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NOV 19 1990

MINNESOTA PUBLIC UTILITIES COMMISSION

1 Public Utilities Commission

2

3 Adopted Permanent Rules Relating to Intervenor Compensation

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5 Rules as Adopted

6 7831.0100 DEFINITIONS.

7 Subpart 1. Scope. The terms used in this chapter have the  
8 meanings given them in this part.

9 Subp. 2. Attorney fees. "Attorney fees" means the  
10 reasonable, itemized billings and costs incurred by an  
11 intervenor for the services of an attorney in a proceeding  
12 before the commission. The costs for services of the attorney  
13 are reasonable when computed at the rate normally charged by  
14 that attorney for comparable services, or at the prevailing  
15 market rate or fair market value to obtain comparable and  
16 available services of an attorney of comparable training and  
17 experience, whichever rate is lower.

18 Subp. 3. Attorney general. "Attorney general" means the  
19 Minnesota Residential and Small Business Utilities Division of  
20 the Office of the Attorney General.

21 Subp. 4. Commission. "Commission" means the Minnesota  
22 Public Utilities Commission.

23 Subp. 5. Compensation. "Compensation" means reimbursement  
24 or payment to an eligible intervenor for all or part of the  
25 intervenor costs, as determined by the commission under this  
26 chapter, for participation in a proceeding.

27 Subp. 6. Department. "Department" means the Minnesota  
28 Department of Public Service.

29 Subp. 7. Expert witness fees. "Expert witness fees" means  
30 the reasonable, itemized billings and costs incurred by an  
31 intervenor for the services of an expert witness in a proceeding  
32 before the commission. The costs for services of the expert  
33 witness are reasonable when computed at the rate normally  
34 charged by that witness for comparable services, or at the  
35 prevailing market rate or fair market value to obtain comparable

1 and available services of an expert witness of comparable  
2 training and experience, whichever rate is lower.

3 Subp. 8. Final determination. "Final determination" has  
4 the meaning given it in Minnesota Statutes, sections 216B.16,  
5 subdivision 2, paragraph (c), and 237.075, subdivision 2,  
6 paragraph (c).

7 Subp. 9. Insufficient financial resources. "Insufficient  
8 financial resources" means that but for the reimbursement of all  
9 or part of its intervenor costs, the intervenor is financially  
10 unable to afford intervenor costs incurred to participate  
11 effectively in the proceeding as determined by the commission  
12 under part 7831.0800, subpart 3.

13 Subp. 10. Intervenor. "Intervenor" means a person who is  
14 entitled or permitted by law, or permitted under rule of the  
15 commission or by order of the presiding officer, to intervene in  
16 a proceeding. For purposes of awarding compensation for  
17 intervenor costs under this chapter, intervenor does not include  
18 (1) a provider of telephone services of any kind, or its  
19 representative, agent, or affiliate, nor (2) an agency,  
20 representative, employee, authority, or political subdivision of  
21 a federal, state, county, home rule charter or statutory city,  
22 or town government or combination of them.

23 Subp. 11. Intervenor costs. "Intervenor costs" means  
24 attorney fees, expert witness fees, and other reasonable costs  
25 incurred in a proceeding. Intervenor costs do not include  
26 costs, fees, or charges incurred for judicial appeal or judicial  
27 review.

28 Subp. 12. Issue. "Issue" means a question, dispute, or  
29 controversy to be resolved in a proceeding held under Minnesota  
30 Statutes, section 216B.16 or 237.075.

31 Subp. 13. Materially assisted. "Materially assisted"  
32 means that the intervenor's participation and presentation was  
33 useful and seriously considered, or otherwise substantially  
34 contributed to the commission's deliberations in the proceeding,  
35 following consideration by the commission of the factors listed  
36 in part 7831.0800, subpart 2.

1 Subp. 14. Other reasonable costs. "Other reasonable  
2 costs" means reasonable fees and charges actually incurred by an  
3 intervenor in a proceeding before the commission, such as the  
4 costs for:

5 A. the services of a consultant or an employee of the  
6 intervenor computed at the rate normally charged by that person  
7 for comparable services, or at the prevailing market rate or  
8 fair market value to obtain comparable, available services of  
9 persons of comparable training and experience, whichever is  
10 lower; and

11 B. out-of-pocket expenses directly related to and  
12 necessary for participation in the proceeding, for example,  
13 costs of filing, copying, travel, travel-related expenses, and  
14 preparation of studies, displays, or exhibits.

15 Subp. 15. Position. "Position" means a factual  
16 contention, legal contention, or specific policy or procedural  
17 recommendation made by an intervenor relating to an issue  
18 addressed and decided in a proceeding.

19 Subp. 16. Proceeding. "Proceeding" means a rate change  
20 proceeding under Minnesota Statutes, section 216B.16, or a  
21 general rate case conducted under Minnesota Statutes, section  
22 237.075. For purposes of this chapter, a procedural or  
23 supplemental matter is considered part of the main proceeding  
24 under Minnesota Statutes, section 216B.16 or 237.075, if it is  
25 decided or conducted by the commission or an administrative law  
26 judge on an issue or position considered in, related to, or  
27 supplemental to the main proceeding, or on the issue of  
28 intervenor compensation awarded. Procedural or supplemental  
29 matters include, for example: motions; orders; settlements;  
30 stipulations; prehearing conferences, determinations, or  
31 procedures; contested case hearings; reconsiderations or  
32 rehearings; and remanded hearings. Proceeding does not include  
33 matters considered during judicial appeal or review.

34 Subp. 17. Telephone company. "Telephone company" has the  
35 meaning given it in Minnesota Statutes, sections 237.01,  
36 subdivision 2; 237.01, subdivision 3, if the company is subject

1 to general rate regulation by the commission; and 237.075,  
2 subdivision 9, if the company has made the election provided in  
3 that subdivision.

4 Subp. 18. Utility. "Utility" has the meaning given  
5 "public utility" in Minnesota Statutes, section 216B.02,  
6 subdivision 4.

7 7831.0200 PURPOSE.

8 The purpose of this chapter is to establish procedural and  
9 substantive criteria for reimbursing an intervenor for its  
10 intervenor costs incurred in a rate change proceeding under  
11 Minnesota Statutes, section 216B.16, subdivision 10, or a  
12 general rate case under Minnesota Statutes, section 237.075,  
13 subdivision 10, when the intervenor has insufficient financial  
14 resources to afford its intervenor costs and has materially  
15 assisted the commission in its deliberations in the proceeding.

16 7831.0300 REQUEST FOR COMPENSATION.

17 Subpart 1. Request filing and notice. An applicant for an  
18 award of compensation shall file with the commission a request  
19 for compensation. The applicant shall also serve a copy of the  
20 request on each known party to the proceeding and shall file  
21 with the commission an affidavit of service. The request must  
22 be filed as soon after notice of a filing, proceeding, or  
23 prehearing conference as is reasonably possible, but at least 75  
24 days after the notice or 30 days before the beginning of  
25 evidentiary hearings in the proceeding, whichever occurs later.  
26 The request must satisfy the requirements of subparts 2 to 5.

27 Subp. 2. General information. The request for  
28 compensation must contain the following information, as  
29 applicable:

30 A. the name and address of the applicant or  
31 representative of an organization;

32 B. for an organization, the names, addresses, and  
33 titles of the members of its governing body, a description of  
34 the organization's general purposes, size, and structure, and  
35 whether it is a nonprofit organization incorporated under

1 Minnesota Statutes, chapter 317; and

2 C. the proceeding for which the compensation is  
3 requested.

4 Subp. 3. Insufficient financial resources. The applicant  
5 shall show as part of the request that, but for an award of  
6 compensation for its intervenor costs under this chapter, the  
7 applicant has insufficient financial resources to intervene and  
8 participate effectively in the proceeding. The request must  
9 address the factors set forth in part 7831.0800, subpart 3. The  
10 applicant shall provide a summary description of finances,  
11 distinguishing between grant funds committed to specific  
12 projects, if applicable, and discretionary funds, showing the  
13 financial status of the applicant, including at least:

14 (1) a listing of actual annual revenues and  
15 expenses for the previous year, projected revenues and expenses  
16 for the current year, and principal revenue sources;

17 (2) a listing of actual assets and liabilities or  
18 balance sheet for the previous year and projected assets and  
19 liabilities or balance sheet for the current year;

20 (3) the amount of assets and revenues that are  
21 firmly committed to other expenditures and how intervention, but  
22 for an award, may constrain programs of public benefit;

23 (4) the amount of its own funds the applicant  
24 will spend on its participation;

25 (5) an explanation of why the applicant cannot  
26 use the excess of assets over liabilities, if any, to cover its  
27 intervenor costs; and

28 (6) if the applicant is an organization, the  
29 scope or amount of benefit in comparison to the organization's  
30 estimated intervenor costs.

31 If available, the applicant shall file a copy of its  
32 audited financial statements. The applicant may reference its  
33 audited financial statements to satisfy items (1) to (6).

34 If the commission has determined within the previous year  
35 before receiving the request that the applicant has met its  
36 burden of showing insufficient financial resources and if the

1 applicant can attest that there has been no substantial change  
2 in available discretionary resources, the applicant may refer to  
3 that decision to satisfy the requirement of this subpart.

4 Subp. 4. Budget. The applicant shall file as part of the  
5 request an estimate of its intervenor costs, the basis for the  
6 estimate, the extent of financial commitment to participation,  
7 and a specific budget showing the total compensation, not to  
8 exceed the maximum amount allowed by Minnesota Statutes, section  
9 216B.16, subdivision 10, or 237.075, subdivision 10, to which  
10 the applicant believes it may be entitled.

11 Subp. 5. Statement of participation. The applicant shall  
12 file as part of the request a statement of the nature and extent  
13 of planned participation in the proceeding as far as it is  
14 possible to set it out when the request is filed. The statement  
15 must include a list of positions and issues that the applicant  
16 intends to present, raise, or respond to in the proceeding, an  
17 explanation of how an issue affects the applicant's interest in  
18 the proceeding, and a clear indication of which viewpoints or  
19 ideas the applicant believes are substantive, novel, or  
20 significant and why their presentation would contribute to a  
21 fair determination of an issue in the proceeding.

22 7831.0400 STATEMENT IN RESPONSE.

23 The department, attorney general, or other party to the  
24 proceeding, within 15 days after an applicant has filed a  
25 request under part 7831.0300, may file with the commission a  
26 statement commenting on any part of the request and on  
27 duplications of positions, issues, or presentations, and make  
28 recommendations to the commission. The statement must be served  
29 on the applicant and known parties to the proceeding. Filings  
30 under this part must be accompanied by an affidavit of service  
31 on the applicant and known parties.

32 7831.0500 PRELIMINARY DETERMINATION ON ELIGIBILITY.

33 Subpart 1. Required determinations. Within 45 days of  
34 receiving a request under part 7831.0300, the commission shall  
35 issue a preliminary determination addressing whether the

1 applicant is eligible for an award of compensation of intervenor  
2 costs. The determination must address:

3 A. whether the commission considers the applicant to  
4 be an intervenor as defined in part 7831.0100, subpart 9; and

5 B. whether the applicant has made a sufficient  
6 showing that, but for an award of compensation for all or part  
7 of its intervenor costs, it has insufficient financial resources  
8 to intervene and participate fully and effectively in the  
9 proceeding, assuming all information in the request filing is  
10 true and accurate pending an audit that may be required under  
11 part 7831.0700, and pending a decision awarding or denying  
12 compensation under part 7831.0800.

13 Subp. 2. Discretionary determinations. The determination  
14 on eligibility may also, but is not required to:

15 A. address whether the applicant has demonstrated its  
16 ability to materially assist the commission in its proposed  
17 statement of participation, assuming its accuracy, under part  
18 7831.0300, subpart 5;

19 B. address whether the application lists duplicate  
20 positions taken or presentations made by intervenors, or whether  
21 they may be more economically or efficiently presented under  
22 common representation;

23 C. recommend use of common legal representation or  
24 expert witnesses in cooperation with other applicants or  
25 participants;

26 D. provide a listing of other known applicants and  
27 participants advocating or proposing substantially similar  
28 positions or presentations;

29 E. point out any unrealistic expectations for  
30 compensation; or

31 F. address any other information that may affect an  
32 applicant's claim for an award of compensation for intervenor  
33 costs.

34 Subp. 3. Effect of preliminary determination on  
35 eligibility. A preliminary determination on eligibility does  
36 not guarantee either a grant or a denial of an award of

1 compensation for intervenor costs. If a preliminary  
2 determination is not made on a discretionary factor in subpart  
3 2, items A to F, no presumption arises regarding that factor.

4 A. After a preliminary determination granting  
5 compensation for intervenor costs, the commission must overcome  
6 in an applicant's claim for compensation a presumption, for the  
7 reasons stated in the preliminary determination, that the  
8 applicant should be granted an award of compensation for  
9 intervenor costs.

10 B. After a preliminary determination denying  
11 compensation, an applicant may elect to intervene and may  
12 intervene if granted permission by the commission or presiding  
13 officer. If, however, the applicant does intervene, the  
14 applicant must overcome in the claim for compensation a  
15 presumption, for the reasons stated in the preliminary  
16 determination, that the applicant should be denied an award of  
17 compensation for intervenor costs.

18 7831.0600 CLAIM FOR COMPENSATION.

19 Subpart 1. **Filing claim.** An intervenor shall file a claim  
20 for an award of compensation of its intervenor costs within 90  
21 days after the later of:

22 A. the date the commission issues its final  
23 determination and the time for petitioning for reconsideration  
24 or rehearing has elapsed; or

25 B. the date the commission issues its order following  
26 reconsideration or rehearing.

27 Subp. 2. **Required information.** The claim must include, at  
28 a minimum:

29 A. adoption or amendment by the intervenor of the  
30 information submitted in the request filed under part 7831.0300;

31 B. a detailed, itemized description of services and  
32 intervenor costs related to specific issues addressed in the  
33 proceeding, for which an award of compensation is sought; and

34 C. a description of how the intervenor's contribution  
35 to the proceeding may have materially assisted the commission in



1 its deliberations.

2 A copy of the claim must be served on all parties to the  
3 proceeding and the claim must have attached to it an affidavit  
4 of service on all parties.

5 Subp. 3. Response. Within 30 days after service of the  
6 claim, a party may file a response to the claim with the  
7 commission. A copy of the statement must be served on the  
8 claiming intervenor and other parties to the proceeding.  
9 Filings under this part must be accompanied by an affidavit of  
10 service on the applicant and known parties.

11 Subp. 4. Reply. The claiming intervenor may file with the  
12 commission a reply to a response under subpart 3 within 15 days  
13 after the response is filed. A copy of the statement must be  
14 served on other parties to the proceeding. Filings under this  
15 part must be accompanied by an affidavit of service on known  
16 parties.

17 Subp. 5. Amended claim. When additional costs are  
18 incurred as a result of a remanded hearing, the intervenor may  
19 file an amended claim within 30 days after the commission issues  
20 its order following remand. Subparts 1 to 4 apply also to an  
21 amended claim.

22 7831.0700 FINANCIAL REVIEW.

23 At any time after a request for compensation is filed, the  
24 commission or its staff may request additional financial  
25 information from the intervenor to clarify or substantiate the  
26 claim. The requested information may include, among other  
27 things, records, receipts, invoices, and other documents showing  
28 the intervenor's expenses incurred and financial condition.

29 If considered necessary by the commission, an applicant for  
30 compensation shall grant the staff of the commission and the  
31 department access to audit and examine pertinent books,  
32 documents, papers, and records, to the extent necessary to  
33 verify that the intervenor has insufficient financial resources  
34 to afford its intervenor costs and to verify the basis for the  
35 amount claimed.

1 Approved applicants shall retain the records relevant to  
2 supporting a claim for three years after receiving compensation.

3 7831.0800 AWARD OF COMPENSATION.

4 Subpart 1. Decision. Within 120 days of the filing of a  
5 claim or amended claim for an award of compensation for  
6 intervenor costs, or within 45 days of the filing of an audit or  
7 additional information, whichever is later, the commission shall  
8 issue a decision awarding or denying compensation.

9 Subp. 2. Materially assisted. To be granted an award of  
10 compensation, in whole or in part, for intervenor costs, the  
11 intervenor must have materially assisted the commission in its  
12 deliberations. The commission shall consider the following  
13 factors, no single one of which is dispositive, in making its  
14 decision awarding or denying compensation:

15 A. whether the intervenor represented an interest  
16 that would not otherwise have been adequately represented in the  
17 proceeding;

18 B. whether the intervenor's position or presentation  
19 on an issue was relevant or important for a fair decision in the  
20 proceeding;

21 C. the intervenor's ability to clarify complex  
22 information, to simplify complex issues, to make timely and  
23 appropriate procedural recommendations, or to otherwise  
24 contribute to the efficiency or progress of the proceeding;

25 D. whether the intervenor's position or presentation  
26 promoted a public purpose or policy;

27 E. whether the intervenor raised new or different  
28 arguments in support of a position, provided materially useful  
29 information not of common knowledge, raised a different issue,  
30 presented or elicited new or different facts or evidence, or  
31 took a different position from that of another party; and.

32 F. whether the commission adopted, in whole or in  
33 part, a position advocated by the intervenor.

34 Subp. 3. Insufficient financial resources. To be granted  
35 an award of compensation for intervenor costs, the intervenor

1 must show that it has insufficient financial resources, but for  
2 the award, to afford all or part of its intervenor costs  
3 necessarily incurred to participate effectively in a  
4 proceeding. The commission shall consider the following  
5 factors, as applicable, in making its decision awarding or  
6 denying compensation, in whole or in part, for intervenor costs:

7           A. whether the intervenor's financial status,  
8 following examination of the financial information provided in  
9 the intervenor's request and claim, and additional financial  
10 information requested or obtained through audit, if any,  
11 indicate the intervenor can afford, in whole or in part, its  
12 intervenor costs;

13           B. whether the intervenor made use of common legal  
14 representation, or otherwise consolidated positions or  
15 presentations, when appropriate;

16           C. whether the intervenor costs alleged in the  
17 intervenor's claim reflect reasonable attorney fees, expert  
18 witness fees, and other reasonable costs, as defined in part  
19 7831.0100; and

20           D. whether a partial award of compensation may be  
21 appropriate.

22           Subp. 4. **Bases for commission decision.** For each issue  
23 addressed by the intervenor and decided in the proceeding:

24           A. On finding that an intervenor materially assisted  
25 the commission and has insufficient financial resources to  
26 afford its intervenor costs, the commission shall issue its  
27 decision awarding compensation. The decision must describe the  
28 bases for assistance found and for the amount of compensation  
29 awarded.

30           B. On finding that an intervenor either did not  
31 materially assist the commission or has sufficient financial  
32 resources to afford all of its intervenor costs, the commission  
33 shall issue its decision denying compensation. The decision  
34 must describe the bases for denying compensation.

35           Subp. 5. **Maximum amount awarded.** The total amount of the  
36 award for a proceeding may be all or part of the amount claimed,

1 but must not exceed the maximum allowed under Minnesota  
2 Statutes, section 216B.16, subdivision 10, or 237.075,  
3 subdivision 10.

4       Subp. 6. **Payment.** The utility or telephone company that  
5 was the subject of the proceeding shall pay the award of  
6 compensation to the intervenor within 30 days after the  
7 commission issues its decision awarding compensation. The  
8 utility or telephone company shall file with the commission  
9 proof that it paid the amount of compensation awarded to the  
10 intervenor.