

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
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Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of an Objection to an Assessment
for Regulatory Costs of the Public Utilities
Commission and Department of Commerce

ISSUE DATE: September 22, 2003

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

ORDER AFFIRMING ASSESSMENT

PROCEDURAL HISTORY

On January 23, 2002, the Energy Cents Coalition (ECC) filed a complaint against Beltrami Electric Cooperative, Inc. (Beltrami). An investigation ensued, joined by the Minnesota Department of Commerce (the Department), the Office of the Attorney General's Residential and Small Business Utilities Division (OAG-RUD), and the Red Lake Energy Assistance Program (RLEAP). Beltrami has been paying the regulatory costs of this proceeding.

On April 23, 2003, the Commission and the Department billed Beltrami for the costs of the investigation incurred from July 3 to December 31, 2002.

On May 23, 2003, Beltrami filed an objection to the bill, arguing that Beltrami should not be responsible for paying the docket's entire costs. The matter was referred to the Commission's subcommittee on assessment appeals.

On July 9, 2003, Commissioner Phyllis Reha, acting on behalf of the subcommittee for assessment appeals, issued a letter denying Beltrami's objection.

On July 30, 2003, Beltrami appealed the subcommittee's decision to the full Commission.

The matter came before the Commission on September 4, 2003.

FINDINGS AND CONCLUSIONS

I. BACKGROUND

A. Assessments

The Legislature generally directs the Commission to recover the cost of performing its regulatory duties from the parties it regulates. Regarding electric cooperatives, Minnesota Statutes § 216B.62, subdivision 5, states that –

The commission and department may charge cooperative electric associations and municipal electric utilities their proportionate share of the expenses incurred in the review and disposition of resource plans, adjudication of service area disputes, proceedings under section 216B.2425, and the costs incurred in the adjudication of complaints over service standards, practices, and rates. Cooperative electric associations electing to become subject to rate regulation by the commission pursuant to section 216B.026, subdivision 4, are also subject to this section. Neither a cooperative electric association nor a municipal electric utility is liable for costs and expenses in a calendar year in excess of the limitation on costs that may be assessed against public utilities under subdivision 2....

Subdivision 2 of the statute relieves a public utility – and, by extension, a cooperative electric association – of the obligation to pay direct assessments that exceed 0.004% of its annual gross operating revenues from providing energy services in Minnesota.

B. Assessment Subcommittee

The Legislature authorizes the Commission to delegate the performance of any of its functions to a subcommittee. Minn. Stat. § 216A.03, subd. 8. At its public meeting on July 11, 2002, the Commission created the subcommittee on assessment appeals – consisting of a commissioner aided by the Executive Secretary and the Administrative Management Director – to rule on assessment objections. Commissioner Reha currently serves on this subcommittee.

II. SUBCOMMITTEE REPORT

By letter issued July 9, 2003, the assessment appeal subcommittee concluded that Beltrami’s assessment was appropriate.

The subcommittee noted that the Commission and the Department, as fee-funded agencies, are obligated to recover the cost of investigations through assessments. Minnesota Statutes § 216B.62 authorizes the Commission to recover these costs from public utilities, municipal utilities and cooperative electrical associations, but not from other entities. While the statute provides for an electric cooperative to bear only its “proportionate share” of the costs, this language only becomes relevant when the Commission can allocate the costs of a docket among multiple public utilities, municipal utilities or cooperative electrical associations. Where, as here, there are no other billable parties in the docket, this language has no application.

Section 216B.62 does cap the total amount of assessments for which Beltrami may be liable in any given year, but Beltrami has not alleged that those caps have been reached. Consequently, the subcommittee found no fault with the assessment rendered to Beltrami.

III. BELTRAMI'S OBJECTION

Beltrami continues to argue that it should not have to bear the full cost of the investigation in this docket. Beltrami makes two points on its behalf.

First, Beltrami again notes that the statute authorizes the Commission to assess Beltrami for only its "proportionate share" of the costs, and that other entities – the Department, OAG-RUD, ECC, RLEAP – are also parties to the case. Beltrami argues that, with all these other parties in the case, Beltrami should not be expected to bear the investigation's cost alone.

Second, Beltrami notes that, unlike the statutory subdivision directing the Commission to impose assessments on public utilities, the subdivision dealing with assessing cooperative electric associations gives the Commission discretion in imposing the assessment. Beltrami cites the 1991 amendment to § 216B.62, subdivision 5, removing the "shall" and inserting a "may" into the statute, and replacing a reference to "all of the costs incurred...." with a reference to "the costs incurred...." Laws 1991, Ch. 234 § 2. By implication, Beltrami argues, the Legislature expects the Commission to exercise judgment in deciding what proportion of regulatory costs should be borne by an electric cooperative association such as Beltrami.

IV. COMMISSION ANALYSIS AND ACTION

The Commission is not persuaded that Beltrami has raised any arguments that warrant changing the subcommittee's decision. The subcommittee correctly interpreted the statute's "proportionate share" language, and Beltrami has not provided relevant evidence, exposed errors or ambiguities in the subcommittee's report, or otherwise persuaded the Commission that it should alter that decision.

The only issue raised by Beltrami on appeal that has not been addressed in the subcommittee report is the extent to which the Commission's discretion to allocate costs was enhanced by the Legislature's 1991 amendments to Minnesota Statutes § 216B.62, subdivision 5. Those statutory changes are as follows, with new text indicated by underlines and deleted text indicated by strike-outs:

The commission and department ~~shall be authorized to~~ may charge cooperative electric associations and municipal electric utilities their proportionate share of the expenses incurred in the review and disposition of resource plans, adjudication of service area disputes, proceedings under section 216B.2425, and ~~all of the costs~~ incurred in the adjudication of complaints over service standards, practices, and rates. Cooperative electric associations electing to become subject to rate regulation by the commission pursuant to section 216B.026, subdivision 4, ~~shall~~ are also be subject to this section. Neither a cooperative electric association nor a municipal electric utility is liable for costs and expenses in a calendar year in excess of the limitation on costs that may be assessed against public utilities under subdivision 2....

Laws 1991, Ch. 234 § 2. Whatever discretion this statute grants to the Commission, the 1991 amendment did not appear to alter that discretion. Rather, most of the modifications appear designed for the sole purpose of simplifying the statutory language.

For example, the Legislature substituted the phrase “are subject to this section” for the phrase “shall be subject to this section.” The Commission finds no change in meaning arising from this modification. Similarly, the Legislature did not change the statute’s meaning by substituting the word “may” for the phrase “shall be authorized to” or by eliminating the words “all of” from the phrase “all of the costs incurred.” These changes are cosmetic, and Beltrami’s efforts to attach significance to these changes are unpersuasive.

Finally, the Commission is not persuaded that the amount of assessments in this matter are unreasonable. The Legislature clearly contemplated the amount of liability entities might reasonably incur when it set its cap on assessments. Until the Commission has evidence that this cap has been exceeded, it has no basis to conclude that the assessment amounts are excessive.

The Commission concludes that the subcommittee’s decision is consistent with the facts, the law, and the public interest, and will therefore affirm that decision.

ORDER

1. The decision of the Assessment Appeals Subcommittee is affirmed.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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