

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

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

ISSUE DATE: January 25, 2005

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

ORDER REQUIRING FURTHER
REMEDIAL MEASURES AND SECOND
COMPLIANCE FILING

PROCEDURAL HISTORY

I. The Complaint and Initial Proceedings

On January 23, 2002, the Energy CENTS Coalition (Energy CENTS or the Coalition) filed a complaint under Minn. Stat. § 216B.17, subd. 6a against Beltrami Electric Cooperative, Inc. (Beltrami or the Cooperative) on behalf of Coalition member Red Lake Community Action Program. Later, approximately 83 individual members of the Cooperative signed the Complaint.

The Complaint claimed that, at least as to residents of the Red Lake Reservation, Beltrami's customer service practices violated Minnesota law, citing the following practices as examples:

- Charging excessive reconnection fees following disconnection of service.
- Conditioning service to new customers upon their payment of reconnection fees for which they were not liable.
- Charging additional fees for routine meter reading.
- Charging excessive deposit requirements.
- Failing to offer payment plans for undercharges resulting from faulty metering or estimated bills.
- Delaying service deposit refunds and paying inadequate interest on service deposits.
- Assessing past-due charges of former tenants to new tenants seeking service at the same location.
- Failing to provide clear and accurate notice of intent to disconnect under the Cold

Weather Rule.

- Failing to comply with the notice periods of the Cold Weather Rule.
- Failing to comply with Cold Weather Rule restrictions on deposit requirements and delinquency charges.
- Violating customers' reasonable expectations of privacy.
- Failing to comply with consumer protection statutes requiring utilities to offer payment plans to customers facing arrearages.

On April 25, 2002, the Commission issued an Order asserting jurisdiction over the complaint and asking the Department of Commerce (the Department) to conduct an investigation of its allegations.

On August 19, 2003, the Department filed its report, which recommended that the Commission require Beltrami to take specific steps to comply with regulatory requirements, to improve customer service, and to improve communications with members on the Red Lake Reservation.

II. The Order Requiring Remedial Measures

On March 4, 2004, the Commission issued an Order requiring Beltrami to take remedial measures, summarized below, and to make a compliance filing demonstrating that these measures had been taken:

- Develop a policy on the non-discriminatory use of service limiters, involve low-income members in developing the policy, communicate the policy clearly to all members, and strictly adhere to the policy once it has been developed.
- Inform members of the new state law classifying the use of service limiters as a disconnection and of Beltrami's new service limiter policy, both through a special mailing and through publication in the same issue of the Cooperative's newsletter that contains the annual explanation of the Cold Weather Rule.
- Develop a procedure to regularly remind and inform members of the Cooperative's membership fee refund policy.
- Search records and identify all cases in which a Red Lake customer, at the request or insistence of Cooperative personnel or as a condition of receiving service, paid the past due bill of a landlord, a relative, or any other person with whom the customer did not reside at the time that the bill was incurred.
- Develop a procedure for informing customers of the importance of notifying the utility of changes in address.
- Revise Policy #206 to accurately reflect actual practice in regard to service deposits.

- Improve notice of deposit refunds by highlighting the refund line item on the customer's bill or enclosing a bill stuffer explaining the refund.
- Revise written and unwritten policies regarding payment plans to ensure compliance with Minn. Stat. §§ 216B.097 and 216B.098, to ensure that payment plans are affirmatively offered to customers in arrears, and to ensure that customers are informed that entering into a payment plan can prevent disconnection. Provide staff with effective training and instruction to implement the new policies.
- Revise collection procedures to ensure that customers receive 20 days' written notice or 15 days' hand-delivered notice before disconnection during the Cold Weather months.
- Reexamine and revise policy or practice of issuing disconnection notices when there is no intention of following through with the disconnection.
- Continue providing information on Past Due and Late Notices explicitly explaining the consequences of non-payment, including the collection, disconnection, and reconnection fees charged if a disconnection trip is made.
- Revise membership agreement to permit members to authorize Beltrami to release account information to Energy Assistance Program agencies when members incur arrearages of 60 days or more.
- Revise policies regarding late fees and penalty fees to comply with Minn. Stat. § 216B.098, subd. 4 and Minn. Rules 7820.1750.
- Search records and identify and list all security deposits from Red Lake customers that exceed the amount of two months' average bills.

III. The Compliance Filing

On May 7, 2004, Beltrami made its initial compliance filing under the March 4, 2004 Order.

A. The Department's Response

On June 30, 2004, the Department of Commerce (the Department) filed comments claiming that Beltrami was not in compliance with the March 4 Order and stating that the Department questioned the Cooperative's good faith:

BEC's [Beltrami Electric Cooperative] reluctance and, in some cases, refusal to comply with specific requirements of the Commission's March 4, 2004 Order, and its presentation of facts that either contradict its previous assertions or were not offered during the investigation, lead the Department to conclude that BEC is

unwilling to conform to applicable Commission statutes, rules, and Order directives. . . .

Comments of the Minnesota Department of Commerce, June 30, 2004.

The Department recommended that unless Beltrami's reply comments demonstrated full compliance with the March 4 Order, the Commission should consider initiating penalty proceedings under Minn. Stat. §§ 216B.57 - 216B.61, reporting its findings to the Legislature, and investigating the option of transferring the Red Lake portion of Beltrami's assigned service area to Otter Tail Power Company.

B. The Coalition's Response

On June 30, 2004, Energy CENTS Coalition filed comments claiming that Beltrami had failed to comply with eight of the sixteen requirements in the March 4 Order and that there were disparities between the Cooperative's treatment of residents of the Red Lake Reservation and its treatment of other members. The Coalition claimed disparities in the following areas:

- Requests for security deposits.
- Amounts of security deposits.
- Percentage of customer bills attributable to non-energy charges.
- Service disconnections.
- Installations of service limiters.
- Investment of Conservation Improvement Program funds.
- Assurance that off-peak customers have adequate back-up heating sources.

The Coalition urged the Commission to take the following actions:

- Require five years of increased Conservation Improvement Program spending on the Red Lake Reservation.
- Limit the amount of non-energy charges assessed against any customer to 30% of the outstanding bill.
- Require Beltrami to inspect the homes of all off-peak customers on the Red Lake Reservation to ensure the presence of adequate back-up heating systems and to repair or replace inadequate systems at Beltrami's expense.
- Require Beltrami to maintain and report detailed information on all new Red Lake accounts for the next five years, to permit regulators and the Coalition to monitor Beltrami's security deposit and bill transfer practices.
- Require Beltrami to spend 13% of its annual Conservation Improvement Program

budget on the Red Lake Reservation for as long as it continues to serve the Reservation.

- Require Beltrami to compensate its Red Lake Reservation members for past disparate treatment by requiring monetary payments to the Red Lake Nation ranging from \$3.3 million over ten years to \$1,000,000 over two years.

IV. Reply Comments

On July 21, 2004, Beltrami, the Coalition, and Otter Tail Power Company filed reply comments.

The Coalition renewed its earlier claims and requests for relief and added a request that the Commission open a proceeding to transfer the service rights to the Red Lake Reservation from Beltrami to Otter Tail Power Company.

Otter Tail Power Company stated its willingness to discuss the possible transfer of service rights and outlined what it considered the most significant issues to be resolved in the event of a transfer.

Beltrami addressed each compliance failure identified by the Department and the Coalition and either detailed the steps it had taken to achieve compliance or detailed the steps it intended to take to achieve compliance. The Cooperative also stated that it intended to meet its obligations under the Order of March 4, 2004 and that there was therefore no need to consider the remedies for non-compliance proposed by the Department and the Coalition.

V. Parties' Responses to Beltrami's Reply Comments

A. The Department

On October 4, 2004, the Department filed supplemental comments on Beltrami's filing of July 21. The Department stated that Beltrami remained out of compliance with the March 4 Order in at least the following ways:

- Failure to provide for after-hours removal of service limiters.
- Failure to ensure meaningful participation by low-income members in the development of service limiter policy.
- Inadequate assurance that policies resulting in members being asked to pay the past-due bills of others had been changed and that personnel had been thoroughly trained in the new policy.
- Inadequate assurance of compliance with payment plan statutes, Minn. Stat. §§ 216B.097 and 216B.098, and of thorough training of personnel in their application.
- Failure to revise membership agreement to permit members to authorize

release of account information to the Energy Assistance Program and to cease releasing information without such authorization.

- Failure to adequately apprise members of the importance of informing Beltrami when they change their place of residence.
- Failure to apprise members that membership fees would not be applied to past-due bills.
- Failure to provide members with comprehensible information on billing procedures and to adequately reflect Beltrami's obligation to work with members in its written materials on payment plans.

The Department emphasized the continuing need for better communication between Beltrami and its Red Lake members.

B. Energy CENTS Coalition

The Coalition concurred in the Department's specific claims of non-compliance, set forth above. The Coalition also contended that the record demonstrated disparate treatment of Red Lake members by Beltrami and that further fact-finding on disparate treatment issues was required.

They claimed that Beltrami continued to resist providing information to which the Coalition was entitled. They urged the Commission to require Beltrami to conduct a manual search of its billing records from 1989 to 2001, looking for instances in which members were asked or required to pay the past-due bills of others. They claimed that the two cases disclosed by the computer search of records from 2001 to 2003 were strong evidence of the existence of earlier abuses.

Finally, the Coalition continued to advocate the financial penalties and service area transfer investigation outlined in its comments on the Cooperative's initial compliance filing.

V. Commission Proceedings

The case came before the Commission on December 21, 2004. The Cooperative, the Coalition, and the Department appeared.

The Coalition and the Department reiterated their positions, summarized above.

Beltrami denied engaging in any disparate treatment of its Red Lake members and stated that perceived disparities were due to the higher incidence of poverty on the Red Lake Reservation, which resulted in correspondingly higher rates of overdue bills and collection actions.

Beltrami reiterated its intention of complying with the March 4 Order, stated that any remaining noncompliance was inadvertent, and sought Commission guidance on achieving full compliance. The Cooperative argued that, since full compliance was underway and disparate treatment had not been shown, the Commission should conclude proceedings on the complaint without further

investigation.

The Cooperative argued that the Commission lacked authority over the administration of the Conservation Improvement Program and could not therefore require the CIP investments advocated by the Coalition. Finally, the Cooperative agreed to adopt the practice of applying security deposits that exceed arrearages to the arrearages, instead of disconnecting or installing service limiters, an accommodation that arguably goes beyond rule requirements.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

The Commission concurs with the Department that Beltrami is not in full compliance with the March 4 Order and will therefore require the remedial measures recommended by that agency, other corrective action, and a final filing demonstrating compliance with this Order and the Order of March 4, 2004. Full compliance with the terms of these Orders will render further proceedings, including potential penalty and service area transfer proceedings, unnecessary. The Commission finds no compelling evidence suggesting that Beltrami has intentionally discriminated against its Red Lake members. The Commission's institutional expertise lies outside the specialized field of civil rights law, however, and the Commission would commend the processes of the Minnesota Department of Human Rights to any person who believes that this complaint or related conduct implicates the provisions of Minnesota's human rights statutes.

Finally, the Commission will encourage the Commissioner of Commerce to consider using the Conservation Improvement Program, and residential projects funded under that program, to address the conservation needs of Red Lake residents.

These actions will be explained in turn.

II. Assurances of Compliance Accepted

The Cooperative has agreed to implement all remedial measures recommended by the Department, has stated that it intends to fully comply with the March 4 Order and any subsequent Orders issued by this Commission, has stated that it intends to fully comply with its legal obligations to its Red Lake members, and has promised to retrain its personnel to prevent recurrence of the conduct that prompted this complaint.

The Commission accepts these assurances and assumes that they are grounded in and supported by the Cooperative's good faith. Full and prompt compliance with the terms of both this Order and the Order of March 4, 2004 will therefore render further proceedings, including potential penalty and service area transfer proceedings, unnecessary.

III. Remedial Measures Required

A. Remedial Measures Recommended by the Department

The Commission will require the remedial measures recommended by the Department, which are attached to its October 4 comments and set forth in the ordering paragraphs of this Order.

B. Other Remedial Measures

The Commission will also require the remedial measures set forth below to address deficiencies identified by the Coalition:

- End the practice of adding late fees to bills after payment has been guaranteed by the Energy Assistance Program.
- Promptly refund, with interest, all amounts paid at the request or insistence of Cooperative personnel or as a condition of receiving service, when those amounts represent the past due bill of a landlord, a relative, or any other person with whom the customer did not reside at the time that the bill was incurred.
- Promptly refund, with interest, all amounts held as security deposits exceeding the amount of the member's average bill over a two-month time period.
- End the practice of rounding up security deposits to the nearest \$50.
- End the practice of using past-due collection amounts to determine the amount of any required security deposit.

Finally, at hearing the Cooperative agreed to honor the Coalition's request that it apply security deposits that exceed past due amounts toward those amounts instead of disconnecting or applying load limiters. The Commission accepts and will enforce that agreement.

C. Remedial Measures to Address Bill Transfer Issues

One of the stated purposes of this complaint was to end Beltrami's alleged practice of requiring members to pay the bills of landlords or other persons with whom they were not living when the bills were incurred. And in fact, the Cooperative admitted that it had a policy requiring the payment of landlords' bills under specified circumstances. Nevertheless, its search of its computerized billing records from 2001-2003 yielded only two instances in which it requested or required the payment of a past-due bill incurred at a residence where the member was not living when the bill was incurred.

The Coalition questioned the thoroughness of this search and the accuracy of its results, stating

that it suspected that the practice of requiring the payment of others' bills was pervasive. The Coalition recommended further factfinding and urged the Commission to require the Cooperative to conduct a manual search of all billing records from 1989 to 2001. Beltrami opposed the proposed manual search as prohibitively expensive.

The Commission remains committed to ensuring that all persons who have paid the past-due bills of others be identified and reimbursed, as required under the March 4, 2004 Order. At the same time, however, there is insufficient evidence of the sort of widespread abuse that would justify the expensive manual search recommended by the Coalition. In fact, of the 13 allegedly improper bill transfer cases identified by the Coalition and investigated by Beltrami, only two or three appear to involve improper transfers. Neither is it clear that conducting a manual search, without reconstructing the facts of each case, would effectively disclose which transfers were proper and which improper.

Given the importance of enforcing the no-bill-transfer provisions of Minnesota's consumer protection statutes¹ and the impracticality of reconstructing the facts of every bill transfer since 1989, the most effective approach at this point appears to be direct mail notice. The Commission will therefore require the Cooperative to work with the Consumer Affairs Office to prepare a bill insert to be mailed to all members, informing them of their right to a refund, with interest, of all amounts paid on bills improperly transferred.

D. Remedial Measures to Address Inaccuracies in Consumption Data

At hearing all parties agreed that certain components of the consumption data supplied by Beltrami to the Energy Assistance Program were seriously inaccurate. Beltrami explained that the inaccuracies were due to computer programming errors, which in turn were due to staffing shortages caused by illness. The Cooperative agreed to correct the data in the compliance filing resulting from this Order, and the Commission will so require.

IV. Disparate Treatment Issues

The Coalition did not raise claims of disparate treatment in its initial complaint, but it did raise them subsequently. The Department examined those claims and concluded that, while the evidence demonstrated that the Cooperative had violated consumer protection statutes, the Public Utilities Act, and Commission rules, the evidence did not demonstrate disparate treatment toward Red Lake members. The Department attributed perceived disparities to the higher incidence of poverty on the Red Lake Reservation, with correspondingly higher rates of overdue bills and collection actions.

The Commission has examined the record on its own and concludes that it contains no compelling evidence suggesting that Beltrami has intentionally discriminated against its Red

¹ Minn. Stat. § 325E.025, subd. 2. See discussion at pages 6-7 in March 4 Order.

Lake members. The Commission's institutional expertise lies outside the specialized field of civil rights law, however, and the Commission would commend the processes of the Minnesota Department of Human Rights to any person who believes that this complaint or related conduct implicates the provisions of Minnesota's human rights statutes.

V. Conservation Improvement Program Issues

Under Minn. Stat. § 216B.241, subd. 1b, electric cooperatives must spend at least 1.5% of their in-state gross operating revenues on energy conservation improvements authorized by the Commissioner of Commerce as administrator of the Conservation Improvement Program (CIP Program). The Coalition claimed that Beltrami had neglected Red Lake in developing past CIP plans and asked the Commission to order the Cooperative to increase its CIP spending on the Red Lake Reservation.

The Commission does not have authority over how Beltrami spends its CIP budget; that authority rests with the Commissioner of Commerce. The Commission notes, however, that both the CIP statute and the CIP rules promulgated by the Commissioner require careful consideration of the needs of low-income persons and renters in preparing and reviewing proposed CIP plans.² Beltrami's CIP Plan would be an appropriate vehicle for addressing the conservation needs of its Red Lake members, and the Commission would encourage the Commissioner of Commerce to consider conservation improvement projects designed to meet the needs of Red Lake residents in the Cooperative's next CIP proceeding.

VI. Compliance Filing Required

The Commission will require Beltrami to make a filing demonstrating compliance with the terms of this Order within 30 days.

ORDER

1. Beltrami Electric Cooperative shall change its service limiter policy to permit after-hours removal of service limiters and shall change all customer information regarding its service limiter policy to reflect the availability of after-hours removal.
2. Beltrami Electric Cooperative shall involve low-income members in developing its policies on the use of service limiters.
3. Beltrami Electric Cooperative shall provide documentation that it has changed its policy on requiring members to pay the past-due bills of others with whom they were not living at the time the bill was incurred, that its new policy conforms with the law, that it has

² Minn. Stat. § 216B.241, subd. 1b (h); Minn. Rules 7690.0500, subp. 2 F and Minn. Rules 1690.0550 B.

communicated its new policy to all Beltrami employees, and that it has trained all Beltrami employees in the new policy.

4. Beltrami Electric Cooperative shall redraft Policy #209 to conform with Attachment 1 of the October 4, 2004 Comments filed by the Department of Commerce to ensure compliance with the payment plan requirements of Minnesota law.
5. Beltrami Electric Cooperative shall comply with paragraph 12 of the March 4, 2004 Order and shall take steps to determine whether or not a residence is occupied before reporting it as unoccupied to the Energy Assistance Program.
6. Beltrami Electric Cooperative shall revise the language of its *Northern Lights* article regarding address changes to conform with the recommendations in section F in the October 4, 2004 Comments filed by the Department of Commerce and shall include in the compliance filing required by this Order a copy of the amended article and the Cooperative's New Member Packet.
7. Beltrami Electric Cooperative shall revise the language of its *Northern Lights* article regarding memberships and deposits, billing procedures, and disconnection to conform with the recommendations in section H in the October 4, 2004 Comments filed by the Department of Commerce.
8. Beltrami Electric Cooperative shall end the practice of adding late fees to bills after payment has been guaranteed by the Energy Assistance Program.
9. Beltrami Electric Cooperative shall promptly refund, with interest, all amounts it has determined have been paid at the request or insistence of Cooperative personnel or as a condition of receiving service, when those amounts represent the past due bill of a landlord, a relative, or any other person with whom the customer did not reside at the time that the bill was incurred.
10. Beltrami Electric Cooperative shall promptly refund, with interest, all amounts held as security deposits exceeding the amount of the member's average bill over a two-month time period.
11. Beltrami Electric Cooperative shall end the practice of rounding up security deposits to the nearest \$50.
12. Beltrami Electric Cooperative shall end the practice of using past-due collection amounts to determine the amount of any required security deposit.
13. Beltrami Electric Cooperative shall enter into payment plans with its members in a timely fashion.
14. Beltrami Electric Cooperative shall work with the Commission's Consumer Affairs Office to prepare and distribute to all members a bill insert notifying them that they have a right to a refund, with interest, of all amounts paid at the request or insistence of Cooperative

personnel or as a condition of receiving service, if those amounts represent the past-due bill of a landlord, a relative, or any other person with whom the customer did not reside at the time that the bill was incurred. The Cooperative shall not distribute the bill insert until it has been approved by the Consumer Affairs Office.

15. Beltrami Electric Cooperative shall honor its agreement to apply security deposits exceeding past due amounts to those amounts, instead of disconnecting or applying load limiters to those accounts.
16. As part of the compliance filing made under this Order, Beltrami Electric Cooperative shall fully address the inaccuracies in consumption data supplied to the Energy Assistance Program.
17. Within 30 days of the date of this Order, Beltrami Electric Cooperative shall make a filing demonstrating compliance with the terms of this Order.
18. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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