

E-119/C-92-318; E-119/C-93-721 ORDER DENYING MOTION TO AMEND,
OPENING DOCKET, AND DIRECTING ANSWER

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Cynthia A. Kitlinski
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint
Against Lake Region Cooperative
Electric Association

ISSUE DATE: August 4, 1993
DOCKET NO. E-119/C-92-318

In the Matter of Complaint
Proceedings Regarding Utility-
Related Electrical Conditions at
the Darrell Franze Farm

DOCKET NO. E-119/C-93-721
ORDER DENYING MOTION TO AMEND,
OPENING DOCKET, AND DIRECTING
ANSWER

PROCEDURAL HISTORY

I. Proceedings to Date

On June 10, 1993, complainants Lonnie Nelson and Darrell Franze filed a petition seeking to amend their original complaint to include concerns regarding electrical conditions at the farm of Darrell Franze. Mr. Franze's farm is located next to the farm of his father Lowell Franze which contains the Franze dairy barn that is subject to the original complaint, Docket No. E-119/C-92-318. Located on Darrell Franze's farm is the residence of Darrell Franze and various livestock facilities. References in this Order to Darrell Franze's farm apply to both the residence and the livestock areas.

On July 1, 1993, Lake Region Cooperative Electrical Association (Lake Region) filed a reply requesting that the Commission deny the petition on grounds that it was improperly filed.

On July 9, 1993, complainant Darrell Franze filed comments on Lake Region's reply to his petition to amend.

No other filing was received regarding this matter.

On July 20, 1993, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

II. The Petition

In their June 10, 1993 petition, Complainants alleged that there are electrical conditions at the Darrell Franze farm which require the immediate attention of the Commission. Conditions alleged were electric shocks in the bathtub/shower and kitchen sink of the residence and electric current in the livestock area causing various animal health problems including loss of several head of cattle. Complainants alleged that their own investigation proved that the electrical conditions complained of come directly from Lake Region's primary neutral. Complainants alleged that Lake Region had been informed of these conditions and invited to investigate and alleviate these conditions but had failed to do so. Complainants requested permission to amend their current Complaint in Docket No. E-119/C-92-318 to include these conditions. Complainants argued that to do so would expedite attention to these conditions. Finally, they requested temporary relief in the form of an order requiring Lake Region to install an isolator at the farmsite.

III. Lake Region's Reply

In its July 1, 1993 reply, Lake Region responded to both the petition to amend and the request for temporary relief:

A. The Request to Amend

With respect to amending the Complaint, Lake Region objected that the procedural process used by the Complainants was not appropriate, that Minn. Rules, Part 7830.2500 provides that amending the Complaint at this point can only be done by Order of the Commission's presiding officer, and that such an Order can only be issued pursuant to a motion, notice of motion and hearing on the motion. On the merits of amending the Complaint as requested, Lake Region argued that the amendment materially altered the original Complaint, expanding the investigative process to an additional farm, thereby delaying and forestalling application of data gathered to date for the two farms subject to the current Complaint.

B. The Request for Temporary Relief

Regarding the temporary relief requested (installation of an isolator at the Franze farmsite), Lake Region denied that it had been unresponsive to requests for attention to conditions at the Franze farm. Lake Region indicated that it had first heard of a concern for electrical conditions at the Franze farm in a letter from Commission Staff on May 27, 1993 and that it had accepted Commission Staff's suggestion that the matter would be handled as a separate informal complaint. Lake Region stated that it had attempted to test and continued to be willing to test at the

Franze farm to determine whether an isolator would be appropriate but that Mr. Franze had imposed unacceptable conditions on the testing. According to Lake Region, Mr. Franze refused to allow Lake Region personnel on the premises to conduct the testing unless Lake Region 1) agreed not to inspect on-farm wiring conditions and the house plumbing and 2) agreed to do testing which was, in Lake Region's view, beyond the capability of Lake Region's equipment.

Regarding the requested isolator, Lake Region stated that its policies provide that it will install either a Ronk or a Dairyland isolator for a period of six months without payment by the customer, but only after it has been able to conduct verified testing of the premises that shows a scientific basis for the installation and that there are no other electrical conditions that would create safety hazards or affect the operation of an isolation device on the premises.

IV. Complainants' Response

Regarding the entry impasse issue, Mr. Franze denied that he was making unreasonable demands. He noted that the Wave Rider that Lake Region proposed to use at the premises (leased from Otter Tail Power Company) had eight channels and so could measure the seven points he had requested rather than the five points proposed by Lake Region. He argued that in this case amperage should be measured as well as voltage because a major exposure at issue in this case (human exposure) has been researched more in terms of amperage than voltage. Accordingly, the testing devices currently used by Lake Region which measure only voltage (the Chessel or the Wave Rider), should be augmented by a device that can measure amperage. Finally, he denied that inspection of his on-farm wiring and plumbing conditions was required for safety or any other relevant purpose. To overcome the current impasse, however, and to expedite this matter, Mr. Franze agreed at the hearing to allow Lake Region to conduct testing using its own protocol.

V. Commission Analysis

A. Amendment

After the original time for answering or replying to a formal complaint has expired, a formal complaint may be amended only by order of the Commission or, if the matter has been referred for contested case proceedings, by the Administrative Law Judge (ALJ) for good cause shown upon motion and notice to all parties to the proceeding. Minn. Rules, Part 7830.2500. In deference to the fact that Complainants are not represented by counsel and because it generally prefers to move to the merits of anything brought before it, the Commission will not view the fact that Complainants styled their filing a petition rather than a motion as a fatal defect, as Lake Region suggests. The filing is

clearly in the nature of a motion and will be treated as such. In addition, the need for notice to the parties and a hearing on the motion appears to have been anticipated by the Complainants and has been afforded the Respondent Lake Region. In short, the procedural defects advanced by Lake Region lack substance.

Proceeding to the merits of the Complainants' request, the Commission is not convinced that good cause exists to allow the proposed amendment, as required by Minn. Rules, Part 7830.2500. The Commission finds that inclusion of allegations regarding conditions at the Darrell Franze farm and Lake Region's responsibilities in that regard would materially expand the scope of the Complaint which, to date, has focused on electrical conditions at the farms of Lowell Franze and Lonnie Nelson. The Commission notes that this is a particularly critical stage in dealing with those farms. The second round of testing and comments from parties has recently been received in that matter. The Commission finds that inclusion of the Darrell Franze farm would inevitably delay consideration of data collected regarding those two farms and would delay resolution of the electrical problems allegedly caused by Lake Region at those farms. Finally, while the Commission is convinced that the allegations regarding the Darrell Franze farm warrant prompt attention, the better way to provide that attention is for the Commission to initiate a complaint proceeding on its own motion as a separate matter rather than mixing the allegations regarding the Darrell Franze farm into the current complaint at this juncture.

Accordingly, the Commission will deny Complainants' motion to amend the current formal complaint and, on its own motion pursuant to Minn. Stat. § 216B.17, Subd. 1 (1992), will initiate a complaint proceeding to process the subject matter of the proposed amendment.

B. The New Complaint Proceedings

The new proceeding will be assigned to a separate docket, E-119/C-93-721. The sole Complainant in this new matter is Darrell Franze and the Respondent is Lake Region. Other parties desiring to intervene in this new matter shall do so pursuant to Minn. Rules, Part 7830.2200.

The scope of the new Complaint is defined in the Complainants' June 10, 1993 Petition to Amend. In short, the subject of the Complaint is the electrical conditions at the Darrell Franze farm and the responsibility of Lake Region with respect to those conditions. Issues raised by the Complaint include what those electrical conditions are, how they are appropriately measured, what the consequences and cause(s) of those conditions are, whether Lake Region's complaint response procedures are appropriate and whether its responses in this particular instance were appropriate, and, as necessary, appropriate measures to alleviate any unsafe conditions on the Darrell Franze farm attributable to Lake Region.

Lake Region will be granted 30 days from the date of this Order, rather than the 20 days provided in Minn. Rules, Part 7830.1900 to file an Answer to this new Complaint. The additional 10 days is granted to allow Lake Region adequate time to include results of its testing at the Franze farm, as described in the following section.

With respect to the testing that Lake Region conducts at the Franze farm as part of its response to this new Complaint, the Commission is not in a position, at this point, to require Lake Region to use any particular testing protocol. Arguments between Mr. Franze and Lake Region regarding what testing protocol is reasonable or preferable are not ripe, on the record developed to date, for Commission decision. In view of the desirability of moving forward with this new complaint, therefore, Mr. Franze's decision announced at the hearing to allow Lake Region on the premises to conduct its testing pursuant to its own procedures is constructive. At the same time, the Commission expects that Lake Region will proceed expeditiously, as it promised at the hearing, to 1) use its Chessel equipment at once and the Wave Rider equipment within the following weeks,¹ and 2) file its answer to the merits of the new Complaint within 30 days of this Order.

C. The Request for Temporary Relief

The Commission is not prepared on the basis of this record to order Lake Region to install an isolator at the Franze farm, as requested in the Petition to Amend. The record does not contain responsive testing data from Lake Region and testing witnessed by the Commission's Staff at the Franze farm on May 27, 1993 did not verify unsafe levels of electricity in the Franze bathtub. At the same time, the Commission is concerned, on the basis of allegations contained in the Petition, for the safety of the Franze household and livestock. Moreover, at least some of those allegations appear to be confirmed by testing witnessed by Commission Staff.²

¹ Of course, if the more sophisticated Wave Rider equipment becomes immediately available, it could be used in lieu of the Chessel. In such a case, testing with the Chessel would be unnecessary.

² Though unable to confirm excessive contact voltage at the Franze residence, testing witnessed by Commission Staff at the Franze farm on May 26, 1993 did show excessive contact voltage from the waterer in the calf pen to earth. In addition, the testing showed elevated non-contact voltage levels at several other points: 1) from the faucet to the earth reference outside the bathroom window, 2) from the drain to earth reference, 3) and on the primary neutral to reference earth when feed mixing equipment was operating at the neighboring Lowell Franze farm. These test results were provided to Lake Region by Commission Staff on May 27, 1993.

In light of these potentially dangerous conditions, the Commission would expect both Mr. Franze and Lake Region to act prudently and cooperatively to avoid prolonging any potentially dangerous conditions. Prudence on the part of Mr. Franze would appear to include his carrying through on his announced intention to promptly address any on-farm wiring defects identified in the course of the testing as contributing to the problem. Likewise, prudence on the part of Lake Region could include installation of an isolator as a temporary preventive measure without waiting for a Commission Order to do so.³ As was pointed out to Lake Region at the hearing, there is nothing to stop Lake Region from installing an isolator at the Franze farm at once.

ORDER

1. The Petition to Amend filed by Darrell Franze and Lonnie Nelson in Docket No. E-119/C-92-318 is denied.
2. On its own motion, the Commission initiates a complaint proceeding to deal with the allegations contained in the Petition to Amend and opens Docket No. E-119/C-93-721 for that purpose. The scope of this Complaint shall be as set forth in the text of this Order at page 4.
3. Within 30 days of this Order, Lake Region Cooperative Electrical Association (Lake Region) shall file an Answer to the Complaint. The Answer shall include results from the testing Lake Region conducts at the Franze farm.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

³ The Commission notes that Mr. Franze has indicated acceptance of either a Ronk or a Dairyland isolator, brands customarily offered by Lake Region, but that his preference is for the spark-gap isolator. The spark gap isolator, which the Commission found suitable at least for investigative purposes and ordered installed at the Lowell Franze and Lonnie Nelson farms in the original complaint docket (E-119/C-92-318), is much less costly than the Ronk or Dairyland isolators.