

NOV 03 2006

Public Service Commission
Wyoming

BEFORE THE WYOMING PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE TARIFF)	
FILING OF MONTANA DAKOTA)	
UTILITIES COMPANY FOR)	
AUTHORITY TO REVISE TARIFFS)	Docket No. 30013-173-GT-06
TO BE IN COMPLIANCE WITH)	Record No. 10532
COMMISSION RULES § 249 AND)	
§ 250)	

COMMENTS AND CONCERNS
OF THE WYOMING OFFICE OF CONSUMER ADVOCATE
(Filed: November 3, 2006)

Introduction and Background

On April 21, 2006, Montana Dakota Utilities (MDU or the Company) filed the above docketed application requesting approval of certain proposed changes to its Purchased Gas Cost Adjustment (PGA) Rate 88 tariff in order to comply with Sections 249 and 250 of the Commission's Procedural Rules and Special Regulations (Commission Rules). On May 11, 2006, the Commission issued a Notice of Application in this matter requesting that parties seeking to file a statement, protest, intervention or request for hearing do so on or before June 12, 2006. No formal interventions were filed at that time.

The matter was brought before the Commission at its July 11, 2006, Regular Open Meeting. According to the Commission's meeting minutes:

... Dave Lucero, Commission Counsel, and Deputy Chair Lewis expressed concern that there is no proof of public interest for determining interest on under-collected balances. Chris Petrie, OCA, said the Rules suggested interest on over-collection is needed to discourage accumulation of large blocks of money in the balancing account, and interest on under-collections is generally done only when the company has made some showing it is in the public interest.

As a result of the discussion, MDU agreed to supplement the application and the matter was tabled. On October 20, 2006, a supplement to the application was filed to support the application of interest to under recovered balances.

The filing of the supplemental information has caught the Office of Consumer Advocate's (OCA) interest in this matter. Furthermore, the OCA's general interest in reviewing pass-on and commodity balancing account tariffs (both those pending and approved) has been rekindled by several Open Meeting discussions with the Commission about compliance with the Commission Rules and natural gas incentive provisions. It is in this context that we offer the Commission our comments and concerns on two subjects: (1) MDU's request for interest on under collected balances; and (2) the Company's tariffed Incentive Adjustment.

Interest on Under-collected Balances

In its proposed tariff sheets, MDU simply and directly seeks authority to compute interest on its under-collected Account 191 (Unrecovered Purchased Gas Cost Account) balances. This request is absurd given that the Company changes its PGA monthly. If the Company were similar to most other utilities and only changed its commodity rates a few times each year, one might be able to argue that the desire for rate stability has a cost, and part of that cost is the carrying charge on balances driven by swings in today's commodity market.¹ However, MDU is distinctly different than others given that it files monthly PGA applications. There is no reason, when rates are changed monthly, to anticipate that large over or under collected balances will accumulate.² Given that there is

¹ While the OCA believes that this argument has some validity, we do not agree that it alone is enough to meet the *public interest* standard required by the Commission's Rules.

² See February 3, 1999, Memorandum Opinion, Findings, Conclusions and Order in Docket No. 30013-GP-98-81, paragraph 5 a.:

Mr. C. Wayne Fox, the Vice President of Regulatory Affairs and General Services, testified that the procedure utilized in the Company's monthly

only a minimal chance for the balance to be significant, there is no reason to authorize interest on under collected balances since there are few, if any, costs to reimburse. Ultimately, it is surprising that MDU would rely upon the fact that it has a monthly PGA as an argument in support of applying interest to under collected balances. Simply put, there is no need for such a provision. Without the need to recover potential expenses or compensate for shareholder risk, the OCA believes that MDU fails to meet the requisite public interest standard.

MDU's remaining arguments are just as baseless as the claim discussed above. MDU argues that the "reciprocal policy of applying interest more appropriately tracks expenses." This incorrectly implies that implementing a "reciprocal policy" is a necessary accounting exercise. It is not. Even if there were a matching principle argument to be made, which there is not, accounting for expenses and the regulatory method used to recover those expenses are two distinct issues. Tracking expenses does not require the use of an expedited rate recovery method, such as the PGA.

MDU also argues that the public interest requires even-handed regulation which the Company defines as balancing the interests of both customers and utilities. The OCA does not disagree with this assertion. The OCA does disagree, however, with the premise that the Commission must allow interest on under collected balances in order for its regulation to be even-handed. The Commission has already considered the interests of MDU versus those of its customers when it allowed the Company to implement a monthly PGA over the objections of its customers. Denying MDU the opportunity to record and recover

purchased gas adjustments present a reasonable and appropriate methodology for passing along the costs of gas purchased for customer use. (Tr. P.9.) He further testified that the monthly process tracks the cost of gas more closely than the semi-annual process due to the longer period between gas purchases and the reflection of any changes in rates. (*Id.*) **He concluded that the monthly adjustments serve to keep surcharge levels at a minimum and avoids the shifting of costs from one period to another. (Tr.p.10.) [Emphasis Added.]**

interest on its under collected balance, if any, is a poor counterbalance to the fact that MDU is permitted to recover the vast majority of its operating costs on an expedited basis with limited review.

Finally, MDU argues that allowing interest on under collected balances reduces borrowing but fails to explain what relevance this has to a discussion regarding the public interest. The argument seems completely out of context for a company with a monthly PGA. The OCA questions exactly how much borrowing can be required for a company whose under collected balances are minimized through monthly filings. The Company has not provided any empirical information on this question. Also, there is no balance between the interests of the Company and its customers when there is no mechanism to pass on the reduced cost of debt between rate cases.

The OCA believes that MDU continues to fail to meet its burden of showing why allowing interest on under collected balances would be in the public interest.

Incentive Adjustment

In its April 21, 2006, filing MDU proposes to keep the Incentive Adjustment provision which is currently part of its PGA tariff. This incentive adjustment has its roots in W.S. § 37-3-115 which provides:

In the case of a utility furnishing natural gas, if the utility decreases its cost of natural gas, not less than ninety percent (90%) of the decrease in the cost shall be passed on to the consumer and in addition to other factors allowed by the commission in setting rates, the commission may allow the utility to add to its rate not more than ten percent (10%) of the difference between its previous cost for natural gas and its new cost for natural gas.

The above referenced statutory language is clearly permissive. The Commission is permitted to allow as much as ten percent of any decrease in the

cost of natural gas to be retained by the utility and its shareholders. The permissive language of this statute does not appear in MDU's Incentive Adjustment language. The opening language of the Company's relevant tariff provision reads:

The Incentive Adjustment is based on 10% of the difference between the actual gas commodity purchased cost for a historic twelve month period and the calculated commodity cost of gas for the same period using the actual purchased volumes at the Rocky Mountain – CIG Index price. If the actual gas costs are less than costs at the Rocky Mountain – CIG Index price there is an Incentive Adjustment.

The tariff language purports to remove the discretion of the Commission to look at the circumstances on a case-by-case basis. The tariffed incentive result is purely formulistic. MDU's incentive language is all or nothing and fails to incorporate the statutory concept of allowing any amount of incentive between zero and ten percent.

While the formula is objective and appears, to an objective observer, to be outside of the control of MDU or the Commission, the OCA is concerned that it may be inconsistent with the statute. The tariff language compares a twelve-month set of data against a different twelve-month set of data. If the Company's cost data is lower than the objective benchmark data, then the incentive is granted. This could occur whether or not the Company's costs had increased or decreased from the prior year. The context of the statutory language, however, relates to situations where costs have decreased from one year to the next.

Finally, and most importantly, the OCA is concerned that the tariff language essentially provides a gift to MDU and its shareholders, rather than compensating the shareholders for measurable risk. The incentive adjustment may be awarded for activities undertaken by the Company but funded by ratepayers. These activities include many of the obvious actions which the Company may take to reduce its costs below the CIG indexed level.

MDU could use storage to better its price compared to the indexed price. Yet, the PGA includes the costs of the stored commodity, costs paid to third parties for the use of the storage, as well as a rate of return on the stored balances. Customers pay for the storage costs yet under the Company's tariff, shareholders get the reward.

MDU could use financial hedging activities to beat the index price. Yet, the costs associated with commodity hedging programs (including gains, losses and transaction costs) are already included in the PGA. These costs are also paid by customers and not shareholders. Yet again, shareholders have an opportunity to gain from these activities.

Understandably, MDU is not seeking to modify its existing tariff language even though it is included in the PGA tariff that is filed for approval as part of this docket. However, the Commission should not permit the status quo to stand in this case, as it violates the *public interest* principles that permeate Sections 249 and 250 of the Commission's Rules. It would be absurd to think that a utility has to meet the public interest test to reduce rates to reflect a refund,³ but does not have to meet the same test for passing on cost reductions to shareholders instead of ratepayers.

Some may validly argue that the Commission should open a rulemaking proceeding on establishing separate and unique standards for implementing the provisions of W.S. § 37-3-115. The OCA would be pleased if the Commission chose to open such a proceeding in this matter. Yet, that does not replace the need for the Commission to carefully examine the MDU tariff language that is before it. Until the Company's tariff language is removed, replaced, or otherwise voided, the possibility exists that its shareholders would be rewarded at the expense of ratepayers. The Commission must not allow such an inequity to occur.

³ See Section 250(f) of the Commission's Rules.

Conclusion

The OCA urges the Commission not to approve the recovery of interest on under collected commodity cost balances for MDU as it has failed to meet the requisite burden of showing how such a provision is in the public interest. Additionally, we ask the Commission to consider our stated concerns and comments relative to the Company's incentive adjustment and direct the removal of this provision from the Company's tariff in this docket.

Respectfully Submitted,

A handwritten signature in black ink that reads "Ivan H. Williams". The signature is written in a cursive, flowing style.

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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2006, I served the foregoing COMMENTS AND CONCERNS OF THE WYOMING OFFICE OF CONSUMER ADVOCATE by delivering copies thereof to the individuals/entities below, by the method(s) indicated.

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