

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition by Greater
Minnesota Gas, Inc. for Authority to Establish
Natural Gas Rates in Minnesota

ISSUE DATE: September 14, 2004

DOCKET NO. G-022/GR-04-667

ORDER SUSPENDING PROPOSED RATES
AND ADOPTING INTERIM RATES

PROCEDURAL HISTORY

In September 2002, Greater Minnesota Gas, Inc. (GMG or the Company) notified the Department and the Commission that it would no longer qualify for an exemption from Commission rate regulation, under Minn. Stat. § 216B.16, subd. 12, because the Company had reached the 2,000 customer mark.¹ GMG is the first exempt gas utility in Minnesota to come under Commission rate regulation after reaching the 2,000 customer level.

On August 28, 2003, the Commission issued an Order requiring GMG to file a general rate case no later than February 2004.

On February 13, 2004, GMG submitted its request for a two month extension and the Commission issued an Order granting GMG's two month extension request until April 2004.

On April 30, 2004, GMG filed a request for authority to establish its current rates as base natural gas rates. While noting that it has a \$528,000 test-year revenue deficiency, GMG did not propose to change its rates up or down nor did it ask to collect interim rates.

On May 14, 2004, the Minnesota Department of Commerce (the Department) filed comments.

On May 21, 2004, GMG filed reply comments.

The Commission met on June 10, 2004 to consider this matter.

¹ Prior to this notification, GMG's rates were regulated and approved by the local governing bodies (i.e. the municipalities and townships) of the areas in which the Company provides service.

On June 18, 2004, the Commission issued its ORDER ACCEPTING FILING EFFECTIVE WHEN COMPLETED. In its Order, the Commission stated that GMG's rate case filing would be accepted as complete and the ten-month rate case period would commence when the Company filed certain additional specified items. The Commission authorized its Executive Secretary to determine whether and when the additional items were filed.

On August 26, 2004, GMG filed additional rate case materials and on September 10, 2004, the Commission's Executive Secretary determined that the Company had filed all the additional items identified in the June 18, 2004 Order.

FINDINGS AND CONCLUSIONS

I. RATE CASE FILING COMPLETE / RATE CASE PERIOD BEGINS

As provided in the Commission's June 18, 2004, ORDER ACCEPTING FILING EFFECTIVE WHEN COMPLETED, the Executive Secretary's determination that GMG's August 26, 2004, supplemental filing contains all the additional items identified in the Commission's June 18, 2004, Order means that the Company's rate case filing is deemed complete as of the supplemental filing date, August 26, 2004.²

Accordingly, the ten-month time period for deciding the merits of the Company's petition commenced as of that date: August 26, 2004.

II. SUSPENSION OF PROPOSED RATES

Under Minn. Stat. § 216B.16, subds. 1 and 2, the rates proposed by the Company become effective 60 days from filing, unless they are suspended by the Commission. The Commission finds that it cannot resolve all issues regarding the reasonableness of the proposed rates within this 60 day period and that the public interest requires suspension. The Commission will so order.³

III. ADOPTION OF INTERIM RATES

A. Whether to Set Interim Rates

GMG's current rate case presents unusual circumstances in that it does not seek a rate increase and has not proposed interim rates.

Despite no rate increase being sought and no interim rates proposed, the Commission finds that it is necessary and appropriate to set interim rates. First, Minn. Stat. § 216B.16, subd. 3 requires it, stating:

² This Commission action, of course, is as to form only and implies no judgment on the merits of the Company's application.

³ In this Order, the Commission also has established interim rates for the suspension period, under Minn. Stat. § 216B.16, subd. 3.

Notwithstanding any order of suspension of a proposed increase in rates, the commission **shall** order an interim rate schedule into effect not later than 60 days after the initial filing date. The commission shall order the interim rate schedule *ex parte* without a public hearing. (Emphasis added.)

Moreover, setting interim rates is appropriate because doing so would establish a date from which a refund would be calculated if the Commission later determines that GMG’s rates should be lowered.⁴

B. How to Set Interim Rates in GMG’s First Rate Case

The interim rate statute directs the Commission in setting interim rates to use (1) a rate of return on common equity for the utility equal to that authorized by the commission in the utility's most recent rate proceeding; (2) rate base or expense items the same in nature and kind as those allowed by a currently effective order of the commission in the utility's most recent rate proceeding; and (3) no change in the existing rate design. Fortunately, the statute allows an exception to the automatic defaults identified in the statute if the Commission finds “exigent circumstances.”

Since this is GMG’s first rate case, there is no previous Commission-approved rate of return and rate base to use in setting interim rates. The Commission finds that these are “exigent circumstances” warranting the Commission’s departure from the statute’s directives regarding what rate of return, rate base, and rate design to use. Simply stated, these must be “exigent circumstances” because the statute cannot be interpreted as requiring the Commission to use non-existent items (Commission-approved rate of return, rate base and rate design) thereby making it impossible to establish the interim rates that the statute clearly requires the Commission to set.

Searching for an appropriate alternate basis for interim rates in these circumstances, then, the Commission finds that it is reasonable to set interim rates at current rate levels. Since the Company is not seeking a rate increase, continuing the Company’s current rates as interim rates will not deny, even temporarily, the Company any requested increase in revenues. And ratepayers will not be harmed since interim rates will not be increased and setting interim rates will establish a clear date from which to calculate refunds in the event the Commission ultimately decides that GMG’s rates should be lowered.

As to the rate design reflected in GMG’s interim rates, the statute does not mandate use of a “Commission-approved” rate design, but simply that the interim rates include no change in the “existing” rate design.” The rate design in GMG’s current rates obviously is “existing” and will not be altered by adopting current rates as interim rates. Therefore no “exigent circumstances” analysis need be applied to the existing rate design in order to authorize its continued use in interim rates.

⁴ Minn. Stat. § 216B.16, subd. 3 (c) authorizes the Commission to order refunds if final rates are lower than interim rates.

IV. MOVING FORWARD

A. Interim Rates as Tariffs

Since current rates will be used for interim rates, there will be no interim rate adjustment (or interim rate increase) to include or disclose on customer bills. However, the Company will be required to label its tariff sheets as interim and file a copy with the Commission and the Department.

B. Interim Rates Compliance Filings

Consistent with previous practice regarding interim rates, the Commission will direct GMG to

- file with the Commission and the Department of Commerce interim tariff sheets and supporting documentation reflecting the decisions herein;
- keep such records of sales and collections under interim rates as would be necessary to compute a potential refund with the understanding that any refund should be made within 120 days of the effective date of the Commission's final Order in a manner approved by the Commission;
- include in its public hearing notice to customers, an explanation of the Commission's decision regarding interim rates;
- submit the proposed notice to customers for approval by the Commission's Executive Secretary or the Administrative Law Judge (ALJ) assigned by the Office of Administrative Hearings (OAH) to this matter;
- certify completion of this notice requirement to the Commission.

C. Executive Secretary Authority

For greater administrative efficiency and flexibility, the Commission will delegate authority to its Executive Secretary to approve notices for the duration of this proceeding.

D. Next Step: Referral to the Office of Administrative Hearings

In a separate Order issued contemporaneously with this one, the Commission is referring this matter to the Office of Administrative Hearings (OAH) for disciplined record development and, if settlement discussions are not fruitful, contested case proceedings to develop the record as the basis for the Commission's ultimate decisions regarding the merits of the Company's petition.

ORDER

1. GMG's rate case filing is declared complete, effective August 26, 2004. The Commission's finding of completeness is as to form only and does not reach the merits of the Company's petition.

2. GMG's proposed rates are suspended and the Company's current rates are adopted as interim rates.
3. GMG shall file with the Commission and the Department of Commerce interim tariff sheets and supporting documentation reflecting the decisions herein.
4. GMG shall keep such records of sales and collections under interim rates as would be necessary to compute a potential refund with the understanding that any refund should be made in a manner approved by the Commission within 120 days of the effective date of the Commission's final Order in this matter.
5. In its public hearing notice to customers, GMG shall include an explanation of the Commission's decision regarding interim rates. GMG shall submit the proposed customer notice to the Commission's Executive Secretary or the Administrative Law Judge (ALJ) assigned to this matter by the Office of Administrative Hearings (OAH) for approval.
6. GMG shall certify completion of this notice requirement to the Commission.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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