

ISSUE DATE: June 11, 1998

DOCKET NO. G-002/M-97-660

ORDER ACCEPTING SETTLEMENT IN PART, DIRECTING REFUND, GRANTING  
VARIANCE AND CLOSING DOCKET NO. E,G-002/M-97-985

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Petition by Northern States Power Company - Gas Utility for Approval of its Proposed Revision to its Annual Recovery Mechanism Adjustment Factor for Conservation Improvement Program Expenses

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**PROCEDURAL HISTORY**

On May 1, 1997, Northern States Power Company - Gas Utility (NSP Gas) filed its request to adjust its CIP adjustment factors starting July 2, 1997.

On June 26, 1997, NSP Gas filed supplemental information regarding the need for a variance from the rules pertaining to purchased gas adjustment clauses.

On July 7, 1997, the Minnesota Department of Public Service (the Department) filed comments recommending approval with modifications.

On July 17, 1997, NSP Gas filed reply comments disagreeing with the Department's recommended modifications.

On August 1, 1997, the Department responded to NSP Gas' reply comments.

On August 11, 1997, NSP Gas responded to the Department's response.

On February 26, 1998, NSP Gas filed supplemental information titled NSP Gas CIP Factor Chronology.

On February 26, 1998, the Commission met to consider this matter and, after deliberations, deferred the matter to allow parties to comment on the Company's February 26, 1998 filing.

On March 4, 1998, the Commission issued a notice requesting comments on the Company's February 26, 1998 filing and on whether or not the CIP Adjustment Factor and the PGA/FCA should be combined on the customer bill.

On March 16, 1998, NSP Gas and UtiliCorp (Peoples & NMU) filed comments.

On March 23, 1998, NSP Gas filed reply comments and Minnesota Power filed comments.

On March 23, 1998, the Department filed comments and a settlement with NSP Gas on two issues, the proposed adjustment factors and the implementation of the 1996-97 CIP Factors.

The Commission met on May 7, 1998 to consider this matter.

## **FINDINGS AND CONCLUSIONS**

This Order addresses four subjects:

- 1) the settlement proposed regarding the CIP adjustment factors;
- 2) the settlement proposed regarding implementation of the 1996-97 CIP factors;
- 3) whether a variance should be granted to allow NSP-Gas to continue combining the CIP adjustment with the PGA on customer bills; and
- 4) whether to close Docket No. E, G-002/M-97-985.

In addition, the Commission notes:

### **I. CIP Adjustment Factors for 1997-98**

In their proposed settlement, NSP-Gas and the Department agreed that the Department's recalculation of the factors for the Large General Service/LGS (and Firm Transportation) and the Large Interruptible (and Interruptible Transportation) classes are acceptable and should be approved.

The Commission has reviewed these factors and finds that they are supported by substantial evidence and in the public interest. The Commission notes with approval NSP - Gas' agreement in the settlement to work with the Department to continue to improve the method of allocating the CIP tracker balance and to address this concern in its 1998 CIP Adjustments and Compliance Report. On the established record, however, the 1997-98 factors are adequately supported. The Commission will, accordingly, approve them.

### **II. Implementation of the 1996-97 CIP Factors**

At issue is the propriety of NSP Gas' action in charging Firm Transportation customers the CIP Adjustment Factor approved for the Large General Service (LGS) customers in the Commission's August 5, 1996 Order. The Commission finds that its August 5, 1996 Order in Docket No. G-002/M-96-484 approved a new CIP Adjustment Factor for the Large General Service (LGS) customers but did not address, let alone change, the previously approved rate for Firm Transportation (FT) customers in that Order.

In its July 7, 1997 comments, the Department noted that the Company has charged a rate to the Firm Transportation class that 1) differs from the rate approved in the Commission's October 2, 1995 ORDER APPROVING CIP ADJUSTMENT in Docket No. G-002/M-95-289; 2) was not included on a filed tariff sheet and 3) was never approved by the Commission to be charged to the FT class.

**A. Charging a Rate Not Filed: Violation of Minn. Stat. § 216B.05**

In a February 26, 1998 filing entitled “NSP Gas CIP Factor Chronology”, NSP Gas explained that following the Commission’s August 5, 1996 Order in Docket No. G-002/M-96-484 it prepared final tariffs and distributed them to all 125 rate book holders, but - due to administrative error - not to the Department. In charging rates not filed with the Department (keeper of the Commission’s official records such as the revised CIP tariffs in question) the Company violated Minn. Stat. § 216B.05.

The Company has acknowledged responsibility for the administrative error and has assured the Commission that corrective action has been taken to preclude recurrence. In these circumstances, the Commission will take no further action in this regard.

**B. Charging a Rate Not Approved by the Commission: Violation of Minn. Stat. § 216B.16**

In its February 26, 1998 filing (“NSP Gas CIP Factor Chronology”), NSP Gas defended its action in charging the LGS CIP Factor to its FT customers. NSP-Gas asserted that the Commission’s August 5, 1996 Order in Docket No. G-002/M-96-484 approved a policy (“comparability policy”) that effectively authorized the Company to apply the same LGS CIP factors to both LGS and FT customers. The Company did not assert that the Commission approved a proposal from the Company to apply the same LGS CIP factors to both LGS and FT customers, but justified its decision to apply the same LGS CIP factors to both LGS and FT customers on the grounds that in doing so it acted pursuant to a “comparability policy” that it claimed the Commission had adopted in the August 5, 1996 Order.

The Company’s argument is without merit. The Commission has not considered, let alone adopted, such a policy, either in the August 5, 1996 Order or elsewhere.

Nevertheless, in a proposed settlement of this issue filed March 23, 1998, the Department joined with NSP Gas in recommending that the Commission allow NSP Gas to continue charging Firm Transportation customers the CIP Adjustment Factor that the Commission had approved for the Large General Service (LGS) customers. The Commission finds that the Settlement, in effect, ignores the fact that NSP Gas has been charging FT customers a rate that the Commission has not approved/authorized the Company to charge. The Commission will not accept this aspect of the Settlement.

In the text of the Settlement filed March 23, 1998, NSP Gas and the Department request approval to “continue charging FT customers the LGS CIP Adjustment Factor”. The parties argued that the Company’s “past actions”, presumably charging FT customers a rate that the Commission had not approved, were “supported” (i.e. justified) by the fact that figures and considerations in the record and before the Commission *at this time* support the reasonableness of such a rate for FT customers. The parties did not specifically address the propriety of the Company’s having charged FT customers a rate that the Commission had not approved.

The Commission finds, as a matter of law, that charging a rate that the Commission has not approved violates Minn. Stat. § 216B.16 (1998) and, as such, is impermissible, albeit that at some later point the Commission finds that the rate charged was reasonable and *would have been approved* if such approval had been requested.

The Commission notes that at the hearing on this matter neither NSP-Gas nor the Department disputed the analysis that the Company's action charging FT customers a rate that the Commission had not approved was illegal. The parties agreed that a refund was justified in these circumstances.

Accordingly, the Commission will direct NSP gas to refund to FT customers the difference between the last Commission-approved FT rate and the rate that NSP-Gas has been unlawfully charging them on bills prior to July 2, 1997, the requested effective date for revised FT rates in the Company's May 1, 1997 filing.

### **III. Variance From Separate-Line Requirement for PGA**

In past cases, the Commission has granted NSP-Gas a variance from the requirement of Minn. Rules, Parts 7820.3500(k) and 7825.2700, Subpart 1 that the purchased gas adjustment (PGA) be listed as a separate line item on customers bills. The Commission has granted the variance to allow the Company to combine the CIP adjustment with the PGA (fuel) adjustment and present a single "Resource Adjustment" line item on the bill.

In this case, NSP-Gas argued that it did not need another variance from the PGA-only requirement of Minn. Rules, Parts 7820.3500(k) and 7825.2700, Subpart 1 to authorize the continuation of the one-line "resource Adjustment" practice. The Company noted that when the Commission approved the Company's tariff changes in Docket No. G-002/M-95-289 it approved tariffs that reflect the variance. The Company further noted that Minn. Stat. § 216B.16 provides that approved tariffs must be observed until changed.

The Department noted that Minn. Rules, Part 7829.2300, Subp. 3 states that variances automatically expire in one year unless the Commission orders otherwise, which the Commission did not do in this case. The Department argued, therefore, that NSP-Gas needs to obtain a variance if it wishes to continue combining the CIP adjustment with the PGA.

UtiliCorp, in essence, supported granting a variance to allow NSP-Gas to combine the CIP adjustment with the PGA. UtiliCorp cited the Commission's reasoning for granting UtiliCorp a similar variance in an earlier docket (G-011/M-94-521) and noted that a change at this point would create customer confusion and dissatisfaction and could be detrimental to the development of competition.

Minnesota Power (MP) opposed granting the variance. In light of the consumer's right to understand the components of their electric bill, MP argued, separating the CIP and fuel adjustment components is appropriate.

The Commission finds that a variance is needed to continue the Company's practice. The statute cited by the Company does not have the purpose or effect of automatically turning one-year variances into variances of indeterminate length simply because the variance affects the terms of a tariff which is subsequently (or simultaneously) approved.

Second, the Commission will grant the variance because the three criteria of Minn. Rules, Part 7820.3200 have been met in this case:

- Excessive Burden: requiring a switch-back to separate line presentation would create an administrative burden on NSP that is excessive in light of the customer confusion it is likely to create.
- Public Interest: the variance would not adversely affect the public interest in any substantial way because the Company would still make available to customers, at their request, the gas-cost and conservation-cost components of the Resource Adjustment.
- Standards Imposed by Law: the separate line requirement is simply a creation of the Commission and, as such, may be varied following the kinds of findings made herein, pursuant to Minn. Rules, Part 7820.3200.

#### **IV. Status of Docket No. E, G-002/M-97-985**

On March 4, 1998, the Commission reopened for consideration its February 3, 1998 decision in Docket No. E,G-002/M-97-985. In its ORDER REOPENING DECISION, the Commission indicated that it wished to consider further the merits of granting NSP a permanent variance allowing it to combine on customers' bills the electric fuel clause adjustment (FCA) and the CIP factor in a single amount titled Resource Adjustment.

Upon further examination, however, the Commission finds that the Order in question (the March 4, 1998 Order in Docket No. E,G-002/M-97-985) does not address whether it is appropriate to combine on customers' bills the electric fuel clause adjustment (FCA) and the CIP factor in a single amount titled Resource Adjustment. Instead, the Order considered and granted a variance allowing **purchased power** to be included in FCA. As such, the Order is not the proper vehicle for examining the CIP-FCA issue.

In these circumstances, the Commission will close Docket No. E,G-002/M-97-985.

#### **ORDER**

1. The settlement proposed by NSP-Gas and the Department regarding the proposed CIP factors is accepted.
2. The settlement proposed by NSP-Gas and the Department regarding the implementation of the 1996-97 CIP factors is not accepted in that it fails to address the fact that bills issued to FT customers prior to July 2, 1997 charged FT customers a rate that the Commission has not approved. The Company shall refund, at shareholders' expense, the amount collected from FT customers in excess of the rate actually approved for FT customers for bills issued prior to July 2, 1997.
3. Within 30 days of this Order, NSP-Gas shall submit a refund plan indicating the amount to be refunded, the rationale for calculating that amount, the means and timing of such refund, and proposed customer notices.
4. NSP-Gas is hereby granted a one-year variance from the requirement of Minn. Rules, Parts 7820.3500(k) and 7825.2700, Subpart 1 that the purchased gas adjustment (PGA) be listed as a separate line item on customers bills.

5. Docket No. E,G-002/M-97-985 shall be, and is hereby, closed.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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