

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott Chair  
Edward A. Garvey Commissioner  
Marshall Johnson Commissioner  
LeRoy Koppendraye Commissioner  
Phyllis A. Reha Commissioner

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In the Matter of a Petition by the City of Rochester ISSUE DATE: MAY 28, 2002  
for Approval of an Adjustment of its Service  
Boundaries with People's Cooperative Services, DOCKET NO. E-132,299/SA-02-496  
Inc.

NOTICE AND ORDER FOR HEARING

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**PROCEDURAL HISTORY**

On April 8, 2002, the City of Rochester (the City) filed a petition under Minn. Stat. § 216B.44 stating its intention to extend its assigned service area to include an area within its city limits known as the Celestica property. The area was annexed on March 21, 2000 and lies within the assigned service area of People's Cooperative Services, Inc. (People's). The petition asked the Commission to adjust the City's service area boundaries to include this area and to determine appropriate compensation to People's for service rights within the area.

On April 26, 2002, People's filed a response stating that the two utilities were unable to agree on compensation and asking the Commission to refer the case for contested case proceedings.

On May 8, 2002, the Department of Commerce filed comments recommending a contested case proceeding to determine compensation. Neither party opposed the agency's recommendation.

This matter, being uncontested, was referred to the Commission subcommittee authorized to act on uncontested filings under Minn. Stat. § 216BA.03, subd. 8.

**FINDINGS AND CONCLUSIONS**

**I. Jurisdiction and Referral for Contested Case Proceedings**

The Commission has jurisdiction over assigned service area disputes under Minn. Stat.

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§§ 216B.37-.44. The Commission has jurisdiction to determine compensation for municipal utility acquisitions of other utilities' service territories under Minn. Stat. § 216B.44.

The Commission finds that it cannot determine, on the basis of the record before it, the amount of compensation due People's for service rights to this area. 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 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 Kathleen D. Sheehy. Her address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7602.

#### **B. Hearing Procedure**

##### *1 \* Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; 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; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

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The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota

State Bar Association.

**2 \*** *Right to Counsel and to Present Evidence*

In these proceedings, 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.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

**3 \*** *Discovery and Informal Disposition*

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 Stuart Mitchell, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 7<sup>th</sup> Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 296-8662; or Cassandra O'Hern, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 282-5725.

**4 \*** *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

**5 \*** *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

**6 \*** *Scheduling Issues*

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

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**7 \*** *Notice of Appearance*

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.

**8 \* *Sanctions for Non-compliance***

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

**C. Parties and Intervention**

The current parties to this case are the City, People's, and the Minnesota Department of Commerce. 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.

Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

**V. Application of Ethics in Government Act**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., apply to ratesetting 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 Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

**VI. 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. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

**This decision is issued by the Commission's consent calendar subcommittee, under a delegation of authority granted under Minn. Stat. § 216A.03, subd. 8 (a). Unless a party, a participant, or a Commissioner files an objection to this decision within ten days of receiving it, it will become the Order of the full Commission under Minn. Stat. § 216A.03, subd. 8 (b).**

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

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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

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In the Matter of a Petition by the City of Rochester MPUC Docket No. E-132,299/SA-02-496  
for Approval of an Adjustment of its Service  
Boundaries with People's Cooperative Services, OAH Docket No.  
Inc.

NOTICE OF APPEARANCE

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Name, Address and Telephone Number of Administrative Law Judge:

Kathleen D. Sheehy, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,  
Minneapolis, Minnesota 55401; (612) 341-7602

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: \_\_\_\_\_