



AN ALLETE COMPANY

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August 17, 2018

VIA ELECTRONIC FILING

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

Re: 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
Nation Railway Company Facilities Near Hoyt Lakes, Minnesota
Docket No. E015, E106/C-17-893

Dear Mr. Wolf:

Enclosed for filing with the Minnesota Public Utilities Commission, please find
Minnesota Power's Comments in the above-referenced matter.

If you have any questions regarding this letter, please do not hesitate to contact me at
the number above.

Yours truly,

A handwritten signature in black ink that reads 'David R. Moeller'.

David R. Moeller

DRM:sr
Attach.

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

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

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

**MINNESOTA POWER'S
COMMENTS**

I. Overview

On December 22, 2017, Lake Country Power (“LCP”) filed a complaint with the Minnesota Public Utilities Commission (“Commission”), alleging that Minnesota Power (or “the Company”) violated service territory restrictions by providing electric service to Canadian National Railway Company (“CN”) in relation to new and improved signaling and sensing equipment CN has implemented near Hoyt Lakes, Minnesota to facilitate its railroad services in the area. Minnesota Power filed an answer January 2, 2018. On May 29, 2018 the Commission issued an order directing LCP to file an amended complaint. On July 19, 2018, LCP eFiled its Amended Complaint with the Commission. On July 27, 2018, Minnesota Power filed its Answer to Amended Complaint in accordance with Minn. Rules 7829.2100. On July 23, 2018, the Commission issued a Notice of Comment Period on Amended Complaint (“Notice”) requesting comments by August 20, 2018. Minnesota Power submits these comments in response to the Notice.

II. Comments

Lake Country Power’s Amended Complaint continues to aver that Minnesota Power has violated the exclusive service area provisions of the Minnesota Public Utilities Act, Minn. Stat. §§ 216B.37 to 216B.43, by providing electrical service to Wisconsin Central Ltd (“Wisconsin Central”)¹ for equipment located in Lake Country Power’s service territory. In doing so, Lake Country Power attempts to limit the Commission’s exception for customers whose property straddles the boundary between different utilities’ service areas to only “when a recipient has a physical ‘bricks and mortar’ building that straddles more than one exclusive service territory”.²

¹ See Wisconsin Central’s Intervention dated July 27, 2018.

² Lake Country Power’s Amended Complaint dated July 19, 2018 at Paragraph 23.

The Commission precedent cited by Lake Country Power does not impose a “bricks and mortar” requirement and ignores other applicable Commission policy directives and decisions. The Commission has made clear that the customer may choose one utility to be the service provider for the entire property, as long as the power serving the facilities located within the other utility’s service area is carried on the customer’s distribution system and not on the equipment of the service provider utility.³ Based on this principle, Minnesota Power is the sole electric service provider because the signaling and sensing equipment in Wisconsin Central’s integrated railroad system that straddles the service territories of both Lake Country Power and Minnesota Power. Wisconsin Central is carrying the power to its facilities on its own distribution system. Therefore, even accepting the factual allegations in the Amended Complaint as true, this well-established exception applies in this case.

1. A customer with property and facilities that straddle two different utilities’ service areas may choose its electric service provider.

The Commission has definitively and consistently determined that the customer may choose its preferred service provider where its property straddles more than one utility’s service territory and the customer provides its own distribution service into the other utility’s territory. This determination goes back several decades. In 1990, the Commission’s then-Energy Manager issued a letter to an electric service customer that had requested permission to run an electric cable from one building in Minnesota Power’s territory to a building in Mille Lacs Electrical Cooperative’s service area.⁴ Commission staff and legal counsel concluded that formal Commission approval was unnecessary because “the Commission’s policy is that wiring on the customer’s side of an electric meter is controlled by the customer, not the utility or the Commission.” The Commission’s letter concluded by noting that customer wiring “must connect to an electric utility’s meter in that utility’s service area.” This is a clear example where the Commission policy allowed for an exception to the service territory requirements was not limited to a physical “bricks and mortar” building since the customer’s electric cable spanned multiple buildings and facilities.

³ While not applicable to this dispute, Minn. Stat. §216B.40 allows a utility to “extend its facilities through the assigned service area of another facility.” In that context, “facilities” means the utility’s distribution or transmission facilities and not a “bricks and mortar” building.

⁴ A copy of the January 5, 1990 letter is attached as Exhibit A.

The Commission addressed a similar situation in a dispute between Freeborn-Mower Cooperative Services (“Freeborn-Mower”) and Interstate Power Company (“Interstate”) in 2000.⁵ In that matter, Freeborn-Mower filed a petition asking the Commission to determine that the co-op was entitled to provide electric service to Alliance Pipeline’s new gas compressor facility that was on a 17.2 acre parcel that straddled the service area boundary between Freeborn-Mower and Interstate. Interstate proposed that the utility in whose service area the customer uses the most electricity should be granted service rights. The Commission rejected the “load center” test and reaffirmed that in situations where “a customer’s property lies in more than one service area”, customer choice should prevail unless it is outweighed by bad faith, pre-existing agreements between utilities, or overarching public interest concerns. In this dispute, Wisconsin Central’s property and right-of-way straddles two utilities’ service areas and the customer has chosen to interconnect within Minnesota Power’s service territory.⁶

The Commission further confirmed this policy in the City of Rice service territory dispute.⁷ Notably, Lake Country Power has throughout this Docket asserted that Minnesota Power’s position and the Commission’s decision in the City of Rice dispute is contrary to Minnesota Power’s position in this case. This is not accurate. In the *City of Rice* matter, the City of Rice requested that East Central Energy (“ECE”) be allowed to provide service to a plant owned and operated by Virnig, which was entirely within Minnesota Power’s service area boundary. Additionally, Virnig and ECE proposed that ECE would deliver the power across Minnesota Power’s territory to the Virnig facility. Minnesota Power (and the Department of Commerce) argued that the exception described in the Commission’s 1990 letter did not apply because (1) no Virnig facilities receiving power

⁵ *In the Matter of the Petition of Freeborn-Mower Cooperative Services to Confirm Customers’ Selection of Electric Power Supplier*, Docket No. E-115/SA-99-1619 (May 4, 2000).

⁶ Lake Country Power’s citation in Paragraph 25 of its Amended Complaint to *In the Matter of a Complaint by McLeod Coop. Power Ass’n Against Hutchinson Utilities Regarding Extension of Service to Hutchinson Technologies, Inc.*, Docket No. E-252, 120/C-95-517 is not applicable to this Docket. First, after summarizing the Commission’s past practice that where “customers whose property straddles the assigned service areas of more than one utility may choose their utility, as long as they use their own distribution system to serve any points within another utility’s assigned service area” the Commission did not reach the service territory issue since it was “unnecessary to resolve this issue, however, or to reexamine or refine previously stated policies on split-service area properties”. Second, Wisconsin Central has not created the problem by obtaining service from Minnesota Power and using its own distribution facilities to transmit power since Minnesota Power is fulfilling a valid service request under its obligation to serve customers within its service territory. See Minn. Stat. §§ 216B.04, 216B.37 and 216B.40.

⁷ *In the Matter of a Request by the City of Rice for a Service Area Boundary Change Between Minnesota Power and East Central Energy*, Docket No. E-112, 015/SA-01-696 (August 28, 2001).

were located in ECE's service area and (2) ECE proposed to deliver service on its own equipment across Minnesota Power's service territory. The Commission agreed, holding:

The Commission will deny the City's request that ECE serve the Virnig plant. The Commission agrees with the DOC that this case is not an appropriate case in which to implement customer choice for two reasons. First, the Virnig plant site is located wholly within MP's service area boundary and to allow choice in this circumstance could encourage gerrymandering to obtain service from the utility of choice. Second, in cases when the Commission has allowed customer choice the **Commission has required that the power be delivered within the assigned service area of the chosen utility and be distributed over the customer's distribution system to any part of the property within the assigned service area of the other utility.** In the present case, ECE readily admits that this requirement cannot be met without sacrificing power and reliability, which the customer is unwilling to do. For these reasons the request for ECE to service the Virnig property will be denied. (emphasis added).

Ultimately, neither Minnesota Power's prior arguments nor the Commission's Order conflict with Minnesota Power's position in this matter because the prerequisites for the customer choice exception were not met in the City of Rice dispute. On the contrary, all conditions are clearly satisfied in this case.

In 2008, the Commission again reaffirmed application of the service area straddling exception in a matter involving both Minnesota Power and Lake Country Power that was not reliant on a physical bricks and mortar building.⁸ Minnesota Power filed a request for approval of an electric service agreement ("ESA") between itself and Mesabi Nugget Delaware, LLC ("Mesabi Nugget"). The ESA committed Mesabi Nugget to purchase electric service from Minnesota Power at a point of connection on the portion of Mesabi Nugget's property that is within Minnesota Power's service territory. From there, Mesabi Nugget would use its own wires to convey the power to its facilities, most of which are within Lake Country Power's service area.⁹ Lake Country Power argued that the ESA should not be approved because it would create a service area dispute between

⁸ *In the Matter of a Petition by Minnesota Power for Approval of an Electric Service Agreement Between Mesabi Nugget Delaware, LLC and Minnesota Power*, Docket No. E-015/M-07-1456, Order dated February 20, 2008.

⁹ *See also*, Lake Country Power's Request for Reconsideration in Docket No. E-015/M-07-1456 dated March 10, 2008 stating: "The construction of production facilities currently underway is solely in Lake Country Power's service territory. While mining operations may occur at some point in the future, there is no present indication of when or where these operations will take place. There is no indication either that any mining operations will use any significant amounts of electrical energy, certainly in comparison to the electric load that will be located in Lake Country Power's service territory."

the utilities because Minnesota Power would be providing power that would be carried over Mesabi Nugget's distribution wires into Lake Country Power's exclusive service area. The Commission rejected Lake Country Power's arguments and approved the ESA, conditioned on Minnesota Power refiling the ESA showing that the point of delivery is within Minnesota Power's service territory. Minnesota Power did so, and the issue was resolved accordingly. The same application of Commission precedent should apply to the present dispute where Wisconsin Central's distribution wires are carrying the power delivered within Minnesota Power's service territory along a system owned by Wisconsin Central.¹⁰

2. The allegations in the Amended Complaint demonstrate that the service area straddling exception applies.

Even taking the allegations in the Amended Complaint as true, Lake Country Power's allegations lack merit because the service area straddling exception allows Wisconsin Central to choose its service provider. Notably, Lake Country Power admits that Wisconsin Central "had constructed its own electrical distribution infrastructure along a rail corridor to the proposed location."¹¹ Lake Country Power further acknowledges that Wisconsin Central "connected the distribution infrastructure to a point of service within the service territory of MP".¹² These two assertions of fact alone satisfy the prerequisites to application of the service area straddling exception and are not nullified by Lake Country Power's asserted physical "bricks and mortar" building limitation. Wisconsin Central's integrated facility straddles Minnesota Power's and Lake Country Power's service territories with railroad tracks and signaling and sensing equipment split between both service territories. The point of delivery of power between Minnesota Power and Wisconsin Central is located within Minnesota Power's service territory and Minnesota Power's distribution lines are all within Minnesota Power's service territory.¹³ The power that is distributed

¹⁰ See also, *In the Matter of the Complaint of Minnesota Power & Light Company against Itasca-Mantrap Electric Cooperative Alleging a Violation of MP&L's Assigned Service Area*, Docket No. E-015, E-117/SA-84-578, Order dated March 11, 1985 at page 4 ("The Commission agrees with the ALJ's findings concerning customer preference, and concludes that the economical service objective is best served by authorizing Itasca-Mantrap to provide service at the rate as specified in the contract."); *In the Matter of the Request by Tim Fisher to Receive Electric Service from Alexandria Light and Power*, Docket No. E138, 203/SA-88-441, Order dated October 27, 1988 at page 2 ("In the absence of an enforceable agreement between the utilities, the Commission has traditionally allowed such property owners to receive service from the utility of their choice. The point of delivery, however, must be within the assigned service area of the serving utility.").

¹¹ Amended Complaint at Paragraph 10.

¹² Amended Complaint at Paragraph 11.

¹³ See Minnesota Power's Answer Filed January 2, 2018 at Exhibit A.

to equipment within Lake Country Power's service area is carried over Wisconsin Central's distribution system along its railroad tracks. Based on these facts, the Commission's well-established preference to allow customer choice of electric service provider for facilities that straddle multiple utility service areas controls.

3. No further record development is necessary for a Commission decision.

Minnesota Power believes there is ample precedent to not require a contested case proceeding in this Docket. In *Matter of Kandiyohi Co-op. Elec. Power Ass'n*, 455 N.W.2d 102, 106 (Minn. Ct. App. 1990), the Minnesota Court of Appeals discussed the Commission's decision to not require a contested case process in a service territory dispute. The Court stated: "The MPUC had before it all of the facts necessary to determine whether Kandiyohi's facilities were capable of providing electric service to the area, pending a determination by Willmar whether it wished to purchase Kandiyohi's facilities and serve the area." The Court also noted that facts related to the existence of electric facilities were undisputed. *Id.* at 106. The same undisputed facts related to Minnesota Power's electric facilities are present in this Docket.

The Commission's order in another Kandiyohi Co-op Elec Power Association docket is also instructive to the Notice. The City of Willmar argued the Commission was required to refer the dispute to a contested case proceeding based on the Commission's procedural rules then in effect.¹⁴ The Commission rejected the City's arguments and stated:

The City argues that the Commission's procedural rules required it to refer this case to the Office of Administrative Hearings for contested case proceedings before reaching a decision. The City relies on the following provisions in the Commission's general procedural rules:

Hearing on formal complaint and other required hearings. When issue has been joined upon formal complaint by service of answer or by failure of respondent to answer, and proof thereof has been filed, and in every other contested case, and in every case where a hearing is required by law, the commission shall assign a time and place of hearing pursuant to parts 7830.3100 and 7830.3200.

Minn. Rules, part 7830.3000, subp. 4.

¹⁴ See Docket No. E-118, 329/SA-89-817, Order dated February 16, 1990.

Clearly, this rule does not require contested case proceedings when there are no material facts in dispute. Such an interpretation would produce an absurd result -- requiring the parties, the ratepayers, and the public to bear the expense of unnecessary contested case proceedings -- and avoiding absurd results is a primary tenet of statutory (or rule) construction.

A more reasonable reading of the rule is that the reference to contested cases does not include all cases based on formal complaints, but is limited to those cases described immediately beforehand, in which issue has been joined and proof thereof filed, i.e., cases in which affidavits or other documentary evidence establish the existence of disputed issues of material fact. Only in those cases are contested case proceedings necessary.

Another instance is found in *In the Matter of a Complaint of People's Cooperative Power Association, Inc. Against the City of Rochester Regarding Extension of Service to Continental Baking*, Docket No. E-132, 299/SA-89-981 (March 9, 1990 Order After Reconsideration) where the Commission held: "The Commission concludes there is no need to conduct contested case proceedings regarding these two utilities' past dealings with one another, since those dealings could not have altered their assigned service areas in any case."

The only relevant material facts, as previously stated, which Minnesota Power believes are undisputed, are that Wisconsin Central applied to Minnesota Power for electric service on October 3, 2016. Wisconsin Central's application stated the request for power was at approx. 5000' SE on RR Tracks from Allen Junction Rd, Hoyt Lakes, Minnesota and that CN was an existing customer. This point of delivery is within Minnesota Power's assigned service territory under Minn. Stat. § 216B.39. Minnesota Power began providing its customer Wisconsin Central with power at a primary metering point located in Minnesota Power's service territory on October 17, 2017. Since that date, Minnesota Power has billed Wisconsin Central for minimal usage that is equivalent to a higher usage residential customer.

If the Commission does not dismiss the complaint for the reasons provided in multiple filings in this Docket, then Minnesota Power recommends either: 1) requesting further written comments if the Commission believes more record development is necessary or 2) directing the OAH to conduct a limited contested case process. Such a limited contested case process with only verified pleadings and without public or evidentiary hearing, would be a more appropriate use of ratepayer and state agency resources that would need to be committed and expended in a full contested case process, given the limited amount of load at issue in this case. This limited

administrative process could still provide the Commission a report and recommendation by an Administrative Law Judge but without the time and expense of witness testimony, a public hearing, and an evidentiary hearing. Minnesota Rule 7829.1200 provides the Commission can conduct an informal process and that rule could be used as guidance to the OAH in developing the record as necessary.

III. Conclusion

Minnesota Power respectfully requests that the Commission dismiss Lake Country Power's Amended Complaint with prejudice for the reasons stated herein and in other filings in this Docket.

Dated: August 17, 2018

Respectfully submitted,



David R. Moeller
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Duluth, MN 55802
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EXHIBIT A

IVIIININ t3kilfi PUBLIC UTILITIES COMMISSION

January 5, 1990

Mr. Jack Ruttger
Ruttger's Bay Lake Lodge
P.O. box 400
Deerwood, Minnesota 56444

Dear Mr. Ruttger:

This responds to your letter asking permission to run an electric cable from one building to another on your property. My understanding is that you *wish* to run the cable from a building now served by Minnesota Power to a building now served by Mille Lacs Electric Cooperative.

This matter has been reviewed by Commission staff and by the Commission's legal counsel. It is our opinion that formal approval by the Commission is not necessary. The Commission's policy is that wiring on the customer's side of an electric meter is controlled by the customer, not the utility or the Commission. It is permissible for wiring to cross service area boundaries as long as it stays on the same customer's property.

Therefore, the Commission will take no action on your letter, with the understanding that you can proceed with whatever wiring is consistent with local codes. Such *wiring* must connect to an electric utility's meter *in* that utility's service area.

Please feel free to call me at (612)296-1336 if you have any questions.

Sincerely,



Richard R. Lancaster
Energy Manager

c: Mille Lacs Electric Cooperative

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

AFFIDAVIT OF SERVICE VIA
ELECTRONIC FILING

SUSAN ROMANS, of the City of Duluth, County of St. Louis, State of Minnesota, says that on the **17th** day of **August, 2018**, she served Minnesota Power's Comments in **Docket No. E015,E106/C-17-893** via electronic filing on the Minnesota Public Utilities Commission and the Office of Energy Security. The persons on E-Docket's Official Service List for this Docket were served as requested.



Susan Romans

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Daniel	Carlisle	d.carlisle@pemplaw.com	Pemberton Law	7 Colfax Avenue Wadena, MN 65482	Electronic Service	No	OFF_SL_17-893_Official
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_17-893_Official
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_17-893_Official
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_17-893_Official
Deanna	McCollian	Deanna.McCollian@cn.ca	Canadian National Railway	17641 S. Ashland Ave Homewood, IL 60430	Electronic Service	No	OFF_SL_17-893_Official
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