

August 15, 2018

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

RE: **In the Matter of the Complaint by Lake Country Power Against Minnesota Power
Alleging Violation of Its Exclusive Service Area By Providing Service to Canadian
National Railway Company Facilities Near Hoyt Lakes**
Docket No. E015, E106/C-17-893

Dear Mr. Wolf:

Attached are the Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in response to the Minnesota Public Utilities Commission's (Commission) July 23, 2018 *Notice of Comment Period on Amended Complaint*.

The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ DALE V. LUSTI
Public Utility Financial Analyst

DVL/ja
Attachment

Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E015, E106/C-17-893

I. BACKGROUND INFORMATION

On December 22, 2017, Lake Country Power (LCP) filed a service area complaint against Minnesota Power (MP) with the Minnesota Public Utilities Commission (Commission). On January 18, 2018, the Commission held a hearing as required under Minn. Stat. § 216B.43. After further comment, the matter came to the Commission again on May 10, 2018. The Commission issued an Order on May 29, 2018 directing LCP to amend its complaint consistent with the facts as they currently stand and the relief it is seeking from the Commission. LCP filed its *Amended Complaint* on July 19, 2018.

On July 23, 2018, the Commission issued a *Notice of Comment Period on Amended Complaint (Notice)* requesting initial comments by August 20, 2018 on the following topics:

- Responses to the substance of the amended complaint.
- What laws and/or past Commission decisions are relevant to the resolution of the complaint?
- Is the record sufficient for the Commission to reach a final determination on this complaint? If not, what additional procedures and process should the Commission use (a contested case, additional comment period, or other)?

On July 27, 2018, Wisconsin Central Ltd. (Wisconsin Central) filed a *Petition for Intervention*. Wisconsin Central has been previously referred to in this proceeding as Canadian National Railway Company (CN).

On July 27, 2018, Minnesota Power filed its *Answer to Lake Country Power's Amended Complaint (Answer to the Amended Complaint)*.

II. DEPARTMENT ANALYSIS

As noted above, the Commission identified three topics that are open for comment by August 20, 2018. The Minnesota Department of Commerce, Division of Energy Resources (Department) offers the following comments:

A. RESPONSES TO THE SUBSTANCE OF THE AMENDED COMPLAINT

The Department begins by first identifying several of the stated differences between LCP and MP in this proceeding. Please note that references to Canadian National Railway Company (CN) and Wisconsin Central (WC) in the Department's *Comments* are synonymous in reference to the same railroad.

- (1) Paragraph 7 of LCP's July 19, 2018 *Amended Complaint* claims that the signaling and sensing equipment CN is adding is a new load and is to be consumed in an area that is currently without electrical service. MP in its July 27, 2018 *Answer to the Amended Complaint* acknowledges that the equipment was new load when it was installed, but clarifies that the equipment is currently receiving electrical service through Wisconsin Central's own distribution system.
- (2) Paragraph 8 of LCP's *Amended Complaint* claims that the signaling and sensing equipment consists of an overhead to underground riser, with underground cable and stand-alone cabinets widely spread across LCP's exclusive service territory, ultimately connecting to CN signaling equipment approximately four (4) miles into LCP's exclusive service territory. MP's *Answer to the Amended Complaint* clarifies that the equipment is located along and integrated with a contiguous stretch of Wisconsin Central's railroad tracks that pass through the service areas of both MP and LCP.
- (3) Paragraph 9 of LCP's *Amended Complaint* claims the signaling and sensing equipment near Hoyt Lakes is entirely within the exclusive service area assigned to LCP by the Commission. MP's *Answer to the Amended Complaint* maintains that Wisconsin Central has added equipment in both utilities' service areas. MP asserts that the power it provides to Wisconsin Central that is being used at a point or points within LCP's service territory is being distributed by Wisconsin Central over Wisconsin Central's system to Wisconsin Central's equipment.
- (4) Paragraph 11 of LCP's *Amended Complaint* claims that CN connected the distribution infrastructure to a point of service within the service territory of MP and that MP is now providing electric service outside of MP's service territory and entirely within

LCP's exclusive service territory. LCP further states that electric service is defined in Minn. Stat. § 216B.38 as "electric service furnished to a customer at retail for **ultimate consumption.**" (Emphasis added). MP's *Answer to the Amended Complaint* disagrees with the allegation that it is impermissibly serving a load outside of its exclusive service area and within LCP's service area.

- (5) Paragraphs 13 and 14 of LCP's *Amended Complaint* claims that MP did not provide notice of its intent to provide electric service to the new load located within the LCP service territory and outside of the MP exclusive service territory. MP's *Answer to the Amended Complaint* disagrees that it is serving a load outside of its exclusive service area and within LCP service area.
- (6) Paragraph 15 of LCP's *Amended Complaint* references its attached Exhibit 1, which is an official service area map taken from the Commission's website. MP's *Answer to the Amended Complaint* states that the map speaks for itself. MP notes that its understanding is that the poles, transformers, cabinets, and underground line depicted in the map, however, are part of Wisconsin Central (WC's) distribution system and are not MP structures or what is labeled as "MN Power Existing Line."
- (7) Paragraphs 23 and 24 of LCP's *Amended Complaint* notes that prior Commission decisions have created a common law exception to the exclusive service territories when a recipient has a physical "bricks and mortar" building that straddles more than one exclusive territory. LCP maintains that CN does not have that in this proceeding. MP's *Answer to the Amended Complaint* maintains that the Commission has not maintained a "bricks and mortar building" requirement.

The Department surmises that as a result of the above seven (7) differences between the LCP and MP positions, the common thread between all of the arguments, is whether or not "CN's distribution system" is considered by the Commission to be similar to a "bricks and mortar" building. If the Commission concludes that Wisconsin Central's electric distribution system can be considered sufficiently similar to a "bricks and mortar" building, the *Amended Complaint* could be dismissed.

B. What laws and/or past Commission decisions are relevant to the resolution of this complaint?

In previous filings in this docket, the Department, MP and LCP have provided discussion of the applicable laws and past Commission decisions relevant to this complaint. The Department will

defer any additional discussion of laws and past Commission decisions to the other parties in this proceeding.

C. Is the record sufficient for the Commission to reach a final determination on this complaint? If not, what additional procedures and process should the Commission use (a contested case, additional comment period, or other)?

The Department will defer to the Commission as to whether there is a sufficient record to reach a final determination on this complaint.

/ja

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. E015, 106/C-17-893

Dated this 15th day of August 2018

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Daniel	Carlisle	d.carlisle@pemplaw.com	Pemberton Law	7 Colfax Avenue Wadena, MN 65482	Electronic Service	No	OFF_SL_17-893_Official
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_17-893_Official
Ian	Dobson	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_17-893_Official
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