

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 21, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.

CASE 06-E-1528 – Petition of Village of Theresa to Exercise an Electric Franchise in
the Town of Theresa, Jefferson County.

ORDER GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY

(Issued and Effective March 28, 2007)

BY THE COMMISSION:

INTRODUCTION

By petition filed December 13, 2006, the Village of Theresa (Village) seeks approval under §68 of the Public Service Law (PSL) to extend its electric franchise area in the Town of Theresa (Town). The extended franchise resolves boundary dispute issues with Niagara Mohawk Power Corporation (Niagara Mohawk) in the Town.

By motion filed January 23, 2007, the Village further requests an expedited proceeding pursuant to 16 NYCRR §21.10(a). As required by that subdivision, a notice was published on January 18, 2007, in the Watertown Daily Times, a newspaper of general circulation in the area. A copy of the petition and public notice was served on Niagara Mohawk.

THE PETITION AND COMMENTS THEREON

In 1948, the Town granted a franchise to the Village to provide electric service to a portion of the Town outside of the Village, and the Commission approved the

exercise of that franchise.¹ Over the years, the Village extended its electric service in the Town to areas arguably outside the original franchise. Niagara Mohawk commenced Court action on January 30, 2001, claiming the Village had illegally extended its municipal electric system and was providing electric service to customers in the franchise area of Niagara Mohawk in the Town.

Niagara Mohawk and the Village came to a resolution of the issues regarding the boundaries of their respective service territories in the Town by stipulation. The settlement agreement indicates that the Village's franchise may be subject to varying interpretations such that it is in the interest of both parties to delineate the Village's service territory in the manner shown on a map annexed to the agreement. On December 14, 2005, the Town amended the franchise area for the Village's electrical system in the Town in accord with the settlement agreement.

According to the Village, no one other than the Village has provided, or is now providing, electric service to the area encompassed by the new franchise agreement. The Village does not need to construct any new facilities to serve the new franchise area as facilities already exist in the area. The electric rates to be charged will be identical to the Village's current rates being charged pursuant to its tariff on file with the Commission. All customers (approximately 25) currently being served by the Village in the new franchise area will continue to be served by the Village.

By letter filed January 25, 2007, opposition to the petition was expressed by Mr. Timothy Minnick, the former Mayor of the Village of Theresa (former Mayor). The former Mayor is opposed to extending the franchise area to accommodate vacant land belonging to the current Mayor's brother. The former Mayor indicates that the Mayor is a practicing real estate agent and the vacant land (parcel number 34.11-1-51) is currently in the Niagara Mohawk franchise area and has been for sale and listed with the Mayor for many years. The extension of the Village's franchise area to accommodate the vacant

¹ Case 13988, Village of Theresa Order Granting a Certificate of Public Convenience and Necessity, (issued December 7, 1948)

land makes the vacant land much more lucrative for development. The former Mayor states that theoretically the Mayor may reap benefit from such franchise extension, besides the obvious familial gain. The former Mayor concludes that the Mayor's action and the Village Board's complacent agreement represents an egregious conflict of interest, and raises serious ethical and legal questions.

By letter filed February 5, 2007, the Village commented on the letter filed by the former Mayor. The Village also included a map that shows the location of the parcel in the franchise area. The Village indicates that the parcel was one of the original seven properties in its original franchise area outside the Village when the original franchise was granted by the Town. According to the Village, the parcel was at one time part of a much larger parcel that included other lots that have since been subdivided and sold and included within the franchise area of the Village. Accordingly, the stipulation the Village made with Niagara Mohawk did not add this property to its franchise area as it has always been part of such area. Well before there was any issue with Niagara Mohawk, the Village explains, its electric poles ran along the County road in front of this property. Since this property has always been part of the Village's franchise area, the franchise line only reflects the historical boundary and there is no intention to benefit anybody by showing the franchise line drawn there. The Village indicates that the Mayor's brother also owns property on the opposite side of the road from the property in question. That property is not part of the Village's current franchise area; it was not added to the Village's franchise territory and remains in the Niagara Mohawk service area. The Village concludes that there was no particular discussion about the parcel in question in the course of its negotiations with Niagara Mohawk as it was never at issue.

The property in question is located along Kelsey Bridge Road. The 1948 franchise indicates that the Village's franchise area along Kelsey Bridge Road extends a distance of 5,800 feet from the corporate limits of the Village. In response to staff's e-mail inquiry of February 15, 2007, the Village indicates that the northwestern boundary of tax map parcel number 34.11-1-51 is approximately three quarters of a mile (3,960 feet) from the Village boundaries and the parcel has approximately 450 feet of frontage along the

Kelsey Bridge Road. The Village contends that, the parcel has access to no other road on which the Village has been authorized to place power.

DISCUSSION AND CONCLUSION

The question presented by the former Mayor's comments is whether the parcel at issue is within or outside the original franchise territory of the Village. Because this question can be answered on the basis of maps of which we may take official notice, pursuant to §306(4) of the State Administrative Procedure Act, a hearing before an Administrative Law Judge is not necessary. Therefore, we will grant the Village's motion for an expedited proceeding.

Data from the New York State Geographic Information System Clearinghouse shows that the nearest boundary of the property is located at a distance of 5,618 feet from the Village boundary, and that the property has 1,235 feet of frontage along the Kelsey Bridge Road. Thus, a portion of the parcel is within the 5,800 feet distance of the limit of the original franchise territory.

We conclude that the property as it existed in 1948 defines the current franchise area. It is illogical to conclude that the parcel in question (which was part of a larger parcel that was included in the 1948 franchise) would have been considered outside the Village's franchise territory. The result would be a single property owner / customer being provided distribution service by two different electric systems.²

A boundary dispute has existed between the Village and Niagara Mohawk for some time. Granting the Village's petition is in the public interest because it resolves this dispute.

A hearing having been held on March 21, 2007, we find, pursuant to PSL §68, that the Village's exercise of the franchise granted by the Town is necessary and convenient for the public service.

² Case 00-E-0454 *Niagara Mohawk Power Corporation*. Declaratory Ruling And Order Denying Request For Extraordinary Relief (issued September 28, 2000)

The Commission orders:

1. The motion for an expedited proceeding on a non contested application filed by the Village of Theresa is granted.
2. A Certificate of Public Convenience and Necessity, authorizing the Village of Theresa to provide electric service in its new franchise area in the Town of Theresa is granted.
3. This proceeding is closed.

By the Commission,

JACLYN A. BRILLING
Secretary