

E-132, 299/SA-92-86 ORDER REQUIRING FURTHER FILINGS

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 Electric Service to the  
New 55th Street Mall

ISSUE DATE: December 17, 1992

DOCKET NO. E-132, 299/SA-92-86

ORDER REQUIRING FURTHER FILINGS

**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 between itself and a neighboring utility, People's Cooperative Power Association.<sup>1</sup> That proceeding, known as the "996" docket, involves both service area and compensation issues. The City sought interim service authority to allow it to serve the mall while service area boundaries and appropriate compensation were being determined in the 996 case.

On August 31, 1992 the Commission issued an Order rejecting the City's claim that it held permanent service rights to the area and denying the City's petition for interim service rights. On September 21, 1992 the City filed for reconsideration of that Order. On October 9, 1992 the Commission granted reconsideration for purposes of tolling the 20-day deadline for acting on reconsideration petitions, to ensure adequate time for careful review of the City's claims.

On December 10, 1992 Commission staff recommended further briefing on the relationship between the decision in this case and a recent decision in the 996 docket.

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<sup>1</sup> 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.

## FINDINGS AND CONCLUSIONS

The Commission's Order denying the City interim service rights to the mall was based on the assumption that compensation for permanent service rights to the area was yet to be determined in the 996 docket. On August 7, 1992, however, the Commission issued an Order in the 996 docket that may have determined compensation for part or all of the area at issue. In that Order (the "Laches Order"), the Commission determined that co-op claims for compensation for areas annexed before April 24, 1984 on which there were no co-op customers or facilities on the date of the annexation were barred by the doctrine of laches. Some or all of the mall area may fall into that category.

The Commission believes it needs further information on the status of the mall area under the Laches Order before completing reconsideration of its August 31 decision in this case. The Commission will therefore require the parties to file briefs and supporting documents on the following issues:

1. Which annexations make up the mall area? Which of these are involved in the first phase of mall construction and which in the second?
2. On the date of each annexation, where were customers and facilities of People's, as defined in the laches Order?
3. For which areas, if any, have People's' compensation claims been barred under the laches Order?

To end, as soon as possible, uncertainty about which utility will serve present and future mall tenants, the Commission will adopt an expedited briefing schedule.

### ORDER

1. Initial briefs addressing the issues set forth above shall be filed on or before December 31, 1992.
2. Reply briefs shall be filed on or before January 11, 1993.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

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