

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT FILED
BY GLOBAL POLYMER INDUSTRIES, INC.,
ARLINGTON, SOUTH DAKOTA, AGAINST THE
CITY OF ARLINGTON REGARDING
ELECTRICAL SERVICE

CE06-003

Transcript of Proceedings
August 8, 2006

BEFORE THE PUC COMMISSION

Chairman Robert Sahr
Vice-Chair Dusty Johnson
Commissioner Gary Hanson

ORIGINAL

COMMISSION STAFF

John Smith
Sara Greff

APPEARANCES

RICHARD J. HELSPER,
GLOVER & HELSPER, Attorneys at Law, 415 Eighth Street
South, Brookings, South Dakota 57006,
appearing on behalf of Global Polymer Industries;

LARRY A. NELSON,
FRIEBERG, NELSON & ASK, Attorneys at Law,
P.O. Box 38, Canton, South Dakota 57013,
appearing on behalf of the South Dakota Municipal
Electric Association.

Reported by Carla A. Bachand, RMR, CRR

1 TUESDAY, AUGUST 8, 2006

2 CHAIRMAN SAHR: Next item under consumer complaints is
3 CE06-003, in the matter of the complaint filed by Global
4 Polymer Industries, Inc., Arlington, South Dakota against the
5 City of Arlington regarding electrical service. And the
6 question today is, shall the commission grant intervention to
7 SDMEA? Mr. Nelson, are you on the line?

8 MR. NELSON: Yes, sir, I just walked in.

9 CHAIRMAN SAHR: Larry, we do have a court reporter
10 here in Pierre, so if you will go ahead and identify yourself,
11 who you are representing and just as much as you possibly can,
12 speak loudly so we can hear you in Pierre.

13 MR. NELSON: Mr. Chairman, can you hear me?

14 CHAIRMAN SAHR: Yes, you are still faint, but we can
15 hear you.

16 MR. NELSON: My name is Larry Nelson, I'm an attorney
17 from Canton, South Dakota, and I represent the South Dakota
18 Municipal Electric Association, which is an organization of
19 member municipalities. There are 34 of them that provide
20 electricity to approximately 100,000 customers in South Dakota
21 and is also an affiliate of the South Dakota Municipal League.
22 We have filed a petition to intervene in this docket number and
23 we believe that our motion to intervene is supported both
24 factually and -- (inaudible)

25 CHAIRMAN SAHR: Larry, we lost you there, you are sort

1 of fading in and out. We can hear you for a couple words and
2 then you disappear, so as much as possible, obviously if you
3 are on a speaker phone, take it off.

4 MR. NELSON: I'm on a direct phone. May I continue,
5 Mr. Chairman?

6 CHAIRMAN SAHR: Absolutely, although if you want the
7 last three sentences kept in the record or put into the record,
8 you are going to need to go back and say them again because the
9 court reporter is having trouble.

10 MR. NELSON: South Dakota Municipal Electric
11 Association is an organization comprised of member
12 municipalities that provide electricity to approximately
13 100,000 customers in South Dakota and is an affiliate of the
14 South Dakota Municipal League. There are 34 members of that
15 organization that own and operate municipal --

16 (Brief interruption.)

17 MR. NELSON: Could you hear me, Mr. Chairman?

18 CHAIRMAN SAHR: We heard Gary Schumacher.

19 MR. NELSON: Could you hear me speaking?

20 CHAIRMAN SAHR: During those drops we lose audio. You
21 don't have to back up to what SDMEA is again.

22 MR. NELSON: Could you hear me when I was talking
23 about SDMEA?

24 CHAIRMAN SAHR: Absolutely. If you go up to the Gary
25 Schumacher break, thank you.

1 MR. NELSON: My question to you is, what would you
2 like to hear from us as far as in this record and how do we
3 proceed? Do you want argument or do we answer questions?

4 CHAIRMAN SAHR: Well, you have alleged standing. I
5 guess you can at this point in time, if you want to, just kind
6 of rest on your pleadings, that's great. We will go to staff,
7 see if they have a position and go to commissioner questions
8 and we will take your matter up for official consideration.

9 MR. HELSPER: Mr. Chairman, Rich Helsper still on the
10 line, too. I represent Global Polymer.

11 CHAIRMAN SAHR: Rich, I skipped you in the process,
12 not strictly by omission. My fault there. Go ahead.

13 MR. HELSPER: And we did file objections to the
14 intervention.

15 CHAIRMAN SAHR: Thank you, so why don't we do this.
16 Larry, you will end up getting the last word because you are
17 the moving party. So if you are comfortable at this point in
18 letting Rich go, we will do staff, see what commissioner
19 questions we have and then come back around to you. We do have
20 your pleadings so we can go forward with that.

21 MR. NELSON: Fine, Mr. Chairman.

22 CHAIRMAN SAHR: Rich, if you would like to go ahead.

23 MR. HELSPER: Thank you, sir. Just very briefly, we
24 filed objections to the intervention of the South Dakota
25 Municipal Electric Association simply for the reason this is a

1 very fact driven matter and it's of interest mainly to the
2 parties involved, which is the customer, Global Polymer
3 Industries, which is in Arlington, and a very small municipal
4 electric, namely the City of Arlington. There is no novel
5 issues of fact. There is no novel issues of law that need
6 someone to intervene on behalf of. Of course they are coming
7 in on behalf of the City of Arlington. And so we would just
8 ask that the intervention be denied.

9 You do have an expert report that the South Dakota
10 Public Utilities Commission actually commissioned and we think
11 it's an excellent report factually and provides the commission
12 with all of the information that it needs to probably decide
13 the case with. And so we just see no reason for South Dakota
14 MEA to be involved. That's all I have, thank you.

15 CHAIRMAN SAHR: Thank you. Staff.

16 MS. GREFF: Thank you, Chairman Sahr. Staff has no
17 objection for SDMEA to be allowed to intervene in this docket.
18 Staff would just note that we have allowed I guess statewide
19 organizations such as SDREA and SDATC to intervene on factual
20 complaint dockets before and that's why staff would not have
21 any objection to SDMEA being allowed in this docket as well.

22 CHAIRMAN SAHR: Thank you, and Mr. Coit is not in the
23 room to give his standard disclosure. Just reduce it to
24 writing. Back around to commissioners and advisors, questions
25 or comments.

1 VICE-CHAIR JOHNSON: This is Commissioner Johnson. I
2 do have a question for Mr. Nelson. Mr. Nelson, it was noted by
3 Global Polymer that there weren't any novel issues of fact or
4 law and that there wasn't any clear indication in your filing
5 of how your members would be -- how the members of SDMEA would
6 be affected by this docket. Did you have a response to that?

7 MR. NELSON: Yes, Commissioner Johnson. Municipal
8 leagues are obviously in the electric business. In this
9 particular case we have allegations from Global Polymer that
10 talk about demand charges, voltage fluctuation, bad voltage
11 regulators, undersized substations, a complaint about shutting
12 off voltage during a fire, concerns about the development of
13 contingency plans. Our position is that the manner in which
14 you address these issues in this particular case are probably
15 going to be the manner that you are going to address these
16 issues if they arise with other member municipal electrics in
17 the future.

18 So we are watching the case. We think what you do
19 will affect how our members do business and the business model
20 that they are going to employ. Because we are well aware that
21 the ultimate penalty, so to speak, is that if we don't do and
22 ask what you tell us to do, you could hold us, that territory
23 or that customer from us. So we would like to be heard from
24 the standpoint of suggesting to you what is fair and what is
25 not fair and come to a resolution ultimately I think that would

1 serve everybody well. To not have us at the table I think
2 would be a disservice.

3 CHAIRMAN SAHR: I think the last item, if I heard it
4 correctly, to not have us at the table would be a disservice to
5 all; is that what you said?

6 MR. NELSON: Yes.

7 CHAIRMAN SAHR: Thank you, Larry.

8 VICE-CHAIR JOHNSON: Mr. Nelson, Commissioner Johnson
9 again. Just to follow up to that, the concerns raised about
10 adequacy of service and the statutes that deal with that issue,
11 let me back up and just ask, so do you view the concerns of
12 your member companies as being distinct and unique when
13 compared to concerns that other utilities that are affected by
14 those adequacy of service statutes would have?

15 MR. NELSON: I think they would be the same as other
16 customers that provide or other companies that provide service.
17 We have an interest in being here and to be part of the process
18 and provide input. Again, whatever you decide in this case I
19 think is going to have a direct impact on how we do business.

20 VICE-CHAIR JOHNSON: Mr. Nelson, is that your opinion
21 even given that, at least from a legal standpoint, a commission
22 order wouldn't have any precedential value? Not saying from a
23 de facto perspective it wouldn't, but from a legal perspective
24 it doesn't; is that right?

25 MR. NELSON: Yes. Again, our concern would be from a

1 de facto perspective.

2 CHAIRMAN SAHR: Ms. Greff.

3 MS. GREFF: To kind of follow up on some of the line
4 of questioning Mr. -- or Commissioner Johnson has been asking,
5 you know, the adequacy of service statutes are there. We have
6 very limited jurisdiction over municipalities and the rural
7 electricians, and this is one of those areas, if not one of the
8 only areas that they do fall under, and so I can see why the
9 SDMEA is jumping on board on this one.

10 CHAIRMAN SAHR: Mr. Helsper, do you care to respond?

11 MR. HELSPER: Well, I do. First of all, this is
12 strictly a complaint by a customer in the city of Arlington and
13 whether or not a transformer was working or a transformer
14 wasn't working, whether or not the City of Arlington responded
15 appropriately, whether or not their lines are big enough or not
16 big enough has nothing to do from a statewide basis. And we
17 are not going to create any novel ruling out of this particular
18 case. This is just a complaint by a customer against its
19 electrical supplier, which happens to be the City of Arlington.

20 And now to have the South Dakota Municipal Electric
21 Association want to intervene in this matter, and again I'm
22 still not sure, after listening to all that, what it is they
23 want to prove or how they will be affected. They just simply
24 have no interest in the matter that's going to be affected.
25 This is just a matter with the city. It makes it much more

1 difficult when you have a customer, that's all I represent, is
2 one customer, if we now have to start submitting responses not
3 only to the City of Arlington but to the South Dakota Municipal
4 Electric Association when it's very fact driven and you have a
5 report from your expert that addresses to me virtually 99 or
6 100 percent of the case.

7 And so the adequacy of service, this isn't going to
8 result in termination of service or anything of that nature and
9 we all know that. So I think it's a fairness issue as well. A
10 customer should be able to file a complaint and not have the
11 REAs, the MEAs, the rural water, all these associations jump on
12 board obviously against that particular customer. That's
13 what's going to happen here. Let the case rise or fall on its
14 merits, especially when we are not asking for some novel ruling
15 by the commission that's going to set precedence in the state
16 of South Dakota.

17 CHAIRMAN SAHR: Now here in Pierre the SDTA, SDREA,
18 the investor-owned companies are all moving forward to jump on
19 the docket as well.

20 MR. HELSPER: Must be a slow month in Pierre.

21 CHAIRMAN SAHR: It's not been the fastest morning. In
22 any event, I'm curious, Mr. Smith, you have got the rules in
23 front of you and certainly we don't need to make this out to be
24 a bigger issue than it is, but of course we are always
25 concerned about standing is a big issue and the ability to be

1 in these cases. Although we may not follow the regular rules
2 of precedence, we do want to be mindful that we are showing
3 some level of consistency. I am curious to see your thoughts
4 on the issue.

5 MR. SMITH: Maybe I'll just -- I guess maybe -- I'm
6 going to read the relevant part of the rule and then maybe, Mr.
7 Nelson, you can address that. It says a petition shall be
8 granted by the commission if petitioner shows that petitioner
9 will be bound and affected, either favorably or adversely, with
10 respect to an interest peculiar to the petitioner as
11 distinguished from an interest common to the public or to the
12 taxpayers in general. Could you explain what interest the
13 SDMEA has that is peculiar to it as opposed to the public at
14 large and in particular maybe the entire universe of utilities
15 out there?

16 MR. NELSON: Mr. Smith, I would suggest the three
17 questions that the commission should have put on its docket was
18 going to be answered. The first one was whether respondent is
19 rendering or proposing to render adequate service. The answer
20 to that is something that's going to affect how all municipal
21 electric companies do business. I realize -- (inaudible)

22 CHAIRMAN SAHR: Larry, it's not the speed, it's the
23 volume. You are talking just fine speed wise, the problem is
24 you are going in and out. I won't ask you who your carrier is.

25 MR. NELSON: I realize this is not res judicata on

1 South Dakota Municipal Electric Association, but that it does
2 form the basis of future decisions. The second thing that the
3 commission has indicated it's going to look at is what
4 corrective action shall be ordered under these particular facts
5 and if you order corrective action, what you have ordered is
6 something that we have to think about as an association as it
7 relates to something you may require us to do or to say, well,
8 we did it in this other particular case under these facts.

9 Finally, if you were to order corrective action, Mr.
10 Smith, I think that we are affected by the timetable and how
11 are you going to set up that timetable and is it reasonable,
12 adequate and fair. And for all of those reasons and the reason
13 that you would find sufficient, we would like to be granted
14 intervention into this particular docket.

15 CHAIRMAN SAHR: Mr. Nelson, one of the issues that Mr.
16 Helsper raised was the question of additional burden and I know
17 that when we have associations that intervene, they normally
18 make a real effort to not duplicate requests and so on and so
19 forth. Do you want to just address, is this going to be
20 something where there is going to be substantial burden or are
21 you mostly going to be watching the pleadings and maybe asking
22 some additional questions at the table or what do you see as
23 your client's role going forward and will it create an undue
24 burden for Mr. Helsper's client?

25 MR. NELSON: Commissioner Sahr, I would suggest that

1 it would not and I would see our role as the latter part of
2 your question.

3 CHAIRMAN SAHR: Thank you. And I do appreciate Mr.
4 Helsper's perspective. When we have I won't say huge
5 telecommunications companies, but when we have fairly large
6 players coming in and having lengthy proceedings, that's far
7 different than some local customer who may have limited
8 resources dealing with it in terms of costs and the ability to
9 bear those costs. Any other commissioner questions, comments?

10 MR. HELSPER: Mr. Chairman, this is Rich Helsper.
11 Just finally, I would think that anything that Larry has
12 commented on, the SDMEA can review any decision of this
13 commission and decide if it wants to make any changes. I
14 just -- I have yet to hear how there's any type of compelling
15 interest for them to be involved.

16 CHAIRMAN SAHR: Thank you. Motion, comments,
17 questions, whatever the commission's pleasure is.

18 COMMISSIONER HANSON: I will move -- Commissioner
19 Hanson moves that the commission does not grant the
20 intervention to SDMEA.

21 CHAIRMAN SAHR: I will second.

22 VICE-CHAIR JOHNSON: I do not concur. Johnson.

23 (Whereupon, the proceedings were concluded at 12:00
24 p.m.)

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