

ISSUE DATE: July 14, 2000

DOCKET NO. E-002/M-00-257

ORDER DIRECTING INFORMATIONAL PRESENTATION AND COMMENT PERIOD

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Petition for Approval to Transfer Functional Control of Certain Transmission Facilities to the Midwest Independent System Operator

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PROCEDURAL HISTORY

On March 1, 2000 Northern States Power Company (NSP or the Company) filed a petition for approval to transfer operating control of certain transmission facilities to the Midwest Independent Transmission System Operator, Inc. (MISO). NSP stated that it did not believe its intended action triggered any specific statutory filing requirement and recommended that the Commission consider the filing an informational filing. At the same time, the Company stated that it recognized that there are aspects of the transfer that could be construed as a lease of an operating unit or system pursuant to Minn. Stat. § 216B.50. The Company requested that if the Commission determined that approval is required pursuant to Minn. Stat. § 216B.50 the Commission grant the Company a variance from Minn. Rules, Part 7825.1800, subp. B.

On March 29, 2000, the Commission issued a notice requesting comments on whether the Commission should evaluate the filing under the property transfer statute, Minn. Stat. 216B.50 or any other statutes and, if so, whether the requested variance should be granted. The Commission also sought comments on procedures and timing. The Commission set April 14 as the deadline for receiving comments and April 26 as the deadline for receiving reply comments.

On or before April 14, 2000, the following parties filed comments: Myer Shark, NSP, the Minnesota Department of Commerce (the Department), the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), Reliant Energy Minnegasco (Minnegasco), and Minnesota Power Company (MP). Dairyland Power Cooperative (Dairyland) filed a petition to intervene and comments on April 17, 2000.

On April 26, 2000, NSP, the RUD-OAG, and MP filed reply comments.

On May 1, 2000, the Commission granted the request of the RUD-OAG for a second round of reply comments, indicating that it would accept a second round of reply comments to be received no later than May 12, 2000.

On May 12, 2000, additional responses were filed by NSP, the Department, and the RUD-OAG.

The Commission met to consider this matter on June 28, 2000.

FINDINGS AND CONCLUSIONS

I. THE COMPANY'S FILING

The Company stated its intent to transfer operational control, but not ownership, of virtually all transmission facilities of 100 kV and above to the Midwest Independent Transmission System Operator, Inc. (MISO).¹ As reasons for doing so, NSP cited FERC initiatives in Orders 888 and 2000, Wisconsin statutory requirements to separate transmission control from the generation portion of the business, and commitments made by NSP pursuant to the merger with New Century Energies as reasons for the proposed transfer. NSP stated that the MISO would promote economic efficiency as well as operational efficiency by providing for a regional tariff and improved management of system constraints. The Company announced its intent to effect the transfer at the time of MISO implementation, which is currently targeted for June 1, 2001.

NSP clarified that transmission owners will continue to own the transmission facilities and will physically operate and maintain the facilities subject to MISO direction. NSP explained that the MISO will exercise functional (not physical) control over transmission facilities, meaning that MISO employees will not perform the actual physical operations, but will establish the operating guides and direct the employees of the transmission owners to perform certain actions.

¹ In its filing, NSP included attachments describing MISO members, maps, MISO governance, description of MISO and NSP functions, summary tariffs, agreement of transmission owners to organize MISO, and implementation schedules.

II. COMMISSION JURISDICTION

In its initial filing, NSP questioned whether the Commission had any jurisdiction over the Company's transfer of transmission assets to MISO. Specifically, NSP argued that its filing with the Commission was not required by any statute and that the transfer did not appear to require Commission approval.²

In response to the Commission's notice soliciting comments on the jurisdictional issues, commenters split into two groups. Commenters taking the position that the Commission has no jurisdiction over the transfer either under Minn. Stat. §§ 216B.50 (property transfers) or 216B.48 (affiliated interests) were: NSP, MP, and Minnegasco. Commenters advocating that the Commission has jurisdiction under these statutes and others³ to review and approve or reject the Company's planned transfer were: the Department and the RUD-OAG.

The Commission has considered the arguments from all parties, both in writing and as presented at the hearing. The Commission appreciates the positions of the parties who urged the Commission to assert its jurisdiction over the transfer at this time. The Commission concludes, however, that it is not necessary to decide the jurisdiction questions at this time. A better understanding of this transfer (and its ramifications) is desirable and will help to

- 1) clarify the jurisdictional issues including whether an Order deciding them is necessary in this docket;
- 2) define and narrow the substantive issues presented by the transfer; and
- 3) clarify the Commission's on-going regulatory role vis a vis NSP's MISO-related operations.

And since NSP has agreed to provide an informational meeting of relevant NSP and MISO personnel with the Commission and interested parties followed by a comment period, the Commission is hopeful that an adequate record for any required Commission action will emerge in a timely manner. The Commission notes that NSP's projected implementation date for this transfer is not until June 1, 2001.

Finally, the Commission clarifies that no inference should be taken from its deferral of the jurisdictional issues. It simply appears to the Commission premature to issue an Order on the

² NSP does not dispute and has specifically acknowledged the Commission's jurisdiction over NSP's operation and control of the transmission facilities in question and the quality of service to Minnesota ratepayers over these transmission facilities.

³ While relying primarily on Minn. Stat. §§ 216B.48 and 216B.50, the Department and the RUD-OAG also cited Minn. Stat. §§ 216B.05, subd. 2 and 216B.04 as sources of Commission jurisdiction.

jurisdiction issue prior to attaining a better understanding of the transfer. No compelling reason has been shown for deciding the jurisdiction question at this point.

III. FUTURE PROCEEDINGS

In its petition, NSP proposed that it be provided an opportunity to present an overview of its transfer plan at a Commission meeting and that parties have 90 days after that presentation to file any comments that may be needed. At the hearing, the Company stated that it would bring relevant MISO and NSP staff to this meeting to provide an opportunity for the Commission to become familiar with MISO. Several parties (including the Department and Dairyland) supported this proposal and no party objected to it.

The Commission will proceed with the informational presentation and comment period proposed by NSP. The Commission notes that this meeting has a particular importance in light of the foregoing discussion about the jurisdictional issues and potential decision by the Commission on the merits of the transfer. The public presentation, as well as the comment period, presents a substantive opportunity for NSP and the interested parties.

ORDER

1. The Executive Secretary shall have authority to schedule a Commission meeting to receive NSP's informational presentation regarding its planned transfer. NSP shall arrange for the presence of relevant representatives of MISO and NSP at this meeting.
2. Parties shall have 90 days from the date of the meeting referenced in Ordering Paragraph 1 to file comments.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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