

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Petition of the City of Moorhead for Determination of Compensation Related to the Transfer of Service Territory under Docket Nos. E-275, 134/SA-04-855 and E-275, 134/SA-04-1386

ISSUE DATE: August 24, 2005

DOCKET NO. E-275, 134/SA-04-1699

ORDER HOLDING DOCKET IN ABEYANCE

PROCEDURAL HISTORY

On July 16, 2003, the Commission approved a Settlement Agreement between the City of Moorhead (Moorhead) and the Red River Valley Cooperative Power Association (the Cooperative), authorizing Moorhead to begin providing electric service to areas previously within the Cooperative's service area.¹ The Agreement provided for the parties to negotiate compensation for transferring authority to serve parcels exceeding 80 acres. If negotiations failed, the matter was to be "determined as provided in Chapter 216B of Minnesota Statutes."

On October 13, 2004, Moorhead petitioned the Commission to determine the appropriate compensation to be paid to the Cooperative for Moorhead's acquisition of two parcels, each of which exceeds 80 acres. The City asked that the matter be referred to the Office of Administrative Hearings for a contested case proceeding. The Commission granted this motion and set the matter to be heard by an Administrative Law Judge (ALJ).²

¹ *In the Matter of the Application of the City of Moorhead to Extend its Assigned Service Area into the Area Presently Served by Red River Valley Cooperative Power Association*, Docket No. E-275, 134/SA-02-1207 ORDER ACCEPTING SETTLEMENT, ADJUSTING SERVICE AREA MAPS, AND DISMISSING CONTESTED CASE.

² Current docket, NOTICE AND ORDER FOR HEARING (December 3, 2004).

On October 22, 2004, the Commission approved the transfer of various annexed parcels into the City's service territory under the provisions of the Settlement Agreement,³ including the parcels which are the subject of the October 13, 2004 Petition.

On May 19, 2005, Moorhead asked to withdraw its petition to establish compensation, but without prejudicing Moorhead's right to re-file the compensation petition in the future. On May 23 the Cooperative objected to Moorhead's petition to withdraw. The parties subsequently responded to each other's positions, and stated that Moorhead had initiated an eminent domain action in the District Court for Clay County to determine the appropriate terms for annexing the parcels.

On July 7, 2005, the ALJ certified to the Commission the question of whether Moorhead may withdraw its petition without prejudice in this docket.

On August 18, 2005, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Positions of the Parties

Moorhead asks the Commission to permit Moorhead to withdraw its petition to determine compensation without prejudice. In brief, Moorhead argues that both statute and the Settlement Agreement grant Moorhead the discretion to select either the Commission or the court as the forum for determining the appropriate price to pay for annexing the Cooperative's service area.

The Cooperative acknowledges Moorhead's discretion to select the forum for determining the appropriate price, but argues that Moorhead already exercised that discretion when it petitioned the Commission to make the judgment. The Cooperative disputes Moorhead's discretion to withdraw from the forum selection that it made in its October 13 petition. Additionally, given that Moorhead seeks to withdraw without prejudice, the Cooperative disputes Moorhead's discretion to re-file with the Commission at a later date.

If Moorhead is allowed to withdraw its October 13 petition, the Cooperative argues, control over the service area should revert back to the Cooperative. Moorhead disputes this assertion, arguing that the Commission granted Moorhead the right to serve the disputed areas in a separate docket, unrelated to Moorhead's selection of forum to determine compensation.

³ *In the Matter of the City of Moorhead's Petition to Extend its Service Area into the Area Presently Served by Red River Valley Cooperative Power Association under the Terms and Conditions of the Settlement Agreement in Docket No. E-275,134/SA-02-1207, Docket Nos. E-275, 134/SA-04-855 and E-275, 134/SA-04-1386.*

II. Commission Action

The Commission finds that the law governing Moorhead's discretion to withdraw its compensation petition without prejudice is unsettled. Given that Moorhead has already filed an eminent domain action in district court, the Commission will provide time for the court to address the question before considering the matter further. In the meantime the current docket will be held in abeyance, but the parties should keep the Commission apprised of further developments.

ORDER

1. Docket No. E-275, 134/SA-04-1699 *In the Matter of the Petition of the City of Moorhead for Determination of Compensation Related to the Transfer of Service Territory under Docket Nos. E-275, 134/SA-04-855 and E-275, 134/SA-04-1386* is held in abeyance pending action by the District Court for Clay County on Moorhead's eminent domain proceeding.
2. Parties shall report back to the Commission about the status of the district court proceedings when the court issues a decision or within 60 days, whichever is earlier.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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