

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: July 13, 2017.....*Agenda Item #5

Company: Lake Region Energy Services, Inc.

Docket No. G-6977/M-17-186

In the Matter of a Petition by Lake Region Energy Services, Inc. for a Small Gas Utility Franchise Exemption to Provide Natural Gas Services to the Municipalities of Deer Creek and Parkers Prairie.

Issue(s): Should the Commission approve Lake Region Energy Services, Inc.'s request for a small gas utility franchise exemption under Minnesota Statute § 216B.16, subdivision 12, to serve the communities of Deer Creek and Parkers Prairie?

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Relevant Documents

Lake Region Energy Services, Inc. – Initial Filing..... March 6, 2017

Department of Commerce – Comments April 24, 2017

Lake Region Energy Services, Inc. - Reply Comments..... May 15, 2017

Department of Commerce – Response Comments June 2, 2017

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless otherwise noted.

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Statement of the Issues

Should the Commission approve Lake Region Energy Services, Inc.'s request for a small gas utility franchise exemption under Minnesota Statute § 216B.16, subdivision 12, to serve the communities of Deer Creek and Parkers Prairie?

Introduction

Lake Region Energy Services, Inc. (LRES or the Company) is a wholly owned subsidiary of Lake Region Electric Cooperative organized to distribute electricity in Minnesota. On March 6, 2017, LRES filed the instant *Petition* requesting Minnesota Public Utilities Commission (Commission) approval for a small gas utility franchise exemption from rate regulation pursuant to Minn. Stat. § 216B.16, subd. 12.

LRES proposes to provide natural gas service within the municipal borders of Deer Creek and Parkers Prairie, Minnesota (the Municipalities).¹ In its exemption request, the Company also requested that incidental natural gas distribution service to the rural areas outside the borders of the municipalities be included. Each of the Municipalities granted LRES a non-exclusive franchise to distribute natural gas to their residents.²

The Department recommends Commission approval of LRES' request.

Relevant Statutes

Minn. Stat. § 216B.02, subd. 4 - Public utility. [Defined]

“Public utility” means persons, corporations, or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof.... In addition, the provisions of this chapter shall not apply to a public utility whose total natural gas business consists of supplying natural, manufactured, or mixed gas to not more than 650 customers within a city pursuant to a franchise granted by the city, provided a resolution of the city council requesting exemption from the regulation is filed with the commission. The city council may rescind the resolution requesting exemption at any time, and, upon the filing of the rescinding resolution with the commission, the provisions of this chapter shall apply to the public utility. ...

Minn. Stat. § 216B.16, subd. 12 – Exemption for small gas utility franchise.

- (a) A municipality may file with the commission a resolution of its governing body requesting exemption from the provisions of this section for a public utility that is under a franchise with the municipality to supply natural, manufactured, or mixed gas and that serves 650 or fewer customers in the municipality as long as the public utility serves no more than a total of 5,000 customers.

¹ The Commission issued its Order approving a Firm Gas Transportation Agreement between LRES and Greater Minnesota Transmission, LLC on May 26, 2017. See Docket No. PL-6580/M-16-936.

² Under this statute, the Municipalities would regulate LRES; see LRES' *Petition*, Exhibits A & B.

- (b) The commission shall grant an exemption from this section for that portion of a public utility's business that is requested by each municipality it serves. Furthermore, the commission shall also grant the public utility an exemption from this section for any service provided outside of a municipality's border that is considered by the commission to be incidental. The public utility shall file with the commission and the department all initial and subsequent changes in rates, tariffs, and contracts for service outside the municipality at least 30 days in advance of implementation.
- (c) However, the commission shall require the utility to adopt the commission's policies and procedures governing disconnection during cold weather. The utility shall annually submit a copy of its municipally approved rates to the commission.
- (d) In all cases covered by this subdivision in which an exemption for service outside of a municipality is granted, the commission may initiate an investigation under section 216B.17, on its own motion or upon complaint from a customer.
- (e) If a municipality files with the commission a resolution of its governing body rescinding the request for exemption, the commission shall regulate the public utility's business in that municipality under this section.

Parties' Comments

On April 24, 2017, the Minnesota Department of Commerce, Division of Energy Resources (Department) submitted *Comments* discussing whether LRES request satisfies Minn. Stat. § 216B.16, subd. 12 requirements. The Department based its review on three measures for determining whether incidental service met the statute's requirements:

- Number of customers located within and outside the Municipalities' boundaries;
- The expected design-day requirements within and outside the Municipalities' boundaries; and
- The level of consumption within and outside the Municipalities' boundaries.

The Department concluded that LRES' service to the Municipalities, including incidental customers located outside of the Municipalities, meets the statutory criteria for an exemption.

The Department also notes that the Company, in its petition, acknowledged its duty to comply with the following statutory requirements:

- Annual Cold Weather Rule reports will be filed as required under Minn. Stat. § 216B.096, subd. 11;
- Annual tariff updates with municipally approved rates will be submitted to the Commission (Minn. Stat. § 216B.16, subd. 12 (c)); and
- Any subsequent changes in rates, tariffs and contracts for service outside the

Municipalities will be filed at least 30 days in advance of implementation (Minn. Stat. § 216B.16 subd. 12 (b)).

Finally, the Department’s analysis identified some issues in the Company’s tariff that the Department categorized as “organizational issues” and requested that LRES address those issues in its *Reply Comments*.

On May 15, 2017, LRES submitted its *Reply Comments* confirming its statutory obligations and addressing the Department’s tariff issues.

On May 22, 2017, LRES submitted *Amended Responses* to Department Information Requests. The Company explained it had identified errors in its responses related to the misclassification of customers and the location of those customers either within or outside the Municipalities. Because of the correction, the number of customers, design-day, and forecasted load outside of the boundaries of the Municipalities increased. A table summarizing this information is below.

On June 2, 2017, the Department submitted *Response Comments* addressing LRES’ *Reply Comments* and *Amended Responses*. The Department reaffirmed its recommendation to approve LRES’ request for a small gas utility franchise exemption pursuant to Minn. Stat. § 216B.16, subd. 12.

Table 1 - Revised Comparison of Forecasted Customers and Load Located Within and Outside of Municipal Boundaries (2018 – 2020)³

System Total						
Customer Class	Customers within Municipal Boundaries	Design-Day per Dth	Total Consumption per Dth	Customers outside Municipal Boundaries	Incidental Design-Day per Dth	Incidental Total Consumption per Dth
Residential	228	260	1,814	14	15	114
Commercial	25	112	822	2	8	67
Industrial	4	120	1,577	5	140	2,189
Total	257	492	4,214	21	163	2,370
Percent	92%	75%	64%	8%	25%	36%

As the revised table reflects, approximately 92 percent of LRES’ customers will be located within the Municipalities’ boundaries accounting for approximately 64 percent of total consumption. Conversely, approximately 8 percent of LRES’ customers will be located outside of the Municipalities’ boundaries accounting for approximately 36 percent of total consumption.

³ Data used in this table is from LRES’ May 22, 2017, *Amended Responses* to Department Information Requests Nos. 8-10.

Commission Staff Comments

For LRES to qualify for a small gas utility franchise exemption from state regulation, the requirements of Minn. Stat. § 216B.16, subd. 12, **Exemption for small gas utility franchise**, (a) and (b) must be fulfilled.

Pursuant to Minn. Stat. § 216B.16, subd. 12 (a), the Municipalities requested Commission approval for a small gas utility franchise exemption from rate regulation within their boundaries. Further, the Municipalities filed the required franchise agreements granting LRES the license to operate within their boundaries. The Company will serve less than 650 customers in each of the Municipalities and LRES will not exceed the total 5,000-customer statutory limit. The Company is requesting Commission approval for its proposed statutory exemption for natural gas services provided within the Municipal boundaries and the surrounding areas.

Pursuant to Minn. Stat. § 216B.16, subd. 12 (b), the Commission has the discretion to determine what constitutes incidental service to areas outside the boundaries of the Municipalities on a case-by-case basis.⁴

The Company states that the ability to serve the incidental areas with existing infrastructure by adding customers will result in lower rates for all customers. This is due to the “one-system rate structure” that has been adopted by LRES and the Municipalities. The rate structure is based on system-wide costs. The same rate for distribution service would apply to all customers within a specific customer rate class. For example, the rate for residential sales service will be the same in each Municipality and the incidental areas.

If the Commission approves LRES’ *Petition*, the customers located outside the Municipalities would not be completely without recourse or protection against LRES charging unfair or unreasonable rates. The following safeguards are in place:

- First, no one is required to switch to natural gas.
- Second, under the small gas utility exemption statute (Minn. Stat. § 216B.16, subd. 12), the Commission may initiate an investigation of LRES under Minn. Stat. § 216B.17, on the Commission’s own motion or upon complaint from a customer.
- Third, LRES is still subject to annual Cold Weather Rule reports (Minn. Stat. § 216B.16, subd. 12 (c)), notice to cities of utility disconnection (Minn. Stat. § 216B.0976), and residential customer protections (Minn. Stat. § 216B.098).

The Commission may wish to inquire from LRES at the July 13th Agenda meeting whether it communicated this information to potential incidental customers.

⁴ The Commission has previously addressed the incidental issue in numerous other dockets, such as Docket Nos. 13-672 (Dooley’s I), 16-756 (Dooley’s II), and 16-214 (Lafayette and Courtland), and currently reviewing 16-214 (Lower Sioux Indian Community).

Decision Options

1. Approve LRES' petition for a small gas utility franchise exemption under Minn. Stat. § 216B.16, subd. 12 and clarify in its Order that approval is limited to this docket and that any future decisions involving interpretation of the term incidental service will be made on a case-by-case basis.
2. Deny LRES' petition for a small gas utility franchise exemption under Minn. Stat. § 216B.16, subd. 12.
3. If the Commission adopts decision option one, then clarify in its Order that LRES is subject to the following statutes, rules and reporting requirements:
 - Annual Cold Weather Rule reports will be filed as required under Minn. Stat. § 216B.096, subd. 11 and Minn. Stat. § 216B.16, subd. 12 (c);
 - Annual tariff updates with municipally approved rates will be submitted to the Commission (Minn. Stat. § 216B.16, subd. 12 (c));
 - Any subsequent changes in rates, tariffs and contracts for service outside the Municipalities will be filed at least 30 days in advance of implementation (Minn. Stat. § 216B.16 subd. 12 (b));
 - Provide annual Minnesota Natural Gas Utility Information reporting to the Department (required by Minn. Rules 7610.0800 – 7610.0860 to monitor reliability and costs of energy service in Minnesota) on July 1 of each year;
 - Notification to the Commission should its customer base expand beyond the 5,000 customer threshold (Minn. Stat. § 216B.16, subd. 12 (a));
 - Notice to cities of utility disconnection (Minn. Stat. § 216B.0976); and
 - Residential customer protections (Minn. Stat. § 216B.098).
4. Require LRES to file an annual compliance filing on March 1st of each year with the following information to be filed in this docket:
 - a. Customer count by customer class, including the applicable rates for each customer class; and
 - b. The associated annual gas and non-gas revenues by customer class; and
 - c. Net Plant in Service by year and on an accumulated basis from when LRES' began construction on their natural gas system. (Net Plant in Service = Total Plant in Service – Accumulated Depreciation – Deferred Income Taxes)