

STATE OF MINNESOTA

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Vice Chair
Matt Schuerger	Commissioner
John Tuma	Commissioner
Katie Sieben	Commissioner

In the Matter of the Complaint by
Lake Country Power Arising from an
Assigned Service Area Violation by
Minnesota Power

AMENDED COMPLAINT
MPUC Docket No.
E105, E106/SA-17-893

Complainant Lake Country Power (“LCP”), for its amended complaint arising from an assigned service area violation by Respondent Minnesota Power (“MP”) with respect to MP’s servicing of a customer located within LCP’s assigned service area, states and alleges as follows pursuant to Minn. Stat. §216B.43:

1. LCP is a member-owned electric cooperative that provides electric services in an exclusive service area located in northeastern Minnesota.

2. Pursuant to Minn. R. 7829.1700, LCP states that its address is 2810 Elida Drive, Grand Rapids, Minnesota, 55744. The names and addresses of LCP’s counsel in this matter are: Daniel T. Carlisle and Samuel S. Rufer, Pemberton Law, 7 Colfax Ave SW, Wadena, MN 56482.

3. Minnesota Power is an investor-owned electric utility that provides electric services in its own exclusive service area located in Minnesota.

4. Pursuant to Minn. R. 7829.1700, LCP states that MP’s address is 30 W. Superior Street, Duluth, MN 55802. Upon information and belief, the name and address of MP’s counsel in this matter is: David Moeller, c/o Minnesota Power, 30 W. Superior Street, Duluth, MN 55802 (dmoeller@allete.com).

5. Canadian National Railway Company (“CN”) is a railroad company based in Montreal, Quebec, Canada. CN operates and maintains railroad systems and facilities in the United States, including in Minnesota. Upon information and belief, the name and address of CN’s counsel in this matter is: John R. Gasele, Fryberger Law Firm, 302 W. Superior Street, #700, Duluth, MN 55802.

6. CN is in the process of improving and adding signaling and sensing equipment to its railroad facilities near Hoyt Lakes, Minnesota to facilitate its railroad services in the area.

7. The signaling and sensing equipment is a new load and is to be consumed in an area that is currently without any electrical service.

8. 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.

9. The signaling and sensing equipment near Hoyt Lakes is entirely within the exclusive service area assigned to LCP by the Public Utilities Commission (“Commission”).

10. In the summer of 2017 LCP first became aware that CN had constructed its own electrical distribution infrastructure along a rail corridor to the proposed location.

11. In doing so, CN connected the distribution infrastructure to a point of service within the service territory of MP and MP is now providing electric service¹ outside of MP’s service territory and entirely within LCP’s exclusive service territory.

¹ Electric Service is defined in Minn. Stat. § 216B.38 as “electric service furnished to a customer at retail for **ultimate consumption...**”(emphasis added).

12. On September 12, 2017, counsel for LCP wrote to MP informing them that the ultimate consumption of the electric service provided by MP is located entirely within LCP's exclusive service territory.

13. MP did not provide notice of its intent to provide electric service to the new load located within the LCP service area.

14. As a result, MP is providing electric service to a load located outside of its exclusive service area and located within the exclusive service territory of LCP.

15. Pursuant to Minn. R. 7829.2000, attached as Exhibit 1 to this Complaint is a copy of the official service area map taken from the Commission's website of the area at issue within St. Louis County, Minnesota. The area of the map shaded in pink represents MP's closest assigned service area. The rest of the area shown on the map represents LCP's exclusive service area, including the noted location of the signaling and sensing equipment installed by CN.

CLAIM FOR RELIEF

16. With the 1974 enactment of the Minnesota Public Utilities Act, Minn. Stat. § 216B.01 *et seq.*, the Minnesota legislature established exclusive service areas for electric utilities in Minnesota.

17. In so enacting, the Minnesota legislature stated:

It is hereby declared to be in the public interest that, in order to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient and adequate electric service to the public, the state of Minnesota shall be divided into geography service areas within which a specific electric utility shall provide electric service to customers on an exclusive basis.

Minn. Stat. § 216B.37.

18. Pursuant to Section 216B.40 of the Minnesota Public Utilities Act, electric utilities are assigned exclusive service territories and may not serve customers within an area assigned to another utility unless the other utility consents thereto in writing, or another exception applies.

19. LCP has not consented to MP's servicing of the signaling and sensing equipment installed by CN, in writing or otherwise.

20. The only statutory exceptions to the exclusive service territories are for large customers (more than 2,000 kW – Minn. Stat. 216B.42) and for homesteads (Minn. Stat. 216B.421).

21. The equipment installed and load required by CN does not meet the requirements for the large customer exception under Minn. Stat. 216B.42.

22. The equipment installed does not meet the definition for the homestead exception under Minn. Stat. 216B.421.

23. Prior decisions of the Public Utilities Commission 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 service territory².

24. CN does not have a physical "bricks and mortar" building that straddles more than one exclusive service territory.

25. Regardless of where CN receives the service, the ultimate consumption of the electric service may not be within LCP's exclusive service territory without meeting the requirements of the aforementioned exceptions ("the customer created the problem")³.

² See e.g. In the Matter of a Request by the City of Rice for a Service Area Boundary Change Between Minnesota Power and East Central Energy, Docket No. E-112, 015/SA-01-696 (August 28, 2001)

³ See e.g. In the Matter of a Complaint by McLeod Coop. Power Ass'n Against Hutchinson Utilities Comm'n Regarding Extension of Service to Hutchinson Technologies, Inc., Docket No. E-252, 120/C-95-517

26. Based upon the foregoing, MP's servicing the signaling and sensing equipment installed by CN violates the exclusive service area provisions of the Minnesota Public Utilities Act, Minn. Stat. §§ 216B.37 to 216B.43.

WHEREFORE, LCP respectfully requests that the Commission: (1) hold a timely hearing as required under Minn. Stat. §216B.43; (2) issue an order determining MP is in violation of the exclusive service area provisions of the Minnesota Public Utilities Act, and (3) issue an order determining that LCP has the exclusive right to extend electric service to the signaling and sensing equipment (and any additional electrical load) installed by CN.

Respectfully submitted,

Dated: July 19, 2018

PEMBERTON LAW

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Country Power

Electric Utility Service Areas

- Coop. Light and Power Assn. of Lake County
- Lake Country Power
- Minnesota Power

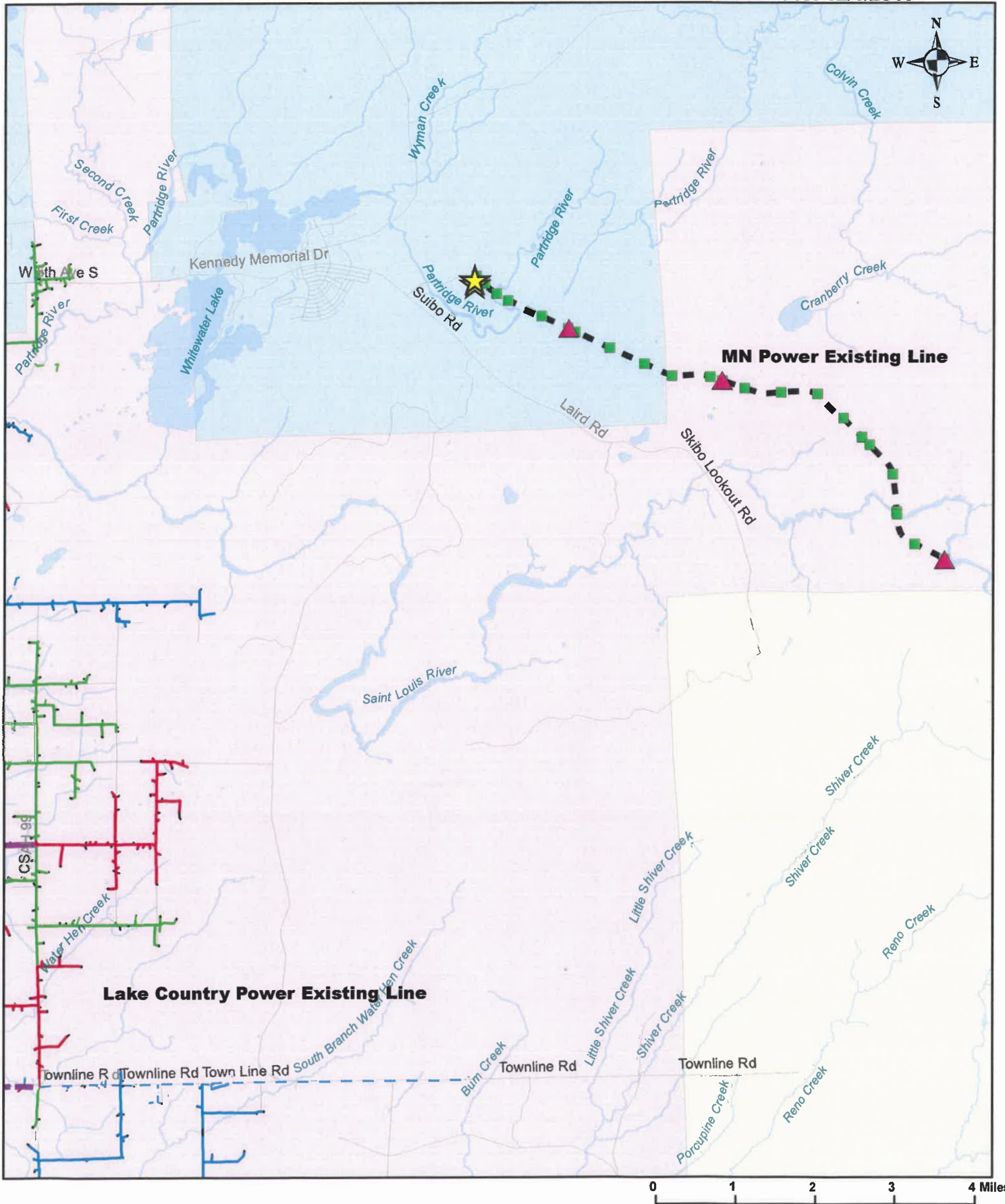
Minnesota Power Structures

- Poles (3)
- Transformer (3)
- Cabinets (25)
- Underground (7.5 mi approx.)



A Touchstone Energy® Cooperative

Date: 12/1/2017



STATE OF MINNESOTA)
) ss.
COUNTY OF BECKER)

AFFIDAVIT OF SERVICE VIA
ELECTRONIC FILING

Tarin L. Ladwig, being duly sworn upon oath, says that on the 19th day of July, 2018, she served the Amended Complaint on the Minnesota Public Utilities Commission and the Energy Resources Division of the Minnesota Department of Commerce via electronic filing. The persons on the E-Docket's Official Service List for this Docket were served as requested.

/s/ Tarin L. Ladwig
Tarin L. Ladwig

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
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	kgasele@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
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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