


Staff Briefing Papers

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| Meeting Date | October 15, 2020 | Agenda Item 1* |
| Company | Minnesota Power | |
| Docket No. | E-015/GR-19-442 | |
| | In the Matter of the Application by Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota | |
| Issues | Should the Commission approve the Citizens Utility Board of Minnesota's request for intervenor compensation in the amount of \$37,821? | |
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|  Relevant Documents | Date |
|---|-------------------|
| Citizens Utility Board of Minnesota's - Request for Intervenor Compensation | August 28, 2020 |
| Minnesota Power's Letter | September 2, 2020 |

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

I. Statement of the Issue

Should the Commission approve the Citizens Utility Board of Minnesota's request for Intervenor compensation in the amount of \$37,821?

II. Background

On November 1, 2019, Minnesota Power filed a request to increase rates for electric service in Minnesota.

On June 30, 2020, the Minnesota Public Utilities Commission (Commission) issued its Initial Order Approving Petition and Resolving Rate Case with Conditions. On August 7, 2020, the Commission issued its Order Approving Petition and Resolving Rate Case with Conditions.

On August 28, 2020, the Citizens Utility Board of Minnesota (CUB) requested intervenor compensation in the amount of \$37,821.

On September 2, 2020, Minnesota Power submitted its response supporting CUB's request for Intervenor Compensation.

Pursuant to Minn. Stat. § 216B.16, subd. 10(j) the Commission has sixty days, i.e. until October 27th, to issue its decision on CUB's request.

III. Relevant Statute

In its current form, the Intervenor Compensation statute, Minn. Stat. § 216B.16, subd. 10,¹ authorizes the Commission to make an award to a nonprofit organization or an individual that has been granted formal intervenor status in an electric or natural gas rate case.

According to Minn. Stat. § 216B.16, subd. 10(b)

The commission may order a utility to compensate all or part of an eligible intervenor's reasonable costs of participation in a general rate case that comes before the commission when the commission finds that the intervenor has materially assisted the commission's deliberation and when a lack of compensation would present financial hardship to the intervenor. Compensation may not exceed \$50,000 for a single intervenor in any proceeding. For the purpose of this subdivision, "materially assisted" means that the intervenor's participation and presentation was useful and seriously considered, or otherwise substantially contributed to the commission's deliberations in the proceeding.

¹ A copy of Minnesota Statute § 216B.16, subd. 10 is attached to these briefing papers.

IV. Parties' Comments

A. CUB Petition

CUB requests Commission approval of its intervenor compensation request pursuant to Minn. Stat. § 216B.16, subd. 10, for its intervention in the Minnesota Power rate case that was resolved via the Commission's order issued on August 7, 2020. CUB argues that its request for intervenor compensation meets the requirements of statute and is reasonable due to the extensive time and expertise required to intervene in a rate case and its financial situation as a small nonprofit organization.

Specifically, CUB noted that in determining whether an intervenor has materially assisted the commission's deliberation, the commission must consider, among other factors, whether:

- The intervenor represented an interest that would not otherwise have been adequately represented;
- The evidence or arguments presented, or the positions taken by the intervenor were an important factor in producing a fair decision;
- The intervenor's position promoted a public purpose or policy;
- The evidence presented, arguments made, issues raised, or positions taken by the intervenor would not have been a part of the record without the intervenor's participation; and
- The administrative law judge or the commission adopted, in whole or in part, a position advocated by the intervenor.

1. The intervenor represented an interest that would not otherwise have been adequately represented

CUB stated it was preparing analysis and testimony on a number of issues that would not have otherwise been represented by an interest representing residential consumers.

Specifically, CUB witness, Ron Nelson of Strategen Consulting, was preparing a cost of service study intended to more fairly (in CUB's judgment) allocate costs among classes and to better account for how changes in power system technologies and operations must be taken into account when considering costs.

Additionally, CUB noted that Mr. Nelson had begun looking into the application and use of late payment and similar fees by Minnesota Power. To CUB's knowledge, no other party planned to address this issue.

2. The evidence or arguments presented, or the positions taken by the intervenor were an important factor in producing a fair decision

CUB stated that it was not aware of any other parties who were preparing cost of service studies, cost allocation positions, rate design arguments, and late fees analyses similar to the testimony that CUB's expert witness was preparing to present.

In addition, CUB took unique positions in its comments in response to the Minnesota Power's petition to move asset-based wholesale credits to the fuel adjustment clause and resolve the rate case. Specifically, CUB identified issues with Minnesota Power's cost of service study model that impeded transparency and should be addressed prior to its next rate case and identified the opportunity to consider alternative collection and/or treatment of late payment and similar fees.

3. The intervenor's position promoted a public purpose or policy

CUB stated that it intervened in this docket because Minnesota Power's application presented a number of issues that would affect those interests, including its preferred cost allocation, rate design, and collection and use of late fees, as outlined above.

Though intervenors did not have the opportunity to submit testimony before the rate case was resolved pursuant to the Commission's August 7, 2020 Order, CUB's expert witness was preparing analyses on these issues in order to propose structures that better reflected the interests of ratepayers.

4. The evidence presented, arguments made, issues raised, or positions taken by the intervenor would not have been a part of the record without the intervenor's participation

CUB noted that its positions were approved by the Commission and ordered in its August 7, 2020 Order. Specifically, ordering paragraph (OP) 1 of the August 7th Order as shown below.²

- A. Minnesota Power shall provide reasonable intervenor compensation to parties participating in this proceeding with the objective of promoting a public purpose.
- B. Before its next rate case, Minnesota Power shall ensure that parties can modify the Company's class cost-of-service study model inputs and cost allocators to allow parties to receive real-time calculations and outputs. The Company shall also track and report any costs related to complying with this requirement.
- C. In its next rate case, Minnesota Power shall submit information on its process for collecting residential late fees and the costs expended in these collection efforts. Before its next rate case, Minnesota Power shall work with interested parties to discuss alternative methods of allocating late payment and similar fees to residential customers.

5. The Administrative Law Judge or the Commission adopted, in whole or in part, a position advocated by the intervenor

As discussed above, CUB noted that its positions were approved by the Commission and ordered in its August 7, 2020 Order.

² Order Approving Petition and Resolving Rate Case with Conditions, at 12, this docket, (August 7, 2020).

B. Minnesota Power

Minnesota Power submitted a one-page letter stating the following:

Minnesota Power (or the “Company”) has reviewed the request made by the Citizens Utility Board (“CUB”) in their August 28, 2020 filing and has found that their request for intervenor (sic) compensation in the amount of \$37,821 for its intervention in the Company’s Application to Increase Electric Service (sic) Rates in Minnesota to be reasonable. CUB’s request is also in accord with Minnesota Power’s filings and the Minnesota Public Utilities Commission’s August 7, 2020 and June 30, 2020 orders in the above-referenced Docket.

V. Staff Analysis

CUB meets the minimum eligibility criteria for an award because it is a nonprofit organization and was granted formal intervenor status in the case.³

Staff believes there are three questions the Commission needs to ask about CUB’s request regarding whether to award CUB intervenor compensation.

1. Did CUB provide the required information in its request?

CUB’s petition included all the information required by Minn. Stat. § 216B.16, subd. 10 (f) consisting of:

- a. The name and address of the intervenor or representative of the nonprofit organization the intervenor is representing;
- b. Proof of the organization’s nonprofit, tax-exempt status;
- c. The name and docket number of the proceeding for which compensation is requested;
- d. A list of actual annual revenues and expenses of the organization the intervenor is representing for the preceding year and projected revenues, revenue sources, and expenses for the current year;
- e. The organization’s balance sheet for the preceding year and a current monthly balance sheet;
- f. An itemization of intervenor costs and the total compensation request; and
- g. A narrative explaining why additional organizational funds cannot be devoted to the intervention.

2. Did CUB provide the Commission with material assistance?

CUB believes it has met all of the criteria the Commission must consider in making its determination on whether CUB provided the Commission with material assistance pursuant to Minn. Stat. § 216B.16, subs. 10(b) and 10(c). CUB argued even though the rate case was

³ ALJ’s First Prehearing Order, this docket and OAH Docket No. 8-2500-36575 (January 16, 2020), at p. 3.

withdrawn before intervenors, including CUB, had the opportunity to submit testimony into the record, CUB sought, and the Commission provided, clarification that qualifying intervenors may still seek compensation. The Commission's August 7, 2020 Order in this docket stated:

Minnesota Power shall provide reasonable intervenor compensation to parties participating in this proceeding with the objective of promoting a public purpose.

CUB stated it retained the services of Strategen Consulting, LLC to prepare analysis and testimony on a number of issues that would not have otherwise been represented by an interest representing residential consumers.⁴ First, its witness was preparing a cost of service study intended to more fairly allocate costs among classes and to better account for how changes in power system technologies and operations must be taken into account when considering costs. Next, CUB was preparing recommendations regarding revenue apportionment among classes. In this process, CUB examined Minnesota Power's UI Planner model in detail and identified a number of ways in which the model lacked transparency. CUB stated that no other party representing residential consumers was conducting a cost of service study, developing revenue allocation recommendations, or examining the UI Planner model.

Finally, CUB was also preparing to address residential rate design and Minnesota Power's proposed transition from its inverted block rates to a flat rate and, presumably, a future time-of-use rate design. In particular, CUB stated it was concerned with the impact that the rate design transitions would likely have on different types of residential consumers, beyond the average consumer, and how to minimize customer confusion through the multiple transitions.

3. Would the absence of compensation present financial hardship to CUB?

The intervenor compensation statute requires the Commission to find that a lack of compensation would be a financial hardship for CUB before it makes an award of compensation. In making its determination, Minn. Stat. § 216B.16, subd. 10(d) requires the Commission to consider whether the \$37,821 in costs incurred by CUB were reasonable and whether these costs are a significant part of CUB's unrestricted funds.

a. Were CUB's intervention costs reasonable?

CUB noted that the requested recovery of \$37,821 covers only a portion of CUB's costs to intervene in the Rate Case. It includes the costs CUB incurred to engage expert witness, Mr. Nelson, and support for him from a colleague, Caroline Palmer. CUB noted that it did not request compensation for CUB's staff's time, as CUB is able to cover those costs using other sources of funding.

Though the Rate Case was resolved before parties had the opportunity to present evidence in the record, CUB undertook the majority of its expected expert witness expenditures in preparation to make such a presentation. Direct testimony was initially due on April 7, 2020. Mr. Nelson and Ms. Palmer conducted the lion's share of their research and analysis during

⁴ See Attachment D of CUB's *Request for Intervenor Compensation* for monthly invoices.

February and March 2020 in order to meet that deadline. On March 27th, CUB staff had an initial discussion with Minnesota Power representatives about the possibility of resolving the Rate Case. After that discussion, CUB directed Mr. Nelson to pause his work to develop testimony and instead focus on a possible settlement. CUB analyzed Minnesota Power's settlement proposal, worked with Minnesota Power to address the three issues described above, and ultimately supported the resolution of the case in comments filed jointly with the Energy CENTS Coalition on May 11, 2020.⁵

- b. If CUB is not compensated will the cost of intervening in this case use up a high percentage of CUB's unrestricted funds?

The statute requires the Commission to consider the ratio between CUB's intervention costs and its unrestricted funds. However, this ratio will vary depending on how unrestricted funds are defined and how closely you try to match the timing of CUB's intervention costs to its unrestricted fund balances.

Technically, unrestricted funds could be defined as any money that CUB is not legally restricted from using for any purpose pursuant to the terms under which the money was received. The intervenor compensation claim represents 13 percent of CUB's unrestricted balance.⁶ If this claim is not granted, CUB plans to pay the expert witness fees from its board-designated reserve fund. CUB states that having to use reserve funds for this expense would significantly reduce CUB's reserve fund and impact its ability to weather unexpected events – which is especially important during this time of economic uncertainty. Subtracting the amount of this claim would reduce CUB's reserve balance by more than 20 percent.

Table 1: CUB Intervention Cost Compared to Unrestricted Funds

| | Incentive Compensation Request | Unrestricted Budget |
|------------|--------------------------------|---------------------|
| Amounts | \$37,821 | \$286,946 |
| Percentage | N/A | 13% |

Staff concludes that CUB has satisfied all of the requirements for intervenor compensation.

VI. Decision Alternatives

1. Grant Citizens Utility Board of Minnesota's request for intervenor compensation in the amount of \$37,821, or
2. Deny Citizens Utility Board of Minnesota's request for intervenor compensation.

⁵ See generally, In the Matter of the Emergency Petition of Minnesota Power for Approval to Move Asset-Based Wholesale Sales Credits to the Fuel Clause Adjustment and Resolve Rate Case, Docket No. 20-429, Initial Comments of the Citizens Utility Board of Minnesota and the Energy CENTS Coalition (May 11, 2020).

⁶ See Attachment C of CUB's *Request for Intervenor Compensation* for Balance Sheet.

Subd. 10. Intervenor compensation.

(a) A nonprofit organization or an individual granted formal intervenor status by the commission is eligible to receive compensation.

(b) The commission may order a utility to compensate all or part of an eligible intervenor's reasonable costs of participation in a general rate case that comes before the commission when the commission finds that the intervenor has materially assisted the commission's deliberation and when a lack of compensation would present financial hardship to the intervenor. Compensation may not exceed \$50,000 for a single intervenor in any proceeding. For the purpose of this subdivision, "materially assisted" means that the intervenor's participation and presentation was useful and seriously considered, or otherwise substantially contributed to the commission's deliberations in the proceeding.

(c) In determining whether an intervenor has materially assisted the commission's deliberation, the commission must consider, among other factors, whether:

(1) the intervenor represented an interest that would not otherwise have been adequately represented;

(2) the evidence or arguments presented or the positions taken by the intervenor were an important factor in producing a fair decision;

(3) the intervenor's position promoted a public purpose or policy;

(4) the evidence presented, arguments made, issues raised, or positions taken by the intervenor would not have been a part of the record without the intervenor's participation; and

(5) the administrative law judge or the commission adopted, in whole or in part, a position advocated by the intervenor.

(d) In determining whether the absence of compensation would present financial hardship to the intervenor, the commission must consider:

(1) whether the costs presented in the intervenor's claim reflect reasonable fees for attorneys and expert witnesses and other reasonable costs; and

(2) the ratio between the costs of intervention and the intervenor's unrestricted funds.

(e) An intervenor seeking compensation must file a request and an affidavit of service with the commission, and serve a copy of the request on each party to the proceeding. The request must be filed 30 days after the later of (1) the expiration of the period within which a petition for rehearing, amendment, vacation, reconsideration, or reargument must be filed or (2) the date the commission issues an order following rehearing, amendment, vacation, reconsideration, or reargument.

(f) The compensation request must include:

(1) the name and address of the intervenor or representative of the nonprofit organization the intervenor is representing;

(2) proof of the organization's nonprofit, tax-exempt status;

- (3) the name and docket number of the proceeding for which compensation is requested;
 - (4) a list of actual annual revenues and expenses of the organization the intervenor is representing for the preceding year and projected revenues, revenue sources, and expenses for the current year;
 - (5) the organization's balance sheet for the preceding year and a current monthly balance sheet;
 - (6) an itemization of intervenor costs and the total compensation request; and
 - (7) a narrative explaining why additional organizational funds cannot be devoted to the intervention.
- (g) Within 30 days after service of the request for compensation, a party may file a response, together with an affidavit of service, with the commission. A copy of the response must be served on the intervenor and all other parties to the proceeding.
- (h) Within 15 days after the response is filed, the intervenor may file a reply with the commission. A copy of the reply and an affidavit of service must be served on all other parties to the proceeding.
- (i) If additional costs are incurred as a result of additional proceedings following the commission's initial order, the intervenor may file an amended request within 30 days after the commission issues an amended order. Paragraphs (e) to (h) apply to an amended request.
- (j) The commission must issue a decision on intervenor compensation within 60 days of a filing by an intervenor.
- (k) A party may request reconsideration of the commission's compensation decision within 30 days of the decision.
- (l) If the commission issues an order requiring payment of intervenor compensation, the utility that was the subject of the proceeding must pay the compensation to the intervenor, and file with the commission proof of payment, within 30 days after the later of (1) the expiration of the period within which a petition for reconsideration of the commission's compensation decision must be filed or (2) the date the commission issues an order following reconsideration of its order on intervenor compensation.