

E-132/SA-88-270AFFIRMING ADMINISTRATIVE LAW JUDGE'S ORDER DENYING SUMMARY JUDGMENT AND ORDERING RESUMPTION OF CONTESTED CASE PROCEEDINGS ON ISSUE OF COMPENSATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of a Complaint Regarding the Annexation of a Portion of the Service Area of People's Cooperative Power Association by the City of Rochester

ISSUE DATE: March 17, 1989

DOCKET NO. E-132/SA-88-270

ORDER AFFIRMING ADMINISTRATIVE LAW JUDGE'S ORDER DENYING SUMMARY JUDGMENT AND ORDERING RESUMPTION OF CONTESTED CASE PROCEEDINGS ON ISSUE OF COMPENSATION

PROCEDURAL HISTORY

On April 22, 1988, People's Cooperative Power Association (People's) filed a Complaint against Rochester Public Utilities (City) with the Minnesota Public Utilities Commission (Commission). People's sought an Order from the Commission requiring the City to cease and desist from further extension of its facilities, and, alternatively an Order establishing a fair price to be paid by the City to People's for extension of service into an area recently annexed by the City. By Order of June 27, 1988 the Commission awarded interim service rights to the City and referred the matter to the Office of Administrative Hearings for a determination of just compensation. Administrative Law Judge Allan W. Klein (ALJ) was assigned to this case.

A prehearing conference was held on July 14, 1988. It was determined that the best way to proceed would be to first resolve a fundamental question regarding whether or not any compensation was due from the City to People's. It was agreed that the City would file a motion for summary disposition of the matter, and the ALJ would rule on it before scheduling any evidentiary hearings. This decision was set forth in the First Prehearing Order dated July 19, 1988.

The City filed a Motion for Summary Denial of Compensation, and affidavits and memoranda were received from the City, People's, and the Department of Public Service (Department or DPS). As part of its motion the City asked the ALJ to certify the Motion to the Commission.

On December 20, 1988, the ALJ issued his Order Denying Summary Judgement. The ALJ found that People's could possibly be entitled to compensation for overcapacity which resulted from the City assuming the right to serve customers which People's had anticipated serving in its long range

plans. The ALJ wrote that overcapacity can be included in the provision "other appropriate factors" of Minn. Stat. § 216B.44 which states the factors to be considered when determining compensation.

On January 19, 1989, the Commission issued its Order Establishing Time Periods for Comments and Responses to Administrative Law Judge's Order Denying Summary Judgment. On February 3, 1989, the City filed its Response, the Department filed its Comments, and People's filed its Amended Comments. On February 10 1989 the City filed its Reply to the Comments of the Department and People's filed its Responses to the Comments of the City.

The Commission met on March 7, 1989 to consider the positions of the parties.

FINDINGS AND CONCLUSIONS

First, the Commission must decide whether the ALJ's Order Denying Summary Judgment should be affirmed. Second, the Commission must decide the scope of the contested case hearing on the issue of compensation.

The ALJ analyzed the pleadings of the parties to determine whether compensation could be required from the City to People's under Minn. Stat. § 216B.44. That statute lists four factors that must be considered in the Commission's determination of compensation. They are (1) the original cost of the property, less depreciation, (2) loss of revenue, (3) expenses resulting from integration of facilities, and (4) other appropriate factors. The ALJ decided that the City may be required to compensate People's for its overcapacity under the fourth factor and that People's is entitled to demonstrate that overcapacity.

The Commission agrees with the ALJ that the City's Motion for Summary Denial of Compensation should be denied. A summary decision is appropriate where there is no genuine issue as to any material fact. Here, the Commission finds that material facts are in dispute and that parties are entitled to develop an evidentiary record on those facts. The Commission will affirm the ALJ's Order Denying Summary Judgment.

The Commission notes that in his Order, the ALJ stated: "For purposes of deciding this summary judgment motion, I have had to assume certain facts. It is likely that if a full hearing is had on this matter, those facts will change, and their assertion at this stage is not intended to prevent their modification at later stages of the case." The Commission believes that full evidentiary hearings may develop facts that could justify compensation on some or all of the factors listed above. For that reason, the Commission will affirm the ALJ's Order and order the resumption of contested case proceedings on any of the statutory factors the parties may choose to address.

The decision the Commission makes today is to resume contested case proceedings; this decision does not prejudice whether compensation is due or define any specific basis for that compensation. This Order simply affords parties an opportunity to develop an evidentiary record supporting their positions.

ORDER

1. The Commission hereby affirms the ALJ's decision to deny the City's Motion for Summary Denial of Compensation.
2. This matter is returned to the ALJ for continuation of contested case proceedings as described above.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)