

March 23, 1995

DOCKET NO. G-002/M-93-773

ORDER DENYING PETITION AFTER RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Joel Jacobs
Marshall Johnson
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition from Northern States
Power Company to Recover the Acquisition
Premium Associated with Its purchase of the
Viking Gas Transmission Company

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RECONSIDERATION

PROCEDURAL HISTORY

On August 11, 1993, Northern States Power Company (NSP or the Company) filed a petition requesting authorization of proposed accounting treatment for certain costs.

On February 9, 1994, the Commission issued an Order referring the matter to the Office of Administrative Hearings for contested case proceedings before an Administrative Law Judge (ALJ).

On November 21, 1994, following contested case proceedings, the Commission issued its ORDER DENYING PETITION FOR RECOVERY OF ACQUISITION PREMIUM THROUGH THE PGA. In that Order the Commission denied NSP's request to recover in retail gas rates a portion of the acquisition adjustment it incurred in its purchase of the Viking pipeline.¹ The Company's request was denied because it had sought recovery through the Purchased Gas Adjustment (PGA), which does not cover this type of cost. The Commission decision followed the ALJ's recommended finding.

In the November 21, 1994, Order, the Commission also adopted two other findings of the ALJ: 1) The Commission is not preempted by FERC jurisdiction; 2) The Commission has the authority under Minn. Stat. § 216B.16, subd. 6 (1992) to authorize the amortization as an unusual expense of a reasonable acquisition premium for nonjurisdictional property. According to the ALJ finding adopted by the Commission, the Company must prove in a rate case that it prudently incurred the expense to benefit Minnesota retail ratepayers.

On December 12, 1994, petitions for reconsideration were filed by the Department of Public Service (the Department) and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG).

¹ The Viking pipeline is now owned by the Viking Gas Transmission Company, an NSP subsidiary which is regulated by the Federal Energy Regulatory Commission (FERC).

On December 22, 1994, NSP filed its answer to the petitions for reconsideration.

On February 23, 1995, the matter came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

I. THE PETITIONS FOR RECONSIDERATION

A. The Department

The Department asked the Commission to reconsider its finding that it has the authority under Minn. Stat. § 216B.16, subd 6 to allow rate recovery of the Viking acquisition cost.

The Department stated that rate recovery cannot be allowed because the utility incurred no cost whatsoever. According to the Department, the "utility's unregulated parent company" acquired the unregulated affiliate and ratepayers therefore cannot be assessed the purchase cost.

The Department asked the Commission to find that rate recovery of the Viking premium would result in improper ratepayer subsidization of a nonregulated activity.

The Department urged the Commission to use this opportunity to reconsider its decision on Commission authority to allow rate recovery. The Department stated that the Commission should make the public policy decision now to disallow costs of the acquisition of the Viking pipeline. Reconsideration of the Commission's authority would mean that the parties would not need to contest the matter further in a rate case or other contested case proceeding.

B. The RUD-OAG

The RUD-OAG also asked the Commission to reconsider its finding that the Commission has the authority to allow rate recovery of the Viking acquisition premium under Minn. Stat. § 216B.16, subd. 6.

The RUD-OAG stated that an acquisition adjustment can only be examined under the used and useful analysis for inclusion in rate base. Because the acquired property is a nonjurisdictional asset, it cannot be considered used and useful to the utility and should not be charged to ratepayers.

The RUD-OAG argued that analysis as an expense rather than a rate base item still results in disallowance of the acquisition costs. The utility cannot recover in rates the expenses associated with a nonregulated asset owned by an entity other than the regulated utility.

Finally, the RUD-OAG argued that recovery of the Viking pipeline purchase price would amount to an illegal cross-subsidy to the nonregulated operation.

C. NSP Response

NSP cited several past decisions in which the Commission allowed NSP to reflect nonjurisdictional costs in jurisdictional rates when the Company demonstrated a net benefit to ratepayers.

NSP stated that the Department and RUD-OAG had used a number of fictions in their arguments against cost recovery of the Viking premium. Contrary to the agencies' assertions, Viking is not unregulated: Viking is regulated by FERC, which will not allow cost recovery because the benefits fall to retail ratepayers. NSP also

refuted the agencies' statements that NSP Gas is a regulated entity within the nonregulated NSP parent company.

NSP argued that cost recovery of the Viking premium would not result in subsidization of the nonregulated operation. If NSP were **not** allowed to recover the costs, the result would be a subsidization of NSP ratepayers by the Company shareholders.

II. COMMISSION ACTION

A. Introduction

In contested case proceedings, the ALJ determined that the Commission has the authority to allow recovery of the Viking acquisition premium in rates. The ALJ left open the question of the causal connection between the Viking acquisition and any benefits to ratepayers. The ALJ also declined to make a finding on the amount of gas cost savings, if any. The ALJ stated that the Company must pursue questions of causality and the quantification of ratepayer benefits in its next general rate case.

In the November 21, 1994, Order, the Commission adopted the ALJ's recommended findings.

On reconsideration, the RUD-OAG and Department have restated their original arguments regarding Commission authority and the possibility of improper cross-subsidization. The Commission was not convinced by these arguments in the original proceedings and sees nothing on reconsideration to merit altering its decisions. The Commission also remains convinced that issues of cross-subsidy are properly dealt with in rate case proceedings.

The Commission's analysis of the parties' main arguments follows.

B. The Used and Useful Analysis

The RUD-OAG's main argument on reconsideration is that the Commission lacks the authority to allow recovery of the Viking acquisition costs because the costs fail the used and useful analysis of Minn. Stat. § 216B.16.

The Commission finds that its central charge under Minn. Stat. § 216B.16 is the setting of just and reasonable rates. The statute also requires the Commission to:

give due consideration to the public need for adequate, efficient, and reasonable service and to the need of the public utility for revenue sufficient to enable it to meet the cost of furnishing the service...

Overemphasis on the used and useful standard for rate recovery can obscure the primary duties of the Commission. The ALJ noted this fact at p. 12 of his June 8, 1994, Recommended Order:

As courts recognize, the end result, just and reasonable rates, is more of concern than strict adherence to a used and useful concept. (Citations omitted.) The same standard of direct benefit and causal relationship as applies to rate base recovery should apply to an acquisition adjustment for nonjurisdictional property sought to be amortized as an expense. (Citations omitted.)

In its next general rate case, NSP will have the opportunity to prove that recovery of the costs of the

Viking acquisition will result in just and reasonable rates. The Company has stated that it will attempt to prove that it saw an investment opportunity to procure leverage on the Northern pipeline, took an appropriate risk in the investment, obtained the discount sought, and passed the savings to customers. Intervenor will have the opportunity to refute the Company's claims. If the Commission determines that the Company has shown that the acquisition investment is linked to just and reasonable rates, the Company will be eligible for rate recovery. It is within the purview of Minn. Stat. § 216B.16, and the Commission's authority, to make such a determination.

C. Recovering Expenses of Acquisition of a Nonjurisdictional Asset

The Department argued that the acquisition costs cannot be recovered, even if the costs are analyzed as expenses rather than as rate base items. The Department stated that the expenses were incurred to acquire a nonjurisdictional asset and therefore cannot be recovered.

The Commission finds that questions of causality and benefit to ratepayers are the primary focus in determining if these costs should be recovered. As the ALJ stated at p. 10 of his Recommended Order: "At bottom, the test of whether an expenditure should be incurred in an expense computation is one of the prudence and reasonableness of the expenditure." These issues will be addressed in general rate case proceedings. The Commission has the authority under Minn. Stat. § 216B.16 to determine the prudence and reasonableness of these expenses in that context.

D. Issues of Cross-Subsidization

Both the Department and the RUD-OAG asserted that issues of cross-subsidization must be decided in this proceeding and not in the Company's next general rate case. The RUD-OAG stated that "...once rate recovery is allowed subsidization will already have been permitted."

The Commission disagrees with these arguments. Traditionally, and in this proceeding, cross-subsidization is a rate case question. Only in a general rate case can issues of cross-subsidization be examined in the context of the utility's test year expenses, revenue, and rate design. Only in a general rate case can the prudence and reasonableness of the expense be determined. These determinations are the basis for a finding on the benefits of the expense to ratepayers. This process is necessary for issues of cross-subsidization to be meaningfully analyzed.

E. The Parties' Characterization of NSP Gas

Both the Department and the RUD-OAG stated that the Commission lacks authority to allow rate recovery because the NSP parent, not NSP Gas, purchased the pipeline, and because the NSP parent is not regulated. The Department stated that it:

...asks the Commission to reconsider its decision that regulated ratepayers may be ordered to pay for costs incurred by the utility's unregulated parent company in acquiring an unregulated affiliate.

The RUD-OAG stated that:

the Minnesota regulated utility took no action. NSP, not NSP-Gas, purchased a non-Minnesota regulated corporation which is now an affiliated interest of the regulated utility. ***** ...NSP-Gas, the Minnesota regulated utility, has incurred no costs in this transaction.

The Commission does not agree with the parties' characterization of NSP as a nonregulated entity. NSP, with its business unit NSP Gas, is considered a public utility under the Commission's jurisdiction. Neither does the Commission agree with the parties' argument that NSP's structure into business units precludes the Commission from consideration of cost recovery for the pipeline purchase. The Commission agrees with the ALJ that the Commission's authority is broad enough under Minn. Stat. § 216B.16, subd. 6 to allow recovery of these acquisition expenses, if benefit to NSP ratepayers is proven. The fact that NSP Gas is a business unit of NSP does not limit the Commission's authority to consider recovery of costs associated with the Viking pipeline purchase.

F. Conclusion

The Department and the RUD-OAG have asked the Commission to reconsider its November 21, 1994, decision and find that the Commission lacks authority to allow recovery of the Viking acquisition costs in rates. The Commission denies this request and reaffirms that its authority to allow cost recovery is firmly rooted in its statutory authority to set just and reasonable rates. Issues of benefit to ratepayers, quantification of savings, and possible cross-subsidization will properly be examined in the Company's next general rate case.

ORDER

1. The Commission denies the requests for reconsideration filed by the Department and the RUD-OAG.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)