

E-101, E-002/SA-88-179 (E62-01)E-002, E-101/SA-88-514VACATING EARLIER ORDER AND DENYING PETITIONS TO CHANGE ASSIGNED SERVICE AREAS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of the City of White Bear Lake's
Request for an Electric Utility Service Area
Change Within its City Limits

ISSUE DATE: December 14, 1988

DOCKET NOS. E-101, E-002/SA-88-179
(E62-01)

In the Matter of the Petition of Northern
States Power Company for an Electric Utility
Service Area Change Within the City of
White Bear Lake

E-002, E-101/SA-88-514

ORDER VACATING EARLIER ORDER
AND DENYING PETITIONS TO CHANGE
ASSIGNED SERVICE AREAS

PROCEDURAL HISTORY

On February 1, 1988 the City of White Bear Lake filed a petition for a change in the assigned service areas of Northern States Power Company (NSP) and Anoka Electric Cooperative (Anoka), the two utilities providing electric service within its city limits. The City planned to develop an area which spanned the assigned service areas of both utilities and believed it would expedite development if officials could work with a single utility. The City requested that the single utility be NSP, stating that only NSP had a franchise to serve the City and that 98% of the City lay within NSP's assigned service area.

NSP supported the City's request. On April 29, 1988 that company filed a Petition to Vacate and Amend Order on Electric Utility Service Area. This petition asked the Commission to vacate and amend the original Order setting assigned service areas for the two utilities due to changes in circumstances.

Anoka opposed both petitions, stating that it could provide adequate service to the area under development and that it had never secured a franchise because the City had never required one.

The Department of Public Service (the Department) investigated both petitions and recommended denial on grounds that assigned service areas should be changed only under the most compelling circumstances. The Department contended that such circumstances were not present here.

On September 22, 1988 the Commission issued an Order granting the City's petition. The basis for the decision was that the Commission and all parties had misinterpreted the statutory criteria for setting assigned service areas when portions of White Bear Lake were assigned to Anoka. The Order interpreted Minn. Stat. 216B.39, subd. 5 (1986) to require that assigned service areas generally be coterminous with municipal franchises. This would have resulted in NSP, the sole franchisee, receiving rights to serve the entire City.

In the same Order, the Commission denied NSP's petition to reopen the proceeding in which the Commission originally established assigned service areas for the two utilities. The grounds for denial were that established service arrangements should not be disturbed without a showing of need, and that need had been shown only in regard to the area under development.

Anoka, the Department, and Cooperative Power Association sought reconsideration of the Order. The petitions of Anoka and the Department were granted. At oral argument Anoka's attorney presented new evidence in the form of the map Anoka and NSP had submitted in the 1975 proceeding establishing their respective assigned service areas. The map clearly showed that the two utilities had agreed to the boundary lines now being challenged and that the Commission had set the boundary lines in accordance with that agreement.

The Commission will vacate its September 22 Order in light of this new evidence and will deny both the City's and NSP's petitions for a change in the assigned service areas of these two utilities.

FINDINGS AND CONCLUSIONS

Factual and Statutory Background

In 1974 the legislature directed that the state be divided into geographical areas, called assigned service areas, in which electric utilities would have exclusive service rights. The reasons for establishing assigned service areas were to encourage the development of coordinated statewide electric service, to avoid unnecessary duplication of electric facilities, and to promote the provision of economical, efficient, and adequate electric service throughout the state. Minn. Stat. § 216B.37 (1986). The Commission was to set the boundaries of these assigned service areas within twelve months of enactment of the legislation. Minn. Stat. § 216B.39, subd. 2 (1986).

To expedite this process, the statute encouraged utilities to reach agreements on service area boundaries and to submit them to the Commission for approval and ratification. Minn. Stat. § 216B.39, subd. 4 (1986). The map produced on reconsideration constituted such an agreement. It had been signed by authorized representatives of NSP and Anoka, notarized, and submitted to the Commission as their agreement and joint recommendation on where their boundary lines should be. The final Order setting assigned service areas approved the agreement, accepted the recommendation, and set the boundary lines in accordance with the map. Report, Findings of Fact, Conclusions, and Order, USA-13, April 7, 1975.

Commission Action

Since the boundary lines at issue were set by agreement under Minn. Stat. § 216B.39, subd. 4, the provisions of subdivision 5, regarding the effects of municipal franchises, do not apply and do not require interpretation. The boundaries set in the 1975 proceeding were not based on a mistake in law and do not require correction. The agreement produced on reconsideration is valid, enforceable, and will be honored by the Commission.

This decision is reached with some reluctance. The Commission appreciates the practical difficulties facing communities engaged in economic development and understands the importance of their efforts. The Commission also values the expertise of municipalities in local energy matters and relies heavily on their judgment in deciding such issues. In this case, however, law and public policy require rejection of the City's petition.

Assigned service areas cannot be lightly changed because the legislature believed, and the Commission agrees, that a high level of certainty regarding territorial boundaries is essential for the development and maintenance of coordinated, reliable state-wide electric service. Investors, cooperative members, and municipal ratepayers face a host of variables when planning to meet the needs of their present and future customers. Assigned service areas represent an attempt to introduce as much predictability as possible into that process.

Assigned service areas have been established for the long term, to facilitate long term planning by utilities, their customers, public officials, and other persons and organizations for whom the long term electric energy needs of this state are a concern. Stability is their essential feature and their primary contribution to the regulatory process.

This stability sometimes produces results at odds with those which would be reached if individual service determinations could be made. The public interest, however, requires that assigned service areas be honored.

Assigned service areas will be changed only upon a strong showing of continuing public need. Such a need has not been established in this case, and the petitions to change the assigned service areas of Northern States Power Company and Anoka Electric Cooperative will be denied.

ORDER

1. The Commission's Order of September 22, 1988, captioned Order Granting Change in Assigned Service Areas and Denying Petition to Vacate and Amend Earlier Order, is hereby vacated.
2. The petition of the City of White Bear Lake requesting that all portions of the City lying east of Interstate 35E be placed within the assigned service area of Northern States Power Company is hereby denied.

3. The petition of Northern States Power Company requesting that all portions of the City of White Bear Lake be placed within its assigned service area is hereby denied.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
400 Summit Bank Building
310 South Fourth Avenue
Minneapolis, Minnesota 55415

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
780 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

In the Matter of the Applications for
Authority to Provide Alternative Operator
Services in Minnesota

MPUC Docket No. P-999/CI-88-917

OAH Docket No.

NOTICE OF APPEARANCE

Date of Hearing:

Name and Telephone Number of Administrative Law Judge:

Allan W. Klein
612/341-7609

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____