

E-002/GR-91-1 ORDER GRANTING AND DENYING REQUESTS FOR INTERVENOR
COMPENSATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
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In the Matter of the Application
of Northern States Power Company
for Authority to Increase Its
Rates for Electric Service in
the State of Minnesota

ISSUE DATE: September 14, 1992

DOCKET NO. E-002/GR-91-1

ORDER GRANTING AND DENYING
REQUESTS FOR INTERVENOR
COMPENSATION

PROCEDURAL HISTORY

On June 5, 1991, Mankato Citizens Concerned with Preserving Environmental Quality (Mankato or MCCPEQ) filed a request for intervenor compensation pursuant to Minn. Rules, parts 7831.0100 through 7831.0800. On June 7, 1991, Minnesotans for an Energy Efficient Economy (ME3) filed a request for intervenor compensation. Both entities sought a determination from the Commission that they were eligible to recover their costs of intervention in the above-captioned Northern States Power Company (NSP) general rate case.

On July 19, 1991, the Commission issued its ORDER DETERMINING PRELIMINARY ELIGIBILITY OF MANKATO CITIZENS CONCERNED WITH PRESERVING ENVIRONMENTAL QUALITY AND MINNESOTANS FOR AN ENERGY EFFICIENT ECONOMY FOR INTERVENOR COMPENSATION. In that Order the Commission found that both intervenors should receive a preliminary determination of compensation eligibility pursuant to Minn. Rules, part 7831.0500.

On November 27, 1991, the Commission issued its FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER in the NSP general rate case. The Commission issued its ORDER AFTER RECONSIDERATION on February 19, 1992.

ME3 submitted its final claim for intervenor compensation on May 15, 1992. Mankato submitted its final claim on May 19, 1992.

NSP filed comments in response to the intervenors' filed claims on June 15, 1992. No other parties filed responsive comments.

The matter came before the Commission for consideration on August 20, 1992.

FINDINGS AND CONCLUSIONS

I. The Intervenor Compensation Rules

Minnesota's intervenor compensation rules, Minn. Rules, parts 7831.0100 through 7831.0800, came into effect on January 22, 1991. These rules require an intervenor seeking compensation to prove that the intervenor has insufficient financial resources to afford its intervenor costs and that the intervenor has materially assisted the Commission in its deliberations in the proceeding.

The rules require an intervenor to file a request for compensation early in the rate case proceeding. The intervenor must file as part of the request a statement of participation in the proceeding and a detailed statement of the intervenor's financial status.

Within 45 days of the intervenor's request the Commission must issue a preliminary determination of the intervenor's eligibility for compensation. This preliminary determination must address the intervenor's financial status and may also address other factors such as the intervenor's likelihood of materially assisting the Commission and the presence of any unrealistic expectations for compensation. Preliminary determinations create presumptions regarding the intervenor's eventual success or failure in its claim; the presumptions are rebuttable.

An intervenor who wishes to pursue its claim further must file a claim for an award of compensation after the rate case proceeding is finished. In order to succeed in its claim, the intervenor must be found to have materially assisted the Commission and to have insufficient resources, but for the award, to afford all or part of its intervenor costs. The rule sets out six factors, no one of which is dispositive, for the Commission to consider in its determination regarding material assistance. The rule lists four factors for the Commission's consideration in determining the sufficiency or insufficiency of an intervenor's financial resources.

II. ME3

Background

ME3 is a nonprofit organization with fewer than 100 members, some of which are themselves organizations with multiple members. ME3 directs its efforts towards issues of energy efficiency and the sustainable use of natural resources in Minnesota.

In the NSP general rate case, ME3 argued that NSP should be required to raise its level of spending on energy conservation to at least 2.5% of its gross operating revenues. ME3 recommended

that NSP be required to implement a Demand-Side Demonstration Initiative Project. According to ME3, the project should be overseen by a panel composed of representatives of NSP, the Commission, the Department of Public Service (the Department), ME3, and an independent outside organization. ME3 urged the Commission to deny NSP's rate increase unless NSP reduced its customers' energy demand by two percent per year, implemented the Demand-Side Demonstration Project, and used the societal cost test to evaluate conservation programs.

In its July 19, 1991 ORDER DETERMINING PRELIMINARY ELIGIBILITY, the Commission preliminarily determined that ME3 has insufficient resources to intervene fully and effectively, but for an award of intervenor compensation. The Commission made no findings regarding the discretionary preliminary determinations found at Minn. Rules, part 7831.0500, subpart 2. The Commission also noted that although ME3 was making its first appearance before the Commission, ME3 was a relatively sophisticated entity which includes members with considerable experience in Commission proceedings.

On September 30, 1991, the Administrative Law Judge (ALJ) assigned to the NSP rate case filed his Findings of Fact. The ALJ found that although ME3's recommendations were "thoughtful and provocative," they simply did not belong in the rate case forum. The ALJ stated that ME3's arguments would be properly addressed in a Conservation Improvement Program (CIP) process, not a general rate case.

In the November 27, 1991 NSP general rate case Order, the Commission agreed with the ALJ that the NSP rate case was the wrong forum for ME3 to raise its concerns. The Commission noted that the Commission and the Department have orderly processes in place for the consideration of both long-term and short-term conservation goals. The Commission cited its Resource Planning Process, Minn. Rules, parts 7843.0100 to 7843.0600, and the CIP process, Minn. Rules, parts 7690.0100 to 7690.1500, as appropriate venues for ME3's efforts. At p. 36 of the November 27, 1991 Order, the Commission noted that:

these processes serve better than a general rate case process, where issues are numerous and time is limited, as the initial forum to focus on the facts which are relevant to the determination of demand-side policy for NSP or Minnesota in general.

Commission Action

After considering the factors for material assistance at Minn. Rules, part 7831.0800, the Commission finds that ME3 has failed to show that it materially assisted the Commission in its deliberations. ME3 failed to make its case for material assistance under at least five of the six factors listed.

A. Whether the intervenor represented an interest that would not otherwise have been adequately represented in the proceeding;

Clearly, ME3's position was not properly part of the rate case considerations. The Commission does not find that this intervenor represented an interest which required representation in the proceeding.

B. Whether the intervenor's position or presentation on an issue was relevant or important for a fair decision in the proceeding;

ME3's proposals regarding energy conservation and a demand-side demonstration project were not relevant to the Commission's decisions regarding NSP's rates. While certain CIP filings are properly part of rate case considerations, ME3's broad conservation and demand-side management policy statements should have been introduced in another forum such as the Resource Planning Process or a CIP docket.

C. The intervenor's ability to clarify complex information, to simplify complex issues, to make timely and appropriate procedural recommendations, or to otherwise contribute to the efficiency or progress of the proceeding;

ME3 did not contribute to the efficiency or progress of the proceeding. On the contrary, ME3 brought a matter into the general rate case which was not relevant to the Commission's deliberations.

E. Whether the intervenor raised new or different arguments in support of a position, provided materially useful information not of common knowledge, raised a different issue, presented or elicited new or different facts or evidence, or took a different position from that of another party;

ME3 did not provide materially useful information in the NSP general rate case, since the positions were not properly before the Commission in that context. ME3 did not raise new or unexplored issues, since the Commission and the Department have ongoing, proven, effective procedures outside of a general rate case which are addressing the types of issues raised by ME3.

ME3's claim for an award of compensation has failed scrutiny under the factors listed for material assistance. While the Commission is not making a judgment as to the merits of ME3's arguments, they clearly did not form any meaningful part in the Commission's deliberations in this rate case. The Commission therefore finds that ME3 has failed to prove material assistance in this rate case. Because an award for intervenor compensation must be based upon both material assistance and insufficient resources, and ME3 has failed to prove the former, the Commission will not reach the issue of the sufficiency of this intervenor's resources.

III. MCCPEQ

Background

MCCPEQ is a nonprofit organization of under 100 members, most or all of whom are private citizens. MCCPEQ devotes its efforts towards environmental issues affecting Blue Earth and Nicollet Counties.

In the NSP general rate case, MCCPEQ argued that NSP's Red Wing and Wilmarth generating plants, which have been converted to burn refuse derived fuel (RDF), should be excluded from rate base. MCCPEQ argued further that the operating costs of the plants should be removed from NSP's test year income statement. MCCPEQ also urged the Commission to exclude the costs of power purchased from United Power Association (UPA), which burns RDF produced by NSP at two unregulated facilities.

MCCPEQ based its recommendations on a number of arguments: RDF is not an economically priced fuel which is competitive with other fuels; NSP has not proven that the power generated from Wilmarth and Red Wing is competitively priced; NSP paid an unnecessarily high price for power from UPA in order to subsidize its unregulated facilities which produce RDF.

In its July 19, 1991 ORDER DETERMINING PRELIMINARY ELIGIBILITY, the Commission preliminarily determined that MCCPEQ has insufficient resources to intervene fully and effectively, but for an award of intervenor compensation. The Commission made no findings regarding the discretionary preliminary determinations found at Minn. Rules, part 7831.0500, subpart 2.

On September 30, the ALJ hearing the NSP rate case rejected the financial adjustments recommended by MCCPEQ. The ALJ did recommend that the Commission investigate the issues raised by MCCPEQ in a separate docket.

In the November 27, 1991 NSP general rate case Order, the Commission adopted the ALJ's recommendations. In its February 19, 1992 ORDER AFTER RECONSIDERATION, the Commission reaffirmed this position. In that Order the Commission noted that NSP had operated its Wilmarth and Red Wing facilities in times of changing state, federal and local attitudes towards the disposal of metropolitan solid waste, the source of RDF. The Commission also noted that NSP's operations were in a state of transition due to evolving pollution control standards. Viewed on a life cycle basis, the Red Wing and Wilmarth facilities were reasonably calculated to benefit ratepayers. The Commission also stated that the record supported the reasonableness of the UPA contract terms.

The Commission agreed with the ALJ that an investigation of NSP's nonregulated RDF activities and their impact on NSP ratepayers should be initiated. This investigation was subsequently opened on December 12, 1991.¹ The investigation remains open.

Commission Action

In order to be found eligible for an award of intervenor compensation, MCCPEQ must prove that it materially assisted the Commission in its deliberations and that it has insufficient financial resources, but for the award, to afford all or part of its intervenor costs. The Commission will first address the issue of material assistance.

MATERIAL ASSISTANCE

The Commission finds that MCCPEQ has supported its claim of material assistance. This intervenor fulfilled at least the following five of the factors for determination of material assistance listed in Minn. Rules, part 7831.0800, subpart 2.

A. Whether the intervenor represented an interest that would not otherwise have been adequately represented in the proceeding;

MCCPEQ presented relevant arguments in the Commission's determination of NSP's rate base and income levels. No other intervenor presented evidence regarding NSP's nonregulated RDF business or its impact on NSP's ratepayers.

C. The intervenor's ability to clarify complex information, to simplify complex issues, to make timely and appropriate procedural recommendations, or to otherwise contribute to the efficiency or progress of the proceeding;

NSP's RDF business, the UPA contracts, and the production of the Wilmarth and Red Wing plants are all complex matters which the Commission considered in its deliberations regarding rate base and income items. MCCPEQ's evidence contributed to an understanding of these matters.

D. Whether the intervenor's position or presentation promoted a public purpose or policy;

MCCPEQ raised issues of possible ratepayer subsidization of nonregulated utility business and the proper pricing of RDF-fueled power. These important public policy questions raised by MCCPEQ were addressed in the NSP general rate case and will be explored further in the investigation which opened as a result of the rate case.

¹ In the Matter of an Investigation Regarding Northern States Power's Refuse Derived Fuel Activity, Docket No. E-002/CI-91-966, ORDER INITIATING INVESTIGATION.

E. Whether the intervenor raised new or different arguments in support of a position, provided materially useful information not of common knowledge, raised a different issue, presented or elicited new or different facts or evidence, or took a different position from that of another party.

As discussed previously, MCCPEQ was the only entity to pose questions regarding NSP's nonregulated RDF enterprise and its impact on ratepayers. Its position was unique to the rate case and its arguments were new and different in this general rate case.

F. Whether the Commission adopted, in whole or in part, a position advocated by the intervenor.

Although the Commission declined to make any financial adjustments as a result of MCCPEQ's arguments, the Commission did find the intervenor's arguments sufficiently persuasive to justify an investigation into NSP's RDF enterprise and its impact on ratepayers.

For all these reasons, the Commission finds that MCCPEQ has met its burden of proving material assistance to the Commission in its deliberations. The Commission will next turn to the other factor determining compensation eligibility, financial resources of the intervenor.

SUFFICIENCY OF FINANCIAL RESOURCES

MCCPEQ properly filed its initial statement of financial resources pursuant to Minn. Rules, part 7831.0300, subpart 3. After examining that filing, the Commission found in its July 19, 1991 ORDER DETERMINING PRELIMINARY ELIGIBILITY that MCCPEQ had proven its case for a preliminary determination of compensation eligibility, based upon the status of its financial resources. Under Minn. Rules, part 7831.0500, subpart 3 (A), a preliminary determination of eligibility creates a presumption of success which must be overcome by the Commission if compensation is eventually denied:

After a preliminary determination granting compensation for intervenor costs, the commission must overcome in an applicant's claim for compensation a presumption, for the reasons stated in the preliminary determination, that the applicant should be granted an award of compensation for intervenor costs.

In this case, the Commission finds no evidence to overcome the preliminary presumption of insufficient financial resources for effective intervention. As part of its final claim, MCCPEQ submitted a financial statement which showed that it had revenues through voluntary contributions of \$1,141.46 and expenses of \$1,145.17 in 1990. The intervenor estimated revenues of \$2,000 and expenses of \$2,000 for 1991. MCCPEQ provided documentation

of \$36,402.51 in intervenor costs for participation in the NSP rate case. Almost all the costs consisted of attorneys fees for representation.

These financial facts support a finding that MCCPEQ had insufficient financial resources, but for an award of intervenor compensation, to intervene and participate fully and effectively in the NSP rate case proceeding. The Commission finds that the preliminary determination of insufficient financial resources is supported by the record.

AWARD OF COMPENSATION

Because MCCPEQ has materially assisted the Commission in its deliberations and has insufficient financial resources to participate in the proceedings without intervenor compensation, the Commission will award MCCPEQ intervenor compensation. The Commission will allow MCCPEQ an award of \$20,000. This amount, the maximum allowed under Minn. Stat. § 216B.16, subd. 11, represents approximately half of MCCPEQ's final claim for an award of compensation.

ORDER

1. The claim of ME3 for an award of intervenor compensation is denied.
2. The claim of MCCPEQ for an award of intervenor compensation is granted in the amount of \$20,000.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

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