

Nancy Olson

From: Nancy Olson
Sent: Wednesday, March 11, 2009 3:04 PM
To: 'dnitschk@nd.gov'; 'ndpsc@nd.gov'
Cc: Bruce Gerhardson; 'bruce@gibbenslaw.com'; 'dellefson@otpc.com'; 'lkremeier@otpc.com'; 'MHelland@otpc.com'; 'jayj@dakotavalley.com'; 'wolson@otpc.com'; 'jfloden@otpc.com'
Subject: RE: Joint Application of Otter Tail Corporation and Northern Plains Electric CoOp for Approval of a Service Area Agreement
Attachments: Exhibit_2_ServiceAreaAgrOTPNorthernPlains_03_10_09.pdf; Joint Application of Otter Tail Corporation and Northern Plains Electric CoOp for Approval of a Service Area Agreement

Dear Mr. Nitschke: On March 10th, I e-filed the Joint Application of Otter Tail Corporation and Northern Plains Electric Cooperative for Approval of a Service Area Agreement. I realized today that Exhibit 2 as referenced in the application was inadvertently not e-filed nor mailed to the Commission. Attached and please accept for filing Exhibit 2. I am sending three originals and 7 copies to your attention at the Commission.

Also attached is the original e-filing of March 10th for your convenience and information.

Please accept my apologies. Thank you.

Nancy Olson
Legal Assistant
Otter Tail Corporation
215 South Cascade Street
Fergus Falls MN 56538-0496

nolson@ottertail.com

218-998-7124
218-998-3165 (fax)

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From: Nancy Olson
Sent: Tuesday, March 10, 2009 9:05 AM
To: 'dnitschk@nd.gov'; 'ndpsc@nd.gov'
Subject: Joint Application of Otter Tail Corporation and Northern Plains Electric CoOp for Approval of a Service Area Agreement

Dear Mr. Nitschke: Please find attached and accept as our e-filing the Joint Application of Otter Tail Corporation, dba Otter Tail Power Company and Northern Plains Electric Cooperative, Inc. for Approval of a Service Area Agreement covering the area in and around Jamestown, North Dakota Under N.D.C.C. § 49-03-06.

An original plus 7 copies are being sent by UPS overnight mail to your attention.

Thank you.

Nancy Olson
Legal Assistant
Otter Tail Corporation
215 South Cascade Street

3 **PU-09-109** Filed: 3/11/2009 Pages: 9
Service Area Agreement – Exhibit 2 to Application

Otter Tail Corporation

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Service Area Agreement – Exhibit 2 to Application

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Legal Assistant, Nancy Olson

Fergus Falls MN 56538-0496

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**SERVICE AREA AGREEMENT
BETWEEN
OTTER TAIL POWER COMPANY AND
NORTHERN PLAINS ELECTRIC COOPERATIVE**

This Agreement, dated as of the 1st day of August, 2008, is made between and among 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 Northern Plains Electric Cooperative, with its address at 1515 West Main, PO Box 180, Carrington, North Dakota 58421 (“**Northern Plains**”). Otter Tail and Northern Plains 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; and

WHEREAS, Northern Plains is a North Dakota electric cooperative corporation, providing electric service in various counties in central North Dakota; and

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 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 Northern Plains believe a service area agreement between them relative to their facilities in and around Jamestown, 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 Jamestown, North Dakota, and applicable law, to all electric customers in the Otter Tail Service Area designated on Exhibit A attached to this Agreement (“**Otter Tail Service Area**”).
- 1.2 Northern Plains Territory. From and after the Effective Date, Northern Plains shall provide electric service, consistent with the requirements of its franchise with the City of Jamestown,

North Dakota, and applicable law, to all electric customers located in the Northern Plains Service Area designated on Exhibit A attached to this Agreement (“**Northern Plains Service Area**”).

- 1.3 Exclusive Territory. Except as provided below, Otter Tail shall not provide electric service to any customers located within the Northern Plains Service Area, and Northern Plains shall not provide 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 which received service 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 structure, 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 of electrical service by and between Otter Tail and Northern Plains within the boundaries defined in Exhibit A which is incorporated by reference as integral to this Agreement. The provision of electric service to customers outside the boundaries defined in Exhibit A 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 Jamestown, North Dakota;
 - (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, 2028, 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.
- 2.3 End of Term Rights and Obligations. 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 serviced 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 franchise agreements with the City of Jamestown 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 nor the scope of the other Party's franchise with the City of Jamestown as it may pertain to such Party's Service Area. Nothing in this Agreement precludes the City of Jamestown 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 Jamestown 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. Northern Plains 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 Jamestown, North Dakota; or if the Jamestown City Council does not grant franchises consistent with the terms of this Agreement.
- 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.

SIGNATURES

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

By: *Mark Heland*
Its: *VP Customer Service*

NORTHERN PLAINS ELECTRIC COOPERATIVE

By: *Lowell Stave*
Its: *Alliance Manager*

The City of Jamestown 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 Jamestown to the full extent authorized by their respective franchise agreements with the City of Jamestown, as they may be established, extended or renewed.

The undersigned certifies that this Agreement was approved by the City of Jamestown at a meeting held on the 2nd day of February, 2008.

CITY OF JAMESTOWN, NORTH DAKOTA

By: Clarice Luskty

Its: Mayor

The undersigned certifies that this Agreement was approved by the North Dakota Public Service Commission at a meeting held on the _____ day of _____, 2008.

NORTH DAKOTA PUBLIC SERVICE COMMISSION

By: _____

Its: _____

EXHIBIT A

