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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 2439

03/02/2023 Authored by Hollins, Kozlowski, Carroll, Hemmingsen-Jaeger and Acomb
The bill was read for the first time and referred to the Committee on Climate and Energy Finance and Policy

1.1 A bill for an act
1.2 relating to energy; modifying provisions providing for a participant's compensation
1.3 in certain Public Utilities Commission proceedings; requiring a report; proposing
1.4 coding for new law in Minnesota Statutes, chapter 216B; repealing Minnesota
1.5 Statutes 2022, section 216B.16, subdivision 10.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. [216B.631] COMPENSATION FOR PARTICIPANTS IN PROCEEDINGS.

1.8 Subdivision 1. Definitions. (a) For the purposes of this section, the following terms have
1.9 the meanings given.

1.10 (b) "Participant" means a person who:

1.11 (1) meets the requirements of subdivision 2;

1.12 (2) meets one of the following criteria:

1.13 (i) files comments or appears in a commission proceeding concerning one or more public
1.14 utilities, excluding public hearings held in contested cases and commission proceedings
1.15 conducted to receive general public comments; or

1.16 (ii) the commission authorizes to intervene in a commission proceeding concerning one
1.17 or more public utilities; and

1.18 (3) files a request for compensation under this section.

1.19 (c) "Party" means a person who files comments or appears in a commission proceeding,
1.20 other than public hearings, concerning one or more public utilities.

2.1 (d) "Proceeding" means a process or procedural means the commission engages in to
2.2 attempt to resolve an issue affecting one or more public utilities and which results in a
2.3 commission order.

2.4 (e) "Public utility" has the meaning given in section 216B.02, subdivision 4.

2.5 Subd. 2. **Participants; eligibility.** Any of the following participants is eligible to receive
2.6 compensation under this section:

2.7 (1) a nonprofit organization that:

2.8 (i) is exempt from taxation under section 501(c)(3) of the United States Internal Revenue
2.9 Code;

2.10 (ii) is incorporated or organized in Minnesota;

2.11 (iii) is governed under chapter 317A or section 322C.1101; and

2.12 (iv) the commission determines under subdivision 3, paragraph (c), would suffer financial
2.13 hardship if not compensated for the nonprofit organization's participation in the applicable
2.14 proceeding;

2.15 (2) a Tribal government of a federally recognized Indian Tribe that is located in
2.16 Minnesota; or

2.17 (3) a Minnesota resident, except that an individual who owns a for-profit business that
2.18 has earned revenue from a Minnesota utility in the past two years is not eligible for
2.19 compensation.

2.20 Subd. 3. **Compensation; conditions.** (a) The commission may order a public utility to
2.21 compensate all or part of a participant's reasonable costs incurred to participate in a
2.22 proceeding before the commission if the commission finds:

2.23 (1) that the participant has materially assisted the commission's deliberation; and

2.24 (2) if the participant is a nonprofit organization, that the participant would suffer financial
2.25 hardship if the nonprofit organization's participation in the proceeding was not compensated.

2.26 (b) In determining whether a participant has materially assisted the commission's
2.27 deliberation, the commission must find that:

2.28 (1) the participant made a unique contribution to the record and represented an interest
2.29 that would not otherwise have been adequately represented;

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

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

3.2 (4) the evidence presented, arguments made, issues raised, or positions taken by the
3.3 participant would not otherwise have been part of the record;

3.4 (5) the participant was active in any stakeholder process included in the proceeding; and

3.5 (6) the proceeding resulted in a commission order that adopted, in whole or in part, a
3.6 position advocated by the participant.

3.7 (c) In determining whether a nonprofit participant has demonstrated that a lack of
3.8 compensation would present financial hardship, the commission must find that the nonprofit
3.9 participant:

3.10 (1) incorporated or organized within three years of the beginning of the applicable
3.11 proceeding;

3.12 (2) has payroll expense less than \$750,000; or

3.13 (3) has secured less than \$100,000 in current year funding dedicated to participation in
3.14 commission proceedings, not including any participant compensation awarded under this
3.15 section.

3.16 (d) In reviewing a compensation request, the commission must consider whether the
3.17 costs presented in the participant's claim are reasonable.

3.18 Subd. 4. **Compensation; amount.** (a) Compensation must not exceed \$50,000 for a
3.19 single participant in any proceeding, except that:

3.20 (1) if a proceeding extends longer than 12 months, a participant may request compensation
3.21 of up to \$50,000 for costs incurred in each calendar year; and

3.22 (2) in a general rate case proceeding under section 216B.16 or an integrated resource
3.23 plan proceeding under section 216B.2422, the maximum single participant compensation
3.24 per proceeding under this section must not exceed \$75,000.

3.25 (b) A single participant must not be granted more than \$200,000 under this section in a
3.26 single calendar year.

3.27 (c) Compensation requests from joint participants must be presented as a single request.

3.28 (d) Notwithstanding paragraphs (a) and (b), the commission must not, in any calendar
3.29 year, require a single public utility to pay aggregate compensation under this section that
3.30 exceeds the following amounts:

4.1 (1) \$100,000, for a public utility with up to \$300,000,000 annual gross operating revenue
4.2 in Minnesota;

4.3 (2) \$275,000, for a public utility with at least \$300,000,000 but less than \$900,000,000
4.4 annual gross operating revenue in Minnesota;

4.5 (3) \$375,000, for a public utility with at least \$900,000,000 but less than \$2,000,000,000
4.6 annual gross operating revenue in Minnesota; and

4.7 (4) \$1,250,000, for a public utility with \$2,000,000,000 or more annual gross operating
4.8 revenue in Minnesota.

4.9 (e) When requests for compensation from any public utility approach the limits established
4.10 in paragraph (d), the commission may prioritize requests from participants that received
4.11 less than \$150,000 in total compensation during the previous two years.

4.12 Subd. 5. **Compensation; process.** (a) A participant seeking compensation must file a
4.13 request and an affidavit of service with the commission, and serve a copy of the request on
4.14 each party to the proceeding. The request must be filed no more than 30 days after the later
4.15 of:

4.16 (1) the expiration of the period within which a petition for rehearing, amendment,
4.17 vacation, reconsideration, or reargument must be filed; or

4.18 (2) the date the commission issues an order following rehearing, amendment, vacation,
4.19 reconsideration, or reargument.

4.20 (b) A compensation request must include:

4.21 (1) the name and address of the participant or nonprofit organization the participant is
4.22 representing;

4.23 (2) evidence of the organization's nonprofit, tax-exempt status, if applicable;

4.24 (3) the name and docket number of the proceeding for which compensation is requested;

4.25 (4) for a nonprofit participant, evidence supporting the nonprofit organization's eligibility
4.26 for compensation under the financial hardship test under subdivision 3, paragraph (c);

4.27 (5) amounts of compensation awarded to the participant under this section during the
4.28 current year and any pending requests for compensation, itemized by docket;

4.29 (6) an itemization of the participant's costs, including:

4.30 (i) hours worked and associated hourly rates for each individual contributing to the
4.31 participation, not including overhead costs;

5.1 (ii) participant revenues dedicated for the proceeding; and

5.2 (iii) the total compensation request; and

5.3 (7) a narrative describing the unique contribution made to the proceeding by the
5.4 participant.

5.5 (c) A participant must comply with reasonable requests for information by the commission
5.6 and other parties or participants. A participant must reply to information requests within
5.7 ten calendar days of the date the request is received, unless doing so would place an extreme
5.8 hardship upon the replying participant. The replying participant must provide a copy of the
5.9 information to any other participant or interested person upon request. Disputes regarding
5.10 information requests may be resolved by the commission.

5.11 (d) A party objecting to a request for compensation must, within 30 days after service
5.12 of the request for compensation, file a response, together with an affidavit of service, with
5.13 the commission. A copy of the response must be served on the requesting participant and
5.14 all other parties to the proceeding.

5.15 (e) The requesting participant may file a reply with the commission within 15 days after
5.16 a response is filed under paragraph (d). A copy of the reply and an affidavit of service must
5.17 be served on all other parties to the proceeding.

5.18 (f) If additional costs are incurred by a participant as a result of additional proceedings
5.19 following the commission's initial order, the participant may file an amended request within
5.20 30 days after the commission issues an amended order. Paragraphs (b) to (e) apply to an
5.21 amended request.

5.22 (g) The commission must issue a decision on participant compensation within 120 days
5.23 of the date a request for compensation is filed by a participant.

5.24 (h) The commission may extend the deadlines in paragraphs (d), (e), and (g) for up to
5.25 30 days upon the request of a participant or on the commission's own initiative.

5.26 (i) A participant may request reconsideration of the commission's compensation decision
5.27 within 30 days of the decision date.

5.28 Subd. 6. **Compensation; orders.** (a) If the commission issues an order requiring payment
5.29 of participant compensation, the public utility that was the subject of the proceeding must
5.30 pay the full compensation to the participant and file proof of payment with the commission
5.31 within 30 days after the later of:

6.1 (1) the expiration of the period within which a petition for reconsideration of the
6.2 commission's compensation decision must be filed; or

6.3 (2) the date the commission issues an order following reconsideration of the commission's
6.4 order on participant compensation.

6.5 (b) If the commission issues an order requiring payment of participant compensation in
6.6 a proceeding involving multiple public utilities, the commission must apportion costs among
6.7 the public utilities in proportion to each public utility's annual revenue.

6.8 (c) The commission may issue orders necessary to allow a public utility to recover the
6.9 costs of participant compensation on a timely basis.

6.10 Subd. 7. **Report.** By July 1, 2025, the commission must report to the chairs and ranking
6.11 minority members of the senate and house of representatives committees with primary
6.12 jurisdiction over energy policy on the operation of this section. The report must include but
6.13 is not limited to:

6.14 (1) the amount of compensation paid each year by each utility;

6.15 (2) each recipient of compensation, the commission dockets in which compensation was
6.16 awarded, and the compensation amounts; and

6.17 (3) the impact of the commission's adoption of the positions of compensated participants.

6.18 **EFFECTIVE DATE.** This section is effective the day following final enactment and
6.19 applies to any proceeding in which the commission has not issued a final order as of that
6.20 date.

6.21 Sec. 2. **REPEALER.**

6.22 Minnesota Statutes 2022, section 216B.16, subdivision 10, is repealed.

216B.16 RATE CHANGE; PROCEDURE; HEARING.

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.

APPENDIX
Repealed Minnesota Statutes: 23-00688

(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.