

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie Sieben
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Chair
Vice Chair
Commissioner
Commissioner
Commissioner

IN THE MATTER OF THE JOINT
REQUEST OF THE CITY OF NORTH
BRANCH, NORTH BRANCH WATER
AND LIGHT COMMISSION AND EAST
CENTRAL ENERGY TO UPDATE
ELECTRIC SERVICE TERRITORY
RECORDS

DOCKET NO: E286,E112/SA-22-388

**INITIAL COMMENTS OF MINNESOTA
MUNICIPAL UTILITIES ASSOCIATION**

INTRODUCTION

The Minnesota Municipal Utilities Association (“MMUA”) represents the interests of Minnesota's municipal electric, gas, and water utilities. Its mission is to unify, support, and serve municipal utilities so they can in turn improve service to their customers and communities. MMUA's interest in this matter arises from issues of statewide significance for municipal utilities.

This matter involves the permanent transfer of the entire assigned electric service territory of the North Branch Water and Light Commission (“North Branch”) to East Central Energy (“ECE”). As a result, it also involves North Branch ceasing to provide retail electric municipal utility service, and thus it squarely raises the concern of public notice and input on such a significant issue to the community. MMUA respects the principle of local self-determination, and it does not seek to interfere with the right of North Branch to decide its own best course. At the same time, MMUA equally respects the requirements of state law and meaningful public input in determining the best course as it pertains to the sale

of municipal utility services. These issues ultimately impact all municipal utilities, and that is MMUA's greatest point of concern.

This matter has been filed as a request to update the service territory map as provided under Minnesota Statutes 216B.39. MMUA believes that amending the map now is premature. The sale and ultimate dissolution of the North Branch municipal electric utility is the only possible result of any process that begins with the transfer of the utility's entire electric service territory. Because this matter—in fact if not in filing—involves the sale or discontinuance, in whole or in part, of municipal electric utility service, under Minnesota Statutes, Section 412.321, subdivision 4, an election is required. This requirement is particularly important in the present case because the voters in the City of North Branch previously voted against abolishing the municipal utilities commission in 2016. See Minn. Sec. of State Election Results, Ballot Question 1, "Shall the public utilities commission be abolished?" (reporting 71.3% vote no to 28.61% vote yes).¹ In addition, the parties have not provided written notice of this proceeding to all affected customers, contrary to the Commission's service territory filing checklist.

MMUA respectfully requests that the Commission: (1) require its typical notice to customers affected by this proceeding, (2) ensure that the statutory requirements are met, and (3) revise its service territory checklist to include an item related to the sale, lease, or discontinuance of operations of a municipal utility service.

ANALYSIS

MMUA notes several concerns with this proceeding, not to impair North Branch from its local decision-making, but to ensure that the proper process and requirements,

¹ <https://electionresults.sos.state.mn.us/results/Index?ErsElectionId=100&scenario=LocalMunicipality&FipsCode=46798&show=Go> (accessed Sept. 19, 2022).

including meaningful public input, are preserved not only in this matter, but for all municipal utilities in similar future matters.

I. THIS PROCEEDING INVOLVES ALL OF NORTH BRANCH'S ASSIGNED SERVICE TERRITORY.

It is important to clarify the scope of this proceeding. The parties have not addressed an isolated section of service territory, such as electric service territory for one development or area that is being transferred from one utility to another.² Instead, this proceeding involves the entirety of the assigned electric service territory of North Branch. Put differently, after this requested boundary change, there will be no remaining assigned service territory for North Branch. Accordingly, North Branch will no longer provide retail electric service. The scope of this proceeding emphasizes the need for adequate information and public input.

II. THE PARTIES HAVE NOT PROVIDED WRITTEN NOTICE TO ALL AFFECTED CUSTOMERS.

The Commission's service territory checklist requires written notice to all customers affected by the proceeding: "If there are customers affected by the service territory change, they must receive written notice, including utility contact information and contact information for the Commission" ([https://mn.gov/puc/activities/economic-analysis/maps/ tab filing checklist](https://mn.gov/puc/activities/economic-analysis/maps/tab-filing-checklist); last accessed Sept. 13, 2022). Although the Initial Filing states that this proceeding "involves 2,082 customers, 1,812 of whom are residential customers in Minnesota" the parties have not provided adequate written notice

² Confusingly, the initial filing references "the permanent transfer of an area located within the city limits of the City of North Branch and within the electric service territory assigned to the Cooperative" although the map attached as Exhibit A shows the entire assigned area labeled "North Branch Municipal Water & Light" and separate from the assigned area labeled "East Central Energy." Initial Filing, July 8, 2022 ("Initial Filing"), at 1, Ex. A.

to customers of this proceeding, the required contact information, and that current North Branch customers would be receiving their electric service from ECE. (Initial Filing at 2).

Instead, the Initial Filing states that “North Branch and ECE will also notify customers of the change in service providers through a Commission-approved customer notice after the transition is approved.” *Id.* at 2 (emphasis added). This approach would not permit customers to provide any input to staff or the Commission while this proceeding is pending but would only notify the affected customers after-the-fact. The checklist specifies contact information for the Commission. Typically, the docket number for the proceeding is included in the notice. It makes little sense to arrange for notice after the Commission has acted.

In response to the Department of Commerce Information Request 1, ECE provided as Exhibit A what it described as “written notices” and stated that “[i]n January of 2022, the attached notice was inserted in all customers’ bills.” See Department of Commerce August 1, 2022 Comments, July 28, 2022 (“DOC Comments”), ECE Information Request Response 1, at 1-2, Ex. A. But this purported notice, which appears to predate any filing with the Commission regarding this matter, provides only a general reference to “talks” between the utilities:

As you may be aware, the Commission and City Council ***are in talks with East Central Electric*** regarding the sale of the power distribution assets. In case you were wondering, ECE is member-owned electric cooperative. ECE currently serve about 2/3rds of North Branch’s households and that number continues to rise as development occurs outside of the city core. Unlike a municipal utility, a cooperative is a business-owned and controlled by the customer who use its services. Rather than excess income going to investors, it circles back to each member. *Id.*, Ex. A at 1 (emphasis added).

Besides inaccurately implying that municipal utilities are for-profit entities responsible to shareholders, rather than being the community-owned and not-for-profit

entities they are, this document does not satisfy the requirements of the Commission's checklist. There is no reference to an actual proceeding, and no contact information for the Commission was provided in this bill insert. Moreover, it was sent approximately six months before this proceeding, and it provided only a vague reference to "talks" rather than the specifics of the permanent transfer of the entirety of North Branch's assigned service territory.³

Because this proceeding involves all of North Branch's assigned service territory, it is particularly important to provide notice to all affected customers. An after-the-fact update of what has already happened does not comply with the Commission's requirements.

III. THE COMMISSION SHOULD CONSIDER THE STATUTORY REQUIREMENTS OF AN ELECTION.

Minnesota Statutes repeatedly connect the requirement to hold an election – to hear from the community itself – to significant milestones for a municipal utility, including its establishment, sale, lease, or discontinued use, in whole or in part. Minnesota Statutes, Section 412.321 addresses each of these milestones. Specifically, it requires an election before any municipal "gas, light, power, or heat utility" may be established. Minn. Stat. § 412.321, subd. 2 (2020).⁴ More relevant to this proceeding, this statute

³ The ECE Information Request Response 1 also references a "second attached notice" inserted in customer bills in May 2022, but the attachment in Exhibit A appears to refer only to water hydrant flushing, with no reference to electric service territory boundaries. *Id.*, Ex. A, at 2. In any case, a May 2022 document would also predate the July 8, 2022 filing with the Commission. The Response also notes an information session, but this does not constitute written notice.

⁴ Although a separate issue that is not involved in the present proceeding, Minnesota Statutes also require an election if a municipal utilities commission is proposed to be

requires an election (in addition to an ordinance/resolution by city council and concurrence by public utilities commission) if “[a]ny such utility” will be “leased, sold, or its operation discontinued wholly or in part....” Minn. Stat. § 412.321, subd. 4 (emphasis added). The only exception to the requirement of an election for the lease, sale, or discontinued operation is if “the action proposed will not result in depriving any customer inside the corporate limits of *any type of municipal utility service* available before the sale, lease or discontinuance of operation.” Minn. Stat. § 412.321, subd. 4. The subdivision reads in full:

Any such utility may be leased, sold, or its operation discontinued wholly or in part, by ordinance or resolution of the council, approved by two-thirds of the electors voting on the ordinance or resolution at a general or special election. If the utility is under the jurisdiction of a public utilities commission, the ordinance or resolution shall be concurred in by the public utilities commission. Such action may be taken with respect to any specific part of the utility, which part shall be named in the ordinance or resolution; but it shall not be necessary to submit the ordinance or resolution to the voters in such case if the action proposed will not result in depriving any customer inside the corporate limits **of any type of municipal utility service available before** the sale, lease or discontinuance of operation. Minn. Stat. § 412.321, subd. 4 (emphasis added).

The present case involves the permanent transfer of all the assigned electric service territory⁵ of North Branch, ceasing municipal electric service at retail. Under the

abolished or “its jurisdiction over any particular utility” is proposed to be transferred from the utilities commission to the city council. Minn. Stat. § 412.391 (2020).

⁵ It also apparently encompasses the sale of electric distribution assets, excluding five generators, preserved for wholesale service to the grid through ECE distribution facilities. DOC Comments, Information Request Response 1, Ex. B, Lease Agreement excerpt, at 2 (noting that North Branch or the City may operate the generators “for the generation, production, transmission, and wholesale sale of electricity from the generators, for emergency purposes or otherwise, and to access and use the Premises for transmission of such produced electricity to the electric grid by and through the ECE owned electric distribution facilities”).

terms of Section 412.321, the North Branch electric utility is being sold or its operation discontinued wholly or in part, requiring the approval of two-thirds of the electors. In addition, the exception at the end of subdivision four is not applicable because the “municipal utility service available before” the sale or discontinuance of operation—municipal retail electric service—will no longer be available to customers inside the corporate limits.

The references to specific utilities throughout the statute makes clear that the focus remains on each particular utility whether it be gas, water, light, power, or heat.⁶ North Branch will no longer provide retail electric service. In other words, that the North Branch Commission retains authority over the water utility is irrelevant. The focus is on the “utility service” being “sold, or its operation discontinued wholly or in part” and the “type of municipal utility service available before” the transaction that will no longer be available to a municipal utility customer after the transaction. Municipal retail electric service will no longer be available within the corporate limits of North Branch after the permanent change in service territory boundaries. The exception does not apply, and an election is required.⁷

⁶ Minnesota Statutes, Chapter 412, contains many references to individual municipal utilities, as opposed to a municipal utilities commission. See, e.g., Minn. Stat. §§ 412.321 (listing each type of utility service, including water, district heating, gas, light, power, and heat, for authority to “own and operate,” establish, or lease, sell, or discontinue operations); 412.371, subd. 1 (requiring a separate fund or account “for each utility”); 412.391, subd. 1 (requiring an election to transfer jurisdiction “over any particular utility” from the utilities commission to the city council); 412.391, subd. 3 (addressing transfer of “any one or more of the utilities previously placed under its [utilities commission] jurisdiction”) **compared with** Minn. Stat. § 412.391, subd. 1 (“The public utilities commission of any statutory city may be abolished” under specified election procedure).

⁷ Although the excerpt of the Asset Purchase Agreement provided, in the second recital, references Section 412.321, subd. 4 and Section 412.361, subd. 5 (which permits

North Branch may not continue to provide retail electric service without any assigned electric service territory. Under these circumstances, Section 412.321 requires approval of the voters through a ballot question at an election. The Commission should not alter the service territory map to reflect the proposed permanent change in service territory boundaries until the requirements of Minnesota Statutes Section 412.321 have been satisfied. In addition to the importance of following proper requirements of statute, it makes little sense to consider a permanent change in boundaries that could be rejected in an election.

To provide clarity on these requirements for future proceedings, the Commission should modify its service area filing checklist. MMUA suggests an addition to the checklist as follows: “For municipal utilities, if municipal utility is leased, sold, or its operation discontinued wholly or in part, provide evidence of compliance with Minnesota Statutes, Section 412.321, subdivision 4.”

CONCLUSION

To ensure compliance with procedural and substantive requirements that affect all municipal utilities—and not to interfere with North Branch’s decision-making—MMUA requests that the Commission require its customary written notice to all customers affected by this service territory boundary proceeding. MMUA also requests that the Commission ensure the compliance with the statutory requirements of an election in Section 412.321 before considering the permanent boundary change. Finally, MMUA

agreements between a city and a municipal utilities commission), the excerpt does not appear to otherwise address the election requirements. DOC Comments, Ex. B, at 1.

requests that the Commission revise its service territory checklist to address the requirements of Section 412.321 for municipal utilities.

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MINNESOTA MUNICIPAL UTILITIES
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