

E-015/M-89-50DENYING RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of a Petition from Minnesota Power & Light Company for a Declaratory Ruling or, in the Alternative, for a Variance Regarding Certain Fuel Purchases Used for Off-System Energy Sales

ISSUE DATE: September 11, 1989

DOCKET NO. E-015/M-89-50

ORDER DENYING RECONSIDERATION

PROCEDURAL HISTORY

On February 2, 1989, Minnesota Power & Light Company (MP or the Company) filed a petition with the Minnesota Public Utilities Commission (the Commission) seeking a declaratory ruling or in the alternative a variance from the Commission's automatic fuel adjustment rules. The Company sought approval to use spot-market coal in pricing off-system energy sales, rather than blending the spot-market coal with the contract coal used for wholesale and retail customers through the fuel clause.

On August 2, 1989, the Minnesota Public Utilities Commission (the Commission) issued its ORDER VARYING RULE AND REQUIRING FILING in this matter. In that Order, the Commission denied the Company's request for a declaratory ruling and varied its automatic fuel adjustment rules, specifically Minn. Rules, part 7825.2400, subps. 8 and 9. The variance allows coal purchased to meet off-system sales to be designated to the specific off-system sales. Under the variance, the fuel cost for certain off-system sales will not be flowed to the automatic fuel adjustment clause, allowing the Company to reflect the lower cost fuel in pricing off-system sales rather than sharing it with all customers through the fuel clause. The Commission found that significant benefits for ratepayers and shareholders would result from the variance because MP would be able to lower the price of its off-system sales and, thereby, increase those sales.

On August 22, 1989, MP filed a Petition for Reconsideration asking the Commission to reconsider and rehear its decision to deny the Company's request for a declaratory ruling that its off-system energy sales proposal and past sales made under it comply with the Commission's fuel adjustment rules and the Company's fuel adjustment clause.

On August 28, 1989, the Minnesota Department of Public Service (DPS or the Department) filed comments recommending that the Commission deny MP's petition.

On August 30, 1989, the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) and Superwood Corporation (Superwood) also filed comments recommending that the Commission deny MP's petition.

The Commission met on September 5, 1989 to consider this matter.

FINDINGS AND CONCLUSIONS

Grounds Asserted for Reconsideration

In support of its request for reconsideration, the Company argued: 1.) that the Commission's denial of a declaratory ruling was unlawful and unreasonable; 2.) that Minnesota's fuel adjustment rules are similar to those of the Federal Energy Regulatory Commission (FERC) and that FERC found that MP's proposal was not unreasonable and did not require a variance under its rules; 3.) that Account 151 of the Uniform System of Accounts (USOA) does not prohibit the establishment of two separate accounting stockpiles of coal; 4.) that without the ability to remove the lower cost fuel purchased specifically for the off-system sale from "cost of fuel", the fuel would not be purchased because the sale would not be made; 5.) that MP's past practice of using an average stockpile cost rather than incremental pricing does not support the proposition that the proposed method is inconsistent with the Commission's rules; and, 6.) that ratepayers have received benefits of over \$2 million.

The DPS recommended that the Commission deny the Company's petition. The DPS argued that MP's proposal was inconsistent with the Commission's automatic fuel adjustment rules and that the issuance of a variance was the proper action for the Commission to take in this matter. The Department also stated that a finding by FERC that, in general, the assignment of lower cost fuel to off-system transactions is not per se unreasonable does not amount to FERC approval of MP's request for a declaratory order from FERC and does not give guidance on whether the MP proposal complied with the Commission's automatic fuel adjustment rules. Finally, in addressing MP's argument that MP's past actions constituted a benefit to ratepayers, the DPS stated that the same benefits flow from the Commission's granting a variance as would result from a declaratory judgment.

Superwood recommended that the Commission deny the Company's petition. Superwood argued that MP requested a variance as an alternative to a declaratory ruling and received a variance. Superwood concluded that there is nothing to rehear.

The RUD-OAG also recommended that the Commission deny MP's petition. The RUD-OAG stated that the Commission's denial of a declaratory ruling was lawful and reasonable. RUD-OAG argued that MP's proposal was contrary to the Commission's rules and the Commission properly granted a variance to its rules to enable ratepayers and MP to realize the economic benefits of the Company's proposal. The RUD-OAG also stated that FERC's holdings of per se not unreasonable does not constitute a per se reasonable holding. Finally, the RUD-OAG stated that MP should not be heard to complain about the legality of a Variance Order it requested.

The Commission finds that MP's petition raises no new issues, offers no new evidence, and identifies no issues which require further consideration by the Commission. The Commission reaffirms its August 2, 1989 decision.

The accounting issue raised here focuses on the fuel costs withdrawn from Account 151 of the Uniform System of Accounts (USOA) and entered into the fuel clause calculations. The Company argued that Commission rules and its own fuel adjustment clause require it to reduce the cost of fuel for fuel adjustment purposes by the fuel costs recovered through intersystem sales. While the Company argues that the fuel costs recovered from intersystem sales are subtracted from the fuel costs for fuel adjustment purposes, it ignores the fact that the amount of fuel costs recovered in intersystem sales is tied to the fuel costs originally assigned to the intersystem sales. It is that original assignment of fuel costs to off-system sales that is at issue here. The Commission found that the rules do not permit the specific assignment proposed by MP and reaffirms that finding.

The Commission notes that Minnesota's fuel adjustment rules are similar to those of FERC. However, they are not identical. The Commission has not adopted the FERC's fuel clause rules and is not bound by FERC's interpretation of its own rules.

Finally, the Commission reaffirms its decisions that the Company's request for a declaratory order should be denied in this case and that a rule variance is reasonable under the circumstances here. Because MP's proposed treatment was contrary to the Commission's fuel clause adjustment rules, the Commission denied MP's request for a declaratory ruling of its validity. In its August 2, 1989 Order, the Commission recognized that historically MP had interpreted the Commission's automatic fuel adjustment clause rules to require averaged cost treatment of fuel costs for automatic fuel adjustment purposes and the Commission has endorsed using average cost as the correct interpretation of the rules. The Commission reaffirms that finding.

Under the circumstances presented here, the Commission found that assigning certain fuel to specific off-system sales produced economic benefits for both ratepayers and shareholders through potentially increased sales. Consequently, the Commission varied its rules on a prospective basis to recognize these benefits.

The Commission believes that a strict interpretation of the automatic fuel adjustment rules serves

the public interest. The analysis required of the Commission in granting a rule variance serves all the parties involved. It protects the party directly affected by the rule, recognizes the public interest, and insures that any variance does not conflict with other laws. Here the Company sought a declaratory ruling which would have allowed it to choose an accounting treatment for fuel clause adjustments depending on circumstances. Circumstances change. The Commission believes that allowing a utility to choose between incremental and average pricing at its will may result in situations where ratepayers could subsidize off-system customers. This would not serve the public interest. By strictly construing its rules in general and carefully analyzing all aspects of rule variances on a case by case basis, the Commission protects the public interest and fulfills its responsibilities. The Commission reaffirms its denial of the request for a declaratory ruling and its decision to grant a variance to Minn. Rules, part 7825.2400, subps. 8 and 9.

The Commission will deny MP's petition for reconsideration.

ORDER

1. The Company's request for reconsideration is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)