

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

**COMMENTS OF THE RED LAKE BAND
OF CHIPPEWA INDIANS**

INTRODUCTION

The Minnesota Public Utility Commission should not update the official service map to reflect the settlement agreement between the City of Warroad (the “City”) and North Star Electric Cooperative (“North Star”) of the purchase of a service territory until such time as the responsibility for the costs of the service territory buyout are fully resolved. Currently, there is an ongoing dispute between the City and the Red Lake Band of Chippewa Indians (the “Red Lake Band”), the utility customer, regarding reimbursement of the costs associated with the purchase of the service territory. As a non-regulated utility, the City has the authority to disconnect the Red Lake Band’s utility service at its discretion if the Band does not comply with its demands for payment of the disputed claim. Updating the official electric service territory map to reflect the permanent transfer of service territory from North Star to the City would permit the City to demand payment from the Red Lake Band without any means of recourse. The Minnesota Public Utilities Commission must assure the Red Lake Band that the City does not engage in unchecked actions, in which the Band has no recourse.

ARGUMENT

I. The Commission Should Not Update the Electric Service Territory Maps to Reflect the Buyout Agreement Between the City of Warroad and North Star Electric Cooperative

The primary issue in this matter is whether the Minnesota Public Utilities Commission should adjust the electric service territory boundaries and update the official map to reflect a change in boundaries when there is an ongoing dispute as to the terms of the service territory buyout. The City has sought to recover the costs associated with the service territory buyout from the Red Lake Band, including seeking to hold the Band fully responsible for the \$600,000 payment made to North Star Electric. The Red Lake Band takes the position that it is not legally obligated to reimburse the City for the costs associated with the service territory buyout. First, the Minnesota utility laws do not permit the City to impose the costs associated with the purchase of a service territory onto a single customer. Second, at no time did the Red Lake Band agree to reimburse the City for the costs of the service territory buyout. Under the discretion granted to non-regulated municipal utility entities, updating the electric service territory map would permit the City to engage in arbitrary and unchecked actions against the Red Lake Band.

II. The City of Warroad's Purchase of the Service Territory from North Star Electric Cooperative Satisfies the Relevant Minnesota Utility Laws

Under Minnesota law, a municipality which owns and operates an electric utility may extend its corporate boundaries through annexation by purchasing the facilities of another utility. Minn. Stat. § 216.44(a). The municipal utility must compensate the previously assigned utility for the "appropriate value of its properties within the area . . . giving due consideration to revenue and value of the respective properties." Minn. Stat. § 216.44(b). "In the event the municipality and the electric utility involved are unable to agree to the terms of the payment or exchange, the municipality or the electric utility may file an application with the commission

requesting that the commission determine the appropriate terms for the exchange or sale.” *Id.* Factors the commission shall consider in determining the appropriate terms for an exchange include “the original cost of the property, less depreciation, loss of revenue to the utility formerly serving the area, expenses from integration of facilities, and other appropriate factors.” *Id.*

Here, the one-time payment of \$600,000 made by the City to North Star served as compensation required by the Minnesota utility laws to complete the purchase of an electric service territory. Under Minnesota law, the only requirement imposed on the City to purchase the service territory is to provide fair compensation to North Star. The sale of the service territory represented a lost business opportunity to North Star. The one-time payment of \$600,000 served as an appropriate measure of compensation for the exchange of North Star’s service rights. Therefore, the City has satisfied the statutory requirements to purchase the service territory from North Star.

Additionally, the Minnesota utility laws do not permit the City to impose the costs associated with the service territory buyout onto its customers. The laws governing a service territory purchase by a municipality serve to ensure that the cooperative receives fair compensation in exchange for the loss of services within the territory. There is no support in the above-referenced statutes for the City to unilaterally demand full payment for the service territory buyout from a single customer. Therefore, the City may not seek to impose reimbursement costs onto the Red Lake Band as a customer within the service territory.

III. The Red Lake Band Was Not a Party to the Electric Service Purchase Agreement, and the Band Did Not Agree to Reimburse the City for the Costs of the Buyout

In September 2013, the City and North Star entered into a Service Territory Agreement, which provided that “the City shall pay the Cooperative a one-time payment of Six Hundred Thousand Dollars (\$600,000).” The Red Lake Band was not a party to the Service Territory

Agreement. Additionally, the Red Lake Band did not agree to reimburse the City for any portion of the \$600,000 payment made to North Star. Furthermore, there was no discussion between the City and the Red Lake Band regarding reimbursement prior to the execution of the Service Territory Agreement. Without any agreement in place to reimburse the City, the Red Lake Band is not legally obligated to reimburse the City any amount of the service territory buyout.

CONCLUSION

The Red Lake Band of Chippewa Indians respectfully requests that the Minnesota Public Utilities Commission not update the official service map to reflect the agreement between the City and North Star until such time as the compensation issues between the City and the Red Lake Band are resolved, and to assure the Band that the City is not free to engage in unjustified actions against it without any recourse.

Dated: October 19, 2017

Respectfully submitted,

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