

In the Matter of the Formal) Application No. FC-1359
Complaint of Marilyn M. Reeser,)
Grand Island v. NorthWestern)
Energy, Sioux Falls, South Dakota,) ORDER OVERRULING OBJECTION,
alleging inaccurate gas usage) GRANTING FILING FEE WAIVER
charges.)
) Entered: May 9, 2013

On April 18, 2013, the Nebraska Public Service Commission ("Commission") received a Formal Complaint from Marilyn M. Reeser, ("Complainant") Grand Island, Nebraska, against NorthWestern Energy ("Respondent" or "NorthWestern"), Sioux Falls, South Dakota, alleging inaccurate gas usage charges.

On April 30, 2013, the Respondent filed an Objection to Request to Waive Filing Fee, and requested oral arguments on its objection.

The Respondent in support of its objection cited two previous formal complaints filed by the Complainant against the Respondent in 2010² and 2011³. The Respondent argues that the three complaints filed by the Complainant against NorthWestern in three years are frivolous and unwarranted. The Respondent further argues it is unclear whether it is permissible for the Commission to waive its filing fee. The Respondent admits the filing fees for the previous complaints were waived by the Commission and the Respondent did not object to the waivers granted in the previous complaints.

¹ See Neb. Admin. Code, Title 291, Ch. 1 § 025.

² See Formal Complaint No. FC-1345, *In the Matter of the Formal Complaint of Marilyn M. Reeser, Grand Island v. NorthWestern Energy, Sioux Falls, South Dakota, alleging unfair gas usage charges*, (filed September 7, 2010).

³ See Formal Complaint No. FC-1354, *In the Matter of the Formal Complaint of Marilyn M. Reeser, Grand Island v. NorthWestern Energy, Sioux Falls, South Dakota, alleging unfair gas usage charges*, (filed February 24, 2011).

complaints filed by the Respondent with the Commission. The Complainant further indicated she is on a fixed income, is receiving disability, and has been granted leave to proceed *in forma pauperis* in previous actions she has filed in district court. She denies that her complaints are frivolous.

O P I N I O N S A N D F I N D I N G S

Neb. Rev. Stat. § 75-128 (Reissue of 2009), states in part,

For each application, complaint, or petition filed with the commission ... the commission shall charge a filing fee to be determined by the commission, but in an amount not to exceed the sum of five hundred dollars, payable at the time of such filing.

The statute requires the Commission to charge filing fees, but grants the Commission discretion to determine the amount of any fee it charges. The statute contains a maximum limit for any fee set by the Commission but contains no minimum fee requirement. The Commission is instead given latitude in the determination of the appropriate fees, and adopts a schedule of fees annually for Commission proceedings.

The Commission has previously granted requests for waivers of Commission adopted filing fees, including in the two previous complaints filed by the Complainant with the Commission. The courts have found administrative agencies possess discretion to relax or modify their procedural rules adopted for the orderly transaction of business before it when, "in a given case the ends of justice require it."⁴ Further, the court has said, "Any agency must have sufficient latitude in its operations and in matters under its jurisdiction to exercise that jurisdiction fairly."⁵ Part of the court's analysis of an agency's decision to deviate from its own regulations includes consideration of any substantial prejudice of the party complaining of a deviation from the agency rules.⁶

In the current proceeding, I find no substantial prejudice to the Respondent if a waiver of the Complainant's filing fee is granted by the Commission. On the contrary, based on the assertions of the Complainant, I find such a waiver to be in the interests of the ends of justice and fairness, and see no reason to deny a Nebraska citizen the

⁴ *Jantzen v. Diller Telephone Company*, 245 Neb. 81, 511 N.W.2d 504 (1994) at 90, citing *American Farm Lines v. Black Ball*, 397 U.S. 532, 90 S.Ct. 1288 (1970).

⁵ *Id.* at 96, citing *Basin Elec. Power Co-op v. Little Blue N.R.D.*, 219 Neb. 372, 363 N.W.2d 500 (1985).

⁶ *Id.*

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. FC-1359

PAGE 3

opportunity to file a complaint with the agency with regulatory oversight over the utility in question.

Therefore, I find that the waiver sought by the Complainant will not prejudice any other party and the Respondent's objection to the waiver of the filing fee in the above-captioned proceeding should be overruled. I further find that a waiver of the filing fee should be granted to further the ends of justice.

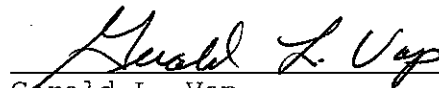
O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that NorthWestern Energy's Objection to the Waiver of the Filing fee, be, and is hereby, overruled.

IT IS FURTHER ORDERED that the filing fee in the present matter should be waived and the Complaint should be considered filed effective May 9, 2013.

MADE AND ENTERED at Lincoln, Nebraska this 9th day of May, 2013.

BY:



Gerald L. Vap
HEARING OFFICER