

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota

ISSUE DATE: April 28, 2006

DOCKET NO. E-002/GR-05-1428

ORDER MAKING PRELIMINARY DETERMINATION OF ELIGIBILITY FOR INTERVENOR COMPENSATION

PROCEDURAL HISTORY

On December 9, 2005, Energy CENTS Coalition (“ECC”) filed a petition to intervene in this matter. No objections were raised and the petition was deemed granted on December 24, 2005.

On March 16, 2006, ECC filed its request for compensation in this matter pursuant to Minn. Rules, Part 7831.0300.

On March 31, 2006, Xcel filed a letter stating that it had no objection to a preliminary determination by the Commission of ECC’s eligibility for intervenor compensation. Xcel reserved comment on whether ECC meets the criteria for an actual award until after the conclusion of the rate case proceeding.

On April 20, 2006, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

I. Background

Minn. Stat. § 216B.16, subd. 10, allows the Commission to order a utility to pay an intervenor up to \$20,000 for participating in a proceeding if the intervenor has materially assisted the Commission and the intervenor has insufficient financial resources to afford the cost of intervention.

Minn. Rules, Parts 7831.0100 through 7831.0800 represent the established procedures under

which a request for intervenor compensation, and later a claim for that compensation, is made to the Commission.

Generally, the rules require that an intervenor requesting intervenor compensation file a request for compensation within 75 days of the filing or 30 days before the evidentiary hearings. That filing must provide general information about the intervenor, and evidence that “. . . but for an award of compensation for its intervenor costs . . .” the intervenor would have insufficient financial resources to intervene and participate effectively in the proceeding.

The rule requires that certain minimum financial information be supplied. The intervenor must state the nature and extent of planned participation in the proceeding as far as it is possible to do so at the time of the filing. Other parties have 15 days to respond to the request.

Under Minn. Rules, Part 7831.0500, the Commission must issue a preliminary determination addressing the eligibility of the intervenor for compensation within 45 days of the filing of the request for a preliminary determination. The rule identifies two specific items that the determination must address: whether the applicant is an intervenor; and whether a showing of insufficient financial resources has been made.

Discretionary determinations that the Commission may choose to undertake include: the intervenor’s ability to materially assist the Commission; duplicate positions or whether the positions could be more efficiently presented under common representation; use of common legal counsel and witnesses; listing of other known applicants with similar positions; pointing out unrealistic expectations for compensation; and addressing other information which may affect the applicant’s claim.

Under the rule, the preliminary determination does not guarantee the award of compensation. The intervenor must file a claim for specific compensation after the proceeding is completed at which time the Commission will again review the financial status of the intervenor and address whether the intervenor materially assisted the Commission in its deliberations in the rate proceeding.

II. ECC’s Request for Compensation

ECC represents low and fixed income utility customers in Minnesota. ECC designs, evaluates and administers low-income bill payment and conservation assistance programs. ECC develops these programs and advocates for them to increase the ability of low-income customers to pay utility bills and to reduce utility service disconnections and collection costs.

ECC stated that in this proceeding it will develop testimony and participate fully. It has already filed direct testimony. In this proceeding it will advocate for a significant change to Xcel’s proposed rate design, including a unique inverted block rate design for non-heating residential customers.

ECC also intends to demonstrate that the proposed rate design does not adequately address a customer’s ability to pay, because, it contends, it harms low-income customers. ECC asserts that

it will contribute to the record by demonstrating that low-income customers are disproportionately and substantially low-usage electric customers.

ECC also intends to materially assist in promoting a rate design that meets the conservation standard in Minn. Stat. § 216B.03, and the consideration of ability to pay under Minn. Stat. § 216B, sub. 15(a).

Finally, ECC will examine and advocate for low and fixed income persons on a number of Xcel's additional proposals, including: the "Financial Neutrality Factor;" the "Purchased Capacity Equity Rider;" the proposed change to the Fuel Clause Adjustment; the proposal to share wholesale margins with shareholders; and the Company's rate of return.

ECC estimated its overall participation costs of intervention at approximately \$11,698 and provided a projected budget.

III. Commission Analysis

In making a preliminary determination whether an applicant is eligible for an award of compensation of intervenor costs, the Commission must determine

- 1) whether ECC is an intervenor as defined in Minn. Rules, Part 7831.0100, and
- 2) whether the applicant has made a sufficient showing that, but for an award of compensation for all or part of its intervenor costs, it has insufficient financial resources to intervene and participate fully and effectively in the proceeding.

A. Intervenor Status

On December 9, 2005, ECC filed a petition to intervene in the rate case with the Commission. No objections were filed and the petition was deemed granted on December 24, 2005, pursuant to Minn. Rules, Part 7829.0800, subp. 5. In the first pre-hearing order, issued January 23, 2006, the ALJ granted ECC party status, and identified ECC as an intervenor in this matter. Accordingly, the Commission finds that ECC is an intervenor for purposes of this preliminary determination of eligibility.

B. Insufficient Financial Resources

ECC filed a request for compensation in the CenterPoint Energy rate case on January 26, 2006. The Commission issued an order on March 6, 2006,¹ finding that ECC had made a sufficient showing of insufficient resources in that proceeding.

According to Minnesota Rules 7831.0300, subp. 3:

If the commission has determined within the previous year before receiving the request that the applicant has met its burden of showing insufficient financial resources and if the applicant can attest that there has been no substantial change in available discretionary resources, the applicant may refer to that decision to satisfy the requirement of this subpart.

ECC asserts that it has had no changes to its financial situation since the filing in the CenterPoint Energy case, and requests that the Commission apply that preliminary finding on ECC's insufficient resources to this matter.

At this stage of the proceedings, the Commission assumes that all information in the request filing is true and accurate. Minn. Rules, Part 7831.0500, subp. 1B. In addition, the Commission clarifies that the determination it is required to make at this time is preliminary. At the close of this rate case, ECC must file a claim for compensation pursuant to Minn. Rules, Part 7831.0600.

Thereafter, an award or denial of compensation will be made, pursuant to Minn. Rules, Part 7831.0800, on the basis of the Commission's determination regarding:

- 1) whether the intervenor has materially assisted the Commission and
- 2) whether the intervenor has shown that it has insufficient financial resources, but for the award, to afford all or part of its intervenor costs necessarily incurred to participate effectively in the proceeding.

With respect to the financial capacity issue, the Commission notes that prior to its final decision regarding the claim, the Commission may conduct such financial review as is appropriate pursuant to Minn. Rules, Part 7831.0700.

With the limited scope of its determination thus clarified, the Commission finds that ECC has made a sufficient showing, for this stage of the proceedings, on the insufficient financial resources issue.

¹ *In the Matter of the Application of CenterPoint Energy for Authority to Increase Natural Gas Rates in Minnesota*, Docket No. G-008/GR-05-1380, March 6, 2006.

The Commission finds that a preliminary determination of the discretionary factors listed in Minn. Rules, Part 7831.0500 would not be useful to the Commission in this proceeding. The Commission has examined the two factors required for a preliminary determination of eligibility: the intervenor's status and the sufficiency of the applicant's resources. ECC has met the requirements of both factors. The Commission therefore grants ECC a preliminary determination of eligibility for intervenor compensation.

ORDER

1. The Commission grants a preliminary determination of eligibility for intervenor compensation to ECC.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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