

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of the City
of Lake Crystal to Extend its Assigned
Service Area into the Area Presently
Served by Blue Earth-Nicollet-Faribault
Cooperative Electric Association;
MPUC Docket No. E-104/SA-01-755

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FIRST PREHEARING ORDER

A prehearing conference was held on December 19, 2001, in the Small Hearing Room of the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, Saint Paul, Minnesota.

Persons appearing at the conference were as follows:

Kaela Brennan, McGrann, Shea, Anderson, Carnival, Straughn & Lamb, for the City of Lake Crystal.

Harold LeVander, Jr., Felhaber, Larson, Fenlon & Vogt, for the Blue Earth-Nicollet-Faribault Cooperative Electric Association (BENCO).

Julia Anderson, Assistant Attorney General, for the Department of Commerce.
Stuart Mitchell representing the Commission staff.

Based upon the discussions during the prehearing conference, and all of the files and proceedings herein, the Administrative Law Judge makes the following:

ORDER

SCHEDULE

1. The following schedule shall govern this proceeding, except when modified by the Order of the Administrative Law Judge:

- a. Discovery requests will be made no later than January 25, 2002.
- b. Direct testimony shall be filed no later than February 15, 2002.
- c. Rebuttal Testimony shall be filed no later than February 25, 2002.
- d. The hearing shall begin on Wednesday, March 6, 2002, at 9:00 a.m. in the Small Hearing Room of the Public Utilities Commission. The hearing will continue on March 7, 2002, if needed.

PROCEDURE

2. The Rules of the Office of Administrative Hearings shall govern the conduct of the hearings. The Professionalism Aspirations adopted by the Minnesota Supreme Court apply to these proceedings.

3. The hearing shall be conducted in accordance with the schedule herein established unless otherwise determined by the Administrative Law Judge.

FILING OF DOCUMENTS

4. All direct testimony sponsored by all parties shall be filed in writing with the Administrative Law Judge and shall be received by the parties in accordance with the schedule herein. All prefiled testimony shall be in question and answer format.

5. All documents filed, including prefiled testimony, but excluding information requests and responses, shall be filed as follows:

a. Prior to the issuance of the Report of the Administrative Law Judge, the original document and one copy shall be delivered or mailed to:

Kenneth A. Nickolai
Chief Administrative Law Judge
Office of Administrative Hearings
100 Washington Avenue South, Suite 1700
Minneapolis, Minnesota 55401-2138

b. Fifteen (15) copies shall be filed with the Commission Secretary for distribution among Commissioners and Commission staff. The copies shall be delivered or mailed to:

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
350 Metro Square
121 Seventh Place East
St. Paul, Minnesota 55101

c. Except as hereinafter provided, one (1) copy shall be served personally or by mail on the attorney of record for each party, or, if there is no attorney, upon the party.

d. Four (4) copies of each such document shall be served personally or by mail on Kathy Aslakson as follows:

Minnesota Department of Commerce

85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198

e. A service list is attached hereto as Exhibit A and made a part hereof. Service of documents in the numbers required by this Order shall be made according to such service list.

f. Following the Report of the Administrative Law Judge, original documents shall be filed with the Secretary of the Commission. A copy may be filed with the Office of Administrative Hearings.

g. The effective date of filing for the deadlines set in Finding 1, above is the date that filing is received by the Administrative Law Judge. The filing may be accomplished by facsimile transmission, followed by a hard copy.

h. Proof of service shall be filed with each filed document.

6. One copy of any document or information filed with or supplied to the Public Utilities Commission or the Commission staff relative to any issue in these proceedings which is not otherwise served on the parties or their attorneys pursuant to Paragraph 13 hereof shall be served on the attorney of record for each party, or, if there is no attorney, upon the party.

DISCOVERY

7. All requests for information shall be made in writing to the person from whom the information is sought with a copy of the request mailed to all parties of record. No such request shall be provided to the Administrative Law Judge. The party responding to the information request shall provide the information requested to the requesting party within ten (10) days from the date of the request. The information need not be supplied as a matter of course to all other parties. In the event the information cannot be supplied within such ten-day period, the responding party shall notify the requesting party, in writing, within five days of the request to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon Motion of a party.

8. Further discovery may be had herein in accordance with Minnesota Rules, parts 1400.6700 - 1400-6900.

PREFILED TESTIMONY

9. Prefiled direct, and rebuttal testimony shall not be bound into the record but shall be received as an exhibit to the record. Prefiled testimony not offered into the record shall be considered withdrawn and the witness may not be cross-examined concerning the withdrawn testimony. Except for cause shown, all revisions or corrections to any prefiled testimony shall be made in writing and served upon the Administrative Law Judge and the parties no later than five days prior to commencement of the evidentiary hearing.

ORDER OF TESTIMONY

10. The order of testimony and cross-examination shall be determined at a later date. Except for cause shown, any new affirmative matter that is not offered in reply to another party's direct case shall not be offered in rebuttal or surrebuttal testimony and exhibits; provided, however, that the parties may raise in rebuttal or surrebuttal testimony affirmative matters in response to statements made by members of the public at the public hearings whether or not the issue was previously a part of that party's direct case.

11. No later than five days prior to the commencement of the evidentiary hearings herein, each party shall submit to the Administrative Law Judge, the Commission and the other parties, a list of that party's witnesses and the order in which those witnesses will appear, indicating, if necessary, any day certain for testimony known to the party calling the witness. The final order of testimony will be as established by the Administrative Law Judge.

EXAMINATION OF WITNESSES

12. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

13. Except for cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states in writing its objection with particularity to the Administrative Law Judge and serves a copy of such objections on the Commission and all other parties no later than five days prior to commencement of the evidentiary hearings. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony which is not objected to shall be admitted during the evidentiary hearings without the necessity of laying a foundation for the testimony.

MISCELLANEOUS

14. Parties are encouraged to stipulate evidence not in dispute and to narrow the scope of contested issues to the matters actually in dispute. All stipulations will be subject to public testimony to be received, acceptance by the Administrative Law Judge,

and review by the Commission, which shall include the opportunity for the Commission or its staff to examine any witness on the record irrespective of the existence of a stipulation between the parties with respect to such testimony.

15. This Order is effective immediately and may be modified by the Administrative Law Judge for cause.

Dated this 27th day of December, 2001.

/s/ Kenneth A. Nickolai

KENNETH A. NICKOLAI

Chief Administrative Law Judge

Exhibit A
Service List
10-2500-14600-2

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Robert J. Hauge, Administrator
City of Lake Crystal
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Lake Crystal, MN 56055-0086