

December 8, 2017

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. E129, E324/SA-17-141

Dear Mr. Wolf:

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

The Joint Request of North Star Electric Cooperative and the City of Warroad to Modify Electric Service Territory Boundaries.

The petition was jointly filed on February 15, 2017 by:

North Star Electric Cooperative
P.O. Box 719
Baudette, MN 56623

and

City of Warroad
P.O. Box 50
Warroad, MN 56763

The Department recommends at this time that the Minnesota Public Utilities Commission (Commission) deny, without prejudice the requested service territory boundary transfer from North Star Electric Cooperative to the City of Warroad, and is available to answer any questions the Commission may have.

Sincerely,

/s/ DALE V. LUSTI
Financial Analyst

DVL/lt
Attachment

Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E129, E324/SA-17-141

I. BACKGROUND

The City of Warroad (City) is an electric municipal utility organized and existing under the laws of the State of Minnesota.

North Star Electric Cooperative (Cooperative), is an electric distribution cooperative organized and existing under the laws of the State of Minnesota.

The Red Lake Band of Chippewa Indians (Red Lake Band), beginning in approximately June 1991, operated the Seven Clans Casino (Original Casino) in Warroad, Minnesota and received electrical service from the City of Warroad. See the City's April 3, 2017 Response to DOC – 1, Part C in Attachment 1 to these comments.

Sometime during the year 2010, the Red Lake Band started the planning process to build a "New Seven Clans Casino" (New Casino) in or near the City of Warroad. See the Red Lake Band's March 20, 2017 Response to DOC – 3, Part E in Attachment 2 to these comments.

On July 31, 2012, the Red Lake Band notified the City of Warroad of, 1) its plan to move forward in relocating the Original Casino across the river to a new location situated on Tribal Trust land in Lake Township on Lake of the Woods, which is outside the City of Warroad; and 2) that it would like to work with the City on infrastructure needs for the New Casino. See the City's April 3, 2017 Response to DOC – 1, Part E, Attachment E in Attachment 1 to these comments. The location of the New Casino is within the Cooperative's assigned service territory.

On November 6, 2012, the Red Lake Band signed a "Property Owner Petition for Annexation" of property located in Lake Township, Roseau County to the City of Warroad, Roseau County. See the City's April 3, 2017 Response to DOC – 1, Part A, Attachment A-2 in Attachment 1 to these comments.

On April 22, 2013, the City of Warroad signed an Orderly Annexation Agreement of the Lake Township property identified above. See the City's April 3, 2017 Response to DOC – 1, Part A, Attachment A-1. The Department has not yet been provided documentation of the Administrative Law Judge's letter of approval of the annexation.

During August 2013, construction began on the New Casino. See the Red Lake Band's March 20, 2017 Response to DOC-3, Part K included in Attachment 2 to these comments.

When construction of the New Casino began, the Cooperative provided the initial electric service for the construction, until the access road to the New Casino property was constructed, and then the City provided service to the property. See the Red Lake Band's March 20, 2017 Response to DOC-3, Part L included in Attachment 2 to these comments.

On September 9, 2013, the Cooperative and the City (collectively, Parties) signed a Service Territory Agreement whereby the Cooperative would transfer to the City, service territory rights to the annexed area for a one-time payment of \$600,000. See the February 15, 2017 Petition filed by the Cooperative on behalf of the City and the Cooperative, Service Territory Agreement, Article II.

On September 24, 2013, the City attempted to file by e-mail with the Minnesota Public Utilities Commission (Commission of MPUC), the above-identified September 9, 2013 Service Territory Agreement. However, because an incorrect e-mail address was used, the Commission never received the service area transfer request. See the City's April 3, 2017 Response to DOC – 1, Parts K & L, Attachment L included in Attachment 1 to these comments.

By letter dated September 24, 2014, the Red Lake Band learned that the City would require the Band to pay the City \$600,000 as a term of receiving electric service from the City rather than receiving service from the Cooperative which is the assigned provider. See the Red Lake Band's March 20, 2017 Response to DOC-3, Part O, included in Attachment 2 to these comments.

Given that the New Casino's location is in an area that had no Cooperative service-related infrastructure, it is the Minnesota Department of Commerce, Division of Energy Resources (Department's or DOC's) understanding that the \$600,000 amount largely reflects estimated lost revenues the Cooperative expected to receive from serving the New Casino. The Department also understands that the City intended to forward to the Cooperative the \$600,000 that the City required the Red Lake Band to pay.

Initially, the Red Lake Band did pay to the City an additional fee of one-and-one-half cents (\$0.015) or 15 mills per kilowatt hour (kWh) for all electric service provided by the City in the transferred area for a three-month period, but the Red Lake Band later deducted the amount from a later payment. See the City's April 3, 2017 Response to DOC – 1, Parts K & L, Attachment L included in Attachment 1 to these comments.

On February 15, 2017, the Cooperative submitted on behalf of the City and the Cooperative, the Parties' September 9, 2013 Service Territory Agreement to the Commission for approval.

By letter dated February 23, 2017, the Red Lake Band stated that it had recently first learned that in order for the City of Warroad to provide electric service to the New Casino, the Commission would need to approve the transfer of service territory. See the Red Lake Band's March 20, 2017 Response to DOC-3, Part M included in Attachment 2 to these comments.

On February 24, 2017 the Cooperative learned that the City had not filed the September 9, 2013 Service Territory Agreement with the Commission. See the Cooperative's April 5, 2017 Response to DOC – 2, Part K included in Attachment 3 to these comments.

On March 8, 2017, attorney Joseph Plumer filed a Notice of Appearance on behalf of the Red Lake Band in this proceeding stating in part that the:

- Red Lake Band was not part of any negotiations between the two entities that resulted in the present Service Territory Agreement;
- Red Lake Band never agreed to pay the entire cost of the service territory buy-out; and
- Because the City's position is contrary to Minnesota Law, the Red Lake Band objects to the City's attempts to collect from the Band the buy-out costs of the service territory acquisition.

On July 17, 2017, the Commission extended the deadline to file Comments in this proceeding until September 26, 2017 at the request of the Parties.

On September 25, 2017, the Commission extended the deadline to file Comments in this proceeding until October 17, 2017 at the request of the Parties.

On October 17, 2017, the Department filed a letter stating, "Since the three Parties have not informed the Department regarding the status of the settlement discussions, the Department will not file substantive Comments today. In the event the Parties do file Comments on October 17, 2017, the Department will file Reply Comments by November 8, 2017."

On October 17, 2017, the City of Warroad filed comments arguing that:

- The Commission should update the electric service territory maps to reflect the Parties' Service Territory Agreement.
- The Commission should decline to address any other issues:
 - The rates of a municipal utility are beyond the Commission's jurisdiction; and
 - The Commission cannot "Undo" the 2013 Service Territory Agreement.

On October 17, 2017, North Star Cooperative filed comments largely echoing those of the City.

On October 17, 2017, the Minnesota Municipal Utilities Association (MMUA) filed comments that can be summarized by the following sentence near the end of the comments, "It is MMUA's strong opinion that the Commission's approval of the agreement is not required and that the territory change was effective upon execution of the agreement."

On October 19, 2017, the Red Lake Band of Chippewa Indians filed comments requesting that:

the Minnesota Public Utilities Commission not update the official service map to reflect the agreement between the City and North Star until such time as the compensation issues between the City and the Red lake Band are resolved, and to assure the Band that the City is not free to engage in unjustified actions against it without any recourse.

On October 30, 2017, the Department re-submitted DOC Information Request Nos. 4 and 5 to the City¹ to which the City responded on November 29, 2017 (see Attachment 4 to these comments).

On December 7, 2017, the Department submitted two additional information requests (DOC 6 & 7) to the City regarding the City's decision to charge the New Casino \$600,000 (based on a fee of 15 mills/kWh) to receive electric service from the City rather than from its assigned provider, the Cooperative (see Attachment 5 to these comments).

II. SUMMARY OF PROPOSAL

The Parties' September 9, 2013 Service Territory Agreement in Article 3.2 states:

The Cooperative consents and authorizes and the City agrees that the City shall file the Parties' joint request under Minnesota Statute 216B.39, subd. 3, legally describing and depicting the Annexed Area, asking that the MPUC modify the service territory boundary and recognize the service territory transfer.

On September 24, 2013, the City attempted to file by e-mail with the Commission, the above-identified September 9, 2013 Service Territory Agreement. However, because an incorrect e-mail address was used, the Commission never received the service area transfer request.

¹ The Department previously submitted these IRs to the individual listed on the City's filing as its contact person.

On February 15, 2017, the Cooperative submitted on behalf of the City and the Cooperative, its September 9, 2013 Service Territory Agreement to the Commission for approval of the Agreement. The Parties also requested that the Commission update its official records as to the electric service territory boundaries.

III. DEPARTMENT ANALYSIS

A. TRANSFER OF THE AFFECTED AREA FROM COOPERATIVE TO THE CITY

Page 1 of the Service Territory Agreement states that the City has annexed certain real property located within Lake Township to the City of Warroad, County of Roseau, Minnesota, described as:

Government Lots one (1) and Two (2) and the South Half of the Northwest Quarter (S ½ NW ¼) of Section Thirty-three (33), Township One Hundred Sixty-three (163) North, range Thirty-six (36) West, excepting therefrom the township road right of way along the eastern and southern boundaries of said NW ¼ of Section 33; and Government Lots (5) and Seven (7), Section Twenty-eight (28), Township One hundred Sixty-three (163) North, Range Thirty-six (36) West, ("Annexed Area") (Attached Exhibit A), portions of which property is currently within the electric service territory of the Cooperative and portions of which are in an area disputed

Page 1 of the Service Territory Agreement states:

... the City wishes to provide exclusive electric service to the Annexed Area, and the Parties have agreed that the Annexed Area shall hereafter be exclusively within the electric service territory of the City....

EXHIBIT A to the Service Territory Agreement is the annexation map.

Page 1 of the Service Territory Agreement indicates that the proposed transfer is a permanent transfer of service territory.

B. NOTICE

Minn. Stat. § 216B.39, Subd 3 states “...the Commission may on its own or at the request of an electric utility make changes in the boundaries of the assigned service area, but only after notice and hearing as provided for in sections 216B.17 and 216B.18.”²

Although there were no customers in the affected area at the time the Service Territory Agreement was signed that are being transferred from the Cooperative to the City; the City now is serving the New Casino operated by the Red Lake Band in the affected area.

It should be noted that the Service Territory Agreement is devoid of any reference to the Red Lake Band. That is, the Agreement is silent as to the Red Lake Band’s decision to construct the New Casino on property that it owned on the east side of the City in the Cooperative’s service area, or as to the Red Lake Band’s decision to close the Original Casino in Warroad that had been served by the City. There is no explanation in the Service Territory Agreement of the reasons for the annexation. The reason is in the record – the Band’s request for annexation to receive City water, sewer and electric services (see Attachment 1, Part E on page 3 of 13).

Based on information provided in the City’s, the Cooperative’s, and the Red Lake Band’s filings, and/or responses to Department information requests, the Department found no written indication that the Red Lake Band, as an affected customer related to this service territory proceeding, was notified that the service territory transfer needed to be approved by the Commission.

The Parties’ citation to Minn. Stat. § 216B.39, Subd. 3 in the Service Territory Agreement suggests that they did or should have known of the potential for a hearing before the Commission and that they must provide notice to the affected customers, namely the Red Lake Band.

In addition, the Commission on November 7, 2014, December 16, 2015 and December 14, 2016 issued to all investor-owned, cooperative, and municipal utilities a REMINDER TO FILE ELECTRIC SERVICE AREA CHANGES. The Commission also referenced a checklist that utilities should use when making their filings. Item 6 on the check list states:

² For example, Minn. Stat. § 216B.18 provides, “Service of notice of all hearings, investigations, and proceedings pending before the commission and of complaints, reports, orders, and other documents must be made personally, by electronic service as provided in section 216.17, or by mail as the commission may direct. Regulated utilities and state agencies must provide an electronic address to the commission for electronic service purposes and agree to accept electronic service as official service.”

Customers affected by this change must receive written notice, including utility contact information and Commission contact information. If notice to certain customers was of the type that does not fit into one of the categories of the chart, please explain in the joint letter to #2 above. Please indicate type and number of customers affected and the date(s) notice was or will be provided.

Article 3.3 of the Service Territory Agreement states:

If the MPUC or the Office of Energy Security raises any question or challenges any provision of this Agreement, the service territory transfer contemplated under this Agreement, or due performance thereof, the Parties shall each, at their own expense, exercise any and all lawful efforts reasonable and necessary to respond to said questions and to assure the transfer of the service territory. If for any reason the MPUC refuses to recognize the service territory described in Article 1, the Cooperative shall return any payments made by the City pursuant to Article 2, upon demand by the City.

C. COMPENSATION

The City and the Cooperative agreed that \$600,000 was appropriate compensation to be paid for lost revenue on behalf of the Cooperative, as identified in Article 2 of the Service Territory Agreement. By letter dated September 24, 2014, the Red Lake Band learned that the City required it to pay the City of Warroad \$600,000 as a term of receiving electric service from the City rather than receiving service from the Cooperative which was the assigned provider.

As claimed by the Red Lake Band, and without any written documentation to the contrary from either the City or the Cooperative, it appears that the September 24, 2014 letter from the City, is the first written documentation of the City's expectation that the Red Lake Band would be required to pay the entire \$600,000 for the privilege of being served by the City rather than being served by the Cooperative. Further, it appears from its February 23, 2017 letter, that the Red Lake Band had only recently learned that in order for the City of Warroad to provide electric service to the New Casino, the Commission would need to approve the transfer of service territory.

D. CONCLUSION

From written information the Department has reviewed to date, it appears that the Red Lake Band was not informed of the City and Cooperative's negotiations regarding the additional cost

the Parties' agreed that the Red Lake Band would be assigned to pay in order to be served by the City rather than being served by the Cooperative. Although the Red Lake Band did file the Annexation Request on November 6, 2012 (see Attachment 1 to the comments), the request was for the purpose of receiving City services, with no mention that the Cooperative had electric service rights in the area.

The Department's conclusion is based on the fact that the Parties have stated in several written documents provided to the Department, that they had many oral conversations with a specific member of the Red Lake Band, and that he was briefed many times that the Red Lake Band would be responsible for all of the lost revenue the Cooperative determined it should receive for agreeing to allow the City to provide electrical service to Red Lake Band; however no written documentation has been submitted to the record to support the assertions (see Attachment 4 to these comments).

For the reasons stated above, the Department concludes that the City and the Cooperative have not demonstrated that approval of the proposed Service Territory Agreement is consistent with the public interest and Minn. Stat. § 216B.39.

IV. RECOMMENDATION

The Department recommends at this time that the Commission deny, without prejudice, the requested service territory boundary transfer from North Star Electric Cooperative to the City of Warroad.

/lt

McGRANN SHEA CARNIVAL STRAUGHN & LAMB, (

ATTORNEYS AT LAW

WILLIAM R. McGRANN
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CARLA J. PEDERSEN
JOSEPH T. BAGNOLI
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JEFFREY C. URBAN
KATHLEEN MICHAELA BRENNAN
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AMY L. COURT

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

April 3, 2017

Dale V. Lusti
Connor Boler
Department of Commerce
85 7th Place East, Suite 280
St. Paul, MN 55101-2198

VIA E-MAIL AND U.S. MAIL

dale.lusti@state.mn.us
utility.discovery@state.mn.us

Re: In re Matter of North Star Electric Cooperative, Inc. and Warroad Municipal
Light & Power Department
MPUC No. E129,324/SA-17-141
Our File No: 63130-0001

Dear Mr. Lusti and Mr. Boler:

As you know, I represent the City of Warroad in this matter. On behalf of the City, I attach the response to the Department of Commerce Information Request 1, and associated attachments.

Please feel free to contact me if you have any questions or difficulties in opening the attachments. A hard copy is also being sent by mail.

Sincerely,



Kaela Brennan

cc: Kathy Lovelace
Steven Anderson, Esq.

RECEIVED

APR 05 2017

MAILROOM

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**Minnesota Department of Commerce
Division of Energy Resources
Information Request**

Docket Number: E129, E324/SA-17-141 Nonpublic Public
Requested From: City of Warroad Date of Request: 3/2/2017
Type of Inquiry: General Response Due: 4/3/2017

Requested by: Dale V. Lusti
Email Address(es): dale.lusti@state.mn.us
Phone Number(s): 651-529-1829

Request Number: 1
Reference(s): February 23, 2017 Response by North Star Cooperative (Cooperative) to Minnesota Department of Commerce (DOC) Informal Information Requests (See Attachment A)

Request:

- A. Please provide a copy of the Annexation Ordinance Approval regarding the area referenced in the second "WHEREAS" on Page 1 of the Service Territory Agreement.

Please see Attachment A-1, the Orderly Annexation Agreement between the City of Warroad and Lake Township, approved April 22, 2013. The annexation concerned over 160 acres. The annexation was initially requested by the customer. Attachment A-2 is the Petition for Annexation dated November 6, 2012 by Red Lake Gambling Enterprises, Inc, by Raymond Brenny, as CEO.

- B. The cover letter of the Petition states: "Notice was given to the one affected customer within the service area." When asked in DOC Informal Information Request No. 5 (DIIR-5) referenced above as to when "Notice" was given to the one affected customer as referenced in the Petition's cover letter, the Cooperative's response was: "N/A, customer was no longer receiving service."

- 1) Was "Notice" ever provided to the "Property Owner" of the service territory being transferred to the City of Warroad (City)?

The City is not aware of the notice that North Star referenced in the Petition. Although North Star would have further information as to its customer, the City believes that at one time there was a small residential trailer house served by North Star, but this service was disconnected and the unit was moved from the property before the City signed the electric service territory agreement with North Star.

- 2) If the response to B-1 above is yes, please provide the following:
(a) To whom was "Notice" provided?

To be completed by responder

Response Date: April 3, 2017
Response by: Kathy Lovelace, City Administrator
Email Address: Kathy Lovelace <warroad@mncable.net>
Phone Number: 218-386-1454

Ms. Lovelace may be contacted through counsel: Kaela Brennan, kmb@mcgrannshea.com, 612-338-2525

Department of Commerce Information Request 1

- (b) On what date was "Notice" provided?
- (c) By what means was "Notice" provided?

See Response 2

- 3) Regarding the customer referenced in response to DIIR-5 referenced above who was no longer receiving service; please explain that person's relationship to the property owner.

The City does not know the particulars of the relationship.

- C. What utility provided electric service to the "Original Seven Clans Casino" (Original Casino) in Warroad, and the dates of such service?

The City provided electric service to the Original Casino, beginning on or about June 1991 to the present. Although the building no longer operates as a casino, there is still active power to the facility.

- D. When the Original Casino was constructed, was it located within an assigned service territory that was sold and/or transferred to a different utility for purposes of providing electric service to the casino? If so, please provide the names of the utilities that provided service to the Original Casino and the dates of such service as well as the dates of any assignment or transfer of the assigned service territory.

No, the Original Casino was, and is, located within the corporate limits of the City of Warroad and its assigned service territory.

- E. When and how did the City learn that a "New Seven Clans Casino" (New Casino) would be built in or near Warroad?

The City was notified through informal inquiries in early 2011 and in July 2012, through a letter from Red Lake Band Chairman Floyd Jourdain, Jr. (Attachment E). Red Lake representatives explained that they wanted the City to provide water, sewer, and electric services to the New Casino. Attachment E notes "infrastructure needs" and working closely with the City on pre-construction and design work. The letter also identifies Mr. Brenny, the CEO of Red Lake Gambling Inc., as the point of contact for the project.

- F. When and how did the property owner of the New Casino contact the City about providing electric service to the New Casino, or did the City first contact the property owner?

Please see response E. After the Attachment E letter, Mr. Brenny contacted the City to continue discussions about water, sewer, and electric service. The City clarified that utility services could not be provided outside of the city limits.

- G. When and how did the City first contact the property owner about providing electric service to the New Casino?

Please see response F. The City did not initiate the discussions about providing electric service.

- H. Do you know if the property owner of the New Casino was aware at the time construction began, that the site of the New Casino was physically located within the assigned service territory of North Star Electric Cooperative?

It was verbally discussed with Mr. Brenny on multiple occasions during the construction process.

- I. When and how did the City notify the property owner of the New Casino that the owner would need to pay the City \$600,000 as a term of receiving service from the City of Warroad, rather than being served by the assigned electric utility provider for the service territory where the New Casino is located?

Starting on or about 2011, Red Lake requested utilities from the City, including electric service, and later petitioned for annexation into the City limits. Without the request from Red Lake, the City would never have pursued service to the area.

During the negotiations with North Star concerning the electric service territory transfer, the City repeatedly communicated with Mr. Brenny, including the City's requirements to recover its costs. The City requested input from Red Lake as to the preferred payment terms. Red Lake later informed the City that it was not aware of the City's requirements. The City has included in its billing statements a fee of one-and one-half cents (\$0.015) or 15 mills per kilowatt hour. This applies to any service in the transferred area based upon usage. In this particular situation, the entire area that was annexed is owned by one entity.

The City is a non-profit entity and is not seeking to make any return or profit. It is seeking to recover its costs due to the request to provide services, although it will recover these costs years after the City's up-front payment to North Star.

- J. Has the property owner of the New Casino paid the City the requested \$600,000 payment identified in (I) above.

No. Although Red Lake paid the \$.015/kWh for three months, it then deducted this amount from a later payment.

- K. Paragraph 3.1 on Page 2 of the Service Territory Agreement (Agreement) states: "Promptly after the execution of this Agreement, the Cooperative consents and authorizes and the City agrees to notify the Minnesota Public Utilities Commission (MPUC) regarding this Agreement."

1. Was the execution date of the Agreement September 9, 2013? If no, please explain.

Yes.

2. When and how did the City contact the MPUC regarding the Agreement?

Please see response L below.

- L. Paragraph 3.2 on Page 2 of the Agreement) states: "The Cooperative consents and authorizes and the City agrees that the City shall file the Parties' joint request under Minnesota Statute 216B.39, subd. 3, legally describing and depicting the Annexed Area,

Department of Commerce Information Request 1

asking that the MPUC modify the service territory boundary and recognize the service territory transfer.” When did the City file the Parties joint request, as referenced above.

The City Attorney’s office provided the Agreement through an email dated September 24, 2013. (Attachment L). The email was directed to consumerpuc@state.mn.us, and asked whether additional information should be provided, or if the request should be directed to a different address. I do not believe that the City received any response.

**IN THE MATTER OF THE ORDERLY ANNEXATION BETWEEN
THE CITY OF WARROAD AND LAKE TOWNSHIP
PURSUANT TO MINNESOTA STATUTES § 414.0325**

WHEREAS, the City of Warroad and Lake Township jointly agree to designate and request the immediate annexation of the following described land located within Lake Township to the City of Warroad, County of Roseau, Minnesota:

Government Lots One (1) and Two (2) and the South Half of the Northwest Quarter (S½ NW¼) of Section Thirty-three (33), Township One Hundred Sixty-three (163) North, Range Thirty-six (36) West, excepting therefrom the township road right of way along the eastern and southern boundaries of said NW¼ of Section 33; and

Government Lots Five (5) and Seven (7), Section Twenty-eight (28), Township One Hundred Sixty-three (163) North, Range Thirty-six (36) West;

and

WHEREAS, the City of Warroad and Lake Township are in agreement as to the orderly annexation of the unincorporated land described; and

WHEREAS, Minnesota Statutes § 414.0325 provides a procedure whereby the City of Warroad and Lake Township may agree on a process of orderly annexation of a designated area; and

WHEREAS, the City of Warroad and Lake Township have agreed to all the terms and conditions for the annexation of the above-described lands; and the signatories hereto agree that no alteration of the designated area is appropriate and no consideration by the Chief Administrative Law Judge is necessary. The Chief Administrative Law Judge may review and comment, but shall within thirty (30) days, order the annexation in accordance with the terms of the resolution.

NOW, THEREFORE, BE IT RESOLVED, jointly by the City Council of the City of Warroad and the Township Board of Lake Township as follows:

I. Property. That the following described land is subject to orderly annexation pursuant to Minnesota Statutes § 414.0325, and that the parties hereto designate the area for orderly annexation; and agree that the land be immediately annexed:

Government Lots One (1) and Two (2) and the South Half of the Northwest Quarter (S½ NW¼) of Section Thirty-three (33), Township One Hundred Sixty-three (163) North, Range Thirty-six (36) West, excepting therefrom the township road right of way along the eastern and southern boundaries of said NW¼ of Section 33; and

Government Lots Five (5) and Seven (7), Section Twenty-eight (28), Township One Hundred Sixty-three (163) North, Range Thirty-six (36) West.

2. **Acreage/Population/Usage.** That the orderly annexation area consists of approximately 160 acres, the population in the area is 0, and the future land use type is tourism/commercial.

3. **Jurisdiction.** That Lake Township and the City of Warroad, by submission of this joint resolution to the Municipal Boundary Adjustment Unit of the Office of Administrative Hearings, confers jurisdiction upon the Chief Administrative Law Judge so as to accomplish said orderly annexation in accordance with the terms of this resolution.

4. **Municipal Reimbursement.** Minnesota Statutes § 414.036.

a. **Reimbursement to Towns for lost taxes on annexed property.**

None.

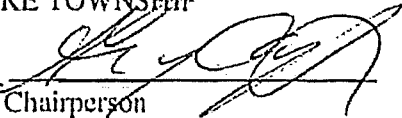
b. **Assessments and Debt.**

None.

5. **Review and Comment.** The City of Warroad and Lake Township agree that upon receipt of this resolution, passed and adopted by each party, the Chief Administrative Law Judge may review and comment, but shall within thirty (30) days, order the annexation in accordance with the terms of the resolution.

Adopted by affirmative vote of all the members of the Lake Township Board of Supervisors this 19 day of FEBRUARY, 2013.

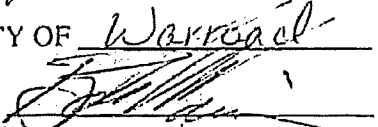
LAKE TOWNSHIP

By: 
Chairperson
Board of Supervisor


ATTEST:

By: 
Township Clerk

Adopted by affirmative vote of the City Council of Warroad this 22 day of April, 2013.

CITY OF Warroad
By: 
Mayor

ATTEST:

By: 
City Administrator

Approved this 22 day of April, 2013.

IN THE MATTER OF THE PETITION
OF A PROPERTY OWNER(S) IN THE TOWN
OF Lake FOR ANNEXATION TO
THE CITY OF Warroad PURSUANT
TO MINNESOTA STATUTES, CHAPTER 414

PROPERTY OWNER
PETITION FOR ANNEXATION

TO: CITY COUNCIL, CITY OF Warroad, Roseau COUNTY,
MINNESOTA

TOWNSHIP BOARD, Lake TOWNSHIP, Roseau COUNTY,
MINNESOTA

The undersigned, being the owner(s) of property located in Lake Township,
Roseau County, Minnesota, hereby request annexation of the below referenced
property (the "Subject Area") to the City of Warroad, Roseau County,
Minnesota.

For purposes of this Petition for Annexation, the undersigned property owner(s) respectfully
state that:

1. The Subject Area to be annexed, as referenced below, consists entirely of land that is located within Lake Township, Roseau County, Minnesota.
2. A legal description of the Subject Area is attached hereto as Exhibit A.
3. A map showing the Subject Area is attached hereto as Exhibit B.
4. The undersigned property owner petitioner(s) own 100% of the Subject Area.
5. The undersigned property owner petitioner(s) has voluntarily signed and filed a copy of this Petition with the City of Warroad and Lake Township seeking annexation of the Subject Area for purposes of receiving City services, which services are located adjacent to and in close proximity to the Subject Area.
6. The Subject Area proposed for annexation abuts or is located in close proximity to the City of Warroad and none of it is presently a part of any incorporated city.
7. The proposed annexation to the City of Warroad is in the best interest of the Subject Area and the undersigned property owner petitioner(s).

STREET ADDRESS OF SUBJECT AREA (Provide complete street address not a P.O. Box)

Street

City State Zip Code

Property Identification (PID) Number(s): 153010000
150034100

SIGNATURE(S) OF PROPERTY OWNER(S) OF SUBJECT AREA:

Red Lake Gaming Enterprises, Inc
Printed Name of Entity

[Signature]
Signature of Authorized Representative

11-8-12
Date

Raymond J. Brennan, CEO
Printed Name and Title
Of Authorized Representative



Map

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Wednesday, Nov. 7, 2012 at 2:33 PM

E

RED LAKE BAND of CHIPPEWA INDIANS

RED LAKE NATION HEADQUARTERS



Chair
DON R. COOK, SR., Secretary
DARRELL G. SEKI, SR., Treasurer

DISTRICT REPRESENTATIVES:

GARY NELSON
RANDALL KINGBIRD
JULIUS "TOADY" THUNDER
ALLEN PEMBERTON
ROMAN "DUCKER" STATELY
DONALD J. "DUDIE" MAY
WILLIAM "BILLY" GREENE
RICHARD BARRETT, SR.

ADVISORY COUNCIL:

7 HEREDITARY CHIEFS

PO Box 550, Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

July 31, 2012

Warroad City Office
Mr. Bob Marvin, Mayor
121 Main Ave NE
P.O. Box 50
Warroad, Minnesota 56763

Dear Mayor:

This letter is in response to our meeting that we had with the City Council sometime early last year regarding our intention to update our Seven Clans Casino Warroad facility. Since our meeting, we have done some preliminary work in estimating costs associated with the new facility using Northern Engineering out of Bemidji, MN and Dsgw Architects located in Duluth, MN. Since that time, the Red Lake Gaming Board of Directors approved the project to move forward in relocating the existing casino across the river to a new location situated on the Lake of the Woods on Tribal Trust Land.

We wanted to inform the City of our intentions as our Civil Engineers and Architects will need to work closely with your team regarding infrastructure needs. We estimate that pre-construction work and project design to commence this fall with construction commencing in the spring of 2013. Early estimates indicate that the facility would include additional slot machines, table games, a 60 room hotel, two restaurant and retail space.

We would be happy to share information on the project as we proceed through the pre-construction and project design phase. Our point of contact for the project is Raymond J. Brenny, CEO of Red Lake Gaming Inc., he can be reached at 1-218-679-2111.

Sincerely,

Floyd Jourdain, Jr.,
Chairman

[Print](#) | [Close Window](#)

Subject: City of Warroad / NorthStar Electric
From: "Nora Crumpton" <nora@andersonlawyers.net>
Date: Tue, Sep 24, 2013 9:05 am
To: consumerpuc@state.mn.us

Good morning,

Attached please find a fully executed Service Territory Agreement between the City of Warroad and Northstar Electric Cooperative. It is our understanding that this must be submitted to the Public Utilities Commission. Please advise as to whether you require additional steps of information on our part, or whether this should be directed to a different address.

Thank you,

Nora Crumpton
Attorney at Law
Anderson Law Offices, P.A.
115 Roberts Ave. N.E.
Warroad, MN 56763
(218) 386-1040

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Minnesota Department of Commerce
Division of Energy Resources
Responses to Information Requests

Docket Number: E129, E324/SA-17-141

Responses Provided by: Red Lake Band of Chippewa Indians

- A. Does the Red Lake Band of Chippewa Indian (Red Lake Band) have a copy of the Annexation Ordinance Approval regarding the area referenced in the second "WHEREAS" on Page 1 of the Service Territory Agreement? If yes, please provide.

Response: No

- B. The cover letter of the Petition states: "Notice was given to the one affected customer within the service area." When asked in DOC Informal Information Request No. 5 (DIIR-5) referenced above as to when "Notice" was given to the one affected customer as referenced in the Petition's cover letter, the Cooperative's response was: "N/A, customer was no longer receiving service."

- 1) Is the Red Lake Band the property owner of the service territory being transferred to the City of Warroad.

Response: Yes

- 2) Was "Notice" ever provided to the Red Lake Band regarding the service territory being transferred to the City of Warroad?

Response: Yes

- 3) If the response to B-2 above is yes, please provide the following:

- (a) To whom was "Notice" provided?

Response: Ray Brenny, CEO of Red Lake Gaming Enterprises, Inc.

- (b) On what date was "Notice" provided?

Response: September 24, 2014

(c) By what means was "Notice" provided?

Response: Letter from Steven Anderson, Warroad City Attorney

- 4) If the response to B-2 above is no, when did the Red Lake Band learn that the City of Warroad planned to purchase the right to provide the electric service with the area which is subject of this proceeding.

Response: N/A

- 5) Regarding the customer referenced in response to DIIR-5 referenced above who was no longer receiving electric service; please explain that person's relationship to the Red Lake Band.

Response: Red Lake believes that the individual was a Native American Elder who had been squatting on the Tribe's property. The Tribe permitted the elder to squat on its property until such time as construction of the new casino was commenced.

- C. What utility provided electric service to the "Original Seven Clans Casino" (Original Casino) in Warroad, and the dates of such service?

Response: City of Warroad from the date the original casino opened (date unknown) until the date the new casino opened.

- D. When the Original Casino was constructed, was it located within an assigned service territory that was sold and/or transferred to a different utility for purposes of providing electric service to the Original Casino and the dates of such service as well as the dates of any assignment or transfer of the assigned service territory.

Response: To the best of the Tribe's knowledge, the City of Warroad provided electric service to the original casino from its inception continuously until the new casino was opened; and there was no purchase/sale of service territory at any time during this service.

- E. When did the Red Lake Band start the planning process to build a "New Seven Clans Casino" (New Casino) in or near Warroad?

Response: Sometime in 2010.

- F. Did the Red Lake Band ever contact North Star Electric Cooperative about the Red Lake Band's plan to construct a New Casino in or near Warroad? Please provide the earliest date of such contact.

Response: Sometime during the development phase. I have not yet been able to ascertain the precise date.

- G. Did the Red Lake Band ever ask North Star Electric Cooperative if the cooperative would be willing to provide electric service to the New Casino in or near Warroad?

Response: I have not yet been able to determine the answer; but the electric cooperative was the service provider during the development phase, so there must have been some communications.

- H. Did the Red Lake Band contact the City of Warroad about the Red Lake Band's plan to construct a New Casino in or near Warroad? Please provide the earliest date of such contact.

Response: Yes, somewhere around December 2013/January 2014.

- I. When the Red Lake Band first contacted the City of Warroad about the Red Lake Band's plan to construct a New Casino in or near Warroad, was the Red Lake Band aware that North Star Electric Cooperative was the assigned electric service provider for the area where the New Casino would be build?

Response: Yes

- J. If the response to (I) above is no at the time indicated in response to (I) above, did the City inform the Red Lake Band that North Star Electric Cooperative was the assigned electric service provider for the area where the New Casino would be build?

Response: N/A

K. What date did construction of the New Casino begin?

Response: August 2013

L. What utility provided electric service for construction of the New Casino?

Response: North Star at the beginning of construction; and when the access road to the new casino property was constructed, the City of Warroad began providing electric service to the property.

M. When did the Red Lake Band first learn that for the City of Warroad to provide electric service to the New Casino, that the Minnesota Public Utilities Commission would need to approve a transfer of service territory from North Star Electric Cooperative to the City of Warroad?

Response: February 23, 2017

N. When did the Red Lake Band first learn that the North Star Electric Cooperative agreed to transfer service rights to the New Casino to the City of Warroad in exchange for the City's payment to North Star Electric Cooperative of \$600,000?

Response: I have not been able to determine a firm date here. I will continue to seek a response.

O. When and how did the City of Warroad notify the Red Lake Band that the New Casino would need to pay the City of Warroad \$600,000 as a term of receiving electric service from the City of Warroad, rather than the New Casino being served by the cooperative which was the assigned electric utility provider for the service territory where the New Casino is located?

Response: By letter dated September 24, 2014 from Steven Anderson, Warroad City Attorney to Ray Brenny, CEO of Red Lake Gaming Enterprises, Inc. (This date was after the City

of Warroad and North Star Electric Cooperative completed their service territory buyout agreement). The Red Lake Band was not a party to the negotiations between the City and North Star, and the Band never agreed to pay the City's costs of service territory acquisition.

P. Has the Red Lake Band or the New Casino paid the City of Warroad the City's requested \$600,000.

Response: No

Lusti, Dale (COMM)

From: Joel Larson <jlarson@minnkota.com>
Sent: Wednesday, April 05, 2017 3:42 PM
To: Lusti, Dale (COMM)
Cc: Ann Ellis; Marty Mollberg
Subject: Docket SA-17-141
Attachments: DOC IR2 17-141 - NSEC Response.pdf

Good afternoon, Mr. Lusti:

Attached please find North Star Electric Cooperative's response to your IR #2. Should you need anything further, please advise.

Regards,

Joel

*Joel L. Larson
Staff Attorney
Minnkota Power Cooperative, Inc.
701-795-4275*

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Minnesota Department of Commerce
Division of Energy Resources
Information Request

Docket No. E129,E324/SA-17-141
Attachment 3
Page 2 of 6

Docket Number: E129, E324/SA-17-141 Nonpublic Public
Requested From: North Star Electric Cooperative Date of Request: 3/2/2017
Type of Inquiry: General Response Due: 4/5/2017

Requested by: Dale V. Lusti
Email Address(es): dale.lusti@state.mn.us
Phone Number(s): 651-529-1829

Request Number: 2
Reference(s): February 23, 2017 Response by North Star Cooperative (Cooperative) to
Minnesota Department of Commerce (DOC) Informal Information Requests
(See Attachment A)

Request:

- A. Please provide a copy of the Annexation Ordinance Approval regarding the area referenced in the second "WHEREAS" on Page 1 of the Service Territory Agreement.

North Star does not have a copy of the Annexation Ordinance Approval.

- B. The cover letter of the Petition states: "Notice was given to the one affected customer within the service area." When asked in DOC Informal Information Request No. 5 (DIIR-5) referenced above as to when "Notice" was given to the one affected customer as referenced in the Petition's cover letter, the Cooperative's response was: "N/A, customer was no longer receiving service."

- 1) Was "Notice" ever provided to the "Property Owner" of the service territory being transferred to the City of Warroad (City)?

No, notice was not provided to the Red Lake Tribe of the service territory being transferred. North Star sent two letters and made numerous phone calls to reach the Red Lake Tribal Gaming Commission to discuss service (when it was still North Star's service territory), but never made actual contact. North Star then learned that the Red Lake Tribe requested the city of Warroad to provide electrical service for the Casino. North Star then worked with the city of Warroad and had no further contact with the Red Lake Tribe.

To be completed by responder

Response Date: April 5, 2017
Response by: Ann Ellis, General Manager
Email Address: annnsec@wiktel.com
Phone Number: 1(218) 634-2202
Ms. Ellis may be contacted through counsel: Joel Larson, jl Larson@minnkota.com, (701) 795-4275

- 2) If the response to B-1 above is yes, please provide the following:
 - (a) To whom was "Notice" provided?
 - (b) On what date was "Notice" provided?
 - (c) By what means was "Notice" provided?
- 3) Regarding the customer referenced in response to DIIIR-5 referenced above who is no longer receiving service; please explain that person's relationship to the property owner.

North Star had previously served Don KaKaGeesick, a former North Star member. His service was disconnected in October, 2012 and he moved his home off of the Red Lake Tribal land. He did not own the land.

- C. What utility provided electric service to the "Original Seven Clans Casino" (Original Casino) in Warroad, and the dates of such service?

North Star believes electric service has always been provided by the city of Warroad, but has no knowledge of any specific dates of service.

- D. When the Original Casino was constructed, was it located within an assigned service territory that was sold and/or transferred to a different utility for purposes of providing electric service to the casino? If so, please provide the names of utilities that provided electric service to the Original Casino and the dates of such service as well as the dates of any assignment or transfer of the assigned service territory.

North Star believes the Original Casino was always in the city of Warroad's service territory.

- E. When and how did the Cooperative learn that a "New Seven Clans Casino" (New Casino) would be built in or near Warroad?

North Star first learned of the New Casino from an underground cable locator, who was doing a locate before soil borings, in preparation for the new casino. The cable locator had informed North Star's operations manager. This was sometime during the Summer of 2012.

- F. When and how did the property owner of the New Casino contact the Cooperative about providing electric service to the New Casino?

The Red Lake Tribe never contacted North Star to provide service to the New Casino. After learning of the soil borings, North Star made phone calls to find out more information but was never able to make contract with the Red Lake Tribe. North Star then learned that the Red Lake Tribe was requesting service from the city of Warroad and began working with the city.

- G. When and how did the Cooperative first contact the property owner about providing electric service to the New Casino?

After learning about the new location of the casino, North Star management attempted contact with the tribe via telephone to learn more. After being unable to make contact by phone, North Star sent a letter on September 28, 2012 to the Red Lake Gaming Commission notifying them that the project was in North Star's service territory. There was no response to this letter. North Star then sent another letter to the CEO of the Red Lake Gaming Commission on November 5, 2012 notifying him of North Star's service territory to assist with

setting up the electrical service. There was no response to this letter. Both letters are attached as G1 and G2.

- H. Do you know if the property owner of the New Casino was aware that the site of the New Casino was physically located within the assigned service territory of the Cooperative?

North Star believes that the Red Lake Tribe was aware the New Casino was in North Star's service territory. The Red Lake Tribe requested the city of Warroad to serve its New Casino and requested the annexation, so it is assumed the Red Lake Tribe was aware the New Casino had been in North Star service territory.

- I. Do you know when and how the City notified the property owner of the New Casino that the owner would need to pay the City \$600,000 as a term of receiving service from the City of Warroad, rather than being served by the Cooperative, which was the assigned electric utility provider for the service territory where the New Casino is located?

North Star does not have information about when or how the city of Warroad notified the Red Lake Tribe.

- J. When and how did the City first contact the Cooperative about the City's desire to become the electric service provider to the New Casino; or in the alternative, when did the Cooperative first contact the City to inquire if the City was interested in acquiring the assigned electric service territory rights to serve the New Casino?

North Star is not certain of the first contact with the city of Warroad, but believes sometime in the Spring of 2013, North Star's general manager met with the attorney for City of Warroad to discuss the situation. After this, North Star presented the city of Warroad city council with options to take over a portion of North Star's service territory.

- K. When did the Cooperative become aware that the City had not notified the Minnesota Public Utilities Commission (MPUC) regarding the existence of the Agreement, nor had the City filed a joint request to modify the service territory boundary, and recognize the service territory transfer as stated in Paragraphs 3.1 and 3.2 of the Agreement?

North Star learned that the city of Warroad had not filed the service territory agreement on February 24, 2017. North Star contacted the city of Warroad and learned that the city had sent the territory adjustment notice to the PUC but had not heard anything further.



P.O. Box 719
Baudette, MN 56623
218-634-2202
1-888-634-2202
Fax: 218-634-2203

P.O. Box 371
Littlefork, MN 56653
218-278-6658
1-888-258-2008
Fax: 218-278-4748

e-mail: nsec@wiktel.com
www.northstarelectric.coop

Red Lake Gaming Commission
15882 Main Ave. #561
Red Lake, MN 56671

September 28, 2012

To the commission,

North Star Electric Cooperative understands that the Red Lake Gaming Commission plans to build a new casino on the outskirts of Warroad, MN. This is exciting news and we would like to take this opportunity to congratulate the folks of the Red Lake Community on their vision and plans for expansion.

North Star Electric Cooperative is an electric distribution cooperative that is located in Baudette MN and serves approximately 6,700 accounts in Roseau, Lake of the Woods, St. Louis and Koochiching counties. We also serve the area which we understand is the proposed site for your casino expansion.

When you get closer to realizing construction on this property or would like information on electric service for this site, please feel free to contact me either at our office, 218-634-2202, 888-634-2202 or by e-mail, danh@wiktel.com and our personnel will be glad to assist you.

Respectfully,

Danny J Hoskins,
General Manager



P.O. Box 719	P.O. Box 371
Baudette, MN 56623	Littlefork, MN 56653
218-634-2202	218-278-6658
1-888-634-2202	1-888-258-2008
Fax: 218-634-2203	Fax: 218-278-4748

e-mail: nsec@wiktel.com
www.northstarelectric.coop

Red Lake Gaming Commission
Raymond J Brenny, CEO
19299 Hwy 89
PO Box 543
Red Lake, MN 56671

November 5, 2012

Dear Mr. Brenny,

Congratulations to the Red Lake Gaming Commission on the announcement and ground-breaking of the proposed new Casino and Resort on Lake of the Woods near Warroad MN. North Star Electric was represented at this festive occasion by 3 of our employees and 2 of which are in management positions and they tell me that this was a grand event.

This is exciting news for the Members of the Red Lake Band of Chippewa and we would like to take this opportunity to congratulate you folks on your vision and plans for expansion. This not only is a great venture for the Red Lake Gaming Commission, but a terrific economic opportunity for our area.

Over the years the Red Lake Band of Chippewa has been very instrumental in economic development over the years in our area with the Casino and its associated facilities. Not only do you employ a number of local people, you also sponsor and donate to so many different organizations and activities that assist with the area's best interests in mind. As a leader in our community, I understand the magnitude of this venture and the company that I represent is also all about working to make sure that the area and the economy is in the forefront of our business.

I am General Manager of North Star Electric Cooperative which is an electric distribution cooperative that is located in Baudette MN and serves approximately 6,700 accounts in Roseau, Lake of the Woods, St. Louis and Koochiching counties. A Cooperative is a not for profit organization that is owned by its member/owners which also returns margins back to their members through a process called capital credits.

The proposed site for your casino expansion happens to be located on our service territory which is located in Roseau County east of Warroad and when you get closer to realizing construction on this property or would like information on electric service for this site, please feel free to contact me either on my mobile at 218-766-1155 or at our office, 218-634-2202, 888-634-2202 or you may send me an e-mail, danh@wiktel.com and either myself or our personnel will be glad to assist you.

Respectfully,

Danny J Hoskins,
General Manager

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. SÖBOL
SCOTT B. CROSSMAN

CARLA J. PEDERSEN
JOSEPH T. BAGNOLI
ROGER J. STELLJES
JEFFREY G. 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

November 30, 2017

Dale V. Lusti
Connor Boler
Department of Commerce
85 7th Place East, Suite 280
St. Paul, MN 55101-2198

VIA E-MAIL
dale.lusti@state.mn.us
utility.discovery@state.mn.us

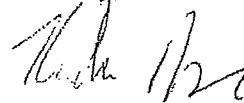
Re: In re Matter of North Star Electric Cooperative, Inc. and Warroad Municipal
Light & Power Department
MPUC No. E129,324/SA-17-141
Our File No: 63130-0001

Dear Mr. Lusti and Mr. Boler:

As you know, I represent the City of Warroad in this matter. On behalf of the City, I attach the responses to the Department of Commerce Information Requests 4-5, and associated attachments. Please note that we received these requests from Mr. Lusti on November 27.

Please feel free to contact me if you have any questions or difficulties in opening the attachments.

Sincerely,



Kaela Brennan

cc: Kathy Lovelace
Steven Anderson, Esq.

**Minnesota Department of Commerce
Division of Energy Resources
Information Request**

Docket Number: E129,324/SA-17-141 Nonpublic Public
Requested From: City of Warroad Date of Request: November 27, 2017
Type of Inquiry: Financial Response Due: December 7, 2017

Requested by: Dale Lusti
Email Address(es): dale.lusti@state.mn.us
Phone Number(s): 651-539-1829

Request Number: 4
Topic: Payment of \$600,000 to North Star Electric Cooperative for the Transfer of Service Rights to the City of Warroad to Serve the New Casino
Reference(s): City of Warroad's October 17, 2017 Comments, at Pages 2-3

Request:

On page 2 the City states:

The City clarified that utility services could not be provided outside of the city limits, and that the City could not provide electric service outside of its assigned service territory. On November 6, 2012, Red Lake submitted a Petition for Annexation, by Red Lake Gambling Enterprises, Inc. and signed by Mr. Brenny, as CEO. The annexation request concerned over 160 acres. The City and Lake Township ultimately entered an Orderly Annexation Agreement which was approved on April 22, 2013.

- A. Please provide a copy of the letter provided to Red Lake prior to Red Lake's November 6, 2016 [2012] submittal of the Annexation petition, that specifically stated that the Red Lake Gambling Enterprises would be responsible for paying whatever amount the City and the Cooperative agree should be paid to the Cooperative for transferring to the City, the right to provide electric service to the "New Casino".
- B. Please provide a copy of the letter provided to Red Lake prior to Red Lake's November 6, 2016 [2012] submittal of the Annexation petition, that specifically stated that the Red Lake Gambling Enterprises could receive electric service to the "New Casino" from its assigned provider North Star Electric Cooperative, without the need to purchase the right to be served by the City.

To be completed by responder

Response Date: November 29, 2017
Response by: Kathy Lovelace, City Administrator
Email Address: warroad@mncable.net
Phone Number: 218-386-1454
Ms. Lovelace may be contacted through counsel: Kaela Brennan, kmb@mcgrannshea.com, 612-338-2525

**Minnesota Department of Commerce
Division of Energy Resources
Information Request**

Docket Number: E129,324/SA-17-141 Nonpublic Public
Requested From: City of Warroad Date of Request: November 27, 2017
Type of Inquiry: Financial Response Due: December 7, 2017

Requested by: Dale Lusti
Email Address(es): dale.lusti@state.mn.us
Phone Number(s): 651-539-1829

Response 4:

A. The quoted excerpt from the City's Initial Comments references initial conversations with Red Lake, and specifically that the area at issue was outside of the City's assigned service territory. The City believes that costs were discussed orally, as reflected in the February 14, 2011 City Council minutes (attached). The City is not aware of a letter before the November 6, 2012 Petition for Annexation. The City believes that Red Lake representatives consulted with North Star before submitting the 2012 Petition for Annexation. Red Lake presented its concept to the City Council on November 26, 2012, along with its Petition for Annexation, as reflected in the November 26, 2012 City Council minutes (attached). The City's consistent position was that it could not incur costs on behalf of a customer without reimbursement, including electric service territory costs.

B. The City provided this information during oral conversations. Please see above.

To be completed by responder

Response Date: November 29, 2017
Response by: Kathy Lovelace, City Administrator
Email Address: warroad@mncable.net
Phone Number: 218-386-1454
Ms. Lovelace may be contacted through counsel: Kaela Brennan, kmb@mcgrannshea.com, 612-338-2525

Review of Municipal Services for development of Cherne Property

Superintendent Klos stated that there had been some informal inquiries by the Red Lake Band of Chippewa as to the cost to improve the Cherne Property on the SE side of town to serve a large casino/convention complex. He contacted both KBM engineers and FS engineers for an estimate of the cost for the City to improve its services. Since then, both Superintendent Klos and City Administrator Kathy Lovelace have been contacted by representatives of the Band about presenting a concept to the Council.

It was council consensus to wait until the Red Lake Band of Chippewa approach the board with a concept plan before proceeding with any additional costs to the City.

Annual Engineers Agreement for 2011

Motion made by Councilor Parker to approve the 2011-FS Engineering Standard Agreement with the new rates as presented. Motion seconded by Councilor Soderberg and carried unanimously.

AIRPORT:**Authorization for Dick Soderberg to sign Airport Pavement Improvements- Engineering Agreement**

Motion made by Councilor Parker to authorize Dick Soderberg to sign the Engineer agreement for the scheduled airport pavement improvements. Motion seconded by Councilor Vandal and carried unanimously.

OTHER BUSINESS:**Authorization to purchase copier**

City Administrator Kathy Lovelace asked for authorization to purchase a new copier for the main office. The old copier would then be purchased by the police department as a needed replacement. A purchase price for each copier was presented. A color copier for an additional \$500 was requested. There are available funds for the purchase.

Motion made by Councilor Parker to authorize the purchase of a new color copier for the main city office at a cost of \$6,894. Motion seconded by Councilor Vandal and carried unanimously.

Review/Authorization to sign new Recycle Center Contract

It was Council's consensus to table action on the new recycle center contract with Mar-Kit until the next regular meeting after some inquiries are made.

Approval of new Warroad Representative to the NWRL Board

Motion made by Councilor Vandal to appoint Liz Hardwick as Warroad's new representative to the Northwest Regional Library Board. Motion seconded by Councilor Parker and carried unanimously.

Revenue & Expense Summary through October, 2012

A Revenue & Expense summary through October 2012 was for information only.

No Action Taken.

Reminder - No second Council meeting in December

No Action Taken.

EMERGENCY SERVICES

Authorization to proceed with Bid Spec Sheet for new Ambulance

Motion made by Councilor Soderberg to authorize the process for a new ambulance to begin with the bid/spec sheet for review at the next council meeting. Motion seconded by Councilor Vandal and carried unanimously.

Fire Dept. - Request to change deferred interest on Relief Association funds

Motion made by Councilor Parker to authorize the interest rate on Fire Department Relief Association funds to be determined by the board, varying between 0 and 5 percent, in compliance with state regulations. Motion seconded by Councilor Thompson and carried unanimously.

Police Dept. - Request to purchase tasers

Motion made by Councilor Parker to authorize the purchase of two tasers to replace the police departments non-repairable ones to be paid for out of NSF funds. Motion seconded by Councilor Vandal and carried unanimously.

DISCUSSION WITH SEVEN CLANS AND PROPOSED CASINO PRESENTATION:

Representatives from the project development committee for the proposed new Seven Clans casino to be located on the southeast side of town gave a presentation on the project. There was discussion on project phases and what each includes, the utilities needed, and the project timeline.

The projected completion of phase one would be May of 2014 with a ground breaking date of March 2013. Mayor Marvin stated that this was an ambitious timeline considering all of the unknowns and permit processes needed. The first concern for the city was if the construction properties would be annexed into the city. The application for annexation was received.

Other concerns were the access road, future plans for old site, and fire/police protection along with other unknowns.

Utility Superintendent Ron Kleinschmidt will be working closely with city engineers and casino representatives.

No Action Taken.

FORMALITIES/OTHER BUSINESS:

Celebrate Women - Request for Nominations

City Administrator Kathy Lovelace asked council for nominations of outstanding women in our community. A recommendation for a nominee will be made at the next meeting.

No Action Taken.

Minnesota Department of Commerce
Division of Energy Resources
Information Request

Docket No. E129,E324/SA-17-141

Attachment 4

Page 6 of 13

Docket Number: E129,324/SA-17-141
Requested From: City of Warroad
Type of Inquiry: Financial

Nonpublic Public
Date of Request: November 27, 2017
Response Due: December 6, 2017

Requested by: Dale Lusti
Email Address(es): dale.lusti@state.mn.us
Phone Number(s): 651-539-1829

Request Number: 5
Topic: Compensation Negotiations between the City and the Cooperative
Reference(s): City of Warroad's October 17, 2017 Comments, at Page 3
The September 9, 2013 "Service Territory Agreement" Section 2.1

Request:

On page 3 of the October 17, 2017 Comments, the City states:

In light of the petition for annexation and the request for City utility services by Red Lake, the City began negotiating with North Star to transfer the electric service territory associated with the annexation area outside of the City's assigned service territory. As directed by Red Lake, the City repeatedly communicated with Mr. Brenny the City's expectation that Red Lake (or any ultimate customers, if other than Red lake) would be responsible for any payments made to North Star to achieve this transfer. Mr. Brenny indicated his agreement. The City requested input from Red Lake as to the preferred payment terms.

The City and North Star ultimately entered the 2013 Agreement. (Feb. 15, 2017 filing). The 2013 Agreement was the result of arms-length negotiations, with each party represented by counsel. It stated that "the Parties have negotiated a mutual settlement and wish to avoid litigation regarding compensation for such electric service territory matters related to the Annexed Area. The 2013 Agreement also specified a one-time, lump-sum payment as consideration for the transfer of service territory. The City made the payment to North Star within 60 days of the effective date.

- A. Please provide copies of all letters to Mr. Brenny (and/or other Red Lake representatives) that indicated Red lake would be responsible for any payments made to North Star to achieve the transfer of service territory.
- B. Were any Red Lake representatives included in the negotiation of the Article II Settlement Payment in the above referenced "Service Territory Agreement"? If yes, please identify who was involved, and what the level of their participation was.
- C. Please provide a copy of the letter indicating Mr. Brenny's agreement that Red Lake (or any ultimate customer) would be responsible for paying \$600,000 for the right to receive electric service from the City.
- D. Please provide a copy of the letter (and Red Lake's response, if any) where the City requested input from Red Lake as to its preferred payment terms.

**Minnesota Department of Commerce
Division of Energy Resources
Information Request**

Docket Number: E129,324/SA-17-141

Requested From: City of Warroad

Type of Inquiry: Financial

Nonpublic Public

Date of Request: November 27, 2017

Response Due: December 6, 2017

Requested by: Dale Lusti

Email Address(es): dale.lusti@state.mn.us

Phone Number(s): 651-539-1829

Response 5:

- A. Many of the communications were oral. Please see attached correspondence.
- B. The two utilities negotiated the terms of the agreement. The City provided oral updates to Mr. Brenny. Mr. Brenny did not raise any objections.
- C. The agreement was expressed in oral conversations.
- D. Please see attached correspondence dated September 24, 2014, which followed multiple oral conversations. The October 15, 2014 response of Red Lake is also attached.

IR 5(A) Response

Docket No. E129,E324/SA-17-141

Attachment 4

Page 8 of 13

September 24, 2014

Ray Brenny
CEO, Seven Clans Casinos
P.O. Box 543
Red Lake, MN 56671

Re: Electricity to New Casino

Dear Mr. Brenny:

As you are aware, the City of Warroad paid \$600,000.00 to North Star Electric Cooperative for the right to provide electricity to the new casino. I have attached a copy of the signed Agreement between the City of Warroad and North Star Electric Cooperative.

The City offers the Band four proposals for the payback of the \$600,000.00:

- Proposal #1: Cash buy off of \$600,000.00.
- Proposal #2: \$600,000.00 paid back over 5 years (60 months), at 2% interest, with a monthly surcharge on the electric bill of \$10,516.66.
- Proposal #3: \$600,000.00 paid back over 7 years (84 months), at 2% interest, with a monthly surcharge on the electric bill of \$7,660.46.
- Proposal #4: \$600,000.00 paid back over 10 years (120) months, at 2% interest for the first 5 years and prime interest -1.25% for the next 5 years, with a monthly surcharge on the electric bill of \$5,520.81.

Please let me know at your earliest convenience which of the proposals works best for the Band.

Sincerely,

Steven A. Anderson

SAA:tb
Enclosure
cc: City of Warroad

ZENAS BAER LAW OFFICE
ATTORNEY AT LAW

WWW.ZBAER.COM

P.O. BOX 249
331 SIXTH STREET
HAWLEY, MN 56549

(218) 483-3372 PHONE (218) 483-4989 FAX

LICENSED IN MINNESOTA AND NORTH DAKOTA

"QUALITY SERVICES SINCE 1929"

ZENAS BAER

MAGNUS WEFALD, (1900-1991)

JUDY AARSVOLD, LEGAL ASSISTANT
CINDY WALLITS, LEGAL ASSISTANT

October 15, 2014

Steven A. Anderson
Attorney at Law
P.O. Box 430
Warroad, MN 56763

Re: City of Warroad/North Star Electric Cooperative – Service Territory Agreement

Dear Mr. Anderson:

Your letter of September 24, 2014, directed to Ray Brenny has been referred to me for response. Red Lake Gaming Enterprises appreciates the good working relationship they have with the City of Warroad and its Public Utilities Commission.

Having said that, neither Ray Brenny nor any of the other members of the Red Lake Gaming Enterprises recalls any discussion on Red Lake Gaming's agreement to pay for the capital expenditures incurred for the City of Warroad Public Utilities Commission to buy out North Star Electric's exclusive right to serve the area. The acquisition of the service territory was optional on the part of the City of Warroad Public Utilities Commission. (See Minn. Stat. 216B.44, *In Re City of Rochester Adjustment of Service Area Boundaries*, 556 N.W.2d 611 (Minn. App. 1996), rev. denied)

My clients have reviewed their recollection, notes of conversations, and discussions with the City authorities and reviewed documents and find nothing to address any discussion about the payment of capital expenditures for altering the service area. Could you please check with your clients to see if there is any public record of an agreement between the Red Lake and the City of Warroad over this expense? Please forward that information to me so that I can discuss your findings with Red Lake Gaming Enterprise. We would like to suggest a meeting to resolve this issue following disclosure of whatever written documentation can be found.

Steven A. Anderson
October 15, 2014
Page 2

Another issue that may be of benefit in resolving this dispute is the data used to come up with a buyout of \$600,000.00. If you could supply that data it would help us greatly in evaluating this situation.

Yours very truly,

ZENAS BAER LAW OFFICE



Zenas Baer
zbaer@zbaer.com

ZB:ja

cc: Ray Brenny, Red Lake Gaming Enterprise

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

September 15, 2016 [sic 2015]

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



Steven A. Anderson*
Nora L. Crumpton
Erica L. Austad

ANDERSON LAW OFFICES, P.A.

Attorneys and Counselors at Law

Docket No. E129,E324/SA-17-141

Attachment 4

Page 12 of 13

900 Third Street N.E.
Roseau, Minnesota 56751
Telephone: (218) 463-1144

HAUDETTE OFFICE
809 First Street S.E.
Baudette, Minnesota 56621
Telephone: (218) 634-2722

April 4, 2016

Mr. Zenas Baer
Attorney at Law
P.O. Box 249
Hawley, MN 56549

Re: City of Warroad/Red Lake Gaming Enterprises – Utility Charges

Dear Mr. Baer:

I am in receipt of your March 10, 2016, and March 21, 2016, letters. You are incorrect when you state that “there was no communication between the City and Red Lake Gaming Enterprises regarding negotiating a Service Territory with North Star Electric.” As I told you in our last telephone conference, the City Superintendent spoke with Mr. Raymond Brenny on more than one occasion regarding the City’s need to acquire the North Star Territory and the requirement that Red Lake reimburse the City for its acquisition cost.

In response to your questions:

- 1) The “disputed area” is located on the southwest edge of the enclosed map, shown by the cross-hatching. The Public Utility Commission map showed the area as being served by both North Star Electric and Roseau Electric Cooperative.
- 2) The Utility Commission Electric Policy which I provided to you was prepared in February, 2015, and approved by the City Council in June, 2015.
- 3) The spreadsheet to which you refer was prepared by City Administrator Kathy Lovelace in November, 2014, and provided to the Mayor, City Superintendent and me, in anticipation of your meeting with Red Lake representatives in December, 2014. I have attached an electronic copy of the spreadsheet.

The City disagrees with the assertions made in your December 29, 2015, letter to me that: a) “The capital costs of expanding territory must be shared across all rate payors not foisted onto the back of a single rate payor unless there is an agreement to the contrary.”; and b) the acquisition fee reimbursement is “discriminatory and in violation of law”. The City has

Mr. Zenas Baer

April 4, 2016

Page 2

acted properly, lawfully and with the knowledge and consent of Red Lake's representative, Mr. Raymond Brenny.

With regard to Red Lake's delinquent utility account, the City is handling the delinquency in the same way as with any other utility customer. The City often "works with" a business which has difficulty paying its utility charges if it proposes a reasonable solution. To date, your client has not proposed a solution. You have asked to meet to discuss the matter. The City is able to meet on Tuesday, April 12, at 1:00 p.m. at the City Office. The City will be represented by the Mayor, City Administrator and me. Please identify any representatives of Red Lake which will attend the meeting. If a resolution is not reached, and Red Lake continues to be delinquent in its utility payments, the City will have no option but to disconnect the utilities until the account is current. Further, late payment fees continue to accrue.

Sincerely,



Steven A. Anderson

SAA:mw

Enclosures

cc: City of Warroad
Kathleen M. Brennan

December 7, 2017

City of Warroad

RE: DOCKET NO. E129, E324/SA-17-141
NATURE OF DOCKET: Service Territory Agreement

Enclosed please find the Department of Commerce information request number(s) **6-7** in the above cited docket number. Please send me and the requesting analyst(s) all responses in a text searchable PDF format. My email address is utility.discovery@state.mn.us. The appropriate analyst is listed on the questions page below and will be CC'd on this information request. If responding to more than one question, please make each response a separate file. If requested by the analyst to send something by CD-ROM please send it to me at the following address:

Connor Boler
Department of Commerce
85 7th Place East Suite 280
St. Paul, MN 55101-2198

Please indicate the above cited docket number, the corresponding request number, the requesting analyst, and the respondent's name and title on your response. If your response contains Trade Secret data, please include a public copy.

If you have any questions or problems providing information in the time specified, please contact me at (651) 539-1534 and I will direct you to the analyst requesting the information.

Respectfully submitted,

/s/Connor Boler
Regulatory Information Center

**Minnesota Department of Commerce
Division of Energy Resources
Information Request**

Docket Number: E129,324/SA-17-141 Nonpublic Public
Requested From: City of Warroad Date of Request: 12/7/2017
Type of Inquiry: Financial Response Due: 12/18/2017

Requested by: Dale Lusti
Email Address(es): dale.lusti@state.mn.us
Phone Number(s): 651-539-1829

Request Number: 6
Topic: Payment of \$600,000 to North Star Electric Cooperative for the Transfer of Service Rights to the City of Warroad to Serve the New Casino
Reference(s): City of Warroad's October 17, 2017 Comments, at Page 4

Request:

On page 4 the City states:

The City's policy decision to impose a 15 mills/kWh fee links the rates to the parties benefited.

- A. Is the above referenced City policy decision "to impose a 15 mills/kWh fee" based on a specific written City policy that is applicable to all service area annexations in the City of Warroad?
- B. If the response to (A) above is yes; please provide a copy of the policy, identify the date the policy was approved, and provide its effective date.
- C. If the response to (A) above is no; please identify what the decision to impose a 15 mills/kWh fee was based on.
- D. If the response to (A) above is yes; please provide a copy of the previous policy (if any), identify what the previous policy (if any) was, the date it was approved, and provide its effective date.

To be completed by responder

Response Date:
Response by:
Email Address:
Phone Number:

**Minnesota Department of Commerce
Division of Energy Resources
Information Request**

Docket Number: E129,324/SA-17-141 Nonpublic Public
Requested From: City of Warroad Date of Request: 12/7/2017
Type of Inquiry: Financial Response Due: 12/18/2017

Requested by: Dale Lusti
Email Address(es): dale.lusti@state.mn.us
Phone Number(s): 651-539-1829

Request Number: 7
Topic: Payment of \$600,000 to North Star Electric Cooperative for the Transfer of Service Rights to the City of Warroad to Serve the New Casino
Reference(s): City of Warroad's October 17, 2017 Comments, at Page 4

Request:

On page 4 the City states:

The City's policy decision to impose a 15 mills/kWh fee links the rates to the parties benefited.

- A. Please identify, quantify and explain what benefit the New Casino will receive from the proposed service area transfer, if any.
- B. Please identify, quantify and explain what benefit the current electric customers will receive from the proposed service area transfer, if any.
- C. Please identify, quantify and explain what benefit the City will receive from the proposed service area transfer, if any.
- D. Please identify, quantify and explain what benefit the Cooperative will receive from the proposed service area transfer, if any.
- E. Please identify, quantify and explain why it is in the public interest that the New Casino should be required to pay \$600,000 for the privilege of continuing to receive electric service from the City (the provider of electric service to its previous facility, the Old Casino in Warroad) as opposed to not having to pay \$600,000 to receive electric service from its currently assigned provider, the Cooperative.

To be completed by responder

Response Date:
Response by:
Email Address:
Phone Number: