

E-016/GR-92-378 ORDER APPROVING PROPOSED RATES AND REQUIRING
TARIFFS

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 the Application
of Northwestern Wisconsin
Electric Power Company for
Authority to Increase Its Rates
for Electric Service in the
State of Minnesota

ISSUE DATE: July 14, 1992

DOCKET NO. E-016/GR-92-378

ORDER APPROVING PROPOSED RATES
AND REQUIRING TARIFFS

PROCEDURAL HISTORY

I. PROCEEDINGS TO DATE

On May 15, 1992, Northwestern Wisconsin Electric Company (NWECC or the Company) filed a general rate case requesting a 15.39 percent increase.

On May 18, 1992, the Commission issued a Notice asking interested parties to submit comments on whether the Commission should accept the Company's filing, grant the requested variances, and set the matter for contested case hearing.

On May 29, 1992, the Minnesota Department of Public Service (the Department) filed the only comments received regarding the adequacy of the Company's filing.

On June 4, 1992, NWECC supplemented its filing by submitting a Conservation Improvement Plan (CIP).

On June 16, 1992, NWECC mailed notices of the proposed rate increase to individual customers, counties, and municipalities. The notices included a statement of the customer's right to request a contested case hearing and gave June 26, 1992 as the deadline for commenting on the proposed increase or to request a hearing.

On June 16, 1992, the Department filed its comments regarding the appropriateness of the Company's requested general rate increase.

On June 30, 1992, the Commission issued its ORDER ACCEPTING FILING AND GRANTING VARIANCES in this matter. The Commission accepted NWECC's filing as adequate and, in lieu of suspending the Company's proposed rates and setting interim rates, accepted the Company's representation that it would not implement new rates until the Commission issued a subsequent Order setting rates.

On July 1, 1992, the Commission met to consider the appropriateness of the Company's requested general rate increase.

FINDINGS AND CONCLUSIONS

II. JURISDICTION

The Commission has general jurisdiction over the Company under Minn. Stat. §§ 216B.01 and .02 (1990). The Commission has specific jurisdiction over rate changes under Minn. Stat. § 216B.16 (1990).

III. FURTHER ADMINISTRATIVE REVIEW

Under Minn. Rules, Part 7830.4100, any petition for rehearing, reconsideration, or other post-decision relief must be filed within 20 days of the date of this Order. Such petitions must be filed with the Executive Secretary of the Commission, must specifically set forth the grounds relied upon and errors claimed, and must be served on all parties. The filing should include an original, 13 copies, and proof of service on all parties.

Adverse parties have ten days from the date of service of the petition to file answers. Answers must be filed with the Executive Secretary of the Commission and must include an original, 13 copies, and proof of service on all parties. Replies are not permitted.

The Commission, in its discretion, may grant oral argument on the petition or decide the petition without oral argument.

Under Minn. Stat. § 216B.27, subd. 3 (1990), no Order of the Commission shall become effective while a petition for rehearing is pending or until either of the following: ten days after the petition for rehearing is denied or ten days after the Commission has announced its final determination on rehearing, unless the Commission otherwise orders.

Any petition for rehearing not granted within 20 days of filing is deemed denied. Minn. Stat. § 216B.27, subd. 4 (1990).

III. NORTHWESTERN WISCONSIN ELECTRIC COMPANY

NWEC is an investor-owned electric utility company engaged in the generation, transmission and distribution of electric energy in northwest Wisconsin and Pine County, Minnesota. In Wisconsin, the Company serves approximately 11,600 customers and has revenues of approximately \$7 million. In its Minnesota service area, the Company serves 95 customers and receives \$33,000 for that service.

IV. BURDEN OF PROOF

Minn. Stat. § 216B.16, subd. 4 (1990) states: "The burden of proof to show that the rate change is just and reasonable shall be upon the public utility seeking the change."

The Minnesota Supreme Court has articulated standards for the burden of proof in rate cases. In the Matter of the Petition of Northern States Power Company for Authority to Change its Schedule of Rates for Electric Service in Minnesota, 416 N.W.2d 719 (Minn. 1987). In the Northern States Power case the Court divided the ratemaking function of the Commission into quasi-judicial and legislative aspects. The Commission acts in a quasi-judicial mode when it determines the validity of facts presented. Just as in a civil case, the burden of proof is on the utility to prove the facts by a fair preponderance of the evidence. Such items as claimed costs or other financial data are facts which the utility must prove by a fair preponderance of the evidence.

The Commission acts in a legislative mode when it weighs the facts presented and determines if proposed rates are just and reasonable. Acting legislatively, the Commission draws inferences and conclusions from proven facts to determine if the conclusion sought by the utility is justified. The Commission weighs the facts in light of its statutory responsibility to enforce the state's public policy that retail consumers of utility services shall be furnished such services at reasonable rates. In its legislative capacity, the Commission forms determinations such as the usefulness of a claimed item, the prudence of company decisions, and the overall reasonableness of proposed rates.

The utility, therefore, faces a two part burden of proof in a rate case. When presenting its case in the rate change proceeding, the utility has the burden to prove its facts by a fair preponderance of the evidence. The utility also has the burden to prove, by means of a process in which the Commission uses its judgment to draw inferences and conclusions from proven facts, that the proposed rates are just and reasonable.

V. THE COMPANY'S PROPOSAL

NWEC requested that the Commission approve the same rates for its Minnesota customers as the Wisconsin Public Service Commission (Wisconsin PSC) recently ordered for the Company's Wisconsin customers.¹ Applying the rate schedules approved in Wisconsin to the actual 1991 number of customers and kilowatt hours sold in Minnesota, the proposed rates would generate an additional \$4,197 revenue for the Company, representing a 12.51% rate increase.

VI. COMMISSION REVIEW

In general rate increase cases, the Commission's ultimate responsibility is to set rates that are fair and reasonable. The process that the Commission adopts to determine fair and reasonable rates is shaped by statute. Minn. Stat. § 216B.16 (1990). Contested case treatment of rate increase requests is provided for, but is not mandated by the statute for every rate case. The level of formality is determined in large part by customer and intervenor concern. In response to these concerns, the rate case process is usually lengthy, intense, and contested. The costs incurred by the utility in the course of such proceedings are generally recoverable by the utility from its customers. Given the small base of NWEC's customers in Minnesota, the burden of a formal contested process on those customers would be immense.

Fortunately for NWEC's customers, the Commission believes that in this case an abbreviated review of the Company's proposal is sufficient to prepare the Commission to make the required findings.

In this case, no customer has filed comments opposing the requested rate increase or requested a hearing. At the same time, the concerns of the Department, the sole intervenor, as well as those of the Commission, have been allayed in large measure by the fact that the Company's proposed rates have been subjected to a rate case proceeding by the Wisconsin PSC prior to adopting these rates for Wisconsin customers. In the course of its examination, Wisconsin PSC staff performed a class cost of service study and designed the rates. The record established in the Wisconsin proceeding, including all the Company and Wisconsin PSC staff testimony and exhibits, are part of the record of this

¹ Application of Northwestern Wisconsin Electric Company, as an Electric Utility, for Authority to Increase Electric Rates, Wisconsin PSC Docket No. 4280-ER-101, FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER (February 6, 1992) and FINDINGS OF FACT AND AMENDED ORDER (March 12, 1992).

case.

In preparing its recommendation in this matter, the Department reviewed the financial, rate of return, rate design, and conservation plan filed by the Company. The Department recommended approval of the proposed rates as fair and reasonable without recourse to a contested case format. Commission Staff conducted its own review of these materials and supported the Department's recommendation.

Comparison with rates charged by other Minnesota electric utilities provides further support for the reasonableness of the Company's proposed rates. The Commission finds that the Company's proposed rates are in line with those of other Minnesota electric utilities: Otter Tail Power Company, Minnesota Power, Interstate Power Company, and Northern States Power Company (summer).

With specific regard to conservation concerns, the Commission finds that the proposed rates, flat rates, send appropriate price signals to encourage conservation. In addition, the Commission finds that the Company's proposed 1992-1993 Conservation Improvement Plan (CIP), which has recently been approved by the Commissioner of the Department, is also adequate for rate case purposes. See Minn. Stat. § 216B.16, subd. 1 (1990).

In the face of Department support for the Company's proposed rates, the lack of consumer opposition to them, the small size of the Company's operations in Minnesota, the level of increase requested, and the fact that the Wisconsin PSC recently approved the same rates after a full scale examination in a contested case proceeding, the Commission finds that it would be inappropriate to subject this matter to the same lengthy analysis and costly administrative hearing as it accords major contested rate cases.

In these circumstances, the Commission finds no reason to refer this matter for further analysis and development in a contested case proceeding. The record provides an adequate basis to conclude, and the Commission does conclude, that the rates proposed by NWEAC are fair and reasonable. Accordingly, the Commission will authorize the Company to place these rates into effect on or after July 15, 1992.

In so ordering, the Commission does not establish the size of particular components of the Company's rate calculation as precedent for any future rate case. For example, in calculating these rates, the Company used a return on equity (ROE) of 14.5 percent. In an Order such as this, where the Commission is simply finding that the proposed rates are fair and reasonable, the Commission need not find and does not find that the particular ROE is fair and reasonable. Where no party has objected to the Company's proposal and that proposal is supported

by the only intervenor in this matter (the Department), the Commission's approval of the proposed rates is in the nature of an acceptance of a settlement. Such an Order is supported by more general findings, i.e. that the settlement is in the public interest and is supported by substantial evidence. See Minn. Stat. § 216B.16, subd. 1a (1990).

Finally, the Commission finds that the Company's increased construction allowance charges and the increased charge for the second meter test in a 12 month period are fair and reasonable. The Commission will approve these changes.

ORDER

1. The electric rates and charges (construction allowance charge and the charge for the second meter test in a 12 month period) that Northwestern Wisconsin Electric Company (NWECC) proposed to charge its Minnesota customers are hereby approved.
2. Within 10 days of this Order, NWECC shall file tariff sheets to reflect the changes in rates and charges that have been approved in this Order.
3. NWECC shall be entitled to charge the new approved rates and assess the new approved charges on or after July 15, 1992.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)