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August 20, 2018

VIA E-FILING

Mr. Dan Wolf
Minnesota Public Utilities Commission
350 Metro Square Building
121 Seventh Place East
St. Paul, MN 55101

Re: In re 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, Minnesota, MPUC Docket No. E015,E106/C-17-893

Dear Mr. Wolf:

Wisconsin Central Ltd.'s comments regarding the amended complaint in the above-captioned matter are included below for electronic filing with this letter. An affidavit of service is also attached.

Respectfully submitted,

FRYBERGER, BUCHANAN, SMITH &
FREDERICK, P.A

/s/ John R. Gasele

John R. Gasele
MN Attorney #386700
302 W. Superior Street, #700
Duluth, MN 55802

FRYBERGER, BUCHANAN, SMITH & FREDERICK, P.A.

DULUTH
302 W. Superior Street, Ste. 700
Duluth, MN 55802
p: (218) 722-0861
f: (218) 725-6800

SUPERIOR
1409 Hammond Avenue, Ste. 330
Superior, WI 54880
p: (715) 392-7405
f: (715) 392-7407

ST. PAUL
380 St. Peter Street, Ste. 710
St. Paul, MN 55102
p: (651) 221-1044
f: (651) 221-1035

fryberger.com

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

**Nancy Lange
Dan Lipschultz
Matthew Schuerger
Katie Sieben
John A. Tuma**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

In re 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, Minnesota	Docket No. E015,E106/C-17-893 WISCONSIN CENTRAL LTD'S COMMENTS ON AMENDED COMPLAINT
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INTRODUCTION

Wisconsin Central Ltd. (Wisconsin Central) appreciates the opportunity to file these reply comments to correct information presented to the Minnesota Public Utilities Commission (Commission). The Commission's notice of comment period on Lake Country Power cooperative's (LCP) Amended Complaint requested comments on the following three issues:

- Responses to the substance of the amended complaint.
- What laws and/or past Commission decisions are relevant to the resolution of this 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 periods, or other)?

Each question is addressed below. In summary, LCP admits key facts in the Amended Complaint yet still misstates or ignores the record, prior Commission decisions indicate that the amended complaint should be dismissed, federal law preempts state regulation of railroad activities, and no additional process is needed beyond a hearing on the requested comments.

COMMENTS

I. The Amended Complaint ignores ample, unchallenged evidence in the record before the Commission.

While the amended complaint admits true facts that are fatal to LCP's claim, it contains other factual errors. The record and positions of the parties are now well established; the Commission has the benefit of LCP's initial complaint, comments from LCP, extensive evidence from Wisconsin Central, and comments from Minnesota Power. Wisconsin Central will not repeat all of the facts established in its prior filings. Instead, these comments will briefly address key admissions, omissions, and misstatements in the Amended Complaint.

A. The Amended Complaint ignores the record evidence showing that Wisconsin Central's equipment is part of a large rail safety system.

The Amended Complaint ignores the actual infrastructure constructed by Wisconsin Central. LCP claims Wisconsin Central's Intermediate Signal System Project (Project) consists of "underground cable and stand-alone cabinets widely spread across LCP's exclusive service territory, ultimately connecting to [Wisconsin Central] signaling equipment approximately four (4) miles into LCP's exclusive service territory."¹

The Project is much more substantial than some cable and a few electrical cabinets. The Project involves construction of numerous Intermediate Signal Bungalows (Bungalows) each of which contains a battery charger, battery, radio, heater, and control box.² Each Bungalow also has an associated junction box, transformer, and power cabinet.³ The Bungalows are connected

¹ Amended Complaint, ¶ 8.

² Declaration of Steve Terhune, Wisconsin Central's Comments in Support of Dismissal, April 4, 2018 (Terhune Declaration), ¶¶ 11-12

³ Supplemental Affidavit of Steve Terhune, Wisconsin Central's Reply Comments, April 16, 2018 (Terhune Supplemental Affidavit), ¶¶ 5-8 and Exhibits 4-8.

to large LED signal lights at each location.⁴ Photos provided by Wisconsin Central show the true scope of the installation at each Bungalow.⁵

The Bungalows do not stand alone. The Project is an interconnected series of complex structures that all work together to form a signaling and sensing system, not a series of simple, isolated cabinets. Each Bungalow is physically connected to all other Bungalows along the right-of-way. This connection, via the rails and the radios, allows Wisconsin Central to monitor track conditions and train locations.⁶ LCP's attempt to minimize the nature of the Project should be disregarded.

B. The Project is not exclusively within LCP's service territory.

LCP's next error in the Amended Complaint is an assertion that the "signaling and sensing equipment near Hoyt Lakes is entirely within the service area assigned to LCP . . ." ⁷ The record demonstrates otherwise.

The purpose of the Project is to install an intermediate signal system between the Allen Junction Control Point and Two Harbors, Minnesota.⁸ This is a far larger area than the limited portion of LCP's service territory crossed by Wisconsin Central's right-of-way.⁹ The Project's interconnected Bungalows are located within the service territories of Minnesota Power, LCP, and Cooperative Light and Power.¹⁰ LCP's own map, included with the Amended Complaint,

⁴ Terhune Declaration, ¶¶ 9-11.

⁵ Terhune Supplemental Affidavit, ¶¶ 2-8 and Exhibits 3-8 (Exhibit 3 shows the power pole within Minnesota Power's service territory where Wisconsin Central receives power from Minnesota Power).

⁶ Terhune Declaration, ¶ 12.

⁷ Amended complaint, ¶ 9.

⁸ Terhune Declaration, ¶ 9.

⁹ Terhune Declaration, Exhibit A.

¹⁰ *Id.*

shows that the Project includes infrastructure within Minnesota Power’s service territory.¹¹ LCP’s claim that the Project is located entirely within LCP’s service territory is not credible given the record established in this docket.

C. Minnesota Power is not providing service outside of its service territory.

LCP’s Amended Complaint incorrectly claims that Minnesota Power is providing electricity to Wisconsin Central outside of Minnesota Power’s service territory.¹² This claim is contradicted by admissions within the Amended Complaint itself.¹³ Minnesota Power provides electricity to Wisconsin Central at a point within Minnesota Power’s service territory.¹⁴ Wisconsin Central then uses its own wiring to bring that power to the various Bungalows along the rail road tracks, all within Wisconsin Central’s right-of-way.¹⁵

LCP cites a portion of the definition of “electric service” provided in Minn. Stat. 216B.38, perhaps implying that delivery of the power is taking place where it is finally consumed after transportation on Wisconsin Central’s private infrastructure.¹⁶ The complete definition is “electric service furnished to a customer at retail for ultimate consumption, but does not include wholesale electric energy furnished by an electric utility to another electric utility for resale.”¹⁷ This term simply distinguishes entities that sell power to consumers from those that purchase power for further resale. The small portion of the definition quoted by LCP does not

¹¹ Amended Complaint, Exhibit 1.

¹² Amended Complaint, ¶¶ 11, 14.

¹³ Amended Complaint, ¶¶ 10-11, 14.

¹⁴ Amended Complaint, ¶ 11; Terhune Supplemental Affidavit, ¶ 6 and Exhibit 6.

¹⁵ Amended Complaint, ¶ 8; Terhune Declaration, ¶¶ 16-17 and Exhibits A and B.

¹⁶ Amended Complaint, ¶ 11.

¹⁷ Minn. Stat. § 216B.38, Subd. 4a.

change the fact that Minnesota Power provides electric service to its customer, Wisconsin Central, at a point within Minnesota Power's service territory, as LCP admits.¹⁸

D. Wisconsin Central did not create the problem faced by LCP.

LCP implies that Wisconsin Central created the problem currently before the Commission.¹⁹ The exact opposite is true. The right-of-way where the Project is located has been a railroad since at least as early as 1890.²⁰ Wisconsin Central did not move into LCP's service territory and then seek to have Minnesota Power provide service to newly-acquired property. To the contrary, Wisconsin Central's property interest in its right-of-way predates the creation of Minnesota's electric utility service territories by nearly a century.²¹ No gerrymandering of the service territories has occurred.²²

II. Prior Commission decisions indicate that the Amended Complaint should be dismissed.

The second question raised in the Notice is what laws and/or past Commission decisions are relevant to resolution of LCP's complaint. As detailed below, numerous Commission decisions point to dismissal of the Amended Complaint. LCP has not cited any applicable statutes or Commission decisions that indicate otherwise.

¹⁸ Amended Complaint, ¶ 11.

¹⁹ Amended Complaint, ¶ 25 ("the customer created the problem").

²⁰ Fountain Affidavit, ¶ 17, Ex. 2, 3.

²¹ Minn. Stat. § 216B.37 was enacted in 1974.

²² Gerrymandering of service territories occurs when a customer buys property outside the territory of its chosen utility, after the service territories were set. *In re Complaint by McLeod Cooperative Power Association Against Hutchinson Utilities Commission Regarding Extension of Service to Hutchinson Technologies, Inc.*, MPUC Docket No. E-252,120/C-95-517 (June 14, 1996), p. 5-6 (declining to apply the customer choice exception where the customer purchased the property after the service territories were created).

A. Commission precedent allows Wisconsin Central to receive power from Minnesota Power within Minnesota Power's service territory, and consume that power within the right-of-way in LCP's service territory.

The Commission has a well-established mechanism to address the question presented by the Amended Complaint. The rule governing the customer choice exception is simple. In the words of the Commission, "customers whose property straddles the assigned service areas of more than one utility may choose their utility, as long as they use their own distribution system to serve *any points* within another utilities assigned service area."²³ The distribution point where the customer receives power must be within the territory of the selected utility.²⁴ There is no reason to deviate from the established precedent in this matter.

The Commission has consistently allowed a customer whose property straddles two service territory boundaries to choose the utility from which it will receive power. The Commission was asked in 2000 to determine whether Freeborn-Mower Cooperative (Freeborn-Mower) or Interstate Power Company (Interstate) should serve a natural gas pump station that straddled their respective service territories. The Commission allowed the customer to select Freeborn-Mower, its preferred utility, noting that it has honored customer choice in these situations unless there were pre-existing agreements between the utilities or gerrymandering by the customer.²⁵ The Commission required the power be delivered within Freeborn-Mower's service territory.²⁶ None of the exceptions identified in Freeborn-Mower are before the

²³ Order Requiring Cessation of Service or Compensation Determination, *In re Complaint by McLeod Cooperative Power Association Against Hutchinson Utilities Commission Regarding Extension of Service to Hutchinson Technologies, Inc.*, MPUC Docket No. E-252,120/C-95-517 (June 14, 1996) (emphasis added).

²⁴ *Id.*, p. 4.

²⁵ Order Determining Service Rights and Notice and Order for Hearing, *In re Petition of Freeborn-Mower Cooperative Services to Confirm Customer's Selection of Electric Power Supplier*, MPUC Docket No. E-115/SA-99-1619 (May 4, 2000), p. 4-5.

²⁶ *Id.* at p. 5.

Commission in this matter.²⁷ There are no pre-existing agreements between LCP and Minnesota Power. There has been no gerrymandering by Wisconsin Central, as the right-of-way owned by Wisconsin Central predates the creation of the service territories.

Wisconsin Central receives power from Minnesota Power within Minnesota Power's service territory, and then uses a private distribution system to move that power along its own property to its own facilities. Minnesota Power has not installed any equipment within LCP's service territory. Accordingly, Wisconsin Central's choice to utilize Minnesota Power should govern.

B. The “bricks and mortar” standard urged by LCP inappropriately attempts to narrow Commission precedent.

LCP incorrectly argues that Wisconsin Central's Project does not qualify for the customer choice exception because it does not constitute a “bricks and mortar” building.²⁸ The fatal flaw in this argument is that the Commission does not require a physical building to straddle the service territory boundary.

The customer choice exception applies to any point on a property, not to a specific building; customers may choose the utility of their choice when the customer's “*property*” straddles the assigned service areas of two different utilities . . . as long as the power is delivered within the assigned service area of the chosen utility and is distributed over the customer's

²⁷ The current facts are the opposite of those faced by the Commission in the *McLeod* matter (supra, n. 23). In that decision, the customer purchased property straddling the service territories after the territories were created, and an agreement between the two utilities governed service. As a result, the Commission declined to apply the exception.

²⁸ Amended Complaint, ¶ 23. Comments of the Department of Commerce also inquire as to whether Wisconsin Central's Project is the equivalent of a “bricks and mortar” building. Comments of the Minnesota Department of Commerce, August 15, 2018, p. 3. This is not the correct analysis, as Wisconsin Central explains in this section.

distribution system *to any part of the property* within the assigned service area of the other utility.”²⁹ Accordingly, the exception applies to entire properties, not just a single building.

The focus on property instead of a specific building is long-standing. The Commission’s Energy Manager informed Ruttger’s Bay Lake Lodge (the “Lodge”) in 1990 that the Lodge could run a cable from a building served by Minnesota Power to a building that was, at the time, served by Mille Lacs Electric Cooperative. The Energy Manager stated:

“The Commission’s policy is that wiring on the customer’s side of an electric meter is controlled by the customer, not the utility or the Commission. It is permissible for wiring to cross service area boundaries as long as it *stays on the same customer’s property*.

...

Such wiring must connect to an electric utility’s meter in that utility’s service area.”³⁰

Notably, the letter makes no reference to a physical building that straddles the service territory boundary. The approved request was to use a wire to move power between buildings located in different service territories. The Commission emphasized that the wiring must remain on the customer’s property, not just within a building, and that the connection to the desired utility must occur in that utility’s service territory.³¹ In same vein, Wisconsin Central receives power from Minnesota Power in Minnesota Power’s own service territory and moves that power on Wisconsin Central’s own wiring within Wisconsin Central’s property.

Additional decisions reinforce the fact that the customer choice exception is much broader than LCP claims. In a 1996 dispute between McLeod Power Cooperative (McLeod) and the Hutchinson Utilities Commission (Hutchinson), the Commission noted that the exception

²⁹ Order Requiring Compensation, *In re Petition of the Kandiyohi Cooperative Electric Power Association Regarding Electric Service to Farm Service Elevator by the Willmar Municipal Utilities Association*, MPUC Docket No. E-118, 329/SA-88-379 (July 11, 1989) (emphasis added).

³⁰ The 1990 letter is included as Attachment 1 (emphasis added).

³¹ *Id.*

was not available to allow the customer to utilize McLeod because the customer purchased property in Hutchinson's territory after creation of the service territories.³² A 17.2 acre pump station property was the focus of the 2000 dispute between Freeborn-Mower and Interstate discussed above. In that matter, one of the customer's pump station buildings did straddle the border of the service territories, but the Commission ruled that the customer's choice should apply to the entire pump station, not just the building that was bisected by the border between territories.³³ In early 2008, the Commission allowed Minnesota Power to provide electricity to an entire mine complex when it approved an electric service agreement between Minnesota Power and Mesabi Nugget Delaware, LLC. Although most of the mine operation was in LCP's territory, the Commission approved the agreement as long as the power delivery point was located within Minnesota Power's service territory and the mine operator used its own distribution system to move power on the property.³⁴

The Commission should not narrow its test to apply the customer choice exception as urged by LCP. Instead, the traditional and long-standing application of service territories and exceptions to land, not buildings, should remain the rule.

³² *In re Complaint by McLeod Cooperative Power Association Against Hutchinson Utilities Commission Regarding Extension of Service to Hutchinson Technologies, Inc.*, MPUC Docket No. E-252,120/C-95-517 (June 14, 1996), p. 4.

³³ Order Determining Service Rights and Notice and Order for Hearing, *In re Petition of Freeborn-Mower Cooperative Services to Confirm Customer's Selection of Electric Power Supplier*, MPUC Docket No. E-115/SA-99-1619 (May 4, 2000), p. 5 ("For all the reasons set forth above, the Commission finds that Freeborn-Mower is entitled to provide permanent service to Alliance's compressor station, as long as the delivery point for that service falls within Freeborn-Mower's assigned service territory.").

³⁴ Order Approving Electric Service Agreement as Conditioned and Clarified, *In re Petition of Minnesota Power for Approval of an Electric Service Agreement Between Mesabi Nugget Delaware, LLC and Minnesota Power*, MPUC Docket No. E-015/M-07-1456 (February 20, 2008), p. 3, 4. The Commission's reasoning and conditions appear to apply the customer choice exception even though this matter was a petition to approve a service agreement instead of a customer choice petition or proceeding under Minn. Stat. 216B.42.

C. Even if a “bricks and mortar” standard existed, Wisconsin Central’s Project would still qualify for the customer choice exception.

Wisconsin Central would still be entitled to utilize Minnesota Power even if the Commission decided to adopt LCP’s narrow interpretation of the customer choice exception. The Project uses sensing equipment located in numerous signal Bungalows, all of which are connected to the rails on Wisconsin Central’s right-of-way, to locate trains and monitor the rails.³⁵ The radios and LED signal lamps allow remote dispatchers to communicate with the train operators for safety.³⁶ The Bungalows and all of Wisconsin Central’s wiring are located within the right-of-way owned by Wisconsin Central.³⁷ The Bungalows themselves are not insignificant in scope, as shown in the pictures provided to the Commission.³⁸ Accordingly, the Project would qualify for the exception even if the Commission required a physical building on the property at issue, which it has not done in the past.

D. Federal law bars LCP from obtaining the requested relief.

Wisconsin Central strongly believes that this matter can and should be decided under the Commission precedent discussed above. In the event the Commission disagrees, Wisconsin Central respectfully notes that federal law also provides a path to resolution. The underlying dispute between LCP and Minnesota Power involves Wisconsin Central, which is an active railroad line subject to a discrete and comprehensive federal statutory regime – the Interstate Commerce Commission Termination Act, or ICCTA. Moreover, remedy sought by LCP would result in de-activation of a track signal system, which intrudes upon the exclusive jurisdiction of

³⁵ Terhune Declaration, ¶¶ 9-12, 16-17; Terhune Supplemental Affidavit, ¶¶ 5-8, Exhibits 3-8.

³⁶ Terhune Declaration, ¶¶ 9-11.

³⁷ Terhune Declaration, ¶¶ 16-17, Exhibit B.

³⁸ Terhune Supplemental Affidavit, ¶¶ 5-8, Exhibits 3-8.

the Surface Transportation Board (STB) as set forth in ICCTA. Federal and state courts and the STB alike have consistently held that state law processes that would lead to the removal, relocation, abandonment, or re-purposing of rail facilities – as LCP seeks to do here – are categorically preempted under ICCTA.

ICCTA, like its statutory predecessor, the Interstate Commerce Act, is “among the most pervasive and comprehensive of federal regulatory schemes.”³⁹ In ICCTA, Congress abolished the ICC, created the STB to handle the regulatory functions of the ICC not otherwise abolished under the new law, and “further broadened the express preemption principles contained in the Interstate Commerce Act.”⁴⁰ The STB’s jurisdiction even applies retroactively to actions that occurred prior to the passage of ICCTA.⁴¹

The preemption provision of ICCTA states as follows:

- (b) The jurisdiction of the Board over –
- 1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and
 - 2) the constructing, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.⁴²

³⁹ *Chicago & N.W. Transportation Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981).

⁴⁰ *14500 Limited LLC - Petition for Declaratory Order*, FD 35788 (STB served June 5, 2014), 2014 WL 2608812, at *3.

⁴¹ *CSX v. Georgia Public Service Commission*, 944 F. Supp.1573 (N.D. Georgia 1996) (held that preemption applied even though the application for modification of railroad agencies was filed prior to the effective date of ICCTA).

⁴² 49 U.S.C. § 10501(b).

ICCTA grants the STB broad and exclusive jurisdiction over the regulation of rail transportation, such that the remedies provided therein “preempt the remedies provided under [other] Federal or State law.”⁴³ Moreover, ICCTA defines rail transportation “expansively to encompass any property, facility, structure or equipment ‘related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use.’”⁴⁴ The Project falls within the scope of ICCTA.

ICCTA completely displaces state law claims that attempt to manage or govern rail transportation.⁴⁵ The STB has interpreted section 10501(b) to mean that the ICCTA preempts “other regulation that would unreasonably interfere with railroad operations that come within the Board’s jurisdiction.”⁴⁶ In fact, “state property law claims brought by non-governmental entities, where such claims would have the effect of [regulating or otherwise] interfering with railroad operations[,]” are preempted by ICCTA.⁴⁷

Under ICCTA, the STB is vested with exclusive jurisdiction over railroad lines and related railroad facilities. Congress has granted to the STB exclusive jurisdiction over, *inter alia*, “transportation by rail carriers” and “the abandonment of spur, industrial, team switching or side tracks or facilities, even if the tracks are located . . . entirely within one state.”⁴⁸

⁴³ 49 U.S.C. §10501(b).

⁴⁴ *14500 Limited LLC*, 2014 WL 2608812, at *3, quoting 49 U.S.C. §10102(9).

⁴⁵ See *Elam v. Kansas City Southern Railway Company*, 635 F.3d 796, 807 (5th Cir. 2011) (“when a plaintiff’s tort claim directly attempts to manage or govern a railroad’s decision in the economic realm” that claim is preempted by ICCTA).

⁴⁶ *14500 Limited LLC*, 2014 WL 2608812, at *3.

⁴⁷ *Id.*

⁴⁸ 49 U.S.C. § 10501(b).

A relevant case is Pinelawn Cemetery – Petition for Declaratory Order, FD No. 35468 (STB served April 21, 2015), 2015 WL 1813674, in which the STB held that ICCTA preempted a state court action in which an adjacent landowner sought to evict a railroad from its property because a lease for the property had supposedly expired. The STB recited that it is "by now well settled that the provisions of 49 U.S.C. § 10501(b) preempt permitting or other laws or legal processes that try to regulate rail transportation directly or that could be used to deny a railroad's ability to conduct rail operations."⁴⁹ After analysis, the STB concluded that, "even if the state court were to find that the 1904 Lease was not renewed, Pinelawn could not use that ruling to evict the Railroads from the property."⁵⁰

In an earlier case in Wisconsin, *Wisconsin Central Ltd. v. City of Marshfield*, a city's attempt to condemn a passing track was considered by that court to be the most "extreme type of control" and therefore, preemption applied.⁵¹ In this case, the result is the same as it was in the *Marshfield* cases.⁵²

Applying the law to the facts makes it clear that ICCTA preemption applies here. The railroad has a large integrated signal system for which the railroad has constructed its own cabling and facilities to move electrical power along that system to ensure safe, efficient and reliable rail operations. It is clearly a rail facility and part of rail transportation as that is defined by 49 U.S.C. §10102(9). The remedy sought by LCP would force the railroad to completely reconfigure or abandon this system, and therefore LCP's remedy in this matter is preempted by

⁴⁹ *Pinelawn*, 2015 WL 1813674, at *8.

⁵⁰ *Pinelawn*, 2015 WL 1813674, at *9.

⁵¹ *Wisconsin Central Ltd. v. City of Marshfield*, 160 F. Supp.2d 1009, 1013 (W.D. Wis. 2000).

⁵² See also, *Soo Line Railroad Company v City of St. Paul, et al.*, 827 F. Supp.2d 1017, 1021 (D. Minn. 2010) (In finding City's attempt to condemn land adjoining a track preempted, the Court said, "The ICCTA explicitly provides that its remedies are exclusive with respect to the regulation of rail transportation. 49 U.S.C. § 10501(b). A review of case law and of the ICCTA's legislative history confirms a broad reading of § 10501(b)")

ICCTA. In addition, the cost to the railroad if LCP were to prevail in this matter is so burdensome that it also runs afoul of ICCTA preemption.⁵³

Fortunately, Minnesota law and Commission precedent are clear. The Commission can resolve this dispute entirely under the rubric of prior Commission decisions. However, if the Commission believes that existing precedent is insufficient to resolve this matter, or would result in LCP's request for relief being granted, Wisconsin Central respectfully requests that the Commission then also consider the federal preemption discussed herein.

III. The record is sufficient for the Commission to dismiss the complaint.

The amended complaint does not present any new facts or law. The facts asserted in LCP's Amended Complaint are essentially unchanged from its initial filing, and Wisconsin Central again urges the Commission to dismiss LCP's complaint without further proceedings.⁵⁴

LCP is not entitled to a contested case hearing and no additional information is required for the Commission to make a decision. The Commission needs to conduct a contested case hearing only when required to do so by law.⁵⁵ The applicable rule, Minn. R. 7829.0900, only requires a contested case hearing when there are contested material facts and a right to a hearing. There are no factual disputes because LCP has admitted the material facts in this matter. LCP is entitled to a hearing under Minn. R. 7829.2100, Subp. 6, but that rule does not specify that the hearing must be a contested case proceeding.⁵⁶ No contested case is required where, as here,

⁵³ See *Soo Line Railroad Company v. Consolidated Rail Corporation*, 2018 WL 1566816 (N.D. Ind.), slip opinion at *6 (“ . . . State regulation can be as effectively exerted through an award of damages as through some form of preventive relief.”).

⁵⁴ Compare paragraphs 1-7, 9, and 13-18 in the Initial Complaint to paragraphs 1-7 and 10-15 in the Amended Complaint.

⁵⁵ *In re Kandiyohi Coop. Electric Power Ass'n*, 455 N.W.2d 102, 105 (Minn. Ct. App. 1990).

⁵⁶ See *Id.* (Holding that a rule which requires a hearing, but does not specify a contested case hearing, does not automatically entitle a petitioner to a contested case hearing.)

there are no contested issues of material fact.⁵⁷ Accordingly, the Commission can and should make a determination based on its own precedent and the filings already in the record.

CONCLUSION

A review of the admitted and undisputed facts in this matter indicates that no service territory violation has occurred. Minnesota Power supplies power to its customer, Wisconsin Central, within Minnesota Power's service territory. Wisconsin Central then uses its own distribution system to supply power to its own equipment in furtherance of its common carrier railroad operations. The Commission has consistently determined that this fact pattern is not a service territory violation. Wisconsin Central respectfully requests that the Commission dismiss LCP's complaint with prejudice and without further action.

Dated August 20, 2018

Respectfully submitted,

/s/ John R. Gasele

John R. Gasele

FRYBERGER, BUCHANAN, SMITH & FREDERICK, P.A.

Attorneys for Wisconsin Central Ltd.

John R. Gasele, Attorney Reg. No. 386700

302 W. Superior Street, Suite 700

Duluth, Minnesota, 55802

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⁵⁷ See *In re Solid Waste Permit etc.*, 421 N.W.2d 398, 404 (Minn. Ct. App. 1988).; *In re Kandiyohi*, 455 N.W.2d at 106.

January 5, 1990

Mr. Jack Ruttger
Ruttger's Bay Lake Lodge
P.O. box 400
Deerwood, Minnesota 56444

Dear Mr. Ruttger:

This responds to your letter asking permission to run an electric cable from one building to another on your property. My understanding is that you wish to run the cable from a building now served by Minnesota Power to a building now served by Mille Lacs Electric Cooperative.

This matter has been reviewed by Commission staff and by the Commission's legal counsel. It is our opinion that formal approval by the Commission is not necessary. The Commission's policy is that wiring on the customer's side of an electric meter is controlled by the customer, not the utility or the Commission. It is permissible for wiring to cross service area boundaries as long as it stays on the same customer's property.

Therefore, the Commission will take no action on your letter, with the understanding that you can proceed with whatever wiring is consistent with local codes. Such wiring must connect to an electric utility's meter in that utility's service area.

Please feel free to call me at (612)296-1336 if you have any questions.

Sincerely,



Richard R. Lancaster
Energy Manager

c: Mille Lacs Electric Cooperative

AMERICAN CENTER building • Kellogg AND ROBERT STS' SAINT PAUL, MN 55101

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Daniel	Carlisle	d.carlisle@pemlaw.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
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_17-893_Official
John R.	Gasele	jpgasele@fryberger.com	Fryberger Buchanan Smith & Frederick PA	700 Lonsdale Building 302 W Superior St Ste 700 Duluth, MN 55802	Electronic Service	No	OFF_SL_17-893_Official
David	Moeller	dmoeller@allete.com	Minnesota Power	30 W Superior St Duluth, MN 558022093	Electronic Service	No	OFF_SL_17-893_Official
Samuel	Rufer	sam.rufer@pemlaw.com	Pemberton Law Firm	903 Washington Avenue Detroit Laks, MN 56501	Electronic Service	No	OFF_SL_17-893_Official
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_17-893_Official