

E-104, 002/SA-88-543 (E07-1)DENYING COMPLAINT AND DENYING CHANGE IN
ASSIGNED SERVICE AREA

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 a Complaint by REM Development, Inc. Against Blue Earth-Nicollet-Faribault County Electric Cooperative Association

ISSUE DATE: February 17, 1989

DOCKET NO. E-104, 002/SA-88-543 (E07-1)

ORDER DENYING COMPLAINT AND DENYING CHANGE IN ASSIGNED SERVICE AREA

PROCEDURAL HISTORY

On August 8, 1988 REM Development, Inc. (REM) filed a complaint against Blue Earth-Nicollet-Faribault County Electric Cooperative Association, d/b/a Frost-BENCO-Wells Electric (Frost-BENCO), alleging that Frost BENCO was wrongfully asserting an exclusive right to provide electric service to a housing development under construction by REM. The complaint alleged that the boundary between the assigned service areas of Frost-BENCO and Northern States Power Company passed through REM's property, giving REM the right to choose which utility would serve the development.

REM also claimed it should be allowed to receive service from Northern States Power Company because such lower cost service would conserve public funds and because REM had allegedly been informed by the Department of Public Service that it would be allowed to choose its electric utility.

The Department of Public Service (the Department) investigated the complaint and reported that REM's property lay wholly within Frost-BENCO's assigned service area. The Department recommended that the Commission deny the complaint.

The matter came before the Commission on February 7, 1989.

FINDINGS AND CONCLUSIONS

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 (1988). The Commission was to set the boundaries of these assigned service areas, after notice and hearing. Minn. Stat. § 216B.39, subd. 2 (1988).

The assigned service areas at issue were established in a 1975 Commission proceeding, Docket No. USA-11, after public and evidentiary hearings. The Commission has examined the official map reflecting the boundaries established in that proceeding and has determined that REM's property lies entirely within the assigned service area of Frost-BENCO.

REM argues that it should be able to choose which utility will serve its development, regardless of assigned service area boundaries, for two reasons. One is that the housing development it is constructing is for low income persons whose rent and utility costs will be paid in part by public funds. The other is that a Department employee at one point prepared a map delineating the assigned service areas of the two utilities which indicated that the boundary line between the two passed through REM's property. Had the line in fact been located there, REM could have received service from either utility.

The Commission will not disregard or alter the assigned service areas for either of these two reasons. The first reason, that lower utility costs for development residents would conserve public funds, fails because the governing statute is clear on its face and requires that assigned service areas be strictly observed:

Except as provided in sections 216B.42 [pertaining to rural customers with electric needs exceeding 2,000 kilowatts] and 216B.421 [pertaining to multi-structure homesteads straddling two or more assigned service areas], each electric utility shall have the exclusive right to provide electric service at retail to each and every present and future customer in its assigned service area and no electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless the electric utility consents thereto in writing; provided that any electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area.

Minn. Stat. § 216B.40 (1988).

It is unclear that the second reason, REM's alleged receipt of confusing information from the Department, could affect its utility service rights under any circumstances. In this case, however,

the Commission need not address that question, since REM did not claim or prove that it relied on the information provided by the Department to its detriment. REM's disappointment upon learning that the map supplied by the Department was inaccurate does not require or justify remedial action.

REM's complaint against Frost-BENCO will be denied.

ORDER

1. The complaint filed by REM Development, Inc. against Blue Earth-Nicollet-Faribault County Electric Cooperative is hereby denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)