

ISSUE DATE: June 23, 1998

DOCKET NO. E-115/SA-98-701

NOTICE AND ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
LeRoy Koppendrayner  
Gregory Scott

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Joint Petition of Agra  
Resources Coop d/b/a Exol Corporation and  
Freeborn-Mower Cooperative Services for an  
Order permitting Freeborn-Mower to Serve  
Exol's Ethanol Plant

ISSUE DATE: June 23, 1998

DOCKET NO. E-115/SA-98-701

NOTICE AND ORDER FOR HEARING

**PROCEDURAL HISTORY**

**I. The Petition**

On May 26, 1998 Agra Resources Coop d/b/a Exol Corporation (Exol) and Freeborn-Mower Cooperative Services (Freeborn-Mower) filed a petition seeking an Order permitting Freeborn-Mower to serve an Exol plant under construction near Glenville, Minnesota. The plant would be located on property straddling the assigned service areas of Freeborn-Mower and Interstate Power Company (Interstate), but the plant itself would be located within Interstate territory.

Petitioners sought an Order permitting Freeborn-Mower to serve the plant on two grounds: (1) Minn. Stat. § 216B.42 permits large customers located outside municipal boundaries to receive service from non-assigned utilities with the consent of the Commission; (2) there is precedent for permitting customers whose property straddles assigned service area boundaries to choose their provider as long as service is delivered on the provider's side of the boundary.

On June 5, 1998 Interstate filed comments opposing the petition. Interstate claimed it would not be in the public interest for Freeborn-Mower to serve the plant, recommended soliciting public comments on underlying policy issues, and requested a contested case hearing.

On June 10, 1998 the Department of Public Service filed comments recommending referring the matter to the Office of Administrative Hearings for contested case proceedings.

On June 18, 1998 the matter came before the Commission.

**FINDINGS AND CONCLUSIONS**

**II. Jurisdiction and Referral for Contested Case Proceedings**

The Commission has general jurisdiction over service area disputes under Minn. Stat. §§ 216B.37-216B.47 and specific jurisdiction over petitions by large customers outside

municipalities seeking service from a non-assigned utility under Minn. Stat. § 216B.42. The Commission finds that it cannot determine, on the basis of the record before it, which utility should serve the Exol plant. The statutory criteria for permitting large customers outside municipalities to choose their supplier turn in large part on factual issues best developed in formal evidentiary proceedings. The significance of the plant's location on property straddling two service areas also turns on facts not adequately developed in the record and potentially subject to dispute.

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

### **III. Issues to be Addressed**

Minn. Stat. § 216B.42 requires consideration of the following factors in evaluating this petition:

- (a) the electric service requirements of the load to be served;
- (b) the availability of an adequate power supply;
- (c) the development or improvement of the electric system of the utility seeking to provide the electric service, including the economic factors relating thereto;
- (d) the proximity of adequate facilities from which electric service of the type required may be delivered;
- (e) the preference of the customer;
- (f) any an all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfill customers' requirements.

The parties shall address these issues, as well as the significance of the plant's location on property straddling two service areas. They may also raise and address other issues relevant to the petition.

### **IV. 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, Suite 1700, 100 Washington Square, 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 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.

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 Dennis Ahlers, Assistant Attorney General, 700 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (612) 296-0410.

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 Agra Resources Coop d/b/a Exol Corporation, Freeborn-Mower Cooperative Services, Interstate Power Company, and the Department of Public Service.

Other persons wishing to become formal parties to this proceeding 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.

### **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 should attend the conference, prepared to discuss time frames, scheduling, the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues.

### **E. Time Constraints**

The Exol plant is under construction (receiving construction power from Interstate), and is scheduled to begin operations in the first quarter of 1999. Since either utility would need at least a month to extend permanent service to the plant, the parties need a final decision by late fall.

The Commission respectfully asks the Office of Administrative Hearings to conduct contested case proceedings in light of these time constraints.

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

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., apply to cases of rate setting. If rates become an issue, 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.

**VI. 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 hereby refers the joint petition of Agra Resources Coop d/b/a Exol Corporation and Freeborn-Mower Cooperative Services to the Office of Administrative Hearings for contested case proceedings.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (612) 297-4596 (voice), (612) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

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 Joint Petition of Agra  
Resources Coop d/b/a Exol Corporation  
and Freeborn-Mower Cooperative Services  
for an Order permitting Freeborn-Mower to  
Serve Exol's Ethanol Plant

MPUC Docket No. E-115/SA-98-701  
  
OAH Docket No.

NOTICE OF APPEARANCE

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

Allan W. Klein, Office of Administrative Hearings, Suite 1700, 100 Washington Square,  
Minneapolis, Minnesota 55401-2138; (612) 341-7609.

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: \_\_\_\_\_