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INTERVENOR COMPENSATION 7831.0100

CHAPTER 7831

PUBLIC UTILITIES COMMISSION INTERVENOR COMPENSATION

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7831.0100 DEFINITIONS.

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

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

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

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

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

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

Subp. 7. Expert witness fees. "Expert witness fees" means the reasonable, itemized billings and costs incurred by an intervenor for the services of an expert witness in a proceeding before the commission. The costs for services of the expert witness are reasonable when computed at the rate normally charged by that witness for comparable services, or at the prevailing market rate or fair market value to obtain comparable and available services of an expert witness of comparable training and experience, whichever rate is lower.

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

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

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

Subp. 11. Intervenor costs. "Intervenor costs" means attorney fees, expert witness fees, and other reasonable costs incurred in a proceeding. Intervenor

costs do not include costs, fees, or charges incurred for judicial appeal or judicial review.

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

Subp. 13. Materially assisted. "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, following consideration by the commission of the factors listed in part 7831.0800, subpart 2.

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

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

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

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

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

Subp. 17. Telephone company. "Telephone company" has the meaning given it in Minnesota Statutes, sections 237.01, subdivision 2; 237.01, subdivision 3, if the company is subject to general rate regulation by the commission; and 237.075, subdivision 9, if the company has made the election provided in that subdivision.

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

Statutory Authority: *MS s 216B.16; 237.075*

History: *15 SR 1599*

7831.0200 PURPOSE.

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

Statutory Authority: *MS s 216B.16; 237.075*

History: *15 SR 1599*

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7831.0300 REQUEST FOR COMPENSATION.

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

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

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

B. for an organization, the names, addresses, and titles of the members of its governing body, a description of the organization's general purposes, size, and structure, and whether it is a nonprofit organization incorporated under Minnesota Statutes, chapter 317; and

C. the proceeding for which the compensation is requested.

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

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

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

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

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

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

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

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

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.

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

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

Statutory Authority: *MS s 216B.16; 237.075*

History: 15 SR 1599

7831.0400 STATEMENT IN RESPONSE.

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

Statutory Authority: *MS s 216B.16; 237.075*

History: 15 SR 1599

7831.0500 PRELIMINARY DETERMINATION ON ELIGIBILITY.

Subpart 1. Required determinations. Within 45 days of receiving a request under part 7831.0300, the commission shall issue a preliminary determination addressing whether the applicant is eligible for an award of compensation of intervenor costs. The determination must address:

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

B. 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, assuming all information in the request filing is true and accurate pending an audit that may be required under part 7831.0700, and pending a decision awarding or denying compensation under part 7831.0800.

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

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

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

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

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

E. point out any unrealistic expectations for compensation; or

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

Subp. 3. Effect of preliminary determination on eligibility. A preliminary determination on eligibility does not guarantee either a grant or a denial of an award of compensation for intervenor costs. If a preliminary determination is not

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made on a discretionary factor in subpart 2, items A to F, no presumption arises regarding that factor.

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

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

Statutory Authority: *MS s 216B.16; 237.075*

History: *15 SR 1599*

7831.0600 CLAIM FOR COMPENSATION.

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

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

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

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

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

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

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

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

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

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

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

Statutory Authority: *MS s 216B.16; 237.075*

History: *15 SR 1599*

7831.0700 FINANCIAL REVIEW.

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

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

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

Statutory Authority: *MS s 216B.16; 237.075*

History: *15 SR 1599*

7831.0800 AWARD OF COMPENSATION.

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

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

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

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

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

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

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

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

Subp. 3. Insufficient financial resources. To be granted an award of compensation for intervenor costs, the intervenor must show 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 a proceeding. The commission shall consider the following factors, as applicable, in making its decision awarding or denying compensation, in whole or in part, for intervenor costs:

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

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

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

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

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

A. On finding that an intervenor materially assisted the commission and

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has insufficient financial resources to afford its intervenor costs, the commission shall issue its decision awarding compensation. The decision must describe the bases for assistance found and for the amount of compensation awarded.

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

Subp. 5. Maximum amount awarded. The total amount of the award for a proceeding may be all or part of the amount claimed, but must not exceed the maximum allowed under Minnesota Statutes, section 216B.16, subdivision 10, or 237.075, subdivision 10.

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

Statutory Authority: *MS s 216B.16; 237.075*

History: *15 SR 1599*