

E-132, 299/SA-89-192REQUIRING CESSATION OF PROVISION OF SERVICE 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 a Complaint of Peoples Cooperative Power Association, Inc. Against the City of Rochester Regarding the Provision of Interim Service to Facilities Known as B&F Truck Stop and Rochester Rent-All

ISSUE DATE: November 1, 1989

DOCKET NO. E-132, 299/SA-89-192

ORDER REQUIRING CESSATION OF PROVISION OF SERVICE AND REQUIRING THE CITY OF ROCHESTER TO SHOW CAUSE

PROCEDURAL HISTORY

On March 31, 1989 Peoples Cooperative Power Association (Peoples) filed a complaint alleging that the City of Rochester (Rochester or the City) had extended electric service to a customer within Peoples' exclusive service area in violation of Minnesota's assigned service area statutes, Minn. Stat. §§ 216B.37 *et seq.* (1988). The customer in question was B & F Truck Stop, which was allegedly receiving service from the City for a lighted billboard. The billboard had been served by Peoples in the past, but Peoples had disconnected service at the customer's request during renovation of the truck stop facilities. Peoples requested that the Commission order the City to cease providing service and refer the alleged violation of the assigned service area statutes to the Attorney General for the assessment of penalties under Minn. Stat. §§ 216B.57 and 216B.59 (1988).

The complaint included a second count which was subsequently dismissed pursuant to a settlement by the parties.

The City filed an answer admitting it was serving the lighted billboard. The answer also alleged that Peoples had no facilities in place capable of serving the billboard and that the City was willing to compensate Peoples for the loss of any revenue attributable to the billboard account.

The Department of Public Service (the Department) intervened in the matter on April 14, 1989. The Department advised that the official service area maps demonstrated that the billboard lay wholly within Peoples' assigned service area. The Department recommended that the Commission order Rochester to cease providing service to the billboard. The Department did not recommend referring the matter to the Attorney General for the assessment of penalties, on grounds that the alleged violation of Peoples' service territory preceded recent Commission Orders clarifying the

unacceptability of such conduct.

The matter came before the Commission on October 18, 1989. It did not reach the Commission within the time frame established under Minn. Stat. § 216B.43 (1988) at the request of the parties, who were engaged in settlement negotiations.

At the October 18 hearing, the City conceded it did not have a legal right to serve the billboard and that it would be possible for Peoples to serve it. The City urged that it be allowed to continue to serve, however, in the interests of expediency. Since the City has annexed the land on which the billboard and the truck stop are located, the City would be entitled to serve both entities upon determination and payment of appropriate compensation to Peoples. Minn. Stat. § 216B.44 (1988). Compensation for this and other parcels of land is currently being determined in a contested case proceeding. The City stated it intended to pay whatever compensation was determined appropriate for the billboard and urged that it be allowed to continue to serve in light of that intention.

FINDINGS AND CONCLUSIONS

The Commission finds that the lighted billboard at issue is located within the exclusive service area assigned to Peoples Cooperative Power Association. The City of Rochester is serving the billboard in violation of Minn. Stat. §§ 216B.40 and 216B.44 (1988). Peoples has facilities in place capable of serving the billboard. The City will be ordered to cease provision of electric service to the billboard and to show cause why the matter should not be referred to the Attorney General for assessment of penalties under Minn. Stat. §§ 216B.57 and 216B.59 (1988).

The Commission is unpersuaded by the City's claim that expediency requires that it be allowed to continue serving the billboard pending determination and payment of appropriate compensation. The Commission has reservations of the most serious sort about tolerating, and in this case even rewarding, clear violations of the statutes it is charged to enforce. Expediency is a poor substitute for compliance with the law. Furthermore, even the City's most sincere intentions to pay whatever compensation is determined in the contested case proceeding may be thwarted if the outcome of that proceeding differs significantly from the City's expectations. Should that occur, any decision based on expediency would be rendered doubly inappropriate. The Commission will not grant the City the right to serve on the basis of its stated intention to pay appropriate compensation for that right.

Finally, the Commission will require the City to show cause why this violation of the assigned service area statutes should not be referred to the Attorney General for the assessment of appropriate penalties. Although the City extended service to the billboard before the Commission issued its most recent service area decisions, there would appear to have been little, if any, statutory support for the extension of service at issue. The City should be required to explain why its conduct in this case did not constitute a knowing and intentional violation of the service area statutes.

ORDER

1. The City of Rochester shall cease providing electric service to the lighted billboard at issue forthwith.
2. On or before November 14, 1989 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. The Commission will hold a hearing on the issue of referral to the Attorney General, at which the City shall show cause why such referral should not be made, on Tuesday, November 21, 1989 at 9:30 a.m. in the Small Hearing Room of the Commission offices.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Lee Larson
Acting Executive Secretary

(S E A L)