

February 2, 1996

DOCKET NO. G-008/GR-95-700

ORDER MAKING PRELIMINARY DETERMINATION OF ELIGIBILITY 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
Company, for Authority to Increase Natural
Gas Rates in Minnesota

ISSUE DATE: February 2, 1996

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PROCEDURAL HISTORY

On December 19, 1995, the Energy CENTS Coalition (Energy CENTS) filed its Request for Compensation in this matter pursuant to Minn. Rules, Part 7831.0300.

On January 3, 1996, Minnegasco filed a letter responding to Energy CENTS' request.

On January 25, 1996, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. BACKGROUND

Minn. Rules, Parts 7831.0100 through 7831.0800 represent the established procedures under which a request for intervenor compensation, and later a claim for that compensation, is made to the Commission.

Generally, the rules require that an intervenor requesting intervenor compensation file a request for compensation within 75 days of the filing or 30 days before the evidentiary hearings. That filing must provide general information about the intervenor, and evidence that "...but for an award of compensation for its intervenor costs..." the intervenor would have insufficient financial resources to intervene and participate effectively in the proceeding. The rule requires that certain minimum financial information be supplied. The intervenor must state the nature and extent of planned participation in the proceeding as far as it is possible to do so at the time of the filing. Other parties have 15 days to respond to the request.

Under Minn. Rules, Part 7831.0500, the Commission must issue a preliminary determination addressing the eligibility of the intervenor for compensation within 45 days of the filing of the

request for a preliminary determination. The rule identifies two specific items that the determination must address: whether the applicant is an intervenor; and whether a showing of insufficient financial resources has been made.

Discretionary determinations that may be made include: the intervenor's ability to materially assist the Commission; duplicate positions or whether the positions could be more efficiently presented under common representation; use of common legal counsel and witnesses; listing of other known applicants with similar positions; pointing out unrealistic expectations for compensation; and addressing other information which may affect the applicant's claim.

Under the rule, the preliminary determination does not guarantee the award of compensation. The intervenor must file a claim for specific compensation after the proceeding is completed at which time the Commission will again review the financial status of the intervenor and address whether the intervenor materially assisted the Commission in its deliberations in the rate proceeding.

B. ENERGY CENTS' REQUEST FOR COMPENSATION

The Energy CENTS Coalition described itself as comprised of 45 member organizations whose mission is to promote affordable utility service and to encourage low and fixed income citizen participation in energy-related decision-making. Energy CENTS stated that its program areas include the encouragement of voluntary contributions for the statewide fuel fund, Reach Out for Warmth; electric utility industry restructuring; participation in the Commission's Customer Service Task Force; advocacy on behalf of low and fixed income citizens; and design of low income utility customer assistance programs.

Energy CENTS stated that it represents the specific interests of low and fixed income ratepayers who are facing the severe consequences of federal funding cuts to energy assistance. Energy CENTS will also suggest ways to address the problem of unaffordable energy while reducing utility expenses related to payment troubled customers.

Energy CENTS filed several financial documents with its petition including a rate case budget, the 1996 Energy CENTS projected budget, a balance sheet as of 11/30/95, an income statement for the 11 months ending 11/30/95, a statement of support, revenue, and expenditures for year-end 1994, a copy of the Restated Articles of Incorporation, a listing of its directors, and a copy of a tax-exempt status determination by the IRS.

In 1994, Energy CENTS indicated revenues and expenditures totaling \$53,150.58. For eleven months ending November 30, 1995, unaudited schedules indicate revenues of \$60,026.06 and expenses of \$56,854.61 with a net income of \$3,171.45. The balance sheet as of November 30, 1995 shows assets of \$37,298.98 and liabilities of \$33,476.17, leaving a fund balance of \$3,822.81.

Energy CENTS projected revenues of \$134,800 (including \$20,000 intervenor compensation) and expenses of \$132,019 for the year 1996. Energy CENTS indicated an additional \$37,500 of secured revenue carried over from 1995 as available in 1996 for secured projects. The projects

include the fuel fund project and the electric restructuring project.

Energy CENTS budgeted rate case intervention costs of \$24,660, for which Energy CENTS seeks \$20,000 of intervenor compensation and also has applied for a \$5,000 grant from the Bremer Foundation.

Energy CENTS stated that it has insufficient financial resources to intervene and participate without compensation. Energy CENTS stated that its fund balance is limited, and would not cover the costs to intervene. Energy CENTS indicated that it has a limited amount of discretionary funding available, with most of its funding designated to specific projects.

C. MINNEGASCO

In its January 3, 1996 statement in response to the Energy CENTS filing, Minnegasco recognized Energy CENTS' efforts in advocating the interests of low income individuals on energy related issues in proceedings before the Commission. Minnegasco also stated, however, that Energy CENTS' financial need for compensation may not meet the standard of proof required by the rules for a preliminary determination of eligibility for an award of compensation. Minnegasco specifically asserted a need for more complete information including evidence of director and secretary time being spent as stated in the projected rate case budget and hoped that Energy CENTS would seek funding for rate case participation beyond the request to a single foundation that secured \$5,000.00.

D. COMMISSION ANALYSIS

In making a preliminary determination whether the applicant is eligible for an award of compensation of intervenor costs, the Commission must determine

- 1) whether Energy CENTS is an intervenor as defined in Minn. Rules, Part 7831.0100, subp. 10 and
- 2) whether the applicant has made a sufficient showing that, but for an award of compensation for all or part of its intervenor costs, it has insufficient financial resources to intervene and participate fully and effectively in the proceeding.

1. Intervenor Status

The definition of "intervenor" under Minn. Rules, Part 7831.0100 includes a person who is or has been permitted by order of the presiding officer to intervene in a proceeding. In this case, the Commission has referred Minnegasco's rate case for contested case proceeding to the Office of Administrative Hearings (OAH) which has, in turn, assigned the matter to an Administrative Law Judge (ALJ). The ALJ, therefore, is a presiding officer for this matter within the meaning of the rule. In a Prehearing Order issued, November 27, 1995, the ALJ identified Energy CENTS as an intervenor in this matter.

Accordingly, the Commission finds that Energy CENTS is an intervenor for purposes of this

preliminary determination of eligibility.

2. Insufficient Financial Resources

At this stage of proceedings, the Commission assumes that all information in the request filing is true and accurate. Minn. Rules, Part 7831.0500, subp. 1B. In addition, the Commission clarifies that the determination it is required to make at this time is preliminary. At the close of this rate case, the applicant must file a claim for compensation pursuant to Minn. Rules, Part 7831.0600.

Thereafter, an award or denial of compensation will be made, pursuant to Minn. Rules, Part 7831.0800, on the basis of the Commission's determination

- 1) whether the intervenor has materially assisted the Commission and
- 2) whether the intervenor has shown that it has insufficient financial resources, but for the award, to afford all or part of its intervenor costs necessarily incurred to participate effectively in the proceeding.

With respect to the financial capacity issue, the Commission notes that prior to its final decision regarding the claim, the Commission may conduct such financial review as is appropriate pursuant to Minn. Rules, Part 7831.0700.

With the limited scope of its determination thus clarified, then, the Commission finds that Energy CENTS has made a sufficient showing, for this stage of the proceedings, on the insufficient financial resources issue.

There are a number of determinations that the Commission has the discretion to make at this time pursuant to Minn. Rules, Part 7831.0500, subp. 2. Some of those discretionary determinations are: 1) whether the applicant has demonstrated its ability to materially assist the Commission and 2) whether the application lists duplicate positions taken or presentations made by intervenors.

The Commission notes that this is Energy CENTS' first involvement with a claim for intervenor compensation pursuant to Minn. Rules, Parts 7831.0100 et seq. In this light, the Commission finds it appropriate to caution Energy CENTS to be aware of the principles and standards applicable to such claims. See Minn. Rules, Parts 7831.0100 et seq. Without waiving any provision in the rules not mentioned hereafter, the Commission includes the caution that in order for an intervenor to receive an award of intervenor compensation, it must meet the requirements of sufficient documentation of reasonable services and costs, proof of insufficient financial resources, and matters of material assistance to the Commission's deliberations as anticipated in the rules beginning at Minn. Rules 7831.0600.

In addition, the Commission notes the January 10 Order in Docket Nos. G-008/CI-94-675 and E-002/M-94-925 which discussed the matter of expansion of low-income discount rates as a societal problem requiring a comprehensive approach benefitted by legislative involvement.

This Order may pose a barrier to Energy CENTS' ability to meet the material assistance criterion with respect to expansion of low-income discount rates.

ORDER

1. The Commission hereby makes a preliminary determination, as limited and clarified in the text of this Order, that the Energy CENTS Coalition is eligible for intervenor compensation in this matter.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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