

FOR BOARD ACTION

Agenda Item # 9

Meeting Date:

1/30/07

SUBJECT: Ratify Common Council Resolution No. 044-07 to Acquire Electric Service Rights Through Condemnation

PREPARED BY: Walt Lorber, Director of Core Services

The City has acquired permanent electric service rights to annexations completed through December 31, 2000. Acquisition of rights to annexations completed subsequent to that date has been the subject of numerous meetings and letters between RPU and People's Cooperative Services. The Minnesota Public Utilities Commission's compensation awards in several recent cases appear to have caused People's to believe that they are now entitled to significantly higher compensation; however People's has not presented a formal proposal of settlement. In replying to the City's recent interim service petition, People's stated that negotiations with RPU had "failed."

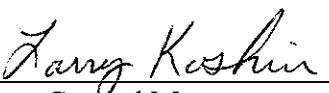
In the event that parties cannot agree on compensation, a City may acquire electric service rights through petitioning the MPUC to determine appropriate compensation or through a condemnation proceeding in district court. As explained in the attached letter to Larry Koshire and Stevan Kvenvold, RPU's legal counsel has recommended that the City use condemnation in this case.

Because the absence of a proceeding for permanent service was raised as an issue in the City's pending interim service petition before the MPUC, staff requested the Council authorize condemnation at its January 17 meeting such that the City's commitment to acquire such rights was affirmed. The Council passed Resolution No. 044-07 authorizing the use of condemnation to acquire electric service rights to 2001-06 annexations.

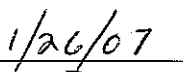
Note: MPUC staff briefing papers subsequently failed to acknowledge the Council's resolution and recommended that the Commission table the City's petition. Legal counsel recommended withdrawing the petition pending the condemnation filing.

UTILITY BOARD ACTION REQUESTED:

Staff recommends that the RPU Board ratify Council Resolution No. 044-07 to acquire electric service rights to 2001-06 annexations through condemnation and authorize staff to commence such action utilizing the McGrann-Shea legal firm for legal support. The 2007 budget includes monies for litigation resources.



General Manager



Date

ROCHESTER PUBLIC UTILITIES



MEMORANDUM

January 11, 2007

To: Stevan Kvenvold, City Administrator
Larry Koshire, RPU General Manager

From: Walt Lorber, RPU Director of Core Services *WNL*

Subject: Acquisition of Electric Service Rights to 2001-06 Annexations

By resolutions dated October 23, 1990 and December 11, 2006, the Rochester City Council has affirmed the City's intent to continue its longstanding practice of providing electric service to all areas annexed into the City. The provision of electricity to such newly annexed areas is contingent upon the City having/obtaining electric service rights. The 1974 state law, which established electric service territories, provided that cities with municipal utilities could choose to acquire the electric service rights to annexed areas by paying the displaced utility appropriate compensation. Since 1974, Rochester has acquired the rights to approximately 11,142 acres from People's Cooperative Services, including all annexations through December 31, 2000.

Since January 1, 2001, the City has completed 122 annexations containing approximately 5436 acres, of which 5203 acres lie within People's assigned service area. Although RPU and People's have met and corresponded many times since 2000, the parties have been unable to reach agreement on compensation terms. Generally, People's has agreed to the City providing "interim" electric service to new development until compensation for permanent rights was established and paid.

People's has recently informed the Minnesota Public Utilities Commission that our negotiations have failed. In the event the parties cannot agree on compensation terms, the law provides that the City can have the compensation determined through 1) the regulatory process established by the MPUC or 2) through condemnation in district court. The procedural steps involved and the associated costs of the proceedings are generally similar in both settings. Since 1974, 11 acquisitions have been completed by the City: six by negotiated settlement, four through the MPUC, and one through condemnation. Outside legal counsel has recommended that the City use condemnation in this situation. Monies for such litigation were included in the 2007 electric budget.

I recommend that you request the Common Council to authorize RPU to initiate a condemnation proceeding in district court to obtain permanent electric service rights to serve all existing and future customers in areas annexed by the City between January 1, 2001 and December 31, 2006. A Request for Council Action, a summary of the annexations (Exhibit A), and a map depicting the annexed areas is attached.

A RESOLUTION OF THE CITY OF ROCHESTER
DETERMINING THE NECESSITY FOR AND AUTHORIZING
THE ACQUISITION OF ELECTRIC SERVICE TERRITORY BY EMINENT DOMAIN

WHEREAS, the City of Rochester ("City"), for over 112 years, has exercised its legal authority to own and operate an electric utility providing electricity to its citizens; and

WHEREAS, the City has implemented this authority under the auspices of Rochester Public Utilities ("RPU") which operates, controls, and manages the City's electric utility; and

WHEREAS, the City has an established, longstanding practice of providing electric service to all areas annexed into the City; and

WHEREAS, the City has undertaken a public project of annexing certain lands into the City since January 1, 2001, and planning to provide City utilities and services for the benefit of the public, including streets, sewer, water, wastewater, electricity, police, and other City services; and

WHEREAS, these annexed lands are located within the assigned electric service territory of People's Cooperative Services, Inc. ("People's"), and include some existing electric customers, as well as a significant amount of land in which there are no existing electric customers; and

WHEREAS, by virtue of the public project, new development can be expected to occur in these annexed lands;

WHEREAS, the City Council finds that it will be in the best interest of the citizens of Rochester who reside or operate within, or who will reside or operate within, in these annexed lands located within the assigned electric service territory of People's, as further described by annexation ordinance and acreage in the Exhibit A hereto ("Acquisition Area"), to have electric service at retail permanently provided by the City, consistent with the City's established, longstanding practice; and

WHEREAS, the City has determined that it is necessary and in furtherance of this public interest to acquire from People's the electric service territory of the Acquisition Area, which is part of the City but within the assigned electric service territory of People's; and

WHEREAS, the parties have been unable to agree upon damages for such service territory; and

WHEREAS, the City is authorized to acquire property by the use of the City's eminent domain authority, including, but not limited to the authority granted to the City pursuant to the City of Rochester City Home Rule Charter, Section 1.00, subdivisions 2 and 3; Minnesota Statutes, Sections 216B.47, 412.211, 412.321, 465.01; and Minnesota Statutes, Chapters 117 and 453

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF ROCHESTER AS FOLLOWS:

1. That extending City electric distribution facilities to serve all customers at retail in the Acquisition Area is reasonably necessary to serve a public purpose and authorized by statute;
2. That acquisition of the electric service territory of the Acquisition Area, described in Exhibit A – including any existing or future service rights, if any, any People's facilities used and usable by the City to provide service to the Acquisition Area, and any other rights necessary for the City to provide electric service to the Acquisition Area – is necessary for the purpose of the City providing electric service to the Acquisition Area in support of the City's established, longstanding practice of providing electric service to all areas annexed into the City and its operating a municipal utility;
3. That acquiring the electric service territory of the Acquisition Area through eminent domain is reasonably necessary to achieve said purpose, allowing court-appointed commissioners to determine appropriate damages in an efficient and responsive proceeding;
4. That the City Attorney is authorized and directed to initiate appropriate proceedings to acquire the electric service territory of the Acquisition Area by the exercise of the power of eminent domain pursuant to Minn. Stat. § 216B.47, Chapter 117, and other express or implied powers, and in said proceedings, to determine what damages, if any, should be paid to People's by the City. The City Attorney is further authorized to take all actions necessary and desirable to carry out the purposes of this resolution. Rochester Public Utilities, as the entity responsible for the control, management, and operation of the City's electric utility, is hereby directed to manage and oversee the eminent domain proceeding.

BE IT FURTHER RESOLVED, that all things necessary to carry out the terms and purpose of the Resolution are hereby authorized and performed

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF
ROCHESTER, MINNESOTA, THIS 17th DAY OF JANUARY, 2007.


PRESIDENT OF SAID COMMON COUNCIL

ATTEST: 
CITY CLERK

APPROVED THIS 18th DAY OF JANUARY, 2007.


MAYOR OF SAID CITY

(Seal of the City of
Rochester, Minnesota)

Res05/Resolu CondemnPeoples07

Exhibit A

Annexations by City of Rochester January 2001 through December 2006

ORD Number	Date Annexed	Location	Acres	
			Annexed	To be Acq
OA-662-1	3/1/2001	Part of Lot 27, Lots 28-32 in Blk 2, Sunnydale	3.12	3.12
OA-122-75	3/30/2001	ROW 2800 Blk W Cr Dr	0.49	0.49
3372	3/30/2001	Century Hills 5	13.66	13.66
OA-660-1	4/26/2001	Misc. Lots in Rose Harbor Area	12.84	12.84
3379	5/24/2001	N of E Cr Dr, NW of Century HS (Plateau Estates)	53.90	53.90
3387	5/24/2001	SE Corner of 50 Ave & 65 St NW	53.39	53.39
3391	6/21/2001	N of Emerald Hills and S of 48 St NE	58.98	58.98
OA-660-2	6/28/2001	Lots 1-3 in Blk 1, Rose Harbor 2	0.99	0.99
3397	6/28/2001	W side St. Bridgets Rd SE, S of 48 St	39.72	39.72
3399	6/28/2001	E of Douglas Trail, S of 65 St NW	59.97	59.97
3401	8/17/2001	E of Plateau Estates on East Circle Dr NE	11.79	11.79
3407/3402	8/17/2001	Sect 16&21, High Forest Twnshp SW, adj to Airpor	165.00	165.00
OA-660-4	9/14/2001	Lots 4-7, Blk 8, and Lot 4, Blk 10, Rose Harbor 4	2.73	2.73
3411	9/14/2001	E of East River Rd NE, W of TH63	40.00	40.00
3412	9/14/2001	NE corner of East Circle Dr and 16 Ave NE	2.00	2.00
3413	9/14/2001	N of Emerald Hills and S of 48 St NE	19.05	19.05
3414	9/27/2001	W of 18 Ave SW, N of 36 St	7.87	7.87
3419	9/27/2001	S of 7 St NW, W of Manor Ridge Dr NW	9.91	9.91
3422	11/9/2001	W side of W Cr Dr, S of Meadow Lakes Golf Cours	54.63	26.82
3427	12/14/2001	S of Viola Rd NE, between Century Hills & Haverhi	58.05	58.05
3429	12/14/2001	E & W sides of TH52N, N of 65 St NW	198.21	198.21
3374/3354	12/14/2001	55 St Estates, exc. Lot 2, Blk 5 & areas in Manorw	103.39	103.39
OA-660-6	1/18/2002	S side of Eastwood Rd SE	238.63	238.63
OA-122-76	2/22/2002	W side of 18 Ave NW, N of Hunter Hills	78.72	78.72
3441	2/22/2002	N of E Circle Dr, E of 16 Ave NE	59.71	59.71
3446	2/22/2002	S side of TH 14, E of 40 Ave SE	41.93	41.93
OA-662-2	3/15/2002	E of Sunnydale Subd	66.10	66.10
3450	3/15/2002	S of Pinewood Rd SE, E of S Park 1st and 2nd	24.30	24.30
3451	3/15/2002	N of TH14E, E of E Ridge Subd	36.93	36.93
3452	3/15/2002	S of 21 St NE, E of Century Hills Dr	59.99	59.99
3460	4/12/2002	S side of 65 St NW, E of 50 Ave	36.77	36.77
3463	5/13/2002	N side of 55 St NW, E of 60 Ave, SW of Douglas T	55.54	55.54
3475	6/14/2002	E side of E Circle Dr, S of Century Hills 3	22.50	22.50
3478	6/14/2002	S of 55 St NW, E of 60 Ave	52.10	52.10
3476	7/15/2002	S of Viola Rd NE, E of Century Hills, W of Havehill	36.65	36.65
3481	7/15/2002	W side of 50 Ave NW, S of Wedgewood Hills 4	57.74	57.74
3490	7/15/2002	N side of E Circle Dr NE, W of Christ Our Rock	9.57	9.57
3494	7/15/2002	N of 55 St NW, E of 60 Ave NW	35.71	35.71
3499	8/13/2002	S of Pinewood Rd SE, W of 22 Ave	1.50	1.50
3501	8/13/2002	W of TH 63N, N of 37 St NE	33.39	33.39
3504	9/13/2002	N of Valleyhigh Rd, betw W Circle Dr and 50 Ave N	39.74	39.74

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ORD Number	Date Annexed	Location	Acres	
			Annexed	To be Acq
3506	9/13/2002	E side of TH 52N, N of 65 St NW	59.93	59.93
3514	10/11/2002	S of 65 St NW and W of 50 Ave NW	19.65	19.65
3522	12/13/2002	S of 55 St NW, E of 60 Ave NW	48.01	48.01
3525	12/13/2002	N of E Circle Dr NE, E of 16 Ave NE and 35 St NE	57.22	57.22
3529	1/17/2003	N of 55 St. NW, W of 50 Ave, S of Douglas Trail	49.45	49.45
3539	2/25/2003	NW quadrant of TH52S & Co Rd 1 SE (11 Ave SE)	54.98	54.98
3540	3/24/2003	SE quadrant of TH52N & 75 St NW (Scott property)	35.44	35.44
3551	5/9/2003	E of E Cr Dr NE, S of Viola Rd, N of Silver Crk Rd	1.07	1.07
3552	5/9/2003	W of 18 Ave SW, W of Hart Farms Sub, N of 40 St	19.35	19.35
OA-122-77	6/16/2003	NE 1/4 of NE 1/4 Sect 9, T107N, R14W, E of Band	32.82	32.82
3545	6/16/2003	N of Viola Rd NE, W of Osjor Estates, E of Schaeff	12.00	12.00
3547	6/16/2003	N of Shannon Oaks Sub, along Viola Rd NE	6.00	6.00
3555	6/16/2003	N of 40 St SW, W of 18 Ave	59.99	59.99
3559	6/16/2003	W of 18 Ave SW, N of Hart Farms Sub	44.99	44.99
3560	6/16/2003	N of E Cr Dr NE, E of Northwood Hills 2 Ssub	25.61	25.61
OA-122-78	8/18/2003	Part of W Cr Dr ROW at 28 St NW	0.09	0.09
OA-660-7	8/18/2003	S of Eastwood Rd SE, W of Knollwood Dr SE	90.00	90.00
3568	8/18/2003	S of 55 St NW, W of Wedgewood Hills 3 & 5	13.63	13.63
3573	8/18/2003	N of Nothern Heights E8 (Baihly Estates Park)	4.43	4.43
OA-660-8	9/12/2003	S of Harbor Dr, E of Sunrise Ave SE	10.19	10.19
3437	9/12/2003	E and W of 50 Ave NW, N of 19 St	137.66	124.63
3576	9/12/2003	N of 19 St, E of 50 Ave NW	59.92	59.92
3577	9/12/2003	N of Northway Ln NE, E of Northland Pl, E of TH63	26.40	26.40
3578	9/12/2003	Lot 1, Blk 1, 41 St Business Park	39.70	39.70
OA-966-1	10/13/2003	W of 60 Ave NW at 55 St	56.70	56.70
3596	10/13/2003	S of TH14E, E of 40 Ave SE	2.15	2.15
3598	11/12/2003	N of 55 St, E of 60 Ave NW	35.97	35.97
3601	12/11/2003	N of TH52, S of Pinewood Rd SE, W of 34 Ave SE	42.09	42.09
3608	1/15/2004	S of TH14W, E of 40 Ave SW	7.94	7.94
OA-122-79	3/18/2004	E side of W Cr Dr NW, S of 41 St NW	14.00	14.00
OA-661-2	3/18/2004	NE of Marion Rd, N of 25 St SE	26.10	26.10
OA-122-81	5/13/2004	Various parcels and ROW S 1/2 Sect 7-T107N-R1	45.73	45.73
OA-122-82	5/13/2004	Various parcels and ROW NW 1/4 Sect 9-T107N-F	8.05	8.05
OA-661-1	5/13/2004	W of 2900 Blk Marion Rd SE	2.97	2.97
OA-661-3	5/13/2004	W of 2800 Blk Marion Rd SE	39.54	39.54
OA-966-2	5/13/2004	55 St NW ROW W of 60 Ave NW	5.45	5.45
3633	5/13/2004	N of 19 St NW, S of Badger Ridge, W of Superior I	19.44	19.44
3641	6/10/2004	E of E Cr Dr NE, W of Century Hills Dr	15.99	15.99
3642	6/10/2004	E of Century Pt Subd	43.34	43.34
OA-1050-1	7/8/2004	Misc Parcels N of Valleyhigh Dr NW betwn 50-60 A	450.60	450.60
3653	8/12/2004	E of TH63N, S of 48 St NE, N of Northland Pl	34.90	34.90

Exhibit A

Annexations by City of Rochester January 2001 through December 2006

ORD Number	Date Annexed	Location	Acres	
			Annexed	To be Acq
3654	8/12/2004	N of Valleyhigh Dr NW, E of 50 Ave	39.67	39.67
3658	9/9/2004	N of 19 St NW, E of 50 Ave	16.74	16.74
3663	10/7/2004	S of Marion Rd SE, N of 30 St	17.47	17.47
3664	10/7/2004	N of 40 St NW, W of 18 Ave	19.19	19.19
3665	10/7/2004	W of 18 Ave SW, N of Hart Farms, S of Merrihills	52.25	52.25
OA-661-4	12/14/2004	20 St SE, W of 38 Ave	20.02	20.02
3681	12/14/2004	Lot 3, Osjor Estates 3rd Subd (2605 Oslo Ct NE)	0.89	0.89
OA-622-1	1/11/2005	S of Pinewood Rd, W of 34 Ave SE (Lots 54,58, Pl	10.01	10.01
3684	1/11/2005	E of 60 Ave NW, SE of Kingbury Hills 3	21.81	21.81
3685	1/11/2005	E of 8 St SW, W of W Cr Dr, S of Meadow Lakes C	3.98	3.98
3597	2/11/2005	N of TH30, W of TH63 (Part of Airport)	189.00	189.00
3689	2/11/2005	S of E Cr Dr, W of Rocky Creek Dr NE	6.42	6.42
3695	4/7/2005	N of 7 St NW, Sect 30 & Sect 31-107-14	15.00	15.00
OA-663-1	4/8/2005	W 48 Ft Front Lot 8, W 42 Ft Lot 9, Crystal Sprgs S	0.68	0.68
OA-660-10	4/19/2005	Lot 5, Blk 3 Rose Harbor 4th Subd.	0.37	0.37
3696	5/16/2005	W of TH63, S of 48 St NE, SE 1/4 Sect 13-107-14	58.29	58.29
3702	6/9/2005	SW Corner of 50 Ave NW and Valleyhigh Road	40.00	40.00
3704	6/9/2005	N of 60 St SW, W of WC Reservoir, S of Scenic O	51.94	51.94
3718	7/6/2005	S of 48 St NE, W of 22 Ave, N of Cassidy Hills	57.51	57.51
3716	7/7/2005	E of 18 Ave SW, S of Greystone Ln	40.00	40.00
3709	7/13/2005	S 33 Ft of Overland Dr NW, Sect 9-107-14	0.16	0.16
OA-122-83	7/19/2005	19 St NW ROW, Begin SE COR NE 1/4 Sect 29-10	11.00	11.00
3719	8/10/2005	E of TH63, S of 48 St NE, N of Viking Hills and Mo	34.98	34.98
OA-1048-1	9/15/2005	Sect 4-107-14, both sides of TH52, N of 65 St NW	7.04	7.04
3710	9/15/2005	SE 1/4 Sect SW 1/4 Sect 34-106-14, S of DAM WF	20.29	20.29
OA-661-5	10/18/2005	Lot 25 and Part of Lot 26, Auditor's Plat E	2.02	2.02
3731	10/18/2005	E of 60 Ave NW, SE of Kingbury Hills 3	8.65	8.65
OA-1048-2	11/10/2005	Part of N 560 Ft of Lot 2 Westgards 1st Subd.	2.01	2.01
3737	12/8/2005	W of 50 Ave NW, S of 65 St, NE 1/4 Sect 7-107-14	9.62	9.62
OA-622-2	1/11/2006	Pinewood Rd SE	291.00	291.00
OA-660-11	2/9/2006	Lots 2&3, Blk 9, Rose Harbor 4 Subd	0.75	0.75
3755	4/6/2006	S of 8th St SW, SW of Meadow Lake Estates	2.25	2.25
OA-660-12	5/11/2006	N of Marion Rd, S of 20th St SE (RPU well site)	0.41	0.41
3756	5/11/2006	S of 19th St, W of W Cr Dr NW, N of DME RR	14.28	14.28
3765	6/19/2006	SW Corner of Intersection CSAH22 & CSAH2 (Thi	9.95	9.95
OA-1170-1	11/16/2006	N of 48 St NE, Sect 18-107-13W	117.51	117.51
OA-661-6	11/16/2006	Lot 7 Vandals 1st Subd	3.80	3.80
OA-1048-3	11/29/2006	16 Parcels in Various Locations	455.13	262.66
OA-661-7	12/15/2006	Part Lot 64 Autitor's Plat "E" SW 1/4 Sec 17-106-1:	24.95	24.95
3794	12/15/2006	Part W 1/2 NE 1/4 Sec 19-106-13, N of TH 52	42.09	42.09
Total:		122 Annexations	5435.83	5202.52