

E-299, 132/SA-93-498 NOTICE AND ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Application by the City of Rochester for an Adjustment of its Service Area Boundaries with People's Cooperative Power Association	ISSUE DATE: July 22, 1993 DOCKET NO. E-299, 132/SA-93-498 NOTICE AND ORDER FOR HEARING
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PROCEDURAL HISTORY

I. Proceedings to Date

On May 28, 1993 the City of Rochester filed a petition under Minn. Stat. § 216B.44 (1992) stating its intention to extend its assigned service area to include specified areas within its city limits annexed between 1991 and 1993.¹ All annexed areas lie within the assigned service area of People's Cooperative Power Association (People's). The petition asked the Commission to determine appropriate compensation to People's for the service territory at issue.

On June 28, 1993 People's filed a response asking the Commission to defer action on the petition until the parties had held settlement negotiations. On the same date the Department of Public Service filed comments recommending a contested case proceeding to determine compensation.

The matter came before the Commission on July 8, 1993. At that time all three parties recommended referring the matter to the Office of Administrative Hearings for contested case proceedings.

¹ Those areas are described in the petition as follows: Municipal Board Orders OA-12-55 and OA-237-1 and Rochester Municipal Annexation Ordinance Numbers 2794, 2830, 2823, 2807, 2827, 2832, 2831, 2845, 2838, and 2853 (as amended by 2872).

FINDINGS AND CONCLUSIONS

II. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over assigned service area disputes under Minn. Stat. §§ 216B.37-.44 (1992). The Commission has jurisdiction to determine compensation for municipal utility acquisitions of other utilities' service territories under Minn. Stat. § 216B.44 (1992).

The Commission finds that it cannot determine, on the basis of the record before it, the amount of compensation due People's for these 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.

III. Issues to be Addressed

Minn. Stat. § 216B.44 (1992) requires consideration of the following factors in determining compensation in municipal acquisition cases: 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.

IV. 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, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (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 (1992); 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 (1992).

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, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-6029; (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: areas annexed through Municipal Board Orders OA-12-55 and OA-237-1 and Rochester Municipal Annexation Ordinance Numbers 2794, 2830, 2823, 2807, 2827, 2832, 2831, 2845, 2838, and 2853 (as amended by 2872).
2. 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
Suite 1700
100 Washington Square
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
Suite 350
121 Seventh Place East
St. Paul, Minnesota 55101-2147

In the Matter of the
Application by the City of
Rochester for an Adjustment of
its Service Area Boundaries
with People's Cooperative
Power Association

MPUC Docket No. E-299, 132/SA-
93-498

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address, and Telephone Number of Administrative Law Judge:

Phyllis A. Reha, Office of Administrative Hearings, Suite 1700,
100 Washington Square, Minneapolis, Minnesota 55401-2138; (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: _____