

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

In the Matter of the Complaint by Lake Country Power Against Minnesota Power Alleging Violation of Its Exclusive Service Area by Providing Service to Canadian National Railway Company Facilities Near Hoyt Lakes

ISSUE DATE: May 29, 2018

DOCKET NO. E-015,106/SA-17-893

ORDER REQUIRING AMENDED COMPLAINT

**PROCEDURAL HISTORY**

On December 22, 2017, Lake Country Power (Lake Country or the cooperative) filed a complaint against Minnesota Power alleging that the utility violated Lake Country’s exclusive service area<sup>1</sup> by providing service to Canadian National Railway Company (Canadian National or the railroad).

On January 2, 2018, Minnesota Power filed an answer to Lake Country’s complaint arguing that no service-territory violation had occurred.

On January 18, the Commission met to determine what procedures to use to decide the matter. The Commission directed its staff to solicit comments from the parties as to whether the Commission should refer the matter to the Office of Administrative Hearings for contested-case proceedings under Minn. R. 7829.1000. The notice was issued on March 5.

By April 4, the following parties had filed comments responding to the Commission’s notice:

- Lake Country
- Minnesota Power
- Canadian National
- Minnesota Department of Commerce

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<sup>1</sup> This order uses the terms “service area” and “service territory” interchangeably.

On April 16, the following parties filed reply comments:

- Minnesota Power
- Lake Country
- Wisconsin Central, Ltd.<sup>2</sup>

On May 10, 2018, the matter again came before the Commission.

## **FINDINGS AND CONCLUSIONS**

### **I. Background**

#### **A. Lake Country's Complaint**

Lake Country's complaint alleges, in pertinent part, as follows:

Lake Country is a member-owned electric cooperative providing electric services in an exclusive service area in northeastern Minnesota.

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

Canadian National is a railroad company based in Montreal. It is in the process of improving and adding signaling and sensing equipment to its railroad facilities near Hoyt Lakes.

Lake Country alleges that Canadian National's signaling and sensing equipment is "entirely within the exclusive service area assigned to" Lake Country. Further, the equipment is "a stand-alone facility" and "not geographically connected to any facility served by" Minnesota Power. However, a map attached to the complaint depicts the railroad crossing the boundary between the two utilities' territories.

Canadian National approached Lake Country in October 2016 to arrange for extension of electrical service to the new equipment, and Lake Country provided the railroad with a price quote. In the summer of 2017, Lake Country became aware that Canadian National had decided to build its own electrical distribution infrastructure along the railroad into Minnesota Power's service area and to receive electric service from that utility.

Lake Country seeks a Commission order declaring Minnesota Power to be in violation of the service-area provisions of the Minnesota Public Utilities Act, Minn. Stat. §§ 216B.37–.43, and determining that Lake Country has the exclusive right to extend electric service to Canadian National's signaling and sensing equipment.

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<sup>2</sup> Wisconsin Central is a wholly owned subsidiary of Canadian National doing business in Minnesota. This order uses "Canadian National" to refer to both companies.

## **B. Further Record Development**

In its April 4 comments, Canadian National provided additional details about the equipment at issue. The railroad has constructed six-foot by six-foot “intermediate signal bungalows” along its track at intervals of approximately two miles. Three of these signal bungalows are located in Lake Country’s service area.

The three bungalows at issue are supplied with power via a cable that Canadian National buried along and within its right-of-way. This cable originates at the railroad’s Allen Junction control point, in Minnesota Power’s service area, where Canadian National has installed a transformer to accept electricity delivered by Minnesota Power. Both the cable and the transformer are owned by Canadian National.

In their comments, Canadian National and Minnesota Power argued that when a customer’s property straddles the boundary between two utilities’ service areas, power may legally be delivered within the assigned area of one utility and distributed over the customer’s own distribution system to all of the facilities on its property, including any situated within the other utility’s service territory.

Lake Country responded that the Commission has allowed power to be distributed from one utility’s service area into another utility’s service area only when the customer has a building that straddles the boundary. It argued that contested-case proceedings were needed to flesh out whether Canadian National’s facilities are an integrated whole, as well as whether the railroad intends to distribute electricity to other end users in Lake Country’s territory.<sup>3</sup>

## **II. Commission Action**

The question the Commission originally sought comment on was whether this matter should be referred to the Office of Administrative Hearings, and what material facts might require development through contested-case proceedings.

However, the parties’ responses have brought to light additional facts that were not available to Lake Country in drafting its complaint, and the Commission believes it would make sense to require the cooperative to file an amended complaint conforming to the record as it now stands before determining the appropriate procedure for handling the complaint.

For example, the complaint alleges that Canadian National’s equipment is located “entirely within” Lake Country’s service area and “not geographically connected to any facility served by” Minnesota Power. Yet Lake Country does not appear to contest that Canadian National’s private distribution system, along with the signaling and sensing equipment it serves, crosses the service-area boundary and is supplied with electricity by Minnesota Power at a point within the latter’s territory.

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<sup>3</sup> The cooperative dropped its claim regarding the railroad’s intent to distribute electricity to other customers after Canadian National provided additional details about its private distribution system.

Rather, Lake Country argues that a customer must have a brick-and-mortar building that straddles the service-area boundary in order for power to be legally distributed across that boundary.<sup>4</sup> This claim is not apparent on the face of Lake Country's complaint.

Before deciding whether or not to put the parties to the time and expense of a contested-case hearing, the Commission will direct Lake Country to file an amended complaint setting forth its claim based on the facts as they now stand.

### ORDER

1. Lake Country Power shall amend its complaint consistent with the facts as they currently stand and the relief it is currently seeking from the Commission.
2. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf  
Executive Secretary



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<sup>4</sup> Lake Country acknowledges that two other, statutory, exceptions exist but argues that they do not apply here. *See* Minn. Stat. §§ 216B.41 (making exception for loads of 2,000 kilowatts or more located outside of municipalities), .421 (making exception for buildings on homestead).