



85 7TH PLACE EAST, SUITE 280
SAINT PAUL, MINNESOTA 55101-2198
MN.GOV/COMMERCE
651.539.1600 FAX: 651.539.1574
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April 24, 2017

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 181
St. Paul, Minnesota 55101-2147

RE: Comments of the Minnesota Department of Commerce, Division of Energy Resources
Docket No. G6977/M-17-186

Dear Mr. Wolf:

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

Petition of Lake Region Energy Services Inc. for Exemption for Small Gas Utility Franchise.

The Petition was filed on March 6, 2017 by:

Tim Thompson
Lake Region Energy Services Inc.
1401 Pelican Rapids,
Minnesota, Minnesota 56572

As discussed in the attached Comments, the Department is requesting that Lake Region Energy Services (LRES) provide additional information in its Reply Comments. The Department will develop its final recommendations after it has had the opportunity to review LRES's Reply Comments. The Department is available to answer any questions that the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ JOHN KUNDERT
Financial Analyst

JK/lt
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NO. G6977/M-17-186

I. SUMMARY OF THE UTILITY'S PROPOSAL

On March 6, 2017, Lake Region Energy Services Inc. (LRES or the Company) filed a Petition for approval by the Minnesota Public Utilities Commission (Commission) of an exemption as a small gas utility franchise from the requirements of Minn. Stat. § 216B.16 subd. 12 (a) for service provided to the cities of Deer Creek and Parker's Prairie, Minnesota (the Municipalities). LRES stated that the Municipalities' respective city councils had approved franchise agreements granting LRES a non-exclusive franchise and passed resolutions supporting LRES's exemption request. To the extent necessary, the Company also requested an exemption for incidental natural gas distribution service to the rural areas outside of the borders of the Municipalities it will serve. LRES's facilities related to this project will be located in Otter Tail County.

The Company included several exhibits in its Petition.

- Exhibit A included the "Resolutions and Acknowledgements of the Receipt of the proposed LRES Rates and Rules Book" and a "Letter of Support and the Resolution of the City of Parkers Prairie, Minnesota."
- Exhibit B included the "Resolutions and Acknowledgements of the Receipt of the proposed LRES Rates and Rules Book" and a "Letter of Support and the Resolution of the City of Deer Creek, Minnesota."
- Exhibit C included copies of the franchise ordinances for Parkers Prairie and Deer Creek.
- Exhibit D included a copy of LRES's proposed tariff or "Rates and Rule Book."
- Exhibit E included a map of the Company's proposed system for service within Parkers Prairie.
- Exhibit F included a map of the Company's proposed system for service within Deer Creek.
- Exhibit G included a map of the proposed transmission and distribution routes that LRES will employ or build.

II. THE DEPARTMENT ANALYSIS

A. BACKGROUND

Lake Region Energy Services Inc. is a wholly owned subsidiary of Lake Region Electric Cooperative (LREC). LREC is an electric cooperative association. According to information provided in the Petition, LREC will provide

LRES with financial, operational, and utility specific organizational capabilities, including back office support services such as; customer service, billing, invoicing, accounting and collections, and field staff. In addition, LREC will deploy excavation, trenching, and horizontal boring equipment, and will provide additional equipment necessary to install and maintain LRES facilities, through contractual arrangements amongst the two related organizations.¹

B. STATUTORY REQUIREMENTS FOR SMALL GAS UTILITY FRANCHISE EXEMPTION

Minnesota Statute § 216B.02, subd. 4 states:

“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. [Emphasis added.]

This statutory language indicates that a public utility would be considered exempt from the legal requirements included in Chapter 216B and by extension, from Commission regulation, if it was granted a franchise by a city and if the city provides a resolution of support for the exemption request.

Minnesota Statute Chapter 216B contains some additional language that is germane to this topic.

Minnesota Statute § 216B.16, subd. 12 (a) states:

¹ Petition at page 4.

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 5,000 customers.

This statutory language reiterates the 650-customers-within-a-municipality threshold included in the definition of public utility and then adds a limiting criterion of 5,000 total customers. A conservative reading of the two statutes would lead to the conclusion that both criteria need to be met in order for the Commission to grant an exemption.

Additionally, Minnesota Statute § 216B.16, subd. 12 (b) states:

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.

This section of Chapter 216B adds a layer of complexity by indicating that a public utility may be granted exemption only for the portion of its business within each municipality, unless the service provided outside each municipality is considered to be incidental, in which case all of the public utility's business is exempt from rate regulation. It appears that Minnesota Statute § 216B.02, subd. 4 (existing since 1981) did not contemplate the possibility that a public utility may serve more than one municipality;² thus, further refinements were made to the statutory language regarding small gas utility exemptions. Chronologically, the initial sentence in Minnesota Statute § 216B.16, subd. 12 (b) became law in 1991. The rest of the passage became law in 1995, as did subpart (d).

Minnesota Statute § 216B.16, subd. 12 (c) through (e) states:

(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.

² As the Commission staff noted in footnote 2 on page 4 of its briefing papers in Docket No. G6915/M-13-672 (*In the Matter of the Petition of Dooley's Natural Gas LLC for Exemption for Small Gas Utility*), "Trying to read these statutes together could arguably result in a contradiction, unless one interprets the former to apply only to a gas utility who services only one city and has 650 or fewer customers in total."

(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.

The language in Minnesota Statute § 216B.16, subd. 12 subparts (c) and (e) originally became law in 1991. They were re-numbered as part of the statutory changes enacted in 1995.

The Minnesota Department of Commerce, Division of Energy Resources (Department or DOC) provides the following analysis regarding the statutory requirements for small gas utility franchise exemptions, and whether LRES's proposed tariff conforms to the remaining statutory requirements.

C. ANALYSIS OF THE PROPOSED EXEMPTION FROM PUC REGULATION OF NATURAL GAS RATES

The Department asked a number of information requests to determine the composition of LRES's potential customer base. In response to DOC Information Request No. 3, the Company stated that the maximum number of customers that could receive service in Deer Creek and Parkers Prairie is 415. The Company's estimate for the initial number of customers that will take natural gas services in the two municipalities is 195. Table 1 below summarizes the information provided in LRES's response to DOC Information Request No. 3 and a 2010 population estimate from the United States Census Bureau:

Table 1 – Summary of Expected Initial Number of Customers and Population for Parkers Prairie, Deer Creek and the Surrounding Area

City	Date of Resolution	Expected Number of Customers*	Population**
Deer Creek	January 23, 2017	<500	323
Parkers Prairie	January 17, 2017	<500	1,005
Immediate Surrounding Areas		36	94
Total		231	1,422

*Source: DOC Information Request Response #3

**Source: www.minnesota-demographics.com/cities_by_population

As indicated above, a natural gas business with 650 or fewer customers within a municipality and operating pursuant to a franchise granted by the municipality may request exemption from rate regulation if a resolution from the municipality is provided supporting the exemption request. The city councils of Deer Creek and Parkers Prairie approved resolutions requesting exemption from Commission regulation and passed ordinances granting LRES a 10-year franchise to operate, repair and maintain a natural gas distribution system within each city's limits.³

In previous dockets of this nature, Commission staff has expressed concerns regarding the extent of the affected natural local distribution company's (LRES in this instance) forecasted usage that is classified as "incidental" or located outside of the boundary of the municipality granting the franchise. In DOC Information Request Nos. 8 through 10, the Department requested this information. Table 2 summarizes this information.

As can be seen in Table 2:

- over 96 percent of the customers are expected to be located within the Municipalities;
- almost 97 percent of LRES's design-day requirements is expected to be located within the Municipalities; and
- over 99 percent of the annual average usage is expected to be located within the Municipalities.

³ These documents were included as Exhibits A through C of the Petition.

Table 2 – Comparison of Forecasted Load and Number of Customers Located Within and Outside the Municipalities’ Boundaries (in Percentage) 2018 - 2020

Location	Customers	Design Day Demand (Dkt/day)	Percentage of Annual Throughput (Annual Dkt)
Within Municipal Boundaries	96.1%	96.7%	99.4%
Outside of Municipal Boundaries (Incidental)	3.9%	3.3%	0.6%
Total	100.0%	100.0%	100.0%

The Department posits that these estimates support LRES’s position that the customers and load it forecasts it will serve outside of the Municipalities could reasonably be considered incidental.

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

D. LRES’S PROPOSED TARIFF

Should the Commission grant LRES’s exemption request, the Department notes that the utility will remain subject to certain statutory requirements, as more fully discussed below. As noted previously, LRES included a 51-page proposed tariff in Exhibit D of its Petition. The Department reviewed this document in light of Minnesota statutes and Commission precedent. This review identified several topics.

The first issue reviewed relates to the extension of certain consumer protections to LRES’s potential ratepayers. Minnesota Statute § 216B.16, subd. 12 (c) indicates that a small gas utility exemption does not exempt the utility from the Cold Weather Rule requirements:

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.

Section 28 of the Company’s proposed tariff addresses this requirement. The Department concludes that LRES’s proposed tariff complies with the statutory requirement regarding disconnection during cold weather.

Commission precedent regarding the extension of consumer protections to an exempt small natural gas utility’s ratepayers can be found in the Commission’s January 7, 2014 *Order Granting Small Gas Utility Franchise Exemption Under Minn. Stat § 216B.16, Subd. 12* for Dooley’s Natural Gas (DNG) in Docket No. G6915/M-13-672. In its Order, the Commission clarified that while DNG had been exempted from rate regulation, it remained subject to

various other statutory provisions under Commission jurisdiction, including but not limited to the following:

- Minn. Stat § 216B.096 – Annual Reporting Requirement to Commission
- Minn. Stat § 216B.0976 – Notice to Cities of Utility Disconnection
- Minn. Stat § 216B.098 – Residential Customer Protections

LRES acknowledged in its Petition that it would be subject to the three statutes listed.⁴

Additionally, the Commission stated in its 13-672 Order:

Under state law, DNG continues to be responsible to submit the following to the Commission:

- Annual Cold Weather Rule reports as required under Minn. Stat. § 216B.096, Subd. 11;
- Annual tariff updates with municipally approved rates to the Commission (Minn. Stat. § 216B.16, Subd. 12 (c)); and
- Any subsequent changes in rates, tariffs and contracts for service outside the municipalities at least 30 days in advance of implementation.

While not included in an order point, the Commission stated in its 13-672 Order that DNG is responsible for informing the Commission should the number of customers served exceed the statutory thresholds. Similar to the Commission's Order in the DNG proceeding, the Commission may wish to state in its Order that LRES has an affirmative duty to inform the Commission should its customer base expand beyond the customer thresholds of 5,000 total customers and 650 customers within a municipality.

In conclusion, the Department's review indicates that LRES recognizes its statutory responsibilities and has agreed to comply with the requirements of Minn. Stat.:

- § 216B.16, subd. 12(c) - Tariff updates with municipally approved rates;
- § 216B.096 – Cold Weather Rule;
- § 216B.0976 – Notice to Cities of Utility Disconnection,
- § 216B.098 – Residential Customer Protections

The Department requests that LRES confirm its understanding of its obligation to file with the Commission any subsequent changes in rates, tariffs and contracts for service outside the municipalities at least 30 days in advance of implementation, and to notify the Commission should LRES's customer base expand beyond the statutory thresholds for exemption.

⁴ Petition at page 7.

The Department's in-depth review of LRES's proposed tariff also identified several issues. The majority of these issues relate to organizational issues in the Company's proposed tariff. Attachment A contains a list of the most notable issues of those identified. The Department requests that LRES address in Reply Comments the issues listed in Attachment A regarding its proposed tariff.

A second issue the Department noted relates to the existence of an agricultural heating and drying service and an interruptible sales service offering. The Department's understanding of the type of service provided under this "end-use" rate is similar to interruptible sales service. The Department requests that LRES provide an explanation as to why the agricultural heating and drying service rate schedule is needed and is separate and distinct from the interruptible sales service rate schedule.

III. DEPARTMENT RECOMMENDATION

The Department requests that LRES provide the following in Reply Comments:

- confirm its understanding of its obligation to file with the Commission any subsequent changes in rates, tariffs and contracts for service outside the municipalities at least 30 days in advance of implementation, and to notify the Commission should LRES's customer base expand beyond the statutory thresholds for exemption; and
- provide an explanation as to why the agricultural heating and drying service rate schedule is needed and is separate and distinct from the interruptible sales service rate schedule.

The DOC will provide its final recommendations in this proceeding to the Commission in a set of Supplemental Comments.

At this time, the Department expects to recommend that the Commission approve the Petition, provided that LRES provides the requested assurance and addresses the tariff-related issues the Department identified.

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Attachment A –Review of Lake Region Energy Services Proposed Tariff

Location	Issue	Proposed Remedy
I. TABLE OF CONTENTS – RATE SCHEDULES AND APPLICABLE PROVISIONS TABLE OF CONTENTS,	Lists Table of Contents under Rate Schedules	Strike second reference to “Table of Contents”
I. TABLE OF CONTENTS – RATE SCHEDULES AND APPLICABLE PROVISIONS	Section 9 is listed as “Purchased gas Adjustment”	Should be changed to “Interruptible Sales Service”
II. CONTACT LIST	No names or emergency contact numbers for Manager and Systems Operations Specialist	Provide names and emergency contact numbers for Manager and Systems Operations Specialist
IV. TECHNICAL TERMS AND ABBREVIATIONS	Regular Construction Season	Remove “Commission or PUC.”
IV. TECHNICAL TERMS AND ABBREVIATIONS	The Minnesota Public Utilities Commission PSC	Remove “PSC” from title.
IV. TECHNICAL TERMS AND ABBREVIATIONS	The Minnesota Public Utilities Commission – The Minnesota Public Service Commission, previous name of the present Public Utilities Commission.	Strike entire definition, replace with “Commission or PUC.”
IV. TECHNICAL TERMS AND ABBREVIATIONS	Date Issued definition includes reference to Commission	Strike Commission and include reference to Municipality
IV. TECHNICAL TERMS AND ABBREVIATIONS	No definition for Municipality.	Include definition of Municipality that is responsible for regulating LRES.
V. RATE SCHEDULES AND APPLICABLE PROVISIONS	“Schedules” is spelled incorrectly.	Include correct spelling.
V. RATE SCHEDULES AND APPLICABLE PROVISIONS – Section 4 – Cost of Purchased Gas	Identify this tariff page as applying to sales customers, consistent with information included in the Table of Contents.	Include title “Lake Region Energy Services Gas Sales Service” or “Sales Services”
V. RATE SCHEDULES AND APPLICABLE PROVISIONS – Section 4 - Cost of Purchased Gas	Natural gas is not distributed to a local distribution system. It is delivered.	Replace “distributed” in first sentence with “delivered”.
V. RATE SCHEDULES AND APPLICABLE PROVISIONS –	Tariff lists three riders that are not included in the tariff – (1) Gas Affordability; (2)	Strike this language.

Section 5 – Residential Sales Service	Conservation Improvement and (3) Conservation Enabling.	
V. RATE SCHEDULES AND APPLICABLE PROVISIONS – Section 6 – Small Volume Commercial	Doesn't identify whether the service is sales or transportation	Change to "Section 6 – Small Volume Commercial Sales Service"
V. RATE SCHEDULES AND APPLICABLE PROVISIONS – Section 6 – Small Volume Commercial	Peak Demand Rate lists BTU's as unit. Delivery Charge and Cost of Gas are listed in Therms.	Change Peak Day Requirement for BTU's to Therms
V. RATE SCHEDULES AND APPLICABLE PROVISIONS – Section 6 – Small Volume Commercial Sales Service	Rate schedule lists three riders that are not included in the tariff – (1) Gas Affordability; (2) Conservation Improvement and (3) Conservation Enabling.	Strike this language.
V. RATE SCHEDULES AND APPLICABLE PROVISIONS – Section 7 – Large Volume Commercial and Industrial Sales Service	Peak Demand Rate lists BTU's as unit. Delivery Charge and Cost of Gas are listed in Therms.	Change Peak Day Requirement for BTU's to Therms
V. RATE SCHEDULES AND APPLICABLE PROVISIONS – Section 7 – Large Volume Commercial and Industrial Sales Service	Peak day demands listed as between 1,250,000 and 2,500,000 BTUs. Annual Usage is listed as less than 2,500,000 BTU's.	Reconcile these figures.
V. RATE SCHEDULES AND APPLICABLE PROVISIONS – Section 7 – Large Volume Commercial and Industrial Sales Service	Rate schedule lists three riders that are not included in the tariff – (1) Gas Affordability; (2) Conservation Improvement and (3) Conservation Enabling.	Strike this language.
V. RATE SCHEDULES AND APPLICABLE PROVISIONS – Section 8 – Agricultural Heating and Drying Sales Service	Under Availability heading language references "Large Volume Commercial and Industrial Sales Service"	Include correct language.
V. RATE SCHEDULES AND APPLICABLE PROVISIONS – Section 8 – Agricultural Heating and Drying Sales Service	Rate schedule doesn't include purchased gas adjustment language.	Include purchased gas adjustment language.
V. RATE SCHEDULES AND APPLICABLE PROVISIONS –	Rate schedule lists three riders that are not included	Strike this language.

Section 9 – Interruptible Sales Service	in the tariff – (1) Gas Affordability; (2) Conservation Improvement and (3) Conservation Enabling.	
V. RATE SCHEDULES AND APPLICABLE PROVISIONS – Section 12 – Small Volume Transportation Service	Rate schedule language is incomplete. Final sentence in rate schedule states: “Lake Region Energy Services shall account for the imbalance volumes as follows:”	Provide additional language that explains how imbalance volumes are calculated.
V. RATE SCHEDULES AND APPLICABLE PROVISIONS – Section 13 – Purchased Gas Adjustment Rider	Rider language includes discussion of “Peak-shaving”.	Strike peak-shaving language unless LRES has access to a peak-shaving facility.
V. RATE SCHEDULES AND APPLICABLE PROVISIONS – Section 13 – Purchased Gas Adjustment Rider	Rider includes term “CCLP”	Define term “CCLP.”
V. RATE SCHEDULES AND APPLICABLE PROVISIONS – Section 14 – Statement of Purchased Gas Adjustments	Rider doesn’t include Interruptible Sales Service	Include language related to “Interruptible Sale Service” or explain why the PGA is not relevant to this rate schedule.
Section headings	Section headings are inconsistent in tariff.	Address inconsistent nature of section headings.

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. G6977/M-17-186

Dated this 24th day of April 2017

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_17-186_M-17-186
Ian	Dobson	Residential.Utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_17-186_M-17-186
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_17-186_M-17-186
Kent D.	Mattson	k.mattson@pemplaw.com	Pemberton, Sorlie, Rufer & Kershner, PLLP	110 N Mills St PO Box 866 Fergus Falls, MN 565380866	Electronic Service	No	OFF_SL_17-186_M-17-186
Tim	Thompson	tthompson@lrec.coop	Lake Region Electric Cooperative	PO Box 643 1401 South Broadway Pelican Rapids, MN 56572	Electronic Service	No	OFF_SL_17-186_M-17-186
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_17-186_M-17-186