

E-123/C-95-1085

ORDER ESTABLISHING BRIEFING SCHEDULE

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 Complaint of Ann Lanners
Against Minnesota Valley Cooperative Light
and Power Association

ISSUE DATE: January 19, 1996

DOCKET NO. E-123/C-95-1085

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SCHEDULE

PROCEDURAL HISTORY

On October 16, 1995, Ann Lanners filed a complaint regarding Minnesota Valley Cooperative Light and Power's (Minnesota Valley's or the Cooperative's) refusal to pay the average retail rates for energy generated by her proposed under-40 kW wind turbine, as required by Minn. Stat. § 216B.164, subd. 3 (c) (1994). Ms. Lanners brought her complaint to the Commission pursuant to Minn. Stat. § 216B.164, subd. 5 (1994).

On November 7, 1995, the Commission issued a Notice regarding the complaint requesting response and comment.

On December 4, 1995, Minnesota Valley filed comments asserting, in effect, that the Minnesota statute requiring payment of the average retail rate was preempted by the Public Utility Regulatory Policies Act of 1978 (PURPA). In support of its position, the Cooperative cited the FERC decision regarding Connecticut Power & Light Company. FERC Docket No. EL95-55-000 (January 11, 1995) and Kansas City Power & Light Company v. State Corporation Commission, 676 P.2d 764 (1984).

On December 8, 1995, the Minnesota Department of Public Service (the Department) filed comments stating that regardless of any asserted conflict with FERC precedent, the duties of the Commission are to regulate utilities in accordance with the Minnesota Statutes. The Department recommended that the Commission find in favor of the Complainant.

On December 15, the Residential and Small Business Utilities Division of the Office of the Attorney General (the RUD-OAG) filed comments. The RUD-OAG recommended that the Commission establish a briefing schedule to address the legal issues raised by the complaint before the Commission makes a determination in this case. The RUD-OAG argued that although Minnesota Valley bears the burden of justifying its position in this dispute under Minn. Rules, Part 7835.4500 it has failed to do so to date.

On January 16, 1996, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

The Commission notes that the Respondent Minnesota Valley has not disputed the facts as presented by the Complainant in this case. Minnesota Valley has taken the position, however, that pursuant to Section 210 of PURPA and the regulations thereunder, it cannot be required to compensate the Complainant [a qualifying facility (QF) generating less than 40 kW of electricity] at a rate greater than the Cooperative's avoided cost. Minnesota Valley contends that Minn. Stat. § 216B.164, subd. 3(c) (1994) is preempted by PURPA.

The Commission finds that this case raises significant legal issues which have not been addressed by the parties. Those issues include: the Commission's jurisdiction over the complaint, statutory and case law interpretation, the legal status of FERC decisions under PURPA vis-a-vis state law, and federal preemption. The Commission finds that this case should not be decided without a comprehensive analysis of these issues.

To prepare a sound foundation for consideration of the legal questions at issue in this matter, the Commission will establish a briefing schedule, as authorized by Minn. Rules, Part 7829.1400. Because Minnesota Valley bears the ultimate burden of persuasion under Minn. Rules, Part 7835.4500 (disputes between a utility and a QF) and has raised the affirmative defense of federal preemption, the Commission feels it appropriate for the Cooperative to submit detailed exposition of its legal position first. After receipt of the Cooperative's filing, the other parties to this matter will have 30 days to submit their detailed legal analyses of the issues in this case.

ORDER

1. Within 30 days of this Order, Minnesota Valley shall file a detailed legal analysis of the legal issues involved in this case, including the Commission's jurisdiction, the legal status of FERC decisions under PURPA vis-a-vis state law, and its federal preemption claim.
2. Within 30 days after receipt of Minnesota Valley's filing pursuant to Ordering Paragraph 1, the Complainant Ann Lanners, the Department, and the RUD-OAG shall file their detailed analyses of the legal issues in this matter.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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