

ISSUE DATE: December 17, 1998

DOCKET NO. G-008/M-98-990

ORDER DENYING PETITION AND REFERRING ISSUES TO ROUNDTABLE  
PROCEEDING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair  
Commissioner  
Commissioner  
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Commissioner

In the Matter of a Request by Minnegasco, a Division of NorAm Energy Corp., For Approval by the Minnesota Public Utilities Commission of a Proposed Change to its Current Method of Recovering Conservation Improvement Program and Environmental Costs from Market-Rate Customers

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**PROCEDURAL HISTORY**

On July 1, 1998, Minnegasco, a Division of NorAm Energy Corp. (Minnegasco or the Company), filed a petition requesting Commission approval to reflect actual recovery from Market-Rate customers for the Conservation Improvement Program (CIP) and Environmental Project tracker accounts, effective November 1, 1997, the implementation date for final rates pursuant to Minnegasco's most recent rate case, Docket No. G-008/GR-95-700.

On August 31, 1998, the Minnesota Department of Public Service (the Department) filed comments recommending that the Commission deny Minnegasco's proposal.

On September 10, 1998, Minnegasco filed reply comments to the Department's filing.

The Commission met on December 3, 1998 to consider this matter.

**FINDINGS AND CONCLUSIONS**

**I. MINNEGASCO'S PROPOSAL**

Minnegasco requested that the Commission approve a change in its accounting practices relating to its Conservation Improvement Program (CIP) and Environmental Cost Recovery Charge (ECRC) tracker accounts.<sup>1</sup> The Company sought a change that would allow it to record in the tracker only the actual recovery from flexible-rate (or Market Rate) customers.<sup>2</sup>

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<sup>1</sup> The Company's request regarding the ECRC is not an issue in this docket. The matter was assigned to Docket No. G-008/M-98-566 and disposed in an Order dated November 16, 1998.

<sup>2</sup> At the hearing, Minnegasco modified its petition, requesting that its proposal be effective prospectively as of the date of the Order.

In support of its request, Minnegasco stated that certain customers taking service under the Company's flexible-rate tariff pay rates that do not fully collect the CIP cost recovery factor. Consequently, the Company explained, its current accounting method of simply multiplying the CIP cost recovery factor by sales volumes overstates the tracker balances and does not reflect the Company's actual collection of costs. Minnegasco stated that without an adjustment to this accounting practice, Minnegasco will experience a shortfall in the collection of tracked costs and have an incentive to forego market-rate sales that do not fully recover the CIP cost recovery factor (i.e. lose the customer from the system, at least temporarily), even though (the Company asserted) these sales would benefit all other customers.

In response to the Department's objection that the proposed change would alter the Commission-approved rate design outside a rate case in violation of Minnesota statutes and Commission precedent, Minnegasco argued:

- Minnegasco is not requesting any change in its flexible rates and therefore there is no change in rate design. The Company is simply requesting that the Commission approve an accounting change for the CIP tracker to reflect actual recovery from flexible-rate customers. The Company stated that the changes requested would ensure the accurate recovery of costs consistent with the intent of the accounts.
- The legislation guaranteeing the full recovery of CIP spending leaves it to the Commission to decide who must pay and the method of recovery. In this filing, Minnegasco is not requesting that the historic per unit method of recovery change, but since the Commission-approved minimum flexible rate does not include the CIP recovery factor, these volumes should only include a contribution to the CIP tracker to the extent that the rate exceeds the flexible rate minimum.
- Minnegasco's proposal to ensure proper accounting for CIP recovery from a few flex rate customers is not contrary to any statute or rule. Even if the Commission interprets Minnegasco's proposal to be a rate design change, such a change is allowed by Minnesota statute and rules. Minn. Stat. § 216B.16 clearly allows rate change filings and Minn. Rules, Part 7825.3200 allows miscellaneous rate changes that do not require determination of the utility's gross revenue requirement.

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

The Department recommended that the Commission deny Minnegasco's proposal, citing several objections:

- The proposed change would allow flexible rates that are below the incremental cost of providing service contrary to Minn. Stat. § 216B.163. The Department based this objection on the assertion that CIP costs are incremental costs and, hence, must be recovered in minimum flexible rates.
- The proposed change would alter the Commission-approved rate design outside a rate case in violation of Minnesota statutes and Commission precedent.

- The Department disputed Minnegasco’s claim that the current accounting practice gives the Company an incentive to forego some market-rate sales that would benefit all ratepayers. The Department noted that in almost all cases Minnegasco has received a net operating gain from sales to flexible rate customers who have bypass options. The Department cautioned that the Company’s proposed change would provide an incentive to retain customers who must be subsidized by other customers.

As discussed more fully below, the objection that the Commission found most relevant to its disposition of this matter is the Department’s contention that the proposed change would alter the Commission-approved rate design outside a rate case in violation of Minnesota statutes and Commission precedent.

### III. COMMISSION CONSIDERATIONS

The Commission has reviewed the parties’ filings and heard extensive oral comments from the parties at the hearing in this matter. The following are the considerations that the Commission finds most relevant to its disposition of this matter.

#### A. Background

Minn. Stat. § 216B.241, subd. 2b requires the Commission to allow for the recovery of the expenses a utility incurs as a result of a conservation improvement program required by the Department and contributions to the energy and conservation account, unless the recovery would be inconsistent with a financial incentive proposal approved by the Commission.

In Minnegasco’s last rate case, the Commission did just that. The Commission set the **CIP recovery factor** at \$0.05008/DT for all customer classes, i.e. allotting a CIP charge of \$0.05008/DT for recovery from each customer in every class. The Commission’s decision to allot CIP recovery equally across the board to all customers in all classes was a significant rate design decision.<sup>3</sup>

In the same proceeding, Minnegasco proposed and the Commission approved Market Rate Service Riders for the Northern and Viking Areas. These riders are flexible-rate tariffs authorized by Minn. Stat 216B.163. Under these tariffs, Minnegasco is authorized to negotiate lower prices for customers who are subject to effective competition.<sup>4</sup> In negotiations with such

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<sup>3</sup> In the Matter of the Application of Minnegasco, a Division of NorAm Energy Corp., for Authority to Increase Its Natural Gas Rates in Minnesota, Docket No. G-008/GR-95-700, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (June 10, 1996).

<sup>4</sup> As defined in Minnegasco’s flexible-rate tariffs, customers subject to “effective competition” are those who have or plan to acquire the capability to switch to alternate energy supplies from a supplier not regulated by the Commission.

customers, Minnegasco is authorized by its flexible-rate tariffs to flex the price down to incremental O&M cost (\$.05000/DT).<sup>5</sup>

## **B. Minnegasco's Status Quo Accounting Practice Regarding CIP Revenue**

Minnegasco's historic accounting practice regarding its CIP revenues<sup>6</sup> has been to record in its CIP tracker accounts as revenue the product of the CIP cost-recovery factor and actual sales volumes. [Recorded CIP revenues = CIP cost-recovery factor X actual sales volumes.] In Minnegasco's most recent rate case, the Company used this historic practice and the Commission approved it.

## **C. Minnegasco's Proposal to Change its Accounting Practice Regarding CIP Revenues**

Minnegasco requested approval to change its accounting practice to reflect actual (rather than assumed) recovery from its Market Rate customers, i.e. those customers receiving service at rates that have been flexed down to where they fail to recover some or all of the CIP cost recovery factor allotted to that customer's consumption.

Minnegasco argued that its current practice (crediting the tracker accounts by the full CIP recovery factor for every unit sold regardless of the actual price) was unfair, created a negative impact on Minnegasco's income statement, and gave an inappropriate incentive to not make the sale. Minnegasco asserted that its proposal to change its accounting practice was not contrary to any statute or rule and that approval of its petition would result in lower rates for all customers.

## **D. Commission Analysis**

### **1. Minnegasco Proposes a Rate Change**

Minnegasco's request to alter its accounting practice for CIP revenues is, in essence, a rate change proposal. The accounting practice that Minnegasco proposed to change affects the charges collected by Minnegasco and is, therefore, a "rate" as that term is defined in Minn. Stat. § 216B.02, subd. 5. Moreover, the affect of the proposed accounting change on rates is significant.

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<sup>5</sup> Allowing Minnegasco to flex down to incremental O&M cost for eligible customers and not recover CIP costs from these customers is permissible under the statute. Minn. Stat. 216B.163 requires that the minimum flexible rate recover incremental costs and CIP costs are not incremental costs. In a recent Order, the Commission discussed the nature of CIP costs in the context of the flexible rates statute. See In the Matter of the Application of Northern States Power Company's Gas Utility to Change its Schedule of Gas Rates for Retail Customers Within the State of Minnesota, Docket No. G-002/GR-97-1606, ORDER AFTER RECONSIDERATION (December 11, 1998) at pages 3-4.

<sup>6</sup> The CIP tracker account keeps track of CIP expenditures and CIP revenues. The Company is allowed to achieve income neutrality by eliminating the **CIP tracker balance**, i.e. the difference between the Company's CIP expenditures and CIP revenues, through a rate adjustment approved in a rate case proceeding.

It would shift recovery of all the CIP costs not recovered from the certain Market Rate customers to other customers. This shift would occur as follows: reducing the revenue figure in the tracker would increase the tracker balance. When Minnegasco is allowed to recover that (inflated) balance at the time of the Company's next rate case, the rate burden for other customers in each customer class would increase to absorb that increased balance, e.g. when the Company calculates its Conservation Cost Recovery Charge (CCRC).

In short, Minnegasco's accounting practice is properly classified as a "rate" as defined in Minn. Stat. § 216B.02, subd. 5. The Company's proposal to change such rate would change the rate design adopted by the Commission in the Company's most recent rate case.

Minnegasco's proposal to change that rate and alter the Commission-approved rate design must be treated accordingly.

## **2. Proposed Rate Change Inconsistent With Applicable Statute**

Minn. Stat. § 216B.163, the statute authorizing flexible rates, states in relevant part:

Subd. 3. Establishing or changing flexible tariff. The commission may establish a flexible tariff through a miscellaneous rate filing only if the filing does not seek to recover revenues the utility expects to lose by implementing flexible tariffs from customers who do not take service under the flexible tariff, nor to change another rate. If a gas utility requests authority to establish a flexible tariff and as part of that request seeks to recover revenues the utility expects to lose by implementing flexible tariffs from customers who do not take service under the flexible tariff or to change other rates, the commission may only establish that flexible tariff within a general rate case for that gas utility.

In short, the legislative directive is that outside a rate case the Commission should not adopt flexible rates which involve recovering revenues the utility expects to lose by implementing flexible tariffs from customers who do not take service under the flexible tariff. The sense of this directive applies to modifications to a flexible-rate tariff as well as to its initial adoption. The statute indicates the inappropriateness of approving Minnegasco's current proposal outside a rate case.

## **3. Equitable Considerations**

In denying Minnegasco's request, the Commission notes the equity of the rate design decision adopted in the context of the Company's prior rate case that the CCRC should be collected from all customers. No party sought reconsideration of that particular rate design decision.

Further, preventing Minnegasco from shifting recovery of foregone CIP costs from other customers is not unfair to the Company, as the Company asserted. In approving the Company's flexible rates tariffs, the Commission obviously has not **required** Minnegasco to offer the minimum flexible rate to anyone and certainly did not authorize Minnegasco to recover any CIP

revenue not recovered from a minimum rate customer from other customers.<sup>7</sup> Therefore, whenever Minnegasco, pursuant to its flexible-rates tariff, chose to flex its rate down for an eligible customer, it chose to not recover some or all of the CCRC allotted to that customer. The resulting shortfall in CIP collection from that particular customer must be viewed as a shortfall voluntarily incurred. When this voluntary shortfall occurs, the Company cannot rightfully complain that it should now be allowed to shift the burden of such foregone CIP recovery to any other customer, in whole or in part.

Finally, in light of the cited statute, Minnegasco's proposal is clearly untimely. When Minnegasco requested and received approval for its flexible-rates tariff in its most recent rate case (Docket No. G-008/GR-95-700), the Company could have but did not request or receive authority to recover any revenues that it would lose by implementing flexible tariffs or to change other rates. Had the proposal been made at that time, the Commission could have (as directed by the statute) made a decision in the proper context, i.e. in the context of setting all of the Company's rates. Since the timing of the Company's proposal to the Commission was within the Company's control, it is not inequitable for the Company to bear responsibility for the consequences of that timing.

#### **4. Rate Impact on Other (Non-Market Rate) Customers**

Likewise, the Commission cannot accept Minnegasco's assertion that its proposal results in lower rates for all its customers. As the Commission's foregoing analysis shows, Minnegasco's declining to collect CIP costs from certain customers and seeking to recover these declined costs from other customers would obviously result in these customers paying more, sooner or later or both.

#### **IV. COMMISSION ACTION**

Based on the foregoing analysis, the Commission rejects Minnegasco's proposal as

- inconsistent with the purpose of the flexible rate statute, as discussed above,
- not mandated by the income neutrality provisions of the CIP statute (Minn. Stat. § 216B.241), and
- inequitable for Minnegasco's other customers.

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<sup>7</sup> The Commission notes that when it requested and received approval for its flexible rates tariff in its most recent rate case (Docket No. G-008/GR-95-700), Minnegasco did not request or receive authority to recover any revenues that it would lose by implementing flexible tariffs or to change other rates.

In short, this appears to be exactly the kind of proposal that the flexible rate statute cautions the Commission not to approve in any proceeding other than a rate case.<sup>8</sup>

While unable to grant the relief requested by Minnegasco in this docket for the reasons stated above, the Commission is aware of and responsive to several larger issues involving demand side management (DSM) policy which appear somewhat related to Minnegasco's petition. On November 19, 1998, the Commission convened a Chair's Roundtable on energy demand side management (DSM). Docket No. G, E-999/CI-98-1759. The Roundtable is to report back to the Commission by May 1, 1999.

In general, the issues that the DSM Roundtable will address relate to what changes in Minnesota's DSM law and policy may be appropriate as competition is increasingly introduced into the energy industry and, in particular, what changes in funding mechanisms may be appropriate for DSM programs in that context.

Since the problem Minnegasco described in the current docket is related to the Roundtable's agenda, the Commission will refer the general concern identified by Minnegasco in this docket to the Chair's Roundtable on energy demand side management for discussion and recommendations.

Specifically, the problem referred by this Order for discussion at the Chair's Roundtable may be stated as the growing difficulty faced by a regulated gas utility in

- reconciling current conservation program mandates with its desire to be able to offer prices adequate to maintain customers who have competitive supply options, and
- doing so in a manner consistent with fair and reasonable rates for all

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<sup>8</sup> The Commission's decision is consistent with the Commission's earlier decision regarding a proposal by Dakota Electric Association in Docket No. E-111/M-96-226. Although Dakota's proposal did not involve flexible rates, it had a similar between-rate-cases effect upon rate design. In its Order denying Dakota's proposal the Commission stated:

In short, Dakota's proposed change would decrease the level of conservation-related costs currently recovered from Rates 51 and 52 customers and shift recovery of the amount of that decrease to the remaining customers. Such a change would alter the rate design adopted by the Commission in Dakota's most recent rate case.

Between rate cases, the Commission is not inclined to adopt piecemeal changes to utilities' rate designs. In rate case settings, unlike the current docket, the Commission is able to examine and determine fairness issues with regard to rate design collectively for all ratepayers. The rate case is the proper place to consider these issues.

See In the Matter of the Request of Dakota Electric Association to Modify the Way it Recovers its Conservation Costs, Docket No. E-111/M-96-226, ORDER DENYING PETITION (July 19, 1996) at page 3.

customers and an equitable share of the burden among customers for conservation programs.

**ORDER**

1. Minnegasco's petition is denied.
2. The Commission's concern for the growing difficulty faced by a regulated gas utility in reconciling current conservation program mandates with the utility's desire to be able to offer prices adequate to maintain customers who have competitive supply options and doing so in a manner consistent with fair and reasonable rates for all customers and an equitable share of the burden among customers for conservation programs is hereby referred to the Chair's Roundtable on Energy Demand Side Management (Docket No. G,E-999/CI-98-1759) for discussion and recommendations.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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