

September 24, 2015

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VIA HAND DELIVERY

Darrell Nitschke, Executive Director
North Dakota Public Service Commission
State Capitol Building, Dept. 408
600 East Boulevard
Bismarck, ND 59505-0480



In re: Northern States Power Company
Advance Determination of Prudence Application
Case No. PU-15-96

Dear Mr. Nitschke:


Enclosed for filing in the above-referenced matter please find the original and seven copies of the following:

1. *Advocacy Staff's Response to Petition to Intervene of Calpine Corporation*; and
2. Affidavit of Service.

Sheldon A. Smith*
Randall J. Bakke***
Scott K. Porsborg***
Suzanne M. Schweigert*
Mitchell D. Armstrong**
Stacy M. Moldenhauer**
David J. Smith**
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Bradley N. Wiederholt**
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Thank you for your attention to this matter.

Respectfully,


MITCHELL D. ARMSTRONG
Special Assistant Attorney General for
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amh
enclosures

PSC.4

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Norther States Power Company
Advance Prudence – 345 MW Mankato Energy Center

Case No. PU-15-96

**ADVOCACY STAFF’S RESPONSE TO PETITION TO INTERVENE OF
CALPINE CORPORATION**

[¶1] On September 21, 2014, Calpine Corporation filed a petition to intervene in the above-captioned proceedings. Calpine asserts it owns and operates the Mankato Energy Center, which sells its output to Xcel Energy/Northern States Power under a long term Power Purchase Agreement. Calpine further asserts it is an interested party because the prudence determination at issue in this proceeding involves a Purchase Power Agreement between Calpine and Northern States Power. Calpine states it has first-hand knowledge of the Mankato Energy Center, the available infrastructure, the technology used and incorporated into the proposed expansion, as well as the benefits of a combined-cycle power generation facility, and it supports NSP’s request for a determination of prudence. Advocacy Staff opposes Calpine’s petition to intervene as it is unnecessary and irrelevant to the determination of the prudence issue in this case. If Calpine is allowed to intervene, Advocacy Staff asserts it should only be allowed to intervene if the intervention will not result in any delay of these proceedings and on very limited grounds to avoid the presentation of irrelevant and/or repetitive information.

[¶2] To summarize the various rules that may be implicated by Calpine’s motion. In an administrative hearing, a nonparty may present relevant statements if all parties are given an opportunity to cross-examine the nonparty witness. N.D.C.C. § 28-

32-24(5). However, a nonparty cannot examine or cross-examine witnesses unless it is granted intervention. Id. An administrative agency may grant intervention in a proceeding such as this to promote the interests of justice if the intervention will not impair the orderly and prompt conduct of the proceeding and if the petitioning intervenor demonstrates its “legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of statute or rule.” N.D.C.C. § 28-32-28. Conditions and limitations may be imposed on intervention and an administrative agency may adopt rules relating to intervention. Id.

[¶3] The Commission’s rule on intervention incorporates the general standards described above, and provides:

Any person with a substantial interest in a proceeding may petition to intervene in that proceeding by complying with this section. An intervention may be granted if the petitioner has a statutory right to be a party to the proceeding; or the petitioner has a legal interest which may be substantially affected by the proceeding, and the intervention would not unduly broaden the issues or delay the proceeding. The commission may impose conditions and limitations on an intervention to promote the interests of justice.

1. **Contents of petition to intervene.** A petition to intervene must be in writing and must set forth the grounds for intervention, the position and interest of the petitioner in the proceeding, what the petitioner would contribute to the hearing, and whether the petitioner's position is in support of or in opposition to the relief sought.
2. **When filed.** A petition to intervene in any proceeding must be filed at least ten days prior to the hearing, but not after except for good cause shown.
3. **Number of copies.** The petitioner will serve a copy of the petition on each party to the proceeding and will file with the commission the original and seven copies.

4. **Effect.** Admission as an intervenor shall not be construed as recognition by the commission that such intervenor might be aggrieved by an order of the commission in such proceeding.

N.D. Admin. Code § 69-02-02-05.

[¶4] The Commission should deny Calpine's motion to intervene in this case, or at the very least, should only allow intervention if it will not delay the proceedings, present repetitive information, or distract from the main issues. The hearing is scheduled for October 15. NSP has filed its pre-filed testimony, Advocacy Staff has filed its testimony, and NSP has filed its rebuttal. As this case involves the determination of prudence of a PPA between Calpine and NSP, it appears Calpine could be affected by the results of the proceeding. However, that is not enough to meet the standard of intervention. The question must also be asked, what can Calpine add to the specific issue of prudence by intervention. Advocacy Staff asserts that Calpine can add nothing as an intervenor that NSP cannot provide, or has not already provided.


[¶5] A review of the testimony filed in this case will show the parties differ on the balancing and weight given to several factors associated with this project, including whether need is outweighed by other factors. Calpine's proposed intervention to discuss "first-hand knowledge of the Mankato Energy Center, the available infrastructure, the technology used and incorporated into the proposed expansion, as well [as] the benefits of a combined-cycle power generation facility" does not get to the heart of whether this project is prudent. It would provide several details of the project that are already known or not in dispute, while adding additional information mere days before the hearing for Advocacy Staff to have to review and consider. Further, Advocacy Staff presumes (and hopes) that NSP has obtained and is informed of any such information that Calpine would

add to this hearing given the scope and significance of this project. Allowing intervention would only serve to add another party to this proceeding, prolong the hearing process and expend additional resources of the Commission and Advocacy Staff. There is no indication why NSP has not presented testimony from Calpine if it views the potential testimony from Calpine witnesses as relevant to the determination of prudence.

[¶6] Overall, a simple analogy establishes why Calpine should not be allowed to intervene. This case is similar to a person who is considering buying a new car when one will not be needed until many years from now (2024 is the earliest date provided for when the power from this PPA is needed by NSP in any of the filed testimony to date). The person has a car that is in good shape, runs well, and does not need replacement. But, the potential new car has all the bells and whistles, and is now offered at a very good price. In this analogy, Calpine would essentially be the car dealership. It has the product it is trying to sell to NSP, the potential buyer. Of course, Calpine is going to support the purchase of its product and explain why it is a great product. But, that does not get to the ultimate decision of whether the purchase is prudent for the people who will ultimately pay for the purchase.

[¶7] As a result, Advocacy Staff requests the petition to intervene be denied.

Dated this 24th day of September, 2015.

By: 
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