

E-132, 299/SA-88-996; E-132, 299/SA-90-872 ORDER FOR HEARING AND
ORDER ADDING AND CONSOLIDATING ISSUES WITH EXISTING DOCKET

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna

Chair
Commissioner
Commissioner
Commissioner

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); and

ISSUE DATE: February 6, 1992
DOCKET NO. E-132, 299/SA-88-996
OAH Docket No. 9-2500-4051-2

In the Matter of the Application of the City of Rochester for Determination of Appropriate Terms for the Acquisition of Electric Service Area Rights and Facilities of People's Cooperative Power Association in the Newly Platted Area Known as South Park Subdivision (South Park)

DOCKET NO. E-132, 299/SA-90-872
OAH Docket No. 9-2500-4051-2
NOTICE AND ORDER FOR HEARING AND ORDER ADDING AND CONSOLIDATING ISSUES WITH EXISTING DOCKET

PROCEDURAL HISTORY

I. Proceedings to Date

This case is a consolidated contested case proceeding to determine appropriate compensation to People's Cooperative Power Association (People's) for acquisition of selected portions of its service territory by the City of Rochester. On December 24, 1991 the City and People's filed a joint petition to include in this proceeding eleven more areas to which the City wished to acquire service rights.

The Administrative Law Judge agreed that inclusion of these areas would simplify the proceeding and had directed the parties to petition the Commission for their inclusion. No one opposed the parties' petition.

The matter came before the Commission on January 28, 1992.

FINDINGS AND CONCLUSIONS

II. Factual Background

The joint petition seeks to add the following areas to this proceeding: Viking Hills 4, Viking Hills 5, Bandel Hills 4, Northern Heights East 6, North Park 4, North Park 5, Watson Sports Complex, Rossi Property, Future Cimarron Property (including Cimarron 5, 6, 7, 8, 9, 10, 11, 12, and 14 subdivisions), Schmidt-Daley Property, Essex-Kottschade Property (including Essex Estates, Essex Estates 2nd, and Essex Estates 3rd subdivisions).

These areas are adjacent to, and in some cases surrounded by, areas already included in this case. They were not included in this docket originally because the City had initiated eminent domain proceedings against them. Those proceedings are now delayed on appeal. Both parties believe it would further their interests, simplify factual development in this case, and avoid repetitious proceedings later to add the areas to this proceeding. The Administrative Law Judge agrees.

III. 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 People's for these 11 areas. 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.

IV. Consolidation with Existing Docket

The Commission believes that the 11 areas at issue should be added to this docket and consolidated with this case. Determining compensation for these areas will raise the same issues and involve the same facts already being examined in this case. Adding the new areas should not add any new parties to the proceeding. This docket has not yet reached a stage at which adding these areas would delay its resolution. In fact, the Administrative Law Judge, the City, and People's agree that adding them would simplify its resolution. The Commission will therefore consolidate compensation proceedings on these 11 areas with this docket, to conserve the resources of all parties, the Commission, and the Office of Administrative Hearings.

V. Issues to be Addressed

Minn. Stat. § 216B.44 (1990) requires consideration of the following factors in cases like the present one: 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.

VI. 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 promptly file petitions to intervene with the Administrative Law Judge. 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 following portions of its service territory: Viking Hills 4, Viking Hills 5, Bandel Hills 4, Northern Heights East 6, North Park 4, North Park 5, Watson Sports Complex, Rossi Property, Future Cimarron Property (including Cimarron 5, 6, 7, 8, 9, 10, 11, 12, and 14 subdivisions), Schmidt-Daley Property, Essex-Kottschade Property (including Essex Estates, Essex Estates 2nd, and Essex Estates 3rd subdivisions).

2. Proceedings on the areas listed above shall be consolidated with ongoing contested case proceedings in this docket.
3. 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
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MPUC Docket No. E-132, 299/SA-
88-996

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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: _____