

Staff Briefing Papers

Meeting Date	October 11, 2018	Agenda Item **8
Company	North Star Electric Cooperative, Inc. City of Warroad	
	E129, E324/SA-17-141	
Docket No.	In the Matter of The Joint Request of North Star Electric Cooperative, Inc. and the City of Warroad to Modify Electric Service Territory Boundaries	
Issues	Should the Commission approve the requested service territory transfer from North Star Electric Cooperative to the City of Warroad? Should the Commission take any other action?	
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Relevant Documents	Date
Initial Filing, North Star Electric Cooperative, Inc.	February 15, 2017
Notice of Appearance, Red Lake Band of Chippewa Indians	March 8, 2017
Initial Comments	
Minnesota Municipal Utilities Association (MMUA)	October 17, 2017
North Star Electric Cooperative, Inc.	October 17, 2017
City of Warroad	October 17, 2017
Letter, Department of Commerce	October 17, 2017
Red Lake Band of Chippewa Indians	October 19, 2017
Department of Commerce	December 8, 2017
Reply and Supplemental Comments	
City of Warroad (Reply)	December 8, 2017
Minnesota Rural Electric Association (MREA)	January 31, 2018
North Star Electric Cooperative, Inc.	January 31, 2018
City of Warroad (Supplemental)	January 31, 2018
Department of Commerce	January 31, 2018

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

Background

On February 15, 2017, North Star Electric Cooperative (“North Star”) filed a service territory agreement for approval by the Minnesota Public Utilities Commission between itself and the City of Warroad (“Warroad”). The agreement involved the transfer of a parcel of land from North Star’s service territory to Warroad’s.

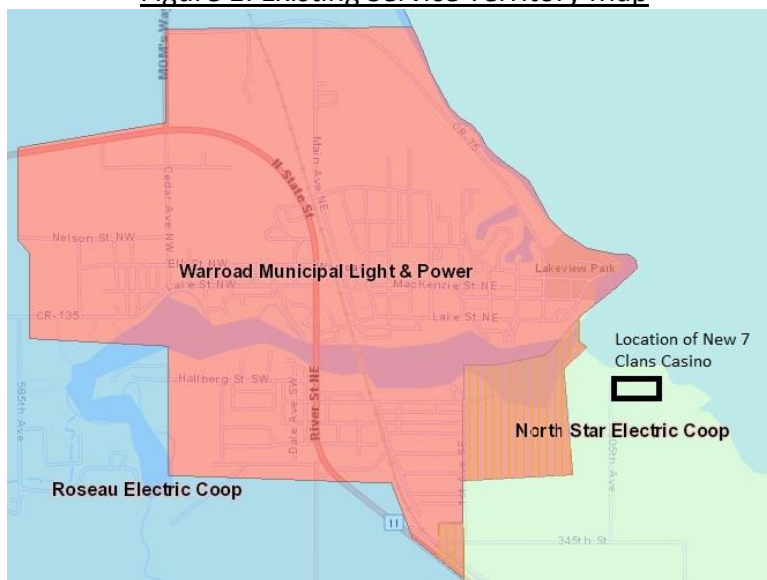
On March 8, 2017 the Red Lake Band of Chippewa Indians (“Red Lake Band”) filed a Notice of Appearance, objecting to the transfer of the service territory from the coop to the city. The Red Lake Band alleged that they were not party to the negotiations between North Star and Warroad, and were now required to pay Warroad’s cost of the service territory buy out.

North Star, Warroad, and the Red Lake Band filed several extension requests throughout much of 2017 as they attempted to negotiate a settlement between themselves. On October 17, 2017, North Star, Warroad, the Red Lake Band, and the Minnesota Municipal Utilities Association (MMUA) filed comments. The Department of Commerce filed a letter stating that since it did not know whether the parties had reached an agreement, it would await their comments before filing its own analysis. The Department then filed its initial comments on December 8, 2017. North Star and Warroad asked for a supplemental comment period to respond to the Department. The Supplemental Comment Period closed on January 31, 2018, with the Department, Warroad, North Star, and Minnesota Rural Electric Association (MREA) filing comments.

Case History

During 2010, the Red Lake Band initiated the planning process for a new casino to replace its Seven Clans Casino in Warroad, Minnesota. During 2012, the Red Lake Band contacted the City of Warroad to inquire about receiving city services at the new casino location. In early 2013, Warroad annexed the parcel of land where the new casino would be located. Figure One depicts the current service territory boundaries, with the location of the new 7 Clans Casino added by Commission staff. The service territory transfer would include that parcel of land.

Figure 1: Existing Service Territory Map



On September 9, 2013, the Warroad and North Star entered into a service territory agreement to transfer the parcel of land from the Cooperative to the City. In Article II of the agreement Warroad agreed to make a payment of \$600,000 to North Star within 60 days of the execution of the agreement.

On September 24th, 2013 an attorney for Warroad attempted to email the service territory agreement to the Commission’s consumer affairs office, however, the individual used an invalid email address and the Commission never received the email. Minn. Stat. [216.17 Subd. 3](#) requires all utility filings to be made electronically through the Commission’s electronic filing system.

The parties are in dispute about the timing, content, and nature of communications between the Red Lake Band and the utilities about who would provide service to the Casino, the details of the service territory transfer, and the payment of the \$600,000 from the Casino to the City of Warroad.

Staff relied on written documents in the record in developing the following timeline, and notes where parties dispute each other’s assertions.

Timeline of Events

Date	Event/Document	Event
Feb 24, 2011	Warroad City Council Meeting Minutes ¹	Warroad City Council meeting minutes indicated a discussion around the proposed location for the new Casino, including a discussion of possible costs to the city to improve the lot. It was not clear whether members of the Red Lake Band were present.
Jul 31, 2012	Red Lake Band letter to Warroad ²	The Red Lake Band sent a letter to the mayor of Warroad informing the City of their plans to build the new Seven Clans Casino.
Sep 28, 2012	North Star letter to Red Lake Band ³	North Star sent a letter to the Red Lake Gaming Commission informing the Commission that they would serve the proposed Casino location.
Nov 5, 2012	North Star letter to Red Lake Band ⁴	North Star sent a second letter to the Red Lake Gaming Commission about the Casino’s location in North Star’s service territory.
Nov 8, 2012	Annexation petition by Red Lake Gaming Enterprises ⁵	Red Lake Gaming Enterprises submitted a formal request to annex the Casino property into the City of Warroad
Nov 26, 2012	Warroad City Council Meeting Minutes ⁶	Warroad City Council meeting minutes indicated a discussion between the Casino project development committee and the City Council, including a discussion of annexing the property and providing necessary utilities.

¹ DOC, Dec 8, 2017 Comments, Attachment 4, p. 4.

² Warroad Oct 17, 2017 Comments, Exhibit 1, DOC Dec 8, 2017 Comments, Attachment 1, p. 12

³ DOC, Dec 8, 2017 Comments, Attachment 3, p. 5.

⁴ *Id.*, p. 6

⁵ *Id.*, Attachment 1, p. 8

⁶ *Id.*, Attachment 4, p. 5

Apr 23, 2013	Annexation Agreement ⁷	The City of Warroad and Lake Township jointly agree to transfer the parcel of land for the future Casino to Warroad.
Sep 9, 2013	SA Transfer Agreement ⁸	The service territory agreement between the City of Warroad and North Star Electric Cooperative for the transfer of the Casino property is executed. Article II of the Agreement states: “Within sixty (60) days of the execution of this agreement, the City shall pay the Cooperative a one-time payment of Six Hundred Thousand Dollars (\$600,000)”
	Warroad Initial Comments, p. 3	Warroad indicated that it made the \$600,000 payment within 60 days of the service territory transfer
Sep 24, 2013	Service Area filing attempt ⁹	Warroad staff attempted to file a service territory transfer with the Commission, but sent it to an invalid Consumer Affairs email address. The petition was never received by the PUC.
Nov 12, 2013	Meeting about Service Area Transfer Payment ¹⁰	Warroad claimed that representatives met with members of the Red Lake Band and discussed the \$600,000 payment. The Red Lake Band disputes this conversation/meeting occurring in subsequent letters to the City and in comments filed with the Commission
Aug 8, 2014	Warroad City Council Meeting Minutes ¹¹	The Warroad City Council authorized the city attorney to negotiate with the Red Lake Band for the repayment of the \$600,000. According to the meeting minutes, representatives of the Red Lake Band were not present at the meeting.
Sep 24, 2014	Warroad letter to the Red Lake Band ¹²	Letter detailed possible payment plans from the Red Lake Band to Warroad for the \$600,000 cost of the service territory rights.
Oct 15, 2014	Red Lake Band reply to Warroad ¹³	The Red Lake Band responded to Warroad’s September 24 letter, stating that they do not recall any agreement to pay the \$600,000 fee, and requested records of the agreement, if available. The Red Lake Band also requests the data used to come up with the \$600,000 payment.
Apr 27, 2015	Warroad City Council Meeting Minutes ¹⁴	Warroad passed a policy pertaining to electrical service extended to annexed areas. The policy applies to any

⁷ *Id.*, Attachment 1, p. 8

⁸ North Star Electric Cooperative, Initial Filing, Feb 15, 2017, p. 3

⁹ DOC, Dec 8, 2017 Comments, Attachment 1, p. 13.

¹⁰ Warroad Supplemental Comments, Affidavits of Ron Kleinschmidt and Amy Friesner. The Red Lake Band disputes that the City communicated costs around the service territory transfer at this meeting.

¹¹ Accessed by PUC Staff through the City of Warroad Website:

https://www.warroadmn.org/index.asp?SEC=669A902D-F72D-40E7-A06A-76BD68986721&Type=B_BASIC

¹² DOC, Dec 8, 2017 Comments, Attachment 4, p. 8.

¹³ *Id.*, p. 9

¹⁴ Accessed by PUC Staff through the City of Warroad Website:

https://www.warroadmn.org/index.asp?SEC=D3042E52-0955-4AA8-8585-C0DADAE0285&Type=B_BASIC

		customers receiving service in an annexed area. According to the meeting minutes, representatives of the Red Lake Band were not present at the meeting.
Jun 8, 2015	Warroad City Council Meeting Minutes ¹⁵	The Warroad City Council authorized a 1.5 cent/kWh surcharge on the Casino meter under the new city policy to recover costs for the service territory acquisition. According to the meeting minutes, representatives of the Red lake Band were not present at the meeting.
Sep 30, 2015	Warroad letter to the Red Lake Band ¹⁶	Warroad sent a letter to the Red Lake Band informing them of the charges associated with the selected Industrial/Generator rate for the Casino. The letter also included the new 1.5 cent/kWh “annexed area charge”
Oct 21, 2015	Warroad Initial Comments, p. 4 Warroad response to DOC IR	Warroad began charging a 1.5 cent/kWh to recover the costs of the service territory charge. The Casino initially paid the charge, but later deducted it from utility payments.
Apr 4, 2016	Warroad letter to the Red Lake Band ¹⁷	Warroad sent a letter in response to two letters from the Red Lake Band (not in the record) defending its previous assertion that the \$600,000 was communicated to the Red Lake Band, and requesting that the Casino pay the delinquent 1.5 cent/kWh adder or risk disconnection.
Feb 15, 2017	SA Transfer Petition ¹⁸	North Star filed the Service Area transfer petition with the Commission through eDockets.

Relevant Statute

Minnesota Statutes §§ 216B.37 through 216B.43 governs Minnesota’s Assigned Electric Service Areas. Municipal Service Territory Extensions are governed by §§ 216B.44 through 216B.47.

ASSIGNED ELECTRIC SERVICE AREAS

- [216B.37](#) ASSIGNED SERVICE AREA; ELECTRIC UTILITY; LEGISLATIVE POLICY.
- [216B.38](#) DEFINITIONS.
- [216B.39](#) ASSIGNED SERVICE AREA.
- [216B.40](#) EXCLUSIVE SERVICE RIGHT; SERVICE EXTENSION.
- [216B.41](#) EFFECT OF INCORPORATION, ANNEXATION, OR CONSOLIDATION.
- [216B.42](#) SERVICE EXTENSION IN CERTAIN SITUATIONS.
- [216B.421](#) HOMESTEAD; OPTION OF ELECTRIC SERVICE.
- [216B.43](#) HEARING ON COMPLAINT.

MUNICIPAL ACQUISITION OF UTILITY PROPERTY

- [216B.44](#) MUNICIPAL SERVICE TERRITORY EXTENSION.
- [216B.45](#) MUNICIPAL PURCHASE OF PUBLIC UTILITY.

¹⁵ *Id.*

¹⁶ DOC, Dec 8, 2017 Comments, Attachment 4, p. 11.

¹⁷ DOC Dec 8, 2017 Comments, Attachment 4, p. 12.

¹⁸ North Star Initial Petition, Feb 15, 2017

- [216B.46](#) MUNICIPAL ACQUISITION PROCEDURES; NOTICE; ELECTION.
- [216B.465](#) VOTER RATIFICATION OF MUNICIPAL PURCHASE; LIMITED APPLICATION.
- [216B.47](#) ACQUISITION BY EMINENT DOMAIN.

Minn. Stat. § 216B.38

For the purposes of Minn. Stat. §§216B.37 to 216B.44, the definition of “electric utility” includes municipal and cooperative utilities:

Subd. 5. **Electric utility.** "Electric utility" means persons, their lessees, trustees, and receivers, separately or jointly, now or hereafter operating, maintaining, or controlling in Minnesota equipment or facilities for providing electric service at retail and which fall within the definition of "public utility" in section 216B.02, subdivision 4, and *includes facilities owned by a municipality or by a cooperative electric association*.¹⁹

Minn. Stat. § 216B.39

This portion of statute addresses how service boundaries should be determined. Subd. 3 provides:

...at any time after April 12, 1974, the commission may on its own or at the request of an electric utility make changes in the boundaries of the assigned service areas, but only after notice and hearing as provided for in sections 216B.17 and 216B.18.

Minn. Stat. § 216B.44

In an electric service territory transfer between a municipal utility and another utility, Minn. Stat. § 216B.44(b) requires that “[t]he municipality acquiring the facilities shall pay to the electric utility formerly serving the area the appropriate value of its properties within the area which payment may be by exchange of other electric utility property outside the municipality on an appropriate basis giving due consideration to revenue from and value of the respective properties.”

If an agreement cannot be reached § 216B.44(b) allows either the municipality or the electric utility to petition the Commission for a determination of the financial terms of the exchange. In the vast majority of cases before the Commission, the two utilities conduct arm’s length negotiations and jointly file an agreement with the Commission for the approval of the transfer of service territory. North Star and Warroad were able to reach such an agreement and did not request that the Commission determine a financial settlement.

Section § 216B.44 does not address whether a utility can pass along the costs of the service territory transfer to individual customers who are being annexed, nor whether the customers have a right to be involved in the decision making process.

Past Commission decisions have ruled that customers do not have the ability to choose between service providers, except under limited exceptions:

1. 216B.42 Subd. 1 **Large customer outside municipality**

¹⁹ Emphasis added by Staff

Allows customers with loads of over 2,000 kW to choose an electric provider after a determination by the Commission based on a number of factors

2. **216B.421 Homestead; Option of Electric Service**

Would not apply as it is only applicable to pre-1974 construction

3. Straddling exceptions – in prior Commission order customers with buildings and property straddling multiple service territories have been granted some discretion in their service provider in some instances. However, the nuances of this issue are under Commission review in Docket No. E015,106/SA-17-893.

There have been a couple of cases where customers were unhappy with the transfer of service from their existing provider through municipal utility annexation (Docket No. 05-1445, Docket No. 14-824). In those cases, the Commission ruled that customer choice does not factor into a service territory transfer.

Rate regulation of municipal utilities

Minn. Stat. § [216B.01](#) identifies:

Because municipal utilities are presently effectively regulated by the residents of the municipalities which own and operate them ... it is deemed unnecessary to subject such utilities to regulation under this chapter except as specifically provided herein.

Minn. Stat. § [412.321](#) grants municipalities the authority to establish an electric utility and carry out its duties:

Any statutory city may own and operate any waterworks, district heating system, or gas, light, power, or heat plant for supplying its own needs for utility service or for supplying utility service to private consumers or both. It may construct and install all facilities reasonably needed for that purpose and may lease or purchase any existing utility properties so needed. It may, in lieu of providing for the local production of gas, electricity, water, hot water, steam, or heat, purchase the same wholesale and resell it to local consumers. After any such utility has been acquired, the council, except as its powers have been limited through establishment of a public utilities commission in the city, shall make all necessary rules and regulations for the protection, maintenance, operation, extension, and improvement thereof and for the sale of its utility products.

Minn. Stat. § [412.361](#) oversees the commission powers of municipal utilities. Subd. 4 states:

The commission shall have power to fix rates and to adopt reasonable rules and regulations for utility service supplied by the municipally owned public utilities within its jurisdiction.

Party Comments

Department of Commerce

The Department sent out extensive IRs to the parties and established a rough timeline of events, captured in Staff's timeline above. The Department focused its analysis on two components of the transfer: notice to the customer and compensation.

Customer Notice

The Department explained that Minn. Stat. § 216B.39 grants the Commission the authority to modify electric service territory boundaries, either “on its own or at the request of an electric utility...but only after notice and hearing as provided for in section 216B.17 and 216B.18.”²⁰

Furthermore, the Department noted that the service territory agreement between the two utilities made no mention of the Red Lake Band nor the Casino, and that information only came about through record development in the present docket. The Department concluded that there is no documentation in the existing record of the Red Lake Band receiving notification that the service territory transfer needed to be approved by the Commission. The Department asserted that the utilities’ citation to § 216B.39, subd. 3 indicates that they were aware that the customer would need to receive notice of any proceedings.

The Department highlighted the following portion of the service territory agreement that pertains to the outcome of the Commission’s proceedings:

If for any reason the MPUC refuses to recognize the service territory described in Article 1, the Cooperative shall return any payments made by the City pursuant to Article 2, upon demand by the City.²¹

In its supplemental comments, the Department once again reiterated its position that sufficient notice was not given to the Red Lake Band:

Based on information provided in the City’s, the Cooperative’s, and the Red Lake Band’s filings, and/or responses to Department information requests, the Department found no written indication that the Red Lake Band, as an affected customer related to this service territory proceeding, was notified that the service territory transfer needed to be approved by the Commission.²²

Compensation

The Department pointed out that although the service territory agreement contains the \$600,000 payment amount, the first written evidence in the record is a September 24, 2014 letter to the Red Lake Band outlining payment terms for the service territory transfer.²³ Furthermore, according to the Red Lake Band’s response to the Department’s IR, it was not aware that Commission approval was needed for the transfer of service territory until February 23, 2017.²⁴

In supplemental comments, the Department noted that after the Red Lake Band declined to pay the \$600,000 payment outright, Warroad passed a new policy that imposed a 1.5 cent/kWh fee on the Casino’s electric bill. As the Department put it, “The City’s policy decision effectively imposed a \$600,000 fee upon the Red Lake Band for the privilege of receiving electric utility service from the City.”²⁵

²⁰ Minn. Stat. 216B.39

²¹ DOC, Dec 8, 2017 Comments, p. 7, citing Service Territory agreement section article 3.3.

²² DOC, Jan 31, 2018 Supplemental Comments, p. 4

²³ DOC, Dec 8, 2017 Comments, p. 7

²⁴ *Id.*

²⁵ DOC, Jan 31, 2018 Supplemental Comments, p. 5

Conclusions and Recommendation

The Department determined that based on the written record, the Red Lake Band was not informed of either the negotiations about the service territory transfer nor that it would be required to pay the cost. Therefore, the Department concluded that Warroad and North Star did not demonstrate that approval of the service territory transfer is consistent with the public interest and Minn. Stat. § 216B.39. For those reasons, the Department recommended that the Commission deny, without prejudice, the service territory boundary transfer.

City of Warroad

Initial Comments

In its initial comments, Warroad stated that the Red Lake Band's intervention did not pertain to the actual boundary change or update of the maps. The Red Lake Band instead raised concerns about municipal utility rates, which are outside of the jurisdiction of the Commission. Warroad emphasized that it chose to recover the costs of the service territory transfer from the Casino, "otherwise the City's remaining customers would be in a position of subsidizing the annexed area customer(s)."²⁶

Warroad distinguished the difference between requesting the Commission to update its official maps and requesting a determination for compensation. In this instance, Warroad identified that it was only requesting an update of the map as it had agreed to the terms of compensation with North Star.

Warroad recommended that the Commission decline to address the Red Lake Band's requests as it pertains to the City's ratemaking authority which does not fall under Minn. Stat. Ch. 216B. Furthermore, Warroad raised concerns about what would happen to the service territory agreement if the Commission did not approve the service territory transfer. Warroad indicated that if the transfer were denied, it would raise public policy concerns, mainly that the Commission would then be delving into a settlement between two parties.

As Warroad put it,

Courts do not second-guess the provisions of a settlement agreement, but instead rely upon the result of the parties' arms-length negotiations as a contract. "The settlement of a lawsuit is contractual in nature, requiring offer and acceptance for its formation, and it is subject to all of the other rules of interpretation and enforcement."²⁷ "Courts should not, nor do they, look for excuses or loopholes to avoid contracts fairly and deliberately made whether such be by individuals or corporations."²⁸ In the present case, neither the City nor North Star has asked the Commission to vacate or reconsider the 2013 Agreement. It stands as a completed contract.²⁹

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²⁶ Warroad, Oct 17, 2017 Comments, p. 4

²⁷ *Beach v. Anderson*, 417 N.W.2d 709, 711 (Minn. App. 1988), *rev. denied* (Minn. Mar. 3, 1988).

²⁸ *Equitable Holding Co. v. Equitable Bldg. & Loan Ass'n*, 202 Minn. 529, 535, 279 N.W. 736, 740 (1938).

²⁹ Warroad, Initial Comments, pp. 9-10

Finally, the Commission should seriously consider whether, as a matter of policy, it desires to extend its regulatory authority over municipal utilities under these circumstances. The principle of deference to local governance has been embodied in state law for many years.³⁰

Reply Comments

In reply comments, Warroad disagreed with the Red Lake Band's request to put the service territory transfer "on hold." Warroad indicated that it attempts to negotiate a settlement with the Red Lake Band failed, and that the PUC should not hold up the service territory transfer on "a rate issue that the Legislature assigned to municipal utilities."³¹ Warroad reemphasized its position that the dispute was over a ratemaking issues, which lies under its jurisdiction under Minn. Stat. § 216B.02. Furthermore, Warroad noted that its ratemaking policy was adopted by the city council at an open meeting which no members of the Red Lake Band attended.³²

Warroad also urged the Commission not to consider the Red Lake Band's comments as they were filed two days after the comment period deadline.

Supplemental Comments

In its supplemental comments, Warroad made the following clarifications:

- Warroad paid \$600,000 to North Star after the execution of the service transfer agreement, and Warroad has not recovered any of those costs from the Casino.
- Proper notice was provided to the Casino as it worked with Warroad and North Star to transfer service at the construction site.
- Warroad communicated the surcharge to the Red Lake Band on multiple occasions.

Warroad argued that the Department's conclusion that proper notice was not given to the Red Lake Band was incorrect. As Warroad explained, Minn. Stat. 216B.39 Subd. 3. and its references to Minn. Stat. 216B.17 and 216B.18 refer to the Commission's standard 10 day meeting notice, which would be fulfilled when the Commission issued its notice for the forthcoming meeting. Furthermore, Warroad contended that the Red Lake Band was well aware of the service territory transfer due to the ongoing negotiations around the payment of the \$600,000.

Warroad also disagreed with the Department's characterization that the transfer was not in the public interest, pointing out that the Department did not offer any analysis to support its position. Additionally, Warroad noted that even using the public interest standard, the existing agreement serves the public interest by giving the Casino lower rates and higher reliability. If the agreement were to be rejected, North Star would be required to build out new infrastructure to serve the Casino, which would result in the "unnecessary duplication of electric utility facilities."³³ Warroad explained that a decision against the service territory

³⁰ *Id.*, p. 10

³¹ Warroad, Reply Comments, p. 2

³² It is unclear whether Warroad publically notices the items and agenda for its city council or public utilities board meetings before those meetings are held. See [https://www.warroadmn.org/vertical/sites/%7B313EADBF-9DEA-4AB0-A45B-374BEBB7B48A%7D/uploads/Warroad_MN_Ordinances\(1\).pdf](https://www.warroadmn.org/vertical/sites/%7B313EADBF-9DEA-4AB0-A45B-374BEBB7B48A%7D/uploads/Warroad_MN_Ordinances(1).pdf)

³³ Minn. Stat. 216B.37

transfer would create a slippery slope for the Commission if it were to determine that settlement agreements in service territory cases were open to revision.

Finally, Warroad pointed out that the neither Red Lake Band nor the Department objected to the transfer itself, only to the \$600,000 payment.

North Star Electric Cooperative

Initial Comments

In its initial comments, North Star emphasized that § 216B.44(b) only authorizes the Commission to determine appropriate payment terms for a transfer of service territory if the utilities involved in the transfer are not in agreement. As the two utilities are non-regulated and do not have any disputes, North Star maintained that the Commission should not make a decision on the payment terms of the service territory transfer.

Supplemental Comments

In supplemental comments, North Star emphasized that due to its large, sparsely populated service territory, its rates are somewhat higher than neighboring utilities. North Star compared its rates to the Warroad’s (using 2015 rates)³⁴:

	Basic Service Fee	Energy Rate
North Star	\$2,640.00	\$0.0710/kWh
Warroad	\$26.75	\$0.0545/kWh

In addition, North Star pointed out that all of its demand charges were higher, and in the case of an outage, its offices were much further away. Therefore, North Star concluded that the Casino would receive less expensive and better service in the case of an outage if it is being served Warroad. North Star recommended that the Commission approve the service territory transfer and decline to address any other issues.

Red Lake Band

In its comments, the Red Lake Band identified the primary issue as whether or not the Commission should update the official service territory map while there is an ongoing dispute relating to the terms of the transfer. The Red Lake Band requested that the Commission decline to approve the transfer as it could result in its disconnection.

The Red Lake Band also claimed that it is “not legally obligated to reimburse the City for the cost associated with the service territory buyout” as “Minnesota utility laws do not permit the City to impose the costs associated with the purchase of a service territory onto a single customer.”³⁵

However, the Red Lake Band acknowledged that Warroad and North Star had satisfied the conditions of § 216B.44 (a) with the onetime payment of \$600,000 for the transfer of the service territory. What the Red Lake Band disputed is the passing of those costs onto the

³⁴ North Star, Jan 31, 2018 Supplemental Comments, p. 3

³⁵ Red Lake Band, Initial Comments, p. 2

Casino, as it claims there is no statutory support in Chapter 216B for Warroad to require full payment of the costs.

The Red Lake Band concluded that since it was not a party to the agreement between North Star and the Warroad, and since it had not engaged in discussions nor a written agreement with Warroad to pay the costs, it was not obligated to reimburse the City for those costs.

Minnesota Municipal Utilities Association (MMUA)

MMUA highlighted portions of Minn. Stat. chapters 216B and 412 that it contended established the scope of the PUC's authority over service territory transfers. In MMUA's view, the Legislature did not give the Commission authority to review or approve service territory agreements unless the utilities negotiating the agreement are unable to come to mutually acceptable terms. As MMUA put it,

Thus, the 1974 law that created service territories did not give the MPUC veto power over city councils to enter into negotiated service territory compensation agreements. The statute simply authorized the MPUC to mediate disputes when they occur. For the MPUC to attempt to make such judgments, it would inappropriately insert itself between local officials and the public they serve.³⁶

MMUA asserted that the Commission does not have the authority to approve service territory transfers, and that it only has the authority to update the official record of service territory boundaries.

Minnesota Rural Electric Association (MREA)

MREA filed brief comments in support of North Star's position. It also pointed out that Minn. Stat. § 216B.39 does not allow the Commission to set rates for non-investor owned utilities, and that the Commission's role in service territory matters is to update the maps upon being presented with a mutually agreed to transfer of service territories between utilities.

Staff Analysis

Parties identified two distinct issues in this docket:

1. The transfer of electric service territory from North Star Electric Cooperative to the City of Warroad.
2. The payment of the cost of the service territory transfer by the Red Lake Band to the City of Warroad.

Staff compiled the following questions for the Commission to consider, based on what parties asserted in their comments:

- Does the transfer of service territory occur when two utilities execute a service territory agreement or when the Commission approves the transfer and updates the maps?
- Does the Commission have jurisdiction over the rates of a municipal utility when a service territory transfer is involved?

³⁶ MMUA Initial Comments, p. 3

- Can a utility pass along the cost of a transfer to the customers in the transferred area?
- When a customer is required to pay the cost of a service territory transfer, do they have the right to be a party to the negotiations of the transfer, and do they have a right to prior notice of the costs of the transfer?

These are jurisdictional and legal questions for the Commission to consider and determine. Staff notes, however, that the statutes that pertain to this service territory transfer do not contain any provisions that address how and from whom the acquiring utility will obtain the monies to pay for the acquisition. Staff also notes that Minn. Stat. §§ 21B.44(d) and (e) and 216B.465 specifically provide that when a municipal utility acquires electric service facilities or territory from another electric utility, the municipal utility does not need to obtain a ratification of its acquisition decision from voters, who presumably are also the municipal utility's customers.

Staff also highlights that there does not appear to be any dispute that Warroad has the authority to annex and serve electric service territory within its own municipal city limits. Previous Commission decisions have found that customer preference is not a factor under Minn. Stat. § 216B.44.

The present record contains a large amount of hearsay and it is difficult to discern what exact representations were made between the parties about the level of compensation. However, from Staff's understanding of the record the exact dollar amount of \$600,000 was not communicated in writing to the Red Lake Band until September 24, 2014, well after the execution of the service territory agreement in September, 2013. Prior communications may have occurred between parties, but there is not written evidence of any such offer in the record.

To recap the Commission's authority over service area boundaries, Minn. Stat. §216.39 subd. 3 states that:

...at any time after April 12, 1974, the commission may on its own or at the request of an electric utility make changes in the boundaries of assigned service areas, but only after notice and hearing as provided for in sections 216B.17 and 216B.18.

First, it is noteworthy that this language is permissive and discretionary, allowing the Commission to make changes in assigned service areas. Had the legislation stated that the Commission shall make changes in utility boundaries upon petition of electric utilities, the Commission would likely have little discretion but to approve it.

Second, this statute requires notice of the proposed change in service territory boundaries and a Commission hearing to make a determination on that proposal before the service territory boundaries are changed, and that did not happen here. North Star and Warroad in effect made a service territory transfer on their own in September 2013 without notice to the Commission until 3 ½ years later in February 2017. And it is not clear what notice North Star and Warroad utility customers received of the boundary change, and when they may have gotten that notice. Given the importance of electric service to all Minnesota residents and businesses, the Commission has a long standing practice of requiring utilities to ensure that a customer potentially facing a change in utility provider understands that the change is being proposed,

how their rates will be impacted by the change, and how their service may be impacted by the change. In some cases, customers have contacted the commission to state that their new utility will no longer offer a service they are subscribed to, and in at least one docket the Commission delayed approval of the boundary change while the utilities worked out a solution with the customer.³⁷

Whether Warroad and North provided adequate notice is for the Commission to consider. The Department has laid out a number of notice issues for the Commission to review carefully.

Procedural Considerations

It is unclear what would occur if the service territory transfer was not approved. To the best of staff's knowledge, the Commission has not denied a service territory transfer where the customer is already receiving service from the new provider. The Commission may wish to ask the parties what would happen if it determined that the boundaries should not be changed, that is, how the transfer agreement would be unwound so that North Star would have its facilities back and Warroad would have its \$600,000 back. The Commission may also want to ask the Red Lake band whether or not it would support Commission denial of the transfer.

Staff is also unclear on Warroad's request for a contested case proceeding if the transfer is denied. Presumably Warroad is suggesting that the Commission refer the issue of the Commission's authority to deny the transfer so an ALJ can develop the factual record and provide a legal analysis on that issue. While portions of the record related to the \$600,000 payment are undeveloped,³⁸ staff believes the record is sufficiently developed for the Commission to reach the legal and policy questions around its authority over service territory transfers. Staff understands the issues to be questions of legal interpretation of Minn. Stat. §§ 216B.37 through 216B.44.

Decision Options

1. Approve the service territory transfer from North Star Electric Cooperative, Inc. to the City of Warroad. Request that the Minnesota Geospatial Information office update the Commission's maps to reflect the service area designations as shown on the maps in the petition. (*North Star, Warroad, MMUA, MREA*)
2. Deny the service territory transfer without prejudice (*Department of Commerce, Red Lake Band*)
3. Order a contested case proceeding to fully develop the record. (*Warroad, if the transfer is denied*)
4. Take some other action.

³⁷ Docket E148, 228/SA-14-824

³⁸ There are several references to letters and other communications between parties pertaining to the \$600,000 payment that are not currently in the record. These may be necessary if the Commission wishes to have a more complete record with respect to the timing and substance of the actual notice Warroad gave Red Lake about the existence of the transfer agreement and the \$600,000 payment Warroad expected Red Lake to pay as a result of the transfer.