

E-015/M-89-42 VARYING RULE

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 Minnesota Power & Light
Company's Compliance Filing Relating to
Certain Expenses Included in the Fuel
Adjustment Clause

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DOCKET NO. E-015/M-89-42

ORDER VARYING RULE

PROCEDURAL HISTORY

Between 1978 and 1985, Minnesota Power and Light Company (MP) included litigation expenses in excess of \$1 million in its fuel adjustment clause; thereby passing them on to ratepayers. The Company spent more than \$200,000 on a total company basis between 1978 and 1981 in unsuccessful efforts to recover \$12.5 million of Montana coal severance taxes. In addition, from 1979 to 1985 MP spent more than \$900,000 challenging a proposed Burlington Northern tariff increase. This litigation resulted in a \$7.6 million refund from Burlington Northern. Also, court proceedings in Minnesota resulted in a reduction of coal freight costs of \$45 million from 1979 to 1983 and \$12 million annually after 1983.

MP stated that all the freight savings were flowed through to ratepayers through the fuel adjustment clause. From 1978 to 1985 MP included the litigation expenses in the Uniform Systems of Accounts (USOA) Account 151, Fuel Stock, to flow them through to wholesale and retail ratepayers through the fuel adjustment clause.

On May 21, 1987, the Federal Energy Regulatory Commission (FERC) issued its Order on Accounting Practices, 39 FERC Para. 61,192 (1987), rehearing denied, 40 FERC Para. 61,042 (1987). That Order disallowed the inclusion of litigation expenses in Account 151 and denied recovery of the expense through the wholesale fuel adjustment clause. Refunds were required in the FERC jurisdiction. FERC denied MP's request for waiver of the retroactive application of FERC's findings.

On March 1, 1988, the Commission issued its Findings of Fact, Conclusions of Law and Order in the Company's general rate case, Docket No. E-015/GR-87-223, and directed that the litigation expense issue be addressed in a separate proceeding. In its Order After Reconsideration issued on May 16, 1988, the Commission stated that it would address the litigation expense issue following the decision of the U.S. Court of Appeals.

On August 1, 1988 the U.S. Court of Appeals affirmed FERC's interpretation of Account 151 and remanded to FERC its decision to deny a waiver of the retroactive application of FERC's interpretation of Account 151. Minnesota Power & Light Company v. FERC, 852 F.2d 1070 (8th Cir. 1988).

On September 14, 1988 the Commission granted MP a time extension for its compliance filing until 45 days after FERC's Order on Remand.

On December 6, 1988, FERC issued its Order on Remand, 45 FERC Para. 61,369 (1988), which waived the retro-active application of its interpretation of Account 151 and the fuel adjustment clause.

On December 23, 1988, MP made its general rate case compliance filing. MP asked that the Commission either accept the accounting treatment granted by FERC, or grant a waiver or variance of the Commission's rules, thereby authorizing MP's prior collection of litigation expenses through the fuel adjustment clause in Minnesota.

The Department of Public Service (DPS or the Department) filed its comments on January 23, 1989 recommending that the Commission grant MP's variance request. The Residential Utilities Division of the Office of the Attorney General (RUD-OAG) filed its comments on January 24, 1989 supporting MP's variance request.

FINDINGS AND CONCLUSIONS

The Commission must decide whether to adopt the FERC's interpretation of USOA Account 151. Then the Commission must decide whether to grant a variance of its accounting and fuel adjustment clause rules which would allow Minnesota Power to retain the Minnesota portion of its litigation expenses which it recovered from ratepayers through the fuel adjustment clause from 1978 through 1985.

Minn. Rules, parts 7825.0200 through 7825.0400 adopt the FERC's Uniform System of Accounts as the Minnesota system of accounts. Minn. Rules, parts 7825.2390 through 7825.3000 provide for the fuel adjustment clause. Minn Rules, part 7825.2400, subp. 8 defines the Cost of Fossil Fuel as those costs withdrawn from Account 151.

USOA Account 151, 18 C.F.R. Part 101 (1988), allows for costs as follows:

1. Invoice price of fuel less any cash or other discounts.
2. Freight, switching demurrage and other transportation charges, not including, however, any charges for unloading from the shipping medium.
3. Excise taxes, purchasing agents' commissions, insurance and other expenses directly assignable to cost of fuel.
4. Operating, maintenance and depreciation expenses and ad valorem taxes on utility-owned transportation equipment used to transport fuel from the point of acquisition to the unloading point.
5. Lease or rental costs of transportation equipment used to transport fuel from the point of acquisition.

MP had included its litigation expenses under the third category.

The Commission finds that the costs included in Account 151 are critical to the integrity of the fuel adjustment clause. The Commission agrees with and adopts the FERC's interpretation of costs to be included in Account 151. The Commission finds that the costs included in Account 151 must be narrowly construed because these costs are automatically passed onto ratepayers. Without a strict interpretation of the costs included in Account 151, the types of expenses that companies could try to flow through the fuel adjustment clause would increase. The Commission puts utilities on notice that expenses that are not specified clearly in USOA Account 151 must be proposed to the Commission prior to flowing those expenses through the fuel adjustment clause.

The Commission will now address MP's variance request.

The Commission may grant a variance to any of its rules upon finding that the following conditions apply:

1. Enforcement of the rules would impose an excessive burden upon the applicant or others affected by the rule;
2. Granting of the variance would not adversely affect the public interest; and
3. Granting of the variance would not conflict with standards imposed by law.

Minn. Rules part 7830.4400.

The Commission is sympathetic to MP's position. The Commission notes that the FERC interpretation of litigation costs under Account 151 is a new interpretation and retro-active application could be burdensome and inequitable. The Commission believes that MP's arguments for including litigation expenses in Account 151 were reasonable and made in good faith. The benefits of the litigation were passed on to ratepayers. The Commission finds that enforcing Minn.

Rules, parts 7825.2400 would impose an excessive burden on MP because it would be unable to recover reasonably incurred costs. The Commission further finds that granting this variance would not adversely affect the public interest because savings that resulted from the litigation have been passed to ratepayers. Finally the Commission finds that granting this variance would not conflict with standards imposed by law. Neither the FERC nor the Court has required the Company to refund the litigation expenses that were included in the fuel clause adjustment and the Company has agreed to seek prior regulatory approval in the future for similar matters. The Commission concludes that the requirements of Minn. Rules, part 7830.4400 have been met and will vary Minn. Rules, part 7825.2400.

ORDER

1. The Commission hereby grants a variance of Minn. Rules, part 7825.2400 to allow MP to include the litigation expenses at issue in the fuel adjustment clause and to require no refund of the amounts collected.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)