

ISSUE DATE: August 27, 1999

DOCKET NO. ET-2/CN-99-976

NOTICE AND ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey	Chair
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayner	Commissioner
Gregory Scott	Commissioner

In the Matter of the Application of Great River Energy for a Certificate of Need for a Combustion Turbine Project in Southern Minnesota

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PROCEDURAL HISTORY

On July 20, 1999, Great River Energy (Great River) filed an application for a certificate of need to build a large electric generating facility, as defined in Minn. Stat. § 216B.2421, subd. 2(a). The proposed project will include three gas-fired, simple cycle combustion turbines for Great River's peaking needs. The plant will be located in Pleasant Valley Township in Mower County, Minnesota.

Great River supplemented the application on August 5, 1999.

On August 6, 1999, the Commission issued an ORDER VARYING TIME DEADLINE. In that Order, the Commission explained that the 30-day review period provided in Minn. Rules, part 7849.0200, subp. 5, would not allow sufficient time in this case to determine the adequacy of the filing. The Commission therefore varied Minn. Rules, part 7849.0200, subp. 5, to extend the period for Commission action on the completeness of the application.

On August 19, 1999, the Commission met to consider this matter.¹

¹ At the hearing, the Commission found that the filing was substantially complete and delegated the filing of an environmental report on the application to the Department of Public Service. The Commission is issuing an ORDER ACCEPTING FILING AND DELEGATING PREPARATION OF ENVIRONMENTAL REPORT on the same date as this Order.

FINDINGS AND CONCLUSIONS

I. JURISDICTION

The Commission has jurisdiction over applications for certificates of need for large energy facilities under Minn. Stat. § 216B.243. The statute requires the Commission to hold at least one public hearing under the Administrative Procedure Act before acting on this or any other application for a certificate of need. Minn. Stat. § 216B.243, subd. 4.

II. REFERRAL FOR CONTESTED CASE PROCEEDINGS

The Commission finds that it cannot satisfactorily resolve all issues raised by the Company's application on the basis of its filing and the single public hearing required under the statute. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

III. ISSUES TO BE ADDRESSED

Minn. Stat. § 216B.243 and Minn. Rules, parts 7849.0010-7849.0400, set forth criteria which must be met to establish need for proposed large energy facilities. Parties to this proceeding shall address whether the proposed facility meets these criteria.

IV. PUBLIC PARTICIPATION

Minn. Stat. § 216B.243, subd. 4, encourages public participation in certificate of need proceedings. The statute requires at least one hearing to obtain public opinion on the application and requires the Commission to designate an employee to facilitate citizen participation in the hearing process.

The Commission has designated statistical analyst David L. Jacobson to facilitate and coordinate public participation in this proceeding. He may be reached by telephone at (651) 297-4562 and by FAX at (651) 297-7073. His address is 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147.

Members of the public need not become formal parties to participate in the hearing process. They are encouraged to attend the public hearing(s) and to submit testimony and exhibits. Persons who cannot attend the public hearing(s) and wish to comment may submit written comments to the Administrative Law Judge. The Commission will require the Company to publish notice of the public and evidentiary hearings, in the form of visible display ads, in relevant newspapers of general circulation at least ten days prior to the start of the hearings. The applicant shall obtain proofs of publication of such ads from the newspapers selected, and shall consult with Commission Staff on the timing, text, and distribution of such ads prior to the publication.

V. PROCEDURAL OUTLINE

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Allan W. Klein. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota 55401-2138; (612) 341-7609.

B. Hearing Procedure

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200. Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, (651) 297-3000.

Under these rules parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Narda Jones, Assistant Attorney General, 800 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101, (651) 282-5720.

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

C. Parties and Intervention

Current parties to this proceeding are Great River and the Department of Public Service.

Other persons wishing to become formal parties to this proceeding shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held in this matter on Wednesday, September 22, 1999, at 9:30 A.M. in the Small Hearing Room at the Commission offices, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.

Persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of public hearings, discovery procedures, and similar issues.

E. Time Constraints

Under Minn. Stat. § 216B.243, subd. 5, the Commission is required to act on the Company's application within six months of receipt of a substantially complete filing. The Commission asks the Administrative Law Judge to conduct contested case proceedings in light of these time constraints. Parties should note the six-month statutory time frames at the outset and be prepared for the expedited hearing schedule that time frame requires.

F. Application of Lobbying Provisions

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., apply to certificate of need proceedings. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Minnesota Ethical Practices Board, (651) 296-1720, with any questions.

G. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. A contested case proceeding shall be held on the Company's certificate of need application.
2. The contested case proceeding shall begin with a prehearing conference on Wednesday, September 22, 1999, at 9:30 A.M. in the Small Hearing Room, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.
3. The Department of Public Service shall initiate an investigation to determine the reasonableness of granting a certificate of need to the applicant. Great River shall facilitate the Department's investigation in every reasonable way.
4. At least one public hearing shall be held in this matter at a time and place determined by the Administrative Law Judge after consultation with the Commission.
5. All parties to this proceeding may serve information requests on any other party. Information requests shall be answered within ten days of receipt.
6. Great River shall publish notice of the public and evidentiary hearings, in the form of visible display ads, in relevant newspapers of general circulation at least ten days prior to the start of the hearings. The applicant shall obtain proofs of publication of such ads from the newspapers selected, and shall consult with Commission Staff on the timing, text, and distribution of such ads prior to publication.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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