


Staff Briefing Papers

Meeting Date	June 17, 2021	Agenda Item 4*
Company	Red River Valley Cooperative Power Association (“RRV”), City of Barnesville and Barnesville Municipal Power (“City”)	
Docket No.	E134, E210/C-20-770	
	In the Matter of the Complaint by Red River Valley Cooperative Power Association arising from an Assigned Service Area Violation by the City of Barnesville and Barnesville Municipal Power	
Issues	Should the Commission Approve the Parties’ Settlement Agreement and Mutual Release?	
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 Relevant Documents	Date
Initial Filing Complaint by Red River Valley Cooperative Power Association Arising from an Assigned Service Area Violation by City of Barnesville and Barnesville Municipal Power	October 8, 2020
Settlement Agreement and Mutual Release between Red River Valley Cooperative Power Association and the City of Barnesville	May 4, 2021
Comments of the Minnesota Department of Commerce	May 6, 2021
Office of Administrative Hearings (OAH) Order-Recommended Order on Settlement Agreement	May 14, 2021

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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.

I. Statement of the Issues

Should the Commission Approve the Parties' Settlement Agreement and Mutual Release?

II. Background

On October 8, 2020, Red River Valley Cooperative Power Association (RRV) filed an assigned service territory violation complaint against the City of Barnesville and Barnesville Municipal Power (collectively, "City").

On November 24, 2020, the Commission issued a Notice and Order for Hearing in this docket. In this Order, the Commission referred RRV's complaint to the Office of Administrative Hearing (OAH) for a contested case proceeding.

On March 1, 2021, the Administrative Law Judge (ALJ) held a proceeding status conference with the parties. At the status conference, the parties stipulated to continue the matter so they can mediate the matter and fully discuss resolution.¹ At the request of the parties, the ALJ issued an Order for Extension of Continuance on April 9, 2021.

On May 4, 2021, a Settlement Agreement and Mutual Release between RRV and the City of Barnesville was filed in this proceeding (Settlement). The Settlement resolves the service dispute originally raised by RRV.

On May 6, 2021, the Minnesota Department of Commerce (Department) filed comments in support of the Settlement agreement. On May 14, 2021, the OAH issued a Recommended Order on settlement Agreement. In this document, the ALJ recommended that the Commission approve the Parties' settlement agreement.

III. Parties' Comments

City of Barnesville and Red River Valley Cooperative

Below Staff is providing the core service area paragraphs of the Settlement:

1. The City agrees to pay to RRV the sum of Forty-One Thousand Eight Hundred Fifty Dollars (\$41,850) for all past, present and future electric service to customers served and to be served on each and all of those certain properties identified and contained within the City annexed territory as set forth in Exhibit A ("Annexed Properties"), which include the properties that are the subject of the Service Dispute. The Annexed Properties include property currently owned and operated by the Dollar General store, property known to the Parties as formerly the site of a Dairy Queen, and property known to the Parties as the Egge property, all contained within land previously annexed by the City. In consideration of payment of the foregoing

¹ Please see OAH Order for Continuance at page 1.

amount, RRV agrees to the re-drawing of the City's service territory to include all Annexed Property and releases all RRV's rights and interest and claim of assigned service territory to the Annexed Properties. The City's payment to RRV shall be made within 30 days of the MPUC approval of this Settlement Agreement. The Parties agree to cooperate in the preparation and submittal to State mapping authorities of the foregoing agreed modification of service territory boundaries effectuated by this Agreement.

2. RRV and the City further agree that the City shall continue to serve existing customers at those properties identified in Exhibit B hereto and shall have sole right and responsibility for service to such electric service subject only to the following:

a. If the City annexes any of the Exhibit B properties for the purpose of acquiring RRV's assigned service territory within the annexation, the Parties agree to proceed pursuant to Minnesota Statutes, Section 216B.44 and other applicable law to resolve issues of compensation, each Party reserving all rights thereunder. The City agrees to provide RRV timely notice of its intent to annex any property identified in Exhibit B;

b. If any of the Exhibit B properties that have not been annexed pursuant to paragraph 2 a. above, change from residential to commercial use, the City shall provide notice to RRV of the expected date of use change to the property and change to City electric service to the new customer. The City and RRV shall first attempt to resolve issues of compensation related to continued service by the City or RRV requested service of the new commercial customer by good faith direct negotiation. If the Parties are unable to resolve said issues, they agree to retain a mutually acceptable mediator and attempt to resolve all issues by mediation, each Party bearing one half of the mediator costs. If the Parties are unable to resolve all issues through mediation, either Party may commence an action with the MPUC under Section 216B.43, each Party reserving all rights thereunder.

3. RRV expressly agrees that a change in property ownership by an existing customer of an Exhibit B property or properties, standing alone, shall not trigger a claim by RRV for compensation from the City for its continued service of the same identified property. RRV may continue to assert the June 24, 2008, and May 13, 2013, letters in future disputes. The City retains all defenses to the foregoing letters.

4. If required by the MPUC, the Parties agree to prepare a separate SBE describing the terms of paragraphs 2 and 3 to be filed with the MPUC separately from this Settlement Agreement.²

² Please see the May 4, 2021 Settlement Agreement at pp. 3-4.

Department

The Department recommends approval of the Settlement and Mutual Release between RRV and the City executed on April 30, 2021.

The Department believes that the Settlement is in the public interest and comports with relevant law. The Settlement avoids unnecessary duplication of electric utility service and promotes economical, efficient, and adequate electric service to the public in line with the policy stated in Minn. Stat. § 216B.37 (2020). The Settlement also comports with state statutory requirements regarding any potential annexation through RRV and the City's agreement to follow the process laid out in Minn. Stat. § 216B.44 and other legal requirements. Resolution of this dispute without a settlement would require substantial private and government resources. The Department believes that the Settlement is a more efficient use of resources and is in the public interest.

Finally, the Department appreciates RRV's and the City's commitment to cooperate in updating the State mapping authorities of the modification of service territory boundaries effected by the Settlement.³

OAH

The ALJ recommends that the Commission approve the Settlement, including the Mutual Release, between RRV and the City executed on April 30, 2021. These agreements resolve the dispute between RRV and the City, as well as setting forth a framework for addressing changes in use and ownership of certain properties which are the subject of current disputes, along with potential broader disputes in the future. As part of the Settlement, the City agrees to pay \$41,850 to RRV for all past, present, and future electric service to customers to which the City is already providing service, as described in Exhibit A of the agreement. RRV and the City also agree that the City will continue to serve existing customers at the properties identified in Exhibit B of the agreement, subject to certain conditions. In addition, RRV and the City agree to proceed in accordance with Minn. Stat. § 216B.44 (2020) and other applicable laws in the event of the City's intent to annex any property identified in Exhibit B.

The ALJ concludes that the Settlement is in the public interest and is consistent with relevant law. The Settlement avoids unnecessary duplication of electric utility service and promotes economical, efficient, and adequate electric service to the public in line with the policy stated in Minn. Stat. § 216B.37 (2020). The Settlement also aligns with state statutory requirements regarding any potential annexation through RRV and the City's agreement to follow the process laid out in Minn. Stat. § 216B.44 and other legal requirements. Resolution of this dispute without a settlement would require substantial private and government resources. The Settlement is a more efficient use of resources and is in the public interest.⁴

³ Please see the comments of the Minnesota Department of Commerce at pp. 1-2.

⁴ Please see Memorandum of Administrative Law Judge Barbara Case dated May 14, 2021.

IV. Staff Analysis

Staff applauds the parties' efforts to resolve the issues originally raised in RRV's complaint. As was stated by the ALJ and the Department, the Settlement and the Mutual Release are in the public interest and should be approved.

With respect to the service-by-exception (SBE) agreement(s), Staff believes that it would be prudent to require the SBE(s) be filed. SBE(s) should be filed for including but not limited to those properties identified in Exhibit B of the Settlement Agreement. Such a filing would allow the Commission to update the map to reflect where the SBEs are to avoid any future issues. Service area exceptions undergo review by the Department, and then are added to the map. At that point, no additional formal action by the Commission is required. This is done to ensure the map is accurate, and the SBE(s) could be filed in a single docket.

V. Decision Options

- 1. Should the Commission Approve the Parties' Settlement Agreement and Mutual Release?**
 - a. Approve the Settlement Agreement and Mutual Release.
 - b. Modify the Settlement Agreement and Mutual Release.
 - c. Reject the Settlement Agreement and Mutual Release.

- 2. Should the Commission require the Parties to prepare a separate service-by-exception (SBE) as identified in paragraphs 2 and 3 of the Settlement Agreement to be filed separately from the Settlement Agreement?**
 - a. Require the SBE agreements be filed separately from the Settlement Agreement (including but not limited to those properties identified in Exhibit B of the Settlement Agreement).
 - b. Do not require the SBE agreement(s) be filed.