

ISSUE DATE: April 3, 1998

DOCKET NO. G-002/CIP-96-440.04

ORDER AFFIRMING DECISION OF COMMISSIONER OF DEPARTMENT OF PUBLIC
SERVICE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey	Chair
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayner	Commissioner
Gregory Scott	Commissioner

In the Matter of the Neighborhood Energy Consortium's Appeal of the Commissioner of Public Service's Decision to Discontinue the Redesigned Insulation Project

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PROCEDURAL HISTORY

On December 15, 1997 the Saint Paul Neighborhood Energy Consortium (the NEC) filed an appeal under Minn. Stat. § 216B.241 from the decision of the Commissioner of the Department of Public Service to eliminate an NEC project, the Redesigned Insulation Project, from the Conservation Improvement Program of Northern States Power Company (NSP) - Gas Utility. The NEC claimed that without the Redesigned Insulation Project, the Company's Conservation Improvement Program did not meet statutory standards.

On January 30, 1998 this Commission issued an Order accepting jurisdiction over the appeal, establishing the procedural framework for deciding the case, and staying the Commissioner's decision until April 1, 1998.

On February 11 and 12, 1998 the following parties filed first-round comments under the January 30 Order: the Saint Paul Neighborhood Energy Consortium, Northern States Power Company, the Department of Public Service, the Energy CENTS Coalition, the Center for Energy and the Environment, and the Izaak Walton League of America.

On February 19, 1998 the following parties filed second-round comments: the Saint Paul Neighborhood Energy Consortium, Northern States Power Company, the Department of Public Service, and the Center for Energy and the Environment.

On March 20, 1998 the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Factual Background

A. The CIP Program

The Conservation Improvement Program (usually called the CIP program) is a statutory program designed to promote conservation and energy efficiency. The CIP statute (Minn. Stat. § 216B.241) requires Minnesota's gas and electric utilities to invest specified percentages of their gross operating revenues in conservation activities under the supervision of the Department of Public Service (the Department).

Every two years, affected utilities must file plans for delivering conservation services to their customers.¹ Typically, these two-year CIP plans contain several discrete projects, some operated by the utility and some operated by local government units or community-based organizations. All CIP plans must specifically address the conservation needs of renters and low income persons.²

Political subdivisions, nonprofit and community organizations, utility customers, and the Residential and Small Business Utilities Division of the Office of the Attorney General are all authorized to suggest CIP projects to utilities. Once they have done so, they may appeal any Department CIP decision to this Commission. Minn. Stat. § 216B.241, subd. 2.

B. The Redesigned Insulation Project

1. The Current Project

The NEC's Redesigned Insulation Project provides insulation services to homeowners and landlords³ in the east metro area, especially in the City of Saint Paul. Project staff work with property owners to determine insulation needs, select an appropriate contractor, prevent or resolve disputes between customer and contractor, and verify that the work has been properly done before final payment.

Independent contractors actually install the insulation; the project provides needs assessment and contract management services. The project also makes referrals to appropriate lenders and provides a rebate of 15% of the cost of the work, up to \$150.

In program year 1997 the project provided contract management services to 360 east metro homeowners and landlords. The project appears to enjoy extraordinary community support and customer loyalty.

¹Minn. Stat. § 216B.241, subd. 2, Minn. Rules, part 7690.0500.

²Minn. Stat. § 216B.241, subs. 1b and 2.

³Owners of residential rental properties of up to four units are eligible to participate.

2. The Project's History

The project has a long history of struggling to meet the cost-effectiveness guidelines of utility and agency CIP administrators. The project began in 1987 with four components: neighborhood conservation workshops, home energy audits, contract management services, and post-installation inspection of completed work. In 1991, in an effort to reduce overhead costs, increase cost-effectiveness, and improve service delivery, the NEC accepted responsibilities previously held by a companion organization, the Energy Resource Center.

In 1992 the Department expressed continued concern about the project's cost-effectiveness. In 1994, in an effort to meet that concern, the NEC eliminated the neighborhood conservation workshops.

The Department's concerns continued, and in 1997 the project was redesigned. Home energy audits were eliminated, high-usage households were targeted, and a 15% rebate was added. The Commissioner of Public Service approved the project, subject to a mid-biennium review of cost-effectiveness. That review did not show the hoped-for increase in cost-effectiveness, and the Department terminated CIP funding for the program.

In deciding to terminate funding, the Department applied the four cost-effectiveness tests used to evaluate all CIP projects:

- (1) the societal test, comparing the project's total costs to society with its total benefits to society;
- (2) the revenue requirements test, comparing the utility's cost of operating the project with the utility's cost of generating or purchasing the amount of energy saved;
- (3) the cost-comparison test, comparing the utility's cost of operating the project plus revenue losses attributable to the project with the cost of generating or purchasing the amount of energy saved;
- (4) the participant test, comparing the participants' share of the project's benefits with their share of its costs.

The Department found that the project's score on the test it weighed most heavily, the societal test, ranged from .96 to 1.03. This was well outside what the Department considered an acceptable range. It was also below the scores of all other NSP-Gas CIP projects, with the exception of one new project, which would be given a chance to prove itself, and one low income project, which was subject to relaxed cost-effectiveness standards.

II. The Statutory Text

The statute requiring the Commission to hear appeals of CIP decisions reads as follows:

A utility, a political subdivision, or a nonprofit or community organization that has suggested a program, the attorney general acting on behalf of consumers and small business interests, or a utility customer that has suggested a program and is not represented by the attorney general under section 8.33 may petition the commission to modify or revoke a department decision under this section, and the commission may do so if it determines that the program is not cost-effective, does not adequately address the residential conservation improvement needs of low-income persons, has a long-range negative effect on one or more classes of customers, or is otherwise not in the public interest. The person petitioning for commission review has the burden of proof. The commission shall reject a petition that, on its face, fails to make a reasonable argument that a program is not in the public interest.

Minn. Stat. § 216B.241.

III. Positions of the Parties

A. The Saint Paul Neighborhood Energy Consortium

The NEC argued that the Redesigned Insulation Project was in the public interest and should be continued. Insulating homes saves energy, reduces environmental risks, reduces energy costs, raises health and comfort levels, raises property values, and contributes to neighborhood stability in neighborhoods with old housing stock.

The NEC pointed out that the Redesigned Insulation Project was the only NSP-Gas project offering home insulation services for east metro, moderate-income households in existing housing. Without the project, NEC claimed, NSP's Conservation Improvement Program loses depth and effectiveness.

The NEC argued that this project was a new project and should be given more time to demonstrate its cost-effectiveness, just as another new project, the Premier Homes Project targeting new residential construction, was being given more time. The NEC challenged the Department's evenhandedness in permitting Premier Homes to continue while terminating the Redesigned Insulation Project.

The NEC also argued that the project was in fact cost-effective, and that technical defects in the Department's cost-effectiveness models made them unreliable for purposes of evaluating this project.

Finally, the NEC urged the Commission to reject the Department's claim that the Commission should defer to the Department unless it believed the decision in this case was arbitrary and capricious.

B. The Center for Energy and Environment (CEE)

CEE claimed that the Department has a history of applying its cost-effectiveness tests arbitrarily and in favor of projects sponsored by utilities, as opposed to projects sponsored by community groups. CEE also claimed that the utilities are using the CIP program to position themselves for retail competition.

CEE attacked the validity of the Department's societal benefit/cost model, alleging the following technical defects: an artificially low measure life, unrealistically low gas costs, failure to factor in all the societal benefits of energy efficiency, an inflated discount rate, and failure to account for effects on future generations.

C. The Energy CENTS Coalition

The Energy CENTS Coalition (ECC) stated that, although the NEC project is not specifically designed to be a low-income program, approximately 10% of its participants are low-income households. Without this program, NSP's total low-income CIP expenditures would benefit approximately 46 fewer households annually.⁴

The ECC emphasized that the project serves not only low-income households, but households with incomes too high to qualify for traditional assistance programs and too low to undertake insulation projects without third-party help.

Finally, the Coalition stated that NSP's low-income CIP expenditures had fallen since its last biennial program and defunding this project exacerbated that trend.

D. The Izaak Walton League of America

The Izaak Walton League supported the decisions in the Commission's first Order, stressed the importance of conservation programs as a matter of public policy, and argued that terminating funding for the NEC project was unreasonable in light of continued funding for the less cost-effective Premier Homes Project.

⁴Actual numbers vary from year to year. NSP's most recent figures put low-income participation at 40 households.

E. The Department of Public Service

The Department argued that the Commission must defer to its judgment unless the Commission found its decision to be arbitrary and capricious.

The Department claimed that the NEC project had a long history of failing cost-effectiveness tests, that the Redesigned Insulation Project had been a final attempt to render it cost-effective, that that attempt had failed, and that it was time to terminate CIP funding for the project. The Department emphasized that it did not question the social value of the program, just its cost-effectiveness for CIP purposes.

The Department defended its cost-effectiveness analysis, saying its benefit/cost tests had been developed using a thorough, public, collaborative process. The agency emphasized that all cost-effectiveness models are subject to criticism, because there is no universally recognized superior model. The Department stated it was always open to re-examining its models, but that that would be a major policy initiative, requiring the active participation of all stakeholders.

Finally, the Department said that NSP's Conservation Improvement Program would continue to meet statutory standards without the NEC project.

F. Northern States Power Company

NSP argued that the Department had an outstanding record as a capable CIP administrator and that its decision to terminate funding for the NEC project should enjoy a presumption of correctness.

NSP concurred with the Department in its arguments and emphasized that it believed ratepayer funds should be spent only on the most cost-effective programs. While the Company saw a public policy rationale for relaxing this standard to ensure CIP participation by low-income households, it saw no reason to relax the standard for the NEC project.

IV. Commission Action

A. The Standard of Review

The Department urged the Commission to use the same standard of review an appellate court would use to review agency action. Since the Department believed the decision at issue was purely legislative, it believed the appropriate standard of review was whether the decision was arbitrary and capricious. The Department cited in support a recent Minnesota federal district court decision rejecting *de novo* review of Commission action under the Telecommunications Act of 1996.⁵

The Commission rejects the claim that "arbitrary and capricious" is the appropriate standard. The statutory grant of authority at issue is not so vague that it forces the Commission to fall back on

⁵U S WEST v. MPUC, et al., No. 97-CF-913 (D. Minn. December 9, 1997).

traditional standards of judicial review.

In fact, the statutory language provides clear, limited, and specific grounds for reversal: *the commission may do so [reverse the Department] if it determines that the program is not cost-effective, does not adequately address the residential conservation improvement needs of low-income persons, has a long-range negative effect on one or more classes of customers, or is otherwise not in the public interest.* Here “program,” as explained in the January 30 Order, means the utility’s Conservation Improvement Program as a whole, minus the rejected or discontinued project.⁶

The Commission is clearly required, then, to make an independent judgment on whether removing the Redesigned Insulation Project from the NSP-Gas Conservation Improvement Plan renders that program, as a whole, (a) not cost-effective; (b) inadequate in addressing the conservation needs of low-income people; (c) harmful in the long run to one or more customer classes; or (d) otherwise not in the public interest.

The Commission’s standard of review is therefore both broader and narrower than the arbitrary and capricious standard. It is broader as to the four issues listed in the statute, on which it must make an independent judgment. It is narrower as to all other issues, over which it has no authority at all.

B. Action on the Merits

The Commission will examine the Department’s decision in light of each of the statutory grounds for reversal.

1. “The Program is Not Cost-Effective”

No one contended that removing the Redesigned Insulation Project from NSP’s Conservation Improvement Program would render it not cost-effective. In fact, since the project’s cost-effectiveness scores are among the lowest in the program, the program’s overall cost-effectiveness would *improve* with the removal of the project.

⁶As the Commission explained in its January 30 Order, at some points the statute blurs the distinction between *program* and *project*, using *program* to refer to both the utility’s comprehensive two-year Conservation Improvement Program and the individual *projects* of which that program consists. The interpretive rules of both the Department and the Commission make the program/project distinction.

The Commission recognizes the Department’s cost-effectiveness models can be challenged on technical and policy grounds. The Commission also recognizes that *all* cost-effectiveness models can be challenged on technical and policy grounds. Historically, measuring cost-effectiveness has been one of the most contentious and intractable issues posed in designing and implementing conservation programs.

At the very least, however, the Department’s cost-effectiveness models represent one credible, good-faith approach to quantifying cost-effectiveness. While the alternative approaches urged by CEE and the NEC would marginally improve the cost-effectiveness of the Redesigned Insulation Project, those approaches would not dramatically alter the cost-effectiveness of the remaining projects, and they certainly would not render the entire program not cost-effective. It is the cost-effectiveness of the whole program, not a single project, that is at issue.

The Commission finds that the NEC has not proved that NSP’s Conservation Improvement Program is not cost-effective without the Redesigned Insulation Project.

2. “The Program Does Not Adequately Address the Residential Conservation Improvement Needs of Low-Income Persons”

The Redesigned Insulation Project is not a low-income project, but approximately 10% of project participants are low-income households. Dropping this project from NSP’s Conservation Improvement Program will reduce the number of low-income households served by approximately 40 and the amount of low-income spending by approximately \$15,000 on an annual basis.

At the same time, however, 36% of NSP’s residential CIP spending would continue to be dedicated to low-income households, and 22% of NSP’s total CIP spending would continue to be dedicated to low-income and rental households. Over the course of the 1997-98 biennium, over \$1.5 million in CIP funding would continue to be dedicated to low-income and rental households.

Furthermore, nearly *all* of NSP’s seven residential CIP projects enjoy substantial low-income participation. See Attachment 1, page 2 of NSP’s February 11 comments, which provides the following information:

Project	# Low-Income Participants	% Low-Income Participants
Low-Income Weatherization	400	100%
Energy Audit	193	35%
High Efficiency Showerhead	3,300	33%
Water Heater Rebate	100	10%
Redesigned Insulation Project	40	10%
Heating System Rebate	315	9%
Premier Homes	0	0%

Not only is the NEC project tied for fourth out of seven in percentage of low-income participation,

it is sixth out of seven in number of low-income households served.

Finally, another NSP CIP project, the Low-Income Weatherization Project, provides insulation services to low-income families throughout NSP's service area, in large part duplicating the low-income mission of the NEC project.

For all these reasons, the Commission finds that removing this project from the NSP CIP program will not result in the program inadequately addressing the residential conservation needs of low-income persons.

3. “The Program Has a Long-Range Negative Effect on One or More Classes of Customers”

NEC argued that eliminating funding for the Redesigned Insulation Project would have a long-range negative effect on moderate-income east metro area residential customers in existing (as opposed to new) housing stock. Even assuming this were true, the Commission does not believe the statutory term “classes of customers” can be read expansively enough to include such specific customer “classes.”

When the Public Utilities Act speaks of “classes of customers” it is normally speaking of the groups of customers with similar usage characteristics into which utilities divide their customers for cost-of-service studies and ratemaking — e.g., residential, commercial, industrial, large and small volume transportation, interruptible, etc. The Commission assumes the same meaning holds here.

Classes as specific as the one suggested by the NEC would be meaningless. Every CIP program would have long-range negative effects on countless classes not served by specific projects. In this case, for example, even if the NEC project were continued, the program as a whole would have long-term negative effects on moderate-income residential customers in existing housing outside the east metro area, since they, unlike similarly situated east metro customers, would have no access to NSP-financed insulation contract management services.

The most reasonable reading of “classes of customers” is that it refers to the traditional customer classes used by all utilities for cost-of-service studies and ratemaking. The Commission finds that that is its meaning and finds that discontinuing funding for this project will not have long range negative effects on the residential class, to which it is targeted, or on any other customer class.

4. “The Program is Otherwise Not in the Public Interest”

The final “not in the public interest” test would appear to permit the Commission to overturn any decision so egregious that it renders the resulting CIP program outside the bounds of acceptable regulatory or public policy. That is not the case here.

The allegation that comes closest to tripping the public interest test -- that the Department is biased in favor of projects proposed by utilities and against projects proposed by community

groups -- is unsubstantiated. The parties produced no hard evidence of biased selection practices and little anecdotal evidence. They relied heavily on the Department's decision to approve the Premier Homes project, an NSP-proposed project which they believe holds little serious potential for ever meeting the Department's own cost-effectiveness tests.

The Department and NSP, however, pointed out that the project is brand new and could fill an important niche by demonstrating the advantages of energy-efficient construction to builders, developers, and buyers of new homes. They also stated that they were prepared to eliminate the project's funding if it did not prove cost-effective.

The Commission is not willing to second-guess the Department's decision to explore improving the energy-efficiency of Minnesota's future housing stock through this project. Neither can the Commission find that the decision to approve this program is so indefensible and far-reaching that it renders the entire NSP Conservation Improvement Program not in the public interest.

Finally, the allegation of bias against community groups is belied by the fact that NSP spends some 25% of its CIP budget on projects operated by 17 different community-based organizations. The Commission concludes that this record does not support the allegation that the Department discriminates against projects proposed by community groups. Neither does the record raise any other issue requiring serious analysis under the "public interest" test.

IV. Conclusion

The Commission has jurisdiction over the complaint brought by the Saint Paul Neighborhood Energy Consortium. The Commission's standard of review is different from the standard applied by the courts and requires it to make an independent judgment on four issues: whether the conservation improvement program remaining after the elimination of the rejected project is not cost-effective, fails to adequately address the residential conservation needs of low-income persons, has a long-range negative impact on one or more classes of customers, or is otherwise not in the public interest.

The Commission has examined the NSP-Gas Conservation Improvement Program and finds that it meets these statutory standards without the Redesigned Insulation Project. The decision of the Commissioner of the Department of Public Service will be affirmed.

ORDER

1. The decision of the Commissioner of the Department of Public Service, appealed by the Saint Paul Neighborhood Energy Consortium, is hereby affirmed.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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