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— LAW FIRM —

August 30, 2018

VIA E-FILING

Mr. Dan Wolf
Minnesota Public Utilities Commission
350 Metro Square Building
121 Seventh Place East
St. Paul, MN 55101

Re: In re 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, Minnesota, MPUC Docket No. E015,E106/C-17-893

Dear Mr. Wolf:

Wisconsin Central Ltd.'s reply comments regarding the amended complaint in the above-captioned matter are included below for electronic filing with this letter. An affidavit of service is also attached.

Respectfully submitted,

FRYBERGER, BUCHANAN, SMITH &
FREDERICK, P.A.

/s/ John R. Gasele

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**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

**Nancy Lange
Dan Lipschultz
Matthew Schuerger
Katie Sieben
John A. Tuma**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

**In re 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,
Minnesota**

Docket No. E015,E106/C-17-893

**WISCONSIN CENTRAL LTD'S
REPLY COMMENTS ON AMENDED
COMPLAINT**

INTRODUCTION

Wisconsin Central Ltd. (Wisconsin Central) respectfully files these limited reply comments with the Minnesota Public Utilities Commission (Commission) in response to the comments filed by Lake Country Power (LCP).¹ Wisconsin Central focuses these reply comments on three issues. First, LCP's review of prior Commission decisions ignores the plain language of those decisions. Second, LCP's claim that Wisconsin Central engaged in gerrymandering of service territories in order to utilize Minnesota Power is inaccurate. Third, this is a unique situation that does not jeopardize Minnesota's system of service territories.

¹ LCP did not file initial comments in favor of its Amended Complaint. Instead, LCP waited until near the end of the period available for reply comments to detail its position. The Minnesota Rural Electric Association (MREA) also filed reply comments instead of initial comments. These reply comments apply equally to the MREA's filing, since the MREA mirrors LCP's argument. Wisconsin Central's silence on any particular argument presented by LCP or MREA does not indicate agreement.

Wisconsin Central believes this rare situation can and should be resolved on long-standing Commission precedent, and again requests that the Commission dismiss LCP's complaint with prejudice.

REPLY COMMENTS

I. Prior Commission decisions do not require a physical building to be bisected by a service territory boundary before a customer is allowed to have a choice.

LCP has overlooked a fundamental point in its Amended Complaint and all of its comments. The exclusive service territories created by Minn. Stat. § 216B.39 apply to entire geographic areas.² Accordingly, the Commission has laid out the analysis for the customer choice exception in these rare cases in terms of property, not buildings. Customers may choose the utility of their choice when the customer's

property straddles the assigned service areas of two different utilities. In such situations, the Commission has allowed the customer to receive service from the utility of his or her choice, as long as the power is delivered within the assigned service area of the chosen utility and is distributed over the customer's distribution system to any part of the property within the assigned service area of the other utility.³

In reaching a decision in these matters, the Commission first recites the rule, and then applies the rule (or exceptions) to the specific facts in each matter. It is true that some Commission

² Minn. Stat. § 216B.38, Subd. 1b, Minn. Stat. § 216B.39.

³ *In re Petition of the Kandiyohi Cooperative Electric Power Association Regarding Electric Service to Farm Service Elevator by the Willmar Municipal Utilities Association*, Order Requiring Compensation, MPUC Docket No. E-118, 329/SA-88-379 (July 11, 1989); *In re Request by the City of Rice for a Service Area Boundary Change Between Minnesota Power and East Central Energy*, Order Denying Petition in Part, Dismissing in Part and Requiring Filings, MPUC Docket No. E-112,015/SA-01-696 (August 28, 2001), p. 4; *In re Complaint by McLeod Cooperative Power Association Against Hutchinson Utilities Commission Regarding Extension of Service to Hutchinson Technologies, Inc.*, Order Requiring Cessation of Service or Compensation Determination, MPUC Docket No. E-252,120/C-95-517 (June 14, 1996).

decisions involve a single building straddling service territories.⁴ That, however, is not the limit as LCP claims. A detailed review of the Commission's prior orders in similar circumstances reveals otherwise.

The Commission has explicitly applied the rule to entire properties, even those with no buildings. In 1988, the Commission allowed a property owner to select the utility provider of his choice prior to building a home because the service territory boundary crossed his lot at some location.⁵ That decision alone belies LCP's claim that the Commission has always required a building to be bisected by a service territory boundary before a customer is allowed to choose their utility. The use at issue has also been providing power to a pump station.⁶ In another decision, the question was whether to allow customer choice for power to a manufacturing plant and associated property.⁷ The Commission has even applied this reasoning to an entire mining complex.⁸

LCP's assertion that a physical building must be bisected by the service territory boundary in order to allow customer choice is not supported by prior Commission decisions.

⁴ *In re Complaint of Minnesota Power & Light Co. against Itasca-Mantrap Electric Cooperative Alleging a Violation of MP&L's Assigned Service Area*, Order Dismissing Complaint, MPUC Docket No. E-015, E-117/SA-84-578 (March 11, 1985).

⁵ *In re Request by Tim Fischer to Receive Electric Service from Alexandria Light and Power*, Order Establishing Service Rights, MPUC Docket No. E138, 203/SA-88-441, 1988 Minn. PUC LEXIS 200 (October 27, 1988), p. 2.

⁶ *In re Petition of Freeborn-Mower Cooperative Services to Confirm Customer's Selection of Electric Power Supplier*, Order Determining Service Rights and Notice and Order for Hearing, MPUC Docket No. E-115/SA-99-1619 (May 4, 2000), p. 5 (allowing customer choice for service to a natural gas pipeline pump station).

⁷ *In re Request by the City of Rice for a Service Area Boundary Change Between Minnesota Power and East Central Energy*, Order Denying Petition in Part, Dismissing in Part and Requiring Filings, MPUC Docket No. E-112,015/SA-01-696 (August 28, 2001), p. 4 (Denying a request to allow East Central Energy to serve a 50-acre parcel including a manufacturing facility where the entire property was located in Minnesota Power's service territory and the point of delivery from East Central Energy could not be within East Central Energy's service territory.)

⁸ *In re Petition of Minnesota Power for Approval of an Electric Service Agreement Between Mesabi Nugget Delaware, LLC and Minnesota Power*, Order Approving Electric Service Agreement as Conditioned and Clarified, MPUC Docket No. E-015/M-07-1456 (February 20, 2008), p. 3, 4. The Commission's reasoning and conditions appear to apply the customer choice exception even though this matter was a petition to approve a service agreement instead of a customer choice petition or proceeding under Minn. Stat. 216B.42.

II. There has been no gerrymandering of service territories.

LCP claims that Wisconsin Central created the problem by building its signal system within LCP's territory, and therefore cannot be allowed to choose Minnesota Power. LCP reasons that this situation is identical to that which caused the Commission to decline to apply the customer choice exception in its decision in the *McLeod* matter.⁹ There, the Commission noted that "the customer in this case did not find itself inadvertently having to deal with two different electric utilities, as did some customers whose land was bisected when the service area boundaries were originally drawn. This customer bought and built on property that was clearly outside the assigned service area of its utility after assigned service areas had been set."¹⁰ Allowing the customer to choose under those circumstances would indeed present risk of abusing the exclusive service territory exception. But that is not what happened here. Indeed, there is no risk of service territory abuse by gerrymandering when the Commission's reasoning in the *McLeod* decision is applied to the present facts.

Gerrymandering of service territories arises, as it did in *McLeod*, when a customer acquires real estate knowing that its new property is in the service territory of another utility, but still attempts to choose its utility. In *McLeod*, the customer purchased the property at issue 12 years after the service territories were created.¹¹ Here, Wisconsin Central's right-of-way predates the creation of service territories by at least 84 years.¹² Contrary to LCP's assertion, Wisconsin Central has not engaged in gerrymandering of the service territories.

⁹ *In re Complaint by McLeod Cooperative Power Association Against Hutchinson Utilities Commission Regarding Extension of Service to Hutchinson Technologies, Inc.*, Order Requiring Cessation of Service or Compensation Determination, MPUC Docket No. E-252,120/C-95-517 (June 14, 1996).

¹⁰ *Id.*, p. 4.

¹¹ *Id.*, p. 3.

¹² See Fountain Affidavit, ¶ 17, Ex. 2, 3.

III. There is no risk to Minnesota's system of exclusive service territories.

Finding in Wisconsin Central's favor does not present risk to Minnesota's system of exclusive service territories. Wisconsin Central receives power from other utilities, including LCP, at other locations along its rights-of-way.¹³ However, creation of the service territory maps in 1974 resulted in a short section of Wisconsin Central's pre-existing right-of-way being placed within a narrow portion of LCP's service territory.¹⁴ Wisconsin Central required power to install and operate its rail safety improvements, but LCP does not provide service to this portion of its territory. In these unique circumstances, Wisconsin Central used its own infrastructure, on its own property, to move power received from Minnesota Power within Minnesota Power's service territory to other locations within Wisconsin Central's property. This fits squarely within the Commission's well-established customer choice exception.

CONCLUSION

Prior Commission decisions demonstrate that the customer choice exception applies not just to single buildings, but to real property and whatever use a customer has for electricity within that real property. None of the exceptions to the Commission's long-standing application of customer choice are present in this matter.

Dated August 30, 2018

Respectfully submitted,

/s/ John R. Gasele

John R. Gasele

FRYBERGER, BUCHANAN, SMITH & FREDERICK, P.A.

Attorneys for Wisconsin Central Ltd.

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¹³ LCP Reply Comments re Amended Complaint, Exhibit A.

¹⁴ See Wisconsin Central's Comments in Support of Dismissal, April 4, 2018, Declaration of Steve Terhune, Exhibit A.

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

John R. Gasele, of the City of Duluth, County of St. Louis, State of Minnesota, being first duly sworn, deposes and says that on the 30th day of August, 2018, he served the included comments and attachments on all said persons on the attached service list, true and correct copies, by electronic filing.

 /s/ John R. Gasele
John R. Gasele

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

 /s/Amanda L. Kaunonen
Notary Public

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