

October 26, 2015

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

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. G6956/M-15-856

Dear Mr. Wolf:

Attached are the Comments of the Minnesota Department of Commerce, Division of Energy Resources (the Department), in the following matter:

Petition of Community Co-ops of Lake Park for Exemption for Small Gas Utility Franchise.

The Petition was filed on September 25, 2015 by:

Elroy Hanson
Wambach & Hanson Law Office, PC
PO Box 340
Mahnomen, Minnesota 56557

As discussed in the attached Comments, the Department recommends **approval** with modifications and is available to answer any questions that the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ MICHELLE ST. PIERRE
Financial Analyst

MS/ja
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES**

DOCKET No. G6956/M-15-856

I. SUMMARY OF THE UTILITY'S PROPOSAL

On September 25, 2015, Community Co-ops of Lake Park (CCPL) filed a Petition for approval by the Minnesota Public Utilities Commission (Commission) of an exemption as a small gas utility franchise from the requirements of Minn. Stat. § 216B.16 subd. 12 (a) for service provided to the cities of Mahnomen and Twin Valley, Minnesota (the Municipalities) and the immediate surrounding areas. CCPL stated that the Municipalities passed resolutions requesting the Commission to approve such an exemption. To the extent necessary, CCPL also requested an exemption for incidental natural gas distribution service to the rural areas outside of the borders of the municipalities it will serve. CCPL's facilities are, or will be, located in Mahnomen and Norman Counties.

CCLP's Attachment A included the "Acknowledgement of Receipt of CCLP's Rate & Rules Book" for each city. On October 14, 2015, CCPL submitted "Supplemental Documents" and explained that its Exhibit A inadvertently omitted copies of the Municipalities' resolutions.

II. THE DEPARTMENT ANALYSIS

A. BACKGROUND

CCPL is a cooperative association organized and existing under the laws of Minnesota (Minn. Stat. Chapter 308A), with its principal place of business located in Lake Park, Minnesota. To the Department's knowledge, CCLP is the first natural gas co-op to seek exemption from the Commission, and its Petition is the second exemption request received by the Commission.¹ In its Petition, CCPL stated:²

¹ In Docket No. G6915/M-13-672 (Docket No. 13-672), the Commission granted Dooley's Natural Gas LLC's (DNG) request for an exemption from Minn. Stat. 216B.16, subd. 12 for service provided within, and incidental service provided outside the borders of, seven municipalities. Those municipalities were: Clara City, Blomkest, Raymond, Maynard, Prinsburg, Roseland, and Whitefield Township/Svea. DNG's request was the first exemption request received by the Commission under Minn. Stat. 216B.16, subd. 12.

² Petition, page 1. The Department notes that there are no page numbers on the Petition.

CCPL desires to deliver a service/product to its members and non-members^[3] and to develop a natural gas distribution system to provide natural gas service to the cities of Mahnomen and Twin Valley, Minnesota (and rural areas outside the borders of said municipalities) (the “Municipalities”). Prior to CCLP’s development of a natural gas distribution system to serve customers in these communities, natural gas service was not available and propane was the primary fuel for industrial, agricultural, commercial and residential uses.

In its Petition, CCPL explained how the development of the distribution system came about: ⁴

In response to low natural gas prices and the growing price differential between the cost of propane and natural gas, CCPL worked with the Municipalities to develop a natural gas distribution system to serve previously un-served customers in the Municipalities and surrounding communities. CCPL’s system was developed with the understanding that it would be regulated by the Municipalities under Minnesota’s statutory exemption for small gas utility franchises. As a result of these cooperative efforts, each Municipality has granted CCLP a non-exclusive franchise to supply natural gas to customers in the respective Municipalities.

In an October 9, 2015 telephone call with the Department’s analyst, CCLP’s General Manager stated that construction of the distribution system would be completed in the following week. Additionally, CCLP indicated that more exemption request filings would be made by CCPL in the future. The Department notes that, in its Petition, CCLP stated that the townships of McDonaldsville, Lake Ida, Wild Rice, and Fossum, in Norman County and Marsh Creek, Pembina, Rosedale, and Chief, in Mahnomen County support the exemptions.⁵

B. STATUTORY REQUIREMENTS FOR SMALL GAS UTILITY FRANCHISE EXEMPTION

Minnesota Statute § 216B.02, subd. 4 states:

“Public utility” means persons, corporations, or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof.... In addition, the provisions

³ The Department notes that CCLP will have one customer that will be a transport customer that purchases natural gas through a wholesale supplier. That customer will not be a member of the co-op since CCLP will bill the transportation fee to the wholesale supplier rather than the end user. October 12, 2015 email from CCLP.

⁴ Petition, page 2.

⁵ *Id.*

of this chapter shall not apply to a public utility whose total natural gas business consists of supplying natural, manufactured, or mixed gas to not more than 650 customers within a city pursuant to a franchise granted by the city, provided a resolution of the city council requesting exemption from the regulation is filed with the commission.

Minnesota Statute § 216B.16, subd. 12 (a) states:

A municipality may file with the Commission a resolution of its governing body requesting exemption from the provisions of this section for a public utility that is under a franchise with the municipality to supply natural, manufactured, or mixed gas and that serves 650 or fewer customers in the municipality as long as the public utility serves no more than 2,000 customers.

Minnesota Statute § 216B.16, subd. 12 (b) states:

The commission shall grant an exemption from this section for that portion of a public utility's business that is requested by each municipality it serves. Furthermore, the commission shall also grant the public utility an exemption from this section for any service provided outside of a municipality's border that is considered by the commission to be incidental. The public utility shall file with the commission and the department all initial and subsequent changes in rates, tariffs, and contracts for service outside the municipality at least 30 days in advance of implementation.

C. ANALYSIS OF THE PROPOSED EXEMPTION FROM PUC REGULATION OF NATURAL GAS RATES

Regarding the number of customers CCLP intends to serve, CCPL stated:⁶

In addition, each Municipality has passed a resolution of its governing body supporting an exemption for CCLP from the requirements of Minn. Stat. § 216B.16 and confirming in each case that CCLP would serve less than 500 customers within each Municipality.⁷ At no point will CCLP serve more than 2,000 customers total; nor was the distribution system developed to serve more than 2,000 customers.

⁶ *Id.*

⁷ Footnote omitted.

Upon completing construction of the small distribution system estimated to be near the end of September of 2015, CCLP intends to provide natural gas distribution service to approximately 350 customers. Included among these customers are approximately 30 customers that are located outside the Municipalities' borders.

As indicated above, a natural gas business with 650 or fewer customers within a city and pursuant to a franchise granted by the city may request exemption from rate regulation if a resolution from the city is provided supporting the exemption request. The city councils of Mahnomen and Twin Valley signed ordinances granting CCLP a 10-year franchise to operate, repair and maintain a natural gas distribution system within the city limits.⁸ Table 1 below summarizes the information provided in CCPL's filings or in a 2010 Census:⁹

Table 1

City	Date of Ordinance	Expected Number of Customers	Population*
Mahnomen	March 16, 2015	<500	1,208
Twin Valley	March 13, 2015	<500	809
Immediate Surrounding Areas		30	N/A
Total		350	2,017

*Source: League of Minnesota Cities <http://lmc.org>

Based on the Department concludes that CCLP is a public utility under Minn. Stat. § 216B.02 subd. 4 and that CCLP meets the requirements of Minn. Stat. § 216B.16, subd. 12 (a) to be exempt from Commission rate regulation. Thus, the Department recommends that the Commission grant CCLP's request for an exemption from Minn. Stat. § 216B.16, subd. 12 for service provided within, and incidental service provided outside, the borders of the municipalities Mahnomen and Twin Valley.

D. CCLP'S RATE BOOK

Minnesota Statute § 216B.16, subd. 12 (c) states:

However, the commission shall require the utility to adopt the commission's policies and procedures governing disconnection during cold weather. The utility shall annually submit a copy of its municipally approved rates to the commission.

⁸ CCPL's October 14, 2015 Supplemental Documents.

⁹ According to the League of Minnesota Cities, when Census data are available, those figures are used in its directory and website. In non-Census years, the annual estimates from the state demographer are used.

In its January 7, 2014 *Order Granting Small Gas Utility Franchise Exemption Under Minn. Stat § 216B.16, Subd. 12* for DNG, the Commission clarified that while DNG had been exempted from rate regulation, it remained subject to various other statutory provisions under Commission jurisdiction, including but not limited to the following:¹⁰

- Minn. Stat § 216B.096 – Cold Weather Rule
- Minn. Stat § 216B.0976 – Notice to Cities of Utility Disconnection
- Minn. Stat § 216B.098 – Residential Customer Protections

Additionally, the Commission stated:¹¹

Under state law, DNG continues to be responsible to submit the following to the Commission:

- Annual Cold Weather Rule reports as required under Minn. Stat. § 216B.096, Subd. 11;
- Annual tariff updates with municipally approved rates to the Commission (Minn. Stat. § 216B.16, Subd. 12 (c)); and
- Any subsequent changes in rates, tariffs and contracts for service outside the municipalities at least 30 days in advance of implementation.

In its Petition, CCPL provided its Rate/Service & Regulations Book¹² (Rate Book). It appears to the Department that CCPL modeled its Rate Book after DNG's tariffs¹³ as they existed before DNG filed its January 24, 2014 Compliance filing pursuant to the Commission's Order in Docket No. 13-672. Thus, CCLP's Rate Book Sections 28, "Discontinuance or Refusal During Cold Weather," 25, "Billing," 26, "Payment of Bills," and 27, "Discontinuance or Refusal of Gas Service" have essentially the same language used by DNG *before* the Commission required DNG to update its tariff to comply with the statutes. As such, the Department recommends that the Commission require CCLP to file a compliance filing to update its Rate Book for the same items required to be updated by DNG.

The Department also recommends that the Commission clarify that CCPL is required to make annual filings as well as file subsequent changes in rates, tariffs, and contracts for service outside the municipalities, at least 30 days in advance of implementation, again as required by law. Additionally, similar to the Commission's Order in DNG, the Commission may wish to state in its Order that CCLP has an affirmative duty to inform the Commission should its customer base expand beyond the 2,000 customer threshold.

¹⁰ Order, page 3 (the statutory provisions noted by the Commission on page 3 appear to be those referenced in Minn. Stat. § 216B.16, subd. 12).

¹¹ *Id.*

¹² CCLP's Rate Book is the same for both towns because CCLP will be using a single-system rate structure based on system-wide costs.

¹³ On page 4 of the Petition, CCLP states that the Rate Book is modeled after CenterPoint Energy's Tariff. It appears that CCLP meant DNG rather than CenterPoint Energy.

During its review, the Department noticed that CCLP included language in its Rate Book that does not appear to apply to CCPL at this time in light of CCPL's very few number of customers. For example, the language under each rate class that states that all customer bills are subject to the Gas Affordability Rider, Conservation Improvement Adjustment Rider, Conservation Enabling Rider,¹⁴ and the New Area Surcharge Rider.¹⁵ Similarly, the language on peak shaving does not appear to apply at this time since CCPL does not own any peak shaving facilities.¹⁶ The Department suggests that at this time, CCLP remove these items from its Rate Book.

III. DEPARTMENT RECOMMENDATION

The Department recommends that the Commission:

- grant CCLP's request for an exemption from Minn. Stat. § 216B.16, subd. 12 for service provided within, and incidental service provided outside, the borders of the municipalities Mahnomon and Twin Valley, subject to making the required compliance filings set forth below.
- require CCLP to submit the following compliance filings within 20 days of the Order:
 - A. an update of Section 28 of its Tariff to reflect that CCLP must comply with the Commission's Cold Weather Rule.
 - B. an update of Section 27, Item 1 (a) of its Rate Book amended to read, "To a customer who owes a past due and unpaid balance for utility service at a former address, in the same class of service."

¹⁴ Rate Book Sections 5, 6, 7, and 8.

¹⁵ Rate Book Section 11. In an October 9, 2015 telephone call, CCLP stated that it did not understand the mechanics of the New Area Surcharge.

¹⁶ Rate Book Section 13. Specifically, the peak shaving language in question in Section 13, paragraph 1 is as follows:

In the event Community Co-ops of Lake Park finds it necessary to supplement the supply of natural gas by means of peak shaving, an amount per Therm shall be added to or deducted from the Gas Cost Reconciliation factor applied to firm gas service sales. This peak shaving amount shall be determined by dividing the difference between the peak shaving costs for the current twelve (12) month period ending June 30, and the peak shaving costs for the base period used for establishing the rate schedules to which this rider applies, by the total Therm sales to firm gas service customers for the current twelve (12) month period (adjusted to reflect normal temperature). To the extent peak shaving is used to serve dual fuel customers, an appropriate adjustment will be made.

- C. additional language in its Rate Book demonstrating its compliance with Minn. Stat. §§ 216B.0976 (Notice to Cities of Utility Disconnection), and 216B.098 (Residential Customer Protections).

The Department also recommends that the Commission clarify that CCPL is required to make annual filings as well as file subsequent changes in rates, tariffs, and contracts for service outside the municipalities, at least 30 days in advance of implementation, again as required by law. Additionally, similar to the Commission's Order in DNG, the Commission may wish to state in its Order that CCLP has an affirmative duty to inform the Commission should its customer base expand beyond the 2,000 customer threshold.

/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. G6956/M-15-856

Dated this 26th day of October 2015

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_15-856_M-15-856
David	Blomseth	davidb@communitycoops.com	Community Co-ops of Lake Park	PO Box 329 14583 Hwy 10 W Lake Park, MN 56554	Electronic Service	No	OFF_SL_15-856_M-15-856
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_15-856_M-15-856
Jessica	Halvorson	jhalvor@arvig.net	Wambach & Hanson Law Office, P.C.	PO Box 340 Mahnomen, MN 56557	Electronic Service	No	OFF_SL_15-856_M-15-856
Elroy E.	Hanson	ehanson@arvig.net	Wambach & Hanson Law Office PC	304 N Main St PO Box 340 Mahnomen, MN 56557	Electronic Service	No	OFF_SL_15-856_M-15-856
John	Lindell	agorud.ecf@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_15-856_M-15-856
Bruce	Nelson	tbnelson@loretel.net	Community Co-ops of Lake Park	PO Box 329 14583 Hwy 10 W Lake Park, MN 56554	Electronic Service	No	OFF_SL_15-856_M-15-856
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_15-856_M-15-856