

E-132, 299/SA-88-996 ORDER DETERMINING 1975 SERVICE AREA
BOUNDARIES, DETERMINING SERVICE AREA CHANGES SINCE 1975, AND
REFERRING SERVICE AREA VIOLATION TO THE ATTORNEY GENERAL

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Patrice M. Vick	Commissioner

In the Matter of the Application
of the City of Rochester to
Adjust its Service Area Boundary
with People's Cooperative Power
Association, Inc. (Multi-Area)
Phase I

ISSUE DATE: December 28, 1990
DOCKET NO. E-132, 299/SA-88-996
INTERIM ORDER DETERMINING 1975
SERVICE AREA BOUNDARIES,
DETERMINING SERVICE AREA CHANGES
SINCE 1975, AND REFERRING
SERVICE AREA VIOLATION TO THE
ATTORNEY GENERAL

PROCEDURAL HISTORY

I. PROCEEDINGS TO DATE

This proceeding is a consolidation of three dockets involving service area disputes between People's Cooperative Power Association (People's) and the City of Rochester (Rochester or the City).

On April 22, 1988 People's filed a complaint alleging the City had violated Minnesota's assigned service area statutes¹ by extending electric service to some 55 residential and commercial developments within People's' assigned service area. People's requested three forms of relief: 1. an Order prohibiting the City from continuing to serve within People's' assigned service area; 2. in the alternative, a determination of reasonable compensation for any portions of People's' service territory the City might be allowed to continue serving; and 3. in either case, an Order referring the alleged violations of People's' service territory to the Attorney General for penalty proceedings under Minn. Stat. §§ 216B.54 et seq. (1990).

On December 27, 1988 the City filed a petition asking the Commission to change the official service area maps to reflect the transfer to the City of all portions of People's' service area within Rochester's current municipal boundaries. The City

¹ Minn. Stat. §§ 216B.37 et seq. (1990).

claimed it had acquired the right to serve these areas upon annexation, either by operation of law or under the terms of written agreements with People's. In the alternative, the City asked the Commission to determine reasonable compensation for any portions of People's' service territory within the city limits which the City was not already entitled to serve.

The Commission consolidated these dockets, finding that they involved related and identical issues. The Commission referred the consolidated docket to the Office of Administrative Hearings for contested case proceedings. Administrative Law Judge Phyllis A. Reha was assigned to the case. The parties to the case were and are People's, the City, and the Department of Public Service (the Department).

On June 4, 1990 the Commission issued an Order asking Judge Reha to make specific findings of fact on related issues in another docket, E-132, 299/C-90-36. In that docket People's claimed an additional territorial violation by the City at the intersections of 37th Street Northeast and East River Road and 37th Street Northeast and North Broadway. The City claimed to have received written permission to serve the intersections under the terms of a 1982 agreement with People's. Since the 1982 agreement would be examined in detail in the consolidated docket, the Commission believed it would be most efficient to examine the agreement's effect on service rights to the 37th Street intersections in that docket, too. The Commission therefore asked Administrative Law Judge Reha to make findings on the effect of the 1982 agreement on service rights to the 37th Street intersections.

II. THE NATURE OF THIS ORDER

At a prehearing conference on November 27, 1989 the parties agreed that the most efficient way to proceed would be to conduct the hearing in two phases. Phase I would determine the original service area boundaries of the two utilities, their current service area boundaries, and whether the circumstances of any unauthorized service extensions warranted a referral for penalty proceedings. Phase II would determine appropriate compensation for any portions of People's' service territory found to be within the Rochester city limits in Phase I.

The Administrative Law Judge filed her FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDED ORDER in Phase I on October 1, 1990. The City and People's filed exceptions and replies to exceptions. The Department filed replies only.

The parties presented oral argument before the Commission on November 29, 1990. At oral argument all parties agreed that the Commission's Order determining Phase I issues would be an interim Order and that reconsideration or other post-hearing review would

occur after issuance of the final Order determining all issues in the proceeding.

FINDINGS AND CONCLUSIONS

This Order will determine the following issues: 1. the original service area boundaries of People's and the City; 2. the current service area boundaries of these two utilities; and 3. whether any of the alleged violations of People's' service area by the City of Rochester should be referred to the Attorney General for penalty proceedings. The 37th Street intersections issues referred for determination in this docket are included and decided as part of the second issue.

III. ORIGINAL ASSIGNED SERVICE AREAS

In 1974 the Minnesota Legislature required the Commission to divide the state into geographical areas, called assigned service areas, in which electric utilities would have exclusive service rights. The Legislature believed exclusive service territories were necessary to encourage the development of coordinated statewide electric service, to avoid unnecessary duplication of electric facilities, and to promote the provision of economical, efficient, and adequate electric service throughout the state. Minn. Stat. § 216B.37 (1990).

The statute encouraged utilities to agree on service area boundaries and to file maps reflecting their agreements. Minn. Stat. § 216B.39, subd. 4 (1990). The original service area boundaries between People's and Rochester were set by agreement.² In this proceeding the parties have stipulated to the accuracy of another map, DPS Exhibit 23, showing the original boundaries in greater detail. The Commission accepts and adopts that map as an accurate representation of the original service area boundaries of these two utilities.

IV. CURRENT ASSIGNED SERVICE AREAS

Since assigned service areas were established in 1975, neither People's nor Rochester has asked the Commission to change the official service area boundaries. Since that time, however, the

² The utilities filed a map reflecting their agreement in September of 1974; the map was accepted and adopted by the Commission as the official service territory map in April of 1975.

City has extended service to approximately 1,700 customers within People's' original assigned service area. These customers are located on some 35 acres of land annexed by the City in approximately 70 separate annexation proceedings.³

In 1982 the two utilities did enter into an agreement intended to change their service area boundaries. They now disagree radically on the effect of that agreement. The City claims it conveyed large portions of People's' service territory to the City. People's claims it conveyed one parcel of land and two sets of customer accounts to the City. The Administrative Law Judge found the agreement conveyed three identifiable portions of People's' original service area to the City.

The two utilities also disagree about the effect of a 1970 agreement setting forth guidelines for determining compensation when the City elected to serve annexed areas previously served by People's. Although the agreement was made before assigned service areas were established, the two utilities filed it and stated their intention to continue to use it when they filed their official service area map in 1974. The City claims that, until the agreement was rescinded in 1984, it granted the City the right to serve areas without existing customers upon annexation. People's disagrees. The Administrative Law Judge rejected the City's construction of the agreement.

The Commission accepts and adopts the findings, conclusions, and reasoning of the Administrative Law Judge (the ALJ) on the meaning and effect of the 1970 and 1982 agreements. The Commission believes the ALJ properly analyzed both agreements and will not repeat that analysis in detail here. Instead, the Commission will summarize the key points leading to its acceptance and adoption of the ALJ's findings.

A. The 1970 Agreement

The ALJ rejected the City's contention that the 1970 agreement transferred service rights upon annexation unless those areas had current customers for the same reasons the Commission rejected that argument in another docket, In the Matter of a Complaint of People's Cooperative Power Association, Inc. Against the City of Rochester Regarding Extension of Service to Continental Baking, Docket No. E-132, 299/SA-89-981, ORDER AFTER RECONSIDERATION

³ It is clear that both utilities were slow to recognize the magnitude of the service area problems which were developing. This was undoubtedly due in part to Rochester's practice of limiting annexation to individual parcels of land for which the owners requested annexation, as opposed to a more comprehensive approach.

(March 9, 1990). That Order, upheld by the Court of Appeals in City of Rochester v. Minnesota Public Utilities Commission and People's Cooperative Power Association, No. CO-90-808 (Minn. Ct. App. August 21, 1990) is attached and incorporated by reference. The Commission continues to believe, for the reasons set forth in the Continental Baking Order and in the ALJ's report, that the 1970 agreement did not operate to transfer service territory from People's to the City upon annexation.

B. The 1982 Agreement

The Commission accepts and adopts the ALJ's interpretation of the 1982 agreement for the reasons set forth in her report. People's' constricted interpretation of the agreement must be rejected as failing to give full effect to its stated purpose, allowing the City to serve newly annexed areas within its municipal boundaries. The City's expansive construction of the agreement must be rejected as unsupported in fact.

The Department's position, adopted by the ALJ, is the only reasonable construction of the 1982 agreement. It recognizes the intent of the parties to transfer service territory, not just specific customers and facilities. It comports with the evidence.

It determines which areas were transferred from the language of the agreement itself. The 1982 agreement incorporated and applied the compensation provisions of the 1970 agreement. Under those provisions the City acquired service rights to individually annexed portions of People's' service territory upon the purchase of all customer accounts in such areas, together with payment for any facilities acquired. It is only reasonable, then, to construe the 1982 agreement as transferring the individually annexed areas in which the City purchased all People's' customers.

C. The 37th Street Intersections

The Commission accepts and adopts the Administrative Law Judge's determination that the 37th Street intersections at issue in docket number E-132, 299/C-90-36 lie within People's' assigned service area. This conclusion flows directly from the earlier findings determining People's' original service area and determining which areas within the city have since been transferred to Rochester. Since the intersections are within People's' original service area and are not within the areas transferred under the 1982 agreement, the intersections are within People's' assigned service area.

D. Technical Corrections to ALJ's Findings

All parties agreed that Finding of Fact No. 32 erroneously identifies Marvale Avenue as Mayfair Street and incorrectly describes the Parkside area as running to the northeast instead of the northwest. Similarly, at one point Finding of Fact No. 33 inadvertently refers to 37th Street as 47th Street.

The Commission agrees with the parties that these references should be corrected to avoid confusion and will so order.

V. REFERRAL OF SERVICE AREA VIOLATIONS TO THE ATTORNEY GENERAL

In its initial complaint in this matter, People's asked the Commission to refer all 55 of the service area violations it alleged to the Attorney General for penalty proceedings under Minn. Stat. §§ 216B.54 et seq. The Commission asked the Administrative Law Judge to make findings to assist it in determining whether any of the individual violations alleged merited such a referral.

The ALJ recommended only one referral for penalty proceedings. The incident she thought justified a referral was the City's extension of service to the Parkwood Hills Wellhouse on or about August 16, 1989. The Commission agrees that this service extension warrants a referral, primarily because it was a clear violation of a Commission Order cautioning the City against extending service under questionable circumstances in the future:

3. People's shall continue to serve and extend service to new customers in all areas which the City of Rochester has annexed or shall annex within the assigned service area of People's until compensation is determined and paid unless, after notice and hearing, the Commission shall find or has already found that it would not be in the public interest for People's to extend service.
4. The City shall immediately cease and desist from providing new service within People's' assigned exclusive service area on and after the date of this Order where such service has not been authorized by the Commission
6. The City shall refer all future requests for new service outside of its assigned service territory to the utility entitled to serve under law.

In the Matter of an Application by the City of Rochester, Minnesota, for an Interim Service Order to Serve Certain Recently Annexed and Platted Undeveloped Lands Within the City of Rochester Known as Viking Hills Third Subdivision and North Park Third

Subdivision, Docket No. E-299, 132/SA-89-136, ORDER DENYING INTERIM SERVICE RIGHTS TO THE CITY OF ROCHESTER, REQUIRING THE CITY OF ROCHESTER TO CEASE AND DESIST FROM PROVIDING SERVICE, AND TO SHOW CAUSE (May 23, 1989), p. 5.

The Commission rejects the City's contention that its course of dealings with People's mitigates the seriousness of the violation. To the contrary, it was the history of conflict between the City and People's which led the Commission to issue the May 23 Order prohibiting questionable service extensions. The Commission also rejects the City's contention that the violation was de minimus. A marked characteristic of People's/Rochester service area disputes is that they involve many small parcels of land. Taken together, however, these small parcels constitute substantial portions of service territory.

Finally, the Commission rejects the City's contention that it was legally authorized to serve the wellhouse under the "utility property" exception of Minn. Stat. § 216B.42, subd. 2 (1990). That subdivision provides as follows: "Notwithstanding the provisions in section 216B.39, any electric utility may extend electric lines for electric service to its own utility property or facilities." The Commission finds that this exception applies only to property or facilities of the electric utility itself ("its own utility property or facilities"). It does not apply to the property or facilities of other city utilities, or to City property generally.

The Commission finds that the City's extension of service to the wellhouse in the face of the May 23, 1989 Order constituted a knowing and intentional violation of the Order and of the statutes it interpreted. The Commission will therefore refer the matter to the Attorney General for penalty proceedings under Minn. Stat. § 216B.54 et seq. (1990).

The Commission agrees with the ALJ that the other service extensions into People's assigned service area were due at least in part to ignorance and do not merit penalty proceedings.

ORDER

1. The Commission accepts and adopts the findings of fact, conclusions, and recommendations set forth in Administrative Law Judge Reha's report, filed October 1, 1990, with the following technical corrections:
 - a. In Finding of Fact No. 32, all references to Mayfair Street are corrected to refer to Marvale Avenue;

- b. In Finding of Fact No. 33, the reference to 47th Street is corrected to refer to 37th Street.
2. The Commission finds that the City of Rochester's extension of electric service to the Parkwood Hills Wellhouse was a knowing and intentional violation of a Commission Order and the statutes it interpreted. The Commission asks the Attorney General to determine appropriate penalties under Minn. Stat. §§ 216B.54 et seq. (1990).
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)