

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

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Northern States Power Company)
Electric Rate Case)

CASE NO. 10,979
(PU-400-87-6)

ORDER APPROVING SETTLEMENT OFFER

Decided December 13, 1988

Appearances

Commissioners Dale V. Sandstrom, Bruce Hagen and Leo M. Reinbold.

David M. Sparby, Attorney at Law, Northern States Power Company, 414 Nicollet Mall, Minneapolis, Minnesota 55401, and Daniel S. Kuntz, Attorney at Law, P. O. Box 1695, Bismarck, North Dakota 58502-1695, appearing on behalf of Northern States Power Company.

Myer R. Shark, Attorney at Law, 319 Fifth Street - Suite A, P. O. Box 1616, Fargo, North Dakota 58107-1616, appearing on behalf of Aggie Investments.

Lynn L. Schloesser, former Commerce Counsel for Public Service Commission, 1602 West Abingdon Drive - #103, Alexandria, Virginia 22314, and Illona A. Jeffcoat-Sacco, Commerce Counsel, Public Service Commission, State Capitol, Bismarck, North Dakota 58505-0165.

Robert W. Senger, North Dakota Public Service Commission, State Capitol, Bismarck, North Dakota 58505-0165, as Hearing Examiner.

PRELIMINARY STATEMENT

This rate case was filed on July 31, 1987. The initial decision was issued on March 24, 1988. A rehearing was held on July 14, 1988 on three issues:

1. The effect of the Tax Reform Act of 1986 for the period July 1, 1987 to May 2, 1988;
2. Jurisdictional allocation; and
3. The effect of jurisdictional allocation on cost of capital.

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At the rehearing, both Northern States Power Company (NSP) and Commission staff presented evidence on issues 2 and 3. No evidence was presented on issue 1, although the issue was argued by intervenor. After the hearing, the parties briefed the matter and oral argument was held September 30, 1988.

On November 15, 1988, the Commission issued an order granting NSP's request to include the Minnesota Public Utilities Commission order in Case No. E-002/GR-87-670, denying NSP's request to include an affidavit and testimony offered in NSP's South Dakota rate case (Nos. F-3764 and F-3780), dismissing intervenor's motion to exclude, and denying intervenor's motion to reopen for additional evidence.

All motions not previously acted upon are denied.

TAX REFORM ACT

The arguments of the intervenor on the Tax Reform Act of 1986 are not supported by the law or the evidence presented. The arguments are without merit.

OFFER OF SETTLEMENT

On December 6, 1988, NSP filed an offer of settlement in this rate case. In substance, the offer asks the Commission to adopt the 12 coincident peak method of allocating system

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production and transmission demand related costs to the North Dakota retail electric jurisdiction. In consideration of this request, NSP offered to file rate schedules for Commission approval to produce an additional 2.5%, or \$1,910,000, on an annual basis for electricity used on and after April 1, 1989. NSP also offered to forego filing in North Dakota for a general rate increase for two years from the date the Commission accepts the offer.

Both intervenor and Commission staff filed a response.

The Commission believes NSP's offer represents a just and reasonable resolution of the matter. The 12 coincident peak method is supported by evidence on the record.

ORDER

The Commission orders:

1. The offer of settlement filed by NSP is approved and accepted.
2. The terms of the offer of settlement are incorporated into the March 28, 1988 order.
3. The 12 coincident monthly peak method of allocating NSP's system production and transmission demand related costs to the North Dakota retail electric jurisdiction is adopted.
4. NSP shall file rates consistent with the offer of settlement that will increase revenue by \$1,910,000 annually for electricity used on and after April 1, 1989.

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5. As agreed to by NSP, NSP may not file for a general rate increase before December 13, 1990.

6. The balance of the March 24, 1988 order is affirmed.

Bismarck, North Dakota, December 13, 1988.


(S E A L)

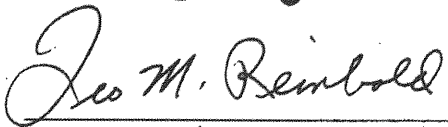
PUBLIC SERVICE COMMISSION


Dale V. Sandstrom, President


Bruce Hagen, Commissioner

ATTEST:


Secretary


Leo M. Reinbold, Commissioner



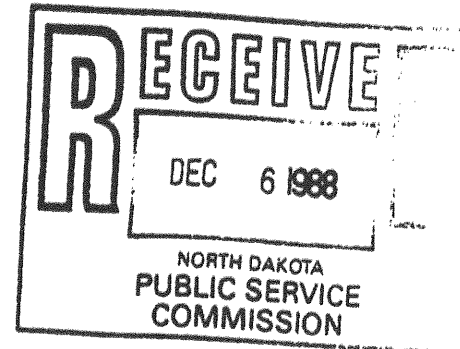
Northern States Power Company

414 Nicollet Mall
Minneapolis, Minnesota 55401
Telephone (612) 330-6161

Case No. PU-12-813
EXHIBIT A - Part 2a
5 of 8

W.J. Lynch
Vice President
Rates and Corporate
Strategy

December 5, 1988



Ms Illona Jeffcoat-Sacco
North Dakota Public Service Commission
State of North Dakota
State Capitol Building - 12th Floor
Bismarck, North Dakota 58505

RE: Case No. 10,979
Settlement Proposal

Dear Ms Jeffcoat-Sacco:

With this letter NSP offers to resolve the remaining outstanding issues in this matter. This offer represents a compromise of the positions of both Staff and the Company and recognizes the uncertainties of the rehearing process. In making this offer NSP continues to believe that evidence submitted in this case supports the level of rate relief requested by the Company.

NSP has provided rates to North Dakota at a level competitive with any investor owned utility in the country and believes this high level of service should be reflected in its rates.

Sincerely,

W J Lynch
Vice President
Rates & Corporate Strategy

Attachment

cc: All parties of record

OFFER OF SETTLEMENT

NSP, is prepared to settle its request for proposed increase in rates for electric service, Docket No 10,979 and PU-400-87-6, under the following general provisions:

It is agreed that, if the Commission approves this Offer of Settlement, the Company will file for Commission approval revised rate schedules to produce an increase in present jurisdictional rate levels of 2.5% (\$1,910,000) on an annual basis exclusive of sales taxes. The revised rate schedules shall be effective for usage on and after April 1, 1989. The present rates will remain in effect until April 1, 1989 and will not be subject to refund.

The Company agrees that it will not file for a general rate increase for 2 years from the date of the Commission's acceptance of the Settlement Offer. This provision does not apply to such changes in charges to customers as are provided for by the operation of Fuel Clause Rider No. 1 (Sheet No: E 76.2) in the Company's rate filing in this docket. The Company waives any claim that this provision might exceed the statutory authority of the Commission.

The Offer of Settlement includes the adoption by the Commission of the 12 monthly coincidental peak method for allocating system production and transmission demand related costs to the North Dakota retail electric jurisdiction.

The Company shall submit for approval as soon as possible a new set of rate schedules designed to produce total revenues equal to the settlement rate level based upon the test year billing determinants. The rates shall be designed as far as possible in the same manner as the rates originally approved by the Commission in its March 24, 1988 order.

End

AFFIDAVIT OF SERVICE

I, JANE DURAND, hereby certify that I have this day served copies of the foregoing documents on the persons listed below by mailing said copies via Federal Express.

Dated this 5th day of December, 1988, at Minneapolis, Minnesota.

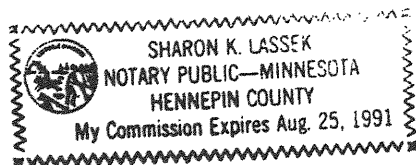
Jane Durand

Illona A. Jeffcoat-Sacco
Commerce Counsel
Public Service Commission
State of North Dakota
State Capitol Building
Bismarck, N.D. 58505

Myer Shark
Attorney
319 5th Street
Suite A
P.O. Box 16216
Fargo, N.D. 58107-1626

Subscribed and sworn to before
me this 5th day of December,
1988.

Sharon K. Lassek
Notary Public



11 10-88

Case No. PU-12-813
EXHIBIT A-Part 2b

PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA

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1 of 6

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ZUGER, KIRKIS,
BOULINSKE & SMITH

Northern States Power Company)
Electric Rate Case)

CASE NO. 10,979
(PU-400-87-6)

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ORDER

The initial decision in this rate case was issued on March 24, 1988. A rehearing on limited issues was held on July 14, 1988. After the hearing, the parties briefed the matter and oral argument was held September 30, 1988.

Subsequent to the oral argument, on October 24, 1988, Northern States Power Company (NSP) filed a request that the Public Service Commission (Commission) include in the record a copy of the October 20, 1988, decision of the Minnesota Public Utilities Commission in Docket No. E-002/GR-87-670, NSP's Minnesota rate case, and an affidavit of Mark Hervey concerning staff testimony in NSP's South Dakota rate case, Docket No. F-3764 and F-3780. NSP served the intervenor with a copy of this filing.

On October 25, 1988, the intervenor filed a motion to exclude the evidence which NSP sought to include. This motion included a request that if the record is opened to receive the evidence sought to be included by NSP, the intervenor be allowed to introduce evidence of the drought and its effect on the North Dakota economy.

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On November 7, 1988, NSP filed a brief in response to intervenor's motion to exclude.

On November 14, 1988, NSP asked permission to supplement the affidavit of Mark Hervey with the prepared testimony and exhibits of both NSP witness Steven B. Huso and the South Dakota commission staff, prefiled in the South Dakota NSP rate case.

Also on November 14, 1988, intervenor filed a brief in support of its motion to exclude and a request for an opportunity to present evidence and cross-examine in regard to the evidence NSP asks the Commission to include.

N.D.C.C. Section 28-32-07 states:

28-32-07. Consideration of information not presented at a formal hearing. If an administrative agency desires to avail itself of competent and relevant information or evidence in its possession or furnished by members of its staff, or secured from any person in the course of an independent investigation conducted by such agency, in addition to the evidence presented at any formal hearing, it may do so after first transmitting a copy of such information or evidence or an abstract thereof to each party of record in the proceeding, and after affording each such party, upon written request, an opportunity to examine such information or evidence and to present evidence in connection therewith and to cross-examine the person furnishing such information at a further public hearing to be called and held upon at least ten days' notice given by registered or certified mail. Nothing contained in this section prevents any administrative agency from taking notice of any fact or facts set forth in its duly adopted rules or any facts which are judicially noticed by the courts of this state.

An agency may avail itself of additional evidence after a hearing, before it issues an order. If it intends to do so, the agency must provide copies of the evidence to the parties. The parties may then request, in writing, the opportunity to present evidence and cross-examine in connection with the evidence. The Commission may also take administrative notice of facts which can be judicially noticed in North Dakota courts. The quoted section cannot be read to prohibit taking administrative notice of facts which are the proper subject of judicial notice.

NSP states that both the Minnesota decision and the South Dakota evidence are adjudicative in nature can be judicially noticed. NSP argues that their proffered evidence is both relevant and probative as an indication of what allocation method the other two jurisdictions in the NSP Minnesota company will use. NSP also argues that the South Dakota evidence is relevant to the credibility of North Dakota's staff witness, Al Clark.

Intervenor argues that whether or not the matter can be judicially noticed is not the question. Intervenor argues that the evidence is neither material nor probative and so should be excluded from the record. Intervenor also exercises his right under N.D.C.C. Section 28-32-07 and requests an opportunity to cross-examine and present evidence concerning the new material.

The test for whether an item of evidence qualifies for judicial notice is set out in Rule 201 of the North Dakota Rules of Evidence. Paragraph (b) of Rule 201 allows judicial notice

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of adjudicative facts which are "1) generally known within the territorial jurisdiction of the trial court or 2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned," and paragraph (d) of that rule makes taking judicial notice mandatory if a party requests it and supplies the tribunal with the information.

The Minnesota Public Utilities Commisison decision in its recent NSP rate case certainly fits that definition. Further, it is a decision of an administrative agency which can be argued as administrative legal precedent. Finally, it is relevant to the question of whether or not the jurisdictions in the NSP-Minnesota company are or will be using the same jurisdictional allocation method.

The argument for accepting the evidence concerning the South Dakota NSP rate case is similar, but not so strong because a decision of the South Dakota Public Utilities Commission does not yet exist. The Commission acknowledges that NSP's supplemental filing constitutes better evidence than its original affidavit, but the value of the evidence does not outweigh the harm to come from the delay of reopening the record. The Commission also acknowledges that the South Dakota information gives some indication of which allocation formula South Dakota will use.

However, the intervenor has asked to cross-examine both staff consultants (the one in the North Dakota case and the one in the South Dakota case), an NSP witness and a South Dakota Public Utilities Commission staff witness. Such a proceeding

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could take several days. The Commission sees little or no merit in developing another two days of transcript for this record. The evidence sought to be introduced by NSP is of insufficient probative value to justify reopening the record for two days of cross-examination.

Even though the Commission is denying part of NSP's request, the Commission believes intervenor's motion to exclude should be dismissed. The Minnesota evidence may be judicially noticed. The South Dakota evidence will not be included in the record, not for the reasons urged by intervenor but because its probative value is insufficient to outweigh the burden of reopening the hearing. The substance of intervenor's motion to exclude will be considered as its comments on the included evidence and its request to cross-examine and present additional evidence.

The final request of intervenor, to reopen the record for evidence of the drought and its effect on the North Dakota economy, should be denied. The drought is irrelevant to the issues before the Commission on rehearing.

ORDER

THE COMMISSION ORDERS:


1. NSP's request to include the Minnesota Public Utilities Commission order in Case No. E-002/GR-87-670 in this record is GRANTED.

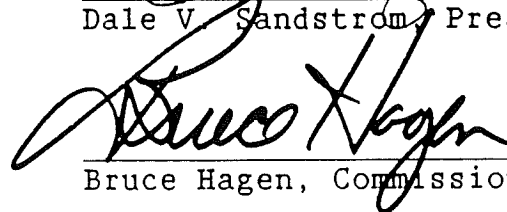
2. NSP's request to include the affidavit of Mark Hervey and the testimony and exhibits of Steven B. Huso and the South Dakota Public Utilities Commission staff in NSP's South Dakota rate case, No. F-3764 and F-3780, in this record is DENIED.
3. Intervenor's Motion to Exclude is DISMISSED.
4. Intervenor's Motion to Reopen the matter for the taking of evidence on the drought and the North Dakota economy is DENIED.

Bismarck, North Dakota, November 15, 1988.

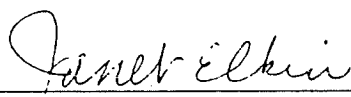
(S E A L)

PUBLIC SERVICE COMMISSION:


Dale V. Sandstrom, President


Bruce Hagen, Commissioner

Attest:


Secretary

(Absent)
Leo M. Reinbold, Commissioner

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