

E-329, 118/SA-89-1097; FOR HEARING AND ORDER CONSOLIDATING DOCKETS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of a Petition of the City of Willmar to Determine Appropriate Compensation to be Paid to Kandiyohi Cooperative Electric Power Association in the Irene Nelson/Wal-Mart Area Pursuant to Minn. Stat. § 216B.44

ISSUE DATE: February 27, 1990

DOCKET NOS. E-329, 118/SA-89-1097;

E-329, 118/SA-89-448

NOTICE AND ORDER FOR HEARING  
AND ORDER CONSOLIDATING  
DOCKETS

PROCEDURAL HISTORY

On December 11, 1989 the City of Willmar filed a petition under Minn. Stat. § 216B.44 (1988), stating its intention to extend its assigned service area to include a recently annexed area known as the Irene Nelson Farm/Wal-Mart area, currently within the assigned service area of Kandiyohi Cooperative Electric Power Association (Kandiyohi or the co-op.) The petition stated that the City and the co-op had been unable to agree on appropriate compensation for Kandiyohi facilities in the area and asked the Commission to decide the issue.

The co-op filed a response asking the Commission to refer the matter to the Office of Administrative Hearings for contested case proceedings.

The Department of Public Service (the Department) filed comments recommending contested case proceedings. The Department also recommended that the matter be consolidated with another docket before the Office of Administrative Hearings involving the same parties and similar issues. That case is In the Matter of the City of Willmar's Request to Determine Appropriate Compensation to be Paid to Kandiyohi Cooperative Electric Power Association Pursuant to Minn. Stat. § 216B.44, Commission Docket No. E-329, 118/SA-89-448; OAH Docket No. 7-2500-4054-2. That case was referred to the Office of Administrative Hearings by NOTICE AND ORDER FOR HEARING dated September 8, 1989.

The matter came before the Commission on February 21, 1990. All parties agreed that contested case proceedings were necessary. The City and the co-op concurred in the Department's recommendation of consolidation.

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. That determination turns on specific facts which are best developed in formal evidentiary proceedings. 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 Richard C. Luis. 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) 349-2542.

**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 Willmar, Kandiyohi Cooperative Electric Power Association, 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, which may be conducted by telephone, will be scheduled by the Administrative Law Judge. The Office of Administrative Hearings will notify all parties of its time, date, and place.

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.

#### **IV. Consolidation**

The Commission agrees with the parties that consolidating this matter with Commission Docket No. E-329, 118/SA-89-448; OAH Docket No. 7-2500-4054-2 would conserve the resources of all parties, the Commission, and the Office of Administrative Hearings. The parties to both dockets are identical; the issues are similar. Both dockets are compensation proceedings involving annexed areas. The earlier docket has not yet reached a stage where consolidation would delay its resolution. The Commission will therefore consolidate the two dockets.

### **ORDER**

1. A contested case proceeding shall be held to determine the compensation due Kandiyohi Cooperative Electric Power Association for the City of Willmar's acquisition of the portion of its service territory known as the Irene Nelson Farm/Wal-Mart area.

2. This proceeding shall be consolidated with the ongoing contested case proceeding In the Matter of the City of Willmar's Request to Determine Appropriate Compensation to be Paid to Kandiyohi Cooperative Electric Power Association Pursuant to Minn. Stat. § 216B.44, Commission Docket No. E-329, 118/SA-89-448; OAH Docket No. 7-2500-4054-2.
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  
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 a Petition of the City of Willmar to Determine Appropriate Compensation to be Paid to Kandiyohi Cooperative Electric Power Association in the Irene Nelson/Wal-Mart Area Pursuant to

Minn. Stat. § 216B.44

MPUC Docket No. E-329, 118/SA-89-1097

OAH Docket No.

NOTICE OF APPEARANCE

Name and Telephone Number of Administrative Law Judge:

Richard C. Luis  
612/349-2542

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: \_\_\_\_\_