

BEFORE THE MUNICIPAL COMMISSION
OF THE STATE OF MINNESOTA

Robert W. Johnson	Chairman
Arthur R. Swan	Vice Chairman
Robert J. Ford	Member
Laurence Wagner	Ex-Officio Member
W. A. Nibbe	Ex-Officio Member

IN THE MATTER OF THE RESOLUTION)	
FOR THE ANNEXATION OF THE ENTIRE)	
UNINCORPORATED TOWNSHIP OF BURNSIDE)	<u>FINDINGS OF FACT,</u>
TO THE CITY OF RED WING, GOODHUE)	<u>CONCLUSIONS OF LAW,</u>
COUNTY, MINNESOTA)	<u>AND ORDER</u>
MUNICIPAL COMMISSION DOCKET A-1850)	

The instant proceeding is one of three proceedings involving the Town of Burnside and the City of Red Wing which were consolidated by the Commission for hearing. Commission Docket Numbers for these proceedings together with a description of the proceeding is as follows: C5-mt Red Wing-Burnside consolidation; I-38 Burnside Incorporation; A-1850 Red Wing annexation of Burnside. The matters came on for hearing before the Municipal Commission on July 10, 1970, August 11, 1970, August 12, 1970, August 13, 1970, and September 2, 1970. The City of Red Wing appeared by its attorney, Charles Richardson. The Township of Burnside appeared by its attorneys, Samuel H. Hertogs and Fred Burstein. The Burnside Community Development Association and the petitioners for consolidation appeared by their attorney, Richard Johnson. Northern States Power Company appeared by their attorney David McGannon and later by their attorney, Raymond A. Haik. Opportunity was also afforded interested persons not represented by attorney to make statements pertaining to the matters before the Commission.

The Commission having considered the evidence and the arguments of counsel and being fully advised, now makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. The resolution of the City Council of Red Wing and the petition by certain property owners resident in Burnside for consolidation of the Township of Burnside and the City of Red Wing into a single new municipality were filed on April 30, 1970, and June 8, 1970, pursuant to and in compliance with Minnesota Statutes, Chapter 414, and said petition and resolution were in all respects proper in form, contents, execution and filing. The area proposed for consolidation is the entire Town of Burnside and the entire City of Red Wing. (MMC C5-mt)

2. The resolution of the Board of Supervisors of Burnside Township for the annexation of the entire unincorporated Township of Burnside with the City of Red Wing was filed on June 9, 1970, pursuant to and in compliance with Minnesota Statutes, Chapter 414, and was in all respects proper in form, contents, execution, and filing.
(MMC A-1850)

3. The resolution of the Board of Supervisors of Burnside Township for the incorporation of the Township of Burnside as a village was filed on July 6, 1970, pursuant to and in compliance with Minnesota Statutes, Chapter 414, and was in all respects proper in form, contents, execution, and filing. The area proposed for incorporation is the entire Town of Burnside. (MMC I-38)

4. Due, timely, and adequate legal notices of the hearing ordered by the Minnesota Municipal Commission were properly published, served, and filed.

5. The instant proceeding came on for hearing on July 10, 1970, at which time it was consolidated for hearing with Minnesota Municipal Commission proceeding C5-mt, and on August 11, 1970, at which time it was further consolidated with Minnesota Municipal Commission proceeding I-38. Further consolidated hearings were held on August 12, 13, and September 2, 1970. The hearings were properly held by a lawful quorum of the Commission. The hearing were closed and the matter taken under advisement.

6. A Petition of the Northern States Power Company for Further Hearings was filed pursuant to Minnesota Municipal Commission Rule of Procedure 14 (a) with the Commission on December 11, 1970. The petition came on for hearing on December 23, 1970. The petition was duly denied by the Commission.

7. A Petition of the Town of Burnside for Further Hearings and a Supplementary Petition of the Town of Burnside for Further Hearings were filed pursuant to Minnesota Municipal Commission Rule of Procedure 14 (a) with the Commission on March 11, 1971. The petitions were duly denied by the Commission.

8. The Commission is concurrently issuing its order on Minnesota Municipal Commission Docket C5-mt which order consolidates the entire Town of Burnside and the entire City of Red Wing into a new City of Red Wing.

CONCLUSIONS OF LAW

1. The Commission duly acquired and now has jurisdiction of this proceeding.

2. The annexation herein requested should be denied.

O R D E R

IT IS HEREBY ORDERED: That the annexation herein requested be denied.

Dated this 9th day of April, 1971

MINNESOTA MUNICIPAL COMMISSION
304 Captiol Square Building
St. Paul, Minnesota 55101



Bruce Rasmussen
Executive Secretary

A-1850

C5-mt

1-38

MEMORANDUM

BY PERMANENT MEMBERS OF COMMISSION

The Minnesota Municipal Commission was created by the legislature to implement the policies outlined in M. S. 414.01, Subd. 1, which states in part:

"The legislature finds that: (1) sound urban development is essential to the continued economic growth of this state;...and, (5) the consolidation of municipalities should be encouraged..."

Consolidation is markedly different than annexation, even though the resultant boundaries may be the same. Initiation of consolidation proceedings requires bilateral action whereas annexation proceedings can be initiated unilaterally. Consolidation results in a new governmental entity, whereas annexation is the enlargement of an existing one. The basic test for annexation is, "Is the area urban or suburban in character or about to become so?" The basic test for consolidation is, "Is it in the best interest of the area?" Thus, consolidation recognizes that new laws, such as M. S. 272.67 which provides for the establishment of rural and urban tax districts, encourage the coexistence of rural and urban land within the same unit of government. The urban character of the land is only one of the considerations of the Commission in consolidation cases.

M. S. 414.031, Subd. 3, which governs annexations by commission order, provides that "The petition shall be denied if the commission finds that the increase in revenues for the annexing municipality bears no reasonable relation to the monetary value of benefits conferred upon the annexed area." This provision is not present in M. S. 414.021, which governs consolidations. The provision has

no applicability with regard to consolidations because there is no taking from one government by another, rather the new government acquires the tax base of the entire area for the benefit of all of the people of the area.

There were three separate proceedings before the Commission here, which were consolidated for hearing. The first called for the consolidation of the City of Red Wing and the Town of Burnside. The second called for the annexation of the Town by the City. The third called for the incorporation of the Town to form a new village. The overriding issue for all of these proceedings, however, was the same: "Where an urbanized town is situated adjacent to an established city, should the commission create a new village, thus establishing two municipalities to serve the people of the area, or should the commission create one new city to serve the people of the area through the consolidation of the city and town." Given the facts of the instant case, and the legislative policy favoring consolidation, the decision was clearly for consolidation.

The testimony was voluminous. The great preponderance of the evidence showed a strong community of interest between the City of Red Wing and the Town of Burnside.

Mr. Robert Isaacson, the Goodhue County Planning Consultant, testified that it was his opinion that "except for the unusable and large amount of swamp, the bottom lands, that all of Burnside Township is either now or about to become urban or suburban in character." Within virtually every municipality there are undevelopable or unbuildable areas.

Under the system of ad valorem taxation in Minnesota, property within a community pays toward the support of the local government of that community. The Commission finds that the City of Red Wing and the Town of Burnside are one community geographically, economically and sociologically, and can best be served by a new City of Red Wing.

Northern States Power Company's Prairie Island nuclear generating plant, which is located within the new city, has an extremely high assessed valuation and is somewhat removed from the built-up area. The taxes paid on this facility will exceed the value of the services received. In this respect it is no different than most other industrial and commercial property. As a part of the Burnside-Red Wing community, the Prairie Island plant has the responsibility of supporting the government of the community.

The record shows that as the Prairie Island plant approaches completion, the tax rates in the new city will decrease to such an extent that Burnside taxpayers will pay less taxes than they are presently paying, including taxes paid on homesteads.

The record discloses that allowing the Town of Burnside to incorporate would impede the orderly growth of Red Wing.

M.S. 414.021, Subd. 3, provides that "...the commission may order the consolidation if it finds that it will be in the best interest of the area." This means the best interest of the entire combined area. The Township of Burnside is urban or suburban or rapidly becoming so. The residents utilize and are dependent upon the services of Red Wing. Their present and future needs for expanded municipal services can best be provided by expansion of the services of Red Wing. Red Wing needs additional area for expansion and the fiscal, human and political resources of Burnside to remain viable. Based on the present and projected needs of the area, it is the

the decision of the Commission that the government best able to serve the fine citizens of Burnside and Red Wing will be obtained by the creation of a new City to be known as Red Wing by consolidation of the town and present city.

Finally, we address ourselves to a transitional problem. The City of Red Wing presently has a ward system which becomes "inoperable" under the terms of M.S. 414.021, Subd. 3. Accordingly, the new councilmen will be elected on an "at large" basis. The Commission urges that the ward system be re-instated by the local officials under the terms of the city charter.

Robert W. Johnson	Chairman
Arthur R. Swan	Vice Chairman
Robert J. Ford	Member
Laurence Wagner	Ex-Officio Member
W. A. Nibbe	Ex-Officio Member

O R D E R

A petition of the Northern States Power Company for further hearings was filed with the Minnesota Municipal Commission on December 11, 1970. The petition came on for hearing on December 23, 1970 at the commission's offices in St. Paul, Minnesota. Appearances were made by: Raymond A. Haik, attorney for petitioner Northern States Power Company; Samuel H. Hertogs and Fred Burstein, attorneys for the Town of Burnside; Richard W. Johnson, attorney for the Burnside Development Association; and Charles Richardson, attorney for the City of Red Wing. All of the commissioners were in attendance. Upon due deliberation on the petition and all other records and files herein, and the written and oral argument of counsel, being fully advised

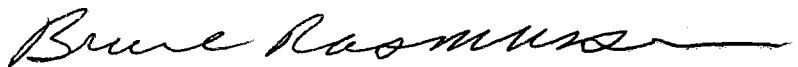
in the premises, the commission hereby makes and issues its

ORDER

IT IS HEREBY ORDERED: That the petition of Northern States
Power Company be in all respects DENIED.

Dated this 23rd day of December, 1970

MINNESOTA MUNICIPAL COMMISSION
610 Capitol Square Building
St. Paul, Minnesota 55101

A handwritten signature in cursive script, reading "Bruce Rasmussen", with a long horizontal flourish extending to the right.

Bruce Rasmussen
Executive Secretary