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 7849.0210, subp. 3 should be granted. Enforcement of the fee rule would impose an excessive burden upon NSP by delaying construction of the facility and jeopardizing the Company's compliance with the statutory mandate. Because the Company has made a commitment to full payment of all fees, the public interest would not be adversely affected if the variance were granted. Finally, granting of the variance would not conflict with standards imposed by law.

The Commission will grant NSP a variance to the fee payment provisions of Minn. Rules, part 7849.0210, subp. 3. NSP is required to promptly pay all applicant's fees when they have been assessed.

ORDER

1. The Commission grants NSP a certificate of need for its 100 MW wind generation project.
2. The Commission grants NSP a variance to Minn. Rules, part 7849.0210, subp. 3, to allow the granting of the certificate of need prior to full payment of applicant's fees. NSP 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)