



## Staff Briefing Papers

Meeting Date	December 15, 2022	Agenda Item **
Company	The City of North Branch Water & Light East Central Energy	
Docket No.	<b>E286, E112/SA-22-388</b>	
	In the Matter of the Joint Petition for Approval of a Permanent Service Territory Transfer Between the City of North Branch, North Branch Water & Light Commission, and East Central Energy	
Issues	Should the Commission approve the requested permanent service area transfer?	
Staff	Christian Noyce	christian.noyce@state.mn.us 651-201-2215



### Relevant Documents

### Date

East Central Energy –Initial Filing	July 8, 2022
Department of Commerce – Comment	August 1, 2022
Minnesota Municipal Utilities Association – Extension Variance Request	September 1, 2022
Minnesota Municipal Utilities Association – Initial Comment	September 20, 2022
Public Comment – T. Hals	September 20, 2022
City of North Branch, North Branch Water & Light Commission – Reply Comment	September 28, 2022
Public Comment –M. Hult (in three parts), received outside of comment period	November 2, 2022
Ex Parte Communication	November 7, 2022
Department of Commerce – Response to Reply Comment	November 22, 2022
City of North Branch, North Branch Water & Light Commission – Letter	November 28, 2022

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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 noted otherwise.



## **I. Statement of the Issue**

Should the Commission approve the joint request from the City of North Branch Water and Light and East Central Energy for a permanent service territory transfer and update the electric service territory?

## **II. Background**

On July 8, 2022, East Central Energy and the City of North Branch Water and Light submitted their request to update the Commission's electric service territory mapping through a request to approve a permanent service territory transfer.

On August 1, 2022, the Department of Commerce submitted comment recommending approval of the permanent service area transfer.

On September 1, 2022, the Minnesota Municipal Utilities Association (MMUA) submitted an extension variance request, opening up comment and reply comment periods.

On September 20, 2022, the MMUA submitted their initial comment. Mx. Hals also submitted public comment.

On September 28, 2022, the City of North Branch, North Branch Water & Light Commission submitted reply comments and a certificate of service.

On November 2, 2022, Mx. Hult submitted public comment.

On November 7, 2022, Mx. Noyce received communication from Nathan Keech advocating for their positions and filed the communication as an Ex Parte under Minn. Rules 7845.7000-.7900.

On November 22, 2022, the Department filed a response to the reply comments.

On November 28, 2022, the City of North Branch, North Branch Water & Light Commission filed a letter in response to the Department's November 22 response.

## **III. The Issues**

The City of North Branch is currently served by three electric companies, East Central Electric (ECE), Xcel Energy, and North Branch Water & Light. In 1940, the citizens of North Branch voted to establish North Branch Municipal Power which eventually became North Branch Power & Light. Prior to 1994, the city of North Branch was approximately 1.5 square miles in size but then expanded to 36 square miles after the city of North Branch merged with the city of Branch. The power needs of the city of Branch were met by ECE and Xcel Energy while North Branch Power & Light continued to supply power for the original area of North Branch.

Following the service territory transfer, North Branch Water & Light will continue to own and operate five generators under a Quick Start Agreement with Southern Minnesota Municipal Power Agency



(SMMPA) that will supply power to the Midcontinent Independent System Operator (MISO) upon request.<sup>1</sup>

The Department recommends approval of the service area transfer based upon their checklist for processing agreed upon service area transfers and exceptions. The Department's checklist can be found in their initial comment and mirrors the Commission's checklist both of which utility and Commission contact information, an explanation of the change and a legal description of the property, an explanation on if the agreement is consistent with Minn. Stat. §216B.39, a map of the transfer, and the written notice received by affected customers.<sup>2</sup>

MMUA recommends denying the service area transfer. In their initial comment, MMUA brought up a few topics of discussion regarding the approval of the permanent service territory transfer including issues regarding proper written notice and the statutory requirements of an election.

### **A. Proper Notice**

MMUA believes that the North Branch and East Central Energy have not provided proper notice which should include the utility and Public Utilities Commission contact information. MMUA believes because North Branch and ECE stated they will notify customers of their change in service providers after the transition is approved by the Public Utilities Commission that this approach would not permit customers to provide input to Commission staff while the proceeding is pending and only notify the affected customers after the fact. MMUA also notes that typically the docket number for the proceeding is included in the notice.

MMUA believes the provided documentation from ECE and North Branch does not satisfy the requirements of the Department of Commerce's checklist, specifically the proper notice guidelines. They believe proper notice should be given to allow for those who wish to comment on this record to do so.

The City of North Branch disagrees with MMUA on the issue of proper notice and the ability of customers to comment. They state they have already provided notice via written mailers, information in open meetings, and information via newspapers.

In their initial comment, the Department of Commerce recommends the Commission approve the requested permanent service area transfer. The Department stated that affected customers received written notice, including utility and Commission contact information.

In response to the reply comments, the Department continues to recommend the Commission approve the requested permanent service area transfer. However, upon a secondary review, the Department agreed that customer notice sent in response to the Department July 19, 2022 information request "may not be sufficient."<sup>3</sup> The Department felt the language did not clearly state the "nature or finality" of the transfer and that the notice could easily be missed due to other unrelated information being

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<sup>1</sup> Reply Comment, City of North Branch Power & Light, Docket 22-388, pdf p 4

<sup>2</sup> The PUC filing checklist can be found here: <https://mn.gov/puc/activities/economic-analysis/maps/>

<sup>3</sup> Response to Reply Comment, DOC, Docket 22-388, pdf p. 2

included. The Department continues in their response that they find the petition met the requirements for the approval, aside from the customer notice portion.

On November 2, 2022, the Commission received public comment outside of the comment period from Mx. Hult that provided a number of local news attachments describing the history surrounding the transfer of this service area. In it, Mx. Hult, a North Branch Water & Light customer who has been following this docket, expressed anxiety and concern regarding the transparency in the transfer and its history. Mx. Hult felt the notice they received was not enough.

On September 19, 2022, the Commission received a public comment from North Branch resident Mx. Hals. In said comment, Mx. Hals discussed the previous election in 2016 that weighed in on the local utility issue of whether to “keep the Municipal Water and Light Utility as is...”<sup>4</sup> Mx. Hals noted in his comment that 60%, or the two thirds, voted in 2016 to keep the municipal utility. The electoral issues will be discussed in the next section below.

## B. Electoral Matters

MMUA believes that the Public Utilities Commission should consider the statutory requirements of the electoral process in this record. They note Minnesota Statutes, Section 412.321 which discusses these requirements. Subd. 4 discusses the lease, sale or abandonment of a municipal utility:

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** (emphasis added).

MMUA believes 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 and recommends to the Department that they clarify their service filing checklist regarding municipality utility lease, sale, or discontinuation. MMUA ask that the Commission ensure that the statutory requirements are met. MMUA also provided similar comment regarding this topic in another service territory transfer, docket 22-587.

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<sup>4</sup> Public Comment –T. Hals, Docket 22-388

#### **IV. Response**

The City of North Branch responded to MMUA's comments regarding notice and the electoral issues. The City of North Branch noted that the proposed action will not deprive any customer of any type of municipal utility service available before the action was taken and that voter approval by referendum is not required by law. North Branch Power & Light states that no customer will lose service as a result of the proposed sale.

The City of North Branch also expanded upon the 2016 voter referendum stating residents were asked to vote on the immediate termination of their commission and immediate transfer of all assets of the utility to the city. As before, the City of North Branch noted North Branch Water & Light will continue to own and operate five generators under a Quick Start Agreement with SMMPA.

The Department of Commerce did not provide comment regarding these electoral matters as the Department believes its involvement in service territory matters is limited to fulfillment of Minn. Stat. § 216B.39 requirements and those on the Commission's checklist.

However, upon a secondary review of the items submitted in the initial filing, the Department agreed that the customer notice sent in response to the Department's July 19, 2022 information request lacked clarity and recommended North Branch send a clear communication which follows item 6 on the Commission's checklist to affected customers.<sup>5</sup>

On November 28, 2022, The City of North Branch, North Branch Water & Light Commission submitted to the docket a letter with the contact information for North Branch Water & Light, East Central Energy, and the Public Utilities Commission. In the letter, they stated that customers would receive notice at least one month prior to the effective date of sale with additional information about the transfer of their accounts as well.

#### **V. Staff Analysis**

Staff would like to thank Mx. Hult and Mx. Hals for their public comment on this service territory transfer.

The Commission has a long-established process for service area transfers based primarily on Minn. Stat. §216B.39 which involves consideration of the issues outlined in the Commission's filing checklist<sup>6</sup>, comment period, and agenda meeting. A service area transfer request must be in writing by the utility and show good cause (Minn. Stat. §216B.39; Subd. 1).

The electoral issues raised by MMUA relate to Minn. Stat. §412.321; subd. 4.

##### **Proper Notice**

Commission staff understand the concern from MMUA regarding proper notice. Staff looks to verify that a utility's notice to customers includes the utility (in this case North Branch Water & Light and East Central Energy) as well as the Minnesota Public Utilities Commission (PUC) contact information. This

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<sup>5</sup> Response to Reply Comments, DOC, Docket 22-388, pdf p. 2

<sup>6</sup> Available at <https://mn.gov/puc/activities/economic-analysis/maps/>

allows customers to contact their utility and the PUC with questions or concerns regarding the sale before, during, and/or after the completion of the sale. The Commission's filing checklist on p. 2 states: "Please indicate type and number of customers affected and the date(s) the notice was **or will be provided**" (emphasis added).

Clearly this sale is of interest to the customers as we had multiple North Branch residents submit comment to this record. This comment from Mx. Hals and Mx. Hult in a type of docket that normally does not see customer participation indicates to staff that notice by East Central and North Branch may have enabled them to speak up on their behalf. However, to make sure that affected customers are provided clear contact information in their notice, the Commission could require that North Branch provide a secondary notice no more than 30 days after publication of the Order in Docket 22-388. This aligns with the Department's recommendation in their response to reply comments filed on November 22 where they recommend North Branch send out a clear communication which follows item 6 on the Department's checklist.

If the Commission chooses Decision Option 2, the parties engaging in the transfer will submit a copy of this secondary notice into the record no more than 30 days after the publication of the Order in Docket 22-388. They may submit this secondary notice to the record even before the Order publication if they wish, once the notice is sent. This secondary notice will clearly state both the North Branch and ECE utilities contact information and the Minnesota Public Utilities Commission's address, phone number, and email:

#### **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](mailto:consumer.puc@state.mn.us)

The notice should alert their affected customers to the fact that the parties expect the sale to occur and be finalized shortly.

#### **Electoral Matters**

Regarding the electoral matters brought up by the parties, Commission staff believe these matters to be outside of the scope of this docket at this time. As discussed above and in the Commission and Department's filing checklists, this docket, and service territory transfer dockets as a whole, focus on the proper notice and information needed to update Commission maps. These electoral matters do not fall under the Commission's typical review.

MMUA recommended including a new item on the checklist which indicates if the utility has met the standards set out in Minn. Stat. §412.321; subd. 4 for municipal utility lease, sale, or discontinuation. At this time, Commission staff does not recommend the addition of another item on our checklist.

## VI. Decision Options

1. Approve the requested permanent service area transfer. (*City of North Branch Water & Light, ECE*)

**OR**

2. Approve the requested permanent service area transfer with the stipulation that the City of North Branch Water & Light provide a secondary notice with the contact information for the utility and the Commission as stated above within 30 days of this order and submit this secondary notice into the record of Docket 22-388. (*MMUA, Department as interpreted by Staff*)

**AND**

3. Request that the Minnesota Geospatial Information Office (MnGEO) update the Commission's maps to reflect the service area designations as shown on the map in the petition. (*Staff*)

**AND**

4. Include on the Commission checklist an item which indicates if the utility has met the standards set out in Minn. Stat. §412.321; subd. 4 for municipal utility lease, sale, or discontinuation. (*MMUA*)