

ISSUE DATE: August 23, 1995

DOCKET NO. E-002/PA-95-260

ORDER DISMISSING PETITION

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 Company for Approval of the Sale of
the Long Lake Service Center

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PROCEDURAL HISTORY

On March 27, 1995, Northern States Power Company (NSP or the Company) filed a petition seeking Commission approval of the Company's sale of real and personal property in Long Lake, Minnesota. The Company also asked the Commission to determine if the sale requires Commission approval under Minn. Stat. § 216B.50. NSP asked the Commission to grant approval of the sale, should the Commission decide that approval is necessary.

On May 25, 1995, the Department of Public Service (the Department) filed comments. The Department recommended that the Commission determine that the transaction must be approved under Minn. Stat. § 216B.50. The Department recommended further that the Commission approve the sale under the terms of the statute.

The matter came before the Commission for consideration on August 3, 1995.

FINDINGS AND CONCLUSIONS

I. FACTUAL BACKGROUND

In 1980, NSP acquired approximately two acres of land in Long Lake, Minnesota. On that property the Company constructed a 5,000 square foot service center which included a vehicle repair garage and office space. The facility was used chiefly for truck maintenance and repair.

In 1994, after conducting an analysis of its metropolitan service centers, NSP determined that the Long Lake facility could be closed without a reduction in the Company's quality of service. A buyer for the land and building was selected through a bidding process. On

February 21, 1995, NSP entered into a purchase agreement with the winning bidder. The purchase agreement is contingent upon the Commission's approval of the sale; the agreement is not enforceable by the buyer if the Commission eventually disapproves it.

II. POSITIONS OF THE PARTIES

A. NSP

NSP asserted that the Commission's approval is not necessary under Minn. Stat. § 216B.50.

That statute provides in relevant part as follows:

No public utility shall sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000, or merge or consolidate with another public utility operating in this state, without first being authorized to do so by the commission. **** ...if [the commission] shall find that the proposed action is consistent with the public interest it shall give its consent and approval by order in writing. In reaching its determination the commission shall take into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated. The provisions of this section shall not be construed as applicable to the purchase of units of property for replacement or to the addition to the plant of the public utility by construction.

NSP argued that the transaction does not involve an "operating unit or system" under the terms of Minn. Stat. § 216B.50. NSP stated that the statute was meant to extend to the transfer of facilities which are used for "the actual direct provision of electric service," and would therefore not apply to the sale of this repair and maintenance facility. According to NSP, the legislature did not mean to require Commission oversight of facilities which do not affect reliability of service, service territory boundaries, or the delivery of electric service to customers.

NSP argued that the transaction passes the statutory tests for approval, should the Commission determine that approval is necessary under Minn. Stat. § 216B.50. The transaction is in the public interest because it provides benefits to NSP and ratepayers, the agreement reflects the reasonable value of the property, and the petition was timely filed.

B. The Department

The Department argued that the transfer of the Long Lake facility is subject to Commission approval under Minn. Stat. § 216B.50. The Department stated that the Long Lake facility does not come under any of the three exceptions to the approval process listed in the statute: 1) plant for which the consideration is less than or equal to \$100,000; 2) units of property purchased for replacement; or 3) additions to the plant of the public utility by construction.

In contrast to the Company, the Department believed that the facility *was* part of the utility's

operating system and is therefore within the purview of Minn. Stat. § 216B.50. According to the Department, repair and maintenance are integral to the provision of service. It would also be bad precedent to allow a utility to take a facility out of service, then transfer the property free of Commission oversight because the property is no longer “part of the utility’s operating system.”

The Department recommended that the Commission find that approval is necessary under Minn. Stat. § 216B.50, and that the Commission grant such approval. The Department agreed with the Company that the transaction is in the public interest, the value transferred is consistent with the property’s real value, and the filing was filed in a timely fashion.

III. COMMISSION ACTION

The Company and the Department agree, and the Commission confirms, that the proposed sale is not within the following exceptions to the approval process found in Minn. Stat. § 216B.50: 1) plant for which the consideration is less than or equal to \$100,000; 2) units of property purchased for replacement; 3) additions to the plant of the public utility by construction.

The parties differ as to whether NSP’s proposed sale of the Long Lake facility would transfer “plant as an operating unit or system.” NSP argues that the property is not within this statutory criterion and hence approval is not necessary; the Department disagrees.

The Commission agrees with the Company that, in this specific set of facts, the proposed transfer of the Long Lake facility is not a sale of “plant as an operating unit or system.” The property was used for maintenance and repair of NSP’s service vehicles, not for the generation or provision of electric service to customers. Further, this property, which had never been used for generation, was not being used for *any* Company purpose at the time the agreement to sell was signed. These two facts, when examined together in this particular set of circumstances, convince the Commission that the property is not an “operating unit or system” under the terms of Minn. Stat. § 216B.50. NSP therefore need not obtain Commission approval for the sale of the property. For this reason, the Commission will dismiss NSP’s petition for approval of the proposed sale.

As always, the prudence and reasonableness of the Company’s disposition of the property will be subject to the Commission’s scrutiny in NSP’s next general rate case.

ORDER

1. The Commission dismisses NSP's May 25, 1995, petition for approval of the proposed sale of the Long Lake service center.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)