

In the Matter of a Petition of Northern States Power Company - Gas Utility for Approval of Affiliated Interest Agreements Between Northern States Power Company - Gas and Northern States Power Company (Wisconsin) and Viking Gas Transmission Company for SCADA and Dispatching Services

ISSUE DATE: December 5, 1995

DOCKET NO. G-002/AI-94-831

ORDER APPROVING AFFILIATED INTEREST CONTRACTS, GRANTING VARIANCE AND REQUIRING INFORMATION IN NEXT RATE CASE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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PROCEDURAL HISTORY

On September 6, 1994, Northern States Power Company - Gas Utility (NSP Gas or the Company) submitted a petition for approval of affiliated interest agreements with Northern States Power Company - Wisconsin (NSPW) and Viking Gas Transmission Company (Viking). The agreements are for the allocation of costs for Supervisory Control and Data Acquisition (SCADA) and dispatching services to be provided to NSPW and Viking by NSP Gas.

On October 11, 1994, NSP Gas submitted a supplement to its petition requesting a variance from Minn. Rules 7825.2200, subp. B (3) which requires information to be filed regarding previous agreements between the petitioner and the affiliated interest.

On November 7, 1994, the Minnesota Department of Public Service (the Department) filed its comments. The Department recommended approval of the petition with modifications. The Department recommended that: (1) the Company be required to file for a variance from Rule 7825.2100 regarding pre-approval by the Commission for affiliated interest agreements, (2) the Company file an Administrative Services Agreement with NSPW, and (3) file information about SCADA costs and allocations in its next rate case.

On November 17, 1994, the Company filed its reply comments. The Company disagreed with most of the Department's recommended modifications.

On March 23, 1995, this filing came before the Commission for consideration. The issue was tabled so more information could be gathered.

On April 12, 1995, the Commission issued a Notice of Additional Filing Requirements and Comment Period. NSP Gas was to provide a detailed schedule of all costs that would be

allocated on a fully allocated basis to the SCADA and gas dispatching function. NSP Gas and the Department were also directed to analyze the legal effect of failure to obtain Commission approval of the contract upon the contract and on rates charged by the utility.

On June 19, 1995, NSP Gas submitted additional comments pursuant to the Commission Notice.

On July 19, 1995, the Department submitted reply comments.

On August 18, 1995, the Company submitted supplemental information requesting that the Commission allow that information to be included in the record.

On October 12, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. NSP's Request

NSP asked the Commission to approve two affiliated interest agreements regarding supervisory control and data acquisition agreements (SCADA Agreements) executed by NSP - Gas Utility. The agreements are between NSP Gas and Viking Gas Transmission Company (Viking) and NSP Gas and Northern States Power Company - Wisconsin (NSPW). The Company requested approval of the agreement with Viking effective July 1, 1994 and approval of the agreement with NSPW effective August 1, 1994.

In conjunction with its request for approval of the two affiliated interest agreements, the Company requested a variance from the requirement that its filing include the information referred to in Minn. Rules, Part 7825.2200, subp. B (3).

B. The Department's Comments

The Department recommended that the Commission

1. direct the Company to request a variance from the prior approval requirement of Minn. Rules, Part 7825.2100 prior to approval of the petition;
2. grant the Company a variance, limited to this instance, from the requirement of Minn. Rules, Part 7825.2200, B (3) that the Company include certain information with its filing but direct the Company to comply with this rule in the future and file an Administrative Services Agreement (ASA) with NSPW within 60 days of this Order; and
3. if the variances are approved, approve the current contracts and require the Company to file certain information as part of NSP's next general rate case.

In support of the reasonableness of the Company's affiliated interest contracts and their consistency with the public interest, the Department relied primarily on two points: 1) the

contracts provide for an allocation of most of the SCADA and dispatch costs and the joint use of the NSP Gas SCADA and dispatch systems take advantages of economics of scale and 2) the agreements reduce the costs allocated to NSP Gas ratepayers by the considerable amount paid by NSPW and Viking.

C. Commission Analysis and Action

1. Variance

The Commission will grant the Company a variance from the provisions of Minn. Rules, Part 7825.2100 which required the Company to obtain Commission approval of the contracts before entering into them. The Commission finds that the conditions for granting a variance established in Minn. Rules, Part 7829.3200 are met in this case. For the reasons set forth in the Company's Reply Comments filed November 17, 1994, enforcement of the rule would impose an excessive burden upon the Company and granting the variance would not adversely affect the public interest. Finally, the Commission finds that since the pre-approval requirement exists solely due to Commission rule, granting the variance would not conflict with standards imposed by law, as that term is used Minn. Rules, Part 7829.3200, subp. 1C.

2. Issues Meriting Discussion

a. Fully Allocated Costing

In its September 28, 1994 ORDER SETTING FILING REQUIREMENTS in Docket No. G,E-999/CI-90-1008, the Commission directed all the utility parties in that proceeding (including NSP Gas) to adopt fully allocated costing to assign and allocate costs between regulated and non-regulated activities, unless a party could demonstrate that its non-regulated activities are insignificant or that the public interest would be better served by another method.¹

The Company did not fully allocate the costs of performing these contracts between the parties and in its Supplemental Filing (June 19, 1995) questioned whether the Commission's fully allocated costing policy would apply to these affiliated interest agreements because all the companies involved are regulated companies.

The Commission has not adopted that circumstance as an exception to its preference for fully allocated costing.

In the above-cited September 28, 1994 Order, the Commission stated:

¹ In the Matter of an Investigation into the Competitive Impact of Appliance Sales and Service Practices of Minnesota Gas and Electric Utilities, Docket No. G,E-999/CI-90-1008 (September 28, 1994), Ordering Paragraph 1 on page 7.

The Commission will require the parties to adopt fully allocated costing to assign and allocate costs between regulated and non-regulated activities, *unless a party demonstrates* that a utility's non-regulated activities are insignificant, or that the public interest is better served by another method. Order at page 4. Emphasis added.

Whether through oversight, price competition reasons, or some other reason, NSP Gas negotiated these agreements using something other than fully allocated costing. In general, when a utility wants to use an alternative costing method it should present its arguments justifying the alternative method in its initial filing requesting approval of the affiliated interest contract. At this point, however, due to the uncertainty of the relationship of the companies resulting from the proposed merger, the Commission finds that in this instance, a rate case would be the best forum to resolve the costing question.

b. Reasonable and Consistent With the Public Interest

Even with the cost allocation issue not fully resolved at this time, the Commission finds that the contracts in question meet the two tests applicable to affiliated interest contracts: reasonableness and consistency with the public interest. Minn. Stat. § 216B.48, subd. 3 (1995). The two contracts contain identical terms and conditions. Having analyzed the contracts, the Commission finds that the revenue received by NSP Gas from Viking and NSPW under these contracts reduces the cost allocated to NSP Gas ratepayers significantly.

c. Effective Date of the Contracts

Minn. Stat. § 216B.48 (1995) does not dictate a particular result regarding the effective date of affiliated interest contracts. The statute provides, in pertinent part, that no contract between a public utility and an affiliated interest is “valid or effective unless and until the contract or arrangement has received the written approval of the commission.” The Commission’s written approval could indicate prospective approval, it could incorporate a date in the executed contract, or the Commission could select another date if it had a reasonable basis for that date. The importance of the effective date given an approved affiliated contract is considerably reduced when as in this case, it will have no immediate rate impact. Note that the Commission’s view would be different if the contract somehow impacted the PGA. It should be further noted that Commission approval of the affiliated interest contract does not guarantee subsequent rate recovery. See, Minn. Stat. § 216B.48, subd. 5 (1995) and Minn. Stat. §216.48, subd. 6 (1995).

In this case, the Commission has reviewed the contracts in question and found them reasonable and consistent with the public interest. It is axiomatic that they were, therefore, reasonable from the date they were entered into. As such, the Commission will approve them effective on the dates they were signed, July 1, 1994 (Viking) and August 1, 1994 (NSPW).

3. Conclusion

Based on the foregoing analysis, the Commission will approve the affiliated interest agreements at issue in this matter effective on the dates they were signed, July 1, 1994 for the NSP-Gas/Viking contract and August 1, 1994 for the NSP Gas/NSPW contract. See Ordering

Paragraph 1. Related to the Company's petition, the Commission grants it a variance from the pre-approval requirement of Minn. Rules, Part 7825.2100 as discussed above at page 4. See Ordering Paragraph 2. The Commission clarifies, however, that its ultimate decision regarding the reasonableness and rate impact of the contracts will be made during the Company's next rate case.

Further, as a basis for considering in the rate case the cost allocation issue noted in this Order, the Company will be required to provide in that rate case specific information, as listed in Ordering Paragraph 3. In the meantime, the Commission notes that if the Company chooses to negotiate a contract selling services, steam, etc. generated using utility assets at a price based on less than fully allocated costs, then the Company is at risk for recovery of the difference between the costs used to determine the contract price and fully allocated costs unless it can conclusively demonstrate in its first rate case following the agreement that the public interest is better served by another method.

ORDER

1. The affiliated interest contracts between NSP Gas and Viking and between NSP Gas and NSPW are approved, effective July 1, 1994 and August 1, 1994, respectively.
2. The Company is granted a variance from the prior approval requirement of Minn. Rules, Part 7825.2100.
3. As part of its next general rate case filing, the Company shall file the following additional testimony and exhibits:
 - direct testimony and exhibits on the accounting and cost allocation for SCADA and dispatching service;
 - a schedule showing the SCADA-related costs included in the current contracts and all Administrative Service Agreements (ASA) costs for both the Rice Street control room and the Wescott SCADA workstation by cost component for the test year including allocation of ASA costs to NSPW;
 - workpapers that develop overhead rates and labor costs;
 - allocation factors based on the number of Remote Terminal Units (RTUs) owned by each entity; and
 - substantiation of its claim that the contract costs cannot be increased without becoming noncompetitive i.e. that fully allocated costs are above the price available from competitors.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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