

G-002/AI-94-670 ORDER APPROVING AFFILIATE TRANSACTIONS, GRANTING  
VARIANCE, AND REQUIRING FILINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Tom Burton  
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Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Petition by Northern States  
Power Company Gas Utility for Approval of  
Certain Gas Supply Purchases from Its Affiliate  
Northern States Power Company (Wisconsin)

ISSUE DATE: January 19, 1995

DOCKET NO. G-002/AI-94-670

ORDER APPROVING AFFILIATE  
TRANSACTIONS, GRANTING VARIANCE,  
AND REQUIRING FILINGS

**PROCEDURAL HISTORY**

On July 19, 1994, Northern States Power Company Gas Utility (NSP Gas or the Company) filed a petition seeking approval of certain gas supply purchases from its affiliate, NSP-Wisconsin (NSPW).

On September 19, 1994, the Department of Public Service (the Department) filed comments generally supporting the request.

On September 29, 1994, NSP Gas filed reply comments.

The matter came before the Commission for consideration on January 5, 1995.

**FINDINGS AND CONCLUSIONS**

**I. THE NSP GAS PETITION**

The petition filed by NSP Gas included three requests. First, the Company sought Commission approval of affiliated interest transactions in which NSP Gas purchased gas supplies from NSPW during the months of June and July, 1993, and February, 1994. NSP Gas also requested a variance from Minn. Rules, Part 7825.2100 so that recovery of gas costs would not be precluded by the Company's untimely filing. Finally, the Company sought a ruling on recovering gas costs through the Purchased Gas Adjustment (PGA).

## **II. DEPARTMENT COMMENTS**

### **A. Affiliated Interest Transactions**

In the Department's opinion, the NSP Gas petition met the criteria for affiliated interest transactions found in governing statutes and rules.

The Department determined that the NSP Gas petition fulfilled the filing requirements for affiliated interest transactions found in Minn. Rules, Part 7825.2200, subd. B.

Minn. Stat. § 216B.48, subd. 3 states that contracts or arrangements between public utilities and affiliated interests will not be valid or effective unless and until the contract or arrangement has received the written approval of the Commission. The utility must prove to the Commission's satisfaction that the contract is reasonable and consistent with the public interest.

The Department stated that the approximately \$60,000 saved by the Company's gas purchases from its affiliate made the affiliate transaction not only consistent with, but **in** the public interest.

The Department noted that Minn. Stat. § 216B.48, subd. 3 requires a utility to provide information about the affiliate's cost of furnishing property to the utility, except when it is reasonable not to require this information. The NSP Gas filing did not include complete information regarding NSPW gas costs. The Department stated that market information about spot gas prices is available and is more relevant than cost information which would be provided by the Company. For this reason, the Department recommended that the agreements be approved without complete information regarding costs to NSPW.

The Department was satisfied with the Company's reasons for its decision not to invite written bids. Pursuant to Minn. Rules, Part 7825.2300, the Department recommended that the Commission require NSP Gas to maintain a complete record of the transactions included in this petition, including all the bids submitted where a bidding process occurred, for review at any time in the future.

### **B. The Request for a Variance**

Minn. Rules, Part 7825.2100 provides in relevant part:

A public utility, prior to entering into a contract or agreement, or making any modifications or revisions to existing contracts or agreements with an affiliated interest, where the total consideration for such contract agreement is in excess of \$10,000...shall petition for and receive approval from the commission by formal written order.

This rule could render the NSP Gas/NSPW agreements invalid because the gas purchases were made in June and July, 1993, and February, 1994, and the Company did not seek approval until July, 1994. The Department recommended that the Commission vary the rule to allow the agreements to be found valid. The Department believed that the petition fulfilled the criteria for variance found in Minn. Rules, Part 7829.3200.

### **C. PGA Recovery**

Because the Department believed that the price of the gas purchases was reasonable and consistent with the public interest, the Department recommended that the Company be allowed to recover the costs through the PGA.

## **III. COMMISSION ACTION**

**A. Affiliated Interest Transactions**

The Commission agrees with the Department that the Company's affiliate transactions were reasonable and consistent with the public interest. The Company availed itself of an opportunity to save on gas costs through spot purchases, and ratepayers benefitted from the transactions.

The Commission also agrees that the Company's filing in general complies with the relevant statute and rules. The Commission finds, however, that the filing did not fulfill a requirement of Minn. Rules, Part 7825.2200, subd. B (3), which states that the filing should include:

a list and the past history of all contracts or agreements outstanding between the petitioner and affiliated interest, the consideration received by the affiliated interest for such contracts or agreements, and a verified summary of the relevant cost records pertaining to the same.

Upon inquiry, the Company informed the Commission that it had open gas supply sales arrangements with NSPW for three other types of gas supply and related services. Because this information is required under the aforementioned rule subdivision, the Commission will require NSP Gas to provide at minimum a list of outstanding contracts and agreements and their effective dates in the Company's next affiliated interest filing.

The Commission will also require the Company to maintain a record of all transactions covered in this petition, including bidding information, as recommended by the Department.

**B. The Request for a Variance**

The Commission agrees with the Department that Minn. Rules, Part 7825.2100, if strictly applied, would invalidate the transactions under the late-filed petition. The Commission also agrees with the Department that the rule should be varied to prevent invalidation of the transactions and to allow the Company recovery of its costs.

Minn. Rules, Part 7829.3200 provides that a variance may be granted when the following criteria are fulfilled: enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule; granting the variance would not adversely affect the public interest; and granting the variance would not conflict with standards imposed by law.

In this case, enforcement of the rule requiring Commission approval prior to entering into the affiliate transaction would impose an excessive burden upon the Company. The Company entered into the transactions because it saw an opportunity for gas cost savings through short-term spot purchases from its affiliate. The purchases were conducted by telephone and gas delivery commenced within 48 hours of the purchases. Invalidation of the contracts would preclude the Company from recovering its costs of these reasonable purchases.

Granting the variance to Minn. Rules, Part 7825.2100 would not adversely affect the public interest because the purchases were reasonable and resulted in savings to ratepayers of approximately \$67,000.

Allowing recovery of these costs should not set a precedent for future untimely filings for at least two reasons. First, the Company's counsel stated that he recently conducted training for Company personnel on statutory and rule requirements for affiliate transactions. This training

should facilitate future compliance with Commission requirements.<sup>1</sup> Second, the Company will be conducting future affiliate transactions with NSPW under an umbrella gas sales and capacity release agreement approved by the Commission on January 5, 1995.<sup>2</sup>

Granting the variance would not conflict with standards imposed by law. Minn. Stat. § 216B.48 does not invalidate agreements entered into prior to filing, but rather provides that the agreements will not be effective prior to Commission approval.

### **C. PGA Recovery**

The Commission agrees with the Department that the Company should be allowed the normal recovery of gas costs through the PGA. The affiliate transactions in the petition did not harm ratepayers and in at least two cases brought a savings benefit.

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<sup>1</sup> Because the Commission believes that adequate training in affiliate procedure is extremely important, the Commission will require NSP Gas to provide a summary of the training and a brief description of future procedures to prevent similar problems.

<sup>2</sup> Docket No. G-002/AI-94-838, In the Matter of the Request by Northern States Power Company for Approval of an Affiliated Interest Agreement Between Northern States Power Company Gas Utility and Northern States Power (Wisconsin).

## ORDER

1. The Commission approves NSP Gas's July 19, 1994, affiliated interest filing.
2. The Commission grants the Company a variance to Minn. Rules, Part 7825.2100 to allow the Company to recover the gas costs of purchasing gas supplies from NSPW in the 1994 true-up calculation for the June and July, 1993, and February, 1993, transactions.
3. NSP Gas shall maintain a complete record of the transactions covered in this petition, including all of the bids submitted where a bidding process occurred, for review at any time in the future.
4. Within 30 days of the date of this Order, NSP Gas shall provide a summary of the training given to its gas supply personnel on the requirements of the statute and rules regarding affiliate transactions. The filing shall include a brief description of the Company's planned procedures to prevent problems in the future.
5. In future affiliated interest filings, the Company shall provide at minimum a list of outstanding affiliate contracts and their effective dates.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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