

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of Northern
States Power Company d/b/a Xcel Energy
to Initiate a Competitive Bidding Resource
Acquisition Process for 375 MW Base
Load Generation

FIRST PREHEARING ORDER

A prehearing conference was held February 22, 2007 in the Commission's large hearing room before Administrative Law Judge Steve M. Mihalchick. The following persons noted their appearance:

Richard J. Salvelkoul, Attorney at Law, Felhaber, Larson, Fenlon & Vogt, 444 Cedar Street, Suite 2100, St. Paul, Minnesota 55101-2136, appeared for and on behalf of Westmoreland Power.

Christopher B. Clark, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall, Fifth Floor, Minneapolis, MN 55401, appeared on behalf of Xcel Energy.

Eric Swanson, Attorney at Law, Winthrop & Weinstine, 225, South Sixth Street, Suite 3500, Minneapolis, MN 55402, appeared on behalf of Manitoba Hydro.

Thomas Osteraas, Vice President, General Counsel, 11100 Wayzata Boulevard, Suite 305, Minnetonka, Minnesota 55303, appeared on behalf of Excelsior Energy.

Elizabeth I. Goodpaster, Attorney at Law, Minnesota Center for Environmental Advocacy, 26 East Exchange Street, Suite 206, St. Paul, Minnesota 55101, appeared on behalf of MCEA.

Valerie Smith, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, appeared on behalf of the Department of Commerce (the DOC).

Bret Eknes, Facilities Planner, Minnesota Public Utilities Commission, 121 East Seventh Place, Suite 350, St. Paul, MN 55101-2147, named to facilitate and coordinate public participation in this matter, appeared on behalf of the Public Utilities Commission (the Commission or PUC) staff.

Robert Cupit, Senior Facility Planner, Minnesota Public Utilities Commission, 121 East Seventh Place, Suite 350, St. Paul, MN 55101-2147, appeared on behalf of the Commission staff.

Based on the discussions during the prehearing conference, the submissions of the parties and interested persons, and upon all of the files, the Administrative Law Judge makes the following:

ORDER

Parties, Participants and Intervenors

1. The current parties to this case are Northern States Power Company d/b/a Excel Energy, Westmoreland Power, Inc. and the Department of Commerce.

2. Manitoba Hydro's Request for Participant Status and Notice of Appearance was received on by the Office of Administrative Hearings on February 22, 2007.

3. Any person desiring to become a formal party must file a Petition to Intervene by March 22, 2007. Any person petitioning to intervene after that date may be restricted as to the scope of their participation. Any existing party that wishes to object must file an objection within seven days of service of the petition. Petitions to Intervene should comply with Minn. R. 1400.6200.

4. Any person who desires to be placed on the service list as a non-party participant must file a request with the Administrative Law Judge by March 22, 2007.

5. Members of the public need not become formal parties to participate in the public hearings. Members of the public may offer either oral or written testimony, may offer exhibits for inclusion in the record and may question the parties' witnesses as set forth below.

Procedure

6. The Administrative Procedure Act and the rules applicable to contested cases¹ shall govern the conduct of the hearings in these matters. Provisions of these rules may be modified as necessary to accommodate recent statutory changes and to accomplish the statutory purposes.

7. The Commission recommended² and the parties agreed, that resolution of this case, which is based on a certificate of need process³ will

¹ Minn. Stat. §§ 14.57 – 14.62 (2006) and 1400.5010 – 8400 (2005).

² Order Accepting Proposals as Substantially Complete and Notice and Order for Hearing, p. 3

benefit from a hearing to obtain public opinion in addition to the contested case proceeding.

Schedule

The following schedule is adopted:

Date	Event
February 22 to start of hearing	Discovery of public data
Date Protective Order is issued to start of hearing	Discovery of nonpublic data
March 22, 2007	Deadline for petitions to intervene and requesting non-party participant status
March 29, 2007	Deadline for parties' objections to petitions to intervene
May 18, 2007	Direct testimony due
June 29, 2007	Rebuttal testimony due
July 20, 2007	Surrebuttal testimony due
August 13-17, 2007	Contested case hearing
August 15, 2007 1:00 pm and 6:00 pm	Public hearings
August 24, 2007	Deadline for written public comments
September 7, 2007	Parties' initial briefs due
September 28, 2007	Parties' reply briefs due

³ Minn. Stat. § 216B.243 (2006). Although the Certificate of Need statute provides a guide for this process, it is not required and need not be strictly followed. Therefore, the Department of Commerce will not file a formal environmental report.

Filing of Documents

8. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

9. Persons capable of doing so should E-file electronic versions of their documents on the E-File system of the Public Utilities Commission, (the E-File system). Prefiled testimony should be filed separately for each witness.

10. All documents filed, including prefiled testimony, but excluding information requests and responses, shall be filed as follows:

11. The original document shall be filed using the E-file system wherever feasible. Otherwise, the original document shall be filed by delivery or mail to:

The Honorable Steve M. Mihalchick
Office of Administrative Hearings
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

12. After the Administrative Law Judges' Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission, in the manner provided for by the Commission.

13. Copies of all documents shall be served on the persons listed on the attached service list, in the number indicated. E-filing constitutes service on those parties that have agreed to accept e-filed documents in this docket. The list will be revised as necessary by the Office of Administrative Hearings. Service shall be made according to the most current service list served upon the parties by the Office of Administrative Hearings.

14. The effective date of filing shall be the date the document is E-filed, mailed by U.S. Mail, or delivered to the Administrative Law Judge or Executive Secretary of the Commission.

15. Proof of service shall be filed with each filed document or within three business days thereafter. Parties using the E-filing system must retain the unique document identifier as proof of service through that system.

16. If nonpublic data is filed with the Administrative Law Judge or Commission, it shall be prepared and marked in accordance with the Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. Those procedures may be viewed at www.puc.state.mn.us/docs/tradsecret.pdf. Nonpublic data must be served in hard-copy format by U.S. mail or personal delivery.

Discovery

17. Discovery between parties shall be by Information Request and response. Information Requests shall normally be made by mail (or e-mail where available) to the party from whom the information is sought and a copy shall be mailed (or e-mailed) to all parties. Information Requests containing references to other documents shall be sufficiently detailed to inform the other parties of the nature of the request. Information Requests and responses shall not be sent to the Administrative Law Judge or the Court Reporter. The party responding to the Information Request shall provide the information requested within eight business days after receipt of the request. There shall be a continuing obligation to update and supplement information responses. The information need not be supplied as a matter of course to other parties unless specifically requested by a party. Information Requests received after 4:00 p.m. on business days or on weekends or State holidays shall be considered to be received on the following business day, except that any U.S. Mail received during business hours shall be considered to be received on the same day.

18. In the event the information cannot be supplied within the required time, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party.

19. Parties asked to provide information they deem confidential or nonpublic may require the requesting party to comply with the terms of a reasonable protective agreement or the Minnesota Government Data Practices Act. A protective order may be obtained on application to the Administrative Law Judge.

20. Disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Notice of such a motion should be made by email if possible and may be heard by telephone conference among the Administrative Law Judge and affected parties.

Offering of Prefiled Testimony and Order of Testimony

21. At the hearing, prefiled testimony and exhibits shall be offered and received as hearing exhibits and exhibit numbers shall be assigned at that time. Prefiled testimony that is amended in total or that is not offered into the record shall be considered withdrawn and the sponsoring witness may not be cross-examined concerning the withdrawn testimony. Except for cause shown, all substantive revisions or corrections to any prefiled testimony shall be filed with the Administrative Law Judge and served on the parties no later than three days before the evidentiary hearing starts. E-filing shall be used where possible.

22. Except for good cause shown, any new affirmative matter that is not offered in reply to another party's direct or rebuttal evidence shall not be offered in rebuttal or surrebuttal testimony and exhibits.

23. Unless the parties agree otherwise, the order of testimony and questioning at the hearing shall be: Excel Energy, Westmoreland Power and the Department of Commerce.

Examination of Witnesses

24. Witnesses shall be allowed five minutes to summarize their prefiled testimony. Additional time may be allowed if necessary or a witness to respond to new issues raised by other parties, if no response was previously allowed.

25. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine witnesses through any one representative chosen by the party.

26. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party files and serves an objection prior to commencement of the evidentiary hearing. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony that is not objected to shall be admitted during the evidentiary hearings without the necessity of laying foundation for the testimony.

Dated: April 27, 2011

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge