

E-017/M-91-817 ORDER DENYING VARIANCE, DISALLOWING POWERSTAT
EXPENSES, AND REQUIRING REGULATORY COMPLIANCE PLAN

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of Otter Tail
Power Company's Request for
Variance From Certain Customer
Service Rules to Implement a
PowerStat Pre-Paid Metering
System Pilot Project

ISSUE DATE: June 26, 1992

DOCKET NO. E-017/M-91-817

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COMPLIANCE PLAN

PROCEDURAL HISTORY

I. Proceedings to Date

On November 21, 1990, Otter Tail Power Company (Otter Tail or the Company) filed its proposed 1991 Conservation Improvement Program (CIP) with the Minnesota Department of Public Service (the Department). Otter Tail's proposal included a one-year PowerStat pre-paid metering pilot project.

On June 24, 1991, Otter Tail filed a request for approval of the PowerStat project with the Commission. The matter was assigned Docket No. E-017/M-91-477. The Company did not request a variance or seek a tariff change. It was unclear from the filing the purpose of the approval sought by the Company. The Department did not file a report and recommendation regarding the Company's request. The matter did not come before the Commission for consideration.

On August 19, 1991, the Commissioner of the Department issued her Decision on the Company's CIP program. The Commissioner approved PowerStat as a one-year pilot project. The Commissioner noted that the project would need a variance to the Public Utilities Commission's customer-service rules. The Commissioner directed Otter Tail to obtain the appropriate variance from the Commission before implementing the project.

On October 16, 1991, counsel for the Department sent a letter to Otter Tail advising it that the Department would disapprove the project and undertake enforcement action if the Company did not petition the Commission for a variance of the appropriate rules

within five days.

On October 21, 1991, Otter Tail filed a request for variances from the requirements of five rules in order to implement PowerStat. The matter was assigned to the current docket, E-017/M-91-817.

On December 5, 1991, the Department filed its report and recommendations regarding the Company's request. The Department recommended that the Commission grant the requested variances until August 19, 1992, one year from the date of the Commissioner's Decision. The Department noted that Otter Tail did not request variances before implementing the project. Instead, the Company began installing PowerStats in January 1991 and by June 21, 1991, all 95 PowerStats were installed. The Company continued to operate the project without securing variances. To prevent further instances of late filing for variances, the Department recommended that the Company be required to file a regulatory compliance plan.

On June 9, 1992, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

II. PowerStat

The PowerStat metering system is a product of CIC Systems, Inc. PowerStat for residences consists of two components: a display unit located inside the house and a control sleeve located between the meter and the meter socket. Communication with the display unit is accomplished by means of a card that contains a magnetic strip on which information is stored and read by the display unit. The card, called a PowerCard, is much like a credit card and can carry information such as the amount of electricity purchased and the rate structure to be used. The customer runs the PowerCard through the display unit to load the amount of the purchase, the rate structure and other operating information. The PowerStat display unit can show, at the push of a button, the dollar amount remaining, the amount presently being used in dollars per hour, the dollar amount used yesterday, the dollars used last month, the dollar amount of the last purchase, and the present electric rate being paid for each kilowatt/hour used. If the present rate of consumption would exhaust the remaining supply within four days, the display will blink continuously and chirp once an hour to attract the customer's attention. PowerStat automatically disconnects service when the amount purchased has been consumed.

II. The PowerStat Project

On November 21, 1990, Otter Tail proposed a PowerStat Project, a one-year pre-paid metering pilot project, as part of its 1991 Conservation Improvement Program (CIP). The Company proposed to install PowerStats in the residences of 95 volunteer customers for a 12 month period to determine, according to the Company, if PowerStat was a viable option to assist customers to better understand and practice energy conservation.

The Company began installing the PowerStats in January 1991. All 95 units were installed by June 1991. On August 19, 1991, the Commissioner approved the PowerStat Project and directed the Company to obtain the appropriate variance from the Commission before implementing the project.

III. Variances Requested

On October 21, 1991, two months after being directed by the Commissioner to obtain appropriate variances from the Commission before implementing the project and ten months after beginning to implement the PowerStat project, Otter Tail requested that the Commission vary five rules that it identified as related to the operation of the PowerStat project.

IV. Commission Analysis

A. Variances Required

The Commission finds that Otter Tail has operated its PowerStat Project in violation of several Commission rules:

1. Minn. Rules, part 7820.1000 - Disconnection of Service with Notice; Permissible Reasons

The rule prescribes the nine grounds for which service may be disconnected. The occasion for termination under the PowerStat system (exhausting the pre-paid amount and failing to pre-pay for additional service) is not among the grounds listed. The rule also requires that the utility give the customer notice of disconnection pursuant to Minn. Rules, part 7820.2400. The PowerStat project provides no such notice.

2. Minn. Rules, part 7820.2400 - Notice Requirements

The rule prescribes the content of the notice required by Minn. Rules, part 7820.1000 and requires that such notice precede the disconnection by at least five days excluding Sundays and legal holidays. Under the PowerStat project, disconnection for failure to pre-pay occurs automatically without the notice required by the rule.

3. Minn. Rules, part 7820.2500 - Manner of Disconnection

The rule requires that prior to disconnection, the utility's representative personally visits the address proposed for disconnection and attempts to make personal contact with the customer at that address. The rule further requires that the utility representative be capable of receiving payment, if nonpayment is the cause of the disconnection, so that disconnection may be avoided. Under the PowerStat project, none of these requirements are met. Disconnection upon failure to pre-pay is automatic.

4. Minn. Rules, part 7820.2900 - Utility Waiver of Right to Disconnect Service and Emergency Status of the Customer

The rule gives the customer the right to ask the utility to waive its right to disconnect and, if the utility refuses to do so, to apply to the Commission for "emergency status." PowerStat's automatic disconnection provisions violate this rule.

5. Minn. Rules, part 7820.3500 - Billing Content

The rule provides that certain information be provided to the customer by bill. Under PowerStat, the utility provides no bill at all and the information available via the display unit is not identical to that required by the rule.

6. Minn. Rules, part 7820.1900 - Declaration of Inability to Pay

This is one of the Cold Weather Rules adopted by the Commission in response to Minn. Stat. § 216B.095 (1990). The rule requires that prior to disconnecting service to any residential unit during the cold weather months (October 15 through April 15) a utility must give the customer seven days personal notice (10 days if by mail) of the proposed disconnection, notice of customer rights and possible assistance, and a commission-approved, addressed, postage-prepaid form on which a residential customer may declare his or her inability to pay. Under PowerStat, no such notice is provided.

The Department agreed that the Company's PowerStat project violated the first five listed rules but argued that the Company did not violate the Cold Weather Rules because Otter Tail has assured it that if a customer applied to it for protection pursuant to Minn. Rules, parts 7820.1500 through 7820.2300 the Company would alter the customer's PowerStat unit to override the automatic shut-off feature and the Cold Weather Rule would apply as in the case of any other customer.

The Commission disagrees. In its October 24, 1991 request for variances, the Company emphasizes that the validity of the information gained from the project depended in large part on the customer's understanding the finality of their situation, i.e. that they must pay "on delivery" and that when that "delivery" is used up, they will be "out of" electricity without further notice.

More important, even accepting the Company's assurance at face value, it is clear that the Company did not plan to comply with important rule requirements. Minn. Rule, part 7820.1900 specifically states that when disconnection is contemplated and prior to actual disconnection the utility must 1) provide notice to the customer of the intended disconnection, 2) inform the customer of his or her rights under the Cold Weather Rule, and 3) facilitate the customer's application for Cold Weather Rule protection by providing the application form and a postage-paid addressed envelope. The Company's process disregards these notification and facilitation responsibilities. Contrary to the rule, the Company places the burden upon the customer to know his or her rights under the Cold Weather Rules and to initiate a request to the Company before the Company agrees that it will observe those rights.

B. Variances Considered

To grant a variance from its rules, the Commission must find that

- 1) enforcing the rule would impose an excessive burden upon the applicant or others affected by the rule;
- 2) granting the variance would not adversely affect the public interest; and
- 3) granting the variance would not conflict with the standards imposed by law. Minn. Rules, part 7830.4400.

1. Excessive Burden

The Department argued that enforcement of the rule would impose an excessive burden upon Otter Tail's customers. The Commission finds that enforcement of the rules at this point would have no impact upon the customers because the project has been completed. Whatever benefits the customers may have received under the project have been realized.

The further question, however, is whether enforcing the rules would impose an excessive burden upon the Company. Because Otter Tail has fully implemented and completed the PowerStat project without securing the necessary variances to render that project lawful, enforcing the rules would mean, at least, that the project expenditures are not recoverable. The question is

whether this result places an excessive burden upon the Company. In light of the Company's sophistication, the number, duration, obviousness, and seriousness of the rule violations, and actual notice from the Commissioner that variances were required, the Commission finds that the burden on the Company resulting from enforcement of the rules (disallowance of project expenditures) is not excessive.

2. Public Interest

The Department argued that granting the variances would be in the public interest because the Commissioner had approved the PowerStat project as a CIP project. In considering whether granting these retroactive variances would adversely affect the public interest, the scope of the Commission's concern goes beyond whether the project is an approved CIP project. In this case, there are heavier considerations that indicate that granting the Company's request would adversely affect the public interest.

First, in granting these variances the Commission would be approving disconnection without notice and requirement of prepayment in advance of consumption. The Commission is unwilling to do so at this time. These conditions are squarely contrary to important consumer protection rules.

Second, the Company has operated a project in serious violation of important rules adopted by the Commission to protect electric customers. Granting the requested variances at this time would degrade the regulatory environment, which depends on utilities understanding the importance of observing their obligation to obtain any variances necessary to render their projects lawful.

3. Standards Imposed by Law

A variance may be granted only if all three of the standards listed in Minn. Rules, 7830.4400 have been met. Having determined that enforcement of the rules at this time will not impose an excessive burden upon the Company and that to grant the requested variances would adversely affect the public interest, the Commission need not consider whether the variances would conflict with standards imposed by law.

V. Commission Action

The Commission finds that the PowerStat Project was operated in violation of Commission rules and that the requirements for granting variances from those rules have not been met. Accordingly, the Commission will deny Otter Tail's request for variances and will direct Otter Tail to remove from its CIP tracker account the expenses that it has incurred or will incur in the execution of that project. The Company will be required

to file a new CIP tracker report showing compliance with this requirement within 30 days of this Order and, in its next general rate case filing, the Company will exclude the amounts disallowed here when presenting its calculation of the over- or undercollection of CIP expenses. Finally, to promote Otter Tail's fulfillment of its regulatory obligations in the future, the Commission will require the Company to file a regulatory compliance plan within 45 days of this Order.

ORDER

1. The request of Otter Tail Power Company (Otter Tail or the Company) for variances from certain Commission rules is denied.
2. All past, present, and future PowerStat project expenditures are disallowed and the Company shall remove them from its CIP tracker account.
3. Within 30 days of this Order, the Company shall file a new CIP tracker report showing compliance with this Order.
4. The Company shall exclude the amounts disallowed herein when presenting its calculation of the over- or undercollection of CIP expenses in its next general rate case filing.
5. Within 45 days of this Order, the Company shall file a regulatory compliance plan which shall include, at a minimum, the following information:
 - (a) how Otter Tail will track what reports and filings are required to be made with the Commission and Department pursuant to
 1. Minnesota statutes and rules;
 2. Commission Orders and other regulatory requirements;
 3. Regulatory requirements of the Minnesota Department of Public Service (the Department); and
 4. federal statutes and rules;
 - (b) what internal management and legal procedures Otter Tail will put in place to identify whether proposed utility actions require regulatory approval; and

(c) what internal management and legal review procedures Otter Tail will put in place to ensure that the filings identified in (a) and (b) above are timely, legally correct in form and content, and factually accurate and complete.

6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)