



Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark
Brian P. Kalk
Kevin Cramer

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

10 November 2011

Carol Larson
Attorney
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000

Re: Otter Tail Power Company v Nodak Electric Cooperative, Inc.
PSC Case No. PU-11-654 and Case No. PU-11-542

Dear Ms. Larson:

Thank you for your 8 November 2011 letter request for certified copies of Otter Tail's Application and Notice of Withdrawal in the captioned cases.

Enclosed are certified copies of docketed items 1 and 6 in case No. PU-11-542. As you requested, these will be docketed in Case No. PU-11-654.

Please don't hesitate to contact me should you require anything further.

Best regards,

Illona Jeffcoat-Sacco
General Counsel

enclosures
c:/with enclosures (uncertified)
Gerad Paul
Bruce Gerhardson

215 South Cascade Street
PO Box 496
Fergus Falls, Minnesota 56538-0496
218 739-8200
www.otoco.com (web site)

July 29, 2011



Mr. Darrell Nitschke
Executive Secretary and Director of Administration
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

Re: In the Matter of the Application of Otter Tail Power Company for an Order and Certificate of Public Convenience and Necessity to Extend Service to the East Devils Lake Outlet Pumping Station of the North Dakota State Water Commission

Dear Mr. Nitschke:

Enclosed for filing please find the Application for Permanent Authority and the Appearance by Customer in the matter of the Application of Otter Tail Power Company for an Order and Certificate of Public Convenience and Necessity to Extend Service to the North Dakota State Water Commission's East Devils Lake Outlet Pumping Station.

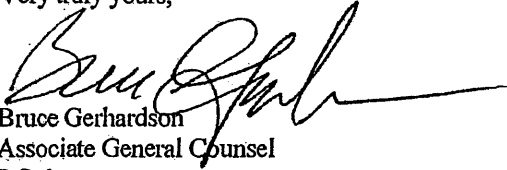
This Application is being filed based upon the request of the North Dakota State Water Commission for electrical service at that site. Bartlett & West Inc., the engineers in charge of the Water Commission's project, contacted Otter Tail to request a proposal for electrical service to the site in the spring of 2011. Otter Tail's response to the request for proposal is summarized in the attached memorandum from John Kelsch, P.E., Construction Engineer, and is based on Otter Tail's rates and extension policies (including its three-year revenue guarantee requirement), which were approved by the Commission in November 2009 in Otter Tail's most recent general rate case (Case No. PU-08-862). Otter Tail's proposal is to provide service from an existing Otter Tail 41.6 kV power line south of the project site. Furthermore, based upon the memorandum of the Water Commission referenced above, the Water Commission has determined that Otter Tail is best qualified to provide service and that Otter Tail will be able to serve the project more economically.

Otter Tail and the Water Commission request that this matter be expedited in order that Otter Tail can take the necessary steps to construct the facilities that are required for service to commence by spring of 2012. To meet that schedule, there are construction activities and procurements that will be required in the fall of 2011.

Mr. Nitschke
July 29, 2011
Page 2

If there are any questions regarding this Application and request, please contact me at 218-739-8475 or at bgerhardson@otpc.com.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bruce Gerhardson", written over a horizontal line.

Bruce Gerhardson
Associate General Counsel
BG:dm

Enclosures

Before the Public Service Commission
State of North Dakota
Case No. _____

In the Matter of the Application of Otter Tail
Power Company for an Order and Certificate
To Extend Service to
The East Devils Lake Outlet Project
of the North Dakota State Water Commission
at the Location Stated Herein

APPEARANCE BY CUSTOMER

The North Dakota State Water Commission, (hereinafter referred to as the Customer) hereby makes a voluntary appearance in this matter and states the following to the Commission:

I.

Customer desires electric service from Otter Tail Power Company as a public utility subject to the jurisdiction of and regulation by this Commission, and has requested said public utility to provide Customer with electric service at the point located as stated in the Application in this matter.

The Customer further states the need of and has demanded service at said location for the reasons that are set forth in the Application herein. The Customer waives Notice of Opportunity for Hearing and Notice of Hearing upon said Application, or a hearing thereon, and requests the Commission to issue an Order and Certificate of Public Convenience and Necessity authorizing this requested and needed service, and that provision be made therein authorizing the extension of immediate service.

II.

All of the allegations of the Application herein are admitted as true and correct.

Wherefore, the undersigned, being the Customer involved herein, prays for the entry of an Order and Certificate of Public Convenience and Necessity by the Commission, authorizing the Applicant to extend the requested and needed service to this Customer at said location, subject to such appropriate and proper conditions to be appended to and made a part of such Order and Certificate as the Commission may determine, said Order and Certificate to become final as may be set forth in the conditions appended thereto; and for such other and further relief as may be proper in the premises.

Witnesses:

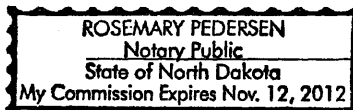
North Dakota State Water Commission

By _____

(Customer)

Rosemary Pedersen
Notary Public, Burleigh County

North Dakota. My commission expires _____



(Notarial Seal)

State of North Dakota
County of Burleigh

Subscribed and sworn to before
me on July 28, 2011.

**Public Service Commission
State of North Dakota**

Otter Tail Power Company)
Fergus Falls, Minnesota)
Customer's Name _____)
Customer's location by)
Nearest city _____)
Public Convenience and Necessity)

**Application For
Permanent Authority**

Otter Tail Power Company, for its Application to the Public Service Commission of North Dakota, respectfully alleges:

I.

The full name of the applicant is Otter Tail Power Company, and the post office address of its principal office is Fergus Falls, Minnesota. Applicant is a public utility corporation, subject to the jurisdiction of, and regulation by, the Public Service Commission of North Dakota, under Title 49, NDCC, as amended. Applicant's Articles of Incorporation, as well as its Annual Report, are on file with the Commission, having been filed in Case No. PU-08-292, and are incorporated herein by reference, and the Commission is requested to take official notice of the same.

II.

This Application is made pursuant to the provisions of Chapter 49-03, NDCC, as amended, and the Rules of Practice and Procedure promulgated by the Commission.

III.

Applicant has been requested by The North Dakota State Water Commission (hereinafter referred to as the Customer), to provide electric service to it at a point located in The Northwest Quarter (NW1/4) In Section Eight (8), Township T-151-N, Range R-62-W, Minco Township, Benson County, North Dakota, as shown on the attached map, marked Exhibit "A" and made a part hereof by reference. The mailing address of the customer is 900 E. Boulevard Ave., Bismarck, ND 58505. The customer will need electric service on the First (1st) day of April, 2012.
Service at: The Devil's Lake East End Pumping Station.

IV.

The service required by the Customer at said location is Three phase service, and the length of the extension will be approximately 29,000 feet, as shown by Exhibit "A". The location of the proposed service is within the economic service area of Applicant, and service will be extended under the provisions of the rates, rules and regulations applicable to Applicant as approved by the Commission. It is Applicant's public utility obligation to furnish the requested service, and the public convenience and necessity require, and will be subserved by, Applicant furnishing the requested electric service to this Customer at said location.

V.

Submitted with this Application, is an Appearance herein by the Customer, in which the Customer states to the Commission that it desires electric service from Applicant as a public utility subject to the jurisdiction of, and regulation by, this Commission. In said Appearance, the Customer also waives Notice of Opportunity for Hearing and Notice of Hearing upon this Application, and requests the Commission to issue an Order and Certificate of Public Convenience and Necessity authorizing this requested and needed service.

VI.

The extension (~~will~~) will not cross any railway tracks.

Wherefore, Applicant prays for the entry of an Order and Certificate of Public Convenience and Necessity authorizing Applicant to extend the requested and needed service to the Customer.

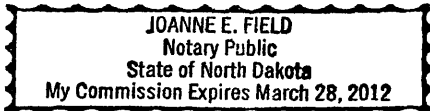
Otter Tail Power Company
By Bryan R. Ellefson
Its Area Manager

State of North Dakota)

County of Ramsey) SS

 Joanne E. Field , being duly sworn, on oath says that he is a Area Manager of Otter Tail Power Company, and the person who executed the foregoing Application on behalf of Otter Tail Power Company, and is authorized to verify this Application on behalf of the Company; that he has read the foregoing Application and knows the contents thereof, and the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters, he believes them to be true.

 Joanne E. Field
Subscribed and sworn to before me this 27 day of July , 20 11 .

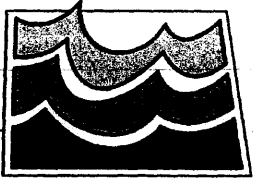


Notary Public, Ramsey County,
North Dakota. My commission expires
 March 28, 2012 (Notary Seal)

ADMISSION OF SERVICE

Personal service of the foregoing Application by true and correct copy thereof is hereby admitted this 28 day of July , 20 11 .

 [Signature]
(Customer)



North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850
701-328-2750 • TTY 800-366-6888 • FAX 701-328-3696 • INTERNET: <http://swc.nd.gov>

July 18, 2011

Scott Sigette
Otter Tail Power Company
Otter Tail Corporation

Re: East Devils Lake Outlet Electric Service

Mr. Sigette,

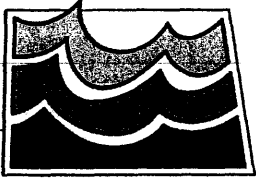
The North Dakota State Water Commission is requesting electrical service from Otter Tail Power Company for the East Devils Lake Outlet pumping station. This pumping station is planned to start operation after spring runoff 2012, and operate during non-winter months.

Attached is a memorandum which outlines the proposals received and the approved recommendation.

Bruce Engelhardt, P.E.
Director of Water Development Division
North Dakota State Water Commission

JACK DALRYMPLE, GOVERNOR
CHAIRMAN

TODD SANDO, P.E.
CHIEF ENGINEER AND SECRETARY



North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850
701-328-2750 • TTY 800-366-6888 • FAX 701-328-3696 • INTERNET: <http://swc.nd.gov>

MEMORANDUM

TO: Todd Sando, P.E., Chief Engineer- Secretary
Bruce Engelhardt, P.E., Director of Water Development Division
FROM: ^{JE}_{JK} Jon Kelsch, P.E., Construction Engineer
SUBJECT: East Devils Lake Outlet Project-Electrical Service
DATE: July 15, 2011

We have received proposals from both Nodak Electric Cooperative and Otter Tail Power Company to provide electric service for the East Devils Lake Outlet pump station.

Otter Tail is proposing to build the substation and the transmission lines (infrastructure costs) for no upfront costs to the State. They would require that the amount of power that State purchases for operation of the East End Outlet Project over the next three years equals or exceeds the total estimated infrastructure costs. Otter Tail has estimated those costs to be \$1.3 million. According to Otter Tail's electrical rates, if the outlet operates for 7-months at near full capacity, the total electrical costs would likely exceeding the \$1.3 million.

Nodak Electric Cooperative would either require the SWC to pay upfront to built infrastructure or propose to spread out that commitment over a 15-year cycle. There would be an approximate \$235,000 per year minimum bill, which if the SWC doesn't reach that amount, then Nodak would want payment. Nodak also expects to get reimbursed the full \$1.65 million over the next 15 years. Bottom line, they expect a payment from the State for the next 15 years at a minimum of \$235,000 per year.

Regarding the actual electrical rates, it's actually difficult to compare one overall rate versus another. We did provide both of them with the project electrical needs including the operating parameters and had them determine what the total estimated annual costs would be, and then a subsequent \$/KWH. Otter Tail estimated \$1.205 million per year with a rate cost of \$0.06921 per KWH. Nodak had estimated \$1.435 million per year with a rate cost of \$0.0820 per KWH.

Based on the two proposals, it's obvious that Otter Tail is the least costly option, and their proposed commitment timeframe is quite a bit less. I am sure both companies would serve the needs of the State for this project very well, but Otter Tail seems to be the better option for this project. Therefore, I recommend the State Water Commission request electrical service from Otter Tail Power Company.

JACK DALRYMPLE, GOVERNOR
CHAIRMAN

TODD SANDO, P.E.
CHIEF ENGINEER AND SECRETARY

EXHIBIT "A"

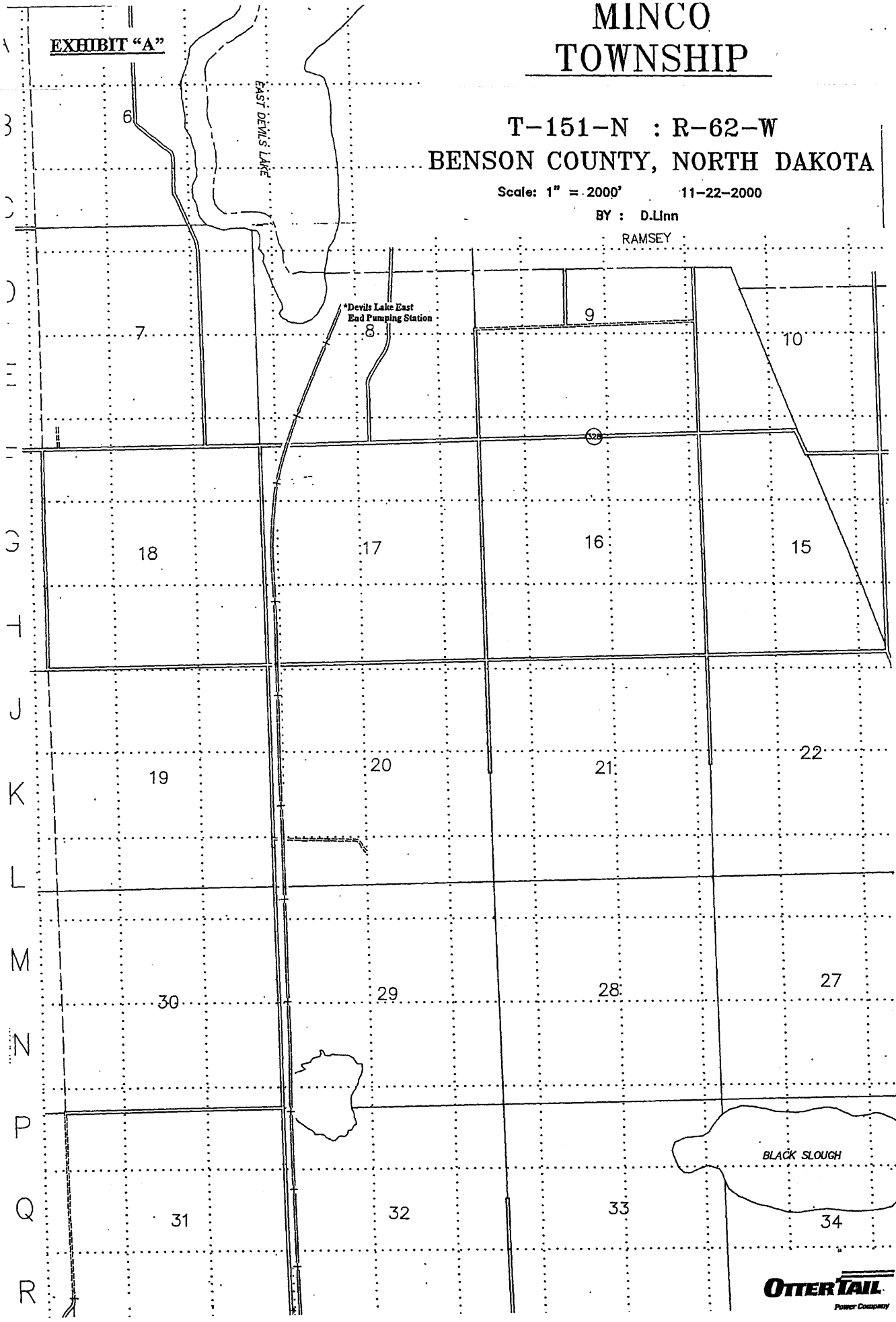
MINCO TOWNSHIP

T-151-N : R-62-W
BENSON COUNTY, NORTH DAKOTA

Scale: 1" = 2000' 11-22-2000

BY : D.Linn

RAMSEY

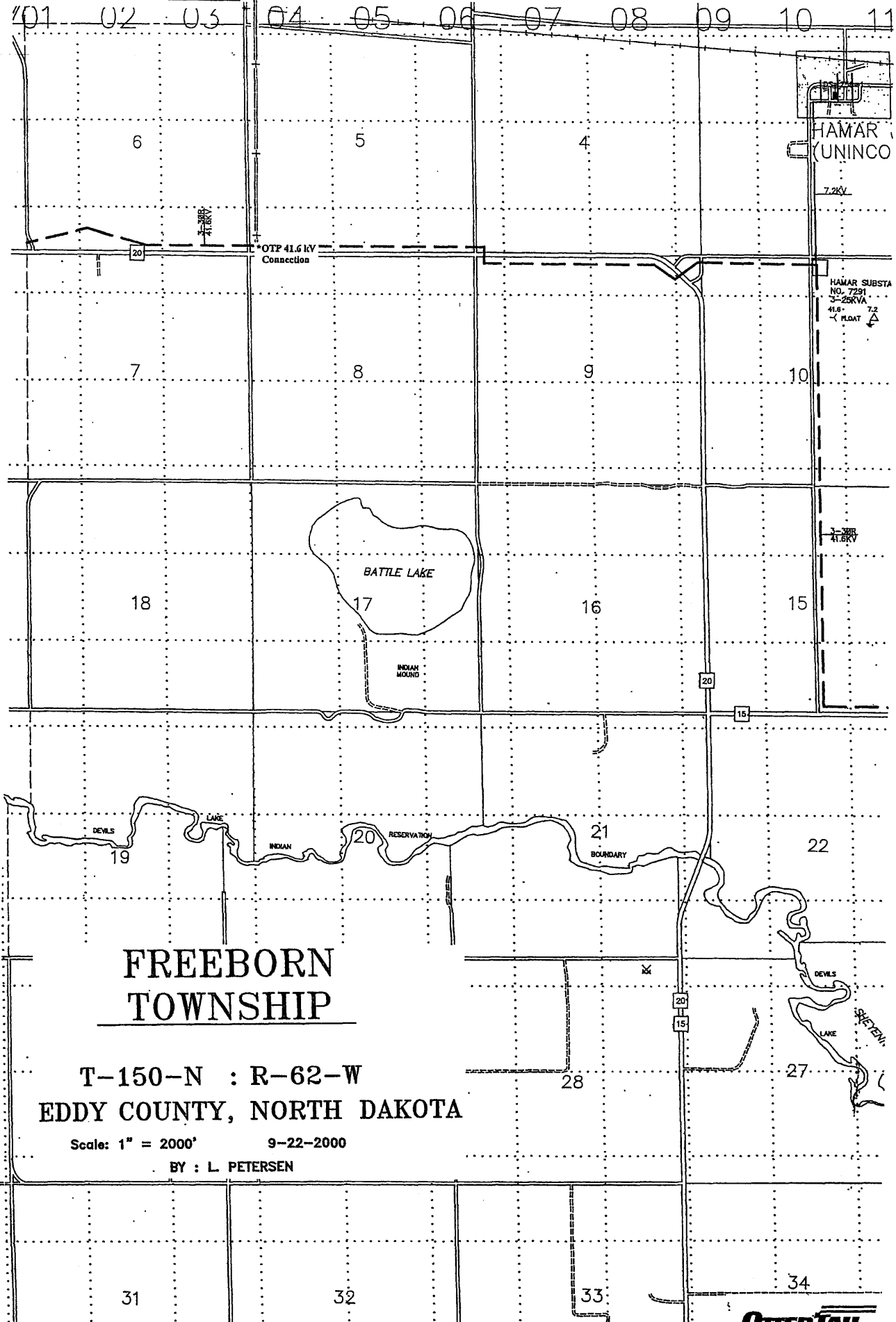


BLACK SLOUGH

OTTER TAIL
Power Company

EXHIBIT "A" (continuation)

BENSON



FREEBORN TOWNSHIP

T-150-N : R-62-W
EDDY COUNTY, NORTH DAKOTA

Scale: 1" = 2000" 9-22-2000
BY : L. PETERSEN



215 South Cascade Street
PO Box 496
Fergus Falls, Minnesota 56538-0496
218 739-8200
www.otpc.com (web site)



September 16, 2011

Mr. Darrell Nitschke
Director of Administration/Executive Secretary
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0408

**RE: Notice of Withdrawal - Otter Tail Power Company East Devils Lake Outlet Pumping
Station Public Convenience & Necessity
Case No. PU-11-542**

Dear Mr. Nitschke:

Enclosed for filing are the original and seven (7) copies of Otter Tail Power Company's Notice of Withdrawal in the above-referenced proceeding.

Should you have any questions, please feel free to call Bruce Gerhardson at 218-739-8475 or bgerhardson@otpc.com.

Very truly yours,

/s/ BRUCE GERHARDSON
Bruce Gerhardson
Associate General Counsel

wao
Enclosures
By electronic filing and UPS overnight mail
c: Gerad C. Paul

STATE OF MINNESOTA)
) SS.
COUNTY OF OTTER TAIL)

AFFIDAVIT OF SERVICE

**RE: Otter Tail Power Company East Devils Lake Outlet Pumping Station Public
Convenience & Necessity
Case No. PU-11-542**

I, Wendi A. Olson, being first duly sworn on oath, deposes and says: that on the 16th day of September, 2011, I served the attached **Notice of Withdrawal** on Mr. Darrell Nitschke and the North Dakota Public Service Commission by e-mail and over-night mail and to all other persons listed below by U.S. mail.

Gerad C. Paul
Senior Attorney
Minnkota Power Cooperative, Inc.
1822 Mill Rd, PO Box 13200
Grand Forks, ND 58208-3200

/s/ WENDI A. OLSON

Subscribed and sworn to before me this
16th day of September, 2011.

/s/ PENNY MICHELLE MOSHER

Penny Michelle Mosher
Notary Public, My Commission Expires on January 31, 2015.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Power Company
East Devils Lake Outlet Pumping Station
Public Convenience & Necessity

Case No. PU-11-542

NOTICE OF WITHDRAWAL

Otter Tail Power Company ("Otter Tail") files with the Public Service Commission ("Commission") pursuant to N.D. Admin.C. § 49-02-02-07 notice of withdrawal of its application in this proceeding to extend electric service to the North Dakota State Water Commission at its Devils Lake East Outlet Project, with a location more particularly described in the application ("Water Commission Project"). Alternatively, Otter Tail moves the Commission for an order dismissing the application on grounds the Commission lacks jurisdiction over the extension of service by Otter Tail to the State Water Commission. No hearing has been held or convened in this proceeding.

On April 6, 2011, the Commission approved a motion acknowledging a similar notice of withdrawal in *Montana-Dakota Utilities Co. City of Kenmare-Ward County Public Convenience and Necessity*, Case No. PU-11-37. In that case, Montana-Dakota Utilities Co. filed a Notice of Withdrawal of an Application for a Certificate of Public Convenience and Necessity on the grounds that the Commission does not have jurisdiction under N.D.C.C. Title 49 over the extension of service to the State of North Dakota or its political subdivisions. This notice repeats the explanation of the grounds for withdrawal made by Montana-Dakota in that case.

Background

On July 29, 2011, Otter Tail filed an application for an order and a certificate of public convenience and necessity authorizing Otter Tail to extend electric service to the Water Commission Project. A notice of opportunity for hearing was issued by the Commission on August 24, 2011 indicating comments or protests should be filed on or before September 26, 2011. No response or protest has been filed as of the date of this notice.

On September 15, 2011, Otter Tail received a letter from the State Water Commission confirming its decision to contract with Otter Tail for the provision of power to the Water Commission Project and requesting that Otter Tail withdraw the application in this matter. (Letter attached as Exhibit 1). Consistent with the Water Commission's request, Otter Tail is providing this notice of its withdrawal of the application, or in the alternative, requesting an order of dismissal of the application, on the grounds the Public Service Commission does not have jurisdiction under N.D. C.C. Title 49 over the extension of electric service by Otter Tail to the State Water Commission.

Legal Basis for Withdrawal of Application

As was explained in MDU's notice of withdrawal in Case No. PU-11-37, the North Dakota Supreme Court has consistently held the Public Service Commission does not have jurisdiction over utility services provided by a public utility to the State of North Dakota or its political subdivisions. In Western Electric Co. v. City of Jamestown, 47 N.D. 157, 181 NW 363 (1921) a dispute existed between the City of Jamestown and Western Electric Co. regarding electric rates that were established under a 1902 ordinance for city pumping service. Western sought to recover additional revenue for

electric service furnished to the City of Jamestown after 1919 pursuant to rates set forth in the Company's tariff. Western argued that by enactment of the Public Utilities Act in 1919, currently N.D.C. C. Chapter 49, the State of North Dakota, through what was then the Board of Railroad Commissioners, assumed full regulation and control concerning rates and charges for all public utilities and therefore Western was required to furnish electric service to the City at Western's tariff rates approved by the Board. The Supreme Court held that while the Public Utilities Act granted the Board regulatory ratemaking jurisdiction over public utilities, the Act did not deprive a city of its powers and privileges to create or enforce a franchise or the rates charged for the provision of electric service to the city in consideration for the franchise. Id. at 367-368. Accordingly, the Board's regulatory authority did not extend to the electric rates between Western and the City.

In Chrysler Light & Power Co. v. City of Belfield, 58 N.D. 33, 224 N.W. 871 (1929), a similar issue was presented. In 1915, the Village of Belfield granted a franchise to George Chrysler which was subsequently assigned to Chrysler Light & Power Company. The franchise included terms and conditions by which Chrysler would furnish electricity to the village at rates specified in the franchise. The Village subsequently incorporated and in 1920 Chrysler filed an application with the Board of Railroad Commissioners for an increase in the rates charged for electric service to the City of Belfield and its inhabitants. In response to the application, the Board set rates to be charged by Chrysler and the City paid the tariff rates until 1927 when it refused to pay rates above those specified in the 1915 franchise. In its opinion, the Supreme Court noted the power conferred upon the City to contract for street lighting for the City at a

certain fixed rate is quite different from the power to regulate the rates of an electric power company doing business within the City; in contracting for the provision of electricity for street lighting purposes, the City is acting in its own interest as a legal entity. Id. at 875. The Court held the Board of Railroad Commissioners had only such powers to regulate rates of public utilities as had been conferred upon it by the Legislature and the Public Utilities Act of 1919 did not cover any authority upon the Board to interfere with the rates for electric service furnished by a utility to a City when such rates were fixed by contract in the franchise granted by the city to the electric company. Id.

In 1957 the Supreme Court addressed a dispute between the City of Grafton, which operated a municipal electric power system, and Otter Tail Power Company regarding the provision of electric service to the North Dakota State Board of Administration for the State School of Grafton. City of Grafton v. Otter Tail Power Company, 86 N.W.2d 197 (ND 1957). In 1955, Otter Tail entered into an agreement with the Board of Administration to furnish supplemental electricity to the State School of Grafton. The service was to be provided over a transmission line constructed by the Board of Administration between a substation to be built by the Board and Otter Tail's transmission line facilities. The City of Grafton had previously provided electric service to the State School and filed a complaint against Otter Tail with the Commission seeking an order requiring Otter Tail to cease and desist from supplying service to the School. Following the hearing, the Commission issued an order directing Otter Tail to cease and desist from furnishing electric service to the School. On appeal, the District Court reversed the order of the Commission and the City of Grafton appealed to the Supreme

Court. On appeal, the City argued: (1) the Board of Administration could only contract with public utilities in accordance with rules and regulations of the Commission; and (2) the Commission could properly direct Otter Tail to cease and desist from furnishing electricity to be conveyed over a line erected and maintained in contravention of the constitutional powers of the City. Upon review, the Supreme Court repeated its holding in Chrysler that the commission has only such powers as have been conferred upon it by the Legislature. Id. at 201. The Court also recited from what is essentially now N.D.C.C. § 49-02-01.1 which in its current form states: “Nothing in this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state . . .” The Court noted the statute indicated an intention on the part of the Legislature to, in large measure, withhold from the Commission jurisdiction and authority over public utilities owned and operated by the State. Id. at 202. The Court recognized the power plant, with the transmission line erected by the Board of Administration between the State School and Otter Tail, was not a public utility but only a facility for the exclusive use of the State School. The Court stated, however, “that the statute has some bearing as indicating a policy on the part of the Legislature to withhold from the Public Service Commission authority to control the production, transmission and use of electric power by the sovereign state of North Dakota and its political subdivisions.” Id. at 202-203. The Court further recognized the statutory construction rule that statutes that tend to encroach upon the affairs of the government receive a strict interpretation favorable to the public and in the absence of express provision or necessary

implication, the sovereign remains unaffected. Id. at 203. In its holding on the first issue presented by the City of Grafton to require the State to comply with the regulations and orders of the Public Service Commission, the Court held:

“We find no provisions of the law which vest in the Public Service Commission power to interfere with the lawful conduct of the Board of Administration including the making and carrying out of contracts for the purchase of commodities reasonably necessary for the operation of the institution under its control. Such a commodity is light and power.”

On the City’s second issue, the Court held that the Commission’s jurisdiction over public utilities could not restrain the State’s power to operate its facilities and therefore, the Public Service Commission had no authority to order Otter Tail to cease and desist from furnishing electric power to the Board of Administration. The Court held the Public Service Commission’s order was beyond its authority and directed dismissal of the City’s complaint before the Commission.

In 1965 the Public Service Commission issued an order to Montana-Dakota and the City of Williston to show cause why the rates charged by Montana-Dakota to the City for electric service to the City’s facilities were not unjust, unreasonable, and unjustly discriminatory. Following hearing, the Commission concluded the rates were unreasonable and that a higher rate previously filed with and approved by the Commission was reasonable and should be charged to the City. On appeal, an argument was made by Northern States Power Company, as amicus curiae, that a decision by the Board of Railroad Commissioners that was not appealed following the Court’s decision in Western Electric v. City of Jamestown, supra, provided the Commission with jurisdiction to determine the reasonableness of rates charged to a municipality whether or not they were part of a franchise. NSP argued that 1929 legislation which allowed a city

the authority to enter into contracts to furnish electric service to the city, but which included a provision that nothing within the statute deprived the Board of Railroad Commissioners of any of its existing regulatory powers with reference to such contract rates, effectively overruled the Court's decision in Western. The Public Service Commission argued that its jurisdiction extended to all the rates of public utilities, including contract rates to municipalities, and that no utility could discriminate through its contract rates by providing any locality undue or unreasonable preference or advantages. The Supreme Court rejected both arguments holding the 1929 legislation did not change the Court's earlier rulings and the Commission had no jurisdiction over electric service under contracts with cities.

The above line of cases was most recently noted in Otter Tail Power Company, North Dakota Public Service Commission, 354 N.W.2d 701 (N.D. 1984) in which the Court recognized the holding from these cases, that the PSC cannot interfere with or encroach upon the state's affairs, is consistent with federal court cases cited on the issue of federal preemption.

Conclusion

In summary, the above cases hold the Legislature did not bestow upon the Public Service Commission authority to interfere with contracts for services between a public utility on one hand, and the State of North Dakota or its political subdivisions on the other hand. While the holdings in these cases dealt primarily with issues regarding rates for services, the holding in City of Grafton v. Otter Tail Power Company, supra, recognized the Commission does not have any jurisdiction to interfere with such contracts for utility service, directly or indirectly.

In the present case, the North Dakota State Water Commission is a State Agency assigned the duty of managing the State's water supply. The State Water Commission is authorized to enter into contracts for the purchase of commodities reasonably necessary for the operation of facilities necessary for managing the State's water supply. The statutory authority under N.D.C.C. § 49-02-01.1 and the Supreme Court precedent in City of Grafton v. Otter Tail Power Company, cited above, reflect the policy on the part of the legislature to withhold from the Public Service Commission authority to control the production, transmission and use of electric power by the sovereign State of North Dakota and its agencies, including the State Water Commission.

Accordingly, Otter Tail is not required to obtain a certificate of public convenience and necessity to provide electric service to the North Dakota State Water Commission. The authority to require that Otter Tail obtain such a certificate of public convenience and necessity would necessarily include the power to deny such a certificate and thereby deny the Water Commission the right to negotiate terms and conditions for the provision of electric service with the provider of its choice. Such a limitation would be in direct conflict with the limitations on the Commission's jurisdiction set forth in N.D.C.C. § 49-02-01 in the same manner as though the Commission sought to prohibit Otter Tail's service to the Water Commission.

For the foregoing reasons, Otter Tail withdraws, pursuant to N.D. Admin.C. § 69-02-02-07(2), its application for a certificate of public convenience and necessity to serve the Water Commission's Devils Lake East Pumping Station. Alternatively, Otter Tail requests the Public Service Commission to dismiss Otter Tail's application on grounds

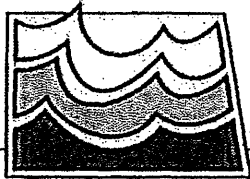
that the Public Service Commission lacks jurisdiction over the electric service provided
by Otter Tail to the North Dakota State Water Commission.

Respectfully submitted this 16th day of September, 2011.

OTTER TAIL POWER COMPANY

By: /s/ BRUCE GERHARDSON

Bruce Gerhardson
Associate General Counsel
215 South Cascade Street
Fergus Falls MN 56537
(218) 739-8475



North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850
701-328-2750 • TDD 701-328-2750 • FAX 701-328-3696 • INTERNET: <http://swc.nd.gov>

September 15, 2011

Scott Sigette
Otter Tail Power Company
524 Fifth Ave. S
Devils Lake, ND 58301

Re: East Devils Lake Outlet Project - Electric Service

Mr. Sigette:

As a result of discussions with Otter Tail Power Company, it is our understanding that as a State agency, the Water Commission can make the determination of which utility offers the best overall value in providing power to State owned facilities without Public Service Commission (PSC) approval. We would like Otter Tail Power Company to provide the power for the East Devils Lake Outlet Project, and based on our understanding that the PSC does not need to approve this service, we request you withdraw the application submitted to the PSC.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Sando".

Todd Sando, P.E.
Chief Engineer and Secretary

TS/BE:416-15