

October 17, 2017

Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, MN 55101-2147

RE: In the Matter of North Star Electric Cooperative, Inc. and Warroad Municipal Light & Power Department – Service Territory Agreement; Docket Nos. E129, E324/SA-17-141

Dear Commissioners:

Minnesota Municipal Utilities Association (MMUA) submits the following Comments for your consideration in the above-referenced docket of the Minnesota Public Utilities Commission (MPUC).

MMUA's mission is to unify, support and serve as a common voice for municipal utilities.

Of the 125 municipal electric utilities in Minnesota, 112 were established prior to 1940; 36 before 1900. Today the median size is approximately 1,800 customers (smaller than the smallest electric cooperative) with the smallest, Whalan Electric Department, having only 39 customers.

These comments are intended to illuminate the appropriate scope for this docket given the limited role of the MPUC regarding service territory agreements entered into by municipal utilities under Minnesota law.

The law authorizing municipalities to enter agreements is not in Minnesota Statutes Chapter 216B. Rather, Section 412.321 was enacted in 1949 and states, in part:

*"[a]ny 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. . . After any such utility has been acquired, the council, to the extent 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."*  
§412.321

Minnesota Laws 1974, chapter 429, codified as Minnesota Statutes Chapter 216B, established the MPUC and charged it with regulating "every *public utility* as defined herein" (§216B.08, emphasis added, and See §216B.02, subd. 4, defining "public utility" to exclude municipal utilities). At the same time the law preserved for municipal utilities regulation "by the residents of the municipalities which own and operate them . . . except as specifically provided herein" (§216B.01).

Chapter 216B explicitly preserves the pre-existing authority of municipal, and only municipal, utilities to expand the areas in which their services are available to reflect the natural growth of their political boundaries.

Minnesota Statutes, Section 216B.44 states, in part:

*(a) Notwithstanding the provisions of sections 216B.38 to 216B.42, whenever a municipality which owns and operates an electric utility (1) extends its corporate boundaries through annexation or consolidation, or (2) determines to extend its service territory within its existing corporate boundaries, the municipality shall thereafter furnish electric service to these areas unless the area is already receiving electric service from an electric utility, in which event, the municipality may purchase the facilities of the electric utility serving the area.*

*(b) The 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.” §216B.44*

The statutes above govern the agreement between the City of Warroad and North Star Electric Cooperative. One statute governs city powers, the other makes it clear that the establishment of service territories in 1974 does not repeal the ability of cities to extend their utilities and regulate the sale of their utility products.

Nowhere does the Legislature task the MPUC with reviewing or approving agreements regarding service areas annexed by municipal utilities, nor does it place MPUC authority above that of the local governments involved in such agreements, except in one specific circumstance. The only time the MPUC has a role in agreements entered into by municipal utilities is in *disputes* between the municipality and the other utility involved after either of them petitions for intervention from the MPUC.

*“In the event the municipality and the electric utility involved are unable to agree as 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. After notice and hearing, the commission shall fix and determine the appropriate value of the property within the annexed area, and the transfer shall be made as directed by the commission.” Minn. Stat. §216B.44(b).*

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. When disputes do occur, and either utility “file[s] an application with the commission” for its assistance in resolving it, the statute gives guidance to the MPUC for calculating compensation. That guidance exists because the MPUC would not be familiar with a local situation to judge whether negotiated terms are fair to either utility. For the MPUC to attempt to make such judgments, it would inappropriately insert itself between local officials and the public they serve. Those officials are either elected city councilors or public utility commissioners appointed by mayors and city councils, much as MPUC commissioners are appointed by the governor.

MMUA submits that the statutory language must control over the language of any particular filing. In the present case, the initial filing by North Star mistakenly referenced *approval* of its agreement. This mistake is apparent in light of the statutory language. This case does not involve an agreement between cooperatives or between a co-op and an investor-owned utility, when analysis and approval by the Commission may well be appropriate. That approval is not necessary nor required by law here.

Given the underlying statutes, the appropriate scope of MPUC action should be updating the official state record of territory boundaries under section 216B.39 to reflect the change being made amicably between Warroad and North Star under Section 216B.44. It is MMUA's strong opinion that the MPUC's approval of the agreement is not required and that the territory change was effective upon execution of the agreement.

Thank you for your consideration of these Comments.

Sincerely,

s/Bill Black  
Bill Black  
Government Relations Director