

E-132, 299/SA-90-36 CONSOLIDATING COMMENT PERIODS AND SETTING MATTER FOR ARGUMENT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of a Complaint of People's Cooperative Power Association, Inc. Against the City of Rochester Regarding Extension of Service to Intersections of 37th Street Northeast and East River Road and 37th Street Northeast and North Broadway

ISSUE DATE: February 2, 1990

DOCKET NOS. E-132, 299/SA-90-36

E-132, 299/SA-89-981

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

ORDER CONSOLIDATING COMMENT PERIODS AND SETTING MATTER FOR ARGUMENT

PROCEDURAL HISTORY

On January 19, 1990 People's Cooperative Power Association, Inc. (People's or the Co-op) filed a complaint alleging that the City of Rochester (the City) had extended service to two intersections within People's exclusive service area, in violation of Minnesota's assigned service area statutes, Minn. Stat. §§ 216B.37 et seq. (1988). People's asked the Commission to order the City to cease providing service and to refer the alleged statutory violation to the Attorney General for the assessment of penalties under Minn. Stat. §§ 216B.57 et seq. (1988).

The City filed an answer admitting that the intersections lay within People's assigned service area as originally established by the Commission and as reflected in the official service area maps. The City alleged, however, that the service area boundaries had been changed, or that People's right to enforce them had been impaired, for the following reasons:

1. The City's annexation of the land changed the service area boundaries by operation of law;
2. The service area boundaries were changed by operation of a 1970 agreement between the parties;

3. People's lacked a franchise from the City to deliver electric service to the signals;
4. People's had lost its right to serve the area by its course of conduct in allowing the City to serve similarly situated customers;
5. People's had failed to make timely objection to the City's notice of its intent to serve the signals;
6. Duplication of facilities would result from People's extension of service;
7. The City may serve the traffic signals at East River Road by virtue of its ownership interest in them;
8. The owner of the traffic signals and street lighting at the Broadway intersection, the Minnesota Department of Transportation, is not subject to the requirements of Minnesota's service area statutes; and
9. The Commission lacked the authority to grant the relief requested by People's.

The Department of Public Service intervened and supported People's requests for relief.

The matter came before the Commission on February 2, 1990.

FINDINGS AND CONCLUSIONS

The Commission finds that the issues in this case are similar to those in a pending matter, 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-1332, 299/SA-89-981. Particularly, the effect of the parties' 1970 agreement is at issue in both cases. The most efficient approach would be to consolidate the comment periods for both dockets and consider them together. The Commission will so order.

Final comments in Continental Baking are due February 12. The Commission will require all parties to file comments on this matter on or before that date.

Both dockets will be taken up at the hearing scheduled for Continental Baking, Thursday, February 22, 1990 at 9:30 a.m. in the Commission's Small Hearing Room.

ORDER

1. Parties wishing to file comments in this docket shall do so on or before February 12, 1990.
2. The Commission will hear this matter on Thursday, February 22, 1990, at 9:30 a.m. in the Commission's Small Hearing Room.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Lee Larson
Acting Executive Secretary

(S E A L)