

McGRANN SHEA CARNIVAL STRAUGHN & LAMB, CHARTERED
ATTORNEYS AT LAW

WILLIAM R. MCGRANN
DOUGLAS M. CARNIVAL
PETER L. COOPER
KATHLEEN M. LAMB
JOHN R. SCHULZ
BRIAN L. SOBOL
SCOTT B. CROSSMAN

CARLA J. PEDERSEN
JOSEPH T. BAGNOLI
ROGER J. STELLJES
JEFFREY C. URBAN
KATHLEEN MICHAELA BRENNAN
CARL S. WOSMEK
AMY L. COURT

CHRISTY E. LAWRIE
KEVIN A. SCHAEKEL
OF COUNSEL
ROBERT O. STRAUGHN
RETIRED
ANDREW J. SHEA

January 31, 2018

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
350 Metro Square Building
121 Seventh Place East
St. Paul, MN 55101

Re: In re Matter of North Star Electric Cooperative, Inc. and Warroad
Municipal Light & Power Department
MPUC No. E129,324/SA-17-141

Dear Mr. Wolf:

On behalf of the City of Warroad, I enclose the following documents via e-filing:

1. Supplemental Comments;
2. Affidavit of Ron Kleinschmidt, with exhibits; and
3. Affidavit of Amy Friesner.

A copy of these documents is being served upon the service list. Please contact me should you have any questions.

Sincerely,



Kathleen M. Brennan

KMB/cmc
Enclosures
cc: Service List

MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Daniel Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie Sieben	Commissioner
John Tuma	Commissioner

Docket No. E129,324/SA-17-141

In Matter of North Star Electric
Cooperative, Inc.
and Warroad Municipal
Light & Power Department

**SUPPLEMENTAL COMMENTS OF THE
CITY OF WARROAD**

SYNOPSIS

The Legislature authorized the Warroad Municipal Light & Power Department of the City of Warroad (the “City”), as a municipal utility, to set electric rates. That authority is separate from the Minnesota Public Utilities Commission’s (the “Commission”) ability to modify assigned service territory boundaries, upon its own motion or a utility’s request. The Department of Commerce, in its recommendation, confuses these two principles.

Because the utilities have only requested the Commission to modify the boundaries, not determine compensation, and because the customer has voiced no objection to the 2013 compensation agreement (the “2013 Agreement”), the Commission should modify the boundaries on the official maps to match the reality of the City providing electric service to this area. The purpose of the official map should be to reflect accurate information. And, as a matter of public policy, the Commission should not thwart amicable service territory compensation agreements.

Tellingly, the Department has recommended more than the customer requested. The Red Lake Band recommended a delay on the map approval until further resolution

of its rate issue with the City. The Department recommended a denial of the service territory change – without addressing how to “unwind” an agreement some four years after the fact, or how to undo electrical facilities that have been installed and have been providing service.

As to the Red Lake Band’s request to delay the boundary change pending its resolution of a rate issue with the City, the Commission should decline to expand this docket beyond its statutory authority. Many factual issues merit clarification, and, if the Commission addresses the merits of the rate dispute, then a contested case proceeding is required.

But such an approach should be unnecessary. The Department’s recommendation to “deny without prejudice” the service territory adjustment due to rates contradicts the statutory framework authorizing the City to set rates. The official map should be adjusted, and the Commission should decline to take further action.

FACTUAL ISSUES

The City notes multiple factual matters that are unclear, or incorrect, after reviewing the Department’s comments. The City repeats its position that if the Commission does not approve the service territory change, it must open a contested case proceeding to fully develop the underlying record. For purposes of clarity, the City notes the following corrections of fact:

1. Payment under 2013 Agreement. The City made a lump-sum payment to North Star in the amount of \$600,000, as provided in the 2013 Agreement. Ron Kleinschmidt Affidavit (“Aff.”), ¶ 6. Any suggestion that the City would forward payments from the Red Lake Band to North Star is incorrect. Department Comments, at 2.

2. City's Financial Position. Because the City completed the payment to North Star as a lump sum (and has not received any payments from the Red Lake Band), the City has lost funds in this transaction. Kleinschmidt Aff. ¶ 6. As a result, the City has not been able to use the funds for other electrical utility expenses. No payment or interest has been provided to the City in response to the City's up-front payment. *Id.* Even under the 1.5 cents/kWh rate, the City does not recover all of its costs associated with the service territory transfer. In the current proceeding, the City has incurred additional expenses, including legal expenses and regulatory expenses from the Department in this matter.

3. Actual Notice. The Red Lake Band received actual notice of the service territory change. The Band was initially served by North Star in the early construction phase, and it worked with the City to petition for annexation and to install electric facilities for the City to provide electric service. See Department Comments at 2 (noting North Star provided initial service in summer 2013); *id.* at 1 (noting July 31, 2012 Band letter seeking City utilities (City IR-1, Attachment E) and the Band's Nov. 6, 2012 petition for annexation). City and the Band representatives held regular work progress meetings to discuss the electric service territory transfer from North Star and facilities. Kleinschmidt Aff. ¶ 3. As to this proceeding, the Red Lake Band has fully participated, filing its petition to intervene days after the initial filing. See Initial Filing by North Star (Feb. 15, 2017); Red Lake Notice of Appearance (Feb. 23, 2017). There is no true issue as to notice in this matter.

4. Rate. Any suggestion that the utilities "agreed" to charge the Red Lake Band is incorrect. (Department Comments at 8). The City determined to allocate the

compensation costs to the customers being served, rather than allocating it across all of its customers. Kleinschmidt Aff., ¶ 6. This decision was permitted in the municipal utility's rate-setting authority. Minn. Stat. §§ 216B.01; 412.361, subd. 4.

5. The City's Surcharge was Communicated and Agreed Upon. The City has noted multiple oral conversations with the designated point person for the Red Lake Band, Mr. Brenny. Kleinschmidt Aff., ¶ 3. Mr. Kleinschmidt, the City's Superintendent, provided regular updates of the service territory negotiations with North Star to Mr. Brenny. *Id.* In addition, the City representatives met with Mr. Brenny and other Band representatives on or about November 12, 2013, when the rate was discussed multiple times, and Mr. Brenny confirmed that he was aware of the rate, and that it was normal business. *Id.* ¶ 4; Amy Freisner Aff., ¶ 5.

6. Customer Benefit. The Red Lake Band benefits from the City's services in multiple respects. The Band sought municipal sewer, water, and other services, which North Star could not provide. The City agreed to share the costs of installing electrical infrastructure required to provide electric service; the City absorbed all labor costs for installing this equipment. The Band also receives heightened reliability, in that the City's service personnel are nearby. By contrast, the North Star offices are approximately 45 miles away from the load. From a financial perspective, North Star has determined that the Red Lake Band would pay higher rates with North Star, even considering the City's 1.5 cents/kWh rate.

7. Statewide Public Interest. In past cases, the Commission has noted the public interest should be considered in a broad sense, linked to the statutory purposes in creating assigned service territory. In the present case, the City's distribution facilities

are closer to the area at issue, and the service territory transfer better coordinates service among electric utilities. It avoids unnecessary duplication of facilities. The transfer also provides clarity in terms of long-term utility planning and resource management. And it supports economical and cost-efficient service.

ARGUMENT

I. THE COMMISSION SHOULD DECLINE TO FOLLOW THE DEPARTMENT'S RECOMMENDATION TO DENY THE SERVICE TERRITORY CHANGE.

The Department's recommendation appears to be based upon a concern with notice to the Red Lake Band and an unspecified concern with the public interest. Both concerns are misplaced.

A. THE RED LAKE BAND RECEIVED ACTUAL NOTICE.

First, as to notice, the statute requires that the Commission provide ten days' notice of the Commission's hearing. See Minn. Stat. §§ 216B.39, subd. 3 ("after notice and hearing as provided for in sections 216B.17 and 216B.18."); 216B.17, subd. 3 (requiring that "[t]he commission shall give the public utility and the complainant ten days' notice of the time and place when and where the hearing will be held and the matters to be considered and determined."); 216B.18 (providing notice personally, by electronic service, or by mail). In addition, the statute directs the Commission to give notice "to the governing bodies of affected municipalities and counties, and to any other persons the commission shall deem necessary." Minn. Stat. § 216B.17, subd. 4. In the present case, the Commission must provide ten days' notice of its meeting considering this matter, satisfying Sections 216B.39 and 216B.17. There is ample time to comply with this statute.

Moreover, it is simply incorrect that the Red Lake Band did not receive notice; it had actual notice of the transfer and of the present proceeding, participating as an

intervenor mere days after the initial filing. The Band was initially served by North Star in the construction of the casino, and the Band worked with the City to install facilities and transition to City service. Department Comments 1-2; Kleinschmidt Aff., ¶ 3. Because the Band has participated in this proceeding, there is no question that it received notice of the proceeding. See, e.g., *In re Collier*, 726 N.W.2d 799, 809 (Minn. 2007) (recognizing actual notice of mortgage interest prevents claim of good faith purchaser of property); *Vernco v. Township of Manyaska*, 290 N.W.2d 443 (Minn. 1980) (actual notice of appeal provided jurisdiction).¹ In the present case, notice does not provide a basis to reject the requested service territory change.

B. THE PUBLIC INTEREST IS NOT SERVED BY THE DEPARTMENT'S RECOMMENDATION.

In the last paragraph of its initial comments, the Department states that the utilities “have not demonstrated” that the joint petition “is consistent with the public interest and Minn. Stat. Sec. 216B.39.” Comments at 8. No specific analysis is provided in the Department’s comments as to the “public interest.” The City notes that Section 216B.39 does not use the phrase “public interest.”

Even considering, for the sake of argument, that the public interest should be determined, this standard supports approval of the boundary change. The broader public interest includes the factors in Section 216B.37: “to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary

¹ The Commission’s 2014 Order adopting the electronic service territory map stated that “electric utilities must hereafter file any service territory boundary changes with the Commission for its approval” which the utilities have done in this matter. *In re Establishing Digital Service Area Maps*, E-999/CI-12-957, at 2 (April 9, 2014). The Department’s reliance upon the checklist is confusing, in that it was not required in the Commission’s 2014 order and is described as a “pilot.”

duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public” Minn. Stat. § 216B.37 (2016). In the present case, the two utilities determined that the transfer was desired, to coordinate long-term planning and the obligation to serve this load, to coordinate regional electric service, to avoid unnecessary duplication of facilities, and to determine which utility should make the capital investment to provide the service.

The City further notes that the transfer promotes economical, efficient, and reliable electric service. Indeed, the customer does not benefit if the Commission were to somehow nullify the 2103 Agreement. North Star has noted that the customer’s electric service costs would increase – even considering the City’s surcharge. In addition, the Red Lake Band benefits from the City’s sharing of initial costs to provide electric service, lower rates, reliable service, and closer personnel to respond to any outages. The City submits that the public interest is best served by honoring agreements between utilities, negotiated at arms-length.

As to the utilities, they would be prejudiced by a rejection of the boundary change. The result would likely require the “unwinding” of the 2013 Agreement, including addressing the payment already made, but also the more complicated issues of how to address the infrastructure installed and the obligation to serve. Presumably the public interest is not supported by a result that requires disconnection of established service to the Red Lake Band and starting over for North Star to install facilities to serve the load.

Public policy also supports sustaining agreements. It creates a slippery slope to entertain concerns years after utilities have determined compensation. It makes little sense to undermine the certainty of agreements and the obligation to serve and undertake

capital-intensive infrastructure investments. The Commission should encourage and enforce settlement agreements as a matter of prudent public policy. If the Commission establishes a course to re-open service territory agreements, then utilities may well prefer to litigate matters. After all, if the end agreement is subject to reversal, and the parties are subject to paying for the costs of the proceeding – this matter has already resulted in significant expenses that were not anticipated, including legal expenses and regulatory costs – then some may prefer litigation. Litigation would provide certainty, but would increase the costs to the parties, expand the number of cases coming before the Commission unnecessarily, and undermine the public policy of encouraging settlements.

C. NO OBJECTION TO THE 2013 AGREEMENT.

Finally, the particular facts of the present case do not support an “unwinding” of the 2013 Agreement. The Red Lake Band raised no challenge to the 2013 Agreement. See Oct. 19, 2017 Comments at 3 (2013 Agreement “served as an appropriate measure of compensation for the exchange of North Star’s service rights.”); *id.* (“Therefore, the City has satisfied the statutory requirements to purchase the service territory from North Star.”). *Id.* at 3. The Department’s comments also did not object to the 2013 Agreement as such, but to the concerns surrounding the City’s rate component.

The Commission has relied upon the statewide public interest in approving boundary adjustments, even if customers disagreed. See, e.g., *In re Assigned Service Area Agreement between Northern States Power Company d/b/a Xcel Energy and the Delano Water, Light and Power Commission*, No. E-228, 002/SA-05-1445, at 4 (Nov. 7, 2005) (“The public interest is best served by honoring reasonable agreements between utilities, including agreements to straighten service area boundaries to ensure clarity and

ease of administration.”). The Commission should follow its past practices and approve the service territory boundary change.

CONCLUSION

The City of Warroad respectfully requests that the Commission update the official electric service territory maps to reflect the permanent transfer of service territory from North Star to the City of Warroad. The Commission should decline to address any other issues in this docket. If, for whatever reason, the Commission does not update the service territory boundaries, then it must order a contested case proceeding to fully develop the record.

Date: Jan. 31, 2018

MCGRANN SHEA CARNIVAL
STRAUGHN & LAMB, CHARTERED

By: /s Kathleen M. Brennan
 Kathleen M. Brennan #256870
800 Nicollet Mall, Suite 2600
Minneapolis, MN 55402
Telephone: (612) 338-2525
kmb@mcgrannshea.com

ANDERSON LAW OFFICES, P.A.
Steven A. Anderson
P.O. Box 430
Warroad, MN 56763
Telephone: (218) 386-1040
steven@andersonlawyers.com

Attorneys for the City of Warroad

signed certified mail receipt shows that the letter was picked up on September 30, 2015, which is the correct date. (See attached Exhibits A and B.)

6. In making the rate decisions and allocating service territory costs to acquired customers, examples of other utilities with electric service territory rates were used. These examples also show that the costs are passed on to the customers. The City made the payment to North Star Electric up-front, and it has not received payment or interest. The City has lost money from this arrangement.

FURTHER YOUR AFFIANT SAITH NOT.

Dated this 30th day of January, 2018.



Ron Kleinschmidt

Subscribed and sworn to before
me this 30th day of January, 2018.



Notary Public, Minnesota



CITY OF WARROAD

on the shore of beautiful Lake of the Woods



121 MAIN AVE N.E. • PO BOX 50 • WARROAD, MINNESOTA 56763-0050
Telephone: 218-386-1454 • Fax: 218-386-3375 • E-mail: warroad@mncable.net

EXHIBIT A

September 15, 2016

Seven Clans Casino
Attn: Accounts Payable
34966 605th Ave.
Warroad, MN 56763

Re: Warroad Municipal Utility Charges

To Whom It May Concern:

Beginning October 2015 the city of Warroad will allow the Casino meter number 1 to go on the Industrial / Generator rate. The reason for the October start is to coincide with the Inadvertent Demand Program. The industrial / generator rate charges will be different than the large commercial rate and are as follows.

- Monthly customer charge \$26.75 per Month
 - Energy charge 5.455 cents per Kwh
 - Summer Demand \$6.75 per KW
 - Winter Demand \$ 6.75 per KW
- Summer and Winter Demand charges will only be applied if generator does not run during red zone control time.*
- Annexed area charge 1.5 cents per KWH
 - Energy charge during peak hours (IPP) 8.0 Cents per Kwh. This charge is in addition to the 5.455 cents per Kwh during yellow Zone time. If you do not wish to participate in IPP your generator must run. At current rates it is cheaper than running your generator. During red Zone your generator must run.


In October and April of each year you will be offered Inadvertent Demand Adjustment. This program is insurance if your generator does not run during red zone time. If your generator does not run during red zone time you will be charged demand rate each month for an entire year. You will be offered Winter IDA in October 2015 at the current rate of \$2.61 per KW. In April you will be offered Summer IDA (\$2.05 2015 Rate). Each payment will be paid at the beginning of the respective season. If your generator does not run in red zone because of equipment failure, the program will cover approximately 66% of the monthly demand charges for the following year. Participation is strongly recommended, but not required. All current customers do participate. This information is based on current 2015 rates. These rates are subject to change by the city council.

If you need any additional information please feel free to call my office at 218-386-1873.

Thank you


Ron Kleinschmidt
Warroad Utilities Superintendent

EXHIBIT B

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> <i>Christina Reed</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>																
<p>1. Article Addressed to:</p> <p>Seven Clans Casino Accts. Payable 34966 605th Ave. Warrroad, MN 56763</p>  <p>9590 9403 0681 5196 9393 90</p>	<p>B. Received by (Printed Name) <i>Christina Reed</i> C. Date of Delivery <i>9/30/15</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>																
<p>2. Article Number (Transfer from service label)</p> <p>13 1710 0001 1976 9317</p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®																
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™																
<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery																
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise																
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™																
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery																
<input type="checkbox"/> Insured Mail																	
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)																	
<p>PS Form 3811, April 2015 PSN 7530-02-000-9053 Domestic Return Receipt</p>																	

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)											
For delivery information visit our website at www.usps.com											
OFFICIAL USE											
<table border="1"> <tr> <td>Postage</td> <td>\$</td> </tr> <tr> <td>Certified Fee</td> <td></td> </tr> <tr> <td>Return Receipt Fee (Endorsement Required)</td> <td></td> </tr> <tr> <td>Restricted Delivery Fee (Endorsement Required)</td> <td></td> </tr> <tr> <td>Total Postage & Fees</td> <td>\$</td> </tr> </table>	Postage	\$	Certified Fee		Return Receipt Fee (Endorsement Required)		Restricted Delivery Fee (Endorsement Required)		Total Postage & Fees	\$	<p>Postmark Here</p> <p><i>mailed 9/23</i></p>
Postage	\$										
Certified Fee											
Return Receipt Fee (Endorsement Required)											
Restricted Delivery Fee (Endorsement Required)											
Total Postage & Fees	\$										
<p>Sent To <i>Seven Clans Casino</i></p> <p>Street, Apt. No., or PO Box No.</p> <p>City, State, ZIP+4</p>											
<p>PS Form 3800, August 2006 See Reverse for Instructions</p>											

7013 1710 0001 1976 9317

AFFIDAVIT OF AMY FRIESNER

STATE OF MINNESOTA)
) ss.
COUNTY OF ROSEAU)

Amy Friesner, being first duly sworn on oath, deposes and states as follows:

1. That I am an employee of the City of Warroad, Minnesota, and held the position of the utility administrative assistant.

2. This affidavit is to set forth my recollection of a meeting between the City of Warroad and the Seven Clans Casino, Warroad, which was held in the fall or early winter of 2013 in a room above the Lakeview Restaurant on Lake Street NE.

3. Present at the meeting was the then Warroad City Superintendent Ron Kleinschmidt and myself, Dave Kammuller Sr. of Taylor Woodstone (Project Superintendent), Ray Brenny, and a male and two females from the Seven Clans Casino whom I didn't know.

4. The meeting was originally scheduled to discuss the details of the Seven Clans Casino installing a generator and what all the charges would be and how it would work.

5. At one point during the meeting, discussion had shifted to include the bare ground acquisition fee of \$600,000.00. Ray Brenny had left the room at that time. When Mr. Brenny returned to the room one of the Casino representatives asked if he knew about the bare ground fee. Mr. Brenny said he was aware of the fee.

6. This subject came up 2 or 3 different times throughout the meeting. I specifically stated at least 2 times during the meeting that the fee could be paid up front if they chose to.

7. The discussion then focused back on the installation of the generator.

FURTHER YOUR AFFIANT SAITH NOT.

Dated this 30th day of January, 2018.



Amy Friesner

Subscribed and sworn to before
me this 30th day of January, 2018.



Notary Public, Minnesota

