

ISSUE DATE: June 25, 1997

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

ORDER ALLOWING WITHDRAWAL OF JOINT PETITION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
Don Storm

Chair
Commissioner
Commissioner
Commissioner

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

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PROCEDURAL HISTORY

On December 18, 1996, Freeborn-Mower Electric Cooperative (the Cooperative) and Exol Corporation (Exol) filed a joint petition requesting authority for the Cooperative to serve Exol's ethanol plant under Minn. Stat. § 216B.42. The joint petitioners requested expedited treatment on the grounds that power for construction at the plant would be required on or about April 15, 1997.

On December 30, 1996, Interstate Power Company (Interstate) filed an Answer and Response opposing the joint petition.

On January 6, 1997, the Minnesota Department of Public Service (the Department) filed comments and Freeborn-Mower and Exol filed joint comments.

On January 23, 1997, the Commission issued its NOTICE AND ORDER FOR HEARING.

On April 1, 1997, the Administrative Law Judge (ALJ) filed a *Recommendation For Approval of Settlement Agreement* in the above entitled matter.

On April 15, 1997, Commission Staff sent a letter to the Cooperative with a copy to Exol requesting clarification of whether petitioners intended to continue to seek Commission approval under Minn. Stat. § 216B.42 or withdraw the joint petition.

On May 7, 1997, the Cooperative and Exol submitted a letter requesting withdrawal of the December 18, 1997 Joint Petition.

On June 12, 1997, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. Overview

Once a petition of any sort has been submitted to the Commission, the Commission will allow its voluntary dismissal by the petitioning party upon a finding that to do so is in the public interest. In this case, the Commission finds that it is in the public interest to allow the requested withdrawal based on the analysis set forth in this Order.

B. The Parties' Positions

In their initial joint petition filed December 18, 1996, the Cooperative and Exol requested that the Cooperative should be exempt, pursuant to Minn. Stat. § 216B.42, from the assigned service area restrictions imposed by Minn. Stat. § 216B.39 and .40 and be allowed to serve Exol. Interstate asserted rights as the assigned provider under Minn. Stat. § 216B.39 and .40 and opposed the joint petition.

Following the execution of a Settlement Agreement between Exol, Interstate and the Cooperative, Exol and the Cooperative filed a request to withdraw its December 18, 1996 joint petition.

The Commission notes that in adopting Minn. Stat. § 216B.42 the legislature created an area (competing claims among electric service providers for the right to serve large customers outside municipalities) which involves important conflicting interests. The Commission finds important public interest issues implicated by conflicts rising under Minn. Stat. § 216B.42. Such conflicts have a necessary claim upon the Commission's attention.

C. The Settlement Agreement

The Settlement Agreement agreed upon by the parties appears to resolve all outstanding issues between them. The Agreement calls for Interstate to withdraw its objection to the Cooperative's service of Exol and to execute and deliver any further consents required by law for the Cooperative to immediately serve the Exol Project.

The parties have also agreed to certain service territory boundary changes effective upon Exol's commencement of production. These transfers include:

- a. transferring the Albert Lea sewage treatment plant to Interstate; and
- b. transferring the entire Exol property to the Cooperative.

In addition, Exol consented to the transfer of the right of service to the Cooperative and will notify both the Cooperative and Interstate, in writing, when commencement of commercial production has occurred.

Further conditions of the Agreement require a) financial closing for the Exol project on or before October 1, 1997, and b) commencement of commercial production on or by July 1, 1998 or either party may, by right, terminate the agreement by written notice to the other.

The Settlement provided that boundary changes described in the agreement were subject to the consent of the City of Albert Lea being served by Interstate and required Interstate to secure consent by February 25, 1997. Interstate has done so.

Finally, Interstate agreed to purchase the on-site facilities of the Cooperative and Dairyland Power dedicated to serving the Albert Lea sewage treatment plant, at net book value.

C. Commission Analysis: Change of Status Moots Joint Petition

As just recited, the parties (who appear to be of relatively equal bargaining power and sophistication) have completed arms length negotiations aimed at resolving all issues in this docket. On April 1, 1997, the Administrative Law Judge (ALJ) filed his recommendation that the Commission approve the parties' settlement agreement.

More important for the Commission's immediate concern (review of the request to withdraw), however, the Agreement has changed the parties' relationship. No longer is the Cooperative contesting with Interstate for the right to serve Exol. Instead, the Cooperative now proposes to serve Exol with Interstate's consent, i.e. under the written consent (service extension) provision of Minn. Stat. § 216B.40. In effect, the parties' agreement moots the claims made by Cooperative/Exol in their joint petition.

D. Commission Action

In these circumstances, the Commission finds that withdrawal of the joint petition is in the public interest and will, therefore, allow the joint petitioners to withdraw their original petition, filed December 18, 1996.

ORDER

1. The request of Freeborn-Mower Electric Cooperative (the Cooperative) and Exol Corporation (Exol) to withdraw the joint petition that they filed on December 18, 1996 is hereby granted.

2. The Cooperative and Interstate shall file maps with the Commission and the Department detailing the service are modifications that occur pursuant to Interstate's written consent for the Cooperative to serve Exol.
3. This docket (E-001, 115/SA-96-1586) is hereby closed.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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