

William A. Schlossman, Jr.

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JUL 15 2008

PUBLIC SERVICE COMMISSION

July 14, 2008

Executive Secretary  
Public Service Commission  
600 East Boulevard Avenue  
Dept. 408  
Bismarck, ND 58505-0480

RE: PSC Application for Approval of Service Area Agreement / CCEC & Otter Tail Power  
Casselton, ND

To Whom It May Concern:

Please find enclosed the original and seven copies of a Joint Application for Approval of Service Area Agreement.

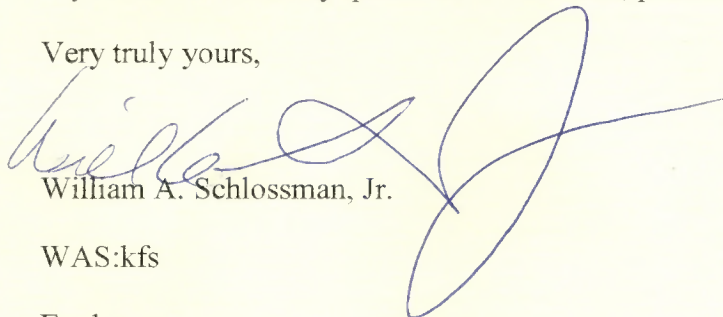
The Application incorporates the following documents:

1. Certificate of Good Standing, State of North Dakota for Otter Tail Corporation
2. Certificate of Good Standing, State of North Dakota for Cass County Electric Cooperative, Inc.
3. Service Area Agreement (Casselton)

The Amended and Restated Articles of Incorporation of Cass County Electric Cooperative, Inc. are on file in connection with other matters.

If you should have any questions or concerns, please contact me.

Very truly yours,



William A. Schlossman, Jr.

WAS:kfs

Enclosure

1 **PU-08-551** Filed: 7/15/2008 Pages: 21  
Application, Corporate Papers, Service Area Agreement, Map

Otter Tail Corporation

vogel-#589639-v2-letter\_ccec\_psc\_filing\_for\_approval

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

In the matter of the Joint Application of	)	
Otter Tail Corporation, d/b/a Otter Tail	)	
Power Company and Cass County	)	Joint Application for Approval of
Electric Cooperative Inc. for approval of	)	Service Area Agreement Under
a Service Area Agreement covering the	)	NDCC § 49-03-06
Area in and around Casselton, North	)	
Dakota under NDCC § 49-03-06	)	

Applicants respectively represent to the commission as follows:

1.

Otter Tail Corporation ("Otter Tail") is a Minnesota corporation, doing business in North Dakota as "Otter Tail Power Company" and is authorized to do business in the State of North Dakota. Otter Tail's principal address is PO Box 496, 215 S Cascade Street, Fergus Falls, MN 56538-0496. Its principal address in North Dakota is PO Box 9156, 4334 18th Avenue SW, Fargo, ND 58106-9156. Otter Tail is a public utility under the laws of North Dakota, engaged in the generation, transmission, and distribution of electricity. Otter Tail's Articles of Incorporation are currently on file with the Public Service Commission. A Certificate of Good Standing issued by the Secretary of State from the states of Minnesota and North Dakota is filed herewith, with a copy attached as Exhibits A-1 and A-2.

2.

Cass County Electric Cooperative Inc. ("Cass Electric") is an electric cooperative organized in North Dakota under N.D.C.C. Chapter 10-13, with its principal place of business at PO Box 8, 491 Elm Street, Kindred, ND 58051. The Amended and Restated Articles of Incorporation of Cass Electric are currently on file with the Public Service Commission. A Certificate of Good standing issued by the Secretary of State of the State of North Dakota is filed herewith, with a copy attached as Exhibit B-1. Cass Electric is engaged in the distribution of electricity in 10 counties in eastern North Dakota.

3.

Otter Tail and Cass Electric operate adjacent and intermingled electrical distribution systems in Casselton, North Dakota and in the surrounding areas located in Everest and Casselton townships.

4.

Under the authority granted by N.D.C.C. Section 49-03-06 Otter Tail and Cass Electric have entered into a Service Area Agreement, a copy of which is attached as Exhibit C. Among other matters, the Service Area Agreement: (a) allocates to Otter Tail and Cass Electric specified service areas within the City of Casselton in the

adjacent areas of Everest and Casselton townships (the "Service Territory") (b) establishes service quality standards and agreements to cooperate, and establishes the authority of the City of Casselton to regulate the franchises of the parties within its area of jurisdiction; and (c) retains the authority of the City of Casselton to enforce the terms of any existing or future franchise agreement. By its terms, the Service Area Agreement is subject to the approval and continuing jurisdiction of the Commission.

5.

The Service Area Agreement is in the public interest by, among other matters: (a) creating the certainty necessary for both applicants to plan and operate efficiently within the service territory granted to them; (b) establishing service areas which will avoid unreasonable duplication of electric facilities; (c) mandating that both parties provide electric service consistent with applicable standards specified therein, so as to best assure adequate and reliable electric service to customers; and (d) establishing agreements which will help avoid territorial disputes between the parties their service in the Service Territory.

6.

The Service Area Agreement was approved by the City of Casselton at a meeting of its City Council held on the 5th day of May, 2008.

7.

For the reasons more fully set forth above, the applicants believe that it is proper and in the public interest for the Commission to approve the Service Area Agreement, and grant Otter Tail a Certificate of Public Convenience and Necessity authorizing it to extend its plant and system within the portions of the Service Territory to be served by Otter Tail under the Service Area Agreement.

WHEREFORE, applicants request that the North Dakota Public Service Commission enter an Order:

1. Approving the Service Area Agreement in accordance with N.D.C.C. Section 49-03-06;
2. Granting to Otter Tail a Certificate of Public Convenience and Necessity authorizing it to extend its plant and system and to provide electric service to service locations within the Otter Tail service area set forth in the Service Area Agreement;
3. Granting such other relief as the Commission may deem lawful, just and proper.



# State of Minnesota

## SECRETARY OF STATE

### Certificate of Good Standing

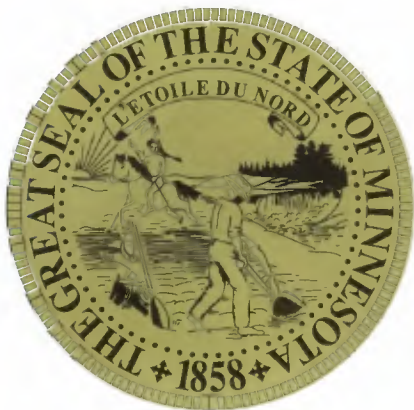
I, Mark Ritchie, Secretary of State of Minnesota, do certify that: The corporation listed below is a corporation formed under the laws of Minnesota; that the corporation was formed by the filing of Articles of Incorporation with the Office of the Secretary of State on the date listed below; that the corporation is governed by the chapter of Minnesota Statutes listed below; and that this corporation is authorized to do business as a corporation at the time this certificate is issued.

Name: Otter Tail Corporation

Date Formed: 07/05/1907

Chapter Governed By: 302A

This certificate has been issued on 07/07/08.



*Mark Ritchie*  
Secretary of State.

# *State of North Dakota*

## SECRETARY OF STATE



### CERTIFICATE OF GOOD STANDING OF

OTTER TAIL CORPORATION

The undersigned, as Secretary of State of the State of North Dakota, hereby certifies that OTTER TAIL CORPORATION, a Minnesota corporation, authorized to transact business in the State of North Dakota on February 24, 1914, and according to the records of this office as of this date, has paid all fees due this office as required by North Dakota statutes governing foreign corporations.

**ACCORDINGLY** the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Good Standing to

OTTER TAIL CORPORATION

Issued: June 30, 2008

A handwritten signature in black ink, reading "Alvin A. Jaeger".

Alvin A. Jaeger  
Secretary of State

# *State of North Dakota*

## SECRETARY OF STATE



### CERTIFICATE OF GOOD STANDING OF

CASS COUNTY ELECTRIC COOPERATIVE INC.

The undersigned, as Secretary of State of the State of North Dakota, hereby certifies that CASS COUNTY ELECTRIC COOPERATIVE INC. , a North Dakota ELECTRIC COOPERATIVE, was incorporated in this office on March 30, 1937 and, according to the records of this office as of this date, has paid all fees due this office as required by North Dakota statutes governing a North Dakota ELECTRIC COOPERATIVE.

**ACCORDINGLY** the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Good Standing to

CASS COUNTY ELECTRIC COOPERATIVE INC.

Issued: June 17, 2008

A handwritten signature in black ink, reading "Alvin A. Jaeger".

Alvin A. Jaeger  
Secretary of State

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904,200 COOP  
File # 1590

ARTICLES OF AMENDMENT  
TO ARTICLES OF INCORPORATION  
OF CASS COUNTY ELECTRIC COOPERATIVE INC.

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APR 24 2006

SEC. OF STATE

The undersigned adopts the following Articles of Amendment to the Articles of Incorporation of Cass County Electric Cooperative Inc. (the "Cooperative") in accordance with the requirements of N.D.C.C. Chapter 10-13:

I.

The name of the corporation is: Cass County Electric Cooperative Inc.

II.

The Articles of Incorporation of the Cooperative are amended and restated in their entirety as specified in the Amended and Restated Articles of Incorporation attached as Exhibit A.

III.

A resolution approving the adoption of the Amended and Restated Articles of Incorporation of the Cooperative as specified in these Articles of Amendment was approved by the members of the Cooperative at a meeting held April 10, 2006 at which a quorum was present, with 317 members voting in favor of the amendment and 6 members voting in opposition to the amendment. At the time the Amendment was adopted, the Cooperative had 24,581 members.

IV.

The Amended and Restated Articles of Incorporation supersede the original articles and all amendments thereto.

Dated this 20 day of April, 2006

CASS COUNTY ELECTRIC COOPERATIVE INC.

*Scott W. Handy*  
\_\_\_\_\_  
President

2792.4

NORTH DAKOTA  
Filed 5-3 2006  
*Michael D. ...*  
SECRETARY OF STATE  
M.D.H.



4/18/06

Exhibit A

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
CASS COUNTY ELECTRIC COOPERATIVE INC.

These Amended and Restated Articles of Incorporation are adopted for the purposes of amending and superseding the Articles of Incorporation of Cass County Electric Cooperative, Inc., an electric cooperative corporation under N.D.C.C. Chapter 10-13 (the "Act"):

**ARTICLE I**

The name of the Corporation is: Cass County Electric Cooperative Inc.

**ARTICLE II**

The Corporation is organized to provide electric service to persons or entities who are authorized to be members of the Corporation under the Act, and to engage in all other activities and services authorized by the Act. The Corporation will operate as a tax exempt cooperative under the Internal Revenue Code of 1986, as amended (the "Code"). The Corporation will have:

- A. All powers authorized by the Act and N.D.C.C. Chapter 10-15 except where any such powers are inconsistent with the requirements of the Act.
- B. The right to serve non-members to the full extent authorized by the Act.

**ARTICLE III**

The number of directors of the Corporation is to be specified in the bylaws of the Corporation, but in no event may be less than five (5) and no more than eighteen (18) members.

**ARTICLE IV**

The principal office of the Corporation is located at 491 Elm Street, PO Box 8, Kindred, ND 58051-0008.

**ARTICLE V**

The duration of the Corporation is perpetual.

## ARTICLE VI

The Corporation will have no capital stock.

## ARTICLE VII

The Bylaws of the Corporation may fix the terms and conditions upon which persons or entities may be admitted to and retain membership in the Corporation, provided that the requirements are not inconsistent with these Articles of Incorporation or the Act.

## ARTICLE VIII

**Section 1.** All patrons must furnish and contribute to the Corporation, and the Corporation will receive from its patrons, as capital the amount by which revenues received by the Corporation from patrons for furnishing electrical service, reduced by the amount of any rebates to patrons authorized by the board, exceed the Corporation's costs and expenses of furnishing electrical service, consistent with the requirements of the Act and the Code ("Operating Margins").

**Section 2.** The Corporation will annually allocate to, and pay by credit to a capital account for each patron, Operating Margins in proportion to the value or quantity of the electricity used by each patron during the applicable fiscal year ("Capital Credits") in the manner required by the Act and the Code. Capital Credits must be treated as though the Corporation paid the Capital Credit amounts to each patron in cash pursuant to a preexisting legal obligation, and each patron furnished or contributed the Capital to the Corporation in the corresponding Capital Credit amounts.

**Section 3.** If the Corporation is a member or patron of an entity providing a good or service used by the Corporation in providing electrical power to its patrons ("Affiliated Entity"), then, to the extent the Affiliated Entity allocates or credits funds, amounts, or capital to the Corporation in proportion to the value or quantity of the goods or services used by the Corporation ("Affiliated Entity Allocated Capital"), the Corporation may separately allocate and credit to its patrons the Affiliated Entity Allocated Capital ("Affiliated Capital Credits") in proportion to the value or quantity of the energy purchased by each patron.

**Section 4.** The board of directors is authorized to adopt bylaws, policies and rules and regulations restricting the sale or other transfer of capital credits. The board may redeem and pay patrons for capital credits at the time and in the manner it determines, consistent with the requirements of these articles of incorporation, the Act, the Code, and any bylaws and policies adopted by the board.

**Section 5.** The Corporation may set off any balance owing by a member to the Corporation against any amounts owed by the Corporation to the member for capital credits redeemed.

## ARTICLE IX

**Section 1.** Seventy-five (75) members present in person or represented by proxy will constitute a quorum for the transaction of business at all meetings of the members.

**Section 2.** The Board of Directors has the power to make, adopt modify and amend bylaws and policies, rules and regulations, not inconsistent with these Articles of Incorporation, as it may deem advisable for the management, administration and regulation of the business and affairs of the Corporation.

**Section 3.** The private property of the members of the Corporation is not subject to the payment of, and no member shall be individually responsible for, corporate debts to any extent whatever.

## ARTICLE X

Upon liquidation of the Corporation, the assets of the corporation will be distributed as reasonably determined by its board of directors, consistent with the following parameters:

- A. The Corporation must first pay, satisfy, or discharge all Corporation debts, obligations, and liabilities;
- B. Thereafter, the Corporation will then retire and refund, without priority, all outstanding Capital Credits allocated to current and former patrons of the Corporation.
- C. After paying, satisfying, or discharging all Corporation debts, obligations, liabilities and Capital Credits as set forth in subpart A and B above, any remaining assets will be distributed to current and former members and patrons of the Corporation in a manner determined by the board of directors.

APPROVED BY MEMBERS: April 10, 2006

## SERVICE AREA AGREEMENT

This Agreement, dated as of the 5<sup>th</sup> day of May, 2008, is made between Otter Tail Corporation, d/b/a Otter Tail Power Company, with its address at 215 South Cascade Street, Fergus Falls, Minnesota 56537 ("Otter Tail") and Cass County Electric Cooperative Inc., with its address at P.O. Box 8, Kindred, North Dakota 58051 ("CCEC"). CCEC and Otter Tail are hereafter referred to individually each as a "Party" and cumulatively as the "Parties" to this Agreement.

### RECITALS

WHEREAS, Otter Tail is a Minnesota corporation and a public utility providing electrical service to customers in North Dakota, Minnesota, and South Dakota;

WHEREAS, CCEC is a North Dakota electric cooperative corporation, providing electric service in various counties in eastern North Dakota;

WHEREAS, in order to encourage harmony and operational efficiencies among electric providers, promote safety, discourage unreasonable duplication of electric facilities, assure adequate and reliable electric service for consumers and territories within North Dakota, and provide antitrust immunity to electric providers that negotiate service area agreements, in 2005 the North Dakota Legislative Assembly enacted a bill codified as NDCC § 49-03-06 (the "Act") authorizing electric utilities to enter into agreements designating the service areas of the Parties; and

WHEREAS, Otter Tail and CCEC believe a service area agreement between them relative to their facilities in and around Casselton, North Dakota, is consistent with the purposes of the Act.

NOW, THEREFORE, in consideration of the mutual covenants and agreements, the Parties agree as follows:

### ARTICLE 1. SERVICE AREA

1.1 Otter Tail Territory. From and after the Effective Date, Otter Tail shall provide electric service, consistent with the requirements of its franchise with the City of Casselton, North Dakota, and applicable law, to all electric customers in the Otter Tail Service Area designated on Schedule 1 attached to this Agreement ("Otter Tail Service Area").

1.2 CCEC Territory. From and after the Effective Date, CCEC shall provide electric service, consistent with the requirements of its franchise with the City of Casselton, North Dakota, and applicable law, to all electric customers located in Casselton and Everest Townships which are not located in the Otter Tail Service Area ("CCEC Service Area").

1.3 Exclusive Territory. Except as provided below, Otter Tail shall not provide electric service to any customers located within the CCEC Service Area, and CCEC shall not provide electric service to any customers located within the Otter Tail Service Area. Notwithstanding the foregoing, each Party is permitted to continue to serve locations in the other Party's territory if either (i) the Party was providing electric service to a customer at the location on the Effective Date or (ii) neither Party was providing electric service to the location on the effective date, and the Party provided electric service to a former customer at that location within 120 days prior to the Effective Date. Each Party shall continue to be the service provider for each such customer in the other Party's Service Area, until such time as:

- (A) the location serviced has been abandoned and electric service disconnected for a continuous period of at least 120 days; or
- (B) the customer makes a material change of its use of the property, or modifies the structures, facilities, or other improvements on the location, and such change or modification necessitates a replacement or substantial modification of the electric service facilities historically used to serve the location (including, but not limited to, a change from single-phase service to three-phase service), or if the change or modification requires additional service to new structures, facilities, or improvements due to a subdivision of the customer location after the Effective Date; or
- (C) the Parties and the customer mutually agree in writing to the transfer of electric service.

1.4 Agreements to Serve Following the Effective Date. Notwithstanding anything herein to the contrary, the Parties may at any time mutually agree (in writing) that any new or existing customer in one Party's Service Area shall be served by the other Party, either temporarily or permanently.

1.5 Scope of Agreement. This agreement is intended to govern the allocation and provision electrical service by and between Otter Tail and CCEC within Casselton and Everest Townships. The provision of electric service to customers outside Casselton and Everest Townships will be governed by applicable law, any future amendments extending the scope of this agreement, or new service area agreements which may be made between the parties.

## **ARTICLE 2. TERM**

2.1 Effective Date. The term of this Agreement will commence upon the occurrence of last to occur of the following events (the "Effective Date"):

- (A) The execution of this Agreement by both parties;

- (B) The approval of this Agreement by the City Council of Casselton, North Dakota; and
- (C) The approval of this Agreement by the North Dakota Public Service Commission.

2.2 End of Term. This Agreement may be terminated at any time by the mutual agreement of the Parties. Otherwise, this Agreement shall continue in effect through December 31, 2033, and thereafter, this Agreement shall automatically renew for successive five-year terms unless either Party provides written notice to the other Party of its intention to terminate this Agreement at least 180 days prior to the end of any such term.

The Parties' rights and obligations to serve new customer locations after termination shall be governed by then applicable law, and each Party shall continue to be the service provider to those customer locations to which it provides service at the time this Agreement terminates.

### **ARTICLE 3. NO PURCHASE OBLIGATION**

3.1 No Purchase. Nothing herein shall obligate either Party to purchase, sell, or otherwise transfer any of its existing customers, electric service locations, or electric utility facilities to the other Party.

### **ARTICLE 4. SERVICE QUALITY**

4.1 Service Requirements. Both parties will provide electric service to customers in their applicable Service Areas consistent with all applicable franchises and/or agreements with the City of Casselton, (with respect to customers located within the City of Casselton), and consistent with all applicable laws and regulations. To the extent consistent with such requirements, both Parties are, however, free to adopt, implement, and enforce policies and practices relating to the provision of electric service, including without limitation to, fees, charges, line extension policies, interconnection policies, and other internal regulations as they may deem appropriate.

4.2 Cooperation. Should any customer be transferred from one provider to the other under this Agreement, both Parties agree to cooperate with each other to minimize disruption of the service provided to the customer to the extent reasonably practicable.

**ARTICLE 5**  
**FRANCHISES AND CERTIFICATES OF PUBLIC CONVENIENCE AND**  
**NECESSITY**

- 5.1 Franchises. Neither Party will interfere with or object to the extension of the term or scope of the other Party's franchise with the City of Casselton as it may pertain to such Party's Service Area. Nothing in this Agreement precludes the City of Casselton from enforcing the terms and conditions of any existing or future agreement with either Party, including without limitation, any cancellation or termination right, as may be provided therein. Neither Party, however, shall provide any inducement to the City of Casselton to encourage the City not to renew, extend, terminate, or alter in any way the other Party's franchise agreement as it pertains to the other Party's Service Area including, without limitation, any lobbying or public relations campaign pertaining to the foregoing; or through providing directly or indirectly, any financial incentive or commitment relative to its provision of service to the other Party's Service Area. Nothing in this provision is intended to prohibit either Party from objecting to the terms and conditions of the other Party's franchise which could unreasonably damage or harm the objecting Party's operations. Each Party agrees to provide the other with reasonable notice of any public meeting, hearing or proceeding relative to the enactment, extension, modification, or revocation of its franchise with the City.
- 5.2 Certificates of Public Convenience and Necessity. CCEC will not object to the issuance of a blanket Certificate or individual Certificates of Public Convenience and Necessity to Otter Tail by the North Dakota Public Service Commission for the extension of facilities and electric service within Otter Tail's Service Area, or to any customers Otter Tail is otherwise authorized to serve pursuant to this Agreement.

**ARTICLE 6.**  
**MISCELLANEOUS**

- 6.1 No Agency. This Agreement is made between the Parties entirely independent from each other. Neither Party shall be a legal representative of the other for any purpose whatsoever. Neither Party has the right or authority to assume or create any obligations of any kind on behalf of the other.
- 6.2 Complete Agreement. The Parties acknowledge that no representations or statements have been made which would modify or tend to modify any of the provisions of this Agreement. All the understandings between the Parties are contained in this Agreement. This Agreement supersedes and terminates all previous agreements entered into between the Parties with respect to the provision

of electric service. Any amendments to this Agreement shall be made in writing and signed by duly authorized representatives of both Parties.

- 6.3 No Third Party Beneficiary. This Agreement may be enforced solely by the named Parties, their respective successors and assigns. No municipality, customer, member, or other individual or entity not a named Party or successor to a party to this Agreement is intended to be a beneficiary of any of the terms, covenants, and conditions of this Agreement. This Agreement may be enforced solely by the Parties and their respective successors and assigns.
- 6.4 Assignment of the Agreement. Either Party may assign this Agreement in connection with a merger, sale of substantially all of the assets, consolidation, or other reorganization where the surviving entity acquires the right to provide electric service in the Service Area of the Party.
- 6.5 Partial Invalidity. Each provision of this Agreement will be interpreted so as to be effective and valid under applicable law, but if any provision is held invalid, illegal or unenforceable under applicable law in any jurisdiction, then such invalidity, illegality or unenforceability will not affect any other provision, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been included herein.
- 6.6 Waiver. The failure of either Party at any time to require strict performance of any condition of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by either Party of a breach of any such condition shall not constitute a waiver of any subsequent breach thereof, nor nullify the validity of such condition.
- 6.7 Notices. Any notices, including notice of termination permitted to be given under this Agreement shall be given in writing and delivered in person, by facsimile, or by mail, postage prepaid, in an envelope addressed to the Party to whom notice is being given. Notices shall be given to the address or facsimile number set forth in this Agreement, or such other place as may be specified by either Party from time to time.
- 6.8 Approval Required. This Agreement shall be void in its entirety if not approved by the North Dakota Public Service Commission and the City Council of Casselton, North Dakota.
- 6.9 Continuing Jurisdiction. This Agreement is subject to the continuing jurisdiction of the North Dakota Public Service Commission to settle all service location disputes between the contracting electric providers arising under the Agreement.

**[The next page is the signature page.]**

OTTER TAIL CORPORATION, d/b/a  
OTTER TAIL POWER COMPANY

By: *Paul Nelson*  
Its: *VP Customer Service*

CASS COUNTY ELECTRIC COOPERATIVE, INC.

By: *Dott W. Hardy*  
Its: *President CEO*

**CITY APPROVAL**

The City of Casselton consents to this Agreement between the Parties, and agrees that each of the Parties may provide service within their respective service territories identified herein which are now or in the future located within the City of Casselton to the full extent authorized by their respective existing franchise agreements with the City of Casselton, as they may be extended or renewed.

CITY OF CASSELTON, NORTH DAKOTA

By: *Edward M. Correll*  
Its: *Mayor*

**CERTIFICATE OF APPROVAL**

The undersigned certifies that this Agreement was approved by the North Dakota Public Service Commission at a meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

NORTH DAKOTA PUBLIC SERVICE COMMISSION

By: \_\_\_\_\_

Schedule 1  
Map of  
Service Territory

