

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer  
Marshall Johnson  
Ken Nickolai  
Phyllis A. Reha  
Gregory Scott

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of The Application of Calpine  
Corporation for a Certificate of Need for a  
Large Electric Generating Facility

ISSUE DATE: April 6, 2004

DOCKET NO. IP-6345/CN-03-1884

NOTICE AND ORDER FOR HEARING

**PROCEDURAL HISTORY**

On November 14, 2003, Calpine Corporation (Calpine) filed a petition stating that it intended to submit an application for a certificate of need to construct a natural-gas-fired combined cycle electric-generating facility at a site near Mankato. The petition requested exemptions from certain data requirements in the certificate of need rules,<sup>1</sup> claiming that the data in issue is not applicable to a generation project proposed by an independent power producer, not reasonably available to Calpine or not necessary to determine the need for the proposed facility.

Calpine's petition also requested that the Commission confirm that the scope of the required data should relate only to power generated for the wholesale market, excluding data related to power production already certified through a Commission-approved resource plan solicitation.<sup>2</sup>

On February 6, 2004, the Commission issued its ORDER GRANTING EXEMPTIONS FROM FILING REQUIREMENTS AND LIMITING SCOPE. The Order granted Calpine's request for exemptions from specific data requirements and also granted Calpine's request to limit the scope of its certificate of need application with certain qualifications.

On March 2, 2004, Mankato Energy Center, LLC (Mankato Energy), a wholly owned subsidiary of Calpine filed its certificate of need application for the portion of the plant that is not included in a pending contract with Northern States Power Company d/b/a Xcel Energy (Xcel), pursuant to a Commission approved bidding process.

On March 12, 2004, the Department of Commerce and Minnesotans for an Energy-Efficient Economy (ME3) each filed comments on the completeness of Mankato Energy's application.

The matter came before the Commission on March 23, 2004.

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<sup>1</sup> Minn. Rules, parts 7849.0010 et seq.

<sup>2</sup> See Minn. Stat. § 216B.2422, subd. 5.

## **FINDINGS AND CONCLUSIONS**

### **I. Jurisdiction**

The Commission has jurisdiction over applications for certificates of need for large energy facilities, including the generation project at issue, under Minn. Stat. §§ 216B.2421 and 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 determine, on the basis of the record before it, whether the Company should be granted the certificate of need it seeks. That determination turns on specific facts that are best developed in formal evidentiary proceedings. The Commission will therefore refer the matter to the Office of Administrative Hearings (OAH) for contested case proceedings.

The Commission notes the potential for joint hearings regarding siting and need issues, as discussed in the companion Order<sup>3</sup>, and leaves it to the OAH to determine whether to assign more than one Administrative Law Judge to this proceeding.

### **III. Issues to be Addressed, Witnesses to be Produced**

Minn. Stat. § 216B.243, subd. 3 and Minn. Rules 7849.0100-7849.0120 set forth criteria that must be met to establish need for proposed large energy facilities, including the project at issue. Minn. Rules 7849.0100 requires specific written findings on each of these criteria. The parties to this proceeding should address whether the proposed project 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 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 Suite 350, 121 7th Place East, St. Paul, Minnesota 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 newspapers throughout the state, to encourage public participation.

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<sup>3</sup> ORDER FINDING APPLICATION SUBSTANTIALY COMPLETE CONTINGENT UPON ADDITIONAL FILING AND REFERRING MATTER TO THE OFFICE OF ADMINISTRATIVE HEARINGS, issued April 6, 2004, page 5.

## 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 Square, Minneapolis, Minnesota 55401-2138; (612) 341-7609.

### B. Hearing Procedure

- *Controlling Statutes and Rules*

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 1400.5010 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, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, 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.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

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 David L. Jacobson, Public Utilities Statistical Analyst, Minnesota Public Utilities Commission, 121 7<sup>th</sup> Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651)297-4562; or Kari Zipko, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1408.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

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 Commission staff and intervening parties.

- *Notice of Appearance*

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.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

### **C. Parties and Intervention**

The current parties to this case are the Company and the Minnesota Department of Commerce. Other persons wishing to become formal parties 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 case on Friday, April 23, 2004 at 9:30 a.m. in the Small Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101.

Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

### **E. Time Constraints**

Under Minn. Stat. § 216B.243, subd. 5, the Commission is required to act on this application within six months of the date it is substantially complete. The Commission has found that the application is substantially complete as of the Company's supplementary filing,<sup>4</sup> so the six month

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<sup>4</sup> Ibid, page 6.

period will begin as of that date. The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of these time constraints. Parties should note the six-month statutory time frame at the outset and be prepared for the expedited hearing schedule that time frame requires.

The Commission has responsibility to determine whether to grant a certificate of need for the project in question and the Environmental Quality Board (EQB) has the responsibility to grant or deny a site permit for the project. Minn. Rules, Part 4410.7060, subp. 4 provides that if the EQB determines that a joint hearing with the Commission to determine both site permit and certificate of need issues is feasible, more efficient, and may further the public interest, and the Commission approves, the two proceedings can be addressed in a joint hearing. The Commission favors administrative efficiencies in general, consistent with due consideration to the issues to be addressed and has authorized its staff David Jacobson to explore with EQB staff the details of such a joint hearing. Mr. Jacobson will have authority to convey the Commission's approval and recommendation to the ALJ regarding the joint hearing option.

## **VI. Application of Ethics in Government Act**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, apply to certificate of need cases. 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 Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

## **VII. *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 Mankato Energy's (the Company's) certificate of need application.
2. The contested case proceeding shall begin with a prehearing conference on Friday, April 23, 2004, at 9:30 a.m. in the Small Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147.
3. 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 Commission staff.
4. The Commission asks the Department of Commerce to continue its examination of the merits of the application and to provide a recommendation on the reasonableness of granting the requested certificate of need.

5. The Company shall facilitate in every reasonable way the continued examination of the issues by the Department of Commerce and the Environmental Quality Board.
6. The Company shall publish notice of the public and evidentiary hearings at least 10 days in advance in visible display ads in newspapers of general circulation throughout the state. The Company shall work with Commission staff to develop a plan to meet this requirement, including a proposed text, a list of the newspapers it proposes to use, and proposed publication dates. The Company shall obtain proofs of publication of the ads required above.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), or 1-800-627-3529 (MN relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
100 Washington Square, Suite 1700  
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East Suite 350  
St. Paul, Minnesota 55101-2147

In the Matter of the Application of Calpine  
Corporation for a Certificate of Need for a  
Large Electric Generating Facility

MPUC Docket No. IP-6345/CN-03-1884

OAH Docket No.

**NOTICE OF APPEARANCE**

Name, Address and Telephone Number of Administrative Law Judge:

Allan W. Klein, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,  
Minneapolis, Minnesota 55401; (612) 341-7609

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: \_\_\_\_\_

DATE: \_\_\_\_\_