

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

Katie Sieben, Chair
Joseph K. Sullivan, Vice Chair
Valerie Means, Commissioner
Matthew Schuerger, Commissioner
John Tuma, Commissioner

In the Matter of a 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

**CITY OF NORTH BRANCH AND
NORTH BRANCH WATER AND LIGHT
COMMISSION'S REPLY COMMENTS
TO MMUA'S COMMENTS**

INTRODUCTION

The City of North Branch is currently served by three electric companies, ECE (East Central Energy), Xcel Energy and North Branch Water & Light. Prior to 1994, the city of North Branch was approximately 1.5 square miles in size. It has a rich and vibrant history dating back to the early 1900's when the potato industry kept the mill and down town areas busy. A volunteer fire department was created in 1895, relying on the Sunrise River as its source of water. In 1922, the community voted in favor of establishing a municipal water system to support fire suppression needs and to provide a water source for its wastewater system. The new system was funded by the Village of North Branch so it is unclear why the water system was maintained through a separate utility company rather than by the village, but today the water system is separate from city owned utility systems. A need for reliable power led to a similar outcome. In 1940, the citizens of North Branch voted to establish their own power plant under the newly formed North Branch Municipal Power. Diesel engines began to produce energy in 1941. In 1977, North Branch was one of the initial partners in UMMPA which merged with the Southern Minnesota Municipal

Power Agency (SMMPA). Eventually the North Branch Municipal Power company became North Branch Water & Light (NBW&L), governed by a 3-person commission who were appointed by the North Branch City Council. The city of North Branch purchases its power from SMMPA today, but also continues to maintain 5 generators under the terms of a Quick Start agreement with SMMPA whereby the city supplies power as called to do so by MISO.

The City of North Branch merged with the city of Branch in 1994, resulting in a city that is now 36 square miles in size rather than 1.5 square miles. The power needs of the city of Branch were met by ECE and Xcel Energy, meaning that NBW&L would only continue to supply power to the original area of North Branch but with the limited opportunity to acquire adjacent areas through a territory agreement with ECE.

FACTUAL BACKGROUND

MMUA implies that the entire city is served by NBW&L, when in fact this small area is merely an island within the service territory of ECE. There will be an impact to the NBW&L customers only. The majority of the city's residents and business owners will experience no change in their relationships with their electrical provider.

Second, MMUA is not aware of the significant challenges NBW&L has had in servicing customers. NBW&L has two linemen on call 24/7 who have been waiting for over a year to have some relief. Given the limited size of NBW&L territory, budget, and staff, NBW&L cannot meet the needs of its customers in a safe, reliable **and cost effective** manner.

Had MMUA contacted its member, NBW&L, it might have learned about the process by which the NBW&L Commission and City Council undertook to determine the applicable legal

standards and to assess the condition of the utility and its ability to provide electrical service at a reasonable rate. Until as recently as 2019, the NBW&L Commission managed the utility like a small business. Books were maintained on ledger sized, columnar paper. Staff were not trained in accounting practices. The commission did not have a capital improvement plan, a rate plan, or other processes in place to manage a multimillion dollar enterprise. Personnel were not cross trained resulting in high overtime and on call costs to have both power and water employees available during off hours.

In 2020, the commission was increased to 5 members and the North Branch City Council adopted a more robust process for appointing commissioners with business acumen. The resignations of two employees and the retirement of another employee was the catalyst for the commission to form an exploratory committee in 2021 to assess the viability of a separate stand-alone water and power utility.

The exploratory committee concluded that the current status of the utility was dire - it was down three employees and operating with a temp office person and a contract finance director, and was short one lineman. The North Branch City Council needed to appoint two new commissioners without any clear direction as to what the commission needed in terms of relevant experience. The commission concluded that the utility was not a viable stand-alone entity in its current state and was one or two retirements/terminations from a meltdown.

The strategy to combine or merge with the city and possibly transfer power to another electric provider was evaluated. The exploratory committee determined that the option would result in staffing stability (a larger worker pool), cost savings through coordination of resources and elimination of redundancy, the means to pay off bonds from the proceeds from the sale of

assets, and achieve salary savings and reduced office overhead. The exploratory committee recommended and the Commission voted to wind down the utility, enter into a contract with the city of North Branch to hire the utility employees and manage operations and begin discussions regarding the sale of the power distribution assets.

A transitions team was formed consisting of two commission members, two council members, the city administrator and the public works director. The next step was to contact ECE to determine whether the cooperative had any interest in acquiring the distribution assets of NBW&L. Power System Engineering, Inc. was hired under a joint contract with ECE and NBW&L to provide valuation information to aid in negotiations. As a result of the negotiations, NBW&L, the North Branch City Council and ECE entered into a purchase agreement for the sale of the power distribution assets. Following the sale, NBW&L will continue to own and operate five generators under a Quick Start agreement with SMMPA, to supply power to the MISO network upon demand. The Commission will also continue to own and operate the water system that serves the areas of North Branch within its municipal utility service area.

Third, MMUA fails to mention that they have known about this sale for over a year. They did not express any reservation to the sale until after the filing with the PUC was accomplished.

Fourth, North Branch is perplexed that as a member of MMUA, MMUA is not looking out for North Branch's best interest. Any delay in this transaction is problematic for North Branch.

ANALYSIS

MMUA asserts it has "concerns with this proceeding, not to impair North Branch from its local decision-making, but to ensure the proper process and requirements, including meaningful

public input, are preserved not only for this matter, **but for all municipal utilities in similar future matters.**” (MMUA Comments at pp.2-3). Protecting the interest of customers/consumers, not an interest group, should be the foremost consideration.

Second, MMUA wrongly alleges that the entirety of North Branch is being transferred to ECE. (MMUA Comments at p.3). To the contrary, as the filings have pointed out, it is a limited area impacting 2,105 customers for whom NBW&L currently provides electric service.

Third, MMUA is wrong that notice has not been provided to all customers. (MMUA comments at p.3). If they had read the filings of the parties, they would have realized that multiple notices have been provided. In addition to the notices mailed to each customer, the status of discussions, the purchase agreement itself and the anticipated impact to NBW&L customers have been covered at multiple open meetings of the NBW&L Commission and the North Branch City Council. All three local papers have been covering the matter, and a “meet and greet” session was held to give residents an opportunity to ask questions to representatives of the ECE customer service team.

MMUA comments imply that the PUC approval process is the forum through which customers could and should have provided input on the sales transaction, when in fact the PUC is the body that approves the territory change and not the terms of sale. MMUA suggests that another notice, after the transaction is approved, would somehow deprive customers of their ability to provide information to the PUC and this suggestion ignores the other methods by which ECE, the City and NBW&L already provided notice: a written notice in mailers, information in open meetings, and information in newspapers. The requirement for notice has been more than met.

MMUA then makes a curious argument that the notice mailed to customers was somehow misleading by “inaccurately implying that municipal utilities are for-profit entities responsible to shareholders.” (MMUA Comments at 4). After re-reading the notice multiple times NBW&L sees no such reference and is surprised by MMUA’s criticism. Members of cooperatives do receive capital credits, so nothing about the statement is inaccurate.

Fourth, MMUA suggests the parties somehow failed to follow a procedural requirement of the PUC by not providing a notice to customers prior to the sale of their ability to contact the PUC prior to the sale. (MMUA Comments at 3-4). To the contrary, MMUA is adding a timing requirement which is not provided in the PUC check list. In fact, the checklist provides as follows:

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:

Minnesota Public Utilities Commission
121 7th Place E
Suite 350
Saint Paul, Minnesota 55101
Local: 651.296.0406 | Toll Free: 1.800.657.3782
consumer.puc@state.mn.us

If notice to certain customers does not fit neatly into one of the categories of the chart below, please explain in the joint letter detailed in #2 above. Please indicate type and number of customers affected and the date(s) the notice was **or will be** provided:

	Date Notice Provided	Number of Customers	Date Notice will be Provided	Number of Customers
Residential				
Commercial				
Industrial				
Vacant Landowner				
Other				

As the checklist plainly asks for the date the notice “was **or will be provided**,” the information submitted by the parties was specifically permitted.

Fifth, MMUA suggests that the statutes require a special election for an asset sale. They are wrong. Minnesota Statutes, section 412.321 allows a city to establish and own water, gas,

light, power, or heat utilities. *See* subd. 1. A city may place these utilities under the jurisdiction of a public utilities commission (“PUC”). *See* Minn. Stat. § 412.351. Pursuant to Minn. Stat. § 412.321, subd. 4, a utility under the jurisdiction of a PUC, may be leased, sold, or its operation discontinued wholly or in part, by resolution of the city council with the concurrence of the PUC.

If the proposed action will not deprive any customer of any type of municipal utility service available before the action is taken, voter approval by referendum is not required by law.

MMUA highlighted earlier text within this statute but failed to identify the language that followed, that clearly indicates a referendum is not needed for the sale of assets, even if it means the utility will be divesting itself of one of its operating divisions. If any customer will be deprived of such leased, sold or discontinued utility service by the above-mentioned action, then at least two-thirds of the voters must approve the action via public ballot through a referendum. In this case, no customer will lose service as a result of the proposed sale. No special election is required.

That being said, and in contrast to a situation involving the sale of operating assets, Minnesota Statutes, Section 412.391 provides a specific procedure for transferring any utility (e.g., the remaining generation and water operations) under a PUC’s control to a city council. In other words, the absorption of those functions **by the city** which would in essence divest the commission of its autonomy related to those operations, would require voter approval in the form of a ballot question stated substantially as follows: “Shall jurisdiction over [the Water Utility] be transferred from the public utilities commission to the council?” The transfer would only occur if a majority of voters answer the question in the affirmative. Consequently, the City may only transfer the water operations and power generation functions from the Commission to the City if the transfer is approved by the voters.

The procedure for abolishing a PUC is also found in Minnesota Statutes, Section 412.391 and is essentially the same as the procedure for transferring a utility under a PUC's jurisdiction to a city. For a PUC to be abolished, a city must submit the proposed abolition to the voters in the form of a ballot question stated substantially as follows: "Shall the public utilities commission be abolished?" A PUC can only be abolished if a majority of voters approve.

MMUA cited the 2016 voter referendum whereby the residents were asked to vote on the immediate termination of the commission and immediate transfer of all assets of the utility to the city. In hindsight, the referendum was ill-conceived and lacked the thorough planning and intentionality needed to adequately manage such a significant change affecting a multimillion dollar utility for the benefit of the users of the system and the taxpayers of the city. In 2016, the city of North Branch was operating without a city administrator, was embroiled in a contentious election season and there was no time for an orderly transition of customers and service delivery and provision for employees of the utility.

Since 2016, the NBW&L Commission was increased from three members to five members and as indicated above, and the City Council adopted a more robust process for appointing commissioners with business acumen. The resignations of two employees and the retirement of another employee was the catalyst for the commission to form an exploratory committee in 2021 to assess the viability of a separate stand-alone water and power utility. MMUA leadership asserts that it could have helped the utility to develop an operating plan to sustain electrical operations under the ownership and leadership of the commission, but such a plan would have required significant rate increases to not only address the ever increasing costs of power but also substantial increases in labor costs to provide relief to the two linemen who have been working or on call 24/7 for the past two years. The five person commission, composed of business owners, determined

that a stand-alone power utility with no means to grow its customer base is not a cost effective or responsible way to meet the needs of North Branch residents, especially since the area served by NBW&L is completely surrounded by ECE who is willing to freeze rates for three years, provide capital credits under its cooperative structure, and has the ability to serve North Branch in a cost effective way utilizing the principles of “economies of scale”. The five-person commission acted in the best interest of the customers, not by continuing to give themselves a position—but by giving the customers a more affordable option for the uninterrupted provision of electric service.

CONCLUSION

In conclusion, the North Branch Water & Light Commission, the North Branch City Council and ECE have provided notice, complied with applicable statutory authority and have considered all options available to it for providing electrical service to the NBW&L customers. These parties respectfully request that the PUC approve the requested territory assignment. Any new changes in PUC process or procedure as requested by the MMUA should not delay action on the request before it.

Dated: September 28, 2022

CITY OF NORTH BRANCH AND NORTH
BRANCH WATER AND LIGHT
COMMISSION

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