

April 13, 1995

DOCKET NO. E-015/M-94-1220

ORDER DENYING PETITION FOR ECONOMIC DEVELOPMENT RIDER WITHOUT  
PREJUDICE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
Dee Knaak	Commissioner

In the Matter of a Petition for Approval of an Economic Development Rider for General Service and Large Light & Power Customers

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**PROCEDURAL HISTORY**

On December 30, 1994, Minnesota Power (MP) filed a petition requesting Commission approval of an Economic Development Rider for General Service (GS) and Large Light & Power (LL&P) customers.

On January 25, 1995, the Minnesota Department of Public Service (the Department) filed comments. The Department argued that the proposed rider is unreasonably discriminatory and recommended rejection.

On February 14, 1995, MP filed reply comments.

On March 30, 1995, the Commission met to consider this matter.

**FINDINGS AND CONCLUSIONS**

**A. MP'S PROPOSED RIDER**

The proposed rider applies to any existing or new customer qualifying for service under the existing General Service (GS) or Large Light & Power Service (LL&P) schedules. Eligible customers must also have a Standard Industrial Classification (SIC) of "manufacturing" (SIC Major Groups 20-39) or "wholesale trade" (SIC Major Groups 50-51). A "new" customer is required to demonstrate that it is new by meeting one of four criterion stated on page 2 of 3 in the rider attached as Exhibit A to MP's December 30, 1994 petition.

The proposed rider reduces the demand charge associated with the customer's qualifying load. The qualified billing demand will be reduced by 50 percent for the first three years on the rider and 25 percent for the fourth year.

The proposed rider requires that the customer sign an electric service agreement (or amendment of an existing agreement) with MP for five years after the effective date on which the customer commences taking service under the rider. The Company's customer operations guidelines require an initial five year contract for GS and LL&P customers with loads between 3 and 10 MW.

The terms of the rider provide that the Company can refuse service under two conditions:

First, the Company may refuse service to customers whose economic development benefits (from the Company) exceed those provided through the Company's standard economic development programs.

Second, the Company may refuse service to customers whose service under the rider would provide an unfair competitive advantage over existing customers in direct competition.

The Company may otherwise decline to provide service under the rider only if conditions on the Company's system change so that capacity and/or energy requirements can not be supplied economically or service reliability is endangered. Once a customer has commenced taking service under the rider, however, the Company will honor its commitment to provide such service for the duration of the agreement.

## **B. THE DEPARTMENT'S COMMENTS**

The Department noted that Minn. Stat. § 216B.03 requires that rates be just and reasonable and that rates not be unreasonably preferential, unreasonably prejudicial, or discriminatory, but should be sufficient, equitable, and consistent in application to a class of consumers. According to the Department, MP's proposed rider potentially violates this statute because it is available only to new or expanding GS and LL&P customers who have the manufacturing and wholesale Standard Industrial Classification (SIC) code designation.

The Department maintained that manufacturing and wholesale customers in the same class can only be treated differently from other customers in the class if:

- the Commission approves a separate rate class for these customers
- the proposed rider complies with Minn. Stat. § 216B.161 as an Area Development Rider (ADR) and
- the Commission determines that the discrimination is reasonable

The Department alleged that the proposed rider is unreasonably discriminatory. It argued that a 1988 Dakota Electric Association (DEA) case (Docket No. E-111/M-88-465) provides the controlling precedent for this case. The Department stated that in the DEA case, the Commission rejected the Cooperative's request for an economic development rate on the basis that offering different rates to similarly situated customers, based *solely on when they first became customers*, would be unreasonably discriminatory. The Department noted that DEA's proposal was similar to MP's in that it would apply to both new load and load expansion of existing customers.

In addition, the Department cited Docket No. E-002/M-89-795, in which Northern States Power (NSP) proposed an area development rider. In that case, both the Department and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) argued that NSP's proposed rider was discriminatory. In those circumstances, according to the Department, the Commission chose to postpone making a determination on the legality of NSP's proposal, stating that the Legislature was currently considering a bill to establish at least one pilot area development rate.<sup>1</sup> The Commission noted that if the area development rate bill was passed into law, it would provide guidelines for choice of targeting zones, rates to be applied, and classes of customers to be provided discounts.

The Department argued that the subsequently enacted area development statute (Minn. Stat. § 216B.161) provides the guidelines and defines the legality for economic development rates. According to the Department, since MP's proposed rider does not comply with the area development statute, it should be rejected.

### **C. MP'S FILED RESPONSE**

MP replied that the Commission had greater authority in setting rates than the Department acknowledged. First, the Company argued that the Commission has authority to adopt economic development rates. The Company noted that in the Commission's "Report and Recommendation to the Legislature on Area Development Rates (December 1994)," the Commission stated its belief that the Commission "currently has the general authority to grant economic development rates."<sup>2</sup> The Company also characterized the Commission's April 4, 1990 Order in Docket No. E-002/M-89-795 as asserting the authority to authorize a general economic development rate.<sup>3</sup>

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<sup>1</sup> See In the Matter of Northern States Power Company's Proposed Area Development Rider, Docket No. E-002/M-89-795, ORDER SUSPENDING PROPOSED TARIFF (April 4, 1990).

<sup>2</sup> Report at page 5.

<sup>3</sup> In its Order, the Commission stated that if the pending area development rate bill does not pass into law the Commission will determine the legality and fairness of NSP's proposal without specific legislative guidance. This would be a perfectly appropriate exercise of

The Company argued that the subsequently enacted Area Development Statute (Minn. Stat. § 216B.161) which guides the creation of specific and geographically limited economic development rates does not delimit the Commission's authority to approve economic development rates. The Company argued that the Commission 1) has reserved the right to consider economic development rates generally and 2) has indicated that Minn. Stat. § 216B.161 applies only to a subset of economic development rates, *area-specific* economic development rates.

In response to the DEA Order cited by the Department, MP denied that this case supplies a controlling precedent. MP noted that the DEA rate rejected by the Commission was different from the Company's proposed rider because under MP's rider customers are required to make significant capital investments that ensure that the customer will remain in business within the Company's service area for a long period of time. In addition, MP noted that eligibility for its proposed rider is not based solely on when a business first became a customer, as was the case with DEA's proposed rate.

Finally, MP denied that its proposed rider was "unreasonably" discriminatory. In support of the reasonableness of the rider's discrimination, the Company noted that the rider authorizes the Company to refuse service to a customer if such service would provide the customer an unfair competitive advantage over existing customers in direct competition. By exercising this condition, MP argued, it would prevent competitive harm to existing customers. In addition, MP reiterated its argument that the Legislature and the Commission have previously endorsed the practice of differentiating between industrial customers based on SIC codes for the purpose of limiting rate offerings.

Finally, MP stated that business customers have confirmed their support for programs and service offerings that enhance economic development.

#### **D. MP'S ARGUMENTS AT HEARING**

At the hearing, MP made arguments and asserted facts not contained in its filed arguments. The Company argued that market conditions made it essential that MP have a marketing tool such as the proposed rider. The Company claimed that without such a tool, it would be difficult to retain its GS and LL&P load in the face of growing competitive forces within the industry. Emphasizing that the rider would only be available to customers committing to a five-year contract, the Company stated that the rider would help shore up the Company's position in the GS and LL&P market and stabilize its load to these classes over the coming years.

#### **E. COMMISSION ACTION**

The Commission certainly supports economic development in principle. In the absence of specific legislative mandates and direction, however, it is unclear what the Commission's proper role should be with respect to fostering economic development in Minnesota. This is a major policy issue.

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Commission discretion. Order at page 2.

In addition, there are several other issues regarding MP's proposal that could benefit from further development. Without limitation, the following is a list of additional issues that MP should address in any subsequent economic development rate proposal:

- whether MP's proposed rider should be called, characterized, and analyzed as an economic development rate or whether it belongs to some other category;
- specification of the direct and indirect benefits to ratepayers and shareholders from a rate such as MP has proposed and explanation of exactly how such benefits result from the proposed rate;
- the status and applicability of the decision in the December 23, 1988 Order in Docket No. E-111/M-88-465 that DEA's proposal, different rates to similarly situated customers based solely on when they first became customers, was unreasonably discriminatory;
- whether a provision allowing the Company to determine whether a customer receiving the discount has an unfair competitive advantage over an existing customer introduces a potentially unduly discriminatory aspect or feature to the rate offering;
- the benefits of approving the rider on a pilot basis;
- whether a longer contract term (6 - 10 years) would be more appropriate;
- full rationale for proposal to limit eligibility for the rate to wholesale and manufacturing customers within the GS and LL&P class;
- clarification of and rationale for MP's second service condition which allows the Company to refuse service under the rider to customers whose economic development benefits from the Company exceed those provided through the Company's standard economic development programs;
- whether the rate should be made available as a service territory-wide discount or by Commission approval of individual contracts or discounted rates between MP and its customers on a case by case basis;
- the potential for and the desirability of MP's economic development rate fostering competition among Minnesota investor-owned utilities for C&I customers and conferring on MP a competitive advantage over other Minnesota investor-owned utilities;
- the effect of such a rate on MP's capacity situation and the desirability of

offering the rate to new and expanded load on an interruptible basis;

- description of the market conditions which would
  - 1) make it appropriate for MP to offer an economic development rate to all members of the GS and LL&P classes;
  - 2) make it appropriate to grant MP the authority to determine (on a case by case basis) that it is subject to "effective competition" with respect to a particular GS or LL&P customer and, therefore, offer that customer an "economic development" rate; and
  - 3) make it appropriate for the Commission to conclude, on a case by case basis, that the Company is subject to effective competition with respect to a particular customer (presented by MP) and therefore to authorize the Company to offer the customer an "economic development" rate
- specification of the market conditions in which MP currently operates; analysis of whether MP is subject to "effective competition" with any entity other than a Minnesota regulated utility with respect to any customers in its GS and LL&P classes; such an analysis would include 1) a list the customers who the Company believes would be appropriate recipients of the proposed rate in the next two years, 2) for each cited customer, the identity of the utility's competitor or competitors for the customer's current or increased load and 3) the capacity of such competitor(s), current or prospective, to compete with MP for any such load; and
- various cost recovery methods (cost splits between shareholders and ratepayers) for any approved economic development rate.

Because these issues have been insufficiently addressed in the record of this proceeding, the Commission will reject MP's filing without prejudice and permit the Company to refile its petition. In any refiled petition, the Company will address the concerns identified in this Order.

To clarify, the list of issues presented in this Order is not intended to limit the scope of any future proceeding but is intended to identify for the parties some of the Commission's current concerns regarding such a proposal and to assure that, in any future proceedings, at least these

issues will be substantially developed for Commission consideration. In the course of the new proceeding, it is expected that the parties will develop the record fully with respect to these and any other issues that they and the Commission may deem relevant at that time.

**ORDER**

1. Minnesota Power Company's (MP's or the Company's) proposed economic development rider is denied without prejudice.
2. If the MP refiles a petition for such a rider, the Company shall address the issues identified in this Order as part of its petition.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)