

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

ISSUE DATE: February 8, 2007

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

ORDER GRANTING APPLICATION TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

PROCEDURAL HISTORY

On September 1, 2006, the Commission issued its Findings of Fact, Conclusions of Law, and Order, in this docket.¹

On November 2, 2006, the Commission declined to reconsider any decisions in the Order.

On December 7, 2006, Myer Shark filed a request for a preliminary determination on his request for intervenor compensation in this matter.

On December 13, 2006, Mr. Shark petitioned the Minnesota Court of Appeals for a writ of certiorari to review the Commission's September 1 order.

On December 18, 2006, Mr. Shark filed with the Commission an affidavit in support of his application for proceeding *in forma pauperis*.²

On January 19, 2007, the Minnesota Court of Appeals issued an order granting Mr. Shark's motion for an extension of time in which to file his brief in the appellate matter. The court also

¹ 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, *Findings of Fact, Conclusions of Law and Order*, Docket No. E-002/GR-05-1428 (September 1, 2006).

² Minn. Stat. 563.01.

noted that court records did not evidence a copy of the Commission's ruling on a request by Mr. Shark to proceed in the appeal via *in forma pauperis* status. The Minnesota Court of Appeals ordered Mr. Shark to file a decision by the Commission addressing his application to proceed *in forma pauperis* on or before February 12, 2007.

On January 30, Xcel submitted a letter indicating that it did not oppose the petition of Mr. Shark to proceed *in forma pauperis* on appeal.

On February 1, 2007, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. *In Forma Pauperis* Application

Minn. R. Civ. App. P. 109.02 requires a party who desires to proceed *in forma pauperis* in the Court of Appeals to file a motion for leave to do so with the trial court.³ The rule also requires the party to file an affidavit showing the party's inability to pay fees, along with the party's statement of the case showing the proposed issues on appeal.

Mr. Shark filed an affidavit in support of his *in forma pauperis* motion evidencing his inability to pay fees. His petition for a writ of certiorari, filed the same day as his affidavit, sets out his proposed issues on appeal.

II. Commission Analysis and Action

Under Minn. Stat. § 563.01, subd. 2, the Commission shall grant a party's motion to proceed *in forma pauperis* if it finds that 1) the action is not of a frivolous nature; 2) the affidavit is substantially in the language required by the subdivision; and 3) the affidavit is not found by the court to be untrue.

The Commission finds that Mr. Shark's motion to proceed *in forma pauperis* satisfies these requirements:

- 1) The Commission finds that considering the contested nature of Xcel's rate case and Mr. Shark's active participation with respect to the tax issues raised in that case, his appeal is not frivolous;
- 2) The affidavit appears to be in substantially the language required by the subdivision; and

³ The Minnesota Rules of Civil Appellate Procedure define "trial court" as the "court or agency whose decision is sought to be reviewed." Minn. R. Civ. App. P. 101.02, subd. 4.

- 3) The Commission does not find the affidavit to be untrue. Mr. Shark's affidavit for proceeding *in forma pauperis* in his appeal of the instant rate case avers that his medical, housing and food expenses have escalated to the point where they now exceed his income from all sources, and that he does not have income above that point to pay for the expenses of this litigation. Based on Mr. Shark's sworn assertions of December 13, 2006, the Commission concludes that he has met the requirements to proceed *in forma pauperis*.⁴

ORDER

1. The Commission grants Mr. Shark's application to proceed *in forma pauperis* on appeal in this matter.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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⁴ The Commission notes that it recently made a preliminary determination of eligibility for intervenor compensation as to Mr. Shark in the rate case, based on its determination of Mr. Shark's insufficient financial resources. *See* 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, Order Granting Variance and Making Preliminary Determination of Eligibility for Intervenor Compensation, E-002/GR-05-1428 (January 22, 2007).