

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE ONE-TIME SPECIAL)	FINDINGS OF FACT AND
UNDERGROUND ASSESSMENT BY)	CONCLUSIONS OF LAW;
NORTHERN STATES POWER COMPANY IN)	NOTICE OF ENTRY OF
SIoux FALLS, SOUTH DAKOTA)	ORDER
)	EL99-019

Sioux Falls ordinances require Northern States Power Company (NSP) to relocate overhead facilities in the downtown Sioux Falls area to underground whenever the streets are resurfaced. Certain streets in downtown Sioux Falls were resurfaced in 1999. The NSP Tariff provides that NSP will comply with lawful orders of a municipality and that NSP will charge the cost of the project to the benefited customers. South Dakota Electric Rate Book, Section No. 6, Original Sheet No. 29, Section 5.5 (effective 12-16-96). NSP determined that the benefited customers in this matter were NSP's Sioux Falls customers.

On November 1, 1999, at a regularly scheduled meeting, the Commission voted to open a docket to determine the definition of "benefited customer" in this matter (Commissioner Laska Schoenfelder dissenting).

At its December 28, 1999, meeting, the Commission considered how to proceed with this matter. After listening to comments, the Commission voted to hold a hearing to determine whether NSP correctly determined who are the benefited customers.

The hearing was held as scheduled on January 27, 2000, beginning at 7:00 o'clock P.M., CST, in the Minnehaha County Commission Meeting Room, located on the second floor of the County Administration Building, 415 N. Dakota, Sioux Falls, South Dakota. At the close of the hearing, the Commission took the matter under advisement. On February 11, 2000, NSP filed responses to questions that it was unable to answer at the hearing. This document will be referred to as Exhibit 4.

At its February 29, 2000, meeting, the Commission considered this matter. The Commission voted unanimously to find NSP's determination that all of its Sioux Falls customers benefited was incorrect. NSP failed to show that the two and a half block underground placement of a 13,800 volt three-phase feeder line benefited all of its Sioux Falls customers. The Commission also moved that NSP credit its customers the one-time special underground assessment of \$2.16. For those people who paid the assessment but are no longer NSP customers, the Commission required NSP to refund the assessment upon request.

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. NSP is an electric utility that serves approximately 53,000 customers within the city of Sioux Falls. Exhibit 4, Answer to Question 4. NSP estimated that the total number of electric customers in Sioux Falls is about 57,000 customers. *Id.*

2. Sioux Falls city ordinances require that overhead lines located in an area the city has designated as an urban renewal area be placed underground when affected streets are resurfaced. Exhibit 3, Article V. Overhead Utility Wiring in Urban Renewal Area, § 41-131. In the summer of 1999, as required by the ordinances, NSP placed a 13,800 volt three-phase feeder line underground for a distance of two and one half blocks along 12th Street located in downtown Sioux Falls. Tr. at 9, 11.

3. Pursuant to NSP's tariff, if NSP replaces overhead facilities with underground facilities upon the request of a customer, a group of customers, or upon lawful order of a municipality, the benefited customers will be charged certain costs associated with that placement. Exhibit 3, South Dakota Electric Rate Book, Section No. 6, Original Sheet No. 29, 5.5 Replacement of Overhead with Underground, Part A. General. The tariff further provides that "[t]he customer, at his expense, must engage an electrician to convert or adapt his electrical facilities to accept service from the underground facilities to be installed." *Id.* The city ordinance contemplates that benefited customers only pay for their expenses to convert their service. Exhibit 3, Article V. Overhead Utility Wiring in Urban Renewal Area, § 41-132.

4. At the hearing, Jim Wilcox, manager of government and regulatory services for NSP, stated that there were seven commercial customers along the north side of the street that had to reconfigure their electric service to hook up to the new underground line. Tr. at 37. This statement was later corrected in NSP's responses filed after the hearing. Exhibit 4, Answer to Question 2. NSP clarified that four of the seven customers receive service from other locations. *Id.* Three of the commercial customers incurred costs to reconnect to the new underground system. *Id.*

5. At the hearing, Mr. Wilcox testified that he considered five separate groups as those who "might be available to pay for a project like this." Tr. at 17. He explored the possibility of the city of Sioux Falls contributing to the cost, but was told that the city would not pay and that he had to find another way to pay for the project. Tr. at 27. He rejected charging NSP shareholders since they did not ask for the project. Tr. at 17. He also looked at the three hundred customers who live in the urban renewal area but thought the cost of several hundred dollars assessed to each would not be fair. *Id.* He rejected those customers living along the two and one half blocks for the same reason. Tr. at 17-18. He then decided that "asking all of our customers in Sioux Falls to contribute was the best way." Tr. at 21.

6. Mr. Wilcox stated that since the city ordinance is passed by a city council that represents all of the citizens of Sioux Falls then NSP's Sioux Falls customers were the best proxy for all of Sioux Falls citizens. Tr. at 20. However, since NSP does not serve approximately 4000 Sioux Falls citizens, those citizens would not be charged.

7. NSP charged each of its Sioux Falls customers \$2.04 plus \$.12 for sales tax, based on an incremental cost of \$108,299.99. Exhibit 3, City of Sioux Falls Special Undergrounding Project; Tr. at 21.

8. The city ordinances, as presented at the hearing, are silent as to any reasons for requiring the lines to be placed underground. Article V. Overhead Utility Wiring in Urban

Renewal Area, §§ 41-130 through 41-132. The overground line was operational and the only rationale put forward for the requirement to underground the line was aesthetics. Tr. at 17. NSP's standard is to not bury this type of feeder line, although NSP has buried this type of line if required for safety reasons. Tr. at 38, 47-48.

9. The city ordinance requires that the affected utility prepare a general written policy that must be approved by the city. Exhibit 3, Article V. Overhead Utility Wiring in Urban Renewal Area, § 41-132. Although it was NSP's position that its tariff was its general written policy, Mr. Wilcox was unaware if the tariff was ever submitted to and approved by the city. Tr. at 23-24.

10. The Commission finds that NSP failed to show that all of its Sioux Falls customers were "benefited customers" pursuant to the tariff. The line was not placed underground for operational, safety, or economic reasons. The only possible benefit brought out at the hearing as to why the line was placed underground lines was aesthetics. The Commission questions how all of NSP's Sioux Falls customers benefited from the burying of a line for purely aesthetic purposes in downtown Sioux Falls. The Commission finds that just because the city council passed an ordinance, it does not necessarily follow that NSP's Sioux Falls customers can be considered "benefited customers" as contemplated by the tariff approved by the Commission. At a minimum, in order to be considered a "benefited customer" under the tariff, the customer should have either requested the underground placement or received a more tangible benefit than driving or walking down a street with buried electric lines. Moreover, it appears that NSP's determination of who were the benefited customers was based more on who had the ability to pay rather than who benefited.

11. The Commission further finds that it is unable to determine from the current record which customer, if any, benefited from the underground placement of the 13,800 volt three-phase feeder line.

12. The Commission finds that since NSP's Sioux Falls customers cannot be considered the "benefited customers" under the tariff, NSP shall credit its Sioux Falls customers the one-time special underground assessment of \$2.16. For those people who paid the assessment but are no longer NSP customers, NSP shall refund the assessment upon request.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically 49-34A-2, 49-34A-3, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-11, 49-34A-26, and 49-34A-27.

2. Sioux Falls city ordinances require that overhead lines located in an area the city has designated as an urban renewal area be placed underground when affected streets are resurfaced. Exhibit 3, Article V. Overhead Utility Wiring in Urban Renewal Area, § 41-131.

3. Pursuant to NSP's tariff, if NSP replaces overhead facilities with underground facilities upon the request of a customer, a group of customers, or upon lawful order of a

municipality the benefited customers will be charged certain costs associated with that placement. Exhibit 3, South Dakota Electric Rate Book, Section No. 6, Original Sheet No. 29, 5.5 Replacement of Overhead with Underground, Part A. General. The tariff further provides that "[t]he customer, at his expense, must engage an electrician to convert or adapt his electrical facilities to accept service from the underground facilities to be installed." *Id.* The city ordinance contemplates that benefited customers only pay for their expenses to convert their service. Exhibit 3, Article V. Overhead Utility Wiring in Urban Renewal Area, § 41-132.

4. The Commission finds that NSP has failed to show that all of its Sioux Falls customers were "benefited customers" pursuant to the tariff for the reasons set forth in Finding of Fact 10.

It is therefore

ORDERED, that NSP shall credit its Sioux Falls customers the one-time special underground assessment of \$2.16. For those people who paid the assessment but are no longer NSP customers, NSP shall refund the assessment upon request.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 14th day of March, 2000. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 14th day of March, 2000.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Dellene Kalbo</u>
Date:	<u>3/14/00</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner