

E-309, 124/SA-89-778FOR HEARING

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 Application of the City of Shakopee to Extend its Assigned Service Area into the Area Presently Served by the Minnesota Valley Electric Cooperative

ISSUE DATE: December 6, 1989

DOCKET NO. E-309, 124/SA-89-778

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On September 8, 1989 the City of Shakopee filed a petition under Minn. Stat. § 216B.44 (1988), stating its intention to extend its assigned service area to include all territory within the city limits currently assigned to Minnesota Valley Electric Cooperative (Minnesota Valley or the co-op). The petition sought the following relief in the alternative:

1. an Order finding that the co-op was serving retail customers within the city limits without a franchise, contrary to City ordinance, and must remove its facilities without compensation unless and until it acquired a franchise;
2. an Order authorizing the City to serve all new retail customers within that portion of the co-op's assigned service area which lies within the city limits;
3. an Order prohibiting the co-op from extending service to any new retail customers within that portion of the co-op's assigned service area which lies within the city limits, except upon 30-days' notice to the City and the Commission and after notice, hearing, and a Commission determination that such extension is in the public interest;
4. an Order determining appropriate terms for the City's acquisition of co-op facilities in that portion of the co-op's assigned service area which lies within the city limits;
5. an Order determining which of the forms of relief requested in paragraphs 1 through 4 require contested case proceedings under the Administrative Procedure Act, Minn. Stat. §§ 14.01 et seq. (1988);

6. an Order referring those matters determined to require contested case proceedings to the Office of Administrative Hearings under Minn. Stat. § 14.58 (1988).

The co-op filed a response alleging that the City was estopped from enforcing the franchise requirement because it had rebuffed the co-op's earlier application for a franchise. The co-op reported the City had stated it intended to acquire the co-op's service territory at a later date and would not enforce the franchise requirement in the interim.

The Department of Public Service (the Department) filed comments stating the City's obligation to compensate the co-op for the intended acquisition of its service area was unaffected by the franchise requirement. The Department recommended referring the issue of the appropriate level of compensation to the Office of Administrative Hearings. Finally, the Department asserted the City had failed to establish any genuine issue of material fact which required a hearing on interim service rights.

On December 6, 1989 the Commission issued its ORDER REQUIRING ADDITIONAL FILINGS, which is attached hereto and incorporated herein. In that Order the Commission required the parties to file affidavits on the facts relevant to interim service rights, to ensure adequate consideration of that issue on the merits.

The ORDER REQUIRING ADDITIONAL FILINGS also rejected the City's claim that the co-op's lack of a franchise entitled the City to acquire the co-op's service territory without compensation. The Order stated the Commission would refer the issue of compensation to the Office of Administrative Hearings by separate Order.

## FINDINGS AND CONCLUSIONS

### **I. Jurisdiction and Referral for Contested Case Proceedings**

The Commission has jurisdiction over assigned service area disputes under Minn. Stat. §§ 216B.37-.44 (1988). The Commission has jurisdiction to determine compensation for municipal utility acquisitions of other utilities' service territories under Minn. Stat. § 216B.44 (1988).

The Commission finds that it cannot determine, on the basis of the record before it, the amount of compensation due the co-op for the City's acquisition of the portion of its service territory within the Shakopee city limits. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

### **II. Issues to be Addressed**

Minn. Stat. § 216B.44 (1988) requires consideration of the following factors in cases like the present one: the original cost of any property acquired by the municipality, depreciation on such property,

loss of revenue by the displaced utility, expenses resulting from integration of facilities, and other appropriate factors.

The parties shall address the above issues in the course of contested case proceedings.

### **III. Procedural Outline**

**Administrative Law Judge** -- The Administrative Law Judge assigned to this case is John W. Harrigan. His address and telephone number are as follows: Office of Administrative Hearings, Fifth Floor, Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; (612) 872-0222.

**Hearing Procedure** -- Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 (1988); the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7830.0100 to 7830.4400. Copies of these rules and statutes may be purchased from the Documents Section of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, (612) 297-3000.

Under these rules parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2 (1988).

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Margie Hendriksen, Special Assistant Attorney General, 780 American Center Building, St. Paul, Minnesota 55101 (612) 296-0410.

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and the parties.

**Intervention** -- Current parties to this proceeding are the City of Shakopee, Minnesota Valley Electric Cooperative, and the Department of Public Service. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

**Prehearing Conference** -- A prehearing conference will be held in this matter on Friday, December 22, 1989 at 9:00 a.m. in the Small Hearing Room at the Commission offices, 780 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, and similar issues.

**Ex Parte Communications** -- Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. A contested case proceeding shall be held to determine the compensation due Minnesota Valley Electric Cooperative for the City of Shakopee's acquisition of that portion of its service territory within the city limits.
2. The proceeding shall begin with a Prehearing Conference on Friday, December 22, 1989 at 9:00 a.m. in the Small Hearing Room at the Commission offices, 780 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Lee Larson  
Acting Executive Secretary

(S E A L)

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
Fifth Floor, Flour Exchange 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 Application of the City of  
Shakopee to Extend its Assigned Service Area  
into the Area Presently Served by the  
Minnesota Valley Electric Cooperative

MPUC Docket No. E-309, 124/SA-89-778

OAH Docket No.

NOTICE OF APPEARANCE

Date of Hearing: December 22, 1989, 9:00 a.m.

Name and Telephone Number of Administrative Law Judge:

John W. Harrigan  
612/872-0222

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: \_\_\_\_\_