

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 Petition of Minnesota Power & Light Company, d/b/a Minnesota Power, for Authority to Change Its Schedule of Rates for Retail Electric Service in the State of Minnesota

ISSUE DATE: July 12, 1988

DOCKET NO. E-015/GR-87-223

ORDER STAYING IMPLEMENTATION  
OF REFUNDS BELOW RATE LEVELS  
PRECEDING GENERAL RATE CASE

PROCEDURAL HISTORY

On March 1, 1988 the Commission issued its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER in the above-captioned general rate case. On May 16, 1988 the Commission issued its ORDER AFTER RECONSIDERATION AND REHEARING.

On June 7, 1988 Minnesota Power (the Company) filed a Motion for Stay Pending Appeal. In that motion the Company requested that the Commission stay those portions of the two Orders requiring the Company to refund the difference between interim rates and final rates, to the extent that final rates were lower than the rates in effect before the filing of the general rate case.

In the alternative, the Company requested that the Commission stay the refund requirement as to that portion of interim rates which corresponded to the Company's claimed revenue requirement during the interim rates period. The Company alleged that its revenue requirement was higher during that time than during the test year used in determining final rates.

The Company stated it intended to raise both issues on appeal to the Minnesota Court of Appeals. The Company argued that it was entitled to the stay as a matter of law and that the public interest supported the request.

No party commented on the Company's motion for a stay.

## FINDINGS AND CONCLUSIONS

### A Stay as a Matter of Right

First of all, Minnesota Power claimed as a matter of law that it had no obligation to make refunds while the refund amount was under appeal. The Company based this claim on its reading of Minn. Stat. Section 216B.16, subd. 3 (1986), which provides in part as follows:

If, at the time of its final determination, the commission finds that the interim rates are in excess of the rates in the final determination, the commission shall order the utility to refund the excess amount collected under the interim rate schedule, including interest on it which shall be at the rate of interest determined by the commission. The utility shall commence distribution of the refund to its customers within 120 days of the final order, not subject to rehearing or appeal. . . .

Minn. Stat. Section 216B.16, subd. 3 (1986).

The Commission will not rule on this claim, because the Company has stated its willingness to make refunds in the amount the Commission intends to order. It would be inappropriate for the Commission to render an advisory opinion on this issue.

### A Stay as Supported by the Public Interest

As to the merits of the stay itself, the Commission agrees with the Company that the most efficient and equitable course of action is to stay the refund of the difference between final rates and the rates which were in effect before the filing of the rate case, pending judicial resolution of the refund issues.

This is true because that portion of the refund involves legal issues of first impression, because reversal on appeal could fail to provide complete relief to the Company, because ratepayers' interests can be adequately protected by a post-appeal refund, and because any attempt to make the Company whole following reversal on appeal could cause unnecessary confusion for ratepayers.

Despite its confidence that its refund decision is legally correct, the Commission recognizes that the statutory authority for ordering refunds below pre-filing rate levels has not yet been interpreted by the courts. This is a consideration favoring a stay.

Furthermore, should the Commission's refund order be reversed on appeal, the Commission and the Company would be faced with two alternatives:

- (1) The Commission could devise a procedure for recovery of the improperly refunded monies. This would be confusing and potentially disconcerting to ratepayers. It would also require twice the effort which would have been expended had a stay been

granted.

- (2) The Company and the Commission could choose to ignore the losses associated with the refund, which would result in the undercollection of revenues to which the Company was entitled. Both alternatives are inferior to a stay, which would preserve the status quo pending resolution of the refund issue.

Finally, upon favorable completion of judicial review, the full refund, with interest at the prime rate, would still be available to ratepayers. This, too, works in favor of a stay.

Taking into consideration the interests of all parties, the need for administrative efficiency, and the desirability of avoiding the confusion which would accompany any recoupment of refunded monies, the Commission concludes the public interest favors granting the requested stay.

### ORDER

1. The requirement that the Company refund that portion of the difference between interim rates and final rates which represents the difference between final rates and the rates which were in effect before the filing of this general rate case, is hereby stayed, pending resolution of the Company's appeal to the Minnesota Court of Appeals.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen  
Executive Secretary

(S E A L)