

August 28, 2012

**RECEIVED**

AUG 29 2012

**PUBLIC SERVICE COMMISSION**

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  
Our File No.: 008087.00000**

To Whom It May Concern:

Enclosed relative to the above-referenced matter, please find 3 originals and four copies of a Joint Application for Approval of Service Area Agreement.

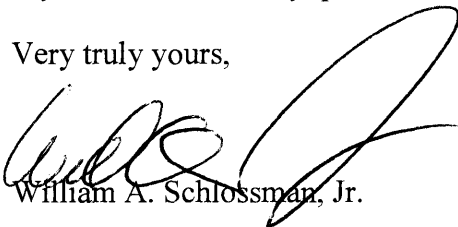
The Application incorporates the following documents:

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.; and,
3. Service Area Agreement.

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

1465731.1

**1 PU-12-697 Filed: 8/29/2012 Pages: 17**  
**Application for approval of service area agreement**

Otter Tail Power Company

William Schlossman, Jr., Vogel Law Firm

**1 PU-12-696 Filed: 8/29/2012 Pages: 17**  
**Application for approval of service area agreement**

Otter Tail Power Company

William Schlossman, Jr., Vogel Law Firm

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PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA

AUG 29 2012

**PUBLIC SERVICE COMMISSION**

In the matter of the Joint )  
Application of Otter Tail Power )  
Company and Cass County Electric )  
Cooperative Inc. for approval of a )  
Service Area Agreement under )  
NDCC § 49-03-06 covering areas in )  
rural Cass and Richland Counties, )  
North Dakota to include the cities of )  
Abercrombie, Christine, Walcott, )  
Davenport, Mapleton and Amenia. )

Joint Application for Approval of Service  
Area Agreement Under NDCC § 49-03-06

Applicants respectively represent to the commission as follows:

1.

Otter Tail Power Company ("Otter Tail") is a Minnesota corporation, 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

2.

Cass County Electric Cooperative Inc. ("Cass Electric") is an electrical cooperative corporation organized in North Dakota under N.D.C.C. Chapter 10-13, with its principal place of business at 3312 42<sup>nd</sup> St. South, Fargo, ND 58104. A copy of the Amended and Restated Articles of Incorporation of Cass Electric are attached as Exhibit "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 throughout Cass County and Richland County, North Dakota.

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 "2." Among other matters, the Service Area Agreement: (a) allocates to Otter Tail and Cass Electric

specified service areas in Cass and Richland Counties, North Dakota, including areas in and around the cities of Abercrombie, Christine, Walcott, Davenport, Mapleton, and Amenia; (b) establishes service quality standards and agreements to cooperate so as to minimize disruption of serviced provided to customers or members served by each party, and (c) to regulate the Franchises of the parties within their respective areas of jurisdiction; retains the authority of the cities of Abercrombie, Christine, Walcott, Davenport, Mapleton, and Amenia; and establishes the authority of the governing boards of those affected cities to enforce the terms of any existing or future franchise agreement. By its terms, the Service Area Agreement is subject to the approval 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 with respect to the areas encompassing the OTP Service Area and CCEC Service Area referenced in the Service Area Agreement.

6.

The Service Area Agreement was approved by the governing boards of each of the cities of and establishes the authority of the governing board of the affected cities of Abercrombie, Christine, Walcott, Davenport, Mapleton, and Amenia.

7.

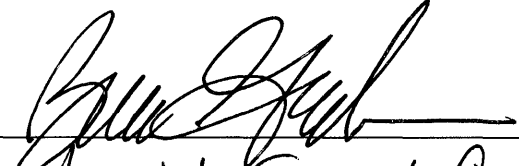
For the reasons more fully set forth above, the applicants believe that it is proper and in the public interest for the Commission to approve the Service Area Agreement, and grant Otter Tail a Certificate of Public Convenience and Necessity authorizing it to extend its plant and system within the service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

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

- (A) Approving the Service Area Agreement in accordance with N.D.C.C. Section 49-03-06;
- (B) 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;
- (C) Granting such other relief as the Commission may deem lawful, just and proper.

Dated this 8<sup>th</sup> day of August 2012.

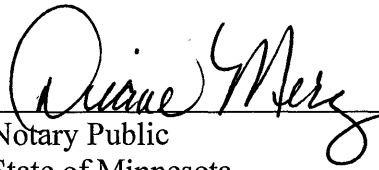
OTTER TAIL POWER COMPANY

By:   
Its: Associate General Counsel

STATE OF MINNESOTA       )  
  )  
COUNTY OF OTTER TAIL    )

Bruce Gerhardson deposes and says that he is the Associate General Counsel of Otter Tail Power Company, the corporation described in the above-entitled matter; that he has read the foregoing Joint Application and knows the contents thereof to be true to the best of his knowledge, information, and belief.

SUBSCRIBED AND SWORN to before me this 8<sup>th</sup> day of August 2012.

  
Notary Public  
State of Minnesota  
My Commission Expires: January 31, 2015





## SERVICE AREA AGREEMENT

This Agreement, dated as of the 25<sup>th</sup> day of October, 2011, is made between Otter Tail Power Company, with its address at 215 South Cascade Street, Fergus Falls, Minnesota 56537 ("OTP") and Cass County Electric Cooperative Inc., with its address at 3312 42<sup>nd</sup> St. South, Fargo, North Dakota 58104 ("CCEC"). CCEC and OTP are hereafter referred to individually each as a "Party" and cumulatively as the "Parties" to this Agreement.

### RECITALS

WHEREAS, OTP 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 the North Dakota Legislative Assembly enacted a bill in 2005 codified as NDCC § 49-03-06 (the "Act") authorizing electric utilities to enter into agreements designating the service areas of the Parties; and

WHEREAS, OTP and CCEC believe a service area agreement between them relative to their facilities throughout several counties in southeastern 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 OTP Territory. From and after the Effective Date, OTP will provide electric service consistent with the requirements of any applicable franchises and applicable law, to all electric customers in the OTP Service Area designated on Schedule 1 attached to this Agreement (the "OTP Service Area").

1.2 CCEC Territory. From and after the Effective Date, CCEC shall provide electric service, consistent with the requirements of any applicable franchises and applicable law, to all electric customers located in the CCEC Service Area designated on Schedule 1 attached to this Agreement (the "CCEC Service Area").

1.3 Exclusive Territory. Except as provided below, OTP 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 OTP 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 of electrical service by and between OTP and CCEC within the OTP Service Area and CCEC Service Area. The provision of electric service to customers outside the OTP Service Area and CCEC Service Area designated in this Agreement will be governed by existing applicable service area agreements between the parties, any future amendments extending the scope of this agreement, any new service area agreements which may be made between the parties and, in areas not subject to any such agreements, applicable law.

## 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 Councils of the cities of Abercrombie, Christine, Walcott, Davenport, Mapleton and Amenia, North Dakota (the "Cities"); 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. Unless so terminated, this Agreement will continue in effect through December 31, 2036. Thereafter, this Agreement will 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 then current term. Following termination of this Agreement, the Parties' rights and obligations to serve customer locations to which they are providing service at the time this agreement terminates will continue until otherwise changed by written agreement of the Parties or applicable law. After termination of this Agreement, service to new customer locations within the OTP Service Area and the CCEC Service Area will be governed by then applicable law.

### 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 located within territory covered by franchise agreements with any municipality, including without limitation, all franchises with the Cities, 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 other Party entering into a franchise agreement or modifying any franchise agreement (however denominated) held by the other Party as it applies to the other Parties' Service Area. Nothing in this Agreement precludes the issuer of any franchise, including without limitation, any of the Cities, 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 municipality issuing any franchise to encourage or induce the issuer not to renew or extend, or to 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 any franchise located in Service Area covered by this Agreement. .

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 OTP by the North Dakota Public Service Commission for the extension of facilities and electric service within the OTP Service Area, or to any customers OTP is otherwise authorized to serve pursuant to this Agreement. To the extent required under any future law, OTP will not object to the issuance of a blanket Certificate or individual Certificates of Public Convenience and Necessity to CCEC by the North Dakota Public Service Commission for the extension of facilities and electric service within CCEC's Service Area, or to any customers CCEC 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.

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 POWER COMPANY

By: Paul Holland  
Its: OTPC Customer Service 9/30/11

CASS COUNTY ELECTRIC COOPERATIVE, INC.

By: Scott W. Hardy  
Its: President/CEO 10/25/11

CITY APPROVAL

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

CITY OF ABERCROMBIE, NORTH DAKOTA

By: Don Hammel  
Its: U. C. Chair. 2/8/12

CITY APPROVAL

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

CITY OF CHRISTINE, NORTH DAKOTA

By: James A. UmRohr  
Its: Mayor 2/8/12

**CITY APPROVAL**

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

CITY OF WALCOTT, NORTH DAKOTA

By: [Signature]  
Its: Mayor 2/6/12

**CITY APPROVAL**

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

CITY OF DAVENPORT, NORTH DAKOTA

By: Larry Palluck  
Its: Mayor 11/2/11

**CITY APPROVAL**

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

CITY OF MAPLETON, NORTH DAKOTA

By: [Signature]  
Its: Mayor 2/7/12

**CITY APPROVAL**

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

CITY OF AMENIA, NORTH DAKOTA

By: Dana Standen  
Its: Mayer 2/13/12

1212012.5

**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 \_\_\_\_\_, 2011.

NORTH DAKOTA PUBLIC SERVICE COMMISSION

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

**Schedule 1**  
**Map of Service Territory**

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SEC. OF STATE

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STATEMENT AMENDING THE  
ARTICLES OF INCORPORATION  
OF CASS COUNTY ELECTRIC COOPERATIVE INC.

Pursuant to Section 10-15-12 of the North Dakota Century Code, the undersigned adopts the following statement amending the Articles of Incorporation of Cass County Electric Cooperative Inc. (the "Cooperative") in order to affect a change in its principal office:

ARTICLE 1.

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

ARTICLE 2.

Article 4 of the Amended and Restated Articles of Incorporation of the Cooperative is amended to read in its entirety, as follows:

ARTICLE 4.

The principal office of the Corporation is located at 3312 42<sup>nd</sup> Street S., Fargo, North Dakota 58104-7084." <sup>Suite 200</sup> SR

ARTICLE 3.

The amendment to the principal office reflected in this statement was adopted by the board of directors of the Cooperative at a meeting held on November 24, 2010.

Dated this 26<sup>th</sup> day of July, 2011.

CASS COUNTY ELECTRIC COOPERATIVE INC.

Scott W. Handy  
President

NORTH DAKOTA

Filed 10-7 2011

Alvin D. Jensen  
Secretary of State SR

