

E-118, 329/SA-89-817REQUIRING CESSATION OF PROVISION OF ELECTRIC SERVICE  
AND REMOVAL OF FACILITIES

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 Complaint by Kandiyohi Cooperative Electric Power Association Against Willmar Municipal Utilities Commission for Extending Electric Facilities into Part of Section 26, Township 119, Range 35

ISSUE DATE: October 23, 1989

DOCKET NO. E-118, 329/SA-89-817

ORDER REQUIRING CESSATION OF PROVISION OF ELECTRIC SERVICE AND REMOVAL OF FACILITIES

PROCEDURAL HISTORY

On September 26, 1989 Kandiyohi Cooperative Electric Power Association (Kandiyohi) filed a complaint under Minn. Stat. § 216B.43 (1988), alleging that Willmar Municipal Utilities Commission (Willmar or the City) was providing electric service to a construction site within Kandiyohi's assigned service area in violation of Minn. Stat. § 216B.37 *et seq.* (1988).

The City filed an answer on October 6, 1989, admitting the City was serving the construction site. The answer also stated the City intended to serve the Wal-Mart store under construction at the site, alleged the City was entitled to serve the construction site and the store as exception customers under an earlier agreement with Kandiyohi, claimed the City had a statutory obligation to serve these customers by virtue of its recent annexation of the area, and challenged the Commission's subject matter jurisdiction over Kandiyohi's complaint.

On October 6, 1989 the City also filed a petition for leave to serve information requests on Kandiyohi.

The matter came before the Commission on October 11, 1989. The parties appeared and presented oral argument. The Department of Public Service (the Department) also appeared, presented oral argument, and produced the official service area maps. The official service area maps had been signed by both utilities and filed as joint exhibits in earlier proceedings to establish and to adjust their service area boundaries.

FINDINGS AND CONCLUSIONS

## **The Commission Has Subject Matter Jurisdiction Over Kandiyohi's Complaint**

The City alleged in its answer that the Commission lacked subject matter jurisdiction over this matter because the Kandiyohi County District Court had issued a temporary restraining order prohibiting Kandiyohi from serving the construction site. The Court has since dissolved the temporary restraining order and has refused to issue a preliminary injunction against service by Kandiyohi. There is therefore no risk of inconsistent Orders being issued by the Commission and the Court.

Furthermore, the Commission has been granted broad authority to set assigned service areas for all electric utilities within the state, to resolve disputes regarding electric service areas, and to set compensation when one utility exercises a right to expand its assigned service area at the expense of another. Minn. Stat. §§ 216B.37-216B.465 (1988). This dispute falls squarely within the Commission's statutory authority. The Commission finds that it has jurisdiction over this matter and should proceed.

## **Factual and Statutory Background**

The Legislative Mandate -- 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 within twelve months of enactment of the legislation. Minn. Stat. § 216B.39, subd. 2 (1988).

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 (1988). That is how the service area boundaries for the City and Kandiyohi were set.

The History of the Service Areas at Issue -- In the proceeding which established their original service areas, Kandiyohi and Willmar submitted signed and notarized maps reflecting their agreement on what their service areas should be. The Commission approved the agreement and adopted the maps as the official service area maps for the two utilities. 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, USA-7, Orders of April 3 and August 28, 1975.

On April 5, 1988, in docket number E-118, E-239/SA-87-173, the Commission approved Kandiyohi's and Willmar's joint request to revise and update their service area boundaries. Again, the petition was accompanied by a signed and notarized map reflecting the agreed-upon boundaries. The map, which is attached and incorporated herein, bore the following agreement:

## **Agreement**

The undersigned parties hereby agree that the electric service area boundaries indicated on this map as of this date accurately reflect the location of the perimeter of the service areas of Kandiyohi Cooperative Electric Power Association and the Willmar Municipal Utilities Commission.

The agreement was dated March 27, 1987.

The Tract of Land at Issue -- The construction site at issue is located within a 25-acre tract of land annexed by the City of Willmar on September 5, 1989. All 25 acres are within Kandiyohi's assigned service area.

The annexed area was formerly part of a farmstead owned by Myron and Irene Nelson. The farmstead is no longer intact; part of it is now the site of a paint store, and part of it is the site of the Wal-Mart store under construction.

The Nelsons received their electric service from Willmar Municipal Utilities as "exception" customers; that is, they were Willmar customers despite being in Kandiyohi's service territory. Such exceptions are not uncommon and were typically agreed to, when service areas were first established, to avoid disrupting existing service arrangements. The exception is noted on the attached official map with the words "MUC Serves 1 Residential," which appear next to a blocked portion of the farmstead measuring approximately 100 feet x 100 feet.<sup>1</sup> The construction site is not within the blocked portion of the official service area map.

The other business located on what used to be the Nelson farmstead, Nationwide Paint, is also outside the blocked area. Nationwide Paint receives service from Kandiyohi. Willmar does not challenge Kandiyohi's right to serve Nationwide Paint.

### **The City is Not Entitled to Serve by Exception**

The City maintains that it is entitled to serve the construction site and the Wal-Mart store because the owners of the property are successors in interest to the Nelsons, whom the City served by exception. The Commission does not agree.

The official service area map allows Willmar to serve one residential customer in the vicinity indicated by the notation and the blocked area. Neither the construction site nor the Wal-Mart store is a residential customer; neither is located within the blocked area. Neither customer qualifies to

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<sup>1</sup>It is undisputed by all parties that the notation "MUC Serves 1 Residential" appears on the original map where the darkened rectangle appears on the attached photocopy. On the original map, the notation is legible and highlighted. The highlighting made reproduction of the highlighted words impossible. The handprinted notation was added by Department staff to duplicate the words which appear on the original.

receive service as the exception customer indicated on the official service area map.

The City notes that the Commission has on occasion allowed customers whose property straddles the service areas of two utilities to choose their utility, as long as they constructed their own distribution systems to deliver power to points outside the service area of the utility selected. The City argues by analogy that the owners of the Wal-Mart property should be allowed to construct a distribution system running from the 100 feet x 100 feet blocked area, which they also own, to the construction site.

The Commission disagrees. In this case, the utilities defined the nature of the exception to which they were agreeing in some detail. The exception was for one residential customer at the location specified on the map. The exception does not entitle the owner of the property to add additional residential customers, to receive commercial service from the City, or to extend commercial service to other portions of the property, whether the owner is the original owner or a successor in interest.

The history of the service area confirms this interpretation of the exception agreement. As discussed above, when the parcel of land on which Nationwide Paint is located was severed from the farmstead, the owner became a Kandiyohi customer. This service arrangement was not challenged then and is not being challenged now. The construction site and the Wal-Mart store are similarly situated and should similarly receive service from Kandiyohi.

## **The Annexation Neither Obligates Nor Entitles the City to Serve the Wal-Mart Store**

The City suggested in its answer that it was obligated under Minn. Stat. § 216B.44 (1988) to serve new customers in the 25-acre annexed area by virtue of the annexation. Therefore, even if the Wal-Mart site was not eligible for exception service, it would qualify for service from Willmar as a new customer. The Commission does not agree.

The statute upon which the City relies provides as follows:

. . . whenever a municipality which owns and operates an electric utility (a) extends its corporate boundaries through annexation or consolidation, or (b) determines to extend its service territory within its existing corporate boundaries, the municipality shall thereafter furnish electric service to these areas unless the area is already receiving electric service from an electric utility, in which event, the municipality may purchase the facilities of the electric utility serving the area. . . .

Minn. Stat. § 216B.44 (1988).

The statute is clear on its face that any obligation to serve on the part of the municipal utility arises only if the area is not receiving service from another utility. The 25-acre area in question is obviously receiving service from Kandiyohi. Kandiyohi is serving Nationwide Paint, a business customer within the annexed area. Kandiyohi has facilities in place to meet the needs of the area and has expressed its willingness to continue to meet the area's electric service needs. Since the area is receiving service from another utility, the City has neither an obligation nor a right to serve new customers there.<sup>2</sup>

## **Leave to Serve Information Requests Denied**

The City also filed a petition for leave to serve information requests and requests for the production of documents on Kandiyohi. These requests related to the nature and location of Kandiyohi facilities in and near the annexed area, their present and future capacity, the role they play in Kandiyohi's long range plans, the details of Kandiyohi's plans for serving customers in and near the annexed area, and the details surrounding Kandiyohi's attempt, blocked by the temporary restraining order, to serve the construction site.

None of the facts sought to be discovered are relevant to the issue before the Commission. The issue before the Commission is whether Willmar is providing electric service to the construction site in violation of the assigned service area statutes. The answer to that question is yes, and the City will

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<sup>2</sup>The statute does establish a procedure whereby the Commission may grant municipal utilities the authority to serve new customers in areas of expansion. However, such authority can be granted only after a hearing and upon a finding that it would not be in the public interest to allow the utility currently serving the area to continue to do so. Minn. Stat. § 216B.44 (1988). The City has not filed a petition requesting such authority.

be required to cease providing service and to remove its facilities from the area to comply with the law.<sup>3</sup>

ORDER

1. Willmar Municipal Utilities Commission shall cease providing electric service to the Wal-Mart construction site discussed herein, shall remove its electric facilities from the area, and shall allow Kandiyohi Cooperative Electric Power Association to serve the site.
2. The two utilities shall coordinate Willmar's cessation of service and Kandiyohi's initiation of service to assure continuous delivery of utility service to the construction site.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen  
Executive Secretary

(S E A L)

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<sup>3</sup>The questions raised by the discovery requests could be relevant in determining any compensation which might be due Kandiyohi, should the City initiate the statutory procedure to add the area to its service territory. They could also be relevant if the City filed a petition requesting interim service rights while compensation was being determined. Those issues, however, are not before the Commission.