

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of the
Application of Northern States
Power Company for Authority to
Increase Its Rates for
Electric Service in Minnesota

ISSUE DATE: October 20, 1988

DOCKET NO. E-002/GR-87-670

ORDER AFTER RECONSIDERATION

PROCEDURAL HISTORY

On August 23, 1988, the Minnesota Public Utilities Commission (the Commission) issued its Findings of Fact, Conclusions of Law and Order in the above-captioned proceeding.

Timely Petitions for Reconsideration of that Order were filed on September 12, 1988, by Northern States Power Company (NSP or the Company), the North American Water Office (NAWO), the Minnesota Department of Public Service (Department or DPS), and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG). The Minnesota Senior Federation filed a late Petition on September 23, 1988.

NSP, the DPS, and the RUD-OAG filed Replies to the Petitions on September 22, 1988.

On September 30, 1988 the Commission issued its Order Granting Petitions for Reconsideration which granted reconsideration of the timely-filed Petitions for purposes of examining the claims raised in them at a later time.

On September 21, 1988, NSP filed its Motion for Partial Stay of Order and Approval Northern States Power Company's Compliance Filing and Refund Plan. The DPS filed a Response to this filing on September 30, 1988.

On October 18, 1988, the Commission heard oral arguments and made the following determinations.

FINDINGS AND CONCLUSIONS

The Commission will address the issues raised in the various Petitions.

Jurisdictional Cost Allocation

In its filing, NSP proposed to change its jurisdictional demand cost allocation method for Minnesota retail rates from the Summer and Winter Peaks method to the 12 Monthly Coincident Peaks (12-CP) method. The Commission had disallowed this change in the Company's last electric general rate case. Granting the request in this case would increase NSP's revenue requirement by \$1,058,000, according to a compliance filing made by the Company on September 21, 1988.

In the August 23, 1988 Order, the Commission found that a consistent allocation method should be used in all of NSP's jurisdictions. The Commission also found that other jurisdictions do not agree on an alternative to the Summer and Winter Peaks method. On that basis the Commission found that it was premature to change from the Summer and Winter Peaks method it had previously approved and ordered final rates based on that method rather than the 12-CP method proposed by NSP.

In its Petition, NSP argued that in its last rate case, Docket No. E-002/GR-85-558, the Commission approved the Summer and Winter Peaks method in part because the Federal Energy Regulatory Commission (FERC) had not adopted the 12-CP method for jurisdictional demand cost allocation. The FERC has now adopted the 12-CP method.

NSP argued further that, with the adoption of the 12-CP method by FERC, the only way to achieve the Commission's goal of consistency in the near future is for the Commission to adopt the 12-CP method. Because the issue is now being reheard in North Dakota, and heard for the first time in South Dakota, there is an opportunity for all jurisdictions to agree on the 12-CP method.

Both the DPS and the RUD-OAG supported NSP's request for reconsideration of this issue, for essentially the same reasons as those given by the Company. NSP, the DPS, and the RUD-OAG pointed out that no party opposed the 12-CP method in this case. NSP argued that, on its merits, the 12-CP method is better than the Summer and Winter Peaks method because NSP's demand-related equipment (and therefore cost) is planned to meet all twelve monthly peaks rather than just the summer and winter peaks.

The Commission will grant NSP's request for reconsideration on this issue. The Commission continues to recognize consistent cost allocation among the various jurisdictions as a worthwhile goal. The Commission is convinced by the arguments of NSP, the DPS and the RUD-OAG that adopting the 12-CP method is the only way to achieve this goal in the near future. In addition, the Commission has not previously found the method unreasonable on its merits. The Commission finds that NSP's demand-related equipment (and therefore cost) is planned to meet all twelve monthly peaks rather than just the summer and winter peaks and, therefore, concludes that the 12-CP method is a reasonable method of allocating demand-related costs among jurisdictions and will authorize it for NSP.

Nuclear Decommissioning

The DPS requested reconsideration of the Commission's decision on nuclear decommissioning. In its August 23, 1988 Order the Commission rejected the parties' stipulation on nuclear decommissioning and reaffirmed the use of internal funding and the cost estimation from the Commission's October 27, 1987 Findings of Fact, Conclusions of Law and Order in In the Matter of the Petition of Northern States Power Company for Depreciation Certification for Expected Decommissioning Costs for the Monticello and Prairie Island Nuclear Steam Generating Facilities, Docket No. E-002/D-86-604.

In its Petition, the Department requested that the Commission accept the stipulation thereby reducing the estimated cost of decommissioning by \$99 million and asked the Commission to require an external fund. The Company and the RUD-OAG supported the DPS position.

The Commission finds that the issues concerning the costs and funding of nuclear decommissioning have been fully analyzed in Docket No. E-002/D-86-604 and its August 23, 1988 Order. The Commission is unconvinced that changing its nuclear decommissioning decisions on the record before it is in the interest of ratepayers.

The Commission believes that the study of decommissioning costs offered by the Department should be thoroughly analyzed before changes are made to the existing Commission-approved decommissioning plan. Further, the Nuclear Regulatory Commission (NRC) has promulgated rules on decommissioning that require that a decommissioning funding plan be submitted by July 27, 1990. This plan must comply with NRC criteria that will provide funding assurance similar to, but not the same as, that proposed by the DPS. Finally, at the present time, there are tax considerations to analyze before switching from an internal funding method to an

external one. The Commission believes that other state Commissions, the National Association of Regulatory Utility Commissioners, and state and federal lawmakers may address the tax implications of the NRC rules before July, 1990 and modifications may result that can benefit ratepayers. Therefore, the Commission is reluctant to change NSP's decommissioning funding method at this time and will deny the Department's Petition.

The Commission has shown its concern with the decommissioning costs for the Monticello and Prairie Island facilities, the method of funding those costs and the NRC pronouncements. In its October 27, 1987 decommissioning Order, the Commission shortened the time period between review of decommissioning studies to more effectively monitor decommissioning plans and coordinate changes with the NRC requirements. Finally, the Commission believes that the decision made here does not foreclose an early review of decommissioning issues in Docket No. E-002/D-86-604.

Medical Needs Discount

The RUD-OAG requested reconsideration of the Commission's decision denying a medical needs discount. The 25% discount would have applied to all electric usage up to 1000 kWh for medically-qualifying customers.

The Commission will deny the RUD-OAG request. The Commission finds that no new evidence or arguments have been presented on this issue. Nevertheless, the Commission is concerned that electric bills for certain rate payers may be inequitable due to their medical conditions. The Commission requests that members of its staff, representatives from the Department, the RUD-OAG, and the Company meet to explore the issues raised by a medical needs discount and within one month report to the Commission on methods to address them, i.e. task force, investigation, referral to the legislature, no action.

NAWO's Conservation Proposal

The Commission finds that NAWO's September 12, 1988 petition does not raise any issues or matters not previously considered and addressed by the Commission and addressed in its August 23, 1988 Order. The Commission will deny NAWO's Petition.

Miscellaneous Issues

In response to the Commission's August 23, 1988 Order, the Company provided information on conservation improvement program expenditures, penetration rates, kW and kWh reductions for 1985

through 1988. The DPS commented that NSP had not complied with the Commission Order and that NSP had agreed to file additional information.

The Commission will order NSP to file this information within 30 days of the service date of this issue.

The Commission will require NSP to file compliance rates and a refund plan that reflect the decisions made here within one week of the issue date of this Order. The Commission is aware that the Company would like to implement final approved rates by November 1, 1988. The Commission puts the Company on notice that parties will be given an opportunity to file written comments on NSP's compliance filing and refund plan. It is the Company's responsibility to ensure that parties receive the filing in a timely manner which will provide parties a minimum of 5 days to file of their comments.

Finally, the Company's request for a partial stay of the Commission's Order until all post-hearing matters relating to jurisdictional demand cost allocation and nuclear decommissioning are resolved will be denied. The decisions made here render the stay issue moot. The Company may refile this type of motion following Commission action on NSP's compliance filing and refund plan.

ORDER

1. The Petitions for Reconsideration filed by the Minnesota Department of Public Service, the Residential Utilities Division of the Office of the Attorney General, and the North American Water Office are hereby denied.
2. The Petition for Reconsideration filed by Northern States Power Company is granted on the issue of jurisdictional demand cost allocation as explained above.
3. Within 30 days of this Order, NSP shall file with the Commission and serve on all parties the conservation objective information required by the Commission's August 23, 1988 Order.
4. The Company shall file with the Commission and serve on all parties compliance rates and a refund plan reflecting the decisions made herein. Parties will have 5 days to file written comments with the Commission and serve them on all parties to this proceeding.
5. The Company's Motion for a Partial Stay is hereby denied.

6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Mary Ellen Hennen
Executive Secretary

(S E A L)

NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Northern States Power Company
Electric
Rates

Case No. PU-400-87-6

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

June 23, 1992

Preliminary Statement

On July 31, 1987, Northern States Power Company (NSP), 414 Nicollet Mall, Minneapolis, Minnesota 55401, applied to the Public Service Commission to increase its rates for electric service to its North Dakota customers. The filing consisted of two increase requests. The first request was for an interim increase of \$2,700,000 on an annualized basis to be effective January 1, 1988. The second request was for a final rate increase of \$6,075,000 or 8 percent on an annualized basis to be effective for sales from April 1, 1988.

On August 4, 1987, the Commission suspended NSP's rate filing pending staff investigation, formal hearing and issuance of a final order.

On September 22, 23 and 24, 1987, the Commission held Public Input Hearings on NSP's rate case in Fargo, Grand Forks and Minot.

On October 20, 1987, the Commission granted the intervention petition of Aggie Investments, GP (Aggie).

On November 3, 1987, the Commission denied the interim increase request.

The Commission issued a Notice of Hearing on November 16, 1987. Hearings were held as scheduled on January 5 through 9, 1988, on the following issues:

1. What is the value of NSP's property, used and useful, for the service and convenience of the public in North Dakota?
2. What is NSP's rate of return on its property, used and useful, for the service and convenience of the public in North Dakota?
3. What is a just and reasonable rate of return on NSP's property, used and useful, for the service and convenience of the public in North Dakota?
4. What rates and charges are necessary to provide a just and reasonable rate of return on NSP's property, used and useful, for the service and convenience of the public in North Dakota?

5. Are NSP's proposed rate schedules designed in such a manner that they result in a basis of change to its customers that is just and reasonable without discrimination?

On March 24, 1988, the Commission issued its initial decision in this case in which it adopted the peak and average method of jurisdictional allocation. In response to petitions of both NSP and Aggie 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.

At the rehearing, both 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 No.'s R-3764 and F-3780, dismissing intervenor's motion to exclude, and denying intervenor's motion to reopen for additional evidence.

On December 6, 1988, NSP filed an offer of settlement in this case which in summary provided that:

1. NSP would file for Commission approval revised rate schedules to produce an increase in the existing rate levels of 2.5 percent (\$1,910,000) on an annual basis exclusive of sales taxes. This revised rate lowered NSP's original requested increase by approximately 70 percent.
2. The revised rates would not become effective until April 1, 1989.
3. NSP would not file another general rate increase for two years.
4. The Commission would adopt the 12 monthly coincident peak method for allocating system production and transmission demand related costs to the North Dakota retail electric jurisdiction.
5. The rates filed under the settlement offer would be designed as far as possible in the same manner as the rates approved by the PSC's order of March 24, 1988.

On December 8, 1988, Commission staff filed a response recommending acceptance of the offer. On December 12, 1988, Aggie filed a response to the offer

of settlement urging the Commission to reject the offer. On December 13, 1988, the Commission issued its order accepting the offer of settlement.

Aggie filed an appeal with Cass County District Court and on March 27, 1989, the Court dismissed the appeal for want of subject matter jurisdiction. On February 2, 1990, the North Dakota Supreme Court reversed the judgment of the District Court and remanded the matter for further proceedings.

On remand the District Court issued an order on July 9, 1990, affirming in part and reversing in part the December 13, 1988, order of the Commission and awarding attorney's fees. The District Court affirmed the Commission's order on the effect of the Tax Reform Act of 1986 on NSP's rates, but reversed the Commission's order accepting its settlement offer on the grounds that the order was issued without a hearing on the settlement offer and without adequate findings of fact. The District Court directed the Commission to establish an appropriate method and schedule for refund by NSP to ratepayers of excess rates collected under the December, 1988 order.

NSP appealed from those portions of the District Court order reversing the Commission's order and directing refunds. The Commission appealed the portion of its District Court order awarding attorney's fees. Aggie appealed the portion of the order relating to the effects of the Tax Reform Act of 1986. On May 28, 1991, the Supreme Court issued its decision in *Aggie Investments GP, v. Public Service Commission*, 470 N.W.2d 805 (N.D. 1991), affirming in part, reversing in part, and remanding.

The Court held that N.D.C.C. § 49-02-02(5) and N.D.A.C. § 69-02-03-01 require a public hearing whenever all the interested parties do not agree to the offer of settlement, the Supreme Court held that a hearing was necessary on the settlement proposal and in that regard affirmed the District Court's reversal of the PSC's order of December 13, 1988. The Supreme Court, however, reversed that portion of the District Court's order directing the PSC to establish a method and schedule of refunds. The Supreme Court held that refunds were premature when the remand to the PSC is necessary for compliance with applicable statutory provisions. Refunds might only be appropriate in such an instance if, after remand, it was determined NSP's customers have been charged excessive rates.

On the tax issue appealed by Aggie, the Commission was affirmed. The matter was remanded to the District Court to determine reasonable attorneys' fees and to the Commission for a hearing on the acceptance of the offer of settlement. The Supreme Court opinion noted that the language of N.D.C.C. § 49-02-02(5) expressly allows the Commission to issue an order without a hearing whenever all interested parties have agreed to the matter at hand. The Court concluded, however, that Aggie did not agree to the offer of settlement and informed the Commission of its disagreement, and consequently Aggie was entitled to a hearing.

On October 25, 1991, the District Court issued its order for judgment awarding Aggie attorneys' fees. On October 29, 1991, the District Court entered its judgment on the attorneys' fees award and recognizing the Court's order of July 12, 1991, remanded a portion of the case to the Commission. The

Commission's request to amend the portion of the judgment relating to remand was denied by order dated November 15, 1991, and judgment entered November 15, 1991. The Commission appealed the attorneys' fees award to the North Dakota Supreme Court.

On December 17, 1991, the Commission scheduled the hearing on remand to commence at 9 a.m. on February 3, 1992, in the Commission Hearing Room, State Capitol, Bismarck, North Dakota, on the following issues:

1. Whether NSP's settlement offer filed December 6, 1988, is reasonable, is in the public interest and should be accepted and approved.
2. The propriety and tenor of taking administrative notice of the October 20, 1988, decision of the Minnesota Public Utilities Commission in Docket No. E-002/GR-87-670.

On January 17, 1992, at the request of counsel for Aggie, the Commission issued an order continuing the hearing to March 16, 1992.

On February 25, 1992, the Commission issued an order continuing the hearing to May 13, 1992.

On April 24, 1992, the Commission issued an order continuing the hearing to June 18, 1992, and reaffirmed the issues specified in the Notice of Rehearing of December 17, 1991, as the only issues to be considered at the hearing.

On May 1, 1992, the Commission received a letter from Aggie referencing a settlement agreement with NSP and including Motion for Withdrawal in this case and a proposed Stipulation for Dismissal of the appeal in the Supreme Court of North Dakota No. 910424.

On May 4, 1992, counsel for Aggie filed a facsimile copy of the Satisfaction of Judgment in this case and the proposed Stipulation for Dismissal of the Supreme Court appeal.

On May 5, 1992, counsel for Aggie filed an original executed Motion for Withdrawal of Aggie Investments, GP and its counsel from this case, and in a cover letter counsel for Aggie requested the Commission to take immediate action.

On May 18, 1992, the Commission received a facsimile copy of a letter sent to the Commission's counsel wherein counsel for Aggie withdrew his Motion for Withdrawal in this case.

On May 19, 1992, the Commission filed a Motion to Dismiss Appeal in the Supreme Court of North Dakota, Case No. 910424, for the reason that the Appellee, Aggie, which had been paid nothing by the Commission, executed and filed a satisfaction of judgment which resulted in the appeal being moot.

On May 20, 1992, the Appellee, Aggie, filed Appellee's Motion for Dismissal of Appeal in the Supreme Court of North Dakota, Case No. 910424, for the reason that the issues on appeal had been rendered moot.

On May 21, 1992, counsel for Aggie filed with the Commission a facsimile letter revoking Aggie's withdrawal of its Motion for Withdrawal in the case, and requesting that the Commission expedite immediate action to grant all of Aggie's Motions to Withdraw.

On May 21, 1992, the Commission issued its order granting Aggie's Motion for Withdrawal, including approval of 1) Aggie's withdrawal of its opposition to NSP's offer of settlement; 2) Aggie's waiver of any right to further hearing, and 3) Aggie's withdrawal of its interventions.

On June 1, 1992, NSP and the Commission staff filed a stipulation, after consideration of Aggie's withdrawal, that the hearing on the settlement offer mandated by the Supreme Court be cancelled. With Aggie's withdrawal of both its opposition to the settlement offer and its intervention in this proceeding, all parties to the proceeding support the settlement and no party desires further hearing.

On June 2, 1992, the Commission entered an order cancelling the previously scheduled hearing.

On June 10, 1992, Dr. Larry J. Dobesh, consultant to the Commission, filed an evaluation of NSP's offer of settlement.

Based on the record in this matter, the Commission now issues its:

Findings of Fact

1. NSP is an investor-owned utility company engaged in providing retail electric service to customers in the North Dakota, South Dakota and Minnesota jurisdictions. NSP's headquarters are located in Minneapolis, Minnesota.
2. Since NSP provides utility service in several states, the costs it incurs must be assigned or allocated between those states in order to identify the cost of providing service to each state. The cost of providing service to North Dakota is a primary determinant for reasonable rates to utility customers.
3. In the March 24, 1988 order in Case No. 10,979 (PU-400-87-6) we found that the preponderance of the evidence presented supported adoption of the peak and average method for allocation of demand costs between jurisdictions.
4. Evidence presented at the rehearing on July 14, 1988, provided additional support for use of the 12 coincident peak method for jurisdictional allocation of demand costs in this proceeding.
5. Evidence at the hearing supports the finding that peak and average double counts and puts excessive weight on the single peak.
6. We find that there is no perfect method for the jurisdictional allocation of demand costs. We do, however, recognize that there are several acceptable methods for allocation of demand costs between jurisdictions, and the choice of a method must be determined based upon an analysis of the costs of a utility in

providing utility service. The decision of the Commission is based upon the evidence presented in the case before it.

7. 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 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 percent, or \$1,910,000, on an annual basis for electricity and to delay the effectiveness until April 1, 1989, after the end of the heating season. 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.

8. Dobesh's June 10, 1992, analysis of the settlement offer is that, based on the evidence presented during the hearing and rehearing in the instant case, NSP's offer of settlement would be reasonable and in the public interest. He states that the jurisdictional cost allocation method offered in the settlement meets three criteria:

- a. it reasonably reflects the incremental cost caused by each jurisdiction;
- b. it is consistent among each of the company's jurisdictions; and
- c. it is understandable, inexpensive to administer, and does not result in large swings in jurisdictional cost responsibility over time.

9. While it is not possible to estimate the full value of the two year rate moratorium included within the settlement offer, the rate stability resulting from such a moratorium has value to customers. NSP's offer not to file new rates for a two year period is an element which the PSC could not require by order in absence of the settlement offer.

10. We can calculate the approximate annual savings resulting from acceptance of the settlement offer versus full implementation of the 12 coincident peak method of jurisdictional allocation as being \$900,000. The two-year moratorium on filing for new rates plus the eight month period fixed by law for the Commission to issue a decision results in a savings to ratepayers of approximately \$2,400,000 ($\$900,000 \times 32 - 12 = \$2,400,000$). In addition, the agreement to delay the effectiveness of the increase until April 1, 1989, provided savings of approximately \$500,000, for a total savings of \$2,900,000. Actual savings were approximately \$3,100,000 because NSP did not immediately file for a rate increase upon expiration of the moratorium.

11. Since the 12 coincident peak method is supported by evidence in this case and since the rate stability offered in the settlement has value to customers, we find NSP's settlement offer is a just and reasonable resolution of this proceeding.

12. NSP filed rates with the Commission for service on and after April 1, 1989. Those rates were approved by the Commission on March 21, 1989.

13. We find that NSP's rates on and after April 1, 1989, have not been excessive.

14. No party objects to the acceptance of the settlement offer.

From the foregoing Findings of Fact, the Commission issues the following:

Conclusions of Law

1. The Public Service Commission has jurisdiction of these proceedings.
2. The Public Service Commission has the authority to accept NSP's proposed settlement offer.
3. No party objects to the proposed settlement offer.
4. NSP's proposed settlement offer is reasonable and should be accepted.
5. NSP's rates on and after April 1, 1989, have not been excessive and refunds are not appropriate.

From the foregoing Findings of Fact and Conclusions of Law, the Commission issues its:

Order

The Commission orders:

1. The offer of settlement filed by NSP is approved and accepted.
2. The Commission order of December 13, 1988, is ratified.
3. The balance of the March 24, 1988, order, which is not in conflict with the settlement, is affirmed.

PUBLIC SERVICE COMMISSION


Leo M. Reinbold
Commissioner


Bruce Hagen
President


Dale V. Sandstrom
Commissioner

