

E-002/M-92-856 ORDER APPROVING COMPETITIVE RATE AGREEMENT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of Northern States
Power Company's Petition for a
Competitive Rate for McGlynn
Bakeries, Inc.

ISSUE DATE: November 4, 1992

DOCKET NO. E-002/M-92-856

ORDER APPROVING COMPETITIVE RATE
AGREEMENT

PROCEDURAL HISTORY

I. Proceedings to Date

In 1990 the Minnesota Legislature enacted legislation allowing electric utilities to offer service at reduced rates to large customers capable of meeting their energy needs through unregulated suppliers. Minn. Stat. § 216B.162 (1990). The goal was to protect captive customers from the rate increases that would be necessary if these large customers left the system and no longer contributed to fixed costs.

The statute established detailed requirements for reduced rates, called competitive rates, to prevent abuse. The statute also required that the Commission approve each utility's competitive rate schedule and each application of the schedule to a particular customer. As part of its last general rate case, Northern States Power Company proposed a competitive rate schedule, which the Commission approved.

On July 22, 1992 Northern States Power Company (NSP or the Company) filed a petition to offer rates under its competitive rate schedule to McGlynn Bakeries, Inc. at its Fridley site. On July 27, 1992 the Commission solicited comments on the Company's application.

On July 30, 1992 the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) filed notice that the Company had failed to serve the petition on the RUD-OAG, as required by statute. Minn. Stat. § 216B.162, subd. 7 (1990). The Company subsequently complied.

The Commission received comments on the Company's proposal from the Department of Public Service (the Department), the RUD-OAG, and Minnegasco, a Minnesota gas utility. Minnegasco stated that what prompted NSP to offer competitive rates to McGlynn Bakeries was a Minnegasco proposal to build a gas-fired cogeneration facility for the customer. Minnegasco challenged the appropriateness of allowing NSP to use competitive rates to compete with cogeneration, in light of the cogeneration statute's intent to provide maximum possible encouragement to cogeneration. Minn. Stat. § 216B.164, subd. 1 (1990). Minnegasco also questioned whether the retention of the McGlynn load was consistent with NSP's long term integrated resource plan, which includes greater reliance on cogeneration to defer the need for future construction.

The Department recommended approving NSP's proposal, stating it met applicable statutory guidelines. The RUD-OAG urged the Commission to subject competitive rate proposals involving cogeneration to strict scrutiny, but did not recommend a particular outcome.

Both the Department and the RUD-OAG stated the Company had failed to supply all the information required by statute in its initial filing, but had supplied it later in response to information requests. The Company did not dispute that claim. None of the parties recommended dismissal or denial of the petition on that basis.

The matter came before the Commission on October 23, 1992. The Commission heard oral argument from NSP, Minnegasco, the Department, and the Izaak Walton League. The Izaak Walton League expressed concern about the effect of competitive rates on the development of cogeneration and concern about potential conflict between the Company's resource plan cogeneration goals and the competitive rates at issue.

FINDINGS AND CONCLUSIONS

II. Commission Action

The issues in this case are whether the Company's competitive rates proposal complies with the terms of the competitive rates statute; whether it is consistent with the terms of the cogeneration statute; and whether it is consistent with the Company's integrated resource plan. The Commission finds that the proposal complies with the competitive rates statute and is consistent with both the cogeneration statute and the Company's integrated resource plan. Each issue will be addressed in turn.

A. The Competitive Rates Statute

Under the competitive rates statute, the Commission must make the following findings to approve competitive rates for McGlynn Bakeries:

- A. McGlynn can meet its energy requirements from a supplier that is not rate-regulated by the Commission;
- B. McGlynn is not likely to take service from NSP at standard rates;
- C. It is in the best interest of all other NSP customers for McGlynn to receive competitive rates;
- D. The proposed rate meets the following conditions, unless the Commission finds they should be waived.
 1. The proposed rates will recover at least the incremental cost of serving McGlynn, including any additional capacity or on-peak or off-peak differential that such service may require;
 2. The difference between the standard rate and the proposed rate does not exceed the difference between the standard rate and McGlynn's lowest cost energy alternative;
 3. The contract with McGlynn runs at least one year and no longer than five years;
 4. NSP will be allowed to seek recovery of the difference between the standard rate and the competitive rate in its next general rate case;
 5. NSP offers the competitive rate on a non-discriminatory basis to all customers within McGlynn's customer class;
 6. The proposed rate does not compete with any heating or cooling rate offered by a district heating utility;
 7. NSP does not have a financial interest in McGlynn exceeding 50%.

Minn. Stat. § 216B.162, subd. 7 (1990).

1. McGlynn Can Meet its Energy Requirements by Using an Unregulated Supplier.

McGlynn could meet its electric energy requirements by installing the natural gas cogeneration system Minnegasco proposes to build. Since Minnegasco's cogeneration activities are not regulated by the Commission, McGlynn would then be meeting its energy requirements without relying on a supplier regulated by the Commission.

2. McGlynn is Unlikely to Take Service from NSP at Standard Rates.

McGlynn has stated it will sign a contract with Minnegasco for a cogeneration facility rather than pay standard rates and has supplied NSP with contract documents and cost projections showing substantial cost savings from such a facility. It is clear that McGlynn is unlikely to continue taking service from NSP under standard rates.

3. Competitive Rates Will Serve the Best Interest of All Other NSP Customers.

McGlynn Bakeries is one of NSP's largest customers, and McGlynn revenues make a significant contribution to the fixed costs of the NSP system. Without that contribution, other customers' rates would eventually increase.

Clearly, it would be best for other customers to keep McGlynn on the system at standard rates. Barring that, however, it would be better for other customers to keep McGlynn on the system at reduced rates, with reduced contribution, than to lose McGlynn's contribution entirely. The Commission therefore finds that offering competitive rates to McGlynn is in the best interest of all NSP's other customers.

The Commission notes that in the long run NSP expects cogeneration facilities, like the one proposed here, to be important resources for meeting the energy needs of its service area. Since such facilities can often meet new demand at lower financial and environmental costs than new power plants, state and federal statutes strongly support the development of cogeneration. Clearly, cogeneration will play an important role in meeting Minnesota's future energy needs. The issue today, though, is whether NSP ratepayers are better served by having this cogeneration project go forward, and paying the rate increases that would entail, or by forgoing this particular project and paying lower rates. The Commission believes that in this case the disadvantages of higher rates outweigh the advantages of fostering this promising new resource.

4. The Proposed Rates Will Recover the Incremental Cost of Providing Service to McGlynn.

The statute requires that competitive rates recover at least the incremental cost of serving the customer, including the cost of any additional capacity and on-peak or off-peak differential that the service may require. This is a core requirement, since allowing rates that do not cover incremental cost would defeat the statutory purpose of avoiding the loss of the contribution large customers make to fixed costs. It is also a complex requirement, since determining incremental cost requires careful examination of competing factual and analytical scenarios.

The Department analyzed NSP's incremental cost of serving McGlynn using data from the Company's 1992 cogeneration filing. To calculate the cost of seasonal peaking capacity, the Department used two scenarios, one based on construction of a new gas turbine peaking unit and the other based on Company reliance on purchased power. The Department concluded that under either scenario, the proposed competitive rates covered incremental costs. The Commission concludes that the proposed rates meet the statutory requirement that they cover the incremental cost of providing service.

5. The Difference Between the Standard and Competitive Rates Does not Exceed the Difference Between Standard Rates and McGlynn's Lowest Cost Energy Alternative.

The statute also requires that the discount from the standard rate not exceed the difference between the standard rate and the customer's lowest cost energy alternative. The purpose is to avoid setting competitive rates any lower than they need to be to keep large customers from leaving the system.

NSP filed a copy of the contract under which Minnegasco would build the proposed cogeneration facility and a copy of the competitive rates contract it had offered McGlynn. NSP's competitive rates were set to compete with the savings McGlynn would realize under the cogeneration contract. The difference between NSP's standard rates and the proposed competitive rates does not exceed the difference between standard rates and the cost of the cogeneration project. The Commission concludes the statutory requirement has been met.

6. The Contract Meets Statutory Length Requirements.

The statute requires that competitive rate contracts run for at least one year and no more than five years. The McGlynn-NSP five year contract meets this requirement.

7. Recovery of Difference Between Standard Rates and Competitive Rates May be Sought in Rate Case.

The statute requires that the utility be allowed to seek recovery of the difference between standard rates and competitive rates in a general rate case. The Company stated its intent to seek such recovery in its next general rate case. Clearly, this statutory requirement is met.

8. NSP Offers Competitive Rates on a Non-Discriminatory Basis.

The statute also requires that utilities offering competitive rates do so on a non-discriminatory basis to all qualifying customers within the same customer class. The Commission finds that NSP offers competitive rates under its competitive rate tariff to all qualifying customers in McGlynn's customer class.

9. This Competitive Rate Contract Does Not Compete with District Heating or Cooling.

To further other policy goals, the statute prohibits any competitive rate contract that competes with heating or cooling service by a district heating utility. There is no district heating utility that could serve McGlynn; the contract meets this statutory requirement.

10. The utility offering the competitive rate does not have a financial interest exceeding 50% in the customer.

The statute generally forbids competitive rates for customers in whom the utility has a financial interest exceeding 50%. NSP has no financial interest in McGlynn; this statutory requirement is met.

B. The Cogeneration Statute

Minnegasco argued that granting this competitive rates application would undermine the intent of the cogeneration statute, which is stated as follows:

This section shall at all times be construed in accordance with its intent to give the maximum possible encouragement to cogeneration and small power production consistent with protection of ratepayers and the public.

Minn. Stat. § 216B.164, subd. 1 (1990).

The Department, the RUD-OAG, and the Izaak Walton League merely noted the potential conflict between promoting cogeneration and allowing competitive rates, and urged careful scrutiny of this application.

The Commission rejects the proposition that the cogeneration statute, by itself, requires the denial of competitive rates applications designed to compete with cogeneration projects. The Commission believes that each competitive rates application must be evaluated on its own merits, and that its effect on cogeneration is one of many factors the Commission must weigh in determining whether the application meets the statutory criteria.

The Commission does not read the "maximum possible encouragement" language of the cogeneration statute as broadly as Minnegasco does. The statutory language does not, after all, direct the Commission to interpret every other statute to provide maximum possible encouragement to cogeneration; it just directs the Commission to construe the cogeneration statute to accomplish that end. The Commission therefore does not consider the two statutes, or their underlying policies, to be in direct conflict with one another.

Furthermore, when the Legislature enacted the competitive rates statute, it was concerned about the potential conflict between cogeneration and competitive rates and chose to enact the statute anyway. Legislative concern was so intense, in fact, that the Legislature required the Department to conduct a "comprehensive evaluation of the impact of competitive electric rates on cogeneration and small power production in the state," and to report its findings by January 1995. Minn. Stat. § 216B.162, subd. 9 (1990). Significantly, however, the Legislature chose not to prohibit competition between competitive rates and cogeneration, as it prohibited competition between competitive rates and district heating utilities. Minn. Stat. § 216B.162, subd. 4 (6) (1990).

From this the Commission concludes that it should consider individual competitive rates applications on their own merits and should consider their effects on cogeneration only as those effects relate to the statutory factors for evaluating competitive rates applications. In this case, for example, in applying the "best interest of all other customers" test, the Commission weighed the advantages of promoting cogeneration against the advantages of avoiding a rate increase. The Commission determined it would be in the ratepayers' best interest to avoid the rate increase and forgo this particular cogeneration project. On different facts, the decision might have been different.

C. NSP's Integrated Resource Plan

Minnegasco and the Izaak Walton League suggested NSP's competitive rates proposal might be inconsistent with its 1991 integrated resource plan, which proposes to use cogeneration to defer future need for new capacity. The Commission agrees with the Company, however, that meeting future need is different from displacing existing load, which is what the proposed cogeneration facility would do.

D. The Official Date of the Company's Filing

The Company's July 22 filing did not contain all the information necessary to evaluate its competitive rates application. The Company did not supply all that information until August 11, in response to information requests served by the Department. NSP has assured the Commission, however, that this was due only to unfamiliarity with the competitive rates statute and procedures for evaluating competitive rates applications. The Commission will therefore accept the filing as complete on August 11, 1992, the date the Company supplied the missing information in response to the Department's information requests.

III. Conclusion

The Commission finds that the proposed competitive rates contract between Northern States Power Company and McGlynn Bakeries is consistent with NSP's competitive rate schedule, conforms with all statutory requirements, and is in the public interest. The Commission will approve it.

ORDER

1. The Competitive Service Rider to the Electric Service Agreement between Northern States Power Company and McGlynn Bakeries, filed on August 11, 1992, is approved.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)