

E-002/GR-89-865 ORDER REQUIRING COMMENCEMENT OF REFUND BY MARCH  
26 AND REQUIRING COMPANY TO DECREASE RATES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner
Patrice M. Vick	Commissioner

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

ISSUE DATE: January 28, 1991

DOCKET NO. E-002/GR-89-865

ORDER REQUIRING COMMENCEMENT OF  
REFUND BY MARCH 26 AND REQUIRING  
COMPANY TO DECREASE RATES

**PROCEDURAL HISTORY**

On November 2, 1989, Northern States Power Company (NSP or the Company) filed a petition seeking a general rate increase of \$120,782,000, or 10.2%, effective January 1, 1990. After the matter was set for contested case proceedings, the Commission set interim rates at 6.91%, to collect \$81,542,000 additional annual revenues, pending the final Order. Interim rates, which were authorized by the Commission's ORDER SETTING INTERIM RATES dated December 29, 1989, went into effect on January 1, 1990.

On August 28, 1990, the Commission issued its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER. In that Order the Commission wholly denied NSP's request for a rate increase and ordered the Company to submit within 30 days a plan for refunding revenues stemming from interim rates.

NSP filed a petition for reconsideration of the August 28 Order on September 17, 1990. In the petition the Company proposed a plan for a "transitional rate increase" of approximately \$39,000,000, to recover allegedly "verifiable and unavoidable" cost increases. On November 26, 1990, the Commission issued its ORDER DENYING PETITIONS FOR RECONSIDERATION AND DENYING TRANSITIONAL RATE INCREASE. In the Order the Commission reaffirmed the requirement that the Company file a refund plan within 30 days.

On January 23, 1991, the Commission issued its ORDER DENYING STAY AND REQUIRING REFUND AND CESSATION OF COLLECTION OF INTERIM RATES. In that Order the Commission denied the Company's request for a stay of its refund obligation. The Commission also ordered NSP to cease collecting interim rates which had been established

in the Commission's December 29, 1989 ORDER SETTING INTERIM RATES. The timing and details of the refund and the lowering of rates were made subject to further Commission Order.

While NSP was pursuing a petition for reconsideration before the Commission, the Company was also seeking other means of relief. NSP filed an appeal of the Commission's August 28 and November 26 Orders with the Minnesota Court of Appeals. The Company also prepared a new rate case filing, which it hopes to submit by the end of January, 1991. Finally, the Company filed a petition to stay its refund obligation with the Court of Appeals on January 22, 1991.

On December 26, 1990, NSP submitted two alternative refund plans for Commission review. One proposed plan was premised upon an anticipated stay of the refund obligation followed by a partial refund. The other plan was based upon a full refund as ordered by the Commission. In both plans, the Company proposed to calculate the refund as a uniform percentage reduction based on actual collections under interim rates versus the amount that would have been collected under pre-1989 rate case rates. Interest would be applied at the average prime rate over the interim rate period. The Company proposed to give the refund in the form of a bill credit for active customers and minimum checks of \$3.00 to inactive customers.

The Department of Public Service (the Department) and the Residential Utilities Division of the Office of Attorney General (RUD-OAG) submitted comments on January 10, 1991. While both state agencies agreed with NSP's basic full refund proposal, the RUD-OAG felt that the minimum amount of refund checks should be lower than \$3.00.

On January 22, 1991, the Commission met to consider the matter.

## FINDINGS AND CONCLUSIONS

### CALCULATION AND METHOD OF REFUND

No party was opposed to the Company's basic method of calculating and implementing the refund. The Company's proposed method is similar to plans which have been previously approved by the Commission. The Commission finds that the proposed method of calculating the refund, including the interest rate applied and the proposed notice of full refund, is appropriate.

The Commission shares the RUD-OAG's concern regarding the minimum check amount proposed by the Company. Under the Company's proposed plan, customers who had moved or gone off the Company

system would receive checks instead of bill credits, but only if their refund amount was \$3.00 or more. In the last NSP rate case, a \$2.00 minimum check amount was set. The Commission finds no reason to raise the minimum amount, particularly in light of the fact that NSP's proposed rate increase has been wholly denied in this case. The Commission finds that a \$2.00 minimum is proper for refund checks issued by the Company. At the January 22 meeting, the Company indicated that they would have no objection to this minimum amount.

#### **TIMING OF THE REFUND**

The Company's second alternative refund plan consisted of a full refund following denial of the refund stay. The Commission denied NSP's request for a stay on January 23, 1991, so the second alternative plan must be evaluated.

NSP has stated that seven to ten days are required for the Company to put new rates in effect, and approximately an additional five weeks are necessary to implement a refund. Under NSP's proposal, rates would not be immediately lowered to the pre-1989 rate case level, but would continue until new interim rates resulting from the Company's upcoming rate case filing were put into effect. If the rate case were filed at the end of January, interim rates would be set sometime in March. Based upon this timeframe, the Company guaranteed that refunds would be paid out to customers by the end of April at the latest.

NSP's proposed method would have the advantage of minimizing rate volatility. Customers would not experience a lowering of rates in February, to be followed by an increase to interim rates sometime in March. (This would be the result if the Commission ordered an immediate lowering of rates to pre-1989 rate case levels.)

The Commission is aware that it is desirable to avoid rate volatility and customer confusion whenever possible. In this case, however, these advantages from the Company's proposal are outweighed by disadvantages from it. There are a number of very important reasons that the Commission will order a refund which is not hinged upon the Company's upcoming interim rates.

While the Company has told the Commission that it intends to file its new rate case by the end of January, it is possible that the filing may be delayed. It is also possible that the Company's filing may be rejected by the Commission as inadequate or incomplete, and the rate case could thus be delayed. This situation occurred with a different utility within the last six months. A delay in filing or acceptance would mean that it would be impossible to implement a refund under the Company's projected schedule by the end of April.

NSP's proposed plan locks the refund to the commencement of interim rates. A refund whose timing is premised upon the date of new interim rates would be speculative and uncertain.

The Commission also finds that the Company's concern regarding rate volatility and customer confusion is somewhat tardy. The Company could have and should have returned rates to pre-1989 rate case levels after the Commission's August 28 Order denying an increase or at least after the November 26 denial after reconsideration. The Company has instead waited until January 1991 to address the issue of implementing a refund, and then attempted to premise the refund on new rate case interim rates. Any customer confusion now is outweighed by the fact that NSP customers have waited too long for their refund. The Company must implement a plan which will now provide refunds within an appropriate time limit.

The legislature has shown a clear intent to require refunds within 120 days of final Commission Order. Minn. Stat. § 216.16, subd. 3 provides as follows:

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If, at the time of its final determination, the Commission finds that the interim rates are in excess of 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.

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Thus, if a final Order requiring a refund is not subject to rehearing or appeal, the utility is required under the statute to commence distribution of the refund within 120 days of the Order. Minn. Stat. § 216B.53 and § 14.65 indicate that if the Order is subject to appeal the Commission may stay the enforcement of the refund or the Court may stay or suspend the obligation upon a finding of great or irreparable harm. Although the final Order in this case is under appeal, the Commission in its January 23, 1991 Order specifically denied a stay. There has been no finding of great or irreparable harm from a refund which be implemented within 120 days of the final Order. The Commission therefore finds that the Company should heed the 120 day time limit, and should implement a full refund of amounts due to customers no later than March 26, 1991. Since the Company has indicated it needs certain amounts of time for reducing rates and

then processing the refund, the Company must lower its rates to pre-1989 rate case levels by whatever date is necessary to commence a refund by March 26, 1991.

The Commission finds for the reasons stated above the Company must commence a refund no later than March 26, 1991. The Company should do what it can to minimize customer confusion due to the rate change and refund.

**ORDER**

1. On or before March 26, 1991, NSP shall commence refunding to ratepayers the increased revenue collected under the December 29, 1989 ORDER SETTING INTERIM RATES.
2. On or before 45 days from completion of the refund, the Company shall submit a compliance filing regarding the payment of the refund, including the amount refunded and the interest rate applied.
3. On or before the date necessary to effect commencement of the above refund by March 26, 1991, NSP shall cease collecting interim rates set out in Commission ORDER SETTING INTERIM RATES dated December 29, 1989, and shall resume the level of rates in existence immediately before issuance of said Order. The Company shall notify the Commission at least five days in advance of the lowering of the rates.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

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