



CALPINE CORPORATION

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May 5, 2016

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

**RE: Expansion of the Mankato Energy Center
Docket No. IP IP-6949/GS-15-620**

Dear Mr. Wolf:

Mankato Energy Center II, LLC (MEC II), a Delaware limited liability company and wholly-owned subsidiary of Calpine Corporation (Calpine), hereby informs the Commission that it inadvertently failed to provide notice required under Minn. R. 7850.2100 when it first submitted its Application for a Site Permit in the above-referenced docket. As discussed below, this omission did not in any way prejudice the ability of interested parties or members of the public to comment on MEC II's proposed expansion project or participate in these proceedings. Nevertheless, Calpine outlines its plan to remedy this omission below by providing additional notice at this time. Because the conclusion of the siting process is rapidly approaching, Calpine requests that at the time the Commission considers the granting of a Site Permit to MEC II, the Commission (1) confirm that Calpine has met the requirements of Minn. R. 7850.2100 subpart 6; and/or (2) waive or vary the Rule.

By way of background, on June 29, 2015 Calpine submitted to the Commission the required letter of intent to submit a Site Permit Application for the proposed 345 MW Expansion of the Mankato Energy Center (eDockets Number 20158-111855-01). Calpine submitted the Site Permit Application to the Commission via eDockets on August 5, 2015 (eDockets Number 20158-113056-01 to 04). The Notice of Comment Period on the Completeness of the Site Permit Application was issued on August 10, 2015 by the Commission (eDockets Number 20158-113135-02) notifying the public and parties on the service list of the opportunity to comment on the completeness of the Site Permit Application. The Site Permit Application was subsequently found to be complete by the Commission (eDockets Number 201510-114798-01).

At the time of the comment period on the completeness of the Site Permit Application, Calpine was required to provide written notice to the parties on the Commission general list, local officials, and adjacent property owners of the submittal of the Site Permit Application to the Commission as outlined under Minnesota Rules 7850.2100 subpart 2. An omission was made and this notice was not filed within 15 days of submittal of the Site Permit Application. The omission of this notice was an unfortunate oversight and was not intentional.

All remaining notices, publications, comment periods, public meetings, and public hearings required as part of the proceedings were completed for this project. The local government officials and adjacent property owners were notified of the Public Information and Environmental Assessment (EA) Scoping Meeting held on October 13, 2015 in the project area. The Certificate of Service and Service Lists for this public information meeting, including the certification of the notification of the required parties, is available as eDockets Number 20159-114109-02. These parties were also notified of the Public Hearing held on March 7, 2016 in the project area for these proceedings (eDockets Number 20162-118060-02). Notices



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for the public information meeting and the public hearing were published in the local newspaper in Mankato as required and affidavit of publications were filed on eDockets (eDockets Numbers 201510-114585-01 and 20162-118323-01). Local land owners and local government officials attended the public information meeting and the public hearing indicating that these parties were notified and aware of these proceedings and were given opportunity to review the project and provide comment on the record of the docket, and indeed did participate in these proceedings.

The record supports that the public, including local officials and adjacent land owners, are aware of these proceedings, have been notified of opportunities to review and comment on the record about the project, and have actively participated in the process. Calpine acknowledges, however, that an omission was made and an additional notification should have been provided as part of the Site Permit process.

Accordingly, Calpine will undertake the following actions to provide additional opportunities for the public to comment on the proposed 345 MW Expansion of the Mankato Energy Center:

- In order to fulfil the requirements under Minnesota Rules 7850.2100 subpart 2, Calpine will mail a notice out to the required parties (i.e. general service list, local officials, and adjacent land owners) outlined under this rule who would have received the notice of the submittal of the Site Permit Application.
- Calpine will publish a notice in the local newspaper to satisfy the requirements under Minnesota Rules 7850.2100 subpart 4.
- The mailing and publication will include appropriate information about the project and the proceedings that have been completed, while also including an additional 10 day comment period. This comment period would provide an additional opportunity for persons to comment if they believe their ability to be informed about the project has been adversely affected by the missing notice and if they require additional time or opportunity to comment on the project. The notice will direct parties to provide comments to Commission staff for these proceedings.

These additional proposed actions will further ensure all parties have received adequate notice of the proceedings and have been given appropriate opportunities to comment on the project.

As the Commission is aware, Minn. R. 7850.2100, subpart 6, "Failure to give Notice" specifically provides that "[t]he failure of the applicant to give the requisite notice does not invalidate any ongoing permit proceedings provided the applicant has made a bona fide attempt to comply, although the commission may extend the time for the public to participate if the failure has interfered with the public's right to be informed about the project."

As we have described above, the failure to provide the required notice was an unintended omission, which has not impeded the ability of the public to comment on the site permit application or participate in the proceedings. The Commission should confirm that Calpine has met the requirements of the Rule by making bona fide attempts to comply with all applicable notice requirements.

Alternatively, the Commission may waive or vary the requirements to Minn. R. 7859.2100, pursuant to Minn. R. 7829.3200. MEC II meets the requirements for a waiver or variance. First, enforcement of the rule would impose an excessive burden on Calpine, which has nearly completed the lengthy permit proceedings and has expended significant resources getting to this point in the process. Second, a waiver or variance would not adversely affect the public interest. As noted above, notice to potentially interested parties was provided at numerous steps throughout the permitting process. As a result, Calpine has been in communication with local officials and interested neighboring landowners throughout the process. Moreover, the matters at issue pertain to the proposed expansion of an existing facility within the existing site footprint, rather than introducing a large energy facility at a new proposed site – limiting the amount of public interest in this siting process. Third, a waiver or variance would not conflict with any requirement of law. The rule at issue is not a statute and, as noted above, the rule explicitly provides that the notice requirements are subject to good faith attempts – which Calpine has taken.



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Finally, as part of these proceedings the Commission granted a variance under this rule to extend the 10-day timeline for determining the scope of the environmental assessment (Order Finding Application Complete, Requesting Summary Report, and Granting Variance, eDockets Number 201510-114798-01). In this instance for the missing notice, the above three conditions of the rule outlined under Subpart 1, can be met with the prior notifications and proceedings that occurred as part of the record, along with the additional actions outlined within this letter to be undertaken by Calpine at this time.

Thank you for your attention to this matter. Please feel free to contact me via phone or email at (713) 570-4829 and hwhidden@calpine.com, respectively.

Sincerely,

Heidi M. Whidden
Director, Environmental Services, East Region