

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2400
of Lincoln Electric System,)
Lincoln, seeking contract carrier) MOTIONS DENIED
permit authority.) Entered: February 21, 2001

BY THE COMMISSION:

O P I N I O N S A N D F I N D I N G S

By its application filed October 4, 2000, Lincoln Electric System (LES or Applicant) of Lincoln, Nebraska, seeks contract carrier permit authority. Notice of the application appeared in The Daily Record, Omaha, Nebraska on October 5, 2000, pursuant to the rules of the Commission. Formal interventions were filed by a number of parties, all of which were made a party to this proceeding.

On November 9, 2000, intervenor, Nebraska Telecommunications Association (NTA) submitted a Motion for Declaratory Ruling challenging LES' legal authority to provide for-hire telecommunications services in the State of Nebraska. The NTA's motion asked the Commission to declare as a matter of law that the City of Lincoln, d/b/a Lincoln Electric System, is not authorized to offer for-hire telecommunications services or to hold a contract carrier permit to perform such services because it lacks the required legal authority.

A hearing on the NTA motion was held December 11, 2000, in the Commission Hearing Room. Attorneys Jack L. Shultz and Gregory D. Barton appeared on behalf of the NTA. Attorneys Mark J. Ayotte and Douglas L. Curry appeared on behalf of LES. Each party presented their respective arguments on the NTA's Motion for Declaratory Ruling, and the matter was submitted for decision by the Commission at the conclusion of the December 11 oral arguments.

On January 9, 2001, this Commission entered an Order Granting NTA's Motion for Declaratory Ruling. In that order, the Commission determined that there is no statute, charter provision or ordinance that either expressly or implicitly grants to LES the power to engage in the for-hire contract carrier telecommunications business.

Furthermore, the Commission concluded that because LES, as a political subdivision, can exercise no power except such as has been expressly delegated to it, or such as may be inferred from some express delegated power essential to give effect to that power, LES does not have the legal authority to provide for-hire contract carrier telecommunications services.

On January 19, 2001, LES filed a Motion for Rehearing with the Commission requesting that the Commission enter an order granting rehearing in this matter. Soon thereafter, on January 24, 2001,

the NTA filed a Motion to Strike Unauthorized Attachments to LES' Motion for Rehearing. As both motions requested oral arguments, an oral argument was held on the motions on January 31, 2001, in the Commission Hearing Room.

After oral arguments and upon review of the briefs filed in this matter, the Commission is of the opinion and finds that both the Motion to Strike and the Motion for Rehearing should be denied.

The attachments at issue in the Motion to Strike are simply certified copies of the Lincoln Charter, Chapter 4.24 - Lincoln Electric System Administrative Board and LES Resolutions 97-7 and 2000-10. These attachments, while not officially introduced into the record as exhibits, were clearly discussed, at least in part, both in the pleadings filed in this matter and in the oral arguments on the initial Motion for Declaratory Ruling.

The Commission entered the January 9, 2001, order in this matter, based upon all the evidence available to the Commission at that time. To the extent that the attachments mentioned above were not part of the record at that time the decision was rendered, the Commission is of the opinion and finds that they should be accepted into the record at this time.

Nonetheless, the Commission affirms its initial decision in this matter and hereby denies LES' Motion for Rehearing. As discussed above, the Commission has reviewed all of the evidence in this matter and is unpersuaded by LES' Motion for Rehearing. While the Commission has now allowed the record to be supplemented with additional exhibits, the additional evidence has no impact on our decision.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the NTA's Motion to Strike is denied.

IT IS FURTHER ORDERED that LES' Motion for Rehearing is also denied.

MADE AND ENTERED at Lincoln, Nebraska, this 21st day of February, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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