

E-132,299/SA-95-1030

NOTICE AND ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs  
Tom Burton  
Marshall Johnson  
Dee Knaak  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Petition by the City of Rochester for an Adjustment of Its Service Area Boundaries with People's Cooperative Power Association, Inc.

ISSUE DATE: December 13, 1995

DOCKET NO.E-132,299/SA-95-1030

NOTICE AND ORDER FOR HEARING

**PROCEDURAL HISTORY**

On October 3, 1995, the City (City) of Rochester submitted a petition requesting an adjustment of its service area boundaries with People's Cooperative Power Association, Inc. (Peoples or the Cooperative). The petition referred to City annexations of land located in the Cooperative's assigned service territory, as listed in Minnesota Municipal Board of Ordinances Numbers 2993 and 2996. The City asked the Commission to adjust its service area territory to include the annexed area, and to determine the appropriate compensation, if any, to be paid to Peoples. The City stated that the two parties had been unable to negotiate acceptable terms in either of the two most recent City annexation dockets. From this fact, the City inferred that the parties would be unable to agree on terms for the transfer of service rights in this case.

On October 27, 1995, Peoples filed an answer and comments, in which it asked the Commission to refer the matter to the Office of Administrative Hearings (OAH) for contested case proceedings.

On October 31, 1995, the Department of Public Service (the Department) filed comments. The Department stated that it believed that a contested case hearing would be necessary to resolve the substantial issues involved.

On November 27, 1995, Peoples filed a letter with the Commission. On November 29, 1995, the City filed a letter. In both letters, the parties stated that they supported the referral of this matter to the OAH for contested case proceedings.

On November 30, 1995, the matter came before the Commission for consideration.

## **FINDINGS AND CONCLUSIONS**

### **I. JURISDICTION AND REFERRAL**

The Commission has general jurisdiction over this matter under Minn. Stat. § 216B.08 and specific jurisdiction over matters related to compensation for municipal service territory extensions under Minn. Stat. §§ 216B.44 and 216B.45.

The Commission finds that it cannot determine, on the basis of the record before it, the appropriate compensation to be paid by the City of Rochester to Peoples for the purchase of property annexed in the municipal service territory extensions. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

### **II. PROCEDURAL OUTLINE**

#### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Judge Phyllis A. Reha. Her address and telephone number are as follows: Office of Administrative Hearings, 100 Washington Square, Suite 1700, 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 (1994); 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 7829.0100 to 7829.3200. 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 Judge Reha 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 (1994).

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 Lisa Youngers, Special Assistant Attorney General, 121 Seventh Place East Suite 350, St. Paul, Minnesota 55101-2147, (612) 296-0413.

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

**C. Intervention**

Persons wishing to become formal parties to this proceeding shall promptly file petitions to intervene with Judge Reha. 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 will be held in this matter on Friday, January 19, 1996, at 9:30 A.M. in the Small Hearing Room at the Commission offices, 121 Seventh Place East Suite 350, St. Paul, Minnesota 55101-2147.

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 public hearings, discovery procedures, and similar issues.

**E. Application of Lobbying Provisions**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq. (1994), apply to general rate cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Minnesota Ethical Practices Board, telephone number (612) 296-1720, with any questions.

**F. 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 on the City of Rochester's petition for an adjustment of its service area boundaries with People's Cooperative Power Association, Inc.
2. The contested case proceeding shall begin with a prehearing conference on Friday, January 19, 1996, at 9:30 A.M. in the Small Hearing Room, Minnesota Public Utilities Commission, 121 Seventh Place East Suite 350, St. Paul, Minnesota 55101-2147.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
100 Washington Square, Suite 1700  
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East Suite 350  
St. Paul, Minnesota 55101-2147

In the Matter of the Petition by the City of  
Rochester for an Adjustment of Its Service  
Area Boundaries with People's  
Cooperative Power Association, Inc.

MPUC Docket No. E-132,299/SA-95-1030  
OAH Docket No.

NOTICE OF APPEARANCE

Date of Hearing: Friday, January 19, 1996, at 9:30 A.M.

Name and Telephone Number of Administrative Law Judge:

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: \_\_\_\_\_