

G-008/C-93-673 ORDER GRANTING VARIANCE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Marshall Johnson	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner

In the Matter of a Request by
Minnegasco for a Variance from
Minn. Rules, Part 7820.4000,
Billing Errors, in Order to
Provide a Refund Beyond the
Twelve Month Period Allowed for
in the Rule

ISSUE DATE: November 8, 1993

DOCKET NO. G-008/C-93-673

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PROCEDURAL HISTORY

On February 9, 1993, Enggrens Enterprises, Inc. (Enggrens) filed a complaint against Minnegasco. Enggrens alleged that Minnegasco had inadvertently overcharged it for gas service since 1971. Although Enggrens had received a credit from Minnegasco for one year's overcharges in the amount of \$2,495.61, Enggrens sought full restitution of overcharges since 1971. Enggrens requested a waiver of Minn. Rules, part 7820.4000, so that Minnegasco could be required to pay more than one year's overcharges.

Minnegasco filed an answer to the complaint on March 15, 1993. Minnegasco stated that Minn. Rules, part 7820.4000 should be applied to limit its refund to one year.

Enggrens submitted reply comments on March 31, 1993; Minnegasco filed reply comments on April 14, 1993.

On June 23, 1993, Enggrens and Minnegasco jointly submitted a request for a delay in the Commission's consideration of this matter.

On July 20, 1993, Minnegasco submitted a petition for a variance to Minn. Rules, part 7820.4000. Minnegasco explained that the parties had negotiated a settlement under which Minnegasco would pay Enggrens \$7,495.61, which represents approximately three years of overcharges. The parties agreed that this would settle the matter in full. The variance was requested so that Minnegasco could pay more than one year's refund.

Enggrens' complaint and Minnegasco's request for a variance came before the Commission for consideration on October 28, 1993.

FINDINGS AND CONCLUSIONS

I. Factual Background

Enggrens operates a Tom Thumb Superette in a shopping mall in Lakeville, Minnesota. A restaurant, the Ole Piper Inn, is situated next door to the Tom Thumb. In August of 1992, Minnegasco informed Enggrens that there had been a mistake in the meter reading for gas services to the Tom Thumb. Minnegasco had read the meter which was connected to the Ole Piper Inn for Tom Thumb's charges, and vice versa. Minnegasco issued Enggrens a credit for \$2,495.61, the amount by which Enggrens had been overcharged in the past year.

The parties agree that the gas lines and meters were installed in 1971. According to Minnegasco, there is no way to determine when and how the meter switch took place. The fault could lie with Minnegasco or with the piping contractor. According to Enggrens, the mistake was not in the connection of the meters but in Minnegasco's reading of the wrong meter. Enggrens agrees with Minnegasco that there is no way to determine when the error first arose.

Although the parties did not come to a consensus regarding the duration of the error or the origin of the error, the parties did agree to settle the matter completely for a total refund of \$7,495.61.

II. The Controlling Rule

Minn. Rules, part 7820.4000 states in relevant part:

When a customer has been overcharged or undercharged as a result of incorrect reading of the meter, incorrect application of rate schedule, incorrect connection of the meter, application of an incorrect multiplier or constant or other similar reasons, the amount of the overcharge shall be refunded to the customer or the amount of the undercharge may be billed to the customer. The refund or charge in no event shall exceed one year, unless the date the error occurred can be fixed with reasonable certainty, in which case the refund or charge shall be computed from that date, but in no event for a period longer than one year.

III. Commission Action

Minn. Rules, part 7830.4400 governs a request for a variance from Commission rule. The Commission may grant a request for variance when it appears to the Commission's satisfaction that:

1. Enforcement of the rule would impose an excessive burden upon the applicant or other affected by the rule;
2. Granting the variance would not adversely affect the public interest; and
3. Granting of the variance would not conflict with the standards imposed by law.

In this case, both Enggrens and Minnegasco would be burdened if the variance were not granted. The parties have reached a mutually satisfactory agreement which will allow them to settle the matter and move on in their business relationship. Because the disagreement arose from an error in Minnegasco's provision of service to a customer, the parties have come before the Commission seeking acknowledgement of their settlement and closure for the proceeding. The parties would be burdened if they were denied a variance under these circumstances.

Granting the variance would not adversely affect the public interest. An equitable, arms length settlement of a dispute between the parties is in the public interest. Payment of the overcharges by Minnegasco would not harm its ratepayers because Minnegasco has received an adjustment for one year's undercharges from its other customer, the Ole Piper Inn, and because Minnegasco does not intend to include the refund costs in a future rate case.

Granting the variance would not conflict with the standards imposed by law. The Commission has the discretion to vary this rule if it finds that it is in the best interests of ratepayers, the parties, and the general public.

The Commission has considered this particular settlement in the context of the unusual circumstances which arose between Minnegasco and Enggrens, and has determined that a variance is appropriate in this case. The Commission notes that a settlement is always specific to its facts. The Commission's decision to acknowledge the settlement and grant a variance in this case will offer little if any precedential value in other fact situations.

The Commission will grant Minnegasco a variance to Minn. Rules, part 7820.4000, so that Minnegasco may pay Enggrens the agreed upon three years of overcharges. Granting this variance means that Enggrens' complaint has in effect been resolved and is no longer relevant. Enggrens' request for a waiver of the rule is also moot. The Commission will therefore dismiss Enggrens' complaint.

ORDER

1. Minnegasco is granted a variance from Minn. Rules, part 7820.4000, so that Minnegasco may pay Enggrens the \$7,495.61 agreed upon by the parties.
2. Enggrens' complaint dated February 9, 1993, is dismissed.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Susan Mackenzie
Acting Executive Secretary

(S E A L)