

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
Ken Nickolai  
Phyllis A. Reha

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: June 29, 2004

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ORDER APPROVING OWNERSHIP  
CHANGE AND TRANSFERRING  
CERTIFICATE OF NEED

**PROCEDURAL HISTORY**

On November 19, 2002, Faribault Energy Park, LLC (FEP or the Applicant) filed a certificate of need application for permission to construct an electric generating facility fueled primarily by natural gas.

On March 31, 2003, FEP submitted a supplement to revise several pages of the application.

On June 6, 2003, Administrative Law Judge (ALJ) Beverly Jones Heydinger submitted Findings of Fact, Conclusions of Law and Recommendations (the ALJ's Report).

On August 13, 2003, the Commission issued its ORDER GRANTING CERTIFICATE OF NEED, REQUIRING NOTICE OF ANY CHANGE IN OWNERSHIP, AND SETTING FILING DATE FOR RESOURCE PLAN.

On June 9, 2004, the Applicant filed a letter notifying the Commission of a change in ownership.

The Commission met on June 24, 2004 to consider this matter.

**FINDINGS AND CONCLUSIONS**

**I. FARIBAULT ENERGY PARK (FEP)**

Faribault Energy Park, LLC (FEP) is a limited liability corporation owned by the Minnesota Municipal Power Agency (MMPA). MMPA is a joint action agency made up of eight member

cities. MMPA formed FEP to construct and operate the proposed facility for the benefit of MMPA, its member cities, and the customers in those member cities.

In an Order dated August 13, 2003, FEP received a Certificate of Need to construct the project but now seeks to transfer ownership of the project and, hence, the Certificate of Need to its parent, MMPA.

## **II. SUMMARY OF COMMISSION ACTION**

In this Order, the Commission considers FEP's proposal to transfer ownership of the project to MMPA, finds that varying a 15-day comment period established by a Commission rule is appropriate in order to allow immediate action on FEP's request, finds that no further hearings need be held on the ownership transfer, approves FEP's request to transfer ownership, and therefore transfers to MMPA the Certificate of Need originally granted to FEP on August 13, 2003.

## **III. WAIVER OF THE 15-DAY COMMENT REQUIREMENT**

Minnesota rules require the holder of a Certificate of Need, such as FEP, to inform the Commission of a change in ownership and the reasons for the change. The rule provides that intervenors may comment on the proposed change within 15 days of being notified of the proposed change.

Specifically, Minn. Rules, part 7849.0400, item H reads in part as follows:

If an applicant determines that a change in size, type, timing, or ownership other than specified in this subpart is necessary for a large generation or transmission facility previously certified by the commission, the applicant must inform the commission of the desired change and detail the reasons for the change. A copy of the applicant's submission to the commission must be sent to each intervenor in the certificate of need hearing proceeding on the facility. Intervenors may comment on the proposed change within 15 days of being notified of the change.

FEP has notified the Commission, the Department, and the Minnesota Environmental Quality Board regarding the change as required by the rule. FEP has indicated the reason for the change is that it has been advised that financing would be more straightforward if the owner were MMPA, FEP's parent and on whose behalf the facility would be constructed and operated, rather than FEP.

Although the 15 day comment period established in the rule has not been completed, the Commission finds cause to vary the rule in that regard, pursuant to Minn. Rules, Part 7829.3200.

First, enforcement of the 15-day comment requirement would impose an excessive burden upon FEP and others affected by the rule, such as MMPA and its members, the beneficiaries of the

electric generating facility whose construction would apparently be jeopardized by insisting on the full 15-day comment period. The basis for this finding is the indicated need to move swiftly to allow financing to move forward on this project and the lack of opposition to the ownership change by the Department and Minnesota Environmental Quality Board (EQB), even after receiving notice that the Commission would be meeting to consider waiving the 15-day comment requirement and approving the proposed ownership change.

Second, granting the variance would not adversely affect the public interest. Indeed, in the circumstances just mentioned, granting the variance would advance the public interest.

Third, the 15-day comment requirement is established by Commission rule only and, as such, the Commission is authorized by terms of its own rules to waive or vary the rule's requirement. Such a waiver does not conflict with standards imposed by law.

### **III. FURTHER HEARING UNWARRANTED**

The Commission is required to order further hearings if and only if it determines that a requested change in the project, if known when the Commission was deciding the need issue on the facility, could reasonably have resulted in a different decision under the criteria specified in part 7849.0120.

Specifically, Minn. Rules, part 7849.0400, item H states in relevant part:

The commission shall order further hearings if and only if it determines that the change, if known at the time of the need decision on the facility, could reasonably have resulted in a different decision under the criteria specified in part 7849.0120.

The Commission concludes that the rule imposes no obligation on the Commission to order further hearings on the proposed ownership change because it is not reasonable to believe that the Commission would have declined to grant a Certificate of Need for the project under the criteria specified in part 7849.0120 if the Commission knew that MMPA would be the owner.

**ORDER**

1. The Commission hereby varies Minn. Rules, part 7849.0400, item H pursuant to Minn. Rules, Part 7829.3200 to permit the Commission to act before the expiration of the 15-day comment period established in Minn. Rules, Part 7849.0400, item H.
2. The Commission approves the proposed change in ownership from FEP to MMPA.
3. The Certificate of Need is transferred from FEP to MMPA.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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