

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Marshall Johnson
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Faribault Energy Park, LLC for a Certificate of Need for a 250-Megawatt Electric Generating Facility

ISSUE DATE: August 13, 2003

DOCKET NO. IP-6202/CN-02-2006

ORDER GRANTING CERTIFICATE OF NEED, REQUIRING NOTICE OF ANY CHANGE IN OWNERSHIP, AND SETTING FILING DATE FOR RESOURCE PLAN

PROCEDURAL HISTORY

I. Initial Proceedings

On November 19, 2002, Faribault Energy Park, LLC filed an application for a certificate of need to construct a 250-megawatt natural-gas-fired electric generating facility near the city of Faribault to serve municipal utility members of the Minnesota Municipal Power Agency. On November 20, 2002, the Commission issued a notice seeking comments on the substantial completeness of the application. On December 11, 2002, the Commission issued an Order extending the 30-day period set by rule for determining the completeness of the application.¹

On January 27, 2003, the Commission issued Orders finding the application substantially complete and referring the application to the Office of Administrative Hearings for contested case proceedings.² The case was assigned to Administrative Law Judge Beverly Jones Heydinger.

II. The Parties and their Representatives

The following organizations were parties to this proceeding and were represented as set forth below:

¹ *Order Extending Completeness Review Period*, this docket.

² *Order Finding Application Substantially Complete and Referring Matter for Contested Case Proceeding and Notice and Order for Hearing*, this docket.

Faribault Energy Park, LLC was represented by James D. Larson, Vice-President, Faribault Energy Park, LLC, 200 South 6th Street, Suite 300, Minneapolis, Minnesota 55402.

The Minnesota Department of Commerce was represented by Priti R. Patel, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota 55103.

The Minnesota Environmental Quality Board Staff was represented by Alan Mitchell and William Cole Storm, Environmental Quality Board, 658 Cedar Street, Room 300, St. Paul, Minnesota 55155.

III. Public and Evidentiary Hearings

The Administrative Law Judge conducted public hearings on the application at 2:00 p.m. and 7:00 p.m. on April 30, 2003 in the Faribault City Council Chambers. Two members of the public spoke at the afternoon hearing, and four spoke at the evening hearing. No member of the public opposed granting a certificate of need to the proposed facility.

The Administrative Law Judge conducted an evidentiary hearing in the case on April 30, 2003, between the two public hearings.

IV. The Parties' Stipulation, the ALJ's Report, Proceedings Before the Commission

On April 2, 2003, the Department of Commerce and Faribault Energy Park submitted a Stipulation and Agreement in which they jointly recommended that the Commission grant the certificate of need. In that document they listed the certificate of need requirements set forth in statute and rule and cited record evidence that each requirement had been met.

The Minnesota Environmental Quality Board Staff took no position on whether the certificate of need should be granted; the Staff intervened to ensure that the record on the environmental effects of the proposed facility was adequately developed.

On June 9, 2003, the Administrative Law Judge issued her report, in which she found that the applicant had demonstrated need for the proposed facility and recommended granting the requested certificate of need.

No one filed exceptions to the Administrative Law Judge's Report, and the record therefore closed on June 24, the last day on which exceptions could have been filed.³ The parties did file comments on the report, however. On June 26, 2003, the applicant filed a letter recommending two editorial corrections. On June 30, 2003, the Environmental Quality Board Staff filed a letter suggesting that the Commission change the applicant's and the Administrative Law Judge's characterization of the size of the proposed facility and of its fuel source, based in part on information in applications for air quality permits filed by the applicant.

³ Minn. Stat. § 14.61, subd. 2; Minn. Rules 7829.2700, subp. 1.

At hearing the Department of Commerce recommended that the Commission decline to adopt one sentence of the report that the Department stated might prove confusing in future certificate of need cases.

The matter came before the Commission on July 10, 2003.

FINDINGS AND CONCLUSIONS

I. Factual Background

Faribault Energy Park, LLC is a limited liability corporation owned by the Minnesota Municipal Power Agency (MMPA). MMPA is made up of eight member cities: Anoka, Arlington, Brownston, Chaska, LeSueur, North St. Paul, Olivia, and Worthington. These eight cities serve a retail customer base of approximately 40,000 and a population of approximately 85,000.

MMPA also serves two non-member municipal utility customers, East Grand Forks and Shakopee, and it provides some power to Steele-Waseca Cooperative Electric. MMPA's eight member cities have an aggregate peak load of 180 megawatts, and the three non-member customers have an aggregate peak demand of 80 megawatts.

Currently, MMPA buys most of its electricity under long-term contracts from other suppliers. As these contracts expire, however, MMPA faces significantly higher purchased power prices, since forecasts prepared by MMPA and by the Mid-Continent Area Power Pool show capacity deficits in the regional power pool beginning in the summer of 2005.

MMPA therefore formed Faribault Energy Park, LLC (FEP) to construct and operate a 250-megawatt generating plant near Faribault to meet intermediate electricity needs during medium to high load periods. The proposed plant would generate electricity using a combustion turbine and heat recovery steam turbine generator operating in combined-cycle mode. The facility would use natural gas as a primary fuel and low-sulfur No. 2 fuel oil as a backup fuel.

The plant would receive its natural gas supply through the Northern Natural Gas system, whose main pipeline runs beneath the plant property. The plant would transmit its output via the Lake Marion - West Faribault 115kV transmission line, which abuts the plant property.

II. The Legal Standard

A. The Statute

The certificate of need statute directs the Commission to "adopt assessment of need criteria to be used in the determination of need for large energy facilities pursuant to this section," listing eight

factors the Commission is to incorporate into its evaluation criteria.⁴ The statute also prohibits the Commission from granting any certificate of need unless the applicant demonstrates that the need for electricity cannot be met more cost-effectively through energy conservation and load-management measures.⁵

It also prohibits the Commission from granting a certificate of need for any generating facility fueled by nonrenewable resources unless the applicant demonstrates that it has explored using renewable resources and that the total costs of the project it proposes, including environmental costs, are lower than the cost of using renewables.⁶

B. The Rules

To comply with its statutory obligation to establish criteria for assessing need, the Commission has adopted the certificate of need rules, Minnesota Rules Chapter 7849. Those rules are detailed, but in brief, they require the Commission to issue a certificate of need when the applicant demonstrates four things:

- (A) the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states;
- (B) a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record;
- (C) by a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health; and
- (D) the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

Minn. Rules 7849.0120.

⁴ Minn. Stat. § 216B.243, subd. 1.

⁵ Minn. Stat. § 216B.243, subd. 3.

⁶ Minn. Stat. § 216B.243, subd. 3a.

The rules also set forth factors to consider in evaluating whether the applicant has met the requirements of criteria A, B, and C.

III. The Administrative Law Judge's Findings on Need Criteria

The Administrative Law Judge examined the application in light of the certificate of need criteria and found that the applicant had demonstrated need for the proposed facility. Her findings are summarized below.

A. The demand for electricity cannot be met more cost-effectively through energy conservation and load-management measures.

The Administrative Law Judge found that energy conservation and load-management measures could not eliminate the need for the generating capacity the proposed plant would provide. While MMPA has consistently exceeded its energy-saving goals, reducing its summer peak load by some 4% and deferring the need for peak capacity, the Administrative Law Judge found that there is no reasonable likelihood that conservation and load-management could provide the additional 100 megawatts of additional capacity required by the summer of 2006. Findings of Fact 32 and 33.

B. The applicant has explored the possibility of using renewable resources, and the costs of the proposed project, including environmental costs, are lower than the cost of using renewable resources.

The Administrative Law Judge found that the applicant had seriously examined all reasonably available renewable technologies and had properly concluded that their costs would exceed the costs of the proposed project, including environmental costs.

Hydropower involves high capital costs and high transmission costs and would not be on-line in time to meet need. Wind is an intermittent resource that is neither appropriate nor cost-effective for meeting the intermediate resource needs at issue. Solar technology is also intermittent, and it has not yet developed to the point of being a reliable, cost-effective alternative in the context of Midwest climate conditions. Biomass technology, too, has not yet developed to the point that it constitutes a reasonable and cost-effective alternative to the proposed plant, given the plant's location and the timing of need. Findings of Fact 41 through 49.

The applicant also investigated lesser-known or less frequently deployed renewable technologies – landfill gas, fuel cells, micro-turbines, pumped storage hydroelectric, compressed air energy storage, battery energy storage, fly wheel energy storage, and superconducting magnets. The Administrative Law Judge concurred in the applicant's conclusion that none of these technologies would meet need because they were not commercially available on the scale of the project, they would not be cost-effective, or there were no suitable sites available. Finding of Fact 50.

C. The probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states.

The Administrative Law Judge determined that both the region and MMPA face a capacity and energy deficit within the next few years. She found that this region, served by the Mid-Continent Area Power Pool, will need some 500 megawatts of new capacity in 2006 and that MMPA will need at least 113 megawatts. She found that failure to certify the proposed facility would have an adverse effect on the state and regional energy supply. Findings of Fact 24 through 39.

D. A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record.

The Administrative Law Judge found that the applicant had appropriately examined both the renewable and nonrenewable alternatives to the proposed facility and that none of the alternatives would be more reasonable and prudent than the proposed facility. In addition to the renewable alternatives discussed above, the applicant examined the four main nonrenewable alternatives: a fuel-oil fired, combined cycle combustion turbine facility; a natural- gas-fired, simple-cycle combustion turbine facility; a coal-fired facility; and purchased power.

The fuel-oil-fired facility would be less cost-effective and would impose higher environmental costs than the proposed facility. The natural-gas-fired, simple-cycle facility would not produce enough capacity and would produce higher air emissions. The coal-fired facility would have higher capital costs, slower start-up times, a lengthy construction period, and higher air emissions. Purchased power is unlikely to be available at reasonable cost, due to projected capacity deficits throughout the region. The Administrative Law Judge concluded that the record did not establish the existence of a more reasonable and prudent alternative to the proposed facility. Findings of Fact 40 through 72.

E. By a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health.

The Administrative Law Judge examined the probable effects of the facility on the natural and socioeconomic environment and found that the proposed plant would provide needed energy and capacity in a manner compatible with protecting the natural and socioeconomic environments. She found that the proposed plant would meet all environmental standards imposed by law and would have fewer adverse effects on the natural environment than all reasonable alternatives.

She found that the proposed facility's effects on the socioeconomic environment would be neutral to positive. She found that the facility would create some 250 jobs during construction and 17 full-time-equivalent jobs on an ongoing basis. She also found that the facility would not place

any significant demands on local government services, including road maintenance, schools, medical facilities, social welfare programs, and law enforcement. Findings of Fact 61 through 70 and 73 through 85.

- F. The record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.**

The Administrative Law Judge found no evidence that FEP would fail to comply with applicable regulatory requirements in any jurisdiction. Finding of Fact 86.

IV. Commission Action

A. Certificate of Need Granted

The Commission has examined the full record in this case, and its reading of the evidence leads to the same findings and conclusions reached by the Administrative Law Judge. The Commission concurs in and adopts the Administrative Law Judge's findings and conclusions, which are attached and incorporated herein, with the technical corrections noted below.

- The last sentence of Finding 3 should be corrected to read, "Also, the Commission requested the Department to prepare the required Environmental Report." "Requested" was the word used in the January 27 *Order Finding Application Substantially Complete and Referring Matter for Contested Case Proceeding*, and "requested" more accurately describes the nature of the Commission's action.
- The *EQB Monitor* cite in Finding 13 should be corrected to read Vol. 27, No. 7, March 31, 2003.
- Conclusion 5 should be corrected to refer to Faribault Energy Park instead of Xcel.
- The last sentence of Conclusion of Law 3, "Application of the [certificate of need] criteria includes a determination that there is no reasonable and prudent alternative," should be deleted. The statement is a paraphrase of a provision of the Environmental Policy Act, and its imprecision could be confusing in future certificate of need proceedings.

Finally, the Commission declines the EQB Staff's recommendation to modify the applicant's and the Administrative Law Judge's characterization of the proposed facility on the basis of statements allegedly made by the applicant in applications for air quality permits. Those applications are not in the record, and at hearing the applicant stated that it has not made any significant change in the design or intended operation of the proposed facility.

The certificate of need rules recognize that applicants may need to make minor changes in a proposed facility's design, may need to alter a proposed facility's capacity, and may need to anticipate contingencies in making filings with other agencies.⁷ Further, the rules detail the circumstances under which modifications to a certified facility necessitate recertification, none of which are present here. The Commission will therefore not change the applicant's and the ALJ's characterization of the certified facility.

B. Ownership Changes to Be Reported

The applicant stated during the evidentiary hearings that it is seeking a partner for the project. To ensure adequate regulatory oversight, the Commission will require the applicant to report any change in ownership that occurs before the facility is completed, even if the affected ownership interest is below the 80 megawatt/20% threshold triggering possible recertification under the rules.⁸

C. Filing Date Set for MMPA's First Resource Plan

Adding the proposed facility's 250 megawatts of generating capacity to MMPA's existing capacity will push MMPA's total capacity over the 100,000-kilowatt statutory threshold at which the utility will be required to file periodic resource plans.⁹ In the interests of administrative efficiency, the Commission will set the date for MMPA's first filing in this Order. That date will be set, by mutual agreement, at one year from the date the proposed facility is completed.

ORDER

1. The Commission accepts and adopts the findings and conclusions of the Administrative Law Judge, which are attached and incorporated herein, as modified above.
2. The Commission grants the certificate of need requested by Faribault Energy Park.
3. Faribault Energy Park shall promptly inform the Commission each time any party acquires any ownership interest in the proposed facility prior to the date on which the facility is completed.
4. Minnesota Municipal Power Agency shall file its first resource plan within one year of the date on which the proposed facility is completed.

⁷ Minn. Rules 7849.0400, subp. 2.

⁸ Minn. Rules 7849.0400, subp. 2.

⁹ Minn. Stat. § 216B.2422.

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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