

ISSUE DATE: January 23, 1997

DOCKET NO. E-001,115/SA-96-1586

NOTICE AND ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs  
Marshall Johnson  
Dee Knaak  
Mac McCollar  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Joint Petition of Exol Corporation and Freeborn-Mower Cooperative to Serve Exol Corporation's Ethanol Plant

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**PROCEDURAL HISTORY**

**I. THE PETITION**

On December 18, 1996, Exol Corporation (Exol) and Freeborn-Mower Electric Cooperative (Freeborn-Mower) filed a joint petition with the Commission. The petition was filed under Minn. Stat. § 216B.42, subd. 1, which governs service extensions for large customers outside municipalities.

According to the petition, Exol will construct a 30 million gallon dry mill ethanol processing plant near Glenville, Minnesota. The plant will process corn products into ethanol for use as a fuel additive and gasoline alternative. The Exol farmer/owners hope to have the processing plant on-line in time for the fall 1997 corn harvest.

The site for the ethanol plant is located within the service areas of both Freeborn-Mower and Interstate Power Company (Interstate). The petition seeks Commission authority for Freeborn-Mower to be the exclusive electric service provider to the ethanol plant.

**II. THE STATUTE**

Under Minn. Stat. § 216B.42, the Commission has the discretion to allow a customer outside a municipality who requires electric service with a connected load of 2,000 kilowatts or more to take electric service from a utility other than the utility assigned to the customer's location. After notice and hearing, the Commission must make a determination based upon six listed statutory factors. The factors include the electric service requirements of the load to be served; the availability of an adequate power supply; the development or improvement of the electric system of the utility seeking to provide the electric service; the proximity of adequate facilities from which electricity of the type required may be delivered; the customer's preference; and any and all pertinent factors affecting the ability of the utility to furnish adequate electric service.

### **III. PROCEEDINGS TO DATE**

On December 30, 1996, Interstate filed an answer and response to the joint petition. Interstate stated that it is at least as well able as Freeborn-Mower to provide service to Exol, which is located in Interstate's assigned service territory. Interstate stated that Freeborn-Mower failed to plead sufficient facts for the Commission to determine, under the statutory factors of Minn. Stat. § 216B.42, that Freeborn-Mower should extend service to Exol. Interstate asked the Commission to deny the joint petition. In the alternative, Interstate asked the Commission to refer the matter for contested case proceedings for a determination of the material facts in dispute.

On January 6, 1997, the Department of Public Service (the Department) filed comments. The Department reviewed the petition in light of the six criteria of Minn. Stat. § 216B.42. The Department stated that there were material facts at issue regarding the load requirements of Exol's planned facility; the effect of adding Exol's load to the utilities' respective systems; the effect of necessary system additions on either provider's overall system; relative net benefits, if any, of either provider's transmission extension; and the impact of the petitioners' request on the broad public interest.

The Department concluded:

The Department finds that the joint petition contains insufficient information for the Commission to make a determination at this time. Moreover, because of the relative complexity of the issues, it is unlikely that the factual disputes between the parties could be resolved through the submission of affidavits. Therefore, the Department recommends that the Commission refer the instant petition to the Office of Administrative Hearings for a contested-case proceeding.

On January 6, 1997, the joint petitioners filed reply comments in which they stated that they would supply any necessary information for a Commission determination. The petitioners asked that the Commission conclude this proceeding on an expedited basis, thus allowing Exol to complete construction in a timely manner.

The matter came before the Commission for consideration on January 16, 1997.

## **FINDINGS AND CONCLUSIONS**

### **I. JURISDICTION AND REFERRAL FOR CONTESTED CASE PROCEEDINGS**

The Commission has general jurisdiction over this matter under Minn. Stat. § 216B.08 and specific jurisdiction over matters related to requests for service extensions under Minn. Stat. §§ 216B.37, 216B.42, and 216B.43.

The Commission finds that it cannot determine, on the basis of the record before it, whether Exol should be obliged to take electric service from Interstate, the electric utility assigned the service area in which the Exol facility will be partially located, or whether Exol should be allowed to take electric service exclusively from its joint petitioner, Freeborn-Mower. The

Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

The Commission notes that representatives of Exol have testified regarding the urgency of these proceedings in relation to their projected construction schedule. The Exol representatives stated that a determination of their service provider will impact their financing opportunities and ability to obtain a return on their investment. The Commission therefore respectfully requests the Office of Administrative Hearings to proceed with this matter in as expedited a fashion as possible. At the same time, the Commission also notes that the parties are free to continue pursuing their own settlement of these matters. The Commission urges the parties to continue to attempt to negotiate a resolution of the issues.

## **II. PROCEDURAL OUTLINE**

### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Allan W. Klein. His address and telephone number are as follows: Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138; (612) 341-7609.

### **B. Hearing Procedure**

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; 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 7829.0100 to 7829.3200. 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 Judge Klein 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.

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 Susan Allender, Assistant Attorney General, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (612) 296-9644.

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

**C. Intervention**

Current parties to this proceeding are Exol, Freeborn-Mower, Interstate, and the Department. Other persons wishing to become formal parties to this proceeding shall promptly file petitions to intervene with Judge Klein. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

**D. Prehearing Conference**

A prehearing conference will be held in this matter on February 3, 1997, at 9:30 A.M., in the Large Hearing Room at the Commission offices, 121 Seventh Place East Suite 350, St. Paul, Minnesota 55101-2147.

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 public hearings, discovery procedures, and similar issues.

**E. Application of Ethics in Government Act**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, apply to cases affecting rates. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Minnesota Ethical Practices Board, telephone number (612) 296-1720, with any questions.

**F. 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. The Commission sets the matter of the joint petition for Freeborn-Mower to serve Exol for contested case proceedings.
2. The contested case proceedings shall begin with a prehearing conference on

February 3, 1997, at 9:30 A.M., in the Large Hearing Room, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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