

E-002/M-93-301 ORDER APPROVING CONTRACT AMENDMENT WITH  
MODIFICATIONS

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 a Petition by  
Northern States Power Company  
and North Star Steel for  
Approval of a Contract Amendment  
to Their Electric Service  
Agreement

ISSUE DATE: June 18, 1993  
DOCKET NO. E-002/M-93-301  
ORDER APPROVING CONTRACT  
AMENDMENT WITH MODIFICATIONS

**PROCEDURAL HISTORY**

On January 15, 1993, Northern States Power Company (NSP) and North Star Steel (NSS) filed a joint petition seeking Commission approval of a contract amendment to their Electric Service Agreement. The amendment would eliminate NSS's demand charge for increased load due to expansion of its St. Paul facilities.

The Department of Public Service (the Department) and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) filed a joint motion requesting that the petition be dismissed, or in the alternative that it be amended to state the legal and regulatory grounds upon which it was based. NSS and NSP responded with a joint request to withdraw their petition for contract amendment. The Commission granted the request for withdrawal in its April 9, 1993 ORDER ALLOWING WITHDRAWAL OF JOINT PETITION.

On April 16, 1993, NSS and NSP refiled a joint petition for amendment to their Electric Service Agreement. This time the amendment was meant to qualify as an application of Minn. Stat. § 216B.161, the Area Development Rate (ADR) statute. NSP therefore also filed a proposed revision to its pilot ADR project.

The United Steel Workers of America filed comments in support of the proposed contract amendment on April 23, 1993.

On April 28, 1993, Metal-Casters of Minnesota filed comments expressing concern regarding the terms of the proposed amendments. Metal-Casters later withdrew its opposition to the joint petition.

The RUD-OAG and the Department filed comments on April 28, 1993. The RUD-OAG supported the joint petition; the Department recommended acceptance of the proposed contract amendment and the proposed revision of NSP's ADR rider.

On May 14, 1993, the City of St. Paul filed comments in support of the proposed amendment to the Electric Service Agreement and the proposed modification of NSP's ADR rider.

The matter came before the Commission for consideration on May 27, 1993.

## FINDINGS AND CONCLUSIONS

### **I. Factual Background**

#### **A. The North Star Steel Facility**

NSS contemplated expansion of its St. Paul steel recycling mini-mill facility and installation of a new, higher efficiency electric arc furnace. The expansion would increase NSP's load by 35 MW. As an alternative to expansion, NSS also considered moving its facility to Wisconsin or expanding production at its Wilton, Iowa operation.

#### **B. The Area Development Rider**

In 1990 the Minnesota legislature passed Minn. Stat. § 216B.161, the Area Development Rate statute. As expressed in the statute, the purpose of the legislation is to assist industrial revitalization projects located within the service areas of participating utilities. ADRs are confined to new or expanding manufacturing or wholesale trade customers, and must recover at least the incremental cost of providing service.

NSP's ADR rider is a pilot program which allows a discount on certain customers' demand charges for a period of five years. Targeted customers are located within five specified "Area Development Zones" in St. Paul and Minneapolis.

### **II. Proposed Amendments**

#### **A. First Proposed Amendment to the Electric Service Agreement**

The first proposed amendment to the Electric Service Agreement (First Amendment), filed January 15, 1993, was termed a "resource recycling and energy efficiency incentive discount." Under the terms of the First Amendment, a Demand Charge Incentive Discount

would be applied to the incremental load associated with the expansion of NSS's St. Paul facility. The discount would be sufficient to result in a zero demand charge for the incremental load for the eight year term of the Amendment. Although the Incentive Discount would apply only to new load, the parties also agreed that all load associated with the St. Paul facility, both existing and new, would continue to be served under NSP's interruptible rate for the term of the Amendment.

The First Amendment would go into effect upon NSS's certification of completion of its updated, lower-emission facilities. The parties agreed to cooperate in developing and implementing a Conservation Improvement Plan which would ensure that all of NSS's St. Paul facilities would be constructed and operated to achieve the highest economically appropriate efficiency level.

**B. Second Proposed Amendment to the Electric Service Agreement**

After the Department and the RUD-OAG questioned the regulatory grounds for the First Amendment, the parties developed and submitted a second proposed amendment to their Electric Service Agreement (the Second Amendment). This amendment was termed an "area development, resource recycling and energy efficiency incentive discount."

The Second Amendment was drafted to qualify as an application of the ADR statute, Minn. Stat. § 216B.161. By bringing the Second Amendment under the umbrella of the ADR statute, the parties hoped to provide the clear regulatory framework sought by the Department and the RUD-OAG. The Second Amendment would extend for five years instead of eight, allowing it to conform with the five year term limitation of NSP's pilot ADR. Because a demand discount alone would not reduce costs sufficiently over five years, the parties agreed that the Second Amendment would allow a discount through reduced energy charges in addition to the reduced demand charges. Both discounts would apply only to the incremental load of the St. Paul facility expansion. According to NSP's estimates, the net revenues associated with the incremental load over five years would be approximately \$4.7 million.

In order to bring the terms of the Second Amendment in conformity with the ADR statute, NSP would facilitate the inclusion of the NSS St. Paul facilities in an ADR zone. The Port Authority of the City of St. Paul indicated that it was willing to shift an existing ADR zone to a new site which would include the NSS facility.

### **C. Proposed Amendment to NSP's ADR Rider**

NSP filed a proposed amendment to its ADR tariff in order to bring the tariff into harmony with the Second Amendment to the Electric Service Agreement.

NSP's current ADR rider provides for demand charge discounts for qualifying customers at levels ranging from 50 percent in the first year to 20 percent in the fifth and final year. There are currently no energy charge discounts included in NSP's ADR rider.

Under the proposed amendment to the ADR tariff, a Special Competitive Market Adjustment would allow NSP to determine individual demand or energy charge discounts for any customer which meets the following criteria:

1. The customer's production process must be highly energy intensive. The customer must provide evidence showing that its energy costs will equal at least 10 percent of its total production costs;
2. The market for the customer's energy requirements must be competitive. The customer must provide evidence of this competition through the existence of:
  - a. A direct competitor who obtains electric energy from another utility at rates lower than NSP's comparable standard rates; or
  - b. A directly substitutable alternative energy source, as described in Minn. Stat. § 216B.162;
3. The customer must make new capital investments in electric energy-using capital equipment equal to or greater than \$750 per kW of Qualified Billing Demand;
4. The customer must take service under one of NSP's interruptible rate schedules.

### **III. Comments of the RUD-OAG and the Department**

#### **A. The RUD-OAG**

The RUD-OAG submitted comments in favor of the Second Amendment to the NSP/NSS Electric Service Agreement. The RUD-OAG stated that the proposed amendment was in compliance with the requirements of Minn. Stat. § 216B.161. The agency stated that the amendment would strengthen NSS's ability to compete in the marketplace and would preserve important jobs and benefits in Minnesota.

## **B. The Department**

In the past, the Department had expressed opposition to NSP's ADR rider. According to the Department, the ADR had not benefitted NSP ratepayers and had not induced new customers to move or expand into NSP's service territory.

The Department stated that the proposed amendment to the ADR would allow NSP to use the ADR concept to the benefit of ratepayers and the community. The rider would allow NSP to design a more flexible tariff which the Company could use to negotiate individually with large, energy-intensive customers who have competitive alternatives to NSP.

The Department recommended one safeguard for the proposed ADR amendment. Because customers would be receiving large discounts under the rider, NSP should provide documentation that ratepayers will benefit from the proposed discount. The Department recommended that the Commission require NSP to submit each application of the Special Competitive Market Adjustment for separate approval.

Finally, the Department analyzed the Second Amendment to the NSP/NSS Electric Service Agreement under the new ADR provisions. The Department concluded that the Second Amendment complies with the qualifying criteria outlined in the Special Competitive Market Adjustment provision.

## **III. Commission Analysis**

### **A. Benefits of an Amendment to the NSP/NSS Electric Service Agreement**

The Commission agrees with the Companies, the Department, the RUD-OAG and other commenting parties that an NSP/NSS Electric Service Agreement which allows NSS to expand and update its St. Paul facilities is a desirable goal. The agreement will provide contractual stability for both NSP and NSS. The expansion of the St. Paul facility will enable NSS to operate in a more efficient and environmentally sound manner. An agreement between NSP and NSS is likely to have a positive effect on area employment and economic health.

### **B. The Second Amendment**

While the parties agreed that an expanded Electric Service Agreement between NSS and NSP is desirable, the Department and the RUD-OAG questioned the regulatory basis for the proposed discount in the First Amendment. Before the First Amendment actually came before the Commission for consideration, it was withdrawn and redrawn in an effort to fit more clearly into a regulatory framework. The result was the Second Amendment, redrafted to fit into the ADR structure.

The Commission is unconvinced that this effort to fit a desirable but "square" Contract Amendment into a "round" regulatory hole is the best means of approaching the NSS/NSP Electric Service Agreement. Because of the five year time constraint under NSP's ADR rider, the discount under the Second Amendment was extended to energy charges as well as demand charges. The statutory basis for this expansion is unclear, however, since the ADR statute specifically mentions reductions in demand charges but does not speak to energy charges. Because of this statutory uncertainty, an alternative of extending the discount beyond incremental load to existing load was discussed. This concept seems more doubtful under the ADR statute, which is meant to benefit "development or redevelopment," not existing facilities, within targeted zones.

The addition of the four qualifying criteria to NSP's ADR rider seems to move the ADR away from the concept of an economic development incentive towards a competitive rate. This trend is not clearly in harmony with the legislative intent of "industrial revitalization" expressed in the ADR statute.

For these reasons, linking the Second Amendment with NSP's ADR rider is an unsatisfactory structure for the amendment of the NSS/NSP Electric Service Agreement. There is no need for such a construction, since the Commission has adequate authority under its general powers to analyze and form determinations on a proposed contract amendment.

#### **C. The Commission's Statutory Authority**

Under Minn. Stat. § 216B.08, the Commission is "...vested with the powers, rights, functions, and jurisdiction to regulate ... every public utility as defined herein." Regulation of public utilities includes the authority to determine just and reasonable rates, as explained in Minn. Stat. § 216B.03:

Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable and consistent in application to a class of consumers.

The Commission thus clearly possesses the broad statutory authority to determine if a proposed amendment to NSP's and NSS's Electric Service Agreement is just, reasonable, and appropriate.

#### **D. Consideration of the First Amendment**

Because the Second Amendment is problematic on a number of counts, and because the Commission possesses the general authority to make findings on any proposed Contract Amendment,

the Commission will turn its analysis to the terms of the parties' First Amendment. The First Amendment expressed the negotiated agreement between NSP and NSS. In order to address questions raised by the RUD-OAG and the Department, the First Amendment was withdrawn and an ADR structure was superimposed upon it. The Commission has now found that the ADR structure of the Second Amendment is inappropriate in this set of facts. When that structure is removed from the Second Amendment, the substantive terms of the First Amendment, which remained unchanged, are left. As shown in the Companies' filings, the projected value of the discount over the contract term and the net revenue effect on NSP also remained virtually unchanged. The Commission will therefore consider the terms of the First Amendment in this proceeding.

#### **E. The First Amendment**

The First Amendment represents the product of arms' length negotiations between the parties, without regard to the imposition of the ADR structure. This Amendment is a reasonable means of answering NSS's expanded power needs while providing NSP with an appropriate source of revenue. The eight year contract term provides NSP revenue stability and NSS sufficient security to make long term plans for recouping its investment in its facility expansion.

Because the 35 MW under the Agreement will be interruptible, the additional load will not impact NSP's system peak demand. The additional interruptible load should help NSP to utilize its system more effectively during non-peak times.

The Commission finds that the terms of the First Amendment are appropriate, reasonable, and nondiscriminatory, **if** the criteria for qualifying for the rate are clearly spelled out. Similarly situated utilities should be able to avail themselves of the terms of the Amendment. The Commission will therefore require that the criteria of the Special Competitive Market Adjustment, presently proposed as a revision of the ADR, be adopted as a separate rider to NSP's interruptible tariffs. With this change, clear guidelines will be set out for any other large NSP customer who might submit a proposal for a discounted rate in order to retain competitiveness.

The Commission will therefore approve the terms expressed in the parties' First Amendment, with the requirement that the Special Competitive Market Adjustment criteria be added as a rider to NSP's interruptible tariffs.

ORDER

1. The Commission approves the terms of the parties' Amendment to Electric Service Agreement filed January 15, 1993.
2. NSP shall add the Special Competitive Market Adjustment criteria as a rider to its interruptible tariffs.
3. Within 15 days of the date of this Order, the Companies shall file a revised Amendment to Service Agreement and NSP shall file a revised rider to its interruptible tariffs, reflecting the findings of this Order.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)