

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

ISSUE DATE: August 11, 2005

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

LEAD COMMISSIONER'S ORDER
DIRECTING DISCOVERY AND
REQUIRING FILING

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 RUD-OAG 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 RUD-OAG stated that CPE had responded to many of the information requests submitted to it by the RUD-OAG, but had refused to provide other requested information. The RUD-OAG 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 hear and decide discovery disputes between the parties.

On January 24, 2005, LEAD COMMISSIONER'S FIRST DISCOVERY ORDER addressed discovery issues raised by the RUD-OAG.

On April 20, 2005, the Lead Commissioner issued her order declining to address CPE's request for mediation.

On June 21, 2005, the RUD-OAG filed its final report, which concluded that CPE willfully and systematically violated the Cold Weather Rule and related laws. The RUD-OAG recommended that the Commission penalize CenterPoint \$5 million, require it to make restitution to those who were harmed by its conduct, and direct it to modify its practices.

On June 23, 2005, the Commission issued a notice of bifurcated comment period. First, the Commission requested comments on process or reporting procedures that were raised in the RUD-OAG's final report and the recommendations (Phase 1). Second, the Commission requested comments on all other matters raised in RUD-OAG's final report (Phase 2).

On August 5, 2005 the Commission addressed Phase 1 procedural issues by issuing its ORDER DIRECTING SUBMISSION OF PROPOSED INTERIM REPORTING MEASURES. In addition, the Lead Commissioner set up a hearing on the RUD-OAG's request for discovery prior to the Commission addressing the substance of the RUD-OAG's June 21, 2005 Report (Phase 2).

On August 8, the Lead Commissioner convened a meeting with the parties to address the RUD-OAG's discovery requests. The Lead Commissioner heard oral arguments from representatives of the RUD-OAG, CPE, Energy CENTS Coalition, and the Consumer Affairs Office.

FINDINGS AND CONCLUSIONS

I. Background

The RUD-OAG originally sought customer records for a list of 300 customers that it had developed from the total 2,560 customers who were disconnected as of October 15, 2005, the beginning of the Cold Weather Rule season. As a compromise, the RUD-OAG agreed to accept the Company's offer to provide records for 60 of those customers. The RUD-OAG based its June 21, 2005 Report on an analysis of the records for those 60 customers.

CPE has objected that the customer sample used by the RUD-OAG as the basis of its June 21, 2005 Report (61 customers) is not representative of the 2,560 customers who were still disconnected at the start of the 2004 Cold Weather Rule (CWR) season.

In its Reply Comments filed August 5, 2005, the RUD-OAG argued that because the Company rejected the results based on the records of the 60 customers, the Commission should require the Company to produce the complete customer records, including recordings of telephone conversations between customers and customer service organizations, for all 2,560 customers who were still disconnected at the start of the 2004 CWR season. For a start, the RUD-OAG requested that the Commission require the Company to supply records for 240 customers, the balance of its list of 300, by August 19, 2005 and to produce records for the remaining customers (the balance of the 2,560 customers who were still disconnected at the start of the 2004 CWR season) in weekly

increments, 240 in all by the end of September.

II. Party Positions at the Discovery Meeting

The RUD-OAG initially requested the discovery scope and schedule stated in its August 5, 2005 Reply Comments. In response to the Company's argument that the level of production was physically impossible and did not address the concern for achieving a representative sample, the RUD-OAG proposed that the records for the 240 customers (the balance of its list of 300) could be provided in equal rolling increments over a five week period and that in the meantime the matter of achieving a representative sample could be discussed with the Company. The RUD-OAG clarified that the records that it sought were the Customer Information System (CIS) notes, Credit and Account Management system (CAMS) notes, the technical notes, and associated recordings.

CPE agreed that records for the balance of the RUD-OAG's list of 300 (records for the remaining 240 customers) could be provided in five weeks, by mid-September, but urged that time would be better spent developing and implementing a representative sample of the balance of the 2,560 customers. The Company representative indicated that he had been in touch with the Company expert resource on sampling and that a mechanism for selecting a representative sample of the 2,560 customers (between 200-250 customers) could be developed quickly.

III. Lead Commissioner's Analysis and Action

The RUD-OAG has a legitimate interest in developing the record to show the extent of Company practices that it believes violate various Cold Weather Rule provisions. The RUD-OAG should be given a reasonable opportunity to develop its case in advance of the Commission's next procedural and substantive determinations regarding this matter.

The types of information sought are not in dispute. The Company does not object to providing the items requested: the Customer Information System (IS) notes, Credit and Account Management system (CAMS) notes, the technical notes, and associated recordings.

A. Production for the Balance of the RUD-OAG's List

The Company objected to how the customers whose records are provided should be chosen and when that information should begin to be provided. The Lead Commissioner believes, however, that the RUD-OAG should be given a reasonable opportunity to develop the record foundation for its Report and Recommendations in advance of the Commission's upcoming procedural and substantive determinations regarding this matter. Given the amount of time that the Company asserts it takes to develop requested information for one customer and the importance of developing broad information in the record regarding customer treatment with respect to the Cold Weather Rule, it appears prudent to proceed immediately with the production of customer records for the balance of the customers on the RUD-OAG's list.

B. Commission Action Regarding the Balance of the RUD-OAG's List

Accordingly, the Lead Commissioner will direct the Company to immediately begin gathering the requested documents for the balance of the customers on the RUD-OAG's list and to produce those documents on a rolling, weekly basis. Based on the Company's representation that it can produce the requested documents for the remaining 240 customers in five weeks, the Commission will direct the Company to provide on Tuesday of each week for the next five weeks documents gathered during that week, i.e., documents for approximately 50 customers.

Documents for the first 50 customers, therefore, will be due Tuesday, August 17, 2005. Since the Company has already provided records for 60 of the 300 customers on the RUD-OAG's list, the Company will begin at the top of that list and provide records for the first 50 customers for which it has not already provided records, then in the following week to the next 50 for which it has not already provided records, etc. until records for all 300 have been provided.

C. Desirability of a Representative Sample of Documents

At the same time, there is merit in producing customer records from a representative number of customers so that sound inferences may be drawn regarding the scope any given treatment for all 2,560 customers whose heat was disconnected as of October 15, 2004, the beginning of the Cold Weather Season. The Company has stated that it can produce a proposal for such a sample and begin producing documents for members of that sample group in short order.

D. Commission Action Regarding a Representative Sample of Documents

To promote the efficient development of an agreed upon statistically representative sample of the 2,560 customers whose gas service was disconnected as of October 15, 2004, the Lead Commissioner will direct the Company to file its proposal for a statistically sound sampling of those customers. The Lead Commissioner understands that the Company reserves the right to challenge conclusions drawn by any party based on the documents produced for members of the representative sample group but agreed at the hearing that it will not challenge the representative nature of the representative sample group that it will propose.

The Company's filing will contain the following items:

- the names, positions, and qualifications of the Company staff preparing the protocol to select the sample group;
- the protocol itself;
- a full explanation of why the Company believes that protocol is sound and that the sample group resulting is statistically representative of the 2,560 customers whose gas service was disconnected as of October 15, 2004;
- the sample group resulting from application of that protocol to the 2,560 customers in question; and
- the Company's formal certification that it endorses this sample group and will not

challenge its validity as representative of the entire group, the 2,560 customers in question.

To facilitate general acceptance of the proposed sampling protocol and resulting sample group, the Lead Commissioner suggests that the Company provide a copy of the protocol and its explanation to the RUD-OAG and other parties to this proceeding as soon as possible and allow representatives of the RUD-OAG to be present when the members of the sampling group are selected pursuant to the protocol.

E. Potential Substitution of the Sample Group for the RUD-OAG's List of 300

If the Company seeks authority to discontinue production of documents pursuant to Part III, Section B of this Order and substitute the production of documents for members of the representative sample group filed pursuant to Part III, Section D of this Order, the Company may make that request of the Lead Commissioner as part of its Section D filing and the matter will be set for hearing before the Lead Commissioner. Pending further Order of the Lead Commissioner, the requirements of Section B shall remain in effect.

ORDER

1. For the reasons stated in the text of this Order, CenterPoint Energy shall take action as set forth in **Part III, Section B** of this Order:
 - The Company shall immediately begin gathering the requested documents for the balance of the customers on the RUD-OAG's list and shall produce those documents on a rolling, weekly basis.
 - On Tuesday of each week for the next five weeks (starting Tuesday, August 17, 2005) the Company shall provide documents gathered during that week i.e., documents for approximately 50 customers.
 - The Company shall begin at the top of that list and provide records for the first 50 customers for which it has not already provided records. In the following week, it shall provide records for the next 50 for which it has not already provided records, etc. until records for all 300 have been provided.
2. For the reasons stated in the text of this Order, CenterPoint Energy shall take action as set forth in **Part III, Section D** of this Order:
 - The Company shall file its proposal for a statistically sound sampling of those customers, as soon as practicable, taking into account the Lead Commissioner's suggestion that the Company provide a copy of the protocol and its explanation to the RUD-OAG and other parties to this proceeding as soon as possible and allow representatives of the RUD-OAG to be present when the members of the sampling group are selected pursuant to the protocol.

- The Company's filing shall contain 1) the names, positions, and qualifications of the Company staff preparing the protocol to select the sample group; 2) the protocol itself, 3) the sample group resulting from application of that protocol to the 2,560 customers in question, 4) a full explanation of why the Company believes that protocol is sound and that the sample group resulting is statistically representative of the 2,560 customers whose gas service was disconnected as of October 15, 2004, and 5) the Company's formal certification that it endorses this sample group and will not challenge its validity as representative of the entire group, the 2,560 customers in question.
3. The Company is hereby authorized to request authority to discontinue production of documents pursuant to Order Paragraph 1 and substitute the production of documents for members of the representative sample group filed pursuant to Order Paragraph 2, as described above in Part III, Section E of this Order.
 4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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