

E-132, 299/SA-91-253 ORDER FOR HEARING AND ORDER ADDING  
COMPENSATION ISSUES TO EXISTING DOCKET

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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|----------------------|--------------|
| Darrel L. Peterson   | Chair        |
| Cynthia A. Kitlinski | Commissioner |
| Dee Knaak            | Commissioner |
| Norma McKanna        | Commissioner |
| Patrice M. Vick      | Commissioner |

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| In the Matter of the Application by the City of Rochester to Determine Appropriate Terms for the Acquisition of Service Rights to Three Annexed Areas        | ISSUE DATE: June 14, 1991<br>DOCKET NO. E-132, 299/SA-91-253   |
| 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) | E-132, 299/SA-88-996<br>NOTICE AND ORDER FOR HEARING AND ORDER ADDING COMPENSATION ISSUES TO EXISTING DOCKET |

**PROCEDURAL HISTORY**

**I. PROCEEDINGS TO DATE**

On April 4, 1991 the City of Rochester filed a petition under Minn. Stat. § 216B.44 (1990), stating its intention to extend its assigned service area to include the following areas: several small parcels annexed in 1989 under City Ordinances 2630, 2638, and 2662; a 15.87 acre parcel annexed in 1990 under City Ordinance 2710; and a 19.68 acre parcel annexed in 1990 under City Ordinance 2716. These areas currently lie within the assigned service area of People's Cooperative Power Association (People's or the co-op). The petition asked the Commission to determine appropriate compensation for service rights to the areas and related facilities.

The petition also asked the Commission to add the compensation issues in this docket to those in an ongoing contested case proceeding, 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), Commission Docket No. E-132, 299/SA-88-996; OAH Docket No. 9-2500-4051-2 (the 996 docket). The 996 docket will determine appropriate compensation for the City's acquisition of many previously annexed portions People's' assigned service area. Finally, the petition asked that the City be allowed to add to the 996 docket portions of People's' service area annexed prior to a date set by the Commission, without further Commission Order.

The co-op and the Department of Public Service (the Department) filed responses supporting the inclusion of these parcels in the 996 docket. The Department also supported the proposed inclusion of future annexations. People's opposed it on grounds that the 996 docket was growing unwieldy. Subsequently, the parties made a joint recommendation that the parcels at issue be included in the 996 docket, that parcels annexed before May 1, 1991 be included at the City's option, and that South Park Second Subdivision, which would be annexed by May 31, 1991, be included at the City's option.

The matter came before the Commission on May 21, 1991.

## FINDINGS AND CONCLUSIONS

### II. JURISDICTION AND REFERRAL FOR CONTESTED CASE PROCEEDINGS

The Commission has jurisdiction over assigned service area disputes under Minn. Stat. §§ 216B.37-.44 (1990). The Commission has jurisdiction to determine compensation for municipal utility acquisitions of other utilities' service territories under Minn. Stat. § 216B.44 (1990).

The Commission finds that it cannot determine, on the basis of the record before it, the amount of compensation due the co-op. That determination turns on specific facts which are best developed in formal evidentiary proceedings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

### III. INCLUSION OF THESE AND FUTURE ANNEXATIONS IN 996 DOCKET

The Commission believes that the compensation issues raised in this petition should be determined as part of the 996 docket, 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), Commission Docket No. E-132, 299/SA-88-996; OAH Docket No. 9-2500-4051-2. The parties to both dockets are identical. The issues are similar. Both dockets are compensation proceedings involving annexed areas. The 996 docket has not yet reached a stage where adding these parcels would delay its resolution. The Commission will therefore add these parcels to the 996 proceeding, to conserve the resources of all parties, the Commission, and the Office of Administrative Hearings.

The Commission agrees with the parties that administrative efficiency supports including parcels recently annexed in the 996

docket. The Commission also considers it reasonable for the parcels treated in the joint recommendation to be added without individual Commission action on each one. The Commission will therefore enter an Order, as recommended by the parties, allowing the inclusion of these parcels in the 996 docket upon filing with the Administrative Law Judge.

#### **IV. ISSUES TO BE ADDRESSED**

Minn. Stat. § 216B.44 (1990) requires consideration of the following factors in compensation cases: the original cost of any property acquired by the municipality, depreciation on such property, loss of revenue by the displaced utility, expenses resulting from integration of facilities, and other appropriate factors.

The parties shall address the above issues in the course of contested case proceedings.

#### **V. PROCEDURAL OUTLINE**

##### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Phyllis A. Reha. Her address and telephone number are as follows: Office of Administrative Hearings, Fifth Floor, Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; (612) 341-7611.

##### **B. Hearing Procedure**

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 (1990); the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7830.0100 to 7830.4400. Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, (612) 297-3000.

Under these rules parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2 (1990).

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Margie Hendriksen, Special Assistant Attorney General, 780 American Center Building, St. Paul, Minnesota 55101 (612) 296-0410.

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and the parties.

#### **C. Intervention**

Current parties to this proceeding are the City of Rochester, People's Cooperative Power Association, and the Department of Public Service. Other persons wishing to become formal parties shall file petitions to intervene with the Administrative Law Judge within ten days of the date of this Order. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

#### **D. Prehearing Conference**

A prehearing conference, which may be conducted by telephone, will be scheduled by the Administrative Law Judge. The Office of Administrative Hearings will notify all parties of its time, date, and place.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, and similar issues.

#### **E. Ex Parte Communications**

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. A contested case proceeding shall be held to determine the compensation due People's Cooperative Power Association for the City of Rochester's acquisition of the portions of its service territory annexed to the City under Ordinances 2630, 2638, 2662, 2710, and 2716 and described in the City's April 4, 1991 petition.
2. The issues raised by this petition shall be determined in the ongoing contested case proceeding 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), Commission Docket No. E-132, 299/SA-88-996; OAH Docket No. 9-2500-4051-2.
3. The City may add to the docket discussed in paragraph 2 any parcels annexed before May 1, 1991, by making appropriate filings with the Administrative Law Judge, without further Order of the Commission.
4. The City may add to the docket discussed in paragraph 2 the South Park Subdivision Second, by making appropriate filings with the Administrative Law Judge, without further Order of the Commission.
5. Any person wishing to intervene in this matter shall file an intervention petition with the Administrative Law Judge within ten days of the date of this Order.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
400 Summit Bank Building  
310 South Fourth Avenue  
Minneapolis, Minnesota 55415

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
780 American Center Building  
160 East Kellogg Boulevard  
St. Paul, Minnesota 55101

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)

MPUC Docket No. E-132, 299/SA-  
88-996

OAH Docket No. 9-2500-4051-2

NOTICE OF APPEARANCE

Name and Telephone Number of Administrative Law Judge:

Phyllis A. Reha  
(612) 341-7611

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the  
above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: \_\_\_\_\_

DATE: \_\_\_\_\_