

E-130/SA-95-1262

ORDER ESTABLISHING COMMENT PERIOD AND GRANTING PETITION TO
INTERVENE

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 Petition of Inland Steel Mining Company and Northern Electric Cooperative Association for Approval of the Purchase and Sale of Electricity at Retail

ISSUE DATE: December 28, 1995

DOCKET NO. E-130/SA-95-1262

ORDER ESTABLISHING COMMENT PERIOD AND GRANTING PETITION TO INTERVENE

PROCEDURAL HISTORY

On November 15, 1995, Inland Steel Mining Company (Inland Steel) and Northern Electric Cooperative Association (NECA) filed a joint petition asking the Commission to interpret and clarify two 1975 Commission Orders. In the alternative, the Petitioners asked the Commission to allow NECA to serve Inland Steel's Minorca Mine, currently served by Minnesota Power.

On December 1, 1995, Cooperative Power Association (CPA) filed both a petition to intervene in this proceeding and comments.

On December 1, 1995, comments in response to the November 15 petition were filed by the Residential Utilities Division of the Office of Attorney General (RUD-OAG), the Department of Public Service (the Department), and Minnesota Power.

On December 12, 1995, the Petitioners filed a reply to CPA's petition to intervene.

On December 14, 1995, the matter came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

I. FACTUAL BACKGROUND

In 1974 the Minnesota Public Utilities Act established a procedure by which previously unassigned territories outside municipalities would be divided into assigned electric service territories. Minn. Stat. § 216B.39, subd. 1. The procedure called for the Commission to

establish assigned service areas for each electric utility and to prepare maps accurately and clearly showing the service area boundaries.

After the passage of the Minnesota Public Utilities Act, the Commission initiated a proceeding to establish assigned service areas in seven counties in northeastern and north central Minnesota. On May 20, 1975, the Commission issued a Proposal for Decision regarding the assignment of service areas in the seven counties. On September 24, 1975, the Commission issued its ORDER AFTER ORAL ARGUMENT, in which it determined the service area assignment.

Following the Commission's decisions in the two Orders, five taconite plants, including Inland Steel's Minorca Mine near Virginia, Minnesota, were served by Minnesota Power. Minnesota Power has continued to supply all of Inland's electricity at this site. The parties currently have a contract under which Minnesota Power will supply 100% of the site requirements through October 31, 1997. Beyond that date, Inland Steel remains committed to purchase 18,000 kW of interruptible demand through October 31, 2008. Inland Steel also has a "right of first refusal" to 18,000 kW of firm demand through October 31, 2008.

Inland Steel and NECA, a distribution cooperative electric utility headquartered in Virginia, Minnesota, recently entered into a letter of intent. If a contract reflecting that letter of intent were signed, NECA would provide the portion of Inland's load that Inland is not contractually required to purchase from Minnesota Power, beginning November 1, 1997.

II. COMMENTS OF THE PARTIES

A. The Petitioners

Inland Steel and NECA petitioned for the Commission to interpret and clarify its 1975 Orders. The petitioners asked the Commission to find that the Orders did not place the Minorca Mine site in Minnesota Power's service territory under Minn. Stat. § 216B.39, but rather allowed Inland Steel to obtain service from Minnesota Power under Minn. Stat. § 216B.42. This statute states in part:

...customers located outside municipalities and who require electric service with a connected load of 2,000 kilowatts or more shall not be obligated to take electric service from the electric utility having the assigned service area where the customer is located.

The petitioners concluded that the Minorca Mine was part of the service territory of NECA, which serves the surrounding area.

If the Commission would not interpret its prior Orders in the manner requested by the Petitioners, the Petitioners asked in the alternative that the Commission allow NECA to serve the Minorca Mine under Minn. Stat. § 216B.42. The Petitioners stated that the request fulfilled the statutory criteria.

B. Minnesota Power

Minnesota Power argued that the Commission's 1975 Orders assigned the Minorca Mine, and five other taconite sites, to Minnesota Power's service territory. According to Minnesota Power, there is no statutory or procedural basis for reopening the Orders now.

Minnesota Power stated that it relied on the Commission's 1975 decision regarding service to the Minorca Mine and constructed generating capacity accordingly.

Minnesota Power argued that Minn. Stat. § 216B.42 is inapplicable in this case because it applies to service extensions. In contrast, this case involves an existing customer whose electric requirements are being fully served by the incumbent utility. If the case were analyzed under Minn. Stat. § 216B.42, the Petitioners would not fulfill the criteria of that statute.

Finally, Minnesota Power noted that there is currently an investigation underway to consider whether regulatory and structural changes in the state's electric industry are in the public interest. Docket No. E-999/CI-95-135. According to Minnesota Power, this would be the proper forum to pursue the issues raised by the Petitioners.

C. The RUD-OAG

The RUD-OAG stated that no clarification of the 1975 Orders is necessary: the Orders assigned the Minorca Mine to Minnesota Power's service territory. If the site *had* been assigned to Minnesota Power under Minn. Stat. § 216B.42, the assignment would not mean that the customer would be able to choose between Minnesota Power and NECA for its electric service.

D. The Department

The Department stated that important issues had been raised in this proceeding. The Department recommended that the Commission order the parties to file comments on these issues. If contested facts remain at the conclusion of briefing, the Commission should refer the matter to the Office of Administrative Hearings for contested case proceedings.

E. CPA

CPA stated that questions raised in this proceeding should be pursued in the electric industry restructuring investigation, Docket No. E-999/CI-95-135. In the alternative, the Commission should order a contested case proceeding.

CPA asked to intervene in this proceeding under Minn. Rules, part 7829.0800. Under that rule, the Commission must grant intervenor status upon a showing that:

the outcome of the proceeding will bind or affect the person with respect to an interest peculiar to the person, as distinguished from an interest common to the public or other ratepayers in general, or the person's interests are not adequately represented by one or more parties participating in the case.

CPA stated that it would be affected by the Petitioners' interpretation of Minn. Stat. § 216B.42, should the interpretation be adopted by the Commission. CPA, and other rural electric cooperatives, would be likely to lose their few large commercial and industrial customers if there were unrestrained competition for the customers' electric needs.

According to CPA, its interests are not adequately represented by any other party participating in the case. NECA is uniquely situated among electric cooperatives to take advantage of the ability to replace existing service; most electric cooperatives do not have similar large electric loads close to, or within, their assigned service territories. Minnesota Power is an investor-owned utility whose interests are seldom aligned with rural electric cooperatives. CPA argued that its interests would not be adequately represented by the RUD-OAG or the Department, because they have the obligation to represent the broad interests of all Minnesota ratepayers.

For these reasons, CPA argued, it should be allowed to intervene in this proceeding.

III. COMMISSION ANALYSIS

A. THE PETITION FOR CLARIFICATION OR FOR APPROVAL OF SERVICE TO INLAND

The Inland Steel/NECA petition and the replies to the petition have raised numerous important service area issues. Among these issues are the following:

- What is the meaning of the Commission's decisions in its 1975 Orders? As a result of those Orders, is Minnesota Power serving the Minorca Mine under service territory rights or under a grant of authority pursuant to Minn. Stat. § 216B.42?
- What is the scope of Minn. Stat. § 216B.42? Is the statute limited to requests for either new customers or additional loads for existing customers, or may it apply to any large customer outside a municipality that wants to change its electric supplier?
- Does Minn. Stat. § 216B.42, either by itself or in conjunction with other statutes, permit dual service?
- If the Commission allows NECA to apply to serve Inland Steel's Minorca Mine under Minn. Stat. § 216B.42, does the proposal meet the statutory criteria?

Many of the issues raised involve legal and policy determinations rather than factual disputes. For this reason, the Commission will not at this time send the matter for contested case proceedings. The Commission will rather solicit comments from the parties, and any other Minnesota electric provider that wishes to comment. The Commission believes that these far-reaching service area issues should be open to comment from any potentially affected entity.

The Commission will therefore establish a comment period for input from any Minnesota

electric provider. Initial briefs will be due January 6, 1996, and reply briefs will be due January 16, 1996.¹ Persons wishing to comment should address at least the questions listed at Ordering Paragraph No. 1 of this Order.

B. THE PETITION TO INTERVENE

The Commission finds that CPA fulfills the criteria of Minn. Rules, part 7829.0800 for intervenor status. The outcome of the proceeding would affect CPA and its member cooperatives, if an interpretation of Minn. Stat. § 216B.42 opened existing large commercial or industrial loads in rural areas to competition. CPA has also demonstrated that its interests are not adequately represented by any other party to the proceeding. NECA's and CPA's long-term goals regarding service to commercial customers are not aligned. No other party shares the perspectives, circumstances, or needs of a rural electric cooperative.

The Commission will grant CPA its request to intervene in this proceeding under Minn. Rules, part 7829.0800.

ORDER

1. The Commission hereby establishes a comment period for input from any Minnesota electric provider. Initial briefs will be due January 6, 1996, and reply briefs will be due January 16, 1996. Persons wishing to comment should address at least the following questions:
 - Did the Commission grant Minnesota Power service territory right to serve Inland Steel's Minorca Mine in the 1975 Orders, or is Minnesota Power serving pursuant to a grant of authority under Minn. Stat. § 216B.42? If Minnesota Power was granted authority under Minn. Stat. § 216B.42, what is the legal effect on this docket?
 - Is Minn. Stat. § 216B.42 limited to requests for either new customers or additional loads for additional customers, or may it apply to any large customer outside a municipality that wants to change its electric supplier? Does Minn. Stat. § 216B.42, either by itself or in conjunction with other statutes, permit dual service?
2. The Commission grants CPA its request to intervene in this proceeding under Minn. Rules, part 7829.0800.

¹ The Commission notes that under its Rules of Practice and Procedure, the Commission may vary non-statutory time periods on its own motion or at the request of a person for good cause shown. The Commission may also delegate the authority to vary time periods to the Executive Secretary. Minn. Rules, part 7829.3100.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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