

E-132, 299/SA-89-269 DENYING INTERIM SERVICE RIGHTS TO THE CITY OF ROCHESTER, AND REQUIRING THE CITY OF ROCHESTER TO SHOW CAUSE

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 an Application by the City of Rochester, Minnesota, for an Interim Service Order to Serve a Highway Advertising Sign Owned by Vogel Outdoor Advertising to be Located in the 5800 Block of T.H. 52 North, and Presently Within the Assigned Service Area of People's Cooperative Power Association

ISSUE DATE: July 7, 1989

DOCKET NO. E-132, 299/SA-89-269

ORDER DENYING INTERIM SERVICE RIGHTS TO THE CITY OF ROCHESTER, AND REQUIRING THE CITY OF ROCHESTER TO SHOW CAUSE

PROCEDURAL HISTORY

In December, 1988 the City of Rochester (City) filed an application with the Minnesota Public Utilities Commission (the Commission) to adjust its service area to include all of the areas it has annexed since 1974 in its service area and to determine compensation for these areas (Docket E-132, 299/SA-88-996). The area involved in the instant matter, occupied by a highway advertising sign owned by Vogel Outdoor Advertising, is included in that application.

On May 1, 1989, the City submitted an application to the Commission requesting authority to provide service to the Vogel sign while compensation is being determined. The area in question lies within the city limits but is in the exclusive service territory of People's Cooperative Power Association (People's or the Cooperative).

The City stated that Vogel Outdoor Advertising had applied to the City for service. It stated that it has facilities in place in a nearby subdivision, approximately 130 feet from the customer. The City claimed that the Cooperative would have to extend its facilities approximately 350 feet over the highway in order to serve the sign.

People's responded to the City's application on May 17, 1989. It stated that the sign owner had also applied to People's for service. It further stated that the sign has been equipped, per its instructions, to receive overhead service from People's facilities. If the City were to serve the sign, the owner would have to dismantle the sign's electric facilities and install new facilities to hook up to the City's underground service, at considerable expense to the customer.

People's further alleged that on or about May 12, 1989, the City extended its facilities approximately 130 feet to reach the lot line of the sign owner's property. People's charged that this is an illegal extension of service within its assigned exclusive service area, and should be referred to the Attorney General's Office for appropriate penalties.

The Commission issued a notice establishing a comment period, and requested parties to address issues of unnecessary duplication of facilities, the public interest, and whether there were any material facts in dispute requiring resolution in a contested case proceeding. Comments were received from the City, People's and the Department of Public Service (Department or DPS), who recommended that the City's petition be denied.

The Commission met on July 5, 1989 to consider this matter.

FINDINGS AND CONCLUSIONS

The Commission must determine whether People's or the City should provide service to the Vogel Outdoor Advertising Sign until such time as compensation has been determined and has been paid by the City to People's.

Minn. Stat. §216B.44 (1988) governs this proceeding. It provides that when a municipality which owns and operates a public utility extends its boundaries through annexation or consolidation, or extends its service territory within its existing boundaries, the municipality shall thereafter provide electric service to these areas unless the area is already receiving service from an electric utility. If so, the municipality may purchase the facilities of the electric utility serving the area. The statute sets guidelines for the purchase and sale of the facilities. Further, if the municipality and the utility cannot agree on a purchase price, the statute provides that either can petition the Commission to determine the appropriate terms for the sale. The statute provides that after notice and hearing the Commission can determine the terms of the sale. The law lists factors for the Commission to consider in making its determination. Minn. Stat. §216B.44 (1988) then states:

Until the determination by the commission, the facilities shall remain in place and service to the public shall be maintained by the owner. However, the electric utility being displaced, serving the annexed area, shall not extend service to any additional points of delivery within the annexed area if the commission, after notice and hearing, with due consideration of any unnecessary duplication of facilities, shall determine that the extension is not in the public interest.

In cases involving these same parties, the Commission has addressed the rights of a municipality to serve recently annexed areas which are receiving electric service from an electric utility serving an area while compensation is being determined.

The Commission reiterates its findings that Minn. Stat. §216B.44 (1988) gives an eventual statutory preference for a municipality which owns or operates an electric utility to serve persons within that municipality's corporate boundaries. However, the Commission finds that the preference arises only after compensation is determined and paid. It does not operate at this stage in this proceeding.

At this stage of the proceeding, prior to extending service to the Vogel Advertising Sign, the City must show that it is not in the public interest for People's to serve the sign. The City has failed to make that showing. The City has not proven to the Commission's satisfaction that the Cooperative cannot provide adequate service to the sign, that the cost of extending or providing that service is unreasonable, or that facilities will be duplicated if the Cooperative serves the sign. The Commission concludes that the City of Rochester's request for interim service should be denied and People's be allowed to serve the sign until compensation is determined and paid.

Finally, the Cooperative has made allegations in its response to Rochester's petition that the City has illegally extended its facilities to the lot line of the sign property while this matter was pending. The Commission is deeply concerned to hear continued allegations of the City's misconduct after the Commission's position was made clear in Commission Orders in In the Matter of a Complaint of People's Cooperative Power Association, Inc. Against the City of Rochester, Docket No. E-132,299/SA-88-660. The Commission will order the City to:

1. show cause why it should not be found to have knowingly and intentionally violated Minn. Stat. §§ 216B.40 and 216B.44 (1988); and

2. show cause why this matter should not be referred to the Attorney General with a recommendation that it be subject to the maximum penalties under Minn. Stat. §§ 216B.57 and 216B.59 (1988).

The Commission will order the City to respond in writing to this Show Cause Order within ten calendar days and appear before the Commission on July 20, 1989 at 9:30 A.M.

ORDER

1. The City of Rochester's request for authorization to provide interim service to the Vogel Outdoor Advertising Sign is hereby denied.
2. Within ten calendar days, the City shall show cause in writing:
 - A. why it should not be found to have knowingly and intentionally violated Minn. Stat. §§ 216B.40 and 216B.44 (1988); and
 - B. why this matter should not be referred to the Attorney General with a recommendation that it be subject to the maximum penalties under Minn. Stat. §§ 216B.57 and 216B.59 (1988).
3. A hearing on this matter will be held on July 20, 1989 at 9:30 A.M.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)