

E-132, 299/SA-92-1149 ORDER DENYING PETITION FOR INTERIM SERVICE RIGHTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Tom Burton  
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Norma McKanna

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Petition by  
the City of Rochester to Provide  
Interim Service to the Realife  
Cooperative

ISSUE DATE: November 24, 1992  
DOCKET NO. E-132, 299/SA-92-1149  
ORDER DENYING PETITION FOR  
INTERIM SERVICE RIGHTS

**PROCEDURAL HISTORY**

**I. Proceedings to Date**

On September 25, 1992 the City of Rochester filed a petition for interim authority under Minn. Stat. § 216B.44 (1990) to provide electric service to a new condominium complex scheduled for completion in the spring of 1993. The complex, known as the Realife Senior Citizens Cooperative, will be within the Rochester city limits. The City sought interim service authority to allow it to serve the complex while appropriate compensation was being determined in an ongoing contested case, 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.

On October 12, 1992 People's Cooperative Power Association (People's or the co-op) filed a response opposing the City's interim service request. On October 26, 1992 the Department of Public Service (the Department) filed comments recommending denial of the City's petition. The City filed reply comments on October 26, and a supplementary affidavit on November 5.

The matter came before the Commission on November 12, 1992.

**FINDINGS AND CONCLUSIONS**

**II. The Legal Standard**

Under Minn. Stat. § 216B.44 (1990), a municipal utility may acquire the right to serve any area within its city limits upon payment of appropriate compensation to the displaced utility.

The statute also provides that the Commission may allow the municipal utility to serve new customers in the area at issue if the Commission finds that new service extensions by the assigned utility would not be in the public interest. Otherwise, the assigned utility is to continue serving old and new customers until compensation has been determined and paid.

### **III. The City's Claims**

The City stated it intends to exercise its statutory right to expand its assigned service area to include the condominium complex and will therefore be the permanent service provider. In light of this intention, the City based its petition for interim service rights on the following claims:

(1) The City has a three-phase line capable of serving the complex already in place within 1000 feet of it, while People's would have to extend a three-phase line under construction for an additional mile. This additional mile of construction would constitute unnecessary duplication of facilities.

(2) The unnecessary duplication of facilities noted above is part of a larger pattern of unnecessary duplication of facilities resulting from People's' refusal to accept the fact that Rochester will eventually be the only utility serving within the city limits. Commission interim service decisions contribute to this refusal to face facts.

(3) The service outage necessary to transfer permanent service from People's to the City will be inconvenient to condominium residents and could be avoided by awarding the City interim service rights.

(4) Since the City will pay appropriate compensation for service rights to the Realife site, People's would not be damaged by granting interim service rights to the City.

(5) Complaints about People's' service from some Rochester residents raise doubts about People's' ability to provide reliable service to Realife.

### **IV. Commission Action**

The Commission has examined the City's claims individually and as a whole and concludes they do not support a finding that interim service by the co-op would contravene the public interest. The co-op should therefore continue providing service to the area, including new points of delivery, while compensation is being determined. Minn. Stat. § 216B.44 (1990). The City's claims are examined individually below.

## **A. Unnecessary Duplication of Facilities**

The condominium complex will require three phase service. The City has a three phase line capable of providing service 1000 feet from the site of the complex. The co-op has a three phase line capable of providing service a mile from the site, but plans to bring that line within one-fourth mile of the site as part of a service upgrade for a permanent customer, Rochester Sand and Gravel.

The City challenged the service upgrade as a ruse for the intentional construction of unnecessary, duplicative facilities. The City reported Rochester Sand and Gravel had denied requesting a service upgrade when questioned by a City employee. The co-op responded with an affidavit from its Assistant General Manager for Engineering and Operations, Paul E. Melby. Mr. Melby stated the upgrade was necessary to balance People's' system and prevent service disruptions to other customers due to intermittent heavy usage by Rochester Sand and Gravel.

The Commission finds that allowing People's to serve the condominium complex will not result in unnecessary duplication of facilities. The Commission proceeds on the assumption that utilities are in the best position to recognize and meet the needs of their own systems; the Commission does not normally second-guess decisions as routine as the placement of three phase feeder lines. In this case, the City's allegation that the co-op was building duplicative three phase feeder lines under false pretenses did merit attention. The co-op's presentation of a credible need for the three phase construction, however, ends the inquiry.

The co-op does not have to prove an absolute need for the three phase upgrade to continue to serve new customers in its assigned service area. The statute provides that the assigned utility is to serve while compensation is being determined unless the Commission finds that such service would not be in the public interest, "with due consideration of any unnecessary duplication of facilities." The construction at issue is clearly within the confines of normal utility practice. It does not support a finding of unnecessary duplication of facilities, let alone a finding that service by the co-op would not be in the public interest.

## **B. The City's Intention to Acquire Permanent Service Rights**

### **1. In This Case**

The City argued it should be granted interim service rights to avoid the expense and inconvenience of integrating People's' facilities with its own when it acquires permanent service rights to the Realife complex. The co-op, however, states it is willing to work with the City in designing and constructing the distribution system to serve the complex and will remove all facilities necessary only for interim service at no cost to the

City. These assurances lead the Commission to conclude that integration of the two systems can be accomplished with minimal difficulty.

Furthermore, although the City's commitment to serve every resident of the City of Rochester may eventually be fulfilled, it is inappropriate to proceed as if that were an absolute certainty. The firmest intentions can be frustrated by economic realities. The process of determining compensation for service rights to co-op territory within the city limits has not yet been completed. Once actual acquisition costs are known, the City could decide to adopt a gradual approach to service territory acquisitions, or even to defer certain acquisitions indefinitely. In short, the City's acquisition of permanent service rights is not sufficiently certain or immediate to justify granting the City interim service rights.

## **2. Historical Pattern**

The City argued that the unnecessary duplication of facilities it saw in the three phase upgrade to Rochester Sand and Gravel is part of a larger pattern of unnecessary duplication of facilities resulting from People's' refusal to accept the fact that Rochester will eventually be the only utility serving within the city limits. The City alleged that People's is engaged in an expensive and futile attempt to become an urban utility, and that Commission interim service decisions are contributing to this behavior. The co-op states it is merely serving new customers within its assigned service area as the need arises.

The Commission believes it is best to continue deciding each interim service petition on its own merits, using the statutory criteria, and not to attempt, in interim service cases, to reach overarching policy judgments in this complex, fifteen-year-old dispute. Contested case proceedings are in progress and will develop the facts necessary to decide appropriate service area boundaries and compensation for any shifts in those boundaries. In the interim, general conclusions about either utility's overall conduct would be less than fully informed. The Commission therefore declines to make a finding on the City's contention that People's has adopted a misguided strategy for serving its service territory. The Commission will continue to base its interim service determinations on the discrete facts of each case.

### **C. The Service Outage Required to Switch to City Service**

The City argued the service outage that will be necessary to transfer permanent service rights to the City will be inconvenient to condominium residents and should be avoided by awarding the City interim service rights. The Commission agrees with People's that the one-time, three to four hour outage is not an unreasonable burden and can be scheduled to minimize customer inconvenience.

#### **D. The Co-op Will be Fully Compensated**

The City claimed the co-op should be indifferent as to which utility provided interim service, since the co-op will be fully compensated for the area in the ongoing contested case proceeding. However, the statute provides that the assigned utility is to serve unless such service would not be in the public interest. Other considerations being equal, the assigned utility is to continue serving. Furthermore, should the City defer or delay acquisition of the Realife area once compensation has been determined, the co-op would have been prejudiced by awarding interim service to the City. The Commission concludes this claim does not justify granting the City interim service rights.

#### **E. Service Complaints by Rochester Residents**

The City argued that complaints by Rochester residents about the quality of People's' service cut in favor of granting interim service rights to the City. The City cited a group complaint allegedly presented to the Rochester City Council, a group complaint filed with the Commission, and individual complaints allegedly fielded by City personnel.

There is nothing in the record linking any of the service complaints cited above to the area at issue. There is nothing in the record to suggest that People's' plans for serving the condominium complex depart in any way from standard utility practice. In the absence of a clear relationship between such complaints and People's' plans for serving the area at issue, those complaints have no bearing on this interim service determination.

#### **IV. Conclusion**

The Commission finds that allowing People's to serve the Realife Senior Citizens Cooperative does not contravene the public interest and will deny Rochester's petition for interim service rights.

#### **ORDER**

1. The City of Rochester's petition for interim service rights to serve the Realife Senior Citizens Cooperative is hereby denied.
2. People's Cooperative Power Association and the City of Rochester shall cooperate as much as possible in the design and construction of the distribution system to serve this condominium complex, to facilitate its eventual integration into the City's system.

3. People's shall remove, without compensation, facilities and equipment not usable in providing permanent service when and if the City of Rochester begins providing permanent service to the condominium complex.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)