

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota

ISSUE DATE: December 30, 2005

DOCKET NO. E-002/GR-05-1428

ORDER ACCEPTING FILING AND SUSPENDING RATES

PROCEDURAL HISTORY

On November 2, 2005, Xcel filed an Application for a Proposed Increase in Electric Rates with the Commission.

On November 7, 2005, the Commission issued a notice seeking comments on whether Xcel's rate change petition complied with the filing requirements of Minn. Stat. § 216B.16, Minn. Rules, Parts 7825.3100 to 7825.4400, and prior Commission Orders.

On November 14, 2005, the Residential and Small Business Division of the Office of the Attorney General (RUD-OAG) filed a petition to intervene as a matter of right in this proceeding pursuant to Minn. Stat. § 8.33 and Minn. Rules, Part 7812.1700, subp.10.¹

On November 18, 2005, the Minnesota Department of Commerce (the Department) filed a completeness review. The Department recommended that the Commission accept Xcel's filing and refer the matter to the Office of Administrative Hearings (OAH).

On November 18, 2005, the RUD-OAG, Meyer Shark (as a ratepayer), Ford Motor Company, Gardau Ameristel US, Inc., and Marathon Petroleum Company (Xcel Large Industrials or XLI), and Rebecca S. Winegarden (as a ratepayer) filed comments. All four of these commenting parties challenged the timing of Xcel's filing based on language contained in the Xcel Merger Order.²

On November 18, 2005, Wal-Mart (Energy Department) filed comments on Xcel's petition to increase rates.

¹ The RUD-OAG's petition to intervene is deemed granted as a matter of right.

² See *In the Matter of the Application of Northern States Power Company for Approval to Merge with New Century Energies, Inc.*, Docket No. E,G-002/PA-99-1031, ORDER APPROVING MERGER, AS CONDITIONED (June 12, 2000), the Merger Order.

On November 21, 2005, the International Brotherhood of Electrical Workers (IBEW), Local 949, filed a petition to intervene in the proceeding.³

On November 28, 2005, Xcel filed reply comments.

On December 2, 2005, IBEW, Local 23, filed a petition to intervene in the proceeding.⁴

The Commission met to consider this matter on December 15, 2005.

FINDINGS AND CONCLUSIONS

I. APPROPRIATE TIMING OF XCEL'S PETITION

A. Summary of Commission Analysis and Action

The Commission finds that the Commission's Merger Order and the stipulations made a part thereof do not preclude Xcel's filing for a general rate increase prior to January 1, 2006. The Commission reaches this conclusion based on its consideration of the relevant stipulations as a whole and the stipulating parties' intent found therein. Contemporaneous documents drafted by the Administrative Law Judge (ALJ) and the stipulating parties themselves at the time the stipulations were submitted to the Commission reinforce that conclusion.

B. Objection to the Timing of Xcel's Petition

Xcel's petition has been challenged as premature by several commenters in this matter: the RUD-OAG, Ford Motor Company, Garde Ameristel US, Inc., and Marathon Petroleum Company (Xcel Large Industrials or XLI), Meyer Shark (as a ratepayer), and Rebecca S. Winegarden (as a ratepayer). These commenters (collectively, the Objecting Parties or the Objectors) have cited the following sentence from Section II of NSP's stipulation with the OAG (NSP/OAG Stipulation) and NSP's stipulation with Minnesota Energy Consumers, Inc. (NSP/MEC Stipulation) for the proposition that the stipulations and the Commission Order adopting them preclude Xcel from filing a request for increased rates until January 1, 2006:

Beginning on the date of this agreement and until January 1, 2006, NSP will not increase or petition the Commission to approve an increase in its electric rates above the levels set forth in Section I above, except as provided in Section II, B.

³ The petition of the International Brotherhood of Electrical Workers (IBEW), Local 949 is considered granted by operation of law. Minn. Rules, Part 7829.0800 , subp. 5 provides that if there is no objection to intervention and a petition to intervene is not denied or suspended within 15 days of filing, the petition to intervene must be considered granted, unless the matter is referred to the Office of Administrative Hearings for contested case proceedings before the expiration of the 15-day period. Since no objections were received and no referral to the OAH was made within 15 days after the petition to intervene was filed it is deemed granted.

⁴ This petition is also deemed granted by operation of Minn. Rules, Part 7829.0800 , subp. 5 since no objections were filed and no referral to the OAH was made within 15 days after the petition to intervene was filed

They also sought to rebut Xcel's argument that Section I of OAG and MEC Stipulations expressly permit rate changes to become effective on January 1, 2006 by noting that Section I contains the phrase "subject to Section II below". The Objecting Parties contend that the phrase "subject to Section II below" effectively incorporates Section II's asserted prohibition against filing a rate case until January 1, 2006 into the meaning of Section I.

Finally, objecting commenters argued that any ambiguity that may exist on this issue should be resolved in favor of the customers.

C. Xcel's Reply to the Objectors' Arguments

Xcel argued that the Objectors' argument that the single phrase "or petition" in Section II precludes the Company from filing an electric general rate case until January 1, 2006 violates the detailed and plain language of the stipulations, as well as an established standard of interpretation, i.e., that isolated phrases such as "or petition" must be interpreted in a manner consistent with the entire sentence and the entire document.

In response to the argument that the phrase "subject to Section II" qualifies Section I's statement that "NSP may file to increase or decrease its base rates effective at any time thereafter as permitted by statute," Xcel argued that the phrase "subject to Section II" was included to preserve the effectiveness of various provisions throughout Section II that would allow rates to change prior to the end of the Stipulations, not to preclude filing a rate case prior to January 1, 2006.

Xcel further argued that the meaning of the phrase "or petition" in Section II must not be viewed in isolation but must be viewed in the context of the entire document. The Company cited Minnesota state court cases as requiring that "whole document" approach and stated that the Objectors' interpretation conflicts with other, far more detailed provisions of the Stipulations referring to the rate freeze as ending on December 31, 2005 and not, as the Objectors argued based on the isolated phrase in Section II, on some unspecified date thereafter resulting from a post-January 1, 2006 petition to raise rates.

In addition to citing multiple provisions in the Stipulations themselves, Xcel also argued that its interpretation (that the rate freeze ends on December 31, 2005 and not beyond) was the contemporaneously expressed understanding of the signatories to the stipulations currently at issue (including the OAG, MEC, and the Department),⁵ the ALJ,⁶ and the Attorney General in his

⁵ See the stipulating parties' Joint Explanation of and Support for the Stipulations and Agreements of Northern States Power Company, Department of Commerce, Office of the Attorney General, Minnesota Energy Consumers, and Community Environmental Coalition (February 7, 2000). The stipulating parties stated: "The OAG and MEC Agreements contain the exact same base rate freeze conditions. The extended base rate freeze applies only to electric rates. The rate freeze extends until January 1, 2006."

⁶ See Paragraph 8 of the ALJ's FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER, Docket No. E,G-002/PA-99-1031 at page 8 (February 28, 2000). The ALJ stated: "The OAG and MEC Agreements contain the exact same base rate freeze conditions. The extended base rate freeze applies only to electric rates. The rate freeze extends until January 1, 2006."

publicly issued Summary of the OAG/NSP Settlement regarding the NSP/New Centuries Merger.⁷

D. Commission Analysis and Action

1. Summary

In its June 12, 2000 Order approving NSP's merger with New Century, the Commission directed NSP to comply with the commitments made under the Merger Agreement as well as the conditions to the merger adopted by the Commission in that Order. Among the conditions imposed by the Commission in that Order were the conditions stipulated between NSP and the OAG, MEC, and the Department. The Commission does not find, as the Objecting Parties have claimed, that one of the conditions stipulated and hence mandated by the Commission in the Merger Order was that NSP would not be allowed to file a petition to increase its base rates until after December 31, 2005.

The Commission finds that its Order does not bar Xcel from filing a request prior to January 1, 2006 for a rate increase to be effective January 1, 2006. This finding is reenforced by the stipulating parties' contemporaneous statements regarding the meaning of their stipulations.

In issuing its June 12, 2000 Merger Order, it was not the Commission's intent to require Xcel's rate freeze to extend beyond December 31, 2005 and the words of its Order do not convey such a meaning. Nor did the Commission misunderstand the stipulating parties' intentions on this issue. Based in the record in this matter, it is not credible that any party to the merger stipulations understood them when they were signed to mean that NSP's rate freeze would extend beyond December 31, 2005 and that the Company would be prohibited from filing for a rate increase until January 1, 2006.

2. The Stipulations

The stipulations considered in their entirety, as is required in order to ascertain the stipulating parties' intent,⁸ indicate that the stipulating parties intended the rate freeze to last to the end of 2005 and that a raise in those rates could go into effect on January 1, 2006, as specifically authorized in Section I of the NSP/OAG Stipulation and the NSP/MEC Stipulation.

⁷ In a four-page publicly issued summary of the OAG/NSP Settlement, the Attorney General stated: "...NSP will provide its customers a \$9 million dollar reduction in current electric rates in 2001. The company will further reduce rates by \$1 million dollars in 2002, and **rates will remain at this reduced level through 2005**. The total rate reduction for Minnesota customers is approximately \$50 million dollars over the next six years." (Emphasis added.)

⁸ See *Motorsports Racing Plus v. Arctic Cat Sales*, 666 N.W.2d 320, 324 (Minn. 2003) in which the Minnesota Supreme Court, quoting *Republic National Life Ins. Co. v. Lorraine Realty Corp.*, 279 N.W.2d 349, 355 (Minn.1979), states: "Intent is ascertained, not by a process of dissection in which words or phrases are isolated from their context, but rather from the process of synthesis in which words and phrases are given a meaning in accordance with the obvious purpose of the contract . . . as a whole."

The Commission cannot rely exclusively on one phrase (“or petition”) in Section II of the MEC and OAG stipulations to ascertain the parties’ intent, as urged by the Objecting Parties. Consistent with proper interpretation of contract language, the Commission must look to the entire document.⁹ When it does so, the Commission finds unequivocal language in Section I regarding 1) the length of NSP’s rate freeze (“NSP agrees to reduce its base electric rates according to the schedule in this section for the calendar years 2001 through 2005”) and 2) when an increase (or decrease) in NSP’s rates can become effective (“...NSP may file to increase or decrease its base rates effective at any time thereafter as permitted by statute.”)

In addition to the clear language of Section I is reinforced by several other references in the stipulations regarding when the rate freeze period ends, e.g., 1) the NSP/OAG Stipulation at page 3 and the NSP/MEC Stipulation at page 1 both state: “NSP agrees to reduce its base electric rates according to the schedule in this Section for the calendar years 2001- 2005”; 2) the NSP/OAG Stipulation at page 3 and the NSP/MEC Stipulation at page 3 both list the rate reduction schedule for each year, ending with: “For the year 2005, 1999 base rates will be reduced by 100% of the Basic Reduction Factor;” and 3) the NSP/OAG Stipulation states at page 11 that the stipulation is effective until January 1, 2006 or until rescinded or revoked, whichever is earlier.

The Objecting Parties have cited no instance in any stipulation that supports their interpretation of the phrase “or petition” in Section II, i.e., that expresses an expectation that the rate freeze will extend beyond December 31, 2005, as they now assert.

Further, contrary to XLI’s suggestion at the hearing on this matter, the clear language of Section I is not nullified or even clouded by the phrase contained therein, “subject to Section II.” The full sentence containing the phrase “subject to Section II” is:

The Parties also agree **that, subject to Section II below, base rates will remain at the level set forth above after the agreement ends, but that NSP may file to increase or decrease its base rates effective at any time thereafter as permitted by statute.** (Emphasis added.)

The sentence presents two agreements: 1) **that, subject to Section II below, base rates will remain at the level set forth above after the agreement ends;** and 2) **that NSP may file to increase or decrease its base rates effective at any time thereafter as permitted by statute.** Seen in the context of the entire sentence, then, it is clear that the phrase “subject to Section II below” is part of and modifies the first “that” clause but not the second. An interpretation subjugating the second “that” clause to Section II would contradict the second “that” clause entirely. The Commission will not adopt an interpretation that ignores the second “that” clause.

3. The Commission’s June 12, 2000 Order (Merger Order)

The Commission’s Merger Order directed Xcel to honor the commitments it made in the stipulations, including the rate reductions and rate freeze period established therein. In issuing the Order, it was clear to the Commission that the stipulated rate freeze period would end December 31, 2005 because 1) that is what the ALJ stated in his Report was the parties’ agreement and 2) that is also how the parties expressed their agreement on that point.

⁹ Id.

The ALJ in his Report and the stipulating parties in their formal written explanation of their stipulations said exactly the same thing:

The OAG and MEC Agreements contain the exact same base rate freeze conditions. The extended base rate freeze applies only to electric rates. The rate freeze extends until January 1, 2006.¹⁰

In sum, then, the contemporaneous statements of the stipulating parties and the ALJ to the Commission regarding the meaning of the stipulations do not support the notion that in adopting the ALJ's Report and the parties' stipulations the Commission was directing NSP to extend the rate freeze beyond December 31, 2005 and barring NSP from filing a rate case on a schedule that would allow its requested rate increase to become effective when the rate freeze ended, i.e., on January 1, 2006.¹¹ Instead, the stipulating parties' contemporaneous statements support Xcel's interpretation that the stipulations only froze rates until December 31, 2005 and do not preclude Xcel from filing a request prior to January 1, 2006 for a rate increase to take effect on January 1, 2006.

In short, the Commission's June 12, 2000 Order mandated implementation of the stipulations as the stipulating parties represented them to the Commission at that time and as the ALJ's Report and Recommendation had characterized those stipulations. With respect to the duration of the rate freeze, the Commission received and adopted information that the rate freeze was to last through December 2005, with certain exceptions to end it **earlier** if certain specified events occurred. No information was presented to the Commission indicating that the stipulations precluded NSP from

¹⁰ See Paragraph 8 of the ALJ's FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER, Docket No. E,G-002/PA-99-1031 at page 8 (February 28, 2000) and the stipulating parties' Joint Explanation of and Support for the Stipulations and Agreements of Northern States Power Company, Department of Commerce, Office of the Attorney General, Minnesota Energy Consumers, and Community Environmental Coalition (February 7, 2000).

¹¹ In addition to the stipulating parties' contemporaneous Joint Explanation, see the Attorney General's public explanation of OAG/NSP Settlement. The Attorney General announced the total rate reduction to be experienced under the stipulation as follows:

...rates will remain at this reduced level **through 2005**. The total rate reduction for Minnesota customers is approximately \$50 million dollars over **the next six years**.

.....

This agreement ensures that rates will not go above that level for at least four and **as long as six years**, depending on the need for new power plants.

This statement and the total rate reduction figure stated were consistent with a six year freeze, not a freeze lasting six years plus the number of additional months required by NSP being prohibited from filing a rate case until January 1, 2006. As noted by XLI, it is well known that there is a lag between filing a general rate case and the effective date of interim rate increases. If the Attorney General's understanding was that the Company would not be allowed to file for a rate increase until January 1, 2006, the dollar level of savings and the period of reduced rates would have been significantly larger than his public explanation indicated.

filing a request for a rate increase until January 1, 2006.

4. No Ambiguity to Resolve

The Commission finds no merit in the assertion that the Commission should resolve any ambiguity in favor of the customers and, hence, should adopt the Objecting Parties' proffered interpretation of the stipulations and Order in question.

First, Minn. Stat. § 216B.03 directs the Commission to resolve doubts as to the reasonableness of rates in favor of the consumer, not the reasonableness of competing interpretations of stipulations or Orders. Here the Objecting Parties are not challenging the reasonableness of proposed rates as is covered by the statute, but are asserting that ambiguity of the Merger Stipulation and Order should be interpreted in favor of consumers.

Second and more importantly, the asserted standard is inapplicable in this case since, as the foregoing discussion has shown, no ambiguity exists either in the stipulations, the ALJ's Report characterizing those stipulations, the stipulating parties' contemporaneous explanation of those stipulations, or the Commission Order directing implementation of those stipulations. The rate freeze is to end December 31, 2005 and Xcel's November 2, 2005 petition to increase rates effective January 1, 2006 is not precluded.

II. COMPLETENESS OF XCEL'S FILING

No party objected that Xcel's filing was not substantially complete. Having examined the filing and having considered the comments of the Department regarding the completeness of Xcel's filing, the Commission finds that the filing substantially complies with the statute (Minnesota Statutes § 216B.16), applicable rules (Minnesota Rules, parts 7825.3100 to 7825.4600) and Commission Orders. This is a finding as to form only. It implies no judgment on the merits of the application.

III. SUSPENSION OF RATES

Under Minnesota Statutes § 216B.16, the rates proposed by Xcel 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 therefore suspend the operation of the proposed rate schedule under Minnesota Statutes § 216B.16, subd. 2.

In a separate but contemporaneously issued Order, the Commission has found that contested case proceedings are necessary for adequate examination of the merits of the proposed rate change. See NOTICE AND ORDER FOR HEARING issued in this docket on this date. Rates will remain suspended until the conclusion of those proceedings.

The Commission will establish interim rates for the suspension period, under Minnesota Statutes § 216B.16, subd. 3, by separate Order.

ORDER

1. Xcel's petition is accepted as being in proper form and substantially complete as of November 2, 2005.
2. The operation of the proposed rate schedule is hereby suspended under Minnesota Statutes § 216B.16, subdivision 2, until the Commission has issued a final determination in this case.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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