BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Phyllis A. Reha	Commissioner
Gregory Scott	Commissioner

In the Matter of the Petition of CenterPoint Energy Minnegasco to Modify the No Surprise Bill Pilot Program to allow more Participants and to Modify the Tariff to Allow Increases for Interim Rates and New Franchise Fees

ISSUE DATE: October 9, 2003

DOCKET NO. G-008/M-03-795

ORDER APPROVING INCREASED PARTICIPATION AND MODIFYING TARIFF

PROCEDURAL HISTORY

In its September 26, 2001 ORDER GRANTING PETITION WITH MODIFICATIONS AND REPORTING REQUIREMENTS the Commission approved Reliant Energy Minnegasco's (Now CenterPoint Energy Minnegasco) No Surprise Bill (NSB) pilot program.

On May 16, 2003, Minnegasco filed a petition for approval to expand its offering of its NSB program, to revise the NSB program tariff to reflect interim rates, and to request clarification that NSB customers should have reflected in their bills any new (or changes to existing) franchise fees or sales taxes.

On June 16, 2003, the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) filed comments objecting to the NSB program tariff changes but supporting the expansion of the NSB program.

On July 25, 2003, the Department of Commerce (DOC) filed comments recommending approval of the proposed expansion of the NSB program. The DOC also recommended that the Commission allow Minnegasco to estimate anticipated franchise fee and sales tax increases in bill quotes with certain qualifications.

On July 25, 2003, the Suburban Rate Authority (SRA) filed comments supporting modifying the tariff to allow Minnegasco to add franchise fees to the NSB amount during the NSB year.

On August 4, 2003, Minnegasco filed reply comments stating that the parties had reached agreement on a resolution of the franchise fee issue and agreement on a process for resolving the interim rate issue.

On September 18, 2003, this matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Minnegasco's Proposal

Minnegasco requested: a) permission to expand its offering of the NSB program; b) approval to revise its NSB tariff to provide for the incorporation of interim rates; and c) clarification of its NSB tariff regarding the appropriate treatment of changes in franchise fees or sales taxes that may be enacted during a NSB program year. Each will be discussed in turn.

II. Expansion of the Program

A. Minnegasco's Position

Minnegasco is requesting that it be allowed to expand the program offering to up to 50,000 customers in the third year of the program and up to 70,000 customers in the fourth year of the program. The Company proposes to set the final cap based on gas supply and market conditions. It will do so prior to its communicating with customers. Reports will be filed with the Commission indicating enrollment and renewal experience so the Commission can track the progress of this program.

When the Commission approved Minnegasco's NSB pilot program in 2001,[1] Minnegasco proposed capping the customer participation in the NSB program at 30,000 customers. It did so because it was unsure how strong customer participation would be. However, during the first two years of the program, Minnegasco believes it could have surpassed the 30,000 customer cap if it had not put limits on its communication efforts.

For the first year of the program over 30,000 customers enrolled and over 19,000 customers completed the program. In the first year, the Company received 400 additional enrollment applications after the enrollment period ended. For the second year 93% of the eligible customers renewed and the program was fully subscribed. In the second year, enrollment applications for approximately 2400 additional customers were received after the close of the enrollment period.

B. DOC's Position

The DOC supported Minnegasco's request to expand the NSB program because it gives more customers a choice of receiving a one-year predetermined bill for natural gas.

[1] *In the Matter of the Petition of CenterPoint Energy Minnegasco for Approval of a Miscellaneous Rate Change and Miscellaneous Tariff to Offer Customers a Fixed Bill Option,* Docket No. G008/M 01-974, ORDER GRANTING PETITION WITH MODIFICATIONS AND REPORTING REQUIREMENTS, September 26, 2001.

C. RUD-OAG's Position

The RUD-OAG supported the Company's request to expand the NSB program.

D. Commission Action

The Commission agrees with the parties that Minnegasco should be allowed to expand the NSB pilot program because the NSB provides a valuable option to some customers and is a benefit to consumers. For these reasons the Commission will approve the expansion to 50,000 customers in the third year of the program and to 70,000 customers in the fourth year.

III. Tariff Revision to Reflect Interim Rates

A. Minnegasco's Proposal

Minnegasco proposed that it revise its NSB tariff to provide for the possibility that an NSB program year may include a rate case filing. It would revise its tariff to reflect interim rates in the NSB amount quoted to customers, subject to true-up at the conclusion of the rate case. It argued that this is required by statute [2] and necessary to ensure that NSB customers and standard rate customers are treated fairly and even-handedly with respect to the impact of any rate case filing.

Minnegasco further argued that the NSB program offers customers protection from changes in natural gas prices and weather but is not intended to offer protection against interim rates or approved rate increases. The NSB customers should not have an advantage, compared to non-participants in the program, by not having the impact of interim rates reflected in their bills.

Finally, it argued that the Company may gain or lose in the NSB program compared to the application of standard rates, just as customers may gain or lose, depending on the weather and natural gas prices. The program is designed to provide no other way for the Company to either make or lose money. If interim rates cannot be reflected in the NSB, it would result in forgone revenues for the Company that would grow as participation in the program grows. This would create a disincentive to the Company to continued growth of the program.

B. Position of the DOC

The DOC argued that Minnegasco promised that customers would be charged a fixed monthly payment which is not trued up. It argued that the basic tenet that the bill is fixed would be altered by the Company's proposal. This proposal would fundamentally alter the program and the "no surprise" expectation of current and future participants. The DOC stated that participant expectation dictates that bill stability must be maintained for each program year.

[2] Minn. Stat. § 216B.16, Subd. 3.

However, the DOC noted that the Company has control over when it may file its next rate case. The Company can therefore time it so that the implementation of interim rates could coincide with the beginning of the next program year. This would solve the problem of uncertain interim rates being incorporated in participants' bill quotes.

The DOC recommended that the Commission allow Minnegasco to use only Commission-approved interim rates before incorporating interim rates in customer quotes.

As an alternative, the DOC indicated its willingness to work with Minnegasco to convene a conference to gain consensus with the interested parties on how the NSB program could be redesigned to accommodate interim rate changes during the program year.

C. Position of the RUD-OAG

The RUD-OAG is opposed to any deviation from the basic "no surprise" nature of the NSB program. It argued that the program attracted customers who were willing to pay a premium for a fixed bill. Although Minnegasco may view the NSB quote as reflecting a weather hedge and insurance against gas price volatility, the customer who chose to participate relied on the representation that the bill was to be the same every month.

RUD-OAG argued that the matter should be resolved by requiring that any rate increase sought by the Company for the duration of the NSB program not include an interim rate increase. Once a final rate is determined, it should not go into effect until the beginning of the next NSB program year.

In response to the Company's argument that the interim rate was mandated by law, the RUD-OAG argued that the statute provides for an exception to the imposition of interim rates where exigent circumstances exist.[3] Protecting the fixed bill nature of the NSB program offering is such an exigent circumstance.

D. Minnegasco's Response to the Positions of the DOC and RUD-OAG

Minnegasco disagreed with RUD-OAG's position that the Company be denied the ability to collect any interim rates as long as it continues to offer the NSB program. It argued that this puts the Company in the position of either terminating the program or forgoing millions of dollars in revenue it would otherwise be entitled to receive.

Minnegasco supported the DOC's alternative recommendation to convene a conference of interested parties to discuss and seek consensus on the issue of interim rate changes during a program year, specifically during the fourth year of the program.

[3] Minn. Stat. 216B.16, Subd. 3(b).

Minnegasco indicated that by accepting this alternative proposal by the DOC, it was agreeing not to seek any interim rate recovery during year three from NSB customers. However, Minnegasco indicated that if the Company were to file a rate case so that interim rates would be put into effect during year three of the NSB program, it would request that the Commission allow interim rates to go into effect for the non-participating customers on the normal time line, but would delay interim rate recovery from NSB customers until the start of the NSB fourth program year.

E. Commission Action

The Commission will not make any determination about interim rates at this time, nor will it direct the parties to confer on the issue. The question of interim rates is more appropriately handled in the context of an actual rate case filing. At this point the issue is too speculative to justify Commission action.

IV. Tariff Change for Taxes and Franchise Fees

A. Minnegasco's Proposal

The Company stated that the NSB tariff may create confusion in the event that applicable taxes and franchise fees associated with a customer account change during the course of a NSB year. For that reason, Minnegasco requested the Commission clarify that NSB customers should have reflected in their bills any new (or changes to existing) franchise fees or sales taxes that occur after the NSB monthly payment is set.

Minnegasco argued that this was necessary to ensure that NSB participants and non-participants would be treated consistently when there were changes in local and state government franchise fee and taxation policies. Without this clarification, non-participants would pay any new franchise fee at the time of implementation, but NSB participants would not pay the new franchise fee until the program year ended.

Minnegasco argued that the NSB was designed to protect against changes in weather and natural gas prices, not to give NSB participants an advantage due to delayed implementation of a new franchise fee.

B. Position of the DOC

The DOC stated that the current NSB program does not allow Minnegasco to estimate and include increased amounts in the bill quotes for franchise fees and sales tax. Because of this, Minnegasco is not free to estimate increased franchise fees and taxes when calculating its next round of NSB quotes.

However, the DOC indicated that it had discussed with Minnegasco the viability of estimating franchise fees to include in quotes and refunding any difference at the end of the program year. The Company agreed to do this.

The DOC recommended that the Commission allow Minnegasco to estimate anticipated franchise fee and sales tax increases in bill quotes and require:

- refunds if actual is less than the estimated amount;
- full disclosure and itemization on the bill of the estimated and actual franchise fee and sales tax percentages;
- a compliance filing within 10 days of the Commission's Order in this docket with the approved tariff language.

The DOC recommended the following revised tariff language, which the Company agreed to:

> In a program year, for each individual customer in which Minnegasco anticipates such taxes or fees will change during the program year, the No Surprise bill amount shall be determined reflecting such taxes or fees that may be in place during a program year. If actual taxes or fees are less than the anticipated taxes or fees included in the No Surprise Bill amount, Minnegasco will refund or credit a No Surprise Bill customer bill, including interest at the average prime interest rate. Any interest will be applied through the date of the refund or credit. If actual taxes or fees are greater than the anticipated taxes or fees included in the No Surprise Bill amount, Minnegasco will not attempt to collect the difference from the No Surprise Bill customers.

Further, the DOC was concerned about disclosure of the estimated and actual franchise fee and sales tax percentages on participants' bills. The DOC indicated that Minnegasco indicated it would show the franchise fee separately on the bills of affected participants and inform the participants of the estimated and actual franchise fee and sales tax percentages and the month the new fee began.

C. Position of the RUD-OAG

The RUD-OAG recommended that the Commission deny Minnegasco's request to adjust NSB program participants' bills to reflect changes in taxes or franchise fees. It argued that the current tariff provides for a single monthly quote that has taxes and franchise fees built in based on the Company's own estimate of these factors. The RUD-OAG recommendation was that the Company model for these variables at the beginning of each program year, rather than being allowed to pass through increasingly unpredictable costs to customers who enrolled in a program promising predictability.

D. Position of the Suburban Rate Authority

The Suburban Rate Authority (SRA) indicated that during the current NSB billing year, two SRA cities in Minnegasco's service territory implemented franchise fees. Minnegasco requested not to add franchise fees to the affected NSB customers. The SRA cities either reached agreement with Minnegasco over this issue or expect the problem to be resolved.

The SRA stated that the obligation to pay the fee is the utility's and that the city could look to Minnegasco to make up the difference created by its inability to add the fee to bills of NSB participants. Further, the SRA does not believe that Minnegasco can collect government fees from one customer and not from another customer.

The solution proposed by the SRA is a tariff provision disclosing to potential customers before the new NSB cycle begins that Minnegasco must add franchise fees to the bill. The SRA argued that Minnegasco's proposal does not completely accomplish that objective. Rather, the SRA recommended tariff language that would provide that if taxes or fees were implemented during the NSB year, the NSB amount would be appropriately adjusted for the remainder of the program year to reflect any such change.

E. Minnegasco's Reply

Minnegasco agreed to the tariff language recommended by the DOC. It further indicated that it was the Company's understanding that the Company could not collect from NSB participants any increases in taxes or franchise fees beyond the amount built into the NSB quotes. However, under its general service tariff it could pass through the appropriate per customer fees to non-participating customers.

Minnegasco also clarified that its billing system does not allow it to break out any franchise fee amounts as another line item on the NSB program bill. However, if a refund is due a customer at the end of a program year, the Company indicated that it will fully disclose to customers the difference between the percentage (or month) used to calculate the estimated franchise fee or sales tax in the customer's NSB quote and the actual percentage (or month) once the franchise fee (or sales tax) is implemented or changed. Any refund amount would be reflected on the "Adjustments" line of a customer's bill.

F. Commission Action

The Commission will accept the tariff change as recommended by the DOC and agreed to by the parties as a reasonable resolution to the matter. The tariff equitably balances the customers' interest in rate stability and the Company's interest in recovering increases in fees and taxes over which it has no control. Further, the treatment of taxes and fees will be clearly set forth in the tariff, and customers will be fully informed.

Further, if actual fees or taxes are less than anticipated, the NSB customer is protected by the tariff provisions for refunds and interest to be paid by the Company. If actual fees or taxes are greater than the taxes or franchise fees included in the NSB quote, the NSB customer is further protected by the Company not being able to collect the difference. These are also reasonable incentives to the Company to accurately estimate any franchise fee or tax changes.

For all of these reasons the agreed-upon tariff will be approved.

ORDER

1. Minnegasco's proposal to increase the number of participants in the NSB program up to 50,000 for the third year and up to 70,000 for the fourth year of the pilot program is approved.

2. The tariff change proposed by the DOC and agreed to by the Company, set forth in ¶ IV B herein, is approved.

3. Minnegasco shall submit a compliance filing within 10 days of this Order with the approved tariff language.

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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