

ISSUE DATE: April 22, 1999

DOCKET NO. E-002/M-95-54

ORDER APPROVING POWER PURCHASE AGREEMENT, SUBJECT TO CONDITIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
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Marshall Johnson
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Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition by Northern States
Power Company for Approval of its Biomass
Phase I Power Purchase Agreement with
Minnesota Valley Alfalfa Producers

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PROCEDURAL HISTORY

On February 17, 1998, Northern States Power Company (NSP) filed a petition for approval of its Power Purchase Agreement (PPA) with Minnesota Valley Alfalfa Producers (MnVAP).

By June 5, 1998, comments (and reply comments) on the PPA had been filed at the Commission. The following parties filed comments: the Minnesota Department of Public Service (the Department), the Residential Utilities Division of the Office of Attorney General (RUD-OAG), the Izaak Walton League of America (IWLA), and NSP.

On August 4, 1998, Minnesota Energy Consumers (MEC) served late-filed comments on the Commission and parties to the case.

On August 14, 1998, the Commission issued its ORDER granting MEC's intervention, allowing late-filed comments, and establishing supplemental comment period to allow MEC ample time to review the proprietary information in the case, and to file supplementary comments.

On August 28, 1998, MEC filed additional comments.

On September 11, 1998, the Department, the RUD-OAG, NSP, MnVAP, and the IWLA filed comments in reply to MEC's comments.

On October 13, 1998, the Commission issued its ORDER PROVIDING FOR SUPPLEMENTARY RECORD DEVELOPMENT. In this Order, the Commission encouraged parties to provide further record material as they deemed appropriate in response to the Commission's concerns as expressed in the Order.

On November 2, 1998, NSP and MnVAP filed a joint petition for reconsideration of this Order. Answers to the petition were filed by the Minnesota Energy Consumers (MEC) on November 9, 1998, and the Department on November 10, 1998.

On December 14, 1998, the Commission issued its ORDER GRANTING RECONSIDERATION

FOR PURPOSES OF TOLLING STATUTORY DEADLINE, in this docket. The Commission noted that the merits of the petition would be addressed in a later Order.

Also on December 14, 1998, the Commission issued a notice asking interested parties to provide further record material by January 13, 1999, and reply comments by January 25, 1999.

On December 23, 1998, the Commission issued a Notice of Extended Period for Filing Replies, extending the period for filing reply comments to February 5, 1999.

On January 25, 1999, the Commission issued its Notice of Second Extension of Period for Filing Replies, extending the period for filing replies a second time to February 12, 1999.

On January 12, 1999, the Department filed supplementary comments.

On January 13, 1999, NSP and MEC filed supplementary comments.

On January 14, 1999, MnVAP filed supplementary comments.

On February 5, 1999, MEC filed replies to the supplementary comments. No other parties filed replies to the supplementary comments.

On March 8, 1999, the Department filed a letter recommending one additional condition/modification to the PPA.

On March 16, NSP filed a report on significant events and changes that have occurred since the original petition was filed.

On March 17, 1997, the American Alfalfa Processors Association (AAPA) submitted comments.

On March 22, 1999, MEC filed comments.

The Commission met to consider this matter on March 25, 1999.

FINDINGS AND CONCLUSIONS

I. PROCEDURAL MATTER: LATE-FILED COMMENTS

On October 13, 1998, the Commission issued its ORDER PROVIDING FOR SUPPLEMENTARY RECORD DEVELOPMENT. In this Order, the Commission deferred action on this item to March 1, 1999 and encouraged the parties to develop the record further as they deemed appropriate in response to the Commission's concerns expressed in the Order.

Subsequently, the Commission issued notices extending the comment period twice: first, extending the period for filing reply comments to February 5, 1999; and second, extending the period for replies to February 12, 1999.

After the time specified for comment had elapsed, several parties filed additional comments:

1) March 8, 1999 comments from the Department of Public Service, 2) March 16, 1999 comments from NSP, 3) March 17, 1999 Comments from American Alfalfa Processors Association (AAPA), and 4) March 22, 1999 comments from MEC. In addition, at the hearing AAPA sought to

introduce into the record two documents: Volumes I and II of MnVAP's Proposal for Minnesota Agri-Power Project dated May 9, 1995.

For good cause shown, the Commission will allow these late-filed items into the record of this proceeding. No party has objected to the admission of these items. The Commission finds that the proposed filings and documents are reasonably related to the issues at hand and that no party will be prejudiced by their admission.

II. JOINT PETITION FOR RECONSIDERATION

NSP and MnVAP jointly requested that the Commission reconsider its October 13, 1998 ORDER PROVIDING FOR SUPPLEMENTARY RECORD DEVELOPMENT, in this docket. The Department supported the joint petition. The petition consists of two parts: (1) a request that the Commission reconsider its Order deferring a decision on this matter until March 1, 1999, and if so, (2) a request to consider the merits and approve the PPA prior to the expiration of this date.

MEC requested that the Commission deny the joint petition and let the October 13 Order stand.

In its Order of December 14, 1998, the Commission granted reconsideration for the purposes of tolling the statute. In so doing the Commission prevented the joint petition from being denied by virtue of the expiration of the statutory period pursuant to Minn. Stat. 216B.27 (1998).

Since this matter was not scheduled on the Commission's calendar before the March 1, 1999 date requested by NSP and MnVAP, the joint petition's request that the Commission do so by that date is moot. Accordingly, the Commission will deny the petition with respect to the date requested but proceed at this time with its consideration of this request for approval of the PPA on the merits.

III. NO FURTHER DELAY TO RECEIVE EQB REPORT IS WARRANTED

In its October 13, 1998 Order, the Commission stated that certain environmental concerns had been raised regarding the Power Purchase Agreement (PPA) for biomass generation and noted that the PPA was currently being reviewed by the Environmental Quality Board (EQB). At the time, the EQB had already undertaken to develop an Environmental Impact Statement (EIS) regarding the proposed biomass operation. Under the circumstances, the Commission stated that it would prefer to receive what light the EQB could provide on these issues.

It is now clear, however, that the EQB's EIS and Siting Process are not sufficiently advanced to provide the desired information. Recent discussions with EQB staff indicate that the draft EIS will not be available until mid-summer. Moreover and most fundamentally, however, the Commission finds that the record is adequate at this time to enable it to determine the merits of the proposed PPA. Therefore, the Commission concludes that whatever light could be shed on this matter by such draft would be far outweighed by the prejudice to the NSP/MnVAP's PPA by delaying this matter to await the EQB's draft EIS.

Accordingly, the Commission will proceed to consider the merits of the PPA.

IV. MERITS OF THE NSP/MnVAP POWER PURCHASE AGREEMENT (PPA)

A. Background

The PPA which the Commission addresses in this Order was entered into as part of NSP's statutory mandate (Minn. Stat. § 216B.2424, the Biomass Mandate) to purchase electricity generated using "farm-grown, closed-loop" biomass as fuel. The Commission has conducted its review of the PPA pursuant to Minn. Stat. § 216B.1645 which requires the Commission to approve or disapprove PPAs entered into under the Biomass Mandate.

B. Commission Analysis and Action

Having considered the comments and arguments of all the parties as well as all the documents filed in this matter, the Commission concludes that, as conditioned in this Order, the NSP/MnVAP contract (PPA) is reasonable and in the public interest. Accordingly, the Commission will approve it.

With specific regard to the costs and rate impact of the PPA, the Commission finds that in the context of the record established in this case, including the statutory requirements of Minn. Stat. § 216B.2424, the cost of power produced under the NSP/MnVAP contract (as conditioned) is reasonable and will not render NSP's rate unjust or unreasonable.

Regarding the reasonableness of the rate impact of this project, the Commission notes that the Legislature determined in 1994 that NSP and its customers would be statutorily obligated to bear the higher cost of a certain amount of biomass generation in order for NSP customers to retain access to low cost nuclear supplies from Prairie Island. In these circumstances, which made the upward rate impact foreseeable and inevitable, the fact that the rates of NSP customers will increase somewhat due to this project is insufficient reason to reject the PPA. Given the statutory mandate, then, the concern for Commission consideration in this regard is to assure that the rate impact is reasonable.

The Commission notes several factors which, taken together, assure the reasonableness of that rate impact:

- First, the Commission has reviewed and approved NSP's project selection process that was aimed at identifying the most cost effective candidate to provide the required biomass generated energy.
- Second, NSP followed that selection process and, as a result, selected MnVAP's proposal as more cost effective than those of competing applicants.¹
- Third, in subsequent contract negotiations between NSP and MnVAP, the cost went down.

¹ The Commission also notes that both the Department and the RUD-OAG have reviewed the negotiating history and the process under which MnVAP was selected and agree that the PPA should be approved, as modified in this Order.

- Fourth, MnVAP has committed to make available to the Commission and the Department financial information about the project to assure the Commission access to data necessary to determine whether NSP's ratepayers are receiving full value under the PPA.
- Fifth, the Department, the RUD-OAG, NSP, and MnVAP have worked on solutions to concerns about some of the contingent cost elements of the PPA, solutions which the Commission is applying as a condition to its approval of the PPA in this Order.

C. Conditions of Approval

As previously noted, the Commission has found that several conditions must be imposed upon the PPA in order to render it acceptable. The conditions that the Commission will attach to the PPA are summarized as follows:

1. Conditions Based on the August 4, 1998 Letter of Agreement Between the Department, NSP, the RUD-OAG, and the ILWA

- a. NSP is required to file any new pricing terms with the Commission, the Department, and the OAG, and the new pricing terms will be subject to the review process as described below:
 - If NSP and MnVAP decide to negotiate a different price, the Department and the OAG will have 30 days to review the new pricing terms and may make recommendations to the Commission regarding the prudence of NSP's continuing management of the contract and the reasonableness of current and future recovery of costs under this contract from ratepayers. Examples of events that will trigger the aforementioned review include but are not limited to the proportional price adjustment as described in Section 2.3.5.3 part (b) of the PPA.
- b. NSP shall inform the Commission, the Department, and the RUD-OAG of any significant changes (price or non-price) to the existing contract, as well as any significant change in the performance by either party in accordance with the contract which may have a material effect on NSP's overall costs under the contract. These changes will be subject to the review process described above in 1A.

- c. An additional condition whose specifics are currently treated as non-public² but which, in general terms, identifies a circumstance that would be subject to the review process described above in Paragraph 1A.

2. Successful Completion of the State Environmental Review Process

As noted previously, the Commission's review of the merits of the PPA for purposes of its utility regulation need not wait upon receipt of the EQB's EIS. The companies' performance under the PPA, however, does require review and approval by the EQB. Before operating, MnVAP must obtain authorization from the EQB for environmental permitting purposes. So in that sense, the Commission's approval of the NSP/MnVAP PPA is conditioned on subsequent completion of the state environmental review process and approval by the EQB. At the same time, however, it is appropriate to clarify (as requested by ILWA) that Commission approval of the companies' PPA in this Order does not constitute any endorsement of the project or the plant for environmental permitting purposes.

3. Conditions Agreed to by NSP and MnVAP in Their November 2, 1998 Joint Petition for Reconsideration

In their joint petition for reconsideration filed November 2, 1998, NSP and MnVAP proposed several additional commitments that the Commission will impose as conditions on its approval of the PPA. Those conditions are as follows:

- MnVAP has agreed to accept a specific guaranteed price term which, at this time is treated as non-public data;
- MnVAP is willing to make financial information about the project available to the Department and the Commission so that these agencies can audit compliance with the PPA;
- NSP and MnVAP are willing to stipulate that approval of the PPA does not constitute any endorsement of the project or the plant for environmental permitting purposes;
- MnVAP has made two specific commitments to NSP that are currently treated as non-public;³ and
- NSP and MnVAP will continue to discuss other ways to alleviate the Commission's concerns about the cost of the PPA, and to bring additional value to NSP's ratepayers.

The Commission finds that these conditions are reasonable and necessary, in conjunction with the

² All items referred to in this Order as non-public have been disclosed to and reviewed by the Commission, the Department, the OAG-RUD, IWLA, and MEC. These items were disclosed to the Commission as a matter of right and to specified representatives of the other parties for use in this proceeding pursuant to Protective Agreements signed by those parties.

³ See Footnote 2.

other conditions listed in this Order, to render the Companies' PPA acceptable.

4. Conditions Regarding Turbine Size and Production Levels

MEC reported that the project's developer, United Power Association, is considering a 100 MW turbine generator, considerably larger than the 75 MW equipment originally contemplated for this project and upon which NSP had based its rate impact projection of 1.63 percent. MEC noted that rate impact depends on production volume as well as price and argued that a larger turbine, capable of a greater production volume, would have a greater rate impact than a smaller turbine.

At the hearing, MnVAP clarified that its current turbine choice is the Siemens V-64.3, which has a nameplate capacity of 83 MW, not the 100 MW turbine cited by MEC. To further address MEC's concern, NSP, MnVAP and the Department proposed that the Commission add another condition to its approval of the PPA, i.e. that, if MnVAP selects a turbine with a capacity nameplate larger than the Siemens V-64.3,⁴ NSP's annual obligation to purchase will continue to be limited to (capped at) the level stated in the PPA which was agreed to by the Companies when MnVAP's selection was a 75 MW Westinghouse turbine.

The Commission finds that the slightly larger size of the increased size of the Siemens V-64.3 turbine is not significant since the Siemens' use of air cooling rather than water cooling may reasonably be expected to reduce its actual output of electricity. Moreover, the additional condition agreed to by the Department, NSP and MnVAP, together with the production cap in the PPA appears to adequately address MEC's concern about the turbine size.

V. SUMMARY

The Commission concludes that as conditioned in this Order the PPA is a reasonable approach to satisfying the Biomass Mandate. NSP's rates, despite the rate impact of this project, will remain just and reasonable. Accordingly, the Commission will approve the NSP/MnVAP PPA, subject to the conditions detailed in this Order.

ORDER

1. The Power Purchase Agreement (PPA) entered into between Northern States Power (NSP) and Minnesota Valley Alfalfa Producers Cooperative (MnVAP) is hereby approved, subject to the conditions enunciated above in the text of this Order.
2. This Order shall become effective immediately.

⁴ The nameplate production rate for a turbine is theoretical, reflecting production at 100 percent capacity, which is rarely achieved and will not, typically, be maintained over the term of the contract. The production reasonably anticipated from the Siemens V-64.3 is considerably lower than 100 percent and may reasonably be expected to provide, on average over the life of the contract, the statutorily required annual amount, 75 MW.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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