

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

In the Matter of the Joint Application of Minnesota Power and Mesabi Nugget Delaware, LLC for Approval of a Service Extension Pursuant to Minn. Stat. § 216B.42

**PREHEARING ORDER**

A Prehearing Conference in this matter was held on September 28, 2007, at 1:30 p.m. in the Small Hearing Room of the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota, before Assistant Chief Administrative Law Judge Bruce H. Johnson.

Appearing on behalf of Minnesota Power (MP) was Thomas Erik Bailey, Attorney at Law, Briggs and Morgan, 2200 IDS Center, 80 South 8th Street, Minneapolis, MN 55402, and David R. Moeller, Minnesota Power General Counsel, 30 West Superior Street, Duluth, MN 55802-2093.

Appearing on behalf of Mesabi Nugget Delaware, LLC (Mesabi Nugget) was Christopher Sandberg, Attorney at Law, Lockridge, Grindal, Nauen & Holstein, 100 Washington Avenue South, Suite 2200, Minneapolis, MN 55401.

Appearing on behalf of Lake Country Power (Lake Country) was Richard J. Savelkoul, of the firm of Felhaber, Larson, Fenlon & Vogt, UBS Plaza, 444 Cedar Street, Suite 2100, St. Paul, MN 55101-2136.

Appearing on behalf of the Minnesota Department of Commerce (Commerce) was Valerie Means, Assistant Attorney General, 1400 Bremer Tower, 445 Minnesota Street, St. Paul MN 55101-2131.

Appearing on behalf of the Commission staff was Stuart Mitchell, Minnesota Public Utilities Commission, 121 East Seventh Place, Suite 350, St. Paul, MN 55101-2147.

Based on the discussion held among the participants, and having considered all the arguments and comments, the Administrative Law Judge makes the following Prehearing Order:

## **Intervenors**

1. The parties identified in the Commission's Notice of and Order for Hearing in this matter named as parties: MP and Mesabi Nugget (collectively "the Joint Applicants"), Lake Country, and the Department of Commerce.<sup>1</sup> The Department has indicated that it intends to limit its participation to the issue of rate discrimination. The final date for intervention is set below as October 5, 2007. Any person allowed to intervene in this proceeding at any time shall be bound by the terms of this Order.

## **Schedule**

2. The following Schedule is adopted and, except when modified by Order of the Administrative Law Judge, shall govern this proceeding:

Intervention – October 5, 2007

Prefiled Simultaneous Direct Testimony – October 15, 2007

Prefiled Simultaneous Rebuttal Testimony – October 22, 2007

Discovery Deadline – October 25, 2007

Evidentiary Hearing – October 25 and 26, 2007

Posthearing Briefs – November 5, 2007

Administrative Law Judge Report – November 16, 2007

## **Procedure**

3. The Rules of the Office of Administrative Hearings shall govern the conduct of the hearings herein. To the extent they are not superseded by the OAH Rules, the Commission's Rules of Practice and Procedure shall also apply. The Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

## **Filing of Documents**

4. All direct testimony sponsored by all parties shall be filed in writing with the Administrative Law Judge and shall be received by the parties in accordance with the schedule herein. All prefiled testimony shall be in question and answer format. Each witness's testimony shall have any attachments included as part of a single exhibit.

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<sup>1</sup> Commission Notice of and Order for Hearing, Docket No. E-015/SA-07-1079, at 4 (September 20, 2007) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4777705>).

5. All documents filed, including prefiled testimony, shall be filed as follows:

The official record copy shall, wherever feasible, be filed using the Commission's E-file system. Prior to the issuance of the Report of the Administrative Law Judge, any exhibit that is not E-Filed will be filed by delivery or mailing to the Administrative Law Judge. **Information requests and responses are not to be E-Filed or served on the ALJ or the Court Reporter.** Regardless as to whether a document is E-Filed, the original and one courtesy copy will be filed with the ALJ by delivery or mailing to:

Bruce H. Johnson  
Administrative Law Judge  
Office of Administrative Hearings  
P.O. Box 64620  
Saint Paul, Minnesota 55164-0620

For any document that is **NOT** E-Filed, fifteen (15) copies shall be filed with the Commission Secretary for distribution among Commissioners and Commission staff. The copies shall be delivered or mailed to:

Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
350 Metro Square  
121 Seventh Place East  
St. Paul, Minnesota 55101

For any document that is **NOT** E-Filed, four (4) copies of each such document shall be served personally or by mail on Linda Chavez as follows:

Linda Chavez  
Docket Coordinator  
Minnesota Department of Commerce  
85 Seventh Place East, Suite 500  
St. Paul, Minnesota 55101

After the Administrative Law Judge's 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.

Copies of all documents shall be served on the persons listed on the attached service list, in the number indicated. E-filing is sufficient service on those persons so indicated on the official service list. For those persons who are **NOT** receiving service by E-filing, they may agree to receive service by email. Any person seeking to receive service by email will provide the appropriate

email address to the Administrative Law Judge for inclusion on the official service list and indicate whether service is email-only or with a hard copy to follow. The list will be revised as necessary by the Office of Administrative Hearings. Service shall be made according to the most current service list provided to the parties by the Office of Administrative Hearings. For the convenience of the parties, the service list will be made available through the E-Docket system.

Pursuant to Minn. R. 1400.5100, subp. 9, and Minn. R. 7829.0400, subp. 1, the effective date of filing shall be the date the document is mailed by U.S. Mail, delivered to the Administrative Law Judge or Executive Secretary of the Commission, or E-filed with the Commission.

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. No document demonstrating proof of E-filing should be filed, as the E-filing system is self-authenticating.

Hard copies of trade secret and other nonpublic data shall be transmitted by U.S. Mail or courier. 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, which is available at: <http://www.puc.state.mn.us/docs/tradsecret.pdf>.

## **Discovery**

6. All requests for information shall be made in writing to the person from whom the information is sought with a copy of the request mailed to all parties of record. No such request shall be provided to the Administrative Law Judge or the court reporter. The party responding to the information request shall provide the information requested to the requesting party within five (5) business days from the date of the request. In the event the information cannot be supplied within that five-day period, the responding party shall notify the requesting party, in writing, within four days of the request to work out a schedule of compliance with the requesting party. For information requests received by 3:00 p.m. on a business day, the date of receipt is included in the five-day period. For requests received after 3:00 p.m., the five-day period for response begins the following business day. All 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. The timeline for motions may be abbreviated by the Administrative Law Judge if needed to ensure adherence to the schedule.

7. Further discovery may be had herein in accordance with Minnesota Rules, parts 1400.6700 – 1400.6950. As set out in the schedule above, discovery may be had at any time up to the start of the evidentiary hearing.

**Prefiled Testimony**

8. Prefiled direct and rebuttal testimony shall not be bound into the record but shall be received as an exhibit to the record. Prefiled testimony not offered into the record shall be considered withdrawn and the witness may not be cross-examined concerning the withdrawn testimony. Except for cause shown, all revisions or corrections to any prefiled testimony shall be made in writing and served upon the Administrative Law Judge and the parties no later than two days prior to commencement of the evidentiary hearing.

**Order of Testimony**

9. Testimony in the evidentiary hearing shall be offered in the following order: the Joint Applicants, Lake Country, any other Intervenors in the order of their intervention, and the Department. Cross-examination of the witnesses shall be conducted by the parties in the same order. The offering party shall have the opportunity for redirect after each round of cross-examination; provided, however, that parties shall not cross-examine their own witnesses. For good cause shown, a reasonable period of direct examination will be allowed for any witness responding to information received after the opportunity for prefiled rebuttal. New affirmative testimony offered only in reply to another party's prefiled direct testimony shall not be offered or received.

10. No later than two days prior to the commencement of the evidentiary hearings herein, each party shall submit to the Administrative Law Judge, the Commission and the other parties, a list of that party's witnesses and the order in which those witnesses will appear, indicating, if necessary, any day or time certain needed for testimony, if known to the party calling the witness. The final order of testimony will be as established by the Administrative Law Judge.

**Examination of Witnesses**

11. 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 each witness through any one representative chosen by the party. In the case of the Joint Applicants, one attorney of behalf of both MP and Mesabi Nugget shall cross-examine the witness.

12. Except for 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 states in writing its objection with particularity to the Administrative Law Judge and serves a copy of such objections on the Commission and all other parties no later than two days prior to

commencement of the evidentiary hearings. 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 which is not objected to shall be admitted during the evidentiary hearings without the necessity of laying a foundation for the testimony.

13. Parties are encouraged to stipulate evidence not in dispute and to narrow the scope of contested issues to the matters actually in dispute. All stipulations will be subject to any public testimony to be received, acceptance by the Administrative Law Judge, and review by the Commission, which shall include the opportunity for the Commission or its staff to examine any witness on the record irrespective of the existence of a stipulation between the parties with respect to such testimony.

**Court Reporter**

14. The Office of Administrative Hearings will arrange to have a Court Reporter present at the hearings. Parties must make arrangements with the Court Reporter to obtain a copy of the transcript.

**Request for Accommodation**

15. No person has requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly if either an accommodation or interpreter is needed.

16. This Order is effective immediately and may be modified by the Administrative Law Judge for cause.

Dated this 1<sup>st</sup> day of October, 2007

/s/ Bruce H. Johnson  
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BRUCE H. JOHNSON  
Administrative Law Judge

Reported: Janet Shaddix Elling, RPR CRR  
Shaddix and Associates  
Transcript Prepared