

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: WESTERN MINNESOTA MUNICIPAL POWER AGENCY	DOCKET NO. WRU-03-19
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NOTICE OF HEARING

(Issued July 2, 2003)

On April 18, 2003, the Western Minnesota Municipal Power Agency (Western Minnesota) filed with the Utilities Board (Board) an application for waiver of the generating certificate requirements of Iowa Code Chapter 476A, Subchapter I (2003). Western Minnesota proposes to construct a 90 MW electric generating facility for peaking purposes in Audubon County near the communities of Exira and Brayton, Iowa. Western Minnesota supplies power, energy, and transmission capability to the Missouri Basin Municipal Power Agency d/b/a Missouri River Energy Services (MRES) pursuant to a power supply contract. MRES is comprised of 57 municipally owned electric utilities in the states of Iowa, Minnesota, North Dakota, and South Dakota. MRES will purchase the entire electric output of the proposed peaking facility to supply the electricity needs of its member municipal utilities and their customers.

Mr. Neil and Mrs. Lavonne Schroeter filed objections to the proposed facility and the request for a waiver on April 28, May 2, May 14, June 3, and June 11, 2003.

Mr. John and Mrs. Lucille Nelson filed objections to the proposed facility and the request for a waiver on April 28, May 7, May 8, and June 13, 2003. Mr. Trevor Schroeter, the son of the Schroeters and grandson of the Nelsons, filed an objection on June 13, 2003. The Schroeters and the Nelsons live near Brayton, Iowa. The proposed facility borders farm land owned by these families.

On May 7, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response to the waiver request. The Consumer Advocate stated it did not oppose the Board granting the application for a waiver. It recommended the Board condition approval of the waiver upon Western Minnesota's commitment to successfully negotiate with affected transmission owners resolution of minor impacts on the transmission system as discussed in the waiver application.

On June 30, 2003, the Board issued an order granting a request by Western Minnesota to begin advance site preparation and assigning this proceeding to the undersigned administrative law judge to conduct a hearing and issue a proposed decision. If it has not already done so, the undersigned recommends that Western Minnesota consult with the Air Quality Bureau of the Iowa Department of Natural Resources regarding the allowable extent of advance site preparation activities it may undertake prior to receiving an air construction permit.

THE BOARD'S AUTHORITY AND JURISDICTION

The Board has jurisdiction over the parties and the application for waiver pursuant to Iowa Code Chapter 476A, Subchapter I, and 199 Iowa Administrative Code (IAC) Chapter 24. Iowa Code § 476A.15 grants the Board the authority to

waive any of the requirements of the subchapter if it determines the public interest would not be adversely affected. 199 IAC 24.15 also provides this authority.

THE ISSUES

The main issue in this case is whether the public interest would be adversely affected by the grant of a waiver of the certification requirements contained in Iowa Code Chapter 476A. Iowa Code § 476A.15. In determining whether the public interest would be adversely affected, the board will consider the following factors: a) the purpose of the proposed facility; b) the type of facility; c) if the facility is for the applicant's own needs; d) the effect of the facility on existing transmission systems; and e) any other relevant factors. 199 IAC 24.15. In addition, the board considers whether the application for a waiver adequately addresses the decision criteria for a generating certificate contained in Iowa Code § 476A.6. In re: Roquette America, Inc., Docket No. WRU-02-44-3676, Order Granting Waiver and Approving Settlement (Issued December 26, 2002); In Re: Corn Belt Power Cooperative and Basin Electric Power Cooperative, Docket No. WRU-01-30-917, Order Granting Waiver (Issued July 13, 2001). (These decisions may be found under Board Orders on the Board's website at www.state.ia.us/iub.) There are three decision criteria for a generating certificate in Iowa Code § 476A.6. The first is whether the services and operations resulting from the construction of the facility are: a) consistent with the legislative intent to attract the development of electric power generating facilities within the state in sufficient quantity to ensure reliable electric service to Iowa consumers and the economic development policy of the state; and b) not detrimental to the provision of

adequate and reliable electric service. The second is whether the applicant is willing to construct, maintain, and operate the facility pursuant to the provisions of the certificate and Chapter 476A, Subchapter I. The third is whether the construction, maintenance, and operation of the facility will be consistent with reasonable land use and environmental policies and in harmony with reasonable use of air, land, and water resources, considering available technology and the economics of available alternatives. Iowa Code §§ 476.53, 476A.6.

PROCEDURAL ISSUES

The conduct of this case is governed by Iowa Code Chapters 17A and 476A, and by Board rules at 199 IAC Chapters 1, 7, and 24. (Links to the Iowa Code and the Iowa Administrative Code can be found at the Board's website at www.state.ia.us/iub.)

The parties to this case are Western Minnesota, Consumer Advocate, Mr. Neil and Mrs. Lavonne Schroeter, Mr. Trevor Schroeter, and Mr. and Mrs. Nelson. Since the parties have already filed extensive evidence supporting their respective positions, prefiled testimony will not be required. At the hearing, the parties may refer to evidence already filed, and do not need to repeat evidence already submitted. However, at the hearing, all parties will be given the opportunity to present additional evidence if they choose, and respond to evidence and argument on all issues, and to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The parties should consider the issues identified above when deciding what evidence to present. The parties should be prepared to answer questions regarding their

evidence from other parties or the undersigned administrative law judge. At the beginning of the hearing, the undersigned will provide instruction regarding hearing procedure for the benefit of unrepresented parties.

In addition, at the hearing, Western Minnesota is directed to submit a map that shows the properties owned by the objectors in relationship to the proposed facility site. If possible, the map should show the extent of the hunting restriction on the objectors' property. Western Minnesota is also directed to provide its address, telephone number, and a contact person. Western Minnesota should be prepared to testify regarding the current status of any required environmental permit applications or zoning requests, and to the "minor impacts" and status of the negotiations with affected transmission owners referenced in paragraph five of the application for waiver. Western Minnesota should also be prepared to testify regarding the "reasonable land use" portion of the decision criteria in Iowa Code § 476A.6(3) and the reasons why it chose the particular site at issue in this case. Western Minnesota should also address whether it has any future plans to expand the facility as alleged by the objectors.

The proposed decision and order that the undersigned administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed in the record. Iowa Code § 17A.12(8). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The official file of this case will be available for inspection at the Board's Records and Information Center, 350 Maple Street, Des Moines, Iowa.

199 IAC 1.9(1).

All written communications from the parties to the Board having to do with this case should be sent to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. Parties must file an original and ten copies of each communication with the Executive Secretary and the party must send one copy to each of the other parties to this case. 199 IAC 1.8. Along with the communication being sent, the party must file with the Board a certificate of service that conforms to 199 IAC 2.2(16), which verifies a copy of the document was served upon the other parties.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The undersigned administrative law judge will be on vacation from July 3–11, 2003. If any party has a procedural question regarding the case that must be answered during this time, the party should call the Board's General Counsel, Mr. David Lynch, at 515-281-8272.

IT IS THEREFORE ORDERED:

A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held beginning at 10 a.m. on Tuesday, July 22, 2003, in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Board at (515) 281-5256 no later than July 15, 2003, to request that appropriate arrangements be made.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 2nd day of July, 2003.