

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Edward A. Garvey  
Marshall Johnson  
LeRoy Koppendrayner  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Energy Cents Coalition  
Complaint Against Beltrami Electric  
Cooperative

ISSUE DATE: April 25, 2002

DOCKET NO. E-103/M-02-105

ORDER ASSERTING JURISDICTION AND  
DIRECTING THE DEPARTMENT TO  
INVESTIGATE

**PROCEDURAL HISTORY**

On January 23, 2002, the Energy CENTS Coalition (ECC) filed a complaint with the Commission against Beltrami Electric Cooperative, Inc. (BEC, the Cooperative).

On February 1, 2002, the Commission sent out a notice of complaint and request for comments. The notice solicited comments on the commission's jurisdiction over the complaint, and whether there are reasonable grounds to further investigate the matter.

On February 21, 2002, the Department of Commerce (the Department) and the Residential Utilities Division of the Office of Attorney General (RUD-OAG) filed comments recommending that the Commission assert jurisdiction over the Complaint and order an investigation.

On February 22, 2002, BEC filed comments responding to the Commission's notice of complaint and request for comments regarding jurisdiction, as well as to the specific allegations contained in the Energy CENTS Coalition's complaint.

On March 4, 2002, the Cooperative filed a copy of some of their complaint-related service policies including Policy Nos. 205-210, 216, 306 and 307. These policies outline Beltrami's practices for providing service within their service territory. These policies also indicate the requirements and responsibilities placed on customers (member), namely, the fees charged for various services.

Also, on March 4, 2002, the Indian Affairs Council filed a letter supporting the ECC request for an investigation.

The Commission met to consider this matter on March 28, 2002.

## FINDINGS AND CONCLUSIONS

### **I. ENERGY CENTS COALITION COMPLAINT**

#### **A. Prior to Hearing**

The Energy CENTS Coalition (ECC) filed its complaint on behalf of the Red Lake Reservation Community Action Program (CAP) and the low income Red Lake Residents that they assist. The ECC challenged several service practices of BEC as unreasonable, including disconnection and reconnection of service, reconnection fees, credit and collection practices, as well as BEC's compliance with the Cold Weather Rule.

As to jurisdiction, ECC stated that the Commission had jurisdiction over its complaint because the complaint raised issues regarding the cooperative's service standards and practices and compliance with the Cold Weather Rule and because ECC was filing on behalf of 1,060 low-income customers, well over the 50 required by Minn. Stat. § 216B.17, subd. 1.

#### **B. At the Hearing**

Initially at the hearing, the ECC requested that the Commission take immediate action with respect to 11 items, including the following:

- declare the current BEC practice of imposing service limiters in the winter months illegal on the grounds that the practice is (according to ECC) a heat-affected shutoff;
- declare physical removal of customer meters an unreasonable service practice;
- require BEC to make a refund to any customer who was charged for the past due bill of a previous customer who never occupied the same premises as the current customer of record; and
- require BEC to modify certain current practices to comply with Minnesota's Cold Weather Rule.

In addition, ECC identified ten other requests that it wanted the Commission to investigate, including the following:

- whether BEC personnel inform Red Lake customers of their rights under the provisions of Minnesota's Cold Weather Rule when they arrive at an occupied unit to disconnect service;
- the extent to which BEC charges every new customer a service deposit regardless of payment history or if that practice is limited to Red Lake; and
- the extent to which cooperative membership fees are required throughout BEC's service territory when a customer moves.

In the course of the hearing, the ECC narrowed its requests for immediate relief to two items: 1) a request that BEC be required to remove the service limiters for the duration of the heating season and 2) a request that before discontinuing service during the remainder of the heating season that BEC be required to negotiate a payment schedule.

Regarding jurisdiction, ECC stated that the Commission had jurisdiction over its complaint because the complaint raised issues regarding the cooperative's service standards and practices and compliance with the Cold Weather Rule and because ECC was filing on behalf of 1,060 low-income customers, well over the 50 required by Minn. Stat. § 216B.17, subd. 1.

At the hearing, in addition to clarifying requested relief as indicated above, the ECC submitted a document entitled "Beltrami Electric Co-op Complaint" bearing the signatures of approximately 83 persons that the document characterized as ECC customers. At the same time, the ECC also submitted the affidavits of 19 BEC customers in support of the complaint.

## **II. THE DEPARTMENT'S COMMENTS**

In comments filed before ECC submitted the "Beltrami Electric Co-op Complaint" signed by 83 BEC customers, the Department analyzed the ECC petition for whether it complied with the requirements of Minn. Stat. § 216B.17, subd. 1 & 6a, as well as Minn. Rules, Part 7829.1800, subpart 1. The Department stated that though ECC filed its petition on behalf of 1,060 low-income customers, there is nothing in the filing to verify the statutory requirement of 50 customers. The Department concluded that jurisdiction had yet to be shown by ECC.

Nevertheless, the Department noted that the Commission has the statutory authority to take up the complaint on its own motion and urged the Commission to do so.

In addition, the Department concluded that based simply on the information contained in the ECC petition, the allegations are sufficiently significant to merit further investigation. As such, petitioners have demonstrated reasonable grounds to investigate their allegations. The Department recommended that the Commission order further investigation into the allegations contained within ECC's complaint.

In sum, the Department recommended that the Commission, on its own motion, find jurisdiction in this matter and order an investigation.

## **III. RUD-OAG COMMENTS**

The RUD-OAG stated that Minn. Stat. § 216B.17, Subd. 6a limits the Commission's authority with regard to electric cooperatives to service standards and practices only. In essence, this subdivision restricts the Commission's authority over the rates charged by a cooperative. Nevertheless, the RUD-OAG suggested that most, if not all, of the allegations contained in the ECC complaint clearly refer to service standards and practices, or are related to cold weather disconnection and fall under Commission' jurisdiction under Minn. Stat. §§ 216B.095 and 216B.097, as well as Minn. Rules, Part 7820.1600, subp. 6.

## **IV. BEC RESPONSE**

### **A. Position Prior to Hearing**

In its written response before the hearing, BEC Beltrami asserted that it complies with all statutes and regulations governing electric cooperatives and customer service standards and practices. In addition, BEC stated that it has developed and adopted its own customer service policies which are

similar to the statutes and rules public utilities comply with. At the same time, BEC stated that if any of its policies are found to be either illegal or unreasonable, BEC would implement appropriate corrective measures. BEC asserted that it applies its customer service policies uniformly to all members regardless of their location on the system.

BEC stated that its Board members met with representatives from the Red Lake CAP, ECC and residents of Red Lake Reservation to discuss customer services practices. BEC stated that it evaluated the information and suggestions provided at the meetings and saw no reason to change its policies or practices.

BEC acknowledged the Commission's authority of the service standards and practices of electric cooperatives and that the subject matter of the complaint involves the cooperative's service standards and practices, but argued that the ECC complaint does not meet the statutory jurisdictional requirements of Minn. Stat. § 216B.17.

Though BEC argued the Commission has no jurisdiction over the complaint, it nevertheless discussed the merits of the allegations made by ECC at some length.

## **B. At the Hearing**

At the hearing, BEC withdrew its objection to the Commission's jurisdiction in light of the 83 customer signatures provided by ECC in support of its complaint.

BEC initially resisted all eleven items ECC identified for immediate action and stated that all these items plus the other issues identified by ECC for further investigation should be considered in the course of an investigation in which it would be able to respond to any specifics brought forward by ECC. BEC stated, however, that as a gesture of good faith it would agree to the two specific items requested by ECC during the hearing: 1) that it would immediately remove all the service limiters in its service area for the duration of the heating season and 2) that before discontinuing service during the remainder of the heating season it would negotiate a payment schedule.

## **V. COMMISSION ACTION AND ANALYSIS**

### **A. Preliminary Matter: Acceptance of March 28, 2002 Filings**

On the day of the hearing, ECC submitted a list of items it proposed for immediate Commission action, a list of items it proposed for investigation, affidavits from 19 BEC customers, and a set of documents titled "Beltrami Electric Co-op Complaint" bearing the signatures of 83 persons identified as BEC customers.

Hearing no objection from any party and finding no prejudice to any party, the Commission will accept these items into the record of this matter with the express understanding that BEC will have a full opportunity to respond to the complaints conveyed in these documents and the facts asserted in the affidavits.

## **B. Jurisdiction and Reasonable Grounds to Investigate**

Minnesota Rules 7829.1800 outlines the process for the Commission's initial consideration of the formal complaint. Subpart 1 requires the Commission to review a formal complaint, as soon as practicable, to determine whether it has jurisdiction over the matter and whether there are reasonable grounds to investigate the allegations.

The Commission has jurisdiction over the ECC Complaint. The subject matter of the complaint (BEC's service standards and practices<sup>1</sup> and its compliance with the Cold Weather Rule<sup>2</sup>) is within the Commission's purview and, based on the documents filed by ECC on the day of the hearing, the number of BEC customers endorsing the complaint exceeds the fifty (50) required by statute.<sup>3</sup> At the hearing, all parties agreed that the Commission has jurisdiction over the complaint.

The next question is whether there are reasonable grounds to investigate ECC's complaint. The Commission agrees with the Department and the RUD-OAG that the ECC complaint raises substantial issues of concern to the Commission that warrant investigation. The Commission acknowledges BEC's point that the complaint as initially filed was short on specifics, but notes that the customer affidavits filed on the day of the hearing are a start toward supplying those specifics and there will be opportunity in the course of the investigation for ECC to provide further specifics and BEC will have a fair opportunity to respond.

## **C. Department to Conduct Investigation**

The Department has expressed an interest in this matter and has the willingness, expertise and capacity to investigate. The Commission will ask the Department to 1) conduct an investigation of the standard and practice issues raised in the complaint as well as those which arise during the course of its investigation, 2) develop the record, and 3) file a report. A specific issue the Department will be asked to examine and later report on is whether there has been disparity of treatment between BEC's Red Lake customers and its other customers with respect to any of its standards and practices.

The Department will be asked to involve the RUD-OAG and the Commission's Consumer Affairs Office in this process and to facilitate resolution of issues between ECC and BEC as the investigation proceeds.

After the parties have had an opportunity for comments and an exchange of information, the Department is encouraged to meet with the parties to address the issues.

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<sup>1</sup> Minn. Stat. § 216B.17, subd. 6a.

<sup>2</sup> Minn. Rules, Part 7829.1800, subp. 1.

<sup>3</sup> See Minn. Stat. §§ 216B.17, subd. 1; 216B.095; and 216B.095 which specifically renders cooperative electric associations such as BEC subject to statutory winter disconnection requirements (Cold Weather Rule).

At the conclusion of its investigation, if all issues have not been resolved, the Department will file a report which, among other things, will state for each disputed item, whether the dispute is over a standard or practice and specifically whether the Department has found disparity of treatment between BEC's Red Lake customers and its other customers.

**D. BEC's Gesture of Good Faith**

The Commission acknowledges with approval BEC's expressed willingness to participate fully and openly in this investigation and, as a gesture of good faith, to immediately do the two things requested by ECC at the hearing: 1) remove all the service limiters that are currently in place in BEC service territory, wherever located, and 2) not disconnect any more service during the remainder of the winter heating season (until April 15), subject to negotiating a reasonable payment plan.

**E. Authority Delegated to Executive Secretary**

The Commission realizes that some flexibility may well be beneficial in pursuing this matter. The Commission will, therefore, delegate to the Executive Secretary the authority to provide for additional comment periods and procedural steps as warranted.

**ORDER**

1. The following documents submitted by Energy Cents Coalition (ECC) on March 28, 2002 are accepted into the record of this matter:
  - a list of items it proposed for immediate Commission action;
  - a list of items it proposed for further investigation;
  - affidavits from nineteen (19) Beltrami Electric Cooperative (BEC) customers; and
  - a set of documents titled "Beltrami Electric Co-op Complaint" bearing the signatures of 83 persons identified as BEC customers.
2. The Department shall conduct an investigation of the standard and practice issues raised in the complaint and which arise during the course of its investigation, develop and order the record, and make recommended findings.

The Department will involve the RUD-OAG and the Commission's Consumer Affairs Office in the investigation and, after all parties have had an opportunity to produce and exchange information, will convene a meeting of the parties to resolve as many issues as possible.

A specific issue the Department will examine and later report on is whether there has been disparity of treatment between BEC's Red Lake customers and its other customers with respect to any of its standards and practices. In its report of any remaining disputed items, the Department will state whether the disputed item is a standard or practice.

3. The Commission accepts BEC's agreement to do the two things requested by ECC at the hearing: 1) remove all the service limiters that are currently in place in BEC's service territory, and 2) not disconnect any more service during the remainder of the winter heating season (until April 15), subject to negotiating a reasonable payment plan.
4. The Executive Secretary is hereby delegated authority to provide for additional comment periods and procedural steps as warranted.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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