

G-010/M-90-407 ORDER REVISING FLEXIBLE RATE TARIFF

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Patrice M. Vick	Commissioner

In the Matter of a Petition from ISSUE DATE: December 3, 1990
Midwest Gas to Revise Its
Flexible Gas Tariffs DOCKET NO. G-010/M-90-407

ORDER REVISING FLEXIBLE RATE
TARIFF

PROCEDURAL HISTORY

In 1987 the Minnesota legislature enacted Minn. Stat. § 216B.163, a flexible rate statute for gas utilities. This law allowed gas utilities to offer flexible, discounted tariffs to customers subject to effective competition. Effective competition was defined as the capability of obtaining equivalent energy service from a nonregulated supplier.

In 1990 the flexible rate tariff was amended by the Minnesota legislature. The new version of the statute incorporated the following changes, among others:

1. The Commission must specify a maximum rate for any flexible tariff.
2. The Commission may specify the minimum term for which a customer must be on the tariff.
3. Eligibility restrictions were changed to disallow competition with district heating facilities as of June 1, 1987.

On June 4, 1990, Midwest Gas (Midwest or the Company) responded to the statutory changes by petitioning for modifications to its flexible rate tariff. The tariff applied to Large Volume Flex Interruptible Service, Large Volume Flex Interruptible Transportation Service, and the Company's Special Flex Interruptible Service for Creameries and Milk Processors. Midwest requested that the Commission approve the following changes to its tariff:

1. The maximum rate would be set at an amount equal to the jurisdictional standard rate plus the same margin by which the Company is allowed to flex down to derive the minimum flexible rate.
2. There would be a minimum term of one year set for new contracts and a one month notice period for switching to a different service.
3. There would be a limitation on competing with district heating and biomass energy sources.
4. The charge to customers for switching from flexible to standard service would be eliminated.

Items three and four requested by the Company were simply restatements of statutory changes. Items one and two were requests for Commission approval of positions taken by the Company.

On August 6, 1990, the Department of Public Service (the Department) filed its Report of Investigation and Recommendation. The Department noted that the Company had not addressed the issue of a default rate to be set in months when the utility and the customer fail to negotiate a rate. The Department also suggested certain clarifying language to be added to the tariff.

On July 16, 1990, Land O'Lakes, Inc. submitted comments. The Residential Utilities Division of the Office of the Attorney General (RUD-OAG) submitted comments on August 13, 1990 and on October 12, 1990. The Minnesota Industrial Energy Group filed comments on August 13 and 28, 1990. On August 17, 1990, Midwest submitted reply comments.

The Commission met to consider the matter on November 27, 1990.

FINDINGS AND CONCLUSIONS

Issues Before the Commission

The following issues were raised in the Company's petition or in the Department's Report of Investigation and Recommendation:

1. At what level should the maximum tariff rate be set?
2. What minimum term should be set for flexible rate contracts?
3. What default rate should be set for periods in which the utility and the customer have failed to negotiate a flexible rate?
4. Should the Department's clarifying language be added to the tariff?

The Maximum Rate

Positions of the Parties

The Department recommended that the Commission set the maximum rate for flexible tariffs at the standard rate as approved in the utility's most recent rate case. The Department argued that this rate would enable utilities to retain dual fuel customers who might otherwise leave the system by offering them flexible downward pricing. At the same time, according to the Department, this system would protect customers who seek alternative energy sources. Such customers would not be at the mercy of sudden price escalations for alternative fuels, because they could choose to pay the standard tariffed rate to Midwest. The Department was supported in its position by large energy users who submitted comments.

Midwest requested that the Commission set the maximum rate at an amount equal to the standard rate plus the same margin by which the Company is allowed to flex down to derive the minimum flexible rate. The Company argued that this method was most fair to all parties, because it would allow the level of risk to the customer to match the level of reward. The RUD-OAG supported this position in its comments.

Commission Action

The Commission agrees with the position advocated by Midwest and supported by the RUD-OAG. Allowing the maximum rate to flex above the standard rate to the same extent as it can flex below is fair to the parties involved. Under the method requested by Midwest, customers are sufficiently protected by the maximum rate "cap." Flex rate customers are thus not entirely subject to extreme price swings for alternative fuel. Any amount by which the flex rate may exceed the standard rate can be considered an appropriate "fee" the customers pay for the benefits of flexible pricing and protection against dramatic price increases.

Flexible rate customers are further protected against excessive cost by their option of choosing the standard rate over a flexible rate. The complaint process is also open to flexible rate customers who feel they have been treated unfairly.

If the maximum were set at the standard rate, flexible gas customers would receive the benefits of the flexible tariff without assuming any of the inherent risk. The Midwest method more closely follows the model of the open market place, in which competitive forces ensure that both risks and rewards are weighed when customers decide to enter the market.

Without the possibility of an upward flex, customers who do not qualify for flexible rates could shoulder an unjust portion of the utilities' fixed costs. Non-flex customers, usually small business and residential customers, would reap little benefit

from the flexible rate tariffs. Nearly all benefits of the gas utility flexible rate statute would flow to the utilities and their large energy customers.

The Commission finds that setting the maximum flex rate above the standard rate by the same increment as the below-standard flex is fair to the utilities, the large customers, and to residential and small business customers. The Commission will set the maximum tariff rate in this manner.

Minimum Term for Contracts

Positions of the Parties

In its petition, Midwest requested a one year minimum term for new flexible rate contracts. The Department recommended the same term if the Midwest maximum rate method were adopted. The large energy users urged the Commission to require a 30 day minimum term for flexible rate contracts.

Commission Action

The Commission agrees with Midwest's position, which is also the Department's recommendation. A one year minimum term will provide sufficient stability for the contracting parties, yet will allow sufficient freedom for the parties to respond to market forces.

Default Rate

The Parties' Positions

In its August 6, 1990 Report and Recommendation, the Department advocated using the utility's maximum flexible rate as the default rate. Thus, if a utility and a flexible rate customer failed to agree during negotiations for a contract renewal, the flexible rate would be set at the maximum until the parties settled on a negotiated rate. Because the Department recommended that the maximum rate should be the standard rate, the Department's recommended default rate would be the standard rate.

Midwest did not refer to the issue of a default rate in its petition.

Commission Action

The Commission agrees with the Department that the default rate should be set at the maximum flexible rate. Because the Commission has decided to adopt Midwest's plan for a maximum rate, the Commission finds that this is the proper formula for a default rate in the tariff.

Clarifying Language

Positions of the Parties

The Department recommended that the following clarifying language be added to the "Availability" section of Midwest's flexible rate tariff to reflect statutory changes and developments in the gas industry:

1. Customers whose only alternative source of energy is gas from a supplier not regulated by the Commission and who must use Midwest's system to transport the gas cannot take service under flexible tariffs. However, customers who have or can reasonably acquire the capability to bypass Midwest's system are eligible to take service under flexible tariffs.
2. Customers of district-heating facilities as of June 1, 1987 are prohibited from taking service under flexible tariffs. (This provision can be removed after July 1, 1992 pursuant to the repeal date in the law.)

Midwest had no objection to the addition of this clarifying language.

Commission Action

The Commission agrees with the Department that the recommended clarifying language should be added to the Company's flexible rate tariff.

ORDER

1. The maximum rate for the Midwest flexible rate tariff shall be set at an amount equal to the standard rate plus the same margin by which the Company is allowed to flex down to derive the minimum flexible rate.
2. The minimum term for flexible rate tariffs between Midwest and its customers shall be one year.
3. The Midwest flexible rate tariff shall include a default rate which is equal to the maximum rate as set out in Paragraph One above.
4. Clarifying language as specified in the body of this Order shall be added to the "Availability" section of Midwest's flexible rate tariff.
5. In all respects not hereinbefore modified or clarified, the June 4, 1990 Midwest petition for modification of its flexible rate tariff is approved.

6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)