

MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Daniel Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie Sieben	Commissioner
John Tuma	Commissioner

Docket No. E129,324/SA-17-141

In Matter of North Star Electric
Cooperative, Inc.
and Warroad Municipal
Light & Power Department

**REPLY COMMENTS OF THE CITY OF
WARROAD**

SYNOPSIS

Considering the initial comments in this matter, the Commission has no objection presented as to the 2013 Service Territory Agreement entered between two non-regulates utilities -- the Warroad Municipal Light & Power Department of the City of Warroad (the "City"), a municipal utility, and North Star Electric Cooperative, Inc. ("North Star"), a rural electric cooperative utility. Indeed, the intervener, the Red Lake Band of Chippewa Indians (the "Red Lake Band") admitted that the 2013 Agreement "served as an appropriate measure of compensation" There is no objection to the 2013 Agreement itself, and the Commission should modify the official service territory maps.

As to the Red Lake Band request to somehow "hold" the change in service territory until the electric rate issue between it and the City "is resolved," this request falls outside the jurisdiction of the Commission. And it fails as a practical matter, in that it appears that Red Lake Band is not seriously interested in resolving the issue. The City and Red Lake Band have been discussing this issue for over three years. Red Lake Band provided no response to the City's most recent counteroffer dated

September 27, 2017. Indefinitely holding on updating the official service territory map – particularly on a rate issue that the Legislature assigned to municipal utilities – lacks support in statutes and in public policy. The Commission should instead process the service-territory change to accurately reflect the true service territory boundaries.

ARGUMENT

I. THE COMMISSION SHOULD DISREGARD UNTIMELY COMMENTS.

The Commission’s notice in this matter issued a deadline “for filing initial comments [as] October 17, 2017 at 4:30 pm.” The City, North Star, MMUA, and the Department of Commerce filed documents within this deadline. The Comments filed by the Red Lake Band were dated and filed October 19, 2017 – two days after the deadline. No request for an extension was presented to the Commission or the parties, and no explanation was provided for the delay. The Commission should not consider the untimely comments.

II. THE COMMISSION SHOULD UPDATE THE ELECTRIC SERVICE TERRITORY MAPS TO REFLECT THE UTILITIES’ AGREEMENT.

If the Commission determines to address the issues in Red Lake Band’s comments, then it should update the official electric service territory map. Significantly, Red Lake Band raised no challenge to the underlying agreement. Indeed, the initial comments noted that the compensation in the 2013 Agreement “served as an appropriate measure of compensation for the exchange of North Star’s service rights.” Oct. 19, 2017 Comments at 3. The Red Lake Band concluded that “Therefore, the City has satisfied the statutory requirements to purchase the service territory from North Star.” *Id.* at 3. Accordingly, there is no objection to the terms of the 2013 Agreement,

nor any claim that the statutory requirements were not met. The Commission should update the official map to accurately reflect the current service territory boundaries. There is no benefit to having incorrect boundaries on the official map.

III. THE COMMISSION SHOULD DECLINE TO ADDRESS ANY OTHER ISSUES.

The Red Lake Band has not identified any objections to the 2013 Agreement, nor any legal authority for the Commission to hold or deny the service territory update. *Johnson v. St. Paul Ins. Cos.*, 305 N.W.2d 571, 573 (Minn. 1981) (“The party seeking to void a settlement has the burden of showing sufficient grounds for its vacation.”).

Instead, the Red Lake Band effectively asked for “more time” until its rate dispute with the City is resolved. Tellingly, the Red Lake Band provides no timetable for resolution, no process to achieve resolution, and no offer to assist with the costs of this proceeding.¹ Perhaps actions speak louder than words. Red Lake Band has failed to provide any response to the City’s September 27, 2017 settlement correspondence, undermining any claimed desire to resolve this matter.

In past matters, even if a customer has objected to having electric service transferred to a new utility – which the Red Lake Band has not argued in this case – the Commission has nonetheless approved the service territory transfer. See, e.g., *In re Assigned Service Area Agreement between Northern States Power Company d/b/a Xcel Energy and the Delano Water, Light and Power Commission*, No. E-228, 002/SA-

¹ Although Red Lake Band’s comments outlined its perspective as to some disputed facts, no underlying evidence or verification was provided. The Commission should uphold the statutory authority allowing municipal utilities to set rates, and need not consider factual matters. If the Commission determines to consider the merits of the municipal utility’s rates, then it should either accept the verified statement of facts in the City’s initial comments, or order a contested case proceeding to fully develop the record.

05-1445 (Nov. 7, 2005) (authorizing transfer of service territory despite objections of customers and stated preference to be served by a different utility). The Commission reasoned that the statutory provisions promoted the broad public interest, rather than the self-serving interests of an individual customer:

However strongly individual customers may prefer specific utility providers, the statute requires the Commission to set assigned service area boundaries to promote the broad, statewide public interest. The public interest is best served by honoring reasonable agreements between utilities, including agreements to straighten service area boundaries to ensure clarity and ease of administration. *Id.* at 4.

In the present case, the broad public interest supports honoring the 2013 Agreement, particularly when no objection has been presented to the terms of the agreement. Instead, it appears that the Red Lake Band wishes to contest the City's allocation of costs among its ratepayers. But such an allocation comprises the essence of rate-setting – a duty reserved to municipal utilities, and not the Commission. Minn. Stat. § 216B.02 (2016).

Moreover, Red Lake Band's comments incorrectly suggest that it has no "recourse." But this suggestion ignores the role of the City itself, and its policies and determinations. The City is subject to the Open Meeting Law, and its agendas are publicly available. The 2013 Agreement was approved, and the City's rate policy was adopted, in open meetings, with opportunities for members of the public to attend or submit comments. No representative of the Red Lake Band attended these meetings or provided any written comments. As a public body, the City is also subject to further requirements, including reasoned decision-making. The Red Lake Band had and has ample opportunities to approach the City. Its failure to do so should not affect this proceeding.

