

No. A04-2342 and A04-2414

STATE OF MINNESOTA
IN COURT OF APPEALS

Hutchinson Utilities Commission, an enterprise fund of the
City of Hutchinson, a Minnesota municipal corporation,

Relator,

vs.

Minnesota Public Utilities Commission,

Respondent,

AND

Minnesota Municipal Utilities Association,
a Minnesota non-profit corporation,

Relator,

vs.

Minnesota Public Utilities Commission,

Respondent.

BRIEF OF *AMICUS CURIAE*
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LEGAL ISSUE

Minnesota law exempts municipal utilities from regulation by the Minnesota Public Utilities Commission (MPUC) unless regulation is specifically provided for by statute. State statute authorizes the MPUC to regulate intrastate-natural-gas pipelines but does not specifically provide authority for the regulation of intrastate pipelines operated by municipal utilities. Does the MPUC have authority to regulate the City of Hutchinson's intrastate pipeline?

INTRODUCTION

The League of Minnesota Cities has a voluntary membership of 825 out of 853 cities in Minnesota. The League represents the common interests of cities before judicial courts and other governmental bodies and provides a variety of services to its members including information, education, training, advocacy, and insurance services. The League has a public interest in this case as a representative of cities.¹ The League has a particular interest in clarifying that the Minnesota Public Utilities Commission (MPUC) does not have authority to regulate intrastate-natural-gas pipelines operated by municipal utilities.

In this case, Hutchinson built a natural-gas pipeline that extends outside its borders. All of the pipeline's capacity is currently committed by contract to the Cities of Hutchinson and New Ulm. Relators' Joint Appendix at 19. State law provides that municipal utilities are not subject to MPUC regulation, unless regulation is specifically provided for by statute. Minn. Stat. § 216B.01. The MPUC determined that it has authority to regulate Hutchinson's pipeline under Minn. Stat. § 216B.045, which authorizes the MPUC to regulate intrastate-natural-gas pipelines, but does not specifically authorize it to regulate intrastate pipelines operated by municipal utilities.

Relators' Briefs demonstrate why the MPUC's decision must be reversed. The League concurs with Relators' legal arguments, which will not be repeated here. Instead,

¹ Pursuant to Minn. R. Civ. App. P. 129.03, the League certifies that this brief was not authored in whole or in part by counsel for either party to this appeal, and that no other person or entity made a monetary contribution to its preparation or submission.

this brief will focus on why it is good public policy to affirm the authority of municipal utilities to operate independently of the MPUC.

STATEMENT OF THE CASE AND FACTS

The League concurs with Relators' statements of the case and facts.

ARGUMENT

- I. It is good public policy to affirm the authority of municipal utilities to operate independently of the MPUC because municipal utilities provide an important public service and are managed by local officials who are responsive and accessible to their consumers.**

This case is not only about whether the MPUC can regulate the City of Hutchinson's pipeline. It is also about the policy decision the Minnesota Legislature has made to provide independence to municipal utilities. If the MPUC is allowed to regulate Hutchinson's pipeline, it will significantly erode the independence of municipal utilities. This Court should affirm the authority of municipal utilities to operate independently of the MPUC because municipal utilities provide an important public service and are managed by local officials who are responsive and accessible to their consumers. The Minnesota Legislature, and not the courts, must make the policy decision about whether the law should be changed to provide the MPUC with authority to regulate intrastate-natural-gas pipelines operated by municipal utilities.

A. Municipal utilities provide an important public service.

The Minnesota Legislature has given municipal utilities independence because they provide an important public service. Municipal utilities supply utility services for the public when the private sector is unable to provide reliable services at reasonable

rates or when the private sector is unwilling to provide utility services because the provision of services will not be sufficiently profitable. Indeed, this case is an excellent example of the public service that municipal utilities provide. The MPUC granted the City of Hutchinson a certificate of need to build its pipeline because the City's private supplier was not adequately meeting the City's growing needs. *In re Application of the City of Hutchinson*, No. A03-99, 2003 WL 22234703 (Minn. Ct. App. Sept. 23, 2003) (unpublished opinion). Amicus Appendix at AA-1.

Because municipal utilities are operated to provide a public service, MPUC regulation of them is unnecessary. The primary purpose for MPUC regulation of private providers of utility services is to ensure that consumers receive reliable services at reasonable rates. *See* Minn. Stat. § 216B.01. It is necessary for the MPUC to regulate the rates of private providers because their profit-making focus creates a strong incentive for setting high rates. It is not necessary, however, for the MPUC to regulate municipal utilities because they have a public-service focus and are not driven by profit. In fact, Hutchinson's operation of its pipeline has allowed consumers in Hutchinson and New Ulm to avoid two rate increases requested by their former private supplier, which involved at least a 20% increase of rates. *See* Transcript of March 23, 2004 Commission Hearing at 6.

MPUC regulation of municipal utilities is also unnecessary because statutory and case law relating to a variety of municipal-utility fees confirm the general rule that requires municipal utilities to set reasonable rates. *See, e.g.*, Minn. Stat. § 444.075, subd. 3 (providing that water and sewer rates charged by a municipal utility must be "just and

equitable”); 12 Eugene McQuillin, *The Law of Municipal Corporations* § 35.37.05 (3rd ed. rev. vol. 1995) (providing that rates charged by a municipal utility must be “fair, reasonable, just, uniform and nondiscriminatory”); Atty. Gen. Op. 624a-3 (June 28, 1999) (advising that rates charged by a municipal utility must be “fair and reasonable”). And when a municipal utility provides electric or gas services, state statute provides additional protection for consumers by establishing a procedure to allow the MPUC to review nonresident complaints.

The commission shall have the power to hear, determine and adjust complaints made against any municipally owned gas or electric utility with respect to rates and services upon petition of ten percent of the nonresident consumers of the municipality owned utility or 25 such nonresident consumers whichever is less.

Minn. Stat. § 216B.17, subd. 6.

And finally, MPUC regulation of municipal utilities is not necessary to ensure the reliability of utility services consumers receive because when a municipality provides utility services, it is also a consumer of the services. As a result, it has the strongest of incentives to ensure that it provides reliable services. And in fact, since Hutchinson has been operating its pipeline, it has not received any complaints from its consumers. Brief of Relator City of Hutchinson at 4.

B. Municipal utilities are managed by local officials who are responsive and accessible to their consumers.

The Minnesota Legislature authorized municipal utilities to operate independently because they are managed by local officials – elected or appointed – who are responsive and accessible to their consumers. *See* Minn. Stat. § 216B.01 (exempting municipal utilities from MPUC regulation “[b]ecause municipal utilities are presently effectively

regulated by the residents of the municipality which own and operate them"). When consumers of municipal utilities have concerns, they do not have to deal with a distant corporate bureaucracy. Instead, consumers of municipal services are dealing with local officials who are easily accessible and who are knowledgeable about and invested in the community.

In this case, for example, all of the pipeline's service capacity is committed by contract to the Cities of Hutchinson and New Ulm. Relators' Joint Appendix at 19. The local officials on the Hutchinson Utilities Commission are directly responsible to the City Council and consumers in Hutchinson. Likewise, the New Ulm City Council is directly responsible to the consumers in New Ulm and can exert its contractual rights on their behalf if concerns ever arise about the services Hutchinson provides. In short, MPUC regulation is unnecessary because customers in both cities are able to exert influence over their own local officials if they have concerns about the utility services they are receiving.

CONCLUSION

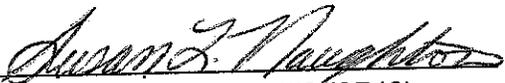
This Court should affirm the authority of municipal utilities to operate independently of the MPUC because municipal utilities provide an important public service and are managed by local officials who are responsive and accessible to their consumers. The Minnesota Legislature, and not the courts, must make the policy decision about whether the law should be changed to provide the MPUC with authority to regulate intrastate-natural-gas pipelines operated by municipal utilities.

For all of these reasons, the League of Minnesota Cities respectfully requests that the MPUC's decision be reversed.

Dated March 25, 2005

Respectfully submitted,

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).