

E-296/C-89-29FOR INVESTIGATION

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 Against Proctor
Public Utilities Commission by Non-Resident
Customers

ISSUE DATE: April 12, 1989

DOCKET NO. E-296/C-89-29

ORDER FOR INVESTIGATION

PROCEDURAL HISTORY

On January 19, 1989, the Minnesota Public Utilities Commission (the Commission) received a formal complaint from 42 customers of the Proctor Public Utilities Commission (Proctor PUC), which is a municipally-owned electric utility in Proctor, Minnesota. The Complainants live in the Bayview Heights section of the City of Duluth but receive their electric service from the Proctor PUC.

The Complainants alleged that the rates charged to customers outside of Proctor are unjust and discriminatory because the rates subsidize the water system and street lighting in Proctor; non-residents do not benefit from these subsidies. The Complainants asked that they be assigned to the service area of another utility or that their electric rates be reduced.

The Commission issued its Notice of Meeting on March 2, 1989 which was amended on March 21, 1989.

On March 17, 1989 Complainants filed a Memorandum of Law with the Commission, supporting its positions.

On March 20, 1989 the Department of Public Service (Department or DPS) filed comments on the Complaint.

The Proctor PUC responded to the Complaint on March 22, 1989.

The Residential Utilities Division of the Office of the Attorney General (RUD-OAG) filed its comments on March 23, 1989.

The Commission met on April 5, 1989 to consider this matter. All parties who submitted written

filings also made oral comments at the meeting. Mr. Norman H. Downs, a Bayview resident, also made oral comments.

The Positions of the Parties

The Complainants claimed that the Proctor PUC has admitted using profits from the electric utility to subsidize Proctor's water system and street lighting. The Complainants claimed that this unreasonably discriminates against non-resident customers who do not receive their water and street lighting from the City of Proctor. The Complainants requested reassignment to the service area of the electric utility serving the City of Duluth (Minnesota Power). They argued that this would guarantee non-resident customers equal treatment with other Duluth residents. They argued further that trying to separate the true costs of the electric utility from water system and street lighting costs is a less attractive alternative due to added accounting costs and possible future discrimination claims.

The DPS argued that the Complainants have stated a prima facie case that they are being charged unjustly discriminatory rates and that an investigation is warranted. The DPS also asserted that there is no basis in the complaint for a change in service territory. However, in its oral comments, the DPS stated that inconsistencies appear to exist between the official service area maps and other available documents.

The RUD-OAG argued that the non-resident customers of Proctor are subsidizing resident customers, contrary to the requirement that rates not be unreasonably preferential. The RUD-OAG asserted that rates must be redesigned after Proctor submits a class cost of service study.

The Proctor PUC asked that the Complaint be dismissed, arguing that the Commission does not have jurisdiction over its rates based on the Minnesota Supreme Court's decision in Frost-Benco Electric Association v. Minnesota Public Utilities Commission, 358 N.W.2d 639 (Minn. 1984) and legislative mandates. The Proctor PUC argued that its rates are not discriminatory, because the non-resident customers are charged the same rate as customers living in Proctor. The Proctor PUC argued that non-resident electric customers do not share the risk of bond financing and may be more expensive to serve because of added distribution and maintenance costs for areas outside of Proctor. The Proctor PUC also stated that it is permitted by statute to enter into agreements with the City of Proctor for street lighting and to transfer surplus funds to the City.

FINDINGS AND CONCLUSIONS

Minn. Stat. 216B.17, subd. 6 (1988) provides:

The Commission shall have the power to hear, determine and adjust complaints made against any municipally owned gas or electric utility with respect to rates and services upon petition of ten percent of the nonresident consumers of the municipally owned utility or 25 such nonresident consumers whichever is less. The hearing of the complaints shall be governed by subdivisions 1 to 5.

The Commission notes that the Complaint against the Proctor PUC was signed by 42 nonresident consumers, clearly meeting the statutory threshold. Further, the Commission is not convinced that the Frost-Benco case applies to this situation. That case decided that the Commission did not have the jurisdiction and authority to retrospectively regulate rates an electric cooperative had charged its customers during a period when it was not regulated by the Commission. The Commission concludes that the statute quoted above provides the Commission with jurisdiction over this Complaint.

The Commission agrees with the Department and the RUD-OAG that the Complainants have presented a prima facie case of discriminatory rates which merits further investigation under Minn. Stat. § 216B.17, subd. 1 (1988). The Commission notes that serious questions regarding service area maps for the Bayview Heights area of Duluth have also been raised here.

The Department is charged with performing all duties relating to the execution and enforcement of Minn. Stat. Chapter 216B and the Orders of the Commission, including the investigative activities incident to such laws or Orders. See, Minn. Stat. §§ 216A.02, subd. 3 and 216A.07. Therefore, the Commission will direct the DPS to investigate the issues involving service area maps and the reasonableness of the rates charged by the Proctor PUC to its customers.

The Commission will also direct the Department to report the results of its investigation within 90 days of this Order. The Commission will direct the Proctor PUC to cooperate with and respond to all information requests of the Department and the RUD-OAG. Finally the commission encourages all parties to meet to discuss possible resolution of this matter.

ORDER

1. The Commission hereby initiates a summary investigation under Minn. Stat. § 216B.17 (1988) of the Complaint filed by nonresident customers of the Proctor Public Utilities Commission.
2. Within 90 days of this Order, the Department of Public Service shall submit a report to the Commission detailing the results of its investigation. The Department shall serve the report on all parties. The Proctor PUC shall respond to information requests from the Department and the RUD-OAG within 10 days of the service date of the request.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)