

E-272, 125/SA-90-484 NOTICE AND ORDER FOR HEARING

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 the Application of the City of Marshall to Adjust and Update the Assigned Service Area Maps to Incorporate an Annexed Area Presently Served by Marshall and to Clarify Interim Service Rights in Said Area

ISSUE DATE: August 7, 1990

DOCKET NO. E-272, 125/SA-90-484

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On June 28, 1990, the City of Marshall filed a petition asking the Commission to adjust its assigned service area boundaries to include within its service territory a parcel of land it annexed in 1974 and began serving in 1978. On the official service area maps, established and maintained by the Commission under Minn. Stat. §§ 216B.39 et seq. (1988), the parcel lies within the service territory of Lyon-Lincoln Electric Cooperative (the co-op).

In an Order dated July 31, 1990 the Commission found that the co-op was providing service to the area under Minn. Stat. § 216B.44 (1988) and was therefore entitled to a determination of appropriate compensation before the area could be placed within the City's assigned service area. The Commission also found that it would not be in the public interest for the co-op to serve new points of delivery within the area while compensation was being determined and granted interim service rights to the City. The Commission stated that the compensation issue would be referred to the Office of Administrative Hearings for contested case proceedings 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).¹

The Commission finds that it cannot determine, on the basis of the record before it, the amount of compensation, if any, 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.

¹ The City has filed an eminent domain proceeding to obtain the right to serve the area in dispute. The Commission does not believe Minn. Stat. § 216B.47 (1988) permits municipalities that own and operate utilities to use eminent domain proceedings and believes that such proceedings are solely within the jurisdiction of the Commission under Minn. Stat. § 216B.44 (1988).

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 Marshall, Lyon-Lincoln 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, 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.

ORDER

1. A contested case proceeding shall be held to determine what, if any, compensation is due Lyon-Lincoln Electric Cooperative for the City of Marshall's acquisition of the portion of its service territory legally described as follows:

That part of the Easterly 700 feet of the NE 1/4 of the SW 1/4 of Section 2, T111N, R41W, lying Southerly of Trunk Highway No. 19, as now located and established.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)