

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Appeal by the Hutchinson Utilities Commission of the Assessments of the Minnesota Department of Commerce and Public Utilities Commission for Direct charges Related to the Periods 01/12/2005 to 06/28/2005 and 06/29/2005 to 12/27/2005.

ISSUE DATE: May 31, 2006

DOCKET NO. G-252/CI-04-452

ORDER FINDING THAT THE HUTCHINSON UTILITIES COMMISSION IS NOT SUBJECT TO MINN. STAT. § 216B.045, SUBD. 6 AND IS ENTITLED TO A REFUND

PROCEDURAL HISTORY

In March 2004 the Commission initiated an investigation into the Commission's jurisdiction over the City of Hutchinson's intrastate natural gas pipeline.¹

On October 10, 2005, the Department of Commerce (the Department) and the Commission issued Invoice # 2002020970 in the amount of \$18,274.19 for direct costs of the joint agencies in this docket for the period January 12, 2005 to June 28, 2005. The Hutchinson Utilities Commission (Hutchinson) remitted this amount.

On November 9, 2005, Hutchinson filed objections to the monetary assessment.

On December 27, 2005, the Minnesota Court of Appeals decided Hutchinson's appeal of the Commission's Order concerning jurisdiction over its intrastate natural gas pipeline.

On January 4, 2006, the Commission heard Hutchinson's objections to the October 10, 2005 assessment. The Commission held disposition of the objection until all appeals of the Commission's decision in this docket had been exhausted.

On January 26, 2006, the Commission filed its Petition for Review of the court of appeals with the Minnesota Supreme Court.

On March 8, 2006, the Department and the Commission issued Invoice # 2002022972 in the amount of \$7,404.97 for direct costs in this docket from the period June 29, 2005 to December 27, 2005. Hutchinson remitted this amount.

¹ Minn. Stat. § 216B.045.

The Minnesota Supreme Court denied the Commission's Petition for Review on March 14, 2006.

On March 29, 2006, the Hutchinson filed objections to the monetary assessment.

This matter came before the Commission on May 25, 2006.

FINDINGS AND CONCLUSIONS

Hutchinson objected to the two monetary assessments imposed by the Commission, stating that they were erroneous, unlawful or invalid, because Hutchinson is not a "public utility" subject to regulation under Minn. Stat. § 216B. Hutchinson further claimed that it is not a municipal power agency or municipal electric utility under Minn. Stat. § 216B.62, subd. 5.

On December 27, 2005, the Minnesota Court of Appeals issued its opinion in this matter, determining that the Commission does not have jurisdiction to regulate Hutchinson's pipeline operations:

We conclude that the language of section 216B.01 is clear on its face. It mandates that municipal utilities are excepted from regulation under chapter 216B, "except as specifically provided herein." Minn. Stat. § 216B.01. And none of the provisions cited by respondent as bases for jurisdiction specifically provide for regulation of municipal utilities. See Minn. Stat. § 216B. 045.²

The Minnesota Supreme Court denied the Commission's request for review.

In light of the foregoing, Hutchinson is entitled to a refund of monies paid.

ORDER

1. The Hutchinson Utilities Commission is not subject to Minn. Stat. § 216B.045, subd. 6 in this case and is entitled to a refund of \$18,274.19 and \$7,404.97 by the State of Minnesota.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

² *In the Matter of an Investigation into the Commission's Jurisdiction Over the City of Hutchinson Intrastate Natural Gas Pipeline*, 707 N. W.2d 223, 227 (Minn. 2005).

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