

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: September 26, 2006

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

ORDER APPROVING SETTLEMENT,
TERMINATING THE INVESTIGATION,
AND CONTINUING REPORTING
REQUIREMENTS

PROCEDURAL HISTORY

On January 4, 2005, the Commission issued an Order initiating an investigation into whether CenterPoint Energy's (CenterPoint's) practices, acts or omissions with respect to Minnesota's Cold Weather Rule (CWR)¹ 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's Consumers Affairs Office (CAO) in conducting the investigation.

On January 14, 2005, the Commission issued an interim Order adopting an agreement between CenterPoint and the RUD-OAG. The agreement included a script that CenterPoint customer service representatives would use with customers seeking reconnection to advise them of their rights under the Cold Weather Rule (CWR). The interim Order also appointed Commissioner Reha as the lead Commissioner in this docket with authority to exercise the Commission's authority to receive and decide discovery disputes between the parties.

On June 21, 2005, the RUD-OAG filed its final report, which concluded that CenterPoint 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, a class action lawsuit was filed against CenterPoint Energy on behalf of certain CenterPoint customers whose gas service was involuntarily disconnected for nonpayment.

¹ Minn. Rules, Parts 7820.1500 to 7820.2300 are known collectively as the Cold Weather Rule (CWR).

On September 26, 2005, the Commission issued an Order referring the following three issues to the Office of Administrative Hearings for contested case proceedings: 1) whether CenterPoint violated the Cold Weather Rule; 2) if it did, whether the violation was knowing and intentional; and 3) if so, what penalties/remedies are warranted.

On March 17, 2006, parties to the class action lawsuit against CenterPoint Energy signed a Settlement Agreement, which included CenterPoint making \$13,500,000, less attorneys' fees and costs, available for distribution to settlement class members who return valid claim forms.

On March 27, 2006, CenterPoint and the RUD-OAG signed an Offer of Settlement in the current docket. In signing the Offer of Settlement, the parties indicated that the Offer was contingent upon federal court approval of the settlement in the Class Action.

On August 14, 2006, Federal District Judge Richard H. Kyle issued a Final Judgment and Order of Dismissal, approving the Settlement Agreement and dismissing the lawsuit.²

On August 17, 2006, the parties filed a copy of the Class Action Settlement, the Federal District Court Order, and an Offer of Settlement with the ALJ. The filing included a request that the ALJ return the matter to the Commission.

On August 22, 2006, Administrative Law Judge Kathleen D. Sheehy took cognizance of the federal district court's approval of the Settlement Agreement and dismissal of the Class Action lawsuit, closed the OAH file, and returned the matter to the Commission.

On August 23, 2006, the Commission issued a notice for comments on the Offer of Settlement proposed by CenterPoint and the RUD-OAG. No comments were received.

The Commission met to consider this matter on September 14, 2006.

FINDINGS AND CONCLUSIONS

I. The Parties' Offer of Settlement

The Offer of Settlement proposed by CenterPoint and the RUD-OAG speaks for itself. See Attachment 1. In the Offer, CenterPoint acknowledges that mistakes were made in its implementation of the CWR and apologizes to persons impacted by those mistakes. In the Offer of Settlement, the parties also reference full settlement of the Class Action lawsuit under which CenterPoint has agreed, among other things, to pay \$13.5 million to 1) compensate customers for damages suffered, 2) pay all costs reasonably incurred, and 3) pay reasonable attorneys fees to plaintiffs' counsel.³

² *Velva Stewart, et al. v. CenterPoint Energy Resources Corporation d/b/a CenterPoint Energy Minnesota Gas*, U.S. District Court - District of Minnesota, Court File. No. 05-CV-1502, FINAL JUDGEMENT AND ORDER OF DISMISSAL (August 14, 2006).

³ In signing the Offer of Settlement on March 2006, the parties indicated that the Offer was contingent upon federal court approval of the settlement in the Class Action. The federal court approved the Settlement Agreement in an Order dated August 14, 2006.

Specific agreements under the Offer of Settlement include:

- 1) a stayed penalty of one million dollars which the Commission may impose if a mediator, mutually agreed upon by the parties, finds that the Company, by acts occurring between March 28, 2006 (the date the Offer was signed) and April 15, 2007, has substantially violated the terms of the Settlement or the CWR;
- 2) the parties' agreement to design and implement a public awareness campaign before the start of the 2006-2007 CWR period to increase awareness of the CWR and the financial assistance that may be available to customers; and
- 3) continuous implementation of the process changes and "script" approved by the Commission in its November 10, 2005 Order in this matter and cooperative work on training of Company personnel who handle CWR issues.

II. The Administrative Law Judge's Comments

In closing the contested case proceeding and forwarding the parties' Offer of Settlement to the Commission for further action, the Administrative Law Judge (ALJ) did not make a recommendation, but simply stated that CenterPoint and the Office of the Attorney General had reached agreements to resolve all issues in the class action litigation pending in U.S. District Court as well as all issues pending in this docket. The ALJ noted that Energy CENTS Coalition, although not a party to the settlements, had no objection to them. In addition, the ALJ reported that Commission staff had informed her that staff has no objection to the parties' request that the agreements be simply forwarded to the Commission for consideration.

III. Commission Analysis and Action

In this investigation, the Commission initially focused its efforts upon ending the emergency situation of thousands of CenterPoint customers being without heat during the winter months. This effort included encouraging CenterPoint to extend office hours and increase active outreach to contact disconnected customers and reconnect their gas.

Throughout this investigation, the Commission has been supportive of changes in CenterPoint's management and implementation of the CWR that were both consistent with the CWR letter and spirit. As part of that effort, the Commission approved a revised script for CenterPoint staff working with CWR-related customers. That script has continued to be improved over the course of this docket, including an iteration submitted at the hearing.⁴ The Commission also established weekly update reports to help track and encourage reduction in the number of disconnected households.⁵

⁴ The changes to the script submitted on the hearing day will be approved in this Order with the understanding that in the future, minor changes to the Settlement may be approved pursuant to the Commission's Consent Agenda process. If substantive changes are proposed, however, the proposed changes will be brought to the Commission for review and approval.

⁵ See the Commission's August 25, 2005 and November 10, 2005 Orders in this matter.

As a consequence, substantially fewer households in CenterPoint's service area were without power during the cold weather season of 2005-2006. As CenterPoint now heads into the third CWR period of this investigation, the Commission finds that the Offer of Settlement, including a conditionally stayed penalty of one million dollars to motivate compliance with the Settlement and the CWR, appropriately reinforces and augments into the future the process changes and safeguards adopted by the Commission in its previous Orders in this matter.

Regarding monetary compensation to individual customers, the Commission recognizes the hardship that hundreds of CenterPoint customers experienced in the winter of 2004-2005. While the Commission has no direct statutory authority to order compensation to individual customers, a class action lawsuit was brought in federal district court against CenterPoint to secure monetary compensation for individual customers. The Federal District Court Judge examining the Settlement Agreement providing for such monetary compensation has found that the Settlement Agreement was entered into between the parties in good faith and that its terms are fair, reasonable, adequate, and in the best interests of the Settlement Class Members.⁶

In light of all these circumstances, the Commission will approve the Offer of Settlement in this docket, incorporating into that Settlement the most recent revisions to the CWR Reconnection Script submitted to the Commission at the hearing. Regarding the reporting requirements established in the August 25, 2005 and November 10, 2005 Orders, the Commission will direct CenterPoint to comply with them through the 2006-07 CWR season.

In addition, a working relationship between CenterPoint, the RUD-OAG, and Commission staff has been established during this investigation to continue these positive developments regarding CWR implementation,

In light of these developments, the public interest concerns that prompted the Commission to undertake this investigation appear to have been effectively addressed. As a consequence, the Commission will terminate the investigation phase of this docket. The investigation can always be reopened if circumstances warrant.

ORDER

1. The Offer of Settlement (attachment A) submitted by CenterPoint Energy, Inc. (CenterPoint) and the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) is hereby approved, revised in one respect only: that the CWR Reconnection Script incorporated as part of the Offer of Settlement is revised as per the version submitted by the parties to the Commission at the hearing of this matter September 14, 2006.
2. The Commission hereby terminates this investigation.

⁶ See *Velva Stewart, et al. v. CenterPoint Energy Resources Corporation d/b/a CenterPoint Energy Minnesota Gas*, U.S. District Court - District of Minnesota, Court File. No. 05-CV-1502, FINAL JUDGEMENT AND ORDER OF DISMISSAL (August 14, 2006) at Paragraphs 6 and 23.

3. The Commission clarifies that into the future, minor revisions to the Settlement may be handled through the Consent Agenda process, but that any substantive changes to the Settlement shall be brought to the Commission prior to implementation for the Commission's review and approval.
4. The reporting requirements established for CenterPoint in the August 25, 2005 and November 10, 2005 Orders shall continue effective through the 2006-07 CWR season.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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