

E-132,299/SA-94-442 ORDER GRANTING INTERIM SERVICE RIGHTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Tom Burton  
Marshall Johnson  
Cynthia A. Kitlinski  
Dee Knaak

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Petition by the City of  
Rochester to Provide Interim Service to 1993-  
94 Annexations

ISSUE DATE: July 15, 1994

DOCKET NO. E-132,299/SA-94-442

ORDER GRANTING INTERIM SERVICE  
RIGHTS

**PROCEDURAL HISTORY**

On May 10, 1994 the City of Rochester filed a petition for interim authority under Minn. Stat. § 216B.44 (1992) to provide electric service to 14 recently annexed areas within the assigned service area of People's Cooperative Power Association (People's or the co-op). The City sought interim authority to allow it to serve the areas while compensation to People's was being determined in another docket.<sup>1</sup> The City proposed to escrow \$1,500 per acre as it extended service, with escrow funds to be credited toward its final compensation obligation.

On May 25, 1994 People's filed a response consenting to a Commission Order granting the City interim service rights to seven of the areas, subject to specified conditions. The co-op opposed granting the City interim service rights to the remaining areas.

On June 6, 1994 the Department of Public Service (the Department) filed comments recommending granting the City's petition in its entirety, subject to the conditions specified by the co-op. On June 9, 1994 the City filed comments concurring in the Department's recommendation.

The petition came before the Commission on June 30, 1994.

**FINDINGS AND CONCLUSIONS**

**I. 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 by the assigned utility 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.

**II. 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

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<sup>1</sup> In the Matter of the Application of the City of Rochester to Adjust its Service Area Boundary with People's Cooperative Power Association, Docket No. E-299,132/SA-93-498.

area to include the annexed areas and all other portions of People's' service territory within the Rochester city limits. The seriousness of the City's intention is demonstrated by its proposal to escrow funds toward the final compensation award and by its recent agreement to pay People's in excess of \$4,000,000 for permanent service rights in the "996" compensation proceeding<sup>2</sup>;

(2) The City has the plant, equipment, and personnel necessary to serve the areas.

(3) When the City acquires permanent service rights to the areas it may incur costs to integrate the two utilities' systems. These costs can and should be avoided by granting the City interim service rights.

(4) The City may be unable to use some materials installed by People's if People's extends service to new customers during the interim service period. This would result in unnecessary duplication of facilities and wasted resources.

(5) Extending service to the areas may require People's to acquire additional system capacity, an unnecessary expense in light of the City's eventual acquisition of service rights. The City alleged the co-op has misled the Commission on this issue in past interim service cases.

(6) Extending service to the areas will cause an increase in People's wholesale demand charge, an unnecessary expense which will remain after permanent service rights have passed to the City. The City alleged the co-op has misled the Commission on this issue in past interim service cases.

### **III. People's' Claims**

People's did not oppose the City's request for interim service rights to seven of the fourteen areas, subject to the following conditions:

(1) The City will consult with People's on the design and construction of distribution facilities to serve the areas;

(2) In the event service rights revert to People's and City-installed cable fails to meet Rural Electrification Administration (REA) standards, People's need not compensate the City for the cable;

(3) In the event service rights revert to People's and the City has installed 175 mil unjacketed cable, the City shall hold harmless, defend, and indemnify People's against third party claims based on improper installation or defective materials;

(4) The City shall escrow \$1,500 per acre as it extends interim service into the areas, with escrow funds credited against any compensation obligation ultimately found due;

The co-op stated the seven remaining areas had co-op customers or facilities in or near them and were not targeted for immediate development, leading to disputed material facts.

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<sup>2</sup> The "996" proceeding, involving compensation rights to some 70 separate annexations over the course of 10 years, is the largest service area compensation case ever to come before the Commission. In the Matter of the Application of the City of Rochester to Adjust its Service Area Boundary with People's Cooperative Power Association, Inc., Docket No. E-132,299/SA-88-996.

The co-op denied misleading the Commission in the past on the issues of wholesale demand charges and the need for additional capacity. People's stated that, to the extent the Commission considered allegations of previous misrepresentations relevant in this case, there are material facts in dispute.

Finally, at oral argument People's made new claims of disputed material facts based on the logistics of either utility extending service to hypothetical customers in the areas at issue. It appeared, and it appeared to be conceded by People's, that the facts in these hypothetical situations were not in dispute (e.g., the location of service area boundaries, location of both utilities' lines). What appeared to be in dispute was how the Commission should weigh the facts in the hypothetical situations to determine the public interest.

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

The Department recommended granting the City interim service rights to all areas at issue, believing it would contravene the public interest for the co-op to incur any expense to provide temporary service to any new customer in these areas.

#### **V. Commission Action**

##### **A. Summary**

The Commission finds it would be contrary to the public interest for People's to extend service to new customers within the areas at issue and will grant the City's petition, subject to the conditions proposed by the co-op, supported by the Department, and concurred in by the City.

In determining the public interest in interim service cases, the Commission must balance the risks and benefits of leaving service rights with the assigned utility against the risks and benefits of allowing the municipal utility to serve new customers. The factors in the equation differ in every case. In this case, there are fewer risks and more benefits in allowing Rochester to serve new customers than in allowing People's to do so.

##### **B. Analysis**

The decision to grant the City's petition is based in large part on the belief that the City will acquire permanent service rights to the areas at issue and will acquire them soon. The City has asked the Commission to determine compensation for service rights to the areas, and evidentiary hearings are scheduled to begin in November. The City has consistently stated it is committed to acquiring service rights to all areas within the city limits. It has demonstrated that commitment by its recent settlement of the "996" case and by its proposal to escrow funds in this case. All these facts lead the Commission to conclude it is virtually certain the City will acquire permanent service rights to these areas.

Given that certainty, there is little to gain, and much to lose, by allowing the co-op to extend service to new customers. It would create a clear and significant risk of unnecessary duplication of facilities, the one factor the statute requires the Commission to consider in making interim service determinations. It would inevitably cause customer inconvenience and service disruption when service rights shifted from People's to Rochester at the end of the compensation proceeding.

It could harm People's' ratepayers by leading People's to make investments (e.g., new equipment) or incur obligations (e.g., higher wholesale demand charges) that are not cost-effective given the short time the new customers will be on the system. It could harm Rochester's ratepayers by increasing the compensation ultimately payable and delaying the receipt of revenues that would contribute to recovery of the fixed costs of their system.

In short, allowing People's to extend service to new customers in the areas at issue would

conflict with the goals of the service area statutes -- to encourage the development of coordinated statewide electric service, to avoid unnecessary duplication of utility facilities, and to promote the provision of economical, efficient, and adequate electric service throughout the state. Minn. Stat. § 216B.37 (1992).

### **C. Conditions**

The Commission respects People's' reluctance to acquiesce in City service to customers within co-op service territory until the co-op has been formally and permanently relieved of its duty to serve. The Commission believes, however, that the safeguards People's proposed for the seven areas it agreed the City should serve provide adequate protection against any failure on the part of the City to acquire permanent service rights. The Commission will extend those protections to all the areas at issue.

### **D. Contested Case Request**

In its answer the co-op suggested that there were material facts in dispute because there was no evidence that development was imminent in the areas at issue. The co-op did not elaborate, and the meaning of this statement is not clear. The Commission clarifies, however, that the decision to grant the City interim service rights is not based on any particular

development scenario, but on the factors discussed above, most of which turn on the Commission's belief that the City will soon acquire permanent service rights to the areas at issue.

Similarly, the co-op challenged the City's allegations that the co-op had misrepresented facts in past Commission proceedings and claimed a right to contested case proceedings if the Commission based its decision on a finding that these misrepresentations had been made. The Commission clarifies that these allegations played no role in the interim service decision.

The Commission concludes there are no material facts in dispute and no need for a contested case proceeding. The Commission will grant the City's petition, subject to the conditions proposed by the co-op. Those conditions will apply to all 14 areas.

### **ORDER**

1. The Commission grants the City's petition for interim service rights to the areas at issue, subject to the following conditions:
  - (a) The City will consult with People's on the design and construction of distribution facilities to serve the areas;
  - (b) In the event service rights revert to People's and City-installed cable fails to meet Rural Electrification Administration (REA) standards, People's need not compensate the City for the cable;
  - (c) In the event service rights revert to People's and the City has installed 175 mil unjacketed cable, the City shall hold harmless, defend, and indemnify People's against third party claims based on improper installation or defective materials;
  - (d) The City shall escrow \$1,500 per acre as it extends interim service into the areas, with escrow funds credited against any compensation obligation ultimately found due.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)