

E-203, 138/SA-95-470

NOTICE AND ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of the
Alexandria Board of Public Works to Extend
its Assigned Service Area into the Area
Presently Served by Runestone Electric
Association

ISSUE DATE: October 16, 1995

DOCKET NO. E-203, 138/SA-95-470

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

I. Proceedings to Date

On May 11, 1995, Alexandria Board of Public Works (Alexandria) petitioned the Commission pursuant to Minn. Stat. § 216B.44 (1994) to extend its assigned electric service area within its corporate boundaries to serve an area of approximately 51.5 acres, land which is within the assigned service territory of Runestone Electric Association (Runestone). Alexandria stated that its compensation offers have been rejected by Runestone.

On June 9, 1995, the Minnesota Department of Public Service (the Department) filed comments recommending that the matter be referred to the Office of Administrative Hearings (OAH).

On June 14, 1995, Runestone responded to Alexandria's petition asserting that the petition failed to include indispensable parties (Cooperative Power Association and its member cooperatives) and that its facilities cannot be transferred without the approval of the Rural Utilities Service.

On June 19, 1995, Cooperative Power Association (CPA) and its 16 member cooperatives filed a Joint Petition to Intervene. The petition requested an Order allowing the petition to intervene and naming the joint petitioners as parties (with all the rights pertinent thereto) in the Commission's Notice and Order for Hearing.¹

On June 27, 1995, Alexandria filed an objection to the Joint Petition to Intervene.

On June 29, 1995, the Commission met to consider this matter. After hearing oral argument, the Commission tabled the matter pending analysis of the legal issues by counsel.

On September 28, 1995, the Commission met to consider this matter.

¹ In a separate Order issued this day, the Commission denies the Joint Petition to Intervene.

FINDINGS AND CONCLUSIONS

II. Jurisdiction

The Commission has jurisdiction over assigned service area disputes under Minn. Stat. §§ 216B.37-.44 (1994). The Commission has jurisdiction to determine compensation for municipal utility acquisitions of other utilities' service territories under Minn. Stat. § 216B.44 (1994).

III. Referral for Contested Case Proceedings

Establishing the proper amount of compensation that Runestone should receive from Alexandria due to Alexandria's extension of service into Runestone's assigned electric service area involves several questions of fact. The parties have been unable to reach agreement on these issues through negotiation and, in fact, appear very far apart on this matter. Alexandria reported that Runestone has insisted upon compensation nearly three times larger than Alexandria has offered. The Department has recommended referring the matter to the OAH and no party has objected that this is unnecessary.

Moreover, the Commission finds that it cannot determine, on the basis of the record before it, the amount of compensation due Runestone in this matter. The ultimate 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.

IV. Issues to be Addressed

Minn. Stat. § 216B.44 (1994) requires consideration of the following factors in determining compensation in municipal acquisition cases: 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.

V. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Phyllis A. Reha whose address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7611.

B. Hearing Procedure

Hearings in this matter will be conducted in accordance with

- the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 (1992);
- the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and,
- the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7830.0100 to 7830.4400, to the extent that they are not superseded by the OAH rules.

Copies of these rules and statutes may be purchased from the Print Communications Division 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 (1992).

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, Assistant Attorney General, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-6029; (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.

C. Intervention

Current parties to this proceeding are the Alexandria Board of Public Works, Runestone Electric Association, and the Minnesota Department of Public Service.² 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.

² In a separate Order issued this day, the Commission has denied the Joint Petition to Intervene filed by Cooperative Power Association (CPA) and its 16 member cooperatives.

D. 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.

E. *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 Runestone Electric Association for the acquisition by the Alexandria Board of Public Works of approximately 51.5 acres of territory within the assigned service territory of Runestone Electric Association.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
Suite 1700
100 Washington Square
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
Suite 350
121 Seventh Place East
St. Paul, Minnesota 55101-2147

In the Matter of the Application of the
Alexandria Board of Public Works to
Extend its Assigned Service Area into the
Area Presently Served by Runestone
Electric Association

MPUC Docket No. E-203, 138/SA-95-470

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address, and Telephone Number of Administrative Law Judge:

Phyllis A. Reha, Office of Administrative Hearings, Suite 1700, 100 Washington Square,
Minneapolis, Minnesota 55401-2138; (612) 341-7611

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: _____