

GREAT RIVER  
ENERGY®

12300 Elm Creek Boulevard • Maple Grove, Minnesota 55369-4718 • 763-445-5000 • Fax 763-445-5050 • www.GreatRiverEnergy.com

**RECEIVED**

October 5, 2012

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**PUBLIC SERVICE COMMISSION**

Mr. Kevin Cramer  
Commissioner  
North Dakota Public Service Commission  
600 East Boulevard Avenue  
Bismarck, North Dakota, 58505-0480

Mr. Darrell Nitschke  
Executive Secretary  
North Dakota Public Service Commission  
600 East Boulevard Avenue  
Bismarck, North Dakota, 58505-0480

**Subject:** Request for jurisdictional determination that Great River Energy is not an “electric public utility” in North Dakota under N.D.C.C. Chapter 49-03.

Dear Commissioner Cramer and Executive Secretary Nitschke,

Great River Energy (“GRE”) has been requested to provide electric service to a proposed new nitrogen fertilizer manufacturing plant to be located in a developing industrial park in Spiritwood Township in Stutsman County, North Dakota. Governor Dalrymple and officials of CHS, Inc. (“CHS”) announced the proposed new nitrogen fertilizer manufacturing plant in a press release on September 12, 2012 (attached). The recently announced project follows an announcement by Dakota Spirit AgEnergy, LLC, an affiliate of GRE, that it also proposes to develop a biorefinery in the industrial park. The industrial park, Spiritwood Energy Park, is being developed, and will be owned and operated by, the Spiritwood Energy Park Association, LLC, a North Dakota limited liability company (“SEPA”). SEPA is jointly owned by GRE and the Jamestown Stutsman Development Corporation (“JSDC”). Spiritwood Energy Park will be located adjacent to GRE’s Spiritwood Station, a 99 megawatt combined heat and power electric generating plant.

With this letter, GRE requests a jurisdictional determination from the North Dakota Public Service Commission (“Commission”) that GRE is not an “electric public utility” in North Dakota as that term is defined in N.D.C.C. Chapter 49-03-01.5, and that the requirements of N.D.C.C. Chapter 49-03 pertaining to “electric public utilities” do not apply to GRE or to the electric service facilities that GRE proposes to construct and operate to provide end-use electric service to the proposed nitrogen fertilizer manufacturing plant, the biorefinery or other future commercial or industrial customers located within the geographical limits of the Spiritwood Energy Park.

1. Background.

GRE is a not-for-profit electric generation and transmission cooperative organized in the State of Minnesota. GRE’s member distribution cooperatives provide electric service to customers in Minnesota and a small part of Wisconsin. GRE owns and operates several electric generating

facilities in North Dakota, including Spiritwood Station. GRE does not offer retail electric service to the general public in North Dakota. However, under a long-term bilateral arrangement, GRE supplies electric service for end-use to The Falkirk Mining Company ("Falkirk"), which owns and operates a coal mine and related facilities located adjacent to GRE's Coal Creek Station in Underwood, North Dakota.

GRE and JSDC have formed SEPA, the developer of the Spiritwood Energy Park, to which they each plan to contribute adjacent land parcels and other resources. The intended area of the park includes approximately 550 acres of undeveloped land within Spiritwood Township (map attached). SEPA plans to build road and rail facilities to serve the park. GRE proposes to construct the electric service facilities for customers who locate in the park. The goal of the collaboration is to attract new commercial/industrial enterprises to the area by offering shared infrastructure within a discrete geographical area. SEPA will begin construction of the road and rail infrastructure after an anchor tenant commits to building a facility within the Spiritwood Energy Park. Candidate anchor tenants include both the nitrogen fertilizer manufacturing plant proposed by CHS and the biorefinery proposed by Dakota Spirit AgEnergy, LLC. Spiritwood Energy Park is sized to accommodate a limited number of projects. Upon the completion of development, GRE anticipates that there will be no more than five (5) tenants located within the geographic boundaries of the park. As shown on the attached map, GRE's Spiritwood Station and the existing Cargill Malt Plant are located adjacent to, but outside of, the park boundaries.

GRE has been requested by CHS to provide electric service to the proposed nitrogen fertilizer manufacturing plant. In the event that the project proceeds, GRE and CHS will negotiate a long-term, custom electric supply agreement governing the terms and conditions of the electric service to the plant. The same would be true for any other tenants who desire to locate commercial or industrial facilities within the geographical boundaries of the Spiritwood Energy Park. The electric supply agreements will contemplate GRE constructing facilities to provide electric service to the customer facilities within the Spiritwood Energy Park directly from Spiritwood Station, from the transmission system administered by the Midwest Independent Transmission System Operator, Inc. (MISO), or from some combination of the two possible configurations.

2. Request for jurisdictional determination that GRE is not an "electric public utility."

GRE requests a jurisdictional determination that GRE is not an "electric public utility" under N.D.C.C. Chapter 49-03-01.5, and therefore not obligated: (a) to secure a certificate of public convenience and necessity before constructing and operating electric facilities intended to provide electric service to end-use commercial or industrial customers located within the Spiritwood Energy Park; or (b) to perform any other of the obligations applicable to an "electric public utility" set forth in N.D.C.C. Chapter 49-03.

Under N.D.C.C, Chapter 49-03-01.5, an "*electric public utility*" is defined as a "*privately owned supplier of electricity offering to supply or supplying electricity to the general public.*" GRE does not meet the definition of an "electric public utility." GRE does not offer and is not proposing to offer retail electric service to the general public. As discussed above, similar to the existing arrangement under which GRE supplies the Falkirk facilities near Coal Creek Station, GRE proposes to supply a small number of commercial and/or industrial customers located near

Spiritwood Station within the boundaries of the Spiritwood Energy Park. Similar to the Falkirk service, GRE would provide the service pursuant to individually negotiated, custom, long-term electric service arrangements with sophisticated commercial or industrial customers.

Even if GRE was deemed to be offering to supply or supplying electricity to the general public, GRE would still not meet the definition of an "electric public utility." As described above, GRE is organized not an investor owned utility, but as a cooperative. Under N.D.C.C Chapter 49-03-01.5, a "*rural electric cooperative*" includes "*any electric cooperative organized under Chapter 10-13.*" The definition goes on to state that an "*electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.*" GRE is a Minnesota cooperative authorized to do business in North Dakota as a foreign cooperative under N.D.C.C. Chapter 10-15, which governs cooperative associations. N.D.C.C. Chapter 10-15-52 provides that upon "*issuance of the secretary of state's certificate of authority, a foreign cooperative is entitled to all rights, exemptions, and privileges of a cooperative organized for the same purposes under the laws of this state.*" N.D.C.C. Chapter 10-13, which governs electric cooperative corporations, provides that a cooperative may be organized and operated as an electric cooperative under N.D.C.C. Chapters 10-15 (as well as Chapter 10-13) for the purpose of engaging in rural electrification by any one or more of several methods, including the "establishment and operation by itself or with any one or more electric cooperatives of an electric generation and transmission cooperative for the purpose of providing electric energy to other cooperatives, public utilities, municipalities, or any department or agency of the state or federal government." Under North Dakota law, the definition of a "rural electric cooperative" is not limited to traditional distribution electric cooperatives. A generation and transmission cooperative, such as GRE, also meets the definition.

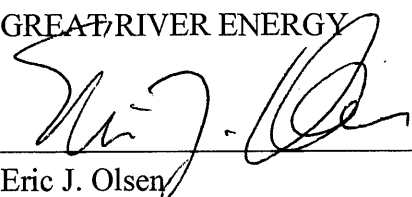
3. Summary.

For the reasons discussed above, GRE requests a jurisdictional determination that GRE is not an "electric public utility" for the purposes of N.D.C.C. Chapter 49-03, and that there is nothing improper in GRE's proposal to construct and operate electric service facilities to serve commercial or industrial customers that propose to locate in the Spiritwood Energy Park.

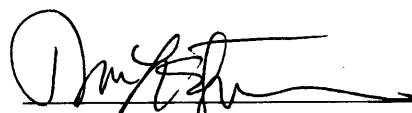
In the event of any questions concerning this request, please feel free to contact either of the undersigned.

Respectfully Submitted,

GREAT RIVER ENERGY



Eric J. Olsen  
Vice President and General Counsel  
Telephone: (763) 445-5201



Donna L. Stephenson  
Associate General Counsel  
Telephone: (763) 445-5218

Attachments

News Releases

## **North Dakota governor, CHS announce plan to pursue major nitrogen fertilizer plant**

### **CHS plant would convert North Dakota natural gas into reliable supplies of fertilizer**

CHSCP

Sep 12, 2012

BISMARCK, N.D. (Sept. 12, 2012) – North Dakota Gov. Jack Dalrymple and leaders of CHS Inc., the nation's largest farmer-owned cooperative, today announced that the company is taking steps toward construction of a more than \$1 billion major nitrogen fertilizer manufacturing plant to be located at Spiritwood, N.D., which would provide the region's farmers with enhanced supplies of crop nutrients essential to raising corn and other crops.

CHS has selected a site on 200-acres near Spiritwood and, following further due diligence, necessary approvals and a successful engineering study, would move forward with the construction of the plant. By selecting the site, CHS is able to conduct a preliminary front-end engineering and design study, which will then be used to determine feasibility of construction plans for the project, expected to cost between \$1.1 billion and \$1.4 billion. CHS is investing \$10 million in this first feasibility phase.

"This potential for this type of project is great news for our farmers and for the entire state of North Dakota," Dalrymple said. "The CHS plant will help us further reduce the flaring of natural gas in western North Dakota and it will provide our farmers with a reliable supply of locally produced fertilizers in place of imports from foreign countries. We will continue working to add value to our energy resources and to develop more locally produced agricultural inputs for North Dakota farmers."

Governor Dalrymple and CHS President and Chief Executive Officer Carl Casale made the announcement during an event at the North Dakota Capitol. They were joined by Woody Barth, president of the North Dakota Farmers Union which has helped facilitate discussions.

"By pursuing this project, CHS would be making a significant, strategic investment that ensures consistent, domestic nitrogen fertilizer supply for our farmer-owners," Casale said. "Today CHS imports fertilizer products from 19 countries. Developing additional domestic crop nutrients sources closer to our customers is critical to meeting increasing demand, improving our logistical and distribution expertise, and adding value for the farmers who count on us."

"The ability to deliver a reliable supply of fertilizer products in North Dakota and the region is a win-win for family farmers and our farmer-owned cooperative system," said Barth. "We are pleased that our organization's initial market analysis and feasibility study for building a plant of this scope has allowed us to work closely with CHS, leading to today's announcement."

Preliminary plans call for construction of a plant to produce 2,200 tons of ammonia daily. It will be distributed as anhydrous ammonia, urea and UAN liquid fertilizer to farm supply retailers and farmers in the Dakotas and parts of Minnesota, Montana and Canada. The proposed North Dakota plant takes advantage of abundant regional natural gas feedstock. It could employ between 100 and 150 people, with a tentative start-up in the second half of 2016.

Casale said CHS is in discussions with Great River Energy and the Jamestown Stutsman Development Corporation (JSDC), who together own the Spiritwood property, to formalize project agreements related to the land and services to be provided by the power generation cooperative and JSDC. CHS will continue working with Governor Dalrymple's office, the North Dakota Department of Commerce, JSDC, Jamestown city and Stutsman County officials, the North Dakota Farmers Union and Great River Energy to move the project forward. In addition, CHS has contracted with engineering firms CH2M Hill of Houston, Texas, and Kadmas, Lee & Jackson of Bismarck, N.D., on site planning and related business and construction details.

CHS Inc. ([www.chsinc.com](http://www.chsinc.com)) is a leading global agribusiness owned by farmers, ranchers and cooperatives across the United States. Diversified in energy, grains and foods, CHS is committed to helping its customers, farmer-owners and other stakeholders grow their businesses through its domestic and global operations. CHS, a Fortune 100 company, supplies energy, crop nutrients, grain marketing services, livestock feed, food and food ingredients, along with business solutions including insurance, financial and risk management services. The company operates petroleum refineries/pipelines and manufactures, markets and distributes Cenex® brand refined fuels, lubricants, propane and renewable energy products.

This document contains forward-looking statements within the meaning of The Private Securities Litigation Reform Act of 1995 that are based on management's current expectations and assumptions. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from the potential results discussed in the forward-looking statements. The company undertakes no obligations to publicly revise any forward-looking statements to reflect future events or circumstances. For a discussion of additional factors that may materially affect management's estimates and predictions, please view the CHS Inc. annual report filed on Form 10-K for the year ended Aug. 31, 2011, which can be found on the Securities and Exchange Commission web site ([www.sec.gov](http://www.sec.gov)) or on the CHS web site [www.chsinc.com](http://www.chsinc.com).

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For further information: Lani Jordan, CHS Inc., +01-651-355-4946, [lanijordan@chsinc.com](mailto:lanijordan@chsinc.com) Jeff Zent, North Dakota Governor's Office, +01-701-328-2424, [jlzent@nd.gov](mailto:jlzent@nd.gov)

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