

ISSUE DATE: February 16, 1996

DOCKET NO. IP-2/CN-95-1406

ORDER GRANTING EXEMPTIONS FROM FILING REQUIREMENTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Application by Koch Refining Company for Certification of the Pine Bend Cogeneration Project

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PROCEDURAL HISTORY

On December 22, 1995 Koch Refining Company filed a petition for exemptions from specified filing requirements for certificate of need applications set forth in Minn. Rules, chapters 7849 and 7855. The Company stated it planned to apply for two certificates of need to build a cogeneration facility at its Pine Bend refinery in Rosemount.

The facility would have two components: (1) a fuel conversion facility, which would convert petroleum coke, a refinery byproduct, into synthetic gas, hydrogen, and sulfur; and (2) a power plant, which would be fueled by the synthetic gas produced by the fuel conversion facility. Besides serving the refinery and the conversion facility, the power plant would produce approximately 85-90 megawatts of electricity for sale on the wholesale market.

The fuel conversion facility required a certificate of need under Minn. Rules, chapter 7855; the power plant required a certificate of need under Minn. Rules, chapter 7849. Both chapters authorize the Commission to exempt applicants from individual filing requirements when necessary. Minn. Rules 7849.0200, subp. 6; Minn. Rules 7855.0200, subp. 8. The Company sought full or partial exemptions from sixteen filing requirements.

On December 26, 1995 the Commission issued a notice requesting comments on Koch's exemption requests. On January 11, 1996 the following parties filed comments: the Department of Public Service (the Department), the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), Cooperative Power Association (CPA), and Northern States Power Company (NSP). On January 22, 1996 Koch and the Department filed reply comments.

On January 18, 1996 the Commission issued its ORDER VARYING RULES, extending the deadlines for acting on the Company's exemption requests to 60 days from the date of filing. The exemption requests came before the Commission on February 8, 1996.

FINDINGS AND CONCLUSIONS

I. Exemptions Requested

As Koch explained in its filing, most of its exemption requests sought to limit or modify the scope of the information filed, not to be excused from filing entirely. The exemption requests are set forth below.

A. Promotional Activities -- Minn. Rules 7849.0240, Subp. 2 B

This rule requires an explanation of how promotional activities may have affected the need for the facility. The Company agreed to file information on how its own promotional activities may have affected the demand for cogeneration at its Pine Bend facility. It asked to be relieved of any responsibility to discuss how the promotional activities of others may have affected the need for the facility or overall system demand.

B. Effect of Facility on Future Development -- Minn. Rules 7849.0240, Subp. 2 C and 7855.0260 C.

These rules require a discussion of how the proposed facility is likely to affect future development. Koch agreed to discuss how the facility will affect development at the refinery and in adjacent areas. The Company asked to be excused from discussing future development at more distant locations, including the effects of the wholesale power the project will produce and the effects of Koch's decision to generate its own power.

C. System Map -- Minn. Rules 7849.0250 D.

The rule requires the applicant to file a map of its "system." The Company agreed to file a map of the proposed project and the Pine Bend refinery. It asked to be relieved of any obligation to file maps of any other systems.

D. Peak Demand and System Capacity -- Minn. Rules 7849.0270 and 7849.0280

These rules require detailed filings on peak demand, actual and projected annual electric consumption, and system capacity within the applicant's service area. The Company agreed to file data on the refinery's energy usage and to use two public documents -- NSP's 1995 integrated resource plan and the Mid-Continent Area Power Pool's (MAPP) Bulk Power Supply Program Report -- to provide other information in summary form.

E. Conservation Programs -- Minn. Rules 7849.0290 E, F and 7855.0270 E and F.

These rules require applicants to file detailed descriptions of future conservation and energy efficiency plans. They also require detailed analysis of how these plans will affect future

demand and the need for future generation, transmission, and other large energy facilities. Koch agreed to file conservation data on its Pine Bend facility, but asked to be relieved from filing information on conservation programs beyond the refinery boundaries.

F. Consequences of Delay -- Minn. Rules 7849.0300

This rule requires discussion of the consequences of a delay in the construction of the proposed facility on the applicant's system, neighboring systems, and the power pool. Koch agreed to file information on the consequences of delay on its own system (the Pine Bend refinery), but asked that its discussion of neighboring systems and the power pool be limited to information it could glean from the two public sources discussed earlier -- NSP's resource plan and MAPP's bulk power supply program report.

G. Large High Voltage Transmission Lines -- Minn. Rules 7849.0330

This rule requires technical filings on any proposal requiring the construction of a large high voltage transmission line. Koch requested an exemption on grounds that its project would not require such construction; existing transmission lines owned by others were capable of carrying the power the Company expected to sell at wholesale.

H. The "No Facility" Alternative

The rule requires the applicant to analyze how a decision not to build the proposed facility would affect the environment, existing generation and transmission facilities, its system, and its operations. The rule also requires an analysis of ways to reduce the environmental impact of no facility.

Koch agreed to use reasonably available information to analyze the effects of no facility on the Pine Bend refinery. It asked that it not be required to discuss the effects of no facility on systems and facilities not owned or controlled by Koch. It agreed to discuss the environmental impact of the proposed facility, but asked to be relieved of any obligation to analyze the environmental impact of not building it, since it did not have access to environmental data from its current supplier.

I. Alternative Facilities -- Minn. Rules 7855.0310

This rule requires discussion of potential alternatives to the proposed facility. Koch requested exemption on grounds that no alternative would accomplish its goals, which include not just power production but the production of synthetic gas, steam, hydrogen, and sulfur for use in the refinery.

J. Alternative Sites -- Minn. Rules 7855.0340

This rule requires discussion of alternative sites for the proposed facility. Koch requested exemption on grounds that the Legislature has granted it authority to limit its consideration to one site. Laws of Minnesota, 1995, Chapter 224, Section 47.

II. Comments of the Parties

A. Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG)

The RUD-OAG supported Koch's exemption requests. The agency also recommended requiring the Company to address any promotional activities of its own which may have promoted demand for the project on the wholesale power market; requiring the Company to file a map showing the transmission facilities it expected to use to transmit the power generated by the facility; and requiring the Company to provide an analysis in support of its claim that the facility would not require the construction of new transmission facilities.

Finally, the RUD-OAG argued that Koch's non-public utility status had no bearing on its obligation to comply with the certificate of need rules, and that any exemptions granted should be based on other grounds.

B. Cooperative Power Association (CPA)

CPA argued that Koch was relying on wholesale power sales to other utilities to make the cogeneration project economically viable and that it should provide information on and from those utilities to meet some of the requirements from which it requested exemption. Specifically, CPA argued Koch should discuss (1) the effect of the promotional activities of these utilities on the need for the facility; (2) the consequences to these utilities of delay in constructing the facility; (3) the utilities' conservation and energy efficiency programs; (4) data on the utilities' peak demand, actual and projected annual electric consumption, and system capacity.

CPA also claimed Koch should be required to analyze the effects on future development of the additional power it planned to introduce into the wholesale market, should be required to prove its contention that the project will require no new transmission facilities, and should file a map of the transmission facilities it intended to use to transmit its wholesale power.

Finally, CPA argued Koch should be required to analyze the "no facility" alternative to the best of its ability.

C. Northern States Power Company (NSP)

NSP urged the Commission to require Koch to disclose its plans for the 85-90 megawatts of electricity it intended to sell on the wholesale market. NSP contended that, without reliable information on the disposition of this electricity, the Commission would have great difficulty in reaching a sound judgment on the need for the facility.

NSP also urged that Koch be required to provide the following information:

- (1) maximum information on peak demand, actual and projected annual electric consumption, and system capacity, using its own system and the ultimate destination of the 85-90 megawatts of wholesale power as baselines, under Minn. Rules 7849.0270, subp. 1;
- (2) the estimated number of consumers in designated categories and their estimated annual usage, for forecast years dealt with in the application;
- (3) Detailed information on the analytical process used to develop the forecasts on which the application is based, Minn. Rules 7849.0270, subps. 3, 4, 5 (B), (D), (E), (F), and 6.

Finally, NSP claimed Minn. Rules 7849.0300 required Koch to identify all contingencies that might delay construction of the facility, the consequences of each contingency, and the likelihood of each contingency occurring.

D. The Department of Public Service (the Department)

In its initial comments the Department supported granting the exemptions the Company requested. Its reply comments reiterated that recommendation. Its reply comments also supported the RUD-OAG's claim that the Company's status as a non-public utility should not be determinative.

The Department recommended requiring the Company to show all connections with the existing transmission system on its maps of the proposed project and of the refinery. Finally, the agency recommended allowing the parties to address transmission issues, without requiring the Company to file detailed transmission data.

E. Koch's Reply Comments

In its reply comments Koch stated it did not yet have a buyer for the 85-90 megawatts of electricity it intended to offer on the wholesale market. It could therefore provide none of the information about the buyer requested by commenting parties.

Koch did, however, pledge to provide as much of the other information as possible, with two exceptions: (1) information on potential causes of delay in constructing the project, which

Koch claimed was not required under the rules; and (2) information on future development outside the area of the refinery, which Koch considered too speculative to be helpful.

III. Commission Action

A. Summary of Commission Action

The filing requirements from which Koch seeks exemptions require information Koch does not have. It would be unfair to deny Koch an opportunity to prove need for the proposed facility on the basis of the information available to it. To allow this application to go forward, the Commission will grant the exemptions, as clarified in the Company's reply comments and further clarified below, on grounds that the filing requirements at issue may be satisfied by submitting other documents. Minn. Rules 7849.0200, subp. 6; Minn. Rules 7855.0200, subp. 8.

At the same time, the burden of proving need for the proposed facility remains with Koch. The exemptions granted relate to filing requirements only; they are not findings that the information at issue may not prove essential to finding need. Such findings would require careful examination of the merits of the application.

B. Disclosure of Buyer(s) Required

The commenting parties are correct in pointing out that the capacity, demand, and conservation programs of any utility purchasing wholesale power from Koch would be highly relevant to determining need for the proposed facility. If, when the Company files its application, it knows who will be buying its wholesale power, it must disclose the name of the buyer and expect the buyer to provide this information. Minn. Rules 7849.0220, subp. 3.

C. Maximum Effort to Provide Data on Demand, Capacity, and Conservation

If the Company does not have a buyer for its wholesale power when it files its application, it should provide as much detail as possible about demand, capacity, and conservation on its own system, making every attempt to respond to each item in Minn. Rules 7849.0270, 7849.0280, and 7849.0290.

D. Transmission Issues to be Examined

The parties are also correct in viewing transmission issues as potentially significant in this case. To make this proceeding as efficient as possible, Koch should include in its application its factual basis for believing no new transmission facilities will be required for its wholesale power sales. It should explain how it intends to transmit power off-site. It should also file a map of the existing transmission system, showing present points of connection with Koch.

E. Promotional Activities to be Considered

The Company should also file information on any of its promotional activities that could have helped create need for the wholesale power the proposed facility will produce. This information is relevant and should be readily available to Koch.

F. Other Concerns Raised by Parties

The Company has agreed to provide all the information it can on the “no facility” alternative. The Commission assumes this meets the concerns expressed by CPA.

The Commission will not require filings on the impact of the proposed facility on development beyond the refinery area. At this point such filings would be too speculative to be helpful.

Finally, the Commission will not require Koch to identify all contingencies that might delay construction of the facility, the consequences of each contingency, and the likelihood of each contingency occurring. This level of detail is not required in the rules. Should this information prove relevant to determining need, it can be developed in the discovery and hearing processes.

ORDER

1. Koch Refining Company’s requests for exemptions from specific filing requirements set forth in Minn. Rules Chapters 7849 and 7855 is granted, as set forth above.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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