

E-132, 299/SA-88-996 ORDER ACCEPTING INTERIM SERVICE AGREEMENT,  
REOPENING AND VACATING EARLIER INTERIM SERVICE DETERMINATIONS,  
AND AWARDING INTERIM SERVICE RIGHTS TO THE CITY OF ROCHESTER

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of the Application of the City of Rochester to Adjust its Service Area Boundary with People's Cooperative Power Association

ISSUE DATE: June 14, 1993

DOCKET NO. E-132, 299/SA-88-996

In the Matter of a Petition by the City of Rochester to Provide Interim Service to the Victory Baptist Church and Newly Platted Areas Known as Hunter Hills Second and Lincolnshire Fourth Subdivisions

DOCKET NO. E-132, 299/SA-90-605

In the Matter of the Petition by the City of Rochester to Provide Interim Service to Various Annexations and Newly Platted Areas Within the City of Rochester

DOCKET NO. E-132, 299/SA-91-251

ORDER ACCEPTING INTERIM SERVICE AGREEMENT, REOPENING AND VACATING EARLIER INTERIM SERVICE DETERMINATIONS, AND AWARDING INTERIM SERVICE RIGHTS TO THE CITY OF ROCHESTER

**PROCEDURAL HISTORY**

**I. Proceedings to Date**

The dockets listed above relate to a complex and protracted service area boundary and compensation dispute between the City of Rochester and People's Cooperative Power Association. Under Minn. Stat. § 216B.44 (1992) a municipal utility may acquire the right to serve any area within its city limits upon paying appropriate compensation to the displaced utility. The City of Rochester has stated it intends to acquire all portions of People's' service territory within its city limits and has asked the Commission to determine appropriate compensation. The first docket listed above, which is before the Office of Administrative Hearings for contested case proceedings, is the one in which compensation is being determined.

Under Minn. Stat. § 216B.44 (1992), a municipal utility acquiring service territory within its city limits may be granted "interim service rights" if the Commission determines it would not be in the public interest for the assigned utility to extend service to new customers while compensation is being determined. The second and third dockets listed above are interim service dockets in which the Commission denied City petitions for interim service rights to specified areas.

On March 10, 1993 the Commission issued its ORDER GRANTING INTERIM SERVICE RIGHTS AND REQUIRING FURTHER FILINGS in the compensation docket. In that Order the Commission decided to give practical effect to two decisions made earlier in the case. One decision had found that specified portions of People's' service area had transferred to the City under a now-rescinded compensation agreement.<sup>1</sup> The other had found that People's' compensation claims for specified portions of its service area were barred by the doctrine of laches.<sup>2</sup> In the March 10 Order the Commission found it would not be in the public interest for People's to continue extending service to new customers in these areas.

The March 10 Order required the parties to make a joint filing listing all areas they agreed should receive interim service from the City, all areas they agreed should receive interim service from People's for reasons of efficiency, and all areas on which they were unable to agree. The Order also required individual filings explaining each party's position on which utility should serve the areas on which they were unable to agree.

On April 12, 1993 the parties made the required joint filing and individual filings. On April 26, 1993 the City made a reply filing. On April 26, 1993 the Department of Public Service filed comments.

On May 10, 1993 the Commission served notice on the parties that it would consider reopening its Orders in the two interim service dockets listed above, since some areas affected by the March 10 Order were treated in those Orders.

The matter came before the Commission on May 20, 1993.

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<sup>1</sup> INTERIM ORDER DETERMINING 1975 SERVICE AREA BOUNDARIES, DETERMINING SERVICE AREA CHANGES SINCE 1975, AND REFERRING SERVICE AREA VIOLATION TO THE ATTORNEY GENERAL (December 28, 1990).

<sup>2</sup> ORDER DETERMINING MOTION FOR PARTIAL SUMMARY DISPOSITION (August 7, 1992).

## FINDINGS AND CONCLUSIONS

### **II. The Parties' Filings**

The parties' joint filing listed some 30 areas to which they agreed the City received interim service rights under the terms of the March 10 Order. They also agreed that People's would continue to serve five of these areas, pending completion of compensation proceedings, because People's could provide interim service more efficiently and economically than the City. Finally, they identified three areas of the 30 on which they were unable to agree: Lincolnshire Three, Lincolnshire Four, and North Slopes Six. All three areas were residential subdivisions with People's' service hookups on all lots. The areas were at issue mainly because they were on the verge of expansion, and both utilities believed it would be more efficient for the same utility to serve the subdivisions and the adjacent areas into which they were expanding.

The City claimed it should serve the subdivisions and adjacent expansion areas, because it had been erroneously denied interim service rights to the areas in earlier Commission proceedings.<sup>3</sup> The City argued it was better to correct that error now than to wait until the end of the compensation proceeding.

People's contended the public interest favored allowing it to serve the subdivisions and adjacent expansion areas until the end of the compensation proceeding. People's said it was preparing to integrate its facilities in the Lincolnshire areas with the rest of its system and that turning these areas over to the City would force it to use a sub-optimal service configuration. People's argued this was not an appropriate time for the Commission to take up any compensation issues created by City acquisition of People's facilities in these areas. Finally, People's argued the Commission should not grant interim service rights on the basis of a decision which could still be overturned on appeal.

The Department recommended awarding interim service for all three areas to the City of Rochester.

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<sup>3</sup> The City's request for interim service rights to Lincolnshire Four had been denied in the second docket listed in the caption, E-132, 299/SA-90-605. Its request for interim service rights to North Slopes Six had been denied in the third docket listed, E-132, 299/SA-91-251. The City later realized it had been mistaken in claiming it had ever requested interim service rights to Lincolnshire Three.

### **III. Commission Action**

#### **A. Summary of Commission Action**

The Commission has reviewed the parties' joint filing, finds that it complies with the terms of the March 10 Order, and will accept and adopt it.

The Commission finds that the public interest requires reopening its decisions in the interim service dockets listed above. The Commission will vacate its earlier Orders as they relate to North Slopes Six and Lincolnshire Four and will award interim service rights to those subdivisions and adjacent areas affected by the laches decision to the City of Rochester. Interim service rights to Lincolnshire Three will remain with People's pending the conclusion of the compensation proceeding.

#### **B. North Slopes Six and Lincolnshire Four**

Under Minn. Stat. § 216B.25 (1992) the Commission may reopen any case for any reason, after giving the parties notice and opportunity to be heard. After notice and hearing, the Commission concludes it will reopen those portions of its October 10, 1990<sup>4</sup> and June 14, 1991<sup>5</sup> Orders which deny City requests to provide interim service to the North Slopes and Lincolnshire Four subdivisions. The Commission will vacate those denials and grant the City interim service rights to the subdivisions and adjacent areas affected by the laches decision.

A key reason that the October 10 and June 14 Orders denied the City interim service rights to North Slopes Six and Lincolnshire Four was the Commission's concern that the City might defer or decline acquisition of these subdivisions once compensation was set. As the Commission explained in the June 14 Order:

Finally, the Commission does not believe the City's intention to acquire permanent service rights to these subdivisions requires granting the City interim service rights. The firmest intentions can be frustrated by economic realities. Appropriate compensation for service rights to this area, or to any of the approximately 56 other areas the City intends to acquire, has not yet been determined. In compensation proceedings to date, the City has sponsored

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<sup>4</sup> ORDER DENYING PETITION AND ESTABLISHING TIME LIMIT FOR COMPLIANCE, Docket No. E-132, 299/SA-90-605.

<sup>5</sup> ORDER DENYING PETITION FOR INTERIM SERVICE RIGHTS, Docket No. E-132, 299/SA-91-251.

compensation figures dramatically lower than those put forward by other parties and awarded by the Commission. It is not clear, then, that the City will in fact serve all areas within its city limits in the immediate future. The City could decide to defer service territory acquisitions or to adopt a gradual approach to such acquisitions, once the cost is known. In short, the City's ultimate acquisition of service rights to these subdivisions is not sufficiently certain or immediate to justify granting the City interim service rights.

ORDER DENYING PETITION FOR INTERIM SERVICE RIGHTS, at 3.

Since then, the Commission has found that the City may serve North Slopes Six and Lincolnshire Four without paying compensation to People's. This changes the outcome of the public interest analysis and tips the balance in favor of allowing the City to serve. It eliminates the risk that service will transfer twice -- once to the City, then back to People's, should the City consider the compensation award too high. With this risk gone, there is little if any reason to allow People's to serve until the conclusion of the compensation proceeding. Delaying the transfer of service to the City will only deprive the City of revenues to which it is entitled, add to the complexity of the service transfer at the end of the compensation proceeding, and, at least potentially, increase the City's eventual integration and facilities acquisition costs for these subdivisions.

Since there are outstanding interim service Orders applicable to North Slopes Six and Lincolnshire Four, the Commission believes the most straightforward way to deal with these subdivisions is to vacate the portions of those Orders dealing with them and to grant the City's earlier requests for interim service rights. This will result in transferring existing customers to the City, an unusual result for an interim service determination. This is an unusual case, however, and the Commission sees nothing to be gained, and much to be lost, by delaying the transfer to the end of the compensation proceeding.

People's questioned whether the Commission was ready, at this point, to resolve any disputes that might arise about the cost of facilities the City will acquire from People's when service is transferred. The Commission doubts disputes will arise, but is confident it can deal with them if they do. Determining compensation for the facilities the City will acquire (mainly, underground wire) involves straightforward calculations the parties have conducted without dispute in the past. The Commission expects the same level of cooperation here. The Commission also notes that its earlier denials of City petitions for interim service rights were based in part on People's' representations that it would remove interim service facilities

without charge and work with the City to minimize eventual integration expenses:

The Commission concludes very little weight should be given to these [the City's integration] cost figures. This is especially true in light of the co-op's pledge to remove poles and transformers installed to serve the subdivisions without charge and to work with the City to design a distribution system to minimize eventual integration costs.

ORDER DENYING PETITION FOR INTERIM SERVICE RIGHTS, at 4.

The Commission is confident People's will carry out its earlier promises.

People's also objected to granting interim service rights on the basis of an Order that is not yet subject to judicial review. (The compensation docket, of which the laches decision is one part, will not be concluded and appealable for approximately another year.) That does not make this interim service determination unusual, however. All interim service determinations are just that, interim determinations, reflecting the Commission's best judgment on the basis of available information pending the completion of an ongoing compensation proceeding. Because of their interim nature, these determinations are not appealable.

Of course there is a possibility that the laches decision will not survive judicial review. In interim service determinations the Commission weighs possibilities, including in this case the possibility of reversal on appeal, and makes an interim judgment on where the public interest lies. In this case, the Commission believes the public interest lies in allowing the City to serve North Slopes Six and Lincolnshire Four. One of the utilities has to serve these subdivisions pending the conclusion of this proceeding. The Commission believes it is more equitable and practical for that utility to be the City, which would have been awarded interim service rights when it requested them if the facts leading to the laches decision had been fully developed then.

### **C. Lincolnshire Three**

The City mistakenly assumed it had filed a petition for interim service rights to Lincolnshire Three, another subdivision in an area the laches decision found the City may serve without paying compensation. Since there is no outstanding interim service Order affecting that subdivision, however, there is no basis for transferring existing service to the City. Furthermore, since every lot in the subdivision is occupied and receiving service, there is no point in awarding service rights to future points of

delivery to the City. The Commission will therefore allow People's to continue to serve the subdivision until the conclusion of the compensation proceeding.

**ORDER**

1. The interim service agreement filed by the parties is accepted and adopted.
2. The October 10, 1990 ORDER DENYING PETITION AND ESTABLISHING TIME LIMIT FOR COMPLIANCE in Docket No. E-132, 299/SA-90-605 and the June 14, 1991 ORDER DENYING PETITIONS FOR INTERIM SERVICE RIGHTS in Docket No. E-132, 299/SA-91-251 are vacated to the extent that they deny the City's petitions for interim service rights to the North Slopes Six and Lincolnshire Four subdivisions and adjacent areas affected by the laches decision.
3. The City of Rochester is granted interim service rights to existing and future customers within the North Slopes Six and Lincolnshire Four subdivisions and adjacent areas affected by the laches decision.
4. The City of Rochester and People's Cooperative Power Association shall cooperate to transfer service in North Slopes Six, Lincolnshire Four, and adjacent areas affected by the laches decision, from People's to the City, with minimal inconvenience to customers.
5. People's Cooperative Power Association shall continue to serve the Lincolnshire Three subdivision until the conclusion of the compensation proceeding, Docket No. E-132, 299/SA-88-996.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)