

E-299, 232/SA-93-499 ORDER DENYING PETITION FOR INTERIM SERVICE RIGHTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Petition of  
the City of Rochester to Provide  
Interim Service to Various  
Annexations Within the City of  
Rochester

ISSUE DATE: July 22, 1993

DOCKET NO. E-299, 232/SA-93-499

ORDER DENYING PETITION FOR  
INTERIM SERVICE RIGHTS

**PROCEDURAL HISTORY**

**I. Proceedings to Date**

On May 28, 1993 the City of Rochester filed a petition for interim authority under Minn. Stat. § 216B.44 (1992) to provide electric service to a number of recently annexed areas within the assigned service area of People's Cooperative Power Association (People's or the co-op).<sup>1</sup> The City sought interim authority to allow it to serve the areas while compensation to People's was being determined in another docket.<sup>2</sup>

On June 15, 1993 People's filed a response opposing the petition. On June 28, 1993 the Department of Public Service (the Department) filed comments opposing the petition in part and supporting it in part.

The matter came before the Commission on July 8, 1993.

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<sup>1</sup> 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).

<sup>2</sup> In the Matter of the Application of the City of Rochester to Adjust its Service Area boundary with People's Cooperative Power Association (1991-1993 Annexations), Docket No. E-299, 132/SA-93-498.

## FINDINGS AND CONCLUSIONS

### **II. The Legal Standard**

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 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 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 based its petition for interim service rights on the following claims:

- (1) The City intends to exercise its statutory right to expand its assigned service area to include the annexations at issue and all other portions of People's' service area within its city limits. It has invested in the plant, equipment, and personnel necessary to carry out this intention.
- (2) When the City acquires permanent service rights to the areas at issue it may incur costs to integrate the two utilities' systems. These costs can and should be avoided by granting the City interim service rights.
- (3) When the City acquires permanent service rights to the areas at issue the parts of its system acquired from People's will contain materials different from standard City materials, complicating inventory control.
- (4) The City may be unable to use (and therefore unable to buy) some materials installed by People's during the interim service period. This would result in wasting the resources of People's and its customers.
- (5) Extending service to the areas at issue may require People's to acquire additional system capacity, an unnecessary expense in light of the City's eventual acquisition of service rights.

#### **IV. The Department's Recommendation**

The Department recommended granting interim service to the City for those areas in which People's was not yet serving any customers. The Department reasoned that duplication of facilities could not be avoided in areas where People's had already extended service to existing customers, but could and should be avoided in the others.

#### **V. 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 areas, including new points of delivery, while compensation is being determined. Minn. Stat. § 216B.44 (1992). The City's claims and the Department's recommendation are examined individually below.

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

The City argued that, since it will eventually acquire permanent service rights to the areas at issue, the most straightforward and efficient course of action is to allow the City to serve new customers from the beginning. The Department appears to have based its recommendation on acceptance of this premise. The Commission disagrees.

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 process of determining compensation for service rights to co-op territory within the city limits is complicated and far from over. The main compensation proceeding, Docket No. E-132, 299/SA-88-996, began in 1988 and is, according to the parties, at least 18 months from completion. It involves some 70 separate annexations over the course of 10 years. The City and the co-op have dramatically different positions on how compensation should be determined, leading to dramatically different compensation figures.

The firmest intentions can be frustrated by economic realities. 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 either event, the co-op would have been prejudiced by awarding interim service to the City. The Commission concludes the City's acquisition of permanent service rights is not sufficiently certain or immediate to justify granting the City interim service rights.

##### **B. Integration Costs**

The City argued it should be granted interim service rights to avoid potential expense and inconvenience in integrating People's' facilities with its own when it acquires permanent service rights. The City filed no cost estimates and did not claim integration costs were certain to exceed the normal costs of initial installation of service. The co-op said it is willing to work with the City in designing and constructing the distribution systems to serve these areas and pledged to remove all facilities necessary only for interim service at no cost to the City.

The Commission concludes the City's concerns are largely speculative and integration of the two systems can be accomplished with minimal difficulty.

### **C. Non-Standard Materials**

The City argued that not all co-op materials are identical to City materials and that acquiring system components with co-op materials will complicate inventory control and system repairs. The City provided no detailed factual support for this claim and no cost estimates.

The co-op has pledged in the past and continues to pledge that it will give the City all necessary assistance in acquiring materials standard for the co-op and non-standard for the City. The City has already acquired significant portions of People's' system, intends to acquire more, and will therefore face the inventory problem for years to come regardless of the outcome of this petition. These facts, together with the absence of any hard evidence of hardship to the City from stocking co-op compatible materials, lead the Commission to conclude any problems associated with future City use of co-op materials would be minor.

### **D. Wasted Materials**

The City did not provide factual evidence to support its claim that it might not be able to use some of the materials in People's' distribution systems and that those materials would be wasted. People's, however, has given two assurances that significantly reduce such concerns: its promise to cooperate with the City in designing the distribution systems to serve the areas and its promise to remove without charge to the City all equipment and materials for which the City has no use. The Commission concludes that the wasted materials claim does not support awarding interim service rights to the City.

### **E. Additional Capacity**

The City said People's' extension of service to the areas at issue "may require additions and augmentations to People's' system capacity which would be needless and avoided if Rochester is allowed to provide interim service." Petition at page 4. The co-op responded with the sworn statement of its general manager that it has sufficient capacity and facilities to meet the foreseeable needs of all areas at issue. The Commission concludes there is no capacity-related basis for awarding the City interim service rights.

### **ORDER**

1. The City of Rochester's May 28, 1993 petition for interim service rights to specified areas annexed from 1991 to 1993 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 these areas to facilitate their 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 areas at issue.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)