

ISSUE DATE: October 2, 1995

DOCKET NO. G-008/GR-93-1090

ORDER DENYING REQUEST FOR INTERVENOR COMPENSATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of
Minnegasco, a Division of NorAm Energy
Corporation, for Authority to Increase Its
Rates for Natural Gas Service in Minnesota

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PROCEDURAL HISTORY

On November 5, 1993, Minnegasco, a Division of Arkla, Inc., (Minnegasco or the Company) filed an application to increase its rates for natural gas service in Minnesota. The matter was assigned to the current docket, G-008/GR-93-1090.

On March 7, 1994, the Minnesota Alliance for Fair Competition (MAC) petitioned to intervene in this docket, Minnegasco's 1993 rate case.

On March 28, 1994, the Administrative Law Judge (ALJ) presiding over Minnegasco's general rate case hearings granted MAC's petition to intervene in the rate case.

On April 5, 1994, MAC filed a request for intervenor compensation for its participation in the rate case. MAC asked the Commission to make a preliminary determination on eligibility for compensation pursuant to Minn. Rules, part 7831.0500.

On April 20, 1994, Minnegasco filed a response to MAC's request for intervenor compensation. Minnegasco asked the Commission to make a preliminary determination against MAC.

On May 19, 1994, the Commission issued its ORDER MAKING PRELIMINARY DETERMINATION OF INELIGIBILITY FOR INTERVENOR COMPENSATION.

On June 20, 1995, after the close of proceedings before the Commission regarding Minnegasco's rate increase request in this matter, MAC filed its Claim for Intervenor Compensation. MAC requested an award of \$20,000, the statutory limit for intervenor compensation.

On July 18, 1995, Minnegasco filed a response opposing MAC's request. The Company supplemented its response on July 28, 1995.

On September 7, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. Background

The Commission's rules on intervenor compensation establish procedures and criteria for reimbursing an intervenor for costs incurred in a rate change or general rate case proceeding. Minn. Rules, Parts 7831.0100 through 7831.0800 (1993).

Under these rules, intervenors are required to file a request for compensation at least 75 days after notice of a filing or 30 days before the beginning of evidentiary hearings, whichever occurs later. The Commission makes a preliminary determination within 45 days of the intervenor's request.

To be considered for an actual award, the intervenor must file a claim at the end of the proceeding. It is such a claim by MAC that is before the Commission at this time.

B. Status of MAC's Request

In its May 19, 1994 Order in this matter, the Commission made the preliminary determination that MAC was not entitled to compensation. The Commission found that MAC did not make the necessary showing of insufficient financial resources. Order at page 4.

The Commission's preliminary determination does not guarantee denial of compensation but does have an effect upon MAC's request. Since the preliminary determination was to deny intervenor costs, MAC is required to overcome a presumption that its request will be denied.

C. MAC's Filing

In its June 20, 1995 request, MAC stated that its participation provided significant benefits to rate payers and that it has insufficient financial resources to cover its entire cost of participating in Minnegasco's rate case, Docket No. G-008/GR-93-1090.

In support of its claim that it has insufficient resources to pay its rate case intervention costs, MAC provided balance sheets and cash flow statements for the years 1993, 1994, and 1995. These proprietary schedules show amounts paid and amounts still owing to its accounting firm and to its attorney for services provided to MAC. The schedules also show amounts for assessments received and receivable from MAC members. Also attached to MAC's petition were copies of detailed invoices from Dahlen, Berg & Co. and from Mr. Larson (consulting firm and attorney, respectively) for rate case matters.

MAC stated that it expended \$24,117 in the rate case and suggested that it would not have made those expenditures except that the Commission deferred the valuation of good will (an issue raised in the Complaint Docket) to the rate case. In addition, MAC explained, it incurred \$488,995 since 1989 to participate in non-rate case proceedings before the Commission and still owes \$59,000 for its participation in the MAC Complaint Docket, G-008/C-91-942.

MAC also stated that its activities have declined due to reduced membership contributions and the resignation of one of MAC's Charter Members. MAC maintained that its rate case participation costs (\$24,117) will go unpaid unless it can raise funds from voluntary contributions and/or receive intervenor compensation.¹

D. Minnegasco's Opposition MAC's Request

Minnegasco noted that the Commission's denial of MAC's request for a preliminary determination of eligibility established the presumption that the award would be denied. The Company argued that MAC had not met its burden of proof with respect to either of the criteria: insufficient financial resources and material assistance to the Commission.²

Regarding MAC's financial capacity, Minnegasco recalled that in making its preliminary determination against granting compensation, the Commission noted many questions that MAC had left unanswered about its finances: specifically, the sharp drop in 1994 revenue and how MAC assesses its members. The Company stated that the Commission had required a clear, well-documented showing of financial need in light of the fact that MAC is an organization made up of trade associations of for-profit businesses. The Company argued that MAC has not provided this documentation nor has it explained the sharp drop in revenue.

Minnegasco asserted that MAC has demonstrated its ability to fund lengthy, substantial and complex litigation in other cases, raising \$488,995 in member funds since 1989. According to Minnegasco, this demonstrates the availability of its financial resources.

Finally, in a subsequent filing, Minnegasco requested that it be allowed to supplement the record at this time by submitting an article from Plumbing & Mechanical entitled "One for the Good Guys: Alliance Claims Victory Over Minnegasco." The Company claimed that the article was relevant because it contradicted MAC's claims that it has insufficient resources to cover its intervention costs.

E. Commission Analysis

1. Minnegasco's July 28, 1995 Supplementary Filing

Minn. Rules, Part 7831.0600, subp. 3 authorizes parties to file a response to a claim for compensation within 30 days after service of that claim. The record in this matter shows that MAC served its claim for compensation on Minnegasco on June 19, 1995. Minnegasco's July 18, 1995 Response to MAC's claim, therefore, was timely.

¹ Because the Commission's analysis (see below) is that it is MAC's failure to meet the insufficient resources criterion that dooms this request, this Order will not summarize MAC's filing with respect to the second criterion, material assistance to the Commission.

² Because the Commission's decision in this matter turns on its analysis of the financial capacity criterion, the Commission will not recount here Minnegasco's arguments that MAC had not materially assisted the Commission.

Minnegasco's later filing (July 28, 1995) which sought to supplement the record, however, was untimely. No request for a variance from the requirements of Minn. Rules, Part 7831.0600, subp. 3 accompanied the Company's later filing and the Commission will decline to grant such a variance on its own motion.

2. MAC's Financial Resources

As previously noted, a claim for intervenor compensation will be granted upon a showing that the intervenor

- 1) lacked sufficient resources, but for the award, to afford all or part of its intervenor costs necessarily incurred to participate effectively in the proceeding; and
- 2) materially assisted the Commission in its deliberations.

In order to obtain an award, MAC is required to make both showings and, having failed to obtain the *preliminary* determination of eligibility, it must overcome a presumption that, for the reasons stated in the preliminary determination, it should be denied an award in this Order. Minn. Rules, Part 7831.0500, subp. 3, B.

In its May 19, 1994 Order, the Commission identified a number of concerns related to the financial resources issue. The Commission stated:

MAC's filing left open important questions regarding the sharp drop in revenue in 1994, and resulting accumulated shortfall. It also failed to provide sufficient information regarding the assessment methods and history. Overall, the financial filing did not provide sufficient information regarding MAC's financial activities in 1994.

MAC is a nonprofit organization of trade associations of for-profit businesses. This structure makes it particularly essential that MAC make a clear, well-documented showing of financial need for intervenor compensation. Order at page 4.

Having reviewed the documents submitted by MAC in support of its post-rate case request for compensation, the Commission finds that MAC has failed to overcome the presumption that it is ineligible for compensation for failure to show insufficient financial resources.

Of primary concern is the credibility of MAC's projection that it will be unable to assess its members to cover the \$24,117 that it expended in the rate case. The credibility of that assertion is weakened by the fact that historically MAC has demonstrated an ability to assess its members for close to half a million dollars. In this filing, MAC has failed to provide evidence that it is unable to raise the cost of the rate case intervention, either in a one-time assessment or within a reasonable time period.

In support of its asserted financial incapacity, MAC has cited the loss of one Charter Association Member and claimed that member contributions have declined and core

membership has gone down. Despite the admonition in the May 13, 1995 Order to make a clear, well-documented showing, MAC has not provided information that goes beyond suggestion and generalities. It has failed to quantify the actual impact of the reported loss of membership upon the organization's ultimate capacity to raise funds through assessments to cover the rate case expenses. Without such information, there is no basis to conclude that the organization has exhausted its capacity to raise the required \$24,717.

MAC's showing on this point, of course, is considerably weakened by the fact that it has not levied any assessment against its substantial remaining membership to cover the rate case expenses or any portion of them in 1995.

F. Commission Action

In order to prevail on a claim for intervenor compensation, the petitioner must meet both criteria: financial incapacity and material assistance. Since the Commission has found that MAC has failed to meet the financial incapacity criterion, the Commission will deny MAC's request. In these circumstances, the Commission need not address the second criterion: material assistance.

ORDER

1. Minnegasco's request to supplement the record at this late date with an article from Plumbing & Mechanical is denied.
2. MAC's request to intervenor compensation is denied.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)