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4031 Hwy. 37 Bypass NW
P.O. Box 399
Garrison, ND 58540-0399

RECEIVED

JUN 29 2010

PUBLIC SERVICE COMMISSION

June 25, 2010

North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

RE: Territory Agreement McLean Electric & Ottertail Power Company

Dear Commissioners,

McLean Electric Cooperative and Ottertail Power Company have completed a territory agreement around the City of Garrison, North Dakota. It is our wish to file this with the Public Service Commission as allowed by the passing of SB 2412. We are happy to say that all interested parties are in agreement and support this agreement. The City Council approved and signed this agreement as well.

I have enclosed four copies of the signed agreement for the commission to review sign and send three copies back to McLean Electric. We will insure that the City and Ottertail Power Company receive the approved documents.

If you have any questions or concerns please feel free to contact me at (701) 463-2291 or at martindd@mcleanelectric.com. Please let us know if any other steps are required to complete the process.

Regards,

Martin D. Dahl P.E.
General Manager/CEO

Enclosures

cc Dennis Ellefson

1 **PU-10-334** Filed: 6/29/2010 Pages: 10
Copy of Joint Application for Approval

McLean Electric Cooperative, Inc.

Martin Dahl, P.E., Gnl. Manager, CEO

Phone: (701) 463-2291 • toll free: (800)263-4922 • Fax: (701) 337-5303
e-mail: mclean@mcleanelectric.com

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

This Agreement, dated as of the _____ day of _____, 200~~9~~¹⁰, is made between and among Otter Tail Power Company, with its address at 215 South Cascade Street, Fergus Falls, Minnesota 56537 (“**Otter Tail**”) and McLean Electric Cooperative, with its address at 4031 Highway 37 Bypass NW, PO Box 399, Garrison, North Dakota 58540 (“**McLean Electric**”). Otter Tail and McLean Electric 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, McLean Electric is a North Dakota electric cooperative corporation, providing electric service in McLean County in west 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 Mclean Electric believe a service area agreement between them relative to their facilities in and around Garrison, 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 Garrison, 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 McLean Electric Territory. From and after the effective date, McLean Electric shall provide electric service, consistent with the requirements of its franchise with the City of Garrison, North

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

- 1.3 Exclusive Territory. Except as provided below, Otter Tail shall not provide electric service to any customers located within the McLean Electric Service Area, and McLean Electric 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 McLean Electric within the area 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 Garrison, North Dakota;

(c.) the adopting and filing 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, 2029, 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 Garrison 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 Garrison as it may pertain to such Party's Service Area. Nothing in this Agreement precludes the City of Garrison 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 Garrison 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. McLean Electric 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 Garrison, North Dakota; or if the Garrison 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 POWER COMPANY

By: _____

Its: _____

MCLEAN ELECTRIC COOPERATIVE, Inc.

By: _____

Its: _____

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

CITY OF GARRISON, NORTH DAKOTA

By: Darin Rement

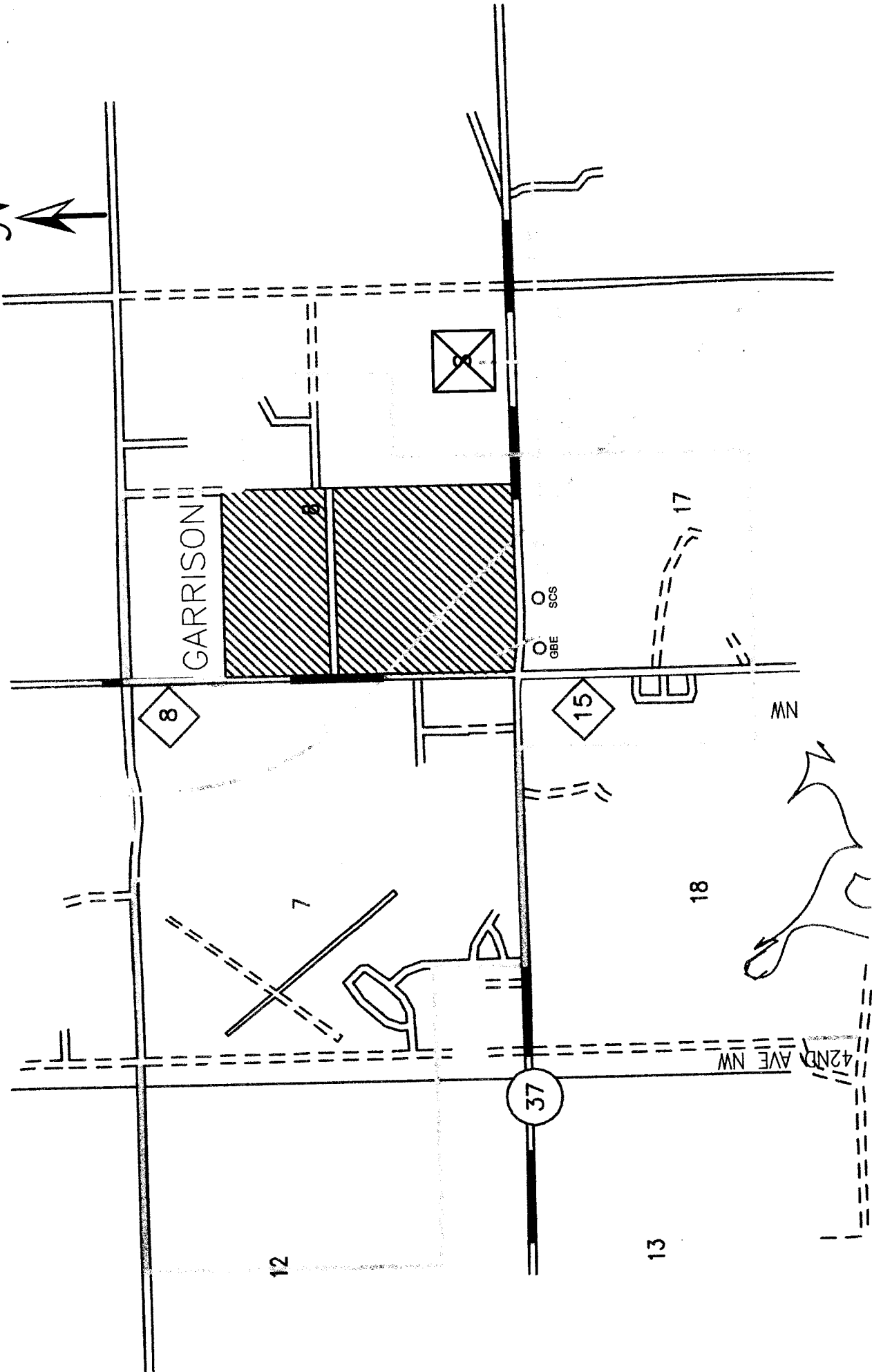
Its: Mayor

The undersigned certifies that this Agreement was adopted and filed by the North Dakota Public Service Commission at a meeting held on the _____ day of _____, 2009.

NORTH DAKOTA PUBLIC SERVICE COMMISSION

By: _____

Its: _____



Legend
New Boundary

APPENDIX A

McLean Electric Cooperative Description of Service Area Boundary

Beginning at a point at the center line of Highway 37 west of the NDDOT; thence North a distance of 1,425' to a point of intersection; thence 90° right a distance of 1,300' east to a point of intersection; thence 90° left a distance of 2,875' north to a point of intersection; thence 90° left a distance of 1,600' west to a point of intersection; thence 90° right a distance of 980' north to a point of intersection; said point being the center line of street, thence 90° left a distance of 2,615' west to a point of intersection; thence 90° left a distance of 1,340' south to a point of intersection; thence 90° right a distance of 2,890' west to a point of intersection; thence 90° right a distance of 1,340' north to a point of intersection; said point being the center line of 17th Street NW; thence west a distance of 5,280 feet to a point of intersection; thence 90° left a distance of 4,010' south to a point of intersection; thence 90° left a distance of 3,790' east to a point of intersection; thence 90° right a distance of 1,250' south to a point of intersection; said point being the centerline of highway 37; thence 90° left a distance of 3,920' east to a point of intersection; thence 90° right a distance of 3,170' south to a point of intersection; thence 90° left a distance of 2,930' east to a point of intersection; thence 90° left a distance of 2,955' north to a point of intersection; said point being on the center line of highway 37 and also being the point of beginning.

Note 1: Service locations served by Ottertail Power that are in Mclean Electric Cooperative service territory will continue to be served by Ottertail Power Company and service locations served by Mclean Electric Cooperative in Ottertail Power Company service territory will continue to be served by McLean Electric Cooperative. New services in close proximity to these existing lines will be served by the service provider who is closest to the new service. The boundary description above was drawn to be equal-distant from the service providers where future growth areas may exist.

Point	Latitude	Longitude	Elevation	Distance from Previous Point	Direction	Description
A	47°38'47.17"N	101°24'29.61"W	1919	0	North	Starting Point Center of Hwy 37 By DOT Shop
B	47°39'1.31"N	101°24'29.61"W	1942	1,425	East	Even with 1st AVE SE
C	47°39'1.31"N	101°24'10.51"W	1931	1,300	North	3rd Point NE 1/4 of the SE 1/4 Sec 8
D	47°39'30.67"N	101°24'10.51"W	1932	2,875	West	Perpendicular to Crank Ave
E	47°39'30.67"N	101°24'34.43"W	1952	1,600	North	Intersection of Crank Ave & 5th St NE
F	47°39'40.29"N	101°24'34.43"W	1954	980	West	Perpendicular to 5th St NE, Center of 17th St NW
G	47°39'40.29"N	101°25'12.52"W	1941	2,615	South	Intersection of County Rd 8 and 17th St NW
H	47°39'27.02"N	101°25'12.52"W	1940	1,340	West	Intersection of County Rd 8 and 6th Ave NE
I	47°39'27.02"N	101°25'54.65"W	1886	2,890	North	SW of Gary Larson's Place
J	47°39'40.20"N	101°25'54.65"W	1936	1,340	West	Center line of 17th St NW
K	47°39'40.20"N	101°27'6.	1928	5,280	South	Center line of 17th St NW and Midpoint of Sec 12
L	47°39'0.27"N	101°27'6.	1935	4,010	East	Perpendicular to the North Tree line W of Bonanza Way
M	47°39'0.27"N	101°26'10.10"W	1912	3,790	South	Center line of Bonanza Way and the N. Tree Line
N	47°38'47.84"N	101°26'10.10"W	1914	1,253	East	Intersection of Bonanza Way and Hwy. 37
O	47°38'47.83"N	101°25'12.90"W	1891	3,920	South	Intersection of Hwy. 37 and County Rd 15
P	47°38'16.47"N	101°25'12.90"W	1892	3,170	East	County Rd 15 and the S. edge of the 4 Bins
Q	47°38'16.47"N	101°24'29.72"W	1928	2,930	North	NW 1/4 of SE 1/4 Section 17
R	47°38'47.17"N	101°24'29.61"W	1919	2,955	Starting Point	Ending point Center of Hwy 37 By DOT Shop