

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Marshall Johnson  
LeRoy Koppendrayner  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of Minnesota Power's  
Petition to Implement Personal Property  
Tax Savings Crediting Methodology

ISSUE DATE: December 16, 2002

DOCKET NO. E-015/M-01-1957

ORDER APPROVING REFUND  
MECHANISM AND TAX  
REDUCTION ADJUSTMENT RIDER,  
AS REVISED

**PROCEDURAL HISTORY**

On December 27, 2001, Minnesota Power Company (MP) proposed a crediting methodology for passing the reduction in personal property taxes to ratepayers.

On May 29, 2002, the Commission issued an Order modifying, adjusting, and clarifying MP's proposal.<sup>1</sup> In its Order, the Commission

- directed MP to calculate the excess tax on generation machinery;
- permitted MP to include transmission and distribution assets in calculating the tax reduction;
- directed MP to allocate to class using the percentage of revenue method, excepting customers served under the competitive rate schedules;
- directed MP to file a rider or tariff adjusting base rates on an ongoing basis;
- directed MP to propose a refund mechanism for the excess taxes recovered in 2002 prior to the effective date of the new rates; and

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<sup>1</sup> *In the Matter of the Petition of Minnesota Power to Implement Personal Property Tax Savings Crediting Methodology*, Docket No. E-015/M-01-1957, ORDER DIRECTING RATE REDUCTION AND REQUIRING FURTHER FILING (May 29, 2002).

- instructed that the rate adjustment will put into effect the difference in payables and must make allowances for the differences of when taxes are collected and when they are paid.

On August 12, 2002, MP made its compliance filing.

On September 1, 2002, the Minnesota Department of Commerce (the Department) filed comments on MP's compliance filing.

On September 24, 2002, MP replied to the Department's comments.

On November 4, 2002, MP filed a revised rider with explanatory comments.

The Commission met on November 7, 2002 to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **I. MP'S COMPLIANCE FILING**

In its August 12, 2002 compliance filing, MP detailed its proposal to implement an ongoing rate reduction through the use of the Personal Property Tax Adjustment Rider. The Company also proposed to implement a lump-sum refund of the excess taxes collected in rates from January 1, 2002 until the date the reduced rates are finally in effect.

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

The Department recommended approval, but only if several recommended changes to the Rider were made. The Department indicated areas of agreement with MP's proposal but also noted areas that it believed required clarification and parts of the filing with which it disagreed.

#### **A. Areas Requiring Clarification**

##### **1. Non-Discriminatory Treatment**

The Department stated that MP's Personal Property Tax Adjustment Rider specifies that it is at MP's discretion, on an annual basis, as to whether or not to apply the reduction related to property taxes on transmission and distribution. The Department recommended that this language be clarified to ensure that all customers are treated equally, i.e., that if the reduction applies, it will apply to all customers and that if the reduction does not apply in a given year, no customers will receive it.

## 2. Notice to Commission

The Department recommended that MP be required to notify the Commission if MP decides not to apply the Personal Property Tax Adjustment Rider for transmission and distribution in a given year. Without this information, the Department argued, the Department and the Commission will not know what rate MP is charging.

### **B. Areas of Disagreement**

#### 1. Cash Working Capital

The Department stated that MP proposed to reduce the tax reduction passed to customers for generation by \$340,866 and for transmission and distribution by \$130,070 and identified this as a working capital adjustment.

The Department recommended that this adjustment be disallowed as not contemplated by the Commission's May 29 Order in this proceeding, or the statute. The Department stated that Minn. Stat. § 216B.1646 utilized a simplified calculation using cash basis numbers to calculate the property tax reduction comparing the 2001 payable with the 2002 payable and argued that MP's proposal to reduce the tax reduction passed to customers by \$340,866 is contrary to the language of the statute which provides that "each dollar of property tax reduction allocated to Minnesota customers retroactive to January 1, 2002 results in a dollar of savings to the utility's customers."

#### 2. Interest on Refund

The Department interpreted Order Paragraph 1 (g) of the Commission's May 29, 2002 Order as requiring an interest payment to customers for the period of January 1, 2002 until the actual refund is made. Order Paragraph 1(g) states:

The rate adjustment will put into effect the difference in payables and must make allowances for the differences of when taxes are collected and when they are paid.

The Department reported that MP offered to apply interest to the refund amount from January 1, 2002 until the new reduced tariff is in place, calculating the amount of interest payable (assuming the refund is made in October of 2002 for example) to customers by multiplying 10/12 of \$2,831,445 by 10/12 of the 4.75% interest rate, arriving at an interest amount of \$93,398 for a refund in October.

The Department disagreed with MP's calculation, arguing that the calculation should take into account that taxes are collected from customers on the accrual method, i.e., that the taxes payable in 2002 were collected in full in rates in 2001. The Department argued that MP's method does not recognize that a full year's balance was on hand as of January 1, 2002.

The Department also objected that MP's method of distributing the interest amount on a cents-per-kWh basis could lead to losses due to rounding. The Department recommended that the interest instead be provided to customers on a per customer basis to avoid any such losses.

### 3. Cash or Accrual

The Department stated that the Rider provides a refund in 2002 for funds collected from customers in 2001, which means there is a one-year lag between collection and refund.

The Department is concerned that ratepayers may not receive the appropriate refund of taxes in the future. To protect against this event, the Department recommended that MP be required to address this one-year lag in a future rate proceeding or at any time when this property tax rider is removed due to legislation. The Department argued that this requirement is needed to satisfy the statutory requirement that each dollar of tax savings results in a dollar of savings to the customer.

## III. MP'S RESPONSE TO THE DEPARTMENT

### A. Non-Discrimination and Notice

MP agreed with the Department's concerns and recommendations regarding non-discrimination and notice and filed a revised Rider accordingly.

### B. Cash Working Capital

MP initially objected to the Department's recommendation that a working capital adjustment be disallowed. MP argued that its calculation was correct and consistent with Order paragraph 1(g). Later, however, the Company filed a revised Rider and supporting calculations showing that its cash working capital adjustment has been removed.

### C. Interest on Refund

MP agreed to pay interest on a per-customer basis because the cents-per-kWh basis could lose the interest to rounding. MP disagreed, however, with the Department's calculation of interest. MP denied that it had a full year's accumulation of excess tax collection to refund, as the Department had asserted. MP objected that the Department was recommending that the Company pay interest on an amount larger than the refund actually made.

### D. Cash or Accrual

MP argued that the property tax reduction/refund statute does not apply to the utility's recovery of taxes before January 1, 2002. Therefore, MP argued, its cash working capital adjustment properly addresses the one-year lag on a present basis, eliminating the necessity to revisit these property tax-related rate issues in the future.

#### **IV. COMMISSION ANALYSIS AND ACTION**

MP proposed to refund the ongoing reduction in taxes via reduced rates, i.e., as described in a Personal Property Tax Adjustment Rider, and to make a lump-sum refund of the excess taxes collected in rates from January 1, 2002 until the effective date of the reduced rates.

The Commission finds that the lump sum proposal is reasonable and will approve it. In addition, the language of the Personal Property Tax Adjustment Rider, as revised and submitted to the Commission on November 4, 2002, is reasonable and consistent with Order Paragraph 1(c) of the Commission's May 29, 2002 Order. Accordingly, the Commission will also approve the revised Rider.

There are several issues related to the Rider that warrant comment.

##### **A. Non-Discrimination**

The Commission notes that in its revised Rider, MP has successfully addressed the non-discrimination concern raised by the Department. In its revised Rider, the Company has appropriately clarified that its determination whether to apply the tax adjustment related to transmission and distribution will apply to all customers, not selective customers.

##### **B. Notice of Change in Scope of Refund**

The Commission finds it appropriate that MP give notice to the Department and the Commission's Consumer Affairs Office by December 31 of each year as to whether there is a change in the application of the Personal Property Tax Adjustment Rider for transmission and distribution for the upcoming calendar year.

##### **C. Customer Notice**

The Commission finds it appropriate for MP to notify its customers that the Commission has directed the Company to transfer to customers (via a rate reduction ) the Company's tax savings related to personal property tax reductions. The Commission notes that MP has agreed to do so.

##### **D. Cash Working Capital Adjustment**

The Commission finds the Department's arguments for rejecting MP's proposed adjustments for cash working capital are persuasive. The Commission also recognizes that the Company's revised Rider (and supporting calculations) show the removal of the cash working capital. The Commission finds that this is appropriate because it treats MP the same way the Commission has treated Xcel, Otter Tail, and Interstate on this issue.

### **E. Interest on Refund**

Order paragraph 1(g) in the Commission's May 29, 2002 Order in this matter states:

The rate adjustment will put into effect the difference in payables and must make allowances for the differences of when taxes are collected and when they are paid.

The Department has interpreted the "make allowances for" provision as requiring an interest payment to customers for the period of January 1, 2002 until the actual refund is made.

Since none of the other utilities have been required to pay interest in similar situations, the Commission believes it inappropriate to place this requirement uniquely on MP. The Commission, therefore, will withdraw the cited provision [1(g)] on its own motion, thereby putting MP in the same position as the other utilities.

### **F. Cash or Accrual**

The Commission believes that the alleged one-year lag (between current property tax accrual rate and Personal Property Tax Adjustment Rider) is an important issue. However, resolution of the issue is not required at this time. The Department stated that the one-year lag would not become a problem until a future rate proceeding when there would be an opportunity for the catch-up not to occur. The Company agreed that deferring the issue would meet its objective of being able to address the issue at a later date. The Commission, therefore, will not consider the one-year lag issue at this time and leave it open for discussion in a future rate proceeding.

## **ORDER**

1. MP's proposal to make a lump sum refund of the excess taxes collected in rates from January 1, 2002 until the effective date of the reduced rates is approved, as is the Company's Personal Property Tax Adjustment Rider, as revised and submitted to the Commission on November 4, 2002. The Company shall file the tariff pages for the rate book reflecting the revised Rider and this Order within 10 days of this Order.
2. The Commission has determined that the Personal Property Tax Adjustment Rider must show that a determination by MP as to whether to apply the tax adjustment related to transmission and distribution applies to all customers, not selective customers. MP's modified rider filed November 4, 2002 appears to have done so.
3. MP shall give notice to the Department and to the Commission's Consumer Affairs Office by December 31 of each year as to whether it proposes to change the application of the Personal Property Tax Adjustment Rider for the upcoming calendar year with respect to transmission and distribution.

4. MP shall provide notice to customers that the Commission has directed a rate reduction so that the benefits of the tax savings related to personal property tax reductions shall be passed through to customers;
5. The Commission accepts the Department's recommendation to reject MP's proposed adjustments for cash working capital. The Commission further finds that MP has filed a revised Rider and supporting calculations that show the removal of the cash working capital adjustment.
6. No interest need be paid on the refund.
7. The Commission's May 29, 2002 Order in this matter is hereby amended to delete Order Paragraph 1(g).
8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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