

E-118, 329/SA-88-379REQUIRING COMPENSATION

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 Petition of the Kandiyohi
Cooperative Electric Power Association
Regarding Electric Service to Farm Service
Elevator by the Willmar Municipal Utilities
Commission

ISSUE DATE: July 11, 1989

DOCKET NO. E-118, 329/SA-88-379

ORDER REQUIRING COMPENSATION

PROCEDURAL HISTORY

The Petition At Issue

On June 6, 1988 Kandiyohi Cooperative Electric Power Association (Kandiyohi) filed a petition alleging that Willmar Municipal Utilities Commission (Willmar or the City) had extended electric service to Farm Service Elevator, a Kandiyohi customer, in violation of Minnesota's assigned service area statutes, Minn. Stat. §§ 216B.37 et seq. (1988). The City filed an answer admitting that it was serving the elevator, denying that the elevator was Kandiyohi's rightful customer, and alleging that, even if the elevator were Kandiyohi's rightful customer, it had exercised its legal right to receive service from the City. The elevator is located within the City's assigned service area, but had received service from Kandiyohi until the onset of this dispute.

The History of the Kandiyohi and Willmar Assigned Service Areas

Assigned service areas were established for the City and Kandiyohi by Commission Orders dated April 3 and August 28, 1975 in Docket No. USA-7, In the Matter of the Establishment of Assigned Service Areas of Electric Utilities in Kandiyohi, McLeod, Meeker, and Renville Counties, Pursuant to Chapter 429, Laws of Minnesota, 1974. Those Orders provided that Kandiyohi would continue to serve its customers in the City's assigned service area, until the two utilities had agreed to terms for the City's purchase of Kandiyohi facilities used to serve those customers. Similarly, the City was allowed to continue serving City customers in Kandiyohi's assigned service area, subject to change by agreement between the two utilities.

Both utilities interpret the existing customer exception to apply only to existing loads; new loads resulting from customer expansion are served by the utility within whose assigned service area the customer is located. Both utilities have consistently applied this interpretation in their dealings with

one another.

Issues regarding the Kandiyohi and Willmar assigned service areas have come before the Commission on two other occasions. On May 31, 1978, in Docket No. E-118, 239/SA-78-698, the Commission approved an agreement between the utilities setting forth procedures for determining compensation when either of them acquired the customers or facilities of the other.

On April 5, 1988, in Docket No. E-118, E-239/SA-87-173, the Commission approved a joint request to revise the official assigned service area maps to reflect Willmar's acquisition of two parcels of land formerly in Kandiyohi's assigned service area. That Order mentioned the number of customers each utility served by exception within the other's assigned service area. On April 11, 1988 the Commission issued an Erratum Notice amending the number of Kandiyohi customers still within the City's assigned service area, increasing that number by one. Individual customers were not identified in the Order or the Notice. The Notice has become a source of controversy in this proceeding, since the City claims the one-customer increase was due to the erroneous inclusion of Farm Service Elevator in the list of Kandiyohi customers within the City's assigned service area.

The Department of Public Service's Report

The Department of Public Service (the Department) investigated the matter and filed a report and recommendation. The Department reported that Farm Service Elevator had received electric service from Kandiyohi since 1959, had been a Kandiyohi customer when assigned service areas were set in 1975, and, in the Department's view, was an existing customer which should continue to receive service from Kandiyohi under the terms of the 1975 and 1988 Orders.

The Department also reported that Farm Service Elevator began constructing a feed mill on its property in 1985. The electric needs of the feed mill constituted new load, which, in accordance with the parties' interpretation of the existing customer exception, was served by the City. In 1986, however, Farm Service Elevator disconnected a portion of its old load from Kandiyohi and took service from the City instead. The remainder of the old load was disconnected from Kandiyohi and connected to the City in 1987.

The City claimed that the elevator chose to take its full electric requirements from the City independent of any City action. Kandiyohi disputed that claim. The Department stated that if the claim were true, the elevator would normally have the right to distribute electricity over its own lines to any point on its property as long as the point of delivery was within the assigned service area of the delivering utility. The Department reasoned that this was analogous to cases in which the Commission had allowed property owners whose property straddled two assigned service areas to choose their electric utility, as long as the point of delivery was within the assigned service area of the utility chosen.

The Department emphasized, however, that all service area determinations are subject to the requirements of the public interest. The Commission therefore could and should weigh any public harm against any private benefit resulting from honoring the elevator's choice of utility. In this case, the Department contended the public harm which would result from failing to enforce a Commission-approved service area agreement would outweigh any benefit which might result from honoring the customer's choice of utility.

Proceedings Before the Commission

The matter came before the Commission on July 6, 1989. Appearances were as follows.

Harold LeVander, Jr., Maun, Hayes, Simon, Johanneson, Brehl and Odlaug, 2300 World Trade Center, 30 East 7th Street, St. Paul, Minnesota 55101-4904, appeared on behalf of Kandiyohi.

Byron E. Starns, Leonard, Street and Deinard, Suite 1500, 100 South Fifth Street, Minneapolis, Minnesota 55402, appeared on behalf of the City.

Audrey Zibelman, Office of the Attorney General, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Department.

FINDINGS AND CONCLUSIONS

Having reviewed the entire record herein, and having heard the arguments of counsel, the Commission makes the following findings, conclusions, and Order.

The Commission Has Jurisdiction Over this Case

The City contends that the Commission lacks jurisdiction over this proceeding because it has not acquired jurisdiction over an indispensable party, Farm Service Elevator. The elevator was informed of the proceeding, but did not elect to become a party. The City maintains that under these circumstances, the proper forum for this dispute is the district court. The Commission disagrees.

The Commission has been granted broad authority to set assigned service areas for all electric utilities within the state, to resolve disputes regarding assigned service areas, and to set compensation when one utility exercises its right to expand its assigned service area at the expense of another. Minn. Stat. §§ 216B.37-216B.465 (1988). All such determinations involve the rights of customers. This case falls squarely within the Commission's statutory authority. It does not differ in any significant respect from other service area disputes regularly resolved by the Commission. The Commission concludes that it has jurisdiction over this dispute and will proceed.

The Elevator Was a Kandiyohi Customer Under Earlier Commission Orders

The City argues that Kandiyohi has been serving Farm Service Elevator at the City's sufferance, that the elevator has been the City's rightful customer since assigned service areas were set, and that the City has merely allowed Kandiyohi to serve the elevator until the City was in a position to serve it itself. The Commission is not convinced.

The original Order setting the assigned service areas for these two utilities clearly provided that Kandiyohi would continue to serve its customers within what had become the City's assigned service area, pending the City's purchase of certain Kandiyohi facilities:

Testimony was presented at the hearing to the effect that the City of Willmar was negotiating with Kandiyohi Cooperative Electric Power Association to purchase all lines and property utilized by Kandiyohi Cooperative Electric Power Association to provide retail service to customers within the City Limits of the City of Willmar. That upon consummation of an agreement, the City of Willmar will provide electric service to all consumers within the municipal limits of the City of Willmar with the exception that Kandiyohi Cooperative shall be entitled to provide electrical energy to its headquarters building which is located within the municipal limits of the City of Willmar; and to the Willmar State Hospital until August 1980, at which time the City of Willmar Municipal Utilities desires to serve that facility.

In the Matter of the Establishment of Assigned Service Areas of Electric Utilities in Kandiyohi, McLeod, Meeker, and Renville Counties, Pursuant to Chapter 429, Laws of Minnesota, 1974, Docket No. USA-7, ORDER (April 3, 1975), at 3.

IT IS FURTHER ORDERED that the Kandiyohi Cooperative Electrical Power Association shall be authorized to provide electric service at retail to its present

customers within the municipal limits of the City of Willmar, Kandiyohi County, until a final agreement is consummated between the City of Willmar and the Kandiyohi Cooperative Electrical Power Association for the purchase of the property of Kandiyohi Cooperative Electrical Power Association utilized in serving consumers within the municipality of the City of Willmar at which time the City of Willmar Municipal Utility shall have the exclusive right to provide electric service at retail to all consumers within the municipal limits of the City of Willmar;

Establishment of Assigned Service Areas, ORDER (April 3, 1975), at 4.

It is clear that Farm Service Elevator was a Kandiyohi customer at the issuance of this Order, and had been a Kandiyohi customer since 1959. There can be little doubt, then, that Kandiyohi had a right to serve the elevator under the terms of the 1975 Order. The next issue is what effect, if any, the 1978 and 1988 Orders had on the elevator's status.

The 1978 Order did nothing to alter the status of any existing customer. It merely approved a stipulation filed by the parties memorializing their agreement on how to determine compensation when they acquired customers from one another.

The 1988 Order, too, was intended only to update the official service area maps by memorializing the parties' agreements on which utility would serve which customers. The City had acquired two parcels of land in what had been Kandiyohi's assigned service area. The Commission corrected its maps to reflect those acquisitions and noted that the two utilities continued to serve some customers in one another's service areas. Individual customers were not identified.

The Commission declines to attach the significance urged by the City to the fact that the 1988 Order was amended to increase the number of Kandiyohi customers believed to be located within the City's assigned service area. The number and identity of these customers was not at issue. The sole purpose of the proceeding was to reflect in the official maps agreed-upon changes in these utilities' assigned service areas.

There has been no showing that the City and Kandiyohi agreed to transfer the elevator from Kandiyohi to the City. The 1988 Order therefore did not alter the status of the elevator as a Kandiyohi customer.

The Elevator's Action Does Not Abrogate Kandiyohi's Right to Compensation

The City claims that, once Farm Service began receiving City power for its new load, Farm Service could also use City power for its old load, as long as it used its own distribution system. The Commission does not agree.

The Commission notes the similarity between this situation and those in which a customer's property straddles the assigned service areas of two different utilities. In such situations the Commission has allowed the customer to receive service from the utility of his or her choice, as long as the power is delivered within the assigned service area of the chosen utility and is distributed over the customer's distribution system to any part of the property within the assigned service area of the other utility. This has proven to be a workable and reasonable approach to split-service area properties.

This case is very different, however, because the two utilities involved had an agreement, approved by the Commission, which governed the situation. The agreement was that old loads of customers such as Farm Service would continue to be served by the old utility; new loads would be served by the utility within whose service area the customer was located; and each utility would compensate the other before serving a load previously served by the other.

The Commission has a longstanding policy of encouraging, honoring, and enforcing service area agreements between utilities. The legislature foresaw that such agreements would be the most efficient way to divide the state into exclusive service areas within the six months allotted for that process. To expedite matters, the statute granted utilities broad rights both to agree on assigned service areas and to agree on exceptions to assigned service areas. Minn. Stat. §§ 216B.39, subd. 4 and 216B.40 (1988). The ability to agree to exceptions was crucial to setting service areas by agreement. Exceptions allowed utilities to prevent the disruption of existing service arrangements, to control load loss during the transition period, and to minimize the duplication of facilities. Public policy and basic fairness require that such agreements, once approved by the Commission, be strictly enforced.

Neither does the Commission believe that the customer can abrogate the agreement reached by the parties and approved by the Commission. Assigned service areas and exceptions thereto are set for the benefit of the public. Individual customer preferences are relevant only insofar as they shed light

on the general public interest. These two utilities could have agreed, subject to Commission approval, that existing customers would continue to be served by their existing utilities whether they expanded or not. Had that been the agreement, Farm Service's new load, as well as its old, would have been served by Kandiyohi. Farm Service's desire to receive service from the City would not have been honored under those circumstances, and it would be anomalous to honor it under the present circumstances. The duly approved agreement of these utilities to compensate one another for acquiring one another's loads will be enforced.

The Commission will require the City and Kandiyohi to attempt to negotiate a purchase price for Kandiyohi facilities used in serving the load the City has acquired from Kandiyohi. In the event they are unable to agree on compensation, the Commission will require the City to bring a proceeding for Commission determination of compensation under Minn. Stat. § 216B.44 (1988) or to show that the City is no longer serving the load. The Commission will require a report on the progress of negotiations within 60 days.

ORDER

1. Willmar Municipal Utilities Commission and Kandiyohi Cooperative Electric Power Association shall enter into negotiations regarding what compensation is due Kandiyohi for the City's acquisition of the Farm Service Elevator load. Willmar may continue to serve Farm Service Elevator's old load during these negotiations.
2. If the City and Kandiyohi are unable to agree on compensation, the City shall either bring a proceeding for Commission determination of compensation under Minn. Stat. § 216B.44 (1988) or show that the City is no longer serving the Farm Service Elevator load.

3. The City and Kandiyohi shall submit reports on the progress of negotiations within 60 days of the date of this Order.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)