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

**RECEIVED**

MAY 09 2012

**PUBLIC SERVICE COMMISSION**

North Dakota Public Service Commission  
Attn: Brian Kalk, Commissioner  
600 East Boulevard Dept. 48  
Bismarck, ND 58505-0480

RE: Service Territory Agreement

Dear Commissioners Kalk, Cramer and Clark

Enclosed are two copies of a service territory agreement between Mountrail Williams Electric Cooperative and McLean Electric Cooperative. Although the Public Service Commission does not have jurisdiction over electric cooperatives it does have jurisdiction over service territory agreements as indicated by the passing of Senate Bill 2412 in 2005. This bill amends North Dakota Century Code 49-03 - 06 page 394, on service area agreements. As we discussed I do not believe a formal hearing is required. However, the Attorney for Mountrail Williams did make the agreement contingent upon PSC approval as his interpretation of SB 2412 requires it.

Please let me know as to when an informal hearing and potential approval may occur.

Sincerely

Martin D. Dahl  
CEO/General Manager  
McLean Electric Cooperative

CC: Dale Haugen, MWEC

Enc. – 2 Territorial Agreements

1 **PU-12-196** Filed: 5/9/2012 Pages: 11  
**Service area agreement**

McLean Electric Cooperative, Inc.  
Martin Dahl, CEO/General Manager

McLean Electric Cooperative, Inc.

and

Mountrail-Williams Electric Cooperative

### SERVICE AREA AGREEMENT

This Service Area Agreement ("Agreement"), dated as of the 28<sup>th</sup> day of March, 201~~2~~<sup>R.S.</sup>, is between McLean Electric Cooperative, Inc., with its address at 4031 Hwy. 37 Bypass NW, PO Box 399, Garrison, ND 58540-0399 ("McLean Electric Cooperative,") and Mountrail-Williams Electric Cooperative with its address at 218 58<sup>th</sup> Street West, Williston, North Dakota 58802 ("Mountrail-Williams"). McLean Electric Cooperative and Mountrail-Williams are hereafter referred to individually each as a "Party" and cumulatively as the "Parties" to this Agreement.

### RECITALS

WHEREAS, McLean Electric Cooperative is a North Dakota rural electric cooperative providing electric utility service to its members in North Dakota.

WHEREAS, Mountrail-Williams is a North Dakota rural electric cooperative providing electric utility service to its members in North Dakota.

WHEREAS, in order to encourage harmony and operational efficiencies among electric service 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 service providers that negotiate service area agreements, North Dakota Century Code § 49-03-06 authorizes electric utilities and rural electric cooperatives to enter into agreements designating the service areas of the Parties; and

WHEREAS, McLean Electric Cooperative and Mountrail-Williams believe a service area agreement between them relative to their electric utility service and facilities in and around Mountrail County and McLean County common borders, located within North Dakota is consistent with the public interest and the purposes of N.D.C.C. § 49-03-06.

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

**ARTICLE I.  
SERVICE AREA**

1.1 McLean Electric Cooperative Service Area. Except as otherwise provided herein, from and after the Effective Date, McLean Electric Cooperative shall provide electric utility service, consistent with the applicable law and requirements of its charter to all new Service Locations within the legal boundaries of the County of McLean as the limits exist on the date of this Agreement and to all new Service Locations in the service area outlined in

orange on Attachment A to this Agreement (collectively “McLean Electric Cooperative Service Area”).

1.2 Mountrail-Williams Service Area. Except as otherwise provided herein, from and after the Effective Date, Mountrail-Williams shall provide electric utility service, consistent with applicable law and the requirements of its charter to all new Service Locations within the legal boundaries of the County of Mountrail as the limits exist on the date of this Agreement and to all new Service Locations in the service area outlined in yellow on Attachment A to this Agreement (“Mountrail-Williams Service Area”).

1.3 Exclusive Territory. For purposes of this Agreement, “Service Location” means the structures, facilities, or improvements on a parcel of real property to which electric service is provided. A Service Location includes expansions, improvements, or additions to existing structures, facilities and other improvements made after the date the real property is designated to be within a service area under this Agreement except as otherwise provided below. Except as provided herein, McLean Electric Cooperative shall not provide electric utility service to any Service Location within the Mountrail-Williams Service Area, and Mountrail-Williams shall not provide electric utility service to any Service Location within the McLean Electric Cooperative Service Area. Notwithstanding the foregoing, each Party is permitted to continue to serve Service Locations in the other Party’s service area if the Party was providing electric service at such

Service Locations on the date the real property is designated to be within a Service Area under this Agreement, 120 days prior to the effective date. Each Party shall continue to be the service provider for each such Service Location in the other Party's service area, until such time as:

- (A) the use of the electrical load at the Service Location has been abandoned and electric service discontinued for a continuous period of at least 120 days; or
- (B) the customer makes a material change of its use of the Service Location, or modifies the structures, facilities, or other improvements on the Service Location, and such change or modification necessitates a replacement or substantial modification of the electric service facilities historically used to serve the Service 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 facilities to new structures, facilities, or improvements due to a subdivision of the Service Location after the Effective Date; or
- (C) the Parties mutually agree in writing to the transfer of electric service.

1.4 Boundary Exception: McLean Electric Cooperative agrees to grant Mountrail-Williams the right to serve an area in McLean County as described as Township 150 North, Range 91 West (T150 n; R91W) Sections; six, seven and eighteen (6,7 & 18).

- 1.5 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 Service Location in one Party's service area shall be served by the other Party, either temporarily or permanently.
- 1.6 Scope of Agreement. This Agreement is intended to govern the allocation and provision of electric utility service by and between McLean Electric Cooperative and Mountrail-Williams 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 shall commence upon the occurrence of the 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 North Dakota Public Service Commission.
- 2.2 End of Term. This Agreement may be terminated at any time by the mutual written agreement of the Parties. Otherwise, this Agreement shall continue in

effect through December 31, 2030. 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 the initial or any extended 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 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 limitations, 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 Party to the other during the term of this Agreement, the Parties will cooperate with each other to minimize disruption of the service provided to the customer to the extent reasonably practicable.

## **ARTICLE 5 MISCELLANEOUS**

- 5.1 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.
- 5.2 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 utility service within the scope of the geographic area of this Agreement. Any amendments to this Agreement shall be made in writing and signed by duly authorized representatives of both Parties.

- 5.3 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.
- 5.4 Assignment of the Agreement. Either Party may assign this Agreement in connection with a merger, sale of substantially all of its assets, consolidation, or other reorganization where the surviving entity acquires the right to provide electric utility service in the service area of the Party.
- 5.5 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.
- 5.6 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.

5.7 Notices. Any notices, including notice of termination permitted to be given under this Agreement shall be given in writing and delivered in person, 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 set forth in this Agreement, or such other place as may be specified by either Party from time to time.

5.8 Approval Required. This Agreement shall be void in its entirety if not approved by the North Dakota Public Service Commission and the respective cooperative board of McLean Electric Cooperative and Mountrail-Williams.

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

MCLEAN ELECTRIC COOPERATIVE, INC.

By: Donald Sogge

Its: Chairman of the Board of Directors

MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE

By: Gary Louren

Its: Chairperson of the Board of Directors