

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of CenterPoint Energy's
Implementation of the Cold Weather Rule and
Reconnection Policies

ISSUE DATE: April 20, 2005

DOCKET NO. G-008/CI-04-2001

LEAD COMMISSIONER'S ORDER
DECLINING TO ADDRESS REQUEST FOR
MEDIATION

PROCEDURAL HISTORY

On January 4, 2005, the Commission issued an Order initiating an investigation into whether CenterPoint Energy's (CPE's or the Company's) practices, acts or omissions with respect to Minn. Rules, parts 7820.1500 to 7820.2300 are in any way unreasonable or insufficient, or improperly prevent service from being obtained. The Commission accepted the offer of the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) to work with the Commission staff in conducting this investigation.

On January 12, 2005, the Office of the Attorney General submitted its Preliminary Report, requesting among other things that the Commission appoint a lead Commissioner for the purpose of ordering CPE to produce documents and witnesses in this investigation. In support of its request at the January 13, 2005 hearing, the Attorney General stated that CPE had responded to many of the information requests submitted to it by the Attorney General, but had refused to provide other requested information. The Attorney General stated that having a lead Commissioner available to resolve discovery disputes would expedite the investigation. CPE did not oppose the request.

On January 14, 2005, the Commission issued its ORDER APPROVING AGREEMENT, DIRECTING IMPLEMENTATION, AND APPOINTING LEAD COMMISSIONER. In its Order, the Commission, among other things, appointed Commissioner Phyllis Reha as lead Commissioner in this docket, vesting her with authority to exercise the Commission's authority to receive and decide discovery disputes between the parties.

On January 24, 2005, LEAD COMMISSIONER'S FIRST DISCOVERY ORDER addressed discovery issues raised by the Attorney General.

On April 6, 2005, CPE submitted a letter to the lead Commissioner requesting that the matter be set for mediation and that she convene the mediation session. At the bottom of its letter, the Company listed names of persons receiving a copy of the letter.

On April 11, 2005, the Office of the Attorney General filed a letter recommending that the lead Commissioner deny CPE's request to set the matter for mediation and requested that the full Commission take up the issue of how to proceed after reviewing the OAG's next report on the investigation of this matter. The OAG stated that barring delays in receiving responses to information requests, it hoped to submit its report by the end of the month.

FINDINGS AND CONCLUSIONS

CPE's request that this matter proceed to mediation is not properly before the lead Commissioner for three reasons.

First, as a procedural matter, the record does not demonstrate that CenterPoint served its request for a fundamental change in how this matter was to proceed on all parties on the Commission's service list for this matter. Specifically, at the bottom of its April 6, 2005 request for mediation, the Company lists persons to whom it sent copies of the Company's request for mediation but does not list three persons who have been on the Commission's service list for this matter since its inception: Ron Elwood, Legal Services Advocacy Project; Pam Marshall, Energy CENTS Coalition; and Gary Van Winkle, Legal Aid Society. Before the Company's request would be properly before the lead Commissioner as a matter of procedure, the record should reflect that all parties on the Commission's service list have received the Company's communication to the lead Commissioner so it's clear that they have received notice about and have had an opportunity to comment on such a proposal.¹

Second, in its initial Order in this matter the Commission undertook an investigation into whether CenterPoint's practices, acts or omissions with respect to the Cold Weather Rules are in any way unreasonable or insufficient, or improperly prevent service from being obtained. The Commission designated the Residential and Small Business Utilities Division of the Office of the Attorney General to work with Commission staff in conducting this investigation. It does not appear from the Commission's Order that the Commission countenanced interrupting that investigation in favor of mediating the issues.

Third, the lead Commissioner in this matter has no authority from the Commission to unilaterally preempt the investigation that the Commission has asked the Attorney General's Office and Commission Staff to conduct in favor of mediating the issues. By terms of the Commission's

¹ If the substance of the Company's April 6, 2005 request were properly before the lead Commission in other respects, assurance that all parties on the Commission's service list received a timely copy of the Company's request would be required before the matter would be properly before the lead Commissioner. For second and third reasons presented above, however, the substance of the Company's request was not properly before the lead Commission.

January 14, 2005 Order designating a lead Commissioner, the lead Commissioner's authority is limited to one area: to receive and decide discovery disputes between the parties. Since CenterPoint's request is not to resolve a discovery dispute, it is not properly before the lead Commissioner.

ORDER

1. For the reasons stated in the text of this Order, the lead Commissioner hereby declines to address the Company's request.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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