

ISSUE DATE: February 7, 2001

DOCKET NO. E-002/M-99-888

ORDER REJECTING REQUESTS FOR FURTHER INVESTIGATION, APPROVING FINAL  
BID SELECTIONS, AND OPENING DOCKET REGARDING EXTERNALITY VALUES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Petition of Northern States  
Power Company for Review of its 1999 All  
Source Request for Proposals

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FURTHER INVESTIGATION, APPROVING  
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VALUES

**PROCEDURAL HISTORY**

**I. CURRENT STATUS OF NSP'S COMPETITIVE BIDDING PROCESS**

**A. Background**

On August 25, 1998, the Commission issued an Order adopting the Minnesota Department of Public Service's, now the Minnesota Department of Commerce (the Department's) recommendation to approve Northern States Power Company's (NSP's or the Company's) proposal to revise its competitive bidding process, with one modification: that the time period to request an investigation of the final selection was set at 30 days rather than 15 days as proposed by NSP.

As a result of the Commission's August 25, 1998 Order, the approved competitive bidding process consists of the following five steps:<sup>1</sup>

Step 1: One-time Commission approval of a list of auditors (evaluators). NSP may add auditors to the list upon notifying the Department, the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), collectively the Parties, and the Commission. No approval will be required, but the additions could be challenged by the Parties.

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<sup>1</sup> In an Order dated October 13, 1999, the Commission modified an aspect of the bidding process not relevant to the instant Order and which does not modify the five major parts of the process listed in the text of this Order. In its October 13, 1999 Order the Commission clarified some ambiguous language in the approved bidding process regarding the participation of NSP Generation (an affiliate of NSP) in the bidding process. The Commission emphasized that in all other respects, NSP's bid process remained unmodified.

- Step 2: NSP will file a proposed Request for Proposals (RFP) with the Commission and serve it on the Parties. Absent a request for investigation by any party, NSP may issue the request for proposals (RFP) to potential bidders 30 days after the filing without Commission approval.
- Step 3: NSP will file with the Commission and serve on the parties its short-list selection including a report justifying its selection. A party may challenge the selection within 15 days upon showing that a bidder was erroneously omitted from the list due to significant unfairness.
- Step 4: NSP will file its final selection of vendor(s), a report justifying the selection, and a certification by the auditor that NSP's selection process was fair with the Commission and serve it on the parties. A party may request investigation of NSP's final selection within 30 days and the Commission may initiate an investigation within 30 days.
- Step 5: The Commission must approve the final Power Purchase Agreement (PPA) between NSP and the winning vendor(s).

**B. Current Stage: Step 4**

On April 6, 2000, NSP filed its Final Evaluation Report, thereby commencing Step 4 of the competitive bidding process.<sup>2</sup> In its Report, the Company announced its final selection of three bidders that it would now begin to negotiate with for a combination of peaking and non-peaking products: 500 MW of non-peaking generation for in-service in 2005 from Manitoba Hydro, 350 MW of non-peaking generation for in-service in 2001-2002 from Northern Alternative Energy, and at least 25 MW of non-peaking generation for in-service in 2001-2003 from Black Hills Corporation. The Report documented the Company's analysis of bids from short-list to final selection.

On July 12, 2000, the Independent Auditor filed its Final Selection Report. In its Report, the Independent Auditor stated that based on its evaluation, which it noted had limited opportunities for external corroboration of the documents and representations provided by NSP, it concluded that NSP implemented the competitive bidding process fairly and reasonably. This filing was also part of the approved process' Step 4 requirements.

On July 14, 2000, the Commission issued a Notice stating that under NSP's competitive bidding process (Step 4) parties have 30 days to review NSP's selections and request an investigation. The Commission stated that the 30 day comment period commenced after both NSP's final report and the report of the independent auditor were filed, i.e. as of July 12, 2000. The

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<sup>2</sup> In its Order dated September 29, 2000 in this matter, the Commission summarized the filings relevant to the first three steps of NSP's current bid process. Order at pages 2-4.

Commission indicated that comments and/or requests for investigation must be filed on or before August 11, 2000 with reply comments due on or before August 25, 2000.

On August 3, 2000, the Commission, in response to a request from PCN, issued a Notice extending the comment period to August 18, 2000 and the reply comment period to September 1, 2000.

### **C. PCN's Motion to Compel**

On August 10, 2000, PCN filed a motion seeking a Commission Order compelling NSP and/or Manitoba Hydro to produce certain documentation that PCN stated was relevant to Manitoba Hydro's bid. In addition, PCN requested that the Commission extend the current comment period (regarding NSP's April 6, 2000 Final Selection Report and the Independent Auditor's July 12, 2000 Final Selection Report) no less than 10 days after the date on which PCN receives the information compelled by the Commission.

On August 18, 2000, Manitoba Hydro replied to PCN's motion to compel and extend the comment period, recommending that the Commission deny PCN's motion. Manitoba Hydro argued that requiring production of the requested material from NSP would undermine the integrity of the bidding process as future potential bidders would hesitate to respond given uncertainty as to whether their RFP response could be made available to other parties. As to the PCN's request for production of documents and information from Manitoba Hydro, Manitoba Hydro argued that the request was being handled appropriately pursuant to Canadian law. Regarding PCN's request to extend the comment period, Manitoba Hydro urged the Commission to deny the request. Manitoba Hydro stated that the Commission already has the judgements of three independent parties (the Independent Auditor the RUD-OAG, and the Department) that the process conducted to date has been fair and in accordance with Commission guidelines. Manitoba Hydro argued that the Commission should not interrupt the process now, but should allow it to move forward, with the knowledge that the Commission will still have the opportunity to review the final contracts.

On August 21, 2000, NSP filed comments requesting that the Commission deny PCN's request for discovery and additional time to file comments. NSP urged the Commission to hold all parties to the approved Commission bidding process (which, according to NSP, did not contemplate discovery requests such as PCN's), defer generic resource-specific issues and concerns to more appropriate forums (such as the resource plan, an environmental externalities docket, or the legislature) and allow NSP to complete negotiations and secure its selected resources for its customers.

On August 22, 2000, the Department filed its response to PCN's Motion to Compel, recommending that the Commission deny PCN's motion. The Department argued that PCN did not need Manitoba Hydro's actual bid in order to assess NSP's analysis of the socioeconomic and reliability issues. The Department also argued that requiring NSP or Manitoba Hydro to provide Manitoba Hydro's bid would unnecessarily delay the project and would discourage future potential bidders from submitting bids in Minnesota. The Department argued that any

Commission action that discourages competitive bids would be costly to NSP's ratepayers and could harm the reliability of NSP's service.

On August 25, 2000, PCN filed a Supplemental Notice of Motion for an Order Under the Minnesota Data Practices Act. PCN clarified that it was not interested in the pricing information contained in Manitoba Hydro's bid. PCN asserted that the bid was government data and that Manitoba Hydro had not shown the four requirements set forth in Minn. Stat § 13.36 necessary to exclude it from public disclosure as a trade secret.

At the August 31, 2000 hearing on its motion, PCN modified its request, clarifying that the sole discovery it sought to compel at this time was a response to the following information requests:

1. For each year of the contract, what percentage of the operation's power (500 MW) would be supplied from the gas turbine electricity generating facility at Brandon, Manitoba?
2. What percentage of that power would be supplied from the Brandon facility during a drought?

In its Order dated September 29, 2000, the Commission acknowledged its authority and discretion to compel discovery in appropriate circumstances. After reviewing the circumstances, however, the Commission stated that PCN had not persuaded it that an Order compelling NSP or Manitoba Hydro to provide PCN with the requested information was warranted. Order at page 12.

**D. Requests for Further Investigation Before Deciding Whether to Approve NSP's Selection of Manitoba Hydro as a Bid Winner**

On March 1, 2000, the North American Water Office (NAWO) filed comments requesting an investigation of NSP's decision to include Manitoba Hydro on its short-list. NAWO stated that during the investigation NSP would produce its findings and other interested parties would have an opportunity to formally provide the Commission with pertinent information relative to consumption in Minnesota of electricity produced by Manitoba Hydro.

On March 2, 2000, the Quaker Peace and Social Action Committee (PSAC) filed comments, including a request that the Commission 1) require an independently audited report from Manitoba Hydro documenting the "true" cost per kilowatt of power produced by Manitoba Hydro, factoring in the environmental and social costs borne predominantly by the PCN, before allowing NSP to enter into future contracts to purchase or transmit electricity from Manitoba Hydro and 2) conduct its own investigation to estimate the "true" cost per kilowatt of power produced by Manitoba Hydro, factoring in environmental and social costs.

On July 14, 2000, the Commission issued a Notice stating that under NSP's competitive bidding process (Step 4) parties have 30 days to review NSP's selections and request an investigation. The Commission stated that the 30 day comment period commenced after both NSP's final

report and the report of the independent auditor were filed, i.e. as of July 12, 2000. The Commission indicated that comments and/or requests for investigation must be filed on or before August 11, 2000 with reply comments due on or before August 25, 2000.

On August 3, 2000, the Commission, in response to a request from PCN, issued a Notice extending the comment period to August 18, 2000 and the reply comment period to September 1, 2000.

On August 18, 2000 Minnesotans for an Energy Efficient Economy (ME3) and the IWLA filed a petition requesting an investigation of environmental and socioeconomic impacts of large-scale hydroelectric facilities. The petition sought a delay in the Commission's consideration of the Manitoba Hydro bid until the requested investigation was completed. In addition, ME3 and IWLA critiqued how NSP evaluated wind resources when it analyzed bidders in this docket.

Also on August 18, 2000, the Clean Water Action Alliance (CWAA) and the Minnesota Public Interest Research Group (MPIRG) filed comments recommending that the Commission not approve the contract between NSP and Manitoba Hydro and supporting the petition of ME3 and the IWLA for an investigation of the environmental and socioeconomic impacts of large-scale hydroelectric facilities.

On August 18, 2000, the RUD-OAG and the Department filed comments recommending that the Commission approve NSP's final bid selections, including Manitoba Hydro.

On August 30, 2000, the RUD-OAG filed additional comments, not questioning the selection of Manitoba Hydro (Step 4), but alerting the Commission to a concern about risk allocation of above-cost energy. The RUD-OAG clarified that its concern was relevant to the Commission's review of NSP's PPA with the bidders, including Manitoba Hydro as part of Step 5.

On September 1, 2000, Manitoba Hydro filed comments urging the Commission not to interrupt the bidding process at this stage, but to allow the process to move forward to Commission review of NSP's contracts with the winning bidders.

On September 1, 2000, the Department filed comments recommending that the Commission approve NSP's selection of final vendors and rejecting all requests to stay the decision on the selection of Manitoba Hydro's proposal.

On September 1, 2000, Xcel Energy (Xcel), formerly NSP, filed comments requesting that the Commission allow the bidding process to proceed to Step 5 (Commission review of proposed PPAs) and not order an investigation or take any action that would result in additional delay.

On September 13, October 19, and November 7, 2000, PCN made additional filings.

The Commission met to consider this matter on November 30, 2000. At the hearing on November 30, 2000, ME3, IWLA, PSAC, CWAA, and MPIRG requested that the Commission defer its decision regarding NSP's selection of Manitoba Hydro as one of three final vendors

until it had investigated and properly considered the environmental and socioeconomic externalities associated with Manitoba Hydro's bid.

## **FINDINGS AND CONCLUSIONS**

### **I. SUMMARY OF COMMISSION ACTION REGARDING NSP'S FINAL SELECTION OF THE MANITOBA HYDRO BID**

In this Order the Commission addresses NSP's selection of final vendors, including Manitoba Hydro. Based on its analysis, the Commission has decided to 1) reject all requests for investigations and public hearings related to the selection of Manitoba, 2) reject all requests to stay the decision on the selection of Manitoba Hydro, and 3) approve NSP's selection of final vendors, including Manitoba Hydro.

### **II. CHALLENGES TO NSP'S SELECTION OF MANITOBA HYDRO**

On April 6, 2000, NSP filed its Final Evaluation Report, thereby commencing Step 4 of the competitive bidding process.<sup>3</sup> In its Report, the Company announced its final selection of three bidders that it would now begin to negotiate with for a combination of peaking and non-peaking products: 500 MW of non-peaking generation for in-service in 2005 from Manitoba Hydro, 50 MW of non-peaking generation for in-service in 2001-2002 from Northern Alternative Energy, and at least 25 MW of non-peaking generation for in-service in 2001-2003 from Black Hills Corporation. The Report documented the Company's analysis of bids from short-list to final selection.

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<sup>3</sup> In its Order dated September 29, 2000 in this matter, the Commission summarized the filings relevant to the first three steps of NSP's current bid process. Order at pages 2-4.

Parties who objected to NSP's selection of Manitoba Hydro as one of three bidders were: North American Water Office, the Quaker Peace and Social Action Committee, Pimmicikamak Cree Nation, Minnesotans for an Energy Efficient Economy, the Izaak Walton League of America, the Clean Water Action Alliance, and the Minnesota Public Interest Research Group.<sup>4</sup>

The objecting parties raised a number of issues that they believe warrant rejecting NSP's selection of Manitoba Hydro's bid, at least until further investigation could be conducted. The common thread in each of these objections is the assertion that NSP viewed Manitoba Hydro's bid more favorably than was warranted because NSP ignored certain characteristics of Manitoba Hydro's bid. The parties suggested that, viewed correctly, Manitoba Hydro's bid was not competitive and should not have been selected as a winner.

Rather than listing each objecting party's arguments separately, this Order will state and address these arguments collectively, since they by and large supported each others' arguments. The objections may be grouped as follows:

- First, that NSP introduced a new element, short term purchases, into an RFP process that was intended for long term resources. This favored bidders that could supply short term power, especially Manitoba Hydro, which is a large utility with existing resources and an on-going relationship with NSP.
- Second, that NSP disregarded the clear reliability problems relating to purchases from Manitoba Hydro.
- Third, that NSP disregarded the thermal impacts (emissions) to the extent that Manitoba Hydro will provide the contracted electricity via thermal generation.
- Fourth, that NSP disregarded the severe environmental and socioeconomic impacts associated with Manitoba Hydro's hydroelectric projects.

The objecting parties argued that these issues, when considered together, have introduced unacceptable levels of unfairness and error into the process. They concluded that the procedural issues, unfairness, and errors so distorted the selection process that incorrect and economically and socioeconomically unacceptable choices may be the result.

The objections will be examined in turn.

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<sup>4</sup> These groups have participant status in this matter. In addition to its participant status, PCN has been granted intervenor status with respect to socioeconomic effects of the Manitoba Hydro bid on its members.

### **III. ALTERATION OF THE BID PROCESS TO CONSIDER SHORT-TERM NEEDS**

#### **A. Objecting Parties**

The process objection was that the current RFP process is unusual and unfair in that NSP modified the process to include consideration of short-term power. Changing the RFP process to include consideration of short-term power gave Manitoba Hydro an unfair advantage relative to other bidders because, as a large utility (5,000 MW of generation) with a long-standing relationship with NSP (including on-going contracts for the purchase and sale of power), Manitoba Hydro had advantages in terms of its ability to provide NSP with short-term energy that other competitors did not have.

The objectors asserted that this unfair advantage was further compounded by the manner in which NSP modified its RFP process, i.e. that this process began as one designed for long-term energy supplies so bidders made determinations regarding whether to bid and what to bid, based on NSP's announced needs. NSP then modified the process to include short-term energy, giving Manitoba Hydro's competitors even less time to effectively respond to NSP's request.

#### **B. NSP**

NSP responded regarding the fairness of the process. The Company stated that its decision to review short term options from bidders is an issue for the independent auditor. No bidder or bidders have expressed concern about this variance to the process. NSP stated that the record will show that all bidders were provided the opportunity to have the same information as others about NSP's interest in short term options. The record will also show that communication with participants in the short term market did not result in the improper flow of information to bidders. In fact, bidders were told they could not tie short term offers in the market to their bid in the RFP process. All bidders were given time to address the short term option once the Company made them aware of the heightened interest in the option. NSP agreed that its handling of the issue should be reviewed at some point, however, the issue doesn't merit stopping or delaying the process.

#### **C. The Independent Auditor re: Fairness of RFP Change to Consider Short-Term (Prior to 2003) Needs**

In his Report on Final Selection filed July 12, 2000, the Independent Auditor identified issues that were of potential concern which required further detailed investigation. The Independent Auditor suggested that while there were activities that could have been improved upon, the overall competitive bidding process seems to have been conducted in a fair and equitable manner. The Independent Auditor stated that it found no bidder fairness or equity basis for rejecting the conclusions reached by NSP as a result of the competitive bidding process.

With specific regard to the issues regarding the RFP change to consider short-term (prior to 2003) needs, the Independent Auditor made the following finding: the consideration of short term supply was included in the long term procurement process, but the process appears to have been fairly administered to all bidders.

In sum, the Independent Auditor found no evidence that any of the bidders were unfairly advantaged or disadvantaged. The Independent Auditor concluded that while NSP understandably focused on obtaining competitive priced power supplies to meet its customers' needs at the lowest possible cost, the process was reasonably and fairly implemented. In addition, the Independent Auditor stated he was confident that the lessons learned by NSP through the conduct of the procurement and the subsequent independent audit will result in improvements to future competitive power procurement.

#### **D. Commission Action**

The Commission does not find the process objection persuasive. In order to find the process unfair, the Commission would require a showing that bidders had been disadvantaged, rather than an inference from a non-showing, which is what has been offered.

Against the process objection, the Commission notes that the three parties charged with overseeing and commenting on the fairness of the bid process (the Independent Auditor, the Department, and the RUD-OAG) all considered this issue and determined that NSP's final selection of vendors was not biased by its negotiations for short-term power. In addition, no bidder objected to NSP's process or objected to NSP's selection of Manitoba Hydro.

While the Commission has fully considered the objection to the process, the Commission has evaluated the process and adopts the view of the Department, the RUD-OAG, and the Independent Auditor. Based on the record established in this matter, the Commission finds that NSP's bid process was fair and treated all bidders equally. The Commission finds strong support for this finding in the fact that no bidder objected to NSP's process or objected to NSP's selection of Manitoba Hydro.

### **IV. OBJECTION TO MANITOBA HYDRO'S RELIABILITY**

#### **A. Objecting Parties**

**The reliability issue raised is whether Manitoba Hydro can meet its energy commitments to its customers if river flows in Manitoba are lower than average. The PCN cited evidence from Manitoba Hydro's 1996 Resource Plan that indicates that Manitoba Hydro is seriously concerned about the reliability of its hydroelectric generation. The PCN argued that the volatility in Manitoba Hydro's historical hydro data reflects the difficulty in assuring dependable generation from hydroelectricity. In addition, the PCN noted that the 1996 Manitoba Hydro plan indicates that Manitoba Hydro continues to use a relatively unsophisticated standard for dependable hydroelectric generation.**

#### **B. Manitoba Hydro**

**Manitoba Hydro stated that it had a proud history of reliable service and takes all reasonable and prudent steps to maintain it. Manitoba Hydro stated that in addition to reliability scoring (part of the final selection by NSP) it must receive approval of any new export sales by Canada's National Energy Board (NEB) which will also critically focus on reliability issues and the ability of Manitoba Hydro to deliver reliably on its planned sales while also meeting reliability standards for its domestic customers. Manitoba Hydro stated that the NEB and the Manitoba Utilities Board have always expressed satisfaction in this regard in previous matters before them. Manitoba Hydro stated that it has exported power for over 40 years and has never failed to supply a firm load due to a shortage of energy.**

**Manitoba Hydro characterized its current proposal as a continuation of the existing 500 MW sale to NSP and stated that no additional resources are needed for MH to continue that sale. Manitoba Hydro noted that its bid does not include any draw-down, flow or drought restrictions or any return energy provisions. Manitoba Hydro stated that it has developed its system using industry standards relating to capacity reserves and a dependable energy supply, standards that are applied to its domestic and export loads and accepted and approved by regulators throughout North America. Manitoba Hydro stated that it uses a dependable energy criterion of sufficient resources to supply firm load during a repeat of the most severe drought on record (90 years).**

### **C. The Department**

**The Department did not share PCN's concerns about Manitoba Hydro's reliability. The Department argued that PCN provided no specific details of Manitoba Hydro's project to support its claim. Thus, the Department concluded that PCN's concerns regarding reliability should be disregarded.**

**First, the Department argued that the reliability of the Manitoba Hydro power is the concern of NSP, its ratepayers, and regulators. Since NSP has had a long-term purchase power contract with Manitoba Hydro, the Department stated, NSP is in the best position to assess the reliability of Manitoba Hydro's project.**

**Second, the Department noted that Manitoba Hydro's obligation to provide reliable firm power is not limited to hydroelectric power. The Department stated that Manitoba Hydro could meet its obligation by other plans such as the 260 MW gas turbine plant to be built by Manitoba Hydro at Brandon.**

**Third, the Department argued that the specific terms and requirements that protect both NSP and its ratepayers are issues that more appropriately belong in the Power Purchase Agreement (PPA) and not in the selection process. The Department stated that NSP's rate payers could be appropriately protected by appropriate safeguards in the PPA.**

### **D. Commission Action**

**The Commission has considered the reliability concerns, which were based on the volatility of Manitoba Hydro's inflows and the fact that Manitoba Hydro relies on reservoirs, several of which are outside of Manitoba and not controlled by Manitoba Hydro, to provide firm generation.**

**Based on its review of the record and as recommended by the Department and the RUD-OAG, however, the Commission concludes that there is no concern for Manitoba Hydro's ability to deliver electricity to Minnesota ratepayers that cannot be accommodated (properly safeguarded) by appropriate language in the PPA. In these circumstances, the reliability concern is effectively neutralized.**

## **V. THE SIGNIFICANCE OF EMISSIONS FROM THERMAL GENERATION ON MANITOBA HYDRO'S SYSTEM**

### **A. The Objection**

**PCN asserted, and was supported by several objectors, that Manitoba Hydro submitted an all-hydro generation bid and NSP treated it as such, adding no thermal emission externality costs to the bid. PCN argued that this treatment unfairly favored Manitoba Hydro and unfairly prejudiced other bidders because, PCN asserted, Manitoba Hydro will actually provide a substantial portion of the contracted electricity using a gas generation facility it plans to build in Brandon, Manitoba. According to PCN, since Brandon is within 200 miles of the Minnesota border, the emissions cost associated with generating at least some portion of the contracted electricity should be included in Manitoba Hydro's bid, as required by the Commission's externalities Order.**

**In support of its assertion that Manitoba Hydro would provide a substantial portion of the contracted electricity from its gas generation facility at Brandon, PCN provided (on the day of the hearing) an analysis of Manitoba Hydro's thermal operations.**

### **B. The Department**

**The Department argued that allegations that NSP did not correctly apply environmental costs associated with the Brandon plant have no factual basis. The Department noted that NSP included in its valuation model the emission rates provided by Manitoba Hydro. The Department believes that the rates supplied by Manitoba Hydro are fully accurate. The Department noted that NSP's RFP required Manitoba Hydro to specify the generating technology, type of primary and secondary fuel, projected location, projected committed capacity and proposed on-site construction start date. The Department reasoned that there was no reason to believe that Manitoba Hydro did not provide accurate responses on these items, especially in view of the fact that NSP has been purchasing long-term power from Manitoba Hydro for many years.**

**The Department noted that NSP stated (in response to an information request) that it included in its valuation model the emission rates provided by Manitoba. The Department**

noted that Manitoba had provided emission rates in response to NSP's RFP, which had required applicants to specify the generating technology, type of primary and secondary fuel, projected location, projected committed capacity, and proposed on-site construction date. The Department stated that there is no reason to believe that Manitoba Hydro failed to meet the RFP's requirements.

### **C. Commission Action**

Having examined the Brandon emissions argument, the Commission is not persuaded to require a recalculating of Manitoba Hydro's bid. At the hearing, Manitoba Hydro clarified that it provided NSP with system-wide emissions data in connection with its bid. In evaluating the Manitoba Hydro bid, then, NSP did not disregard the thermal-generation factor. Manitoba Hydro provided and NSP ascribed thermal externality costs to Manitoba Hydro's bid based on the percentage of Manitoba Hydro's total generation (systemwide) that is thermally generated. This approach appears appropriate and reasonably takes in to consideration the externality costs of the electricity to be provided pursuant to this contract.

## **VI. SOCIOECONOMIC COSTS**

### **A. PCN and Other Objecting Parties**

PCN cited Minn. Stat. § 216B.2422, subd. 3 (a) as requiring utilities to use environmental and socioeconomic costs when evaluating and selecting resource options.<sup>5</sup> PCN asserted, based on the limited information available to it, that NSP has assumed that there are no environmental and socioeconomic costs associated with Manitoba Hydro's bids in the current RFP process. However, the PCN argued that importing electricity from Manitoba entails very substantial environmental and socioeconomic impacts and costs. Thus, to the extent that NSP has not properly accounted for such costs within the RFP process, PCN argued, it has given undue advantage to Manitoba Hydro.

Regarding the environmental costs of Manitoba Hydro's hydroelectric generation, PCN acknowledged that the Commission has a 200 mile limit for environmental externalities generated by the hydro production, but asserted that it has no such geographic limitation for socioeconomic concerns. And in this case, PCN argued, the degradation of the environment for the purpose of hydro development is a driver for the associated socioeconomic impacts. PCN urged, therefore, that the Commission must understand the environmental factors outside the 200 mile limit since they are the primary cause of socioeconomic impacts.

PCN acknowledged its need to show incremental harm resulting from the Manitoba Hydro

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<sup>5</sup> PCN has been granted intervenor status with respect to the socioeconomic effects of Manitoba Hydro's bid. See September 29, 2000 Order in this matter.

generation that is the subject of this proceeding. The PCN argued that NSP's proposed purchase will result in changes to the existing hydro system operations that will exacerbate the environmental and associated socioeconomic impacts. First, the contract would permit NSP some ability to schedule deliveries when power is most valuable. By superimposing NSP's need for load on that of Manitoba's native load, power sales to NSP could result in an even more damaging pattern of water releases, with greater fluctuations and greater divergence from natural patterns.

Second, PCN argued that the NSP purchase could be an impediment to future efforts to mitigate adverse impacts. Elsewhere, it stated, hydro operations are being modified to mitigate impacts through adoption of a water release regime that is more like naturally occurring patterns. These changes result in a reduction in the overall value of the electricity produced by shifting electricity production from high to low value periods. To the extent that Manitoba Hydro has entered into long-term commitments with NSP that require Manitoba Hydro to schedule power deliveries to maximize the value of electricity, it will have less flexibility and face greater costs to adopt water flow patterns that are more like those naturally occurring.

In sum, PCN argued that if the existing Manitoba Hydro projects are used to supply the NSP purchases, this will exacerbate the environmental and, hence, the socioeconomic costs associated with these projects. The PCN argued that the increased environmental and socioeconomic costs associated with existing projects must be weighed against any environmental and socioeconomic benefits that NSP attributes to its reduced need for other forms of generation.

At the hearing, PCN acknowledged that the job of evaluating and quantifying the benefits and detriments of Manitoba Hydro's hydro generation projects would be immensely complicated. PCN suggested, however, that an impartial Canadian authority had the capacity to make such an evaluation and provide the Commission with a report of its findings. PCN requested a stay to allow such a study to be completed.

## **B. NSP**

NSP asserted that it had complied with the bidding requirements and the previous resource plan Order regarding socioeconomic issues and noted that the Department and the RUD-OAG agreed. NSP stated that to the extent necessary, additional comment regarding socioeconomic effects of the particular purchase could be provided at the contract approval stage (Step 5) as well as information from the monitoring resulting from the February 17, 1999 Order in the Resource Plan.

NSP opposed the request for a stay in the bidding process for the inquiry into the socioeconomic effects of large-scale hydroelectric facilities requested by IWLA and ME3. NSP asserted that it had applied the environmental externality values set by the Commission to bids received in this docket and that it would be inappropriate to develop new values for hydro at this point in the process. NSP stated that to the extent a more generic inquiry into these issues was desired, such an inquiry should occur in a different docket.

### **C. The Department**

**The Department disagreed with the assertion that NSP failed to correctly include environmental and socioeconomic costs in valuating Manitoba Hydro's bid.**

**First, the Department noted that in its December 16, 1996, ORDER ESTABLISHING ENVIRONMENTAL COST VALUES, the Commission found environmental costs of emissions from plants located further than 200 miles from Minnesota to be zero. The Department argued that the Commission's rationale for excluding environmental costs outside the 200 mile zone applies as well to socioeconomic impacts outside the 200 mile zone. The Department argued, therefore, that any negative socioeconomic impacts upon PCN should not be included in the cost valuation.**

**The Department added that the socioeconomic impacts of Manitoba Hydro have been subjected to many negotiations and agreements between the Canadian Government, Manitoba Hydro and the Cross Lake Cree Nation. The Department stated that these parties are the best equipped to deal with this issue and the Commission should not intervene in their dispute.**

### **D. Nisichawaysihk Cree Nation (NCN)**

**NCN argued against the Commission initiating an investigation into the socioeconomic costs associated with large hydro generation projects and against the Commission delaying approval of NSP's selection of Manitoba Hydro's bid.**

**NCN stated that an investigation would be unlikely to change anything at this time since many of the hydro projects that have caused socioeconomic damage were developed in the 1960s and 1970s. NCN argued that the socioeconomic costs associated with resolving claims for past developments have already been included in Manitoba Hydro's bid. NCN cautioned that an investigation into socioeconomic costs would be a massive undertaking that would have to consider not only the negative impacts but also the positive benefits (which it indicated were numerous). Even regarding negative impacts, NCN noted that the issues are complex and an examination of alleged negative impacts would have to differentiate between the impacts of the hydro projects and the impacts of other factors, including - for example - an all-weather road to Thompson, the anti-fur lobby, and mining.**

**NCN also argued that staying consideration of Manitoba Hydro's bid would have a negative effect on NCN's joint future development planning process with Manitoba Hydro. NCN stated that such a stay would be unfair and unreasonable since PCN has had the same options open to it that all of the other Cree Nations had. NCN noted that PCN can take its outstanding claims against Manitoba to arbitration, to Canadian courts to argue treaty and aboriginal rights issues, and to international tribunals in certain circumstances to argue violations of international treaties to which Canada is a signatory.**

**In sum, NCN urged the Commission to dismiss the request for an investigation since socioeconomic costs incurred in the past have either already been dealt with or are subject to Canadian processes. As to any future socioeconomic costs due to future developments, NCN stated that these would be under the scrutiny of Canadian regulators and, moreover, would be beyond the Commission’s jurisdiction since the proposed contract is not dependent on power from the new developments.**

**E. Split Lake Cree Nation**

**Split Lake Cree Nation, an intervenor in this matter, took the same position as NCN, urging the Commission to deny requests for further investigation and to approve NSP’s selection of Manitoba Hydro’s bid.**

**F. Commission Action**

**Minnesota Statutes, Section 216B.2422, subdivision 3, requires that the Commission, to the extent practicable, quantify and establish a range of environmental costs associated with each method of electricity generation. The Commission established interim values in 1994, and permanent values in 1997.<sup>6</sup> The statute also requires utilities to use these environmental cost values in conjunction with other external factors, including socioeconomic costs, when evaluating and selecting resource options in all proceedings before the Commission.<sup>7</sup>**

**The Commission finds that proper consideration of the socioeconomic impacts of Manitoba Hydro’s current bid does not alter NSP’s selection of Manitoba Hydro. Under the unique facts of this case, the Commission deems the socioeconomic impacts of this generation to be adequately internalized by Manitoba Hydro pursuant to the December 16, 1977 Northern Flood Agreement (NFA or “the treaty”). Accordingly, the Commission finds no reason to initiate a process aimed at further accounting for those costs.**

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<sup>6</sup> See In the Matter of the Quantification of Environmental Costs Pursuant to Laws of Minnesota 1993, Chapter 356, Section 3, Docket No. E999/CI-93-583, ORDER ESTABLISHING ENVIRONMENTAL COST VALUES (January 3, 1997) and ORDER AFFIRMING IN PART AND MODIFYING IN PART ORDER ESTABLISHING ENVIRONMENTAL COST VALUES (July 2, 1997).

<sup>7</sup> At the outset, the Commission clarifies that of the five Cree nations affected by the hydro projects in question, PCN is the only one to allege that the project’s socioeconomic effects have not been properly compensated or accounted for by Manitoba Hydro. In fact, two of the affected Cree nations (NCN and Split Lake Cree Nation) are on record in this matter indicating that Manitoba Hydro has adequately addressed the socioeconomic impacts of the project on their members. These commenters urged the Commission to proceed to approve NSP’s selection of Manitoba Hydro’s bid.

**The Commission understands that Manitoba Hydro has not paid to PCN all the compensation to which PCN believes it is entitled for socioeconomic damage nor has Manitoba Hydro expended all the remediation costs that PCN believes are due under the NFA. In signing the NFA, however, Manitoba Hydro has effectively given a promissory note to pay for the socioeconomic effects that its projects cause and has obligated itself to a process by which those amounts can be confirmed and collected by PCN if Manitoba Hydro fails to honor those obligations.**

**Based on its review, the Commission finds that the treaty provides comprehensive relief for “all the adverse results of the Project”, i.e. the negative socioeconomic effects of the hydro projects at issue in this matter. The treaty states:**

**Uncertainty as to the effects of the Project, with respect not only to the Project as it exists at the date of this Agreement but also as it may develop in the future, is such that it is not possible to foresee all the adverse results of the Project nor to determine all those persons who may be affected by it, and, therefore it is desirable to establish through the offices of a single arbitrator a continuing arbitration instrument, to which any person adversely affected may submit a claim, and as well as to fully empower such arbitrator to fashion a just and appropriate remedy; . . . .**

**The NFA contains specific provisions providing for compensation lands, wildlife and fishing rights, programs to compensate for adverse effects on trapping and fishing, the construction of remedial works, the provision of a continuous supply of potable drinking water, removal of obstructions to navigation, comprehensive community planning and other matters.**

**To illustrate: a principal concern identified by PCN in its comments was the impact of the project upon traditional navigation. The following excerpts from the treaty illustrate the extensive promises made by Manitoba Hydro regarding this important subject:**

#### **ARTICLE 5: Navigation**

- 5.1 Residents of the Reserves have a right to free and normal navigation of the waterways.**
- 5.2 In order to give effect to the continued right to free and normal navigation by all persons, Manitoba agrees to remove obstructions to navigation created by the construction of the Footprint River and the Minago River causeways as soon as practical and in any event not later than two months after the date of ratification of this Agreement.**
- 5.3 Manitoba and/or Hydro undertake to maximize the free and normal use of the navigable waters (as defined by the Navigable Waters Protection Act R.S.C. 1970 Chapter N-19) by all persons affected by the Project and in particular:**
  - 5.3.1 To ensure proper clearing of land in the Nelson House area and in the area between**

**Footprint Lake and Threepoint Lake in order that flooding will not interfere with existing navigation by the local population;**

- 5.3.2 To ensure that, in the event that standing trees become a navigation problem now or in the future, clearing action is performed;**
- 5.3.3 To remove debris of any nature which results from the actual construction or from the flooding of land or by diversion of waters in the total area encompassed by the overall Project.**
- 5.4 In the event that any claim is submitted to the Arbitrator with respect to any adverse effect of the Project on navigation, the Arbitrator may, irrespective of any order he may make in respect of such claim, recommend to the Minister of Transport, Canada ("the Minister" in this Article) such measures as the Arbitrator deems may be appropriately required of Manitoba and/or Hydro by the Minister, for the purpose of ensuring free and normal navigation of the navigable waters.**
- 5.5 Hydro shall comply with the conditions set out in all Approval Documents issued to Hydro by the Minister in relation to the Project as these pertain to actual or potential adverse effects on the communities or the residents thereof.**
- 5.6 In order to give effect to the continued right to free and normal navigation by all persons, Hydro agrees to construct and maintain a portage facility at Notigi Dam which will enable users of the waterways to freely and safely proceed along the waterway now obstructed by the Notigi Dam.**

**The NFA also promises maintenance of community infrastructure, shorelines and property of residents. Article 12 - Community Infrastructure. The comprehensive nature of Manitoba Hydro's treaty promises is further illustrated by the following:**

#### **ARTICLE 13: Additional Clearing**

- 13.1 In addition to clearing of shorelines which may be required pursuant to Article 5 and Article 12 of this Agreement, it is contemplated that clearing of certain areas in the vicinity of a community may be required where standing trees are, or are likely to be inundated or damaged by the modified water regime so as to adversely affect the traditional or intended use of the shoreline by community residents.**

**Specific promises of remediation are given in ARTICLE 22 - Remedial Works. The NFA also provides that any First Nation or any member of a First Nation may bring a claim to arbitration to seek a remedy for any direct or indirect adverse effect of the Project. See Article 24: Arbitration. Further, the NFA provides that the NFA Arbitrator may order that the respondents to a claim (Manitoba Hydro, the Government of Manitoba or the Government of Canada) pay the reasonable costs of the claimant to prepare and advance the claim. These costs may include attorneys' costs and the costs of consultants or experts, to the extent that the costs are reasonable.**



Based on this analysis, then, the Commission concludes that to the extent that socioeconomic costs have been or will be incurred by the PCN and its members due to the generation in question, these costs are assumed to have been internalized by Manitoba Hydro and, hence, already reflected in its bid price. In these circumstances, the Commission finds that NSP has given adequate consideration to the socioeconomic costs as required by Minn. Stat. § 216B.2422, subd. 3 and no further examination and evaluation of Manitoba Hydro's bid in light of such costs is necessary.

## VII. NEXT STEP IN THE BID PROCESS

This Order concludes Step 4 of the Commission-approved bid process: Commission review and approval of the Company's final bid selections. The next and final step in this process is Step 5: NSP will submit Power Purchase Agreements with the three winning/approved bidders (Northern Alternative Energy; Black Hills Corporation, and Manitoba Hydro) for Commission review and approval. Before NSP's contracts with the winning bidders become operative, the Commission must approve the final Power Purchase Agreement (PPA) between NSP and the winning vendor(s).

## VIII. REVIEW OF ENVIRONMENTAL AND SOCIOECONOMIC COSTS

In this case, the Commission has found that NSP's application of environmental and socioeconomic cost factors to the bids submitted to it did not result in evaluations that need to be revisited. In the course of this docket, however, the Commission has concluded that it would be appropriate to open an investigation into whether the environmental costs established in 1997<sup>8</sup> should be updated or expanded and whether and how socioeconomic costs can be compared for all generating sources. The Commission will so order.

## IX. WIND INTERMITTENCY FACTOR

In its August 18, 2000 filing, IWLA challenged the way NSP evaluated wind resources in this docket. The IWLA alleged that NSP's bid methodology systematically discriminates against wind energy resources by overstating the intermittency cost of wind energy, understating the value of fuel diversity offered by wind resources, and inflating wind transmission costs by dividing procurement into small blocks. The IWLA asked the Commission to direct NSP to work with the parties to correct serious mistakes in the evaluation of intermittent wind resources before the Company releases its next all-source RFP.

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<sup>8</sup> See In the Matter of the Quantification of Environmental Costs Pursuant to Laws of Minnesota 1993, Chatter 356, Section 3, Docket No. E999/CI-93-583, ORDER ESTABLISHING ENVIRONMENTAL COST VALUES (January 3, 1997) and ORDER AFFIRMING IN PART AND MODIFYING IN PART ORDER ESTABLISHING ENVIRONMENTAL COST VALUES (July 2, 1997).

**The Department stated that the wind valuation methods used by NSP in this all source bid did not inappropriately exclude wind proposals. The Department, therefore, supported the IWLA's proposal that wind valuation issues be resolved outside of the current all source bid docket, but prior to the next all source RFP. The Department also noted that NSP's current resource plan may be the appropriate forum to resolve this issue.**

**At the November 30, 2000 meeting to address these issues, the IWLA and the Company stated that they had reached agreement on how to proceed on these issues and stated the substance of that agreement. A subsequently filed statement clearly sets out this agreement. The Commission finds that the parties' agreement (copy attached, marked Attachment A) is reasonable and represents a hopeful step forward to clarify the intermittency cost issues. The Commission will, therefore, approve this agreement and direct the parties thereto to abide by it.**

### **ORDER**

- 1. The Commission rejects all requests for further investigation and stay of consideration of the Manitoba Hydro bid.**
- 2. The Commission approves NSP's final selection of Northern Alternative Energy (350 MW), Black Hills Corporation (25 MW), and Manitoba Hydro (500 MW).**
- 3. The Commission initiates an investigation into environmental and socioeconomic costs under Minn. Stat. § 216B.2422, subd. 3 for all generation sources and assigns the matter to Docket No. E-999/CI-00-1636.**
- 4. The Commission approves the agreement between NSP and the Izaak Walton League of America regarding wind intermittency (copy attached) and directs the parties to abide by it.**
- 5. This Order shall become effective immediately.**

**BY ORDER OF THE COMMISSION**

**Burl W. Haar  
Executive Secretary**

**(S E A L)**

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