

E-132, 299/C-92-183 ORDER DENYING COMPLAINT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint
by People's Cooperative Power
Association, Inc. Against the
City of Rochester (55th Street
Mall)

ISSUE DATE: March 30, 1992

DOCKET NO. E-132, 299/C-92-183

ORDER DENYING COMPLAINT

PROCEDURAL HISTORY

On January 31, 1992 the City of Rochester filed a petition for interim authority under Minn. Stat. § 216B.44 (1990) to provide electric service to a new retail mall scheduled for construction in the spring of 1992. The mall, known as the 55th Street Mall, is within the Rochester city limits. The City claimed the mall was also within its assigned service area, but believed the merits of that claim might not be resolved until the conclusion of an ongoing contested case proceeding on service area boundaries and compensation disputes between itself and a neighboring utility, People's Cooperative Power Association.¹

On February 19, 1992 People's Cooperative Power Association (People's or the co-op) filed a response claiming the mall was within its service area and opposing the City's interim service request. People's also filed a complaint alleging the municipal utility had had extensive contacts with the mall developer, in violation of an earlier Commission Order requiring the City to refer new customers outside its assigned service area to the utility entitled to serve under law.² The co-op asked the

¹ In the Matter of the Application of the City of Rochester, Minnesota to Adjust its Service Area Boundary with People's Cooperative Power Association, Inc., Docket No. E-132, 299/SA-88-996, OAH Number 9-2500-4051-2.

² 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, 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

Commission to refer the alleged violation to the Department of Public Service (the Department) for further investigation.

On March 4, 1992 the City filed a verified answer denying it had violated the Commission's Order. The answer included a supporting affidavit signed by Roger Kanestadt, supervisor of distribution design for Rochester Public Utilities.

Under Minn. Stat. § 216B.43 (1990), utilities complaining of service territory violations are entitled to a hearing within 15 days. The co-op waived this right, stating it would be more convenient for itself, the other parties, and the Commission for the complaint to be heard at the same time as the City's interim service petition.³ Both matters came before the Commission on March 17, 1992.

The Department appeared at the hearing and said it considered the record evidence sufficient to deny the Complaint, but would undertake any further investigation the Commission considered necessary.

FINDINGS AND CONCLUSIONS

Having examined People's' Complaint, the City's response, and the City's supporting affidavit, and having heard the arguments of the parties, the Commission concludes there is no basis for finding the City in violation of any Commission Order and no need for further investigation.

The City filed a sworn answer to People's' Complaint denying any improper contact with the mall developer.⁴ The answer stated that the power division of Rochester Public Utilities has avoided contact with the mall developer, to avoid violating or appearing to violate Commission Orders prohibiting service in areas officially assigned to People's. The answer stated that several departments of the City government, including the water division of Rochester Public Utilities, have met with the developer, but that the power division has not.

Hills Third Subdivision and North Park Third Subdivision, Docket No. 299, 132/SA-89-136 (May 23, 1989).

³ The interim service petition is dealt with by separate Order in Docket No. E-132, 199/SA-92-86.

⁴ The answer was verified by Robert Pawelski, General Manager of the Public Utility Department of the City of Rochester.

The City filed a supporting affidavit signed by Roger Kanestadt, supervisor of distribution design for Rochester Public Utilities. Mr. Kanestadt stated he personally referred the mall developer to People's as the utility entitled to serve. He stated he had later contacted the developer about the mall's projected load solely for purposes of preparing the City's interim service petition.

The co-op did not dispute the facts set forth in the affidavit or the verified answer and did not introduce evidence suggesting improper conduct by the City. The co-op nevertheless advocated further investigation of the City's contacts with the developer.

The Commission concludes further investigation is unnecessary. The City has provided sworn testimony from the general manager of the Public Utility Department and the supervisor of distribution design, accounting for all contacts they believe took place between the municipal utility and the mall developer. All reported contacts were proper; there is no evidence of further contacts. The Commission finds the verified answer and the supporting affidavit credible and persuasive. The Complaint will be denied.

ORDER

1. The Complaint of People's Cooperative Power Association filed on February 19, 1992 is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)