

RECEIVED

In the Matter of the Request of
Great River Energy for
Jurisdictional Determination

NOV 30 2012

Case No. PU-12-767

PUBLIC SERVICE COMMISSION

**OTTER TAIL POWER COMPANY'S BRIEF IN OPPOSITION TO GREAT RIVER
ENERGY'S REQUEST FOR JURISDICTIONAL DETERMINATION**

I. INTRODUCTION

On October 5, 2012, Great River Energy (GRE) asked the North Dakota Public Service Commission for jurisdictional determinations that would effectively render the Commission unable to regulate, restrict, or govern in any way GRE in its attempt to supply electric service on a contract basis to industrial customers near Spiritwood, North Dakota. Specifically, GRE asked the Commission for a determination 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."¹

The Commission should deny GRE's request for the following reasons:

1. GRE's proposal would turn North Dakota service territory and electric supplier laws on their head, only to allow GRE to transfer the benefits of North Dakota growth from Otter Tail Power Company's North Dakota customers to GRE's Minnesota customers.
2. GRE's request for authority to serve electric customers in the area of Spiritwood would result in significant waste and duplication of facilities in contradiction of the express purposes of the laws governing utility service in North Dakota.

¹ GRE's October 5, 2012 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., page 3.

3. GRE's proposal to serve customers on a contract basis (instead of a permanent utility supplier basis) is contrary to the laws governing electric service in the State of North Dakota.
4. GRE's provision of service to the Falkirk Mine, and the *McLean Electric* litigation related thereto has little relevance to GRE's current request. The *McLean Electric* case is easily distinguished.

II. FACTS

A history of the North Dakota laws governing electric cooperatives and public utilities is provided in Appendix A. GRE's interests in the Spiritwood area, as well as Otter Tail Power Company's service in the Spiritwood area are described in Appendix B.

III. ANALYSIS

1. **GRE's proposal would turn North Dakota service territory and electric supplier laws on their head, only to allow GRE to transfer the benefits of North Dakota growth from Otter Tail Power Company's ("Otter Tail") (North Dakota customers to GRE's Minnesota customers.**

GRE's request is for an approval of its plan to offer contracted electric service to industrial customers near Spiritwood, North Dakota. GRE is a Minnesota generation and transmission (G&T) cooperative without any North Dakota members. If GRE were to supply electric service on this basis at this location, it would take growth that would otherwise benefit OTP's North Dakota customers and confer that benefit to GRE's Minnesota cooperative members. For good reason, North Dakota law has never recognized any legal authority for what GRE is proposing. Instead, the benefit of North Dakota growth should not be transferred out of state to the detriment of North Dakota utility customers.

The problem created by GRE's proposal can be illustrated by looking at what the Commission has considered when it has decided prior service territory cases. In every service territory dispute in which Otter Tail has been involved, the question for the Commission has been which of two North Dakota suppliers of electric service should supply a new load -- one supplier is an investor-owned utility serving North Dakota customers, and the other is a North Dakota distribution cooperative. Regardless of the outcome in each of these cases, the benefit of the growth is conferred to North Dakota electric consumers, either those of the IOU or those of the distribution cooperative. The North Dakota Supreme Court, in *Application of Otter Tail Power Co.*² set forth these factors for the Commission to consider when determining which supplier can provide service more economically: customer preference, location of lines, reliability of service, the ability of electric providers to serve the area more economically and still earn an adequate return on its investment, which supplier sits best qualified to furnish electric service to the site, and which supplier can serve the site without wasteful duplication of services. Resolving disputes based on these factors ensures that the best over-all economic benefit is created for electric service customers in this State.³ Following a service territory dispute, the customers of the prevailing supplier benefit from the growth because the new revenues received related to service to the new load are applied to the supplier's cost of service, thereby keeping the supplier's existing customers' rates lower than they would be without the growth. Contrary to what might be a commonly held assumption, the benefit of the growth in such cases is not merely captured by the supplier in the form of "profits." Even in the case of the

² *Application of Otter Tail Power Co.*, 169 N.W.2d 415 (N.D. 1969)

³ See, e.g., *Capital Electric Cooperative, Inc. v. Public Service Commission*, 534 N.W.2d 58 (1995) ("the primary purpose of the [TIA] was to minimize conflicts between suppliers of electricity and wasteful duplication of investment in capital-intensive utility franchises.")

IOU, the revenues from the growth are applied to the IOU's cost of service thereby reducing revenue deficiencies and lowering rates.

GRE's proposal is an attempt to contort this basic function of the territory laws of North Dakota. Appendix A provides a summary of these laws. As indicated above, GRE's plan would take growth that would otherwise benefit Otter Tail's North Dakota customers and confer that benefit to GRE member cooperatives and their customers in Minnesota. GRE's plan has been conceived because GRE is desperate to access the economic growth in North Dakota after growth that it had mistakenly forecast for Minnesota did not materialize, as discussed below and provided in Appendix B. The Commission should not permit GRE to take the benefits of North Dakota growth away from North Dakota utility ratepayers to remedy GRE's incorrect Minnesota forecasts.

2. **GRE's request for authority to serve electric customers in the area of Spiritwood would result in significant waste and duplication of facilities in contradiction of the express purposes of the laws governing utility service in North Dakota.**

Spiritwood Station was constructed where it now sits for the purpose of providing steam, but not electricity, to customers located in the Spiritwood Industrial Park: specifically, Cargill's malting facility and the Newman Group's ethanol plant, Spirit Ethanol.⁴ From an electrical supply standpoint, "[t]he decision to build Spiritwood Station was made when Great River Energy faced a strong growth in demand for electricity by its member cooperatives in the mid 2000s."⁵ Numerous indications in GRE materials and press releases reveal that they intended for the electricity generated from Spiritwood Station be transmitted to its members in Minnesota and Wisconsin. Additionally, GRE intended to sell excess electricity to the Midwest Independent

⁴ http://www.greatriverenergy.com/aboutus/pressroom/110607_spiritwood_groundbreak.html

⁵ <http://www.greatriverenergy.com/makeelectricity/newprojects/spiritwoodstation.html>

Transmission System Operator (MISO) “for the regional market” due to favorable electric prices at the time.⁶

When the United States was hit with economic recession of 2008, GRE’s growth in demand for electricity became “marginal” and prices for electricity on the open market decreased.⁷ Additionally, GRE lost one of its future steam customers when the Newman Group cancelled its Spirit Ethanol project. Despite the unanticipated escalation of costs, decrease in electric demand, and loss of steam customers, GRE continued with the construction of Spiritwood Station instead of cutting its losses. When Governor Hoeven announced the project, GRE anticipated that Spiritwood Station would cost \$157 million.⁸ By the time construction was completed in 2011, GRE had reportedly spent between \$350 million and \$437 million on the plant.⁹

Due to increasing costs of coal and drastically reduced costs of natural gas, steam is now capable of being produced by natural gas sources at preferential rates. Electrical demand also remains too low to economically place Spiritwood Station online. As a result, GRE does not have any steam customers in the Spiritwood Industrial Park and its completed power plant sits idle. Cargill acquires steam from other sources. The news articles provided in Appendix B, provide further insight on GRE’s decision to “mothball” Spiritwood Station. All the while GRE’s Spiritwood Generating Station was being planned and constructed, GRE assured all parties that the electrical output of the Spiritwood Station was intended only for its own members and for wholesale market sales. Because Otter Tail had been providing service in the Jamestown

⁶ [http://www.greatriverenergy.com/makeelectricity/newprojects/spiritwood fact sheet.pdf](http://www.greatriverenergy.com/makeelectricity/newprojects/spiritwood%20fact%20sheet.pdf)

⁷ <http://www.greatriverenergy.com/makeelectricity/newprojects/spiritwoodstation.html>

⁸ http://www.greatriverenergy.com/aboutus/pressroom/050806_spiritwood.html

⁹ Costs reported by three different news articles found here and provided in Appendix B:

http://bismarcktribune.com/news/opinion/editorial/spiritwood-station-decision-not-the-end/article_7d56b134-20f7-11e1-b260-0019bb2963f4.html ; <http://www.prairiebizmag.com/event/article/id/13058/> ; and <http://www.startribune.com/business/134647533.html?refer=y>

and Spiritwood areas for several decades, all relevant parties in the area, including GRE, expressly agreed that Otter Tail was the local provider of electricity and that the electricity to the Industrial Park was to be provided by Otter Tail. GRE has specifically acknowledged Otter Tail as the “local service provider” of electricity in a number of its publications related to the Industrial Park.¹⁰

Otter Tail’s service in the Industrial Park area goes back at least to 1974 when the Commission issued the first of three Certificates of Public Convenience and Necessity (CPCN) authorizing Otter Tail to extend electrical service to the area. Copies of these CPCNs are included in Appendix B. In the first CPCN, the Commission issued an Order granting Otter Tail authority to provide electrical service to the Ladish Malting Company’s facilities near Spiritwood in 1974. Ladish was purchased by Cargill in 1991 and Otter Tail continues to serve Cargill to this day. On October 3, 2007, the Commission issued a second Order granting Otter Tail with a CPCN to extend permanent electric distribution service to the property on which GRE would construct its Spiritwood Station. On October 24, 2007, the Commission issued a third Order granting Otter Tail with a CPCN to extend permanent electric distribution service to the property on which Spirit Ethanol was to be built. This third CPCN actually covers the very same parcel on which GRE now proposes to extend service to CHS.

Since obtaining these three CPCNs to extend electrical service to the Industrial Park, Otter Tail has made substantial investments in materials and resources in order to adequately serve the anticipated electrical demands of the area. Case in point, Otter Tail has constructed a substation to serve the Industrial Park. The Otter Tail substation is directly adjacent to the Industrial Park. In fact, it is very close to the Industrial Park site that GRE has identified for a future “utility distributing” point, presumably a new sub-station, as noted in the map GRE

¹⁰ <http://www.greatriverenergy.com/makeelectricity/newprojects/spiritwoodstation.html>

attached to its jurisdictional determination request to the Commission. This is the very essence of wasteful duplication of services. If GRE is permitted to carry out its objectives, it would effectively strand the investments that Otter Tail had rightly made in the area to serve customers in the Industrial Park.

GRE's position assumes that CPCNs issued by the Commission stand for nothing, and that the wasteful duplication of service to an area is just a consequence of it exerting its rights to provide service in rural North Dakota. This is a perversion of the law. In this case, if GRE were to move forward as it plans, the result would be a wasteful duplication that would exacerbate the negative economic consequences of its taking of growth from North Dakota ratepayers to benefit its Minnesota vendors described earlier in this brief.

The Commission should exercise its authority to enforce the CPCNs issued to Otter Tail to ensure that North Dakota ratepayers do not suffer from wasteful duplication described above, and to ensure that the benefits of load growth within the State of North Dakota benefit the ratepayers of North Dakota rather than cooperative members residing exclusively in Minnesota and Wisconsin. N.D.C.C. 49-02 provides the various powers of the Commission.¹¹ In addition to its powers to investigate practices of public utilities, require public utilities to conform to the laws of North Dakota and the orders of the Commission, the Commission also has the authority to "require public utilities *or other persons* to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law."¹² (Emphasis added). Clearly, the Commission's authority to compel obedience with its orders is not restricted by any organization's classification under the law. Because the Commission has previously assumed jurisdiction over the Spiritwood Industrial and Energy Park area by authorizing Otter Tail to

¹¹ N.D.C.C. 49-02.

¹² N.D.C.C. 49-02-02.

serve electricity, the Commission maintains the authority to exercise these powers to ensure that the rights and obligations Otter Tail was granted in the referenced CPCNs is not contravened by GRE's plan.

3. GRE's proposal to serve customers on a contract basis (instead of a permanent utility supplier basis) is contrary to the laws governing electric service in the State of North Dakota.

According to GRE's representatives, and contrary to their claim that they should be treated like any North Dakota electric distribution cooperative, the service that GRE is offering to industrial customers in the Spiritwood area is contemplated as strictly a matter of negotiated contract, and for which GRE will not be creating any permanent or lasting obligation to serve. In its request to the Commission, GRE says that it's proposing cannot be considered "offering electric service to the general public." This is not correct. Commercial and Industrial customers have always been considered members of the general public served by utilities and local distribution cooperatives in North Dakota. They are not fair game for outsiders. Interpreting the law in a way that would authorize unregulated providers to supply electric service on this non-utility contract basis would fundamentally transform how electric service is provided in North Dakota. With open-access transmission rights, such an interpretation of North Dakota Law would afford literally anyone who so desired a similar opportunity to offer non-utility contracted electric service throughout the state. If electric service is permitted on such a basis, there can be no doubt that countless others would rush into the state to make similar offerings, especially given North Dakota's enviable position with respect to economic growth. It is not an exaggeration to say that interpreting the law in a way that would authorize an unregulated, non-utility, contract-based approach to electric service would create chaos in how utility service is planned, organized and provided throughout the state. It would destroy the notion of orderly

development of electric facilities within the state and it would most certainly result in much, much higher rates to the vast majority of North Dakotan's.

At the outset it is important to recognize that the location of GRE's Spiritwood Station to the proposed services is entirely irrelevant despite the fact GRE attempts to imply that the location of the generation station gives them some advantage in providing electrical service in that area. In its request for jurisdictional determination, GRE states that its electric supply to customers in the Energy Park may come directly from Spiritwood Station *or* from MISO. This is an important distinction because CHS will not require steam from Spiritwood Station and nothing in GRE's proposal suggests that the "mothballed" power plant will come online if they are allowed to serve electricity to CHS. GRE has confirmed that CHS and the other customers will receive the service of GRE's system, not service of the Spiritwood Station. GRE has also confirmed that it will dispatch Spiritwood Station in the ordinary course, i.e. when it is economical to do. It is possible that GRE may never put Spiritwood Station on line, and it most certainly means that the location of the generating plant to end-users in the industrial park is without meaningful correlation. It also demonstrates that any claim by GRE that providing electrical service in the Energy Park is necessary to put Spiritwood on-line is unsupportable. In essence, GRE is proposing to create a private service territory that would allow them to simply tap into the electrical grid and claim North Dakota customers as their own, regardless of whether such territory is located in areas served by public utilities or locally-owned RECs. If permitted, there is no legal or logical limitation on GRE's ability to offer such service anywhere in the State. GRE's claim that is immune from Commission oversight must be viewed in light of this structure.

The Commission can quickly dispense with GRE's claim that the provision of contractual service to CHS and other industrial end-users is not service to the "general public" under N.D.C.C. 49-03-01.5, and as such is not subject to the Commission's jurisdiction. "Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained." N.D.C.C. 1-02-02. While the term "general public" is not defined by the TIA, under any common, ordinary usage, the "general public" must include industrial end-users, regardless of how sophisticated those end-users may be. Many of the territorial disputes to which Otter Tail has been a party have involved industrial end-users. If one could simply deem a contract with such entities as an exception from the provision of service to the general public there would be little need for the TIA. Neither the North Dakota Supreme Court nor the Commission has recognized such an exception. In short, GRE's interpretation defies common usage and would create a very dangerous loophole in the Commission's jurisdiction.

GRE's plan to offer "contract-based" service is equally problematic. The provision of electric service in North Dakota has always been exclusively a matter of permanent service to customer locations and for which the supplier has both a lasting right to serve and a corresponding obligation to serve. That obligation goes beyond the simple terms of a contract. It goes to the heart of the notion of utility service. If GRE is not creating such an obligation, numerous very serious questions arise about the relationship being created, such as who will be obligated to serve the customer if GRE fails to do so? What if the customer desires to terminate its contract because of non-performance or inadequate performance by GRE? Will the customer have a right to transfer its service in such conditions to an alternative supplier in the area? Of course these questions also raise the prospect of Otter Tail and other traditional utility suppliers

having to serve in the role of “supplier of last resort” with these contracted customers, which is a concept never before addressed in North Dakota. If Otter Tail were put in such a position, how would it plan for the possibility that it may be required to serve the customer in the future? How would rates be set to accommodate the cost of standing-by in case service is required by the utility as provider of last resort?

The reason such questions have not be addressed before is that all electric service in North Dakota has previously been strictly on the basis of a permanent “utility” service whereby the supplier has both a right to serve as well as a continuing obligation to serve; and the customer has both a right to receive service and an obligation to take service from a particular supplier.

This “monopoly” utility/customer relationship of course also requires a close examination of the governance and regulation of the utility supplier. Contrary to anything previously contemplated under North Dakota Law, under GRE’s proposal, GRE will not be governed by any regulatory agency or any cooperative board of directors with North Dakota members.

North Dakota Century Code 10-13 and 49-03 contemplate only three kinds of entities that can supply service within the State - municipals, governed by North Dakota city councils; locally-owned distribution cooperatives, governed by boards made up of North Dakota members; and IOUs, regulated by the North Dakota Public Service Commission. GRE doesn’t fit any of these categories. GRE’s proposal is for a new type of entity without any governance or regulation by any board or governing body with the North Dakota public interest in mind. In fact, the only governing body that would presumably govern GRE’s activities in the performance of its obligations to these contemplated customers is the GRE Board of Directors, which is entirely comprised of Minnesota members with no interest in the long term public interest of

North Dakota.¹³ This kind of unregulated and out-of-state governance is neither contemplated under North Dakota law nor should it be permitted.

In fact, the distribution cooperative laws that GRE claims insulate it from Commission regulation expressly carve out distribution cooperatives from Commission regulation because they are assumed to have adequate self-regulation by their North Dakota board membership. N.D.C.C. 49-02-01.1 limits the Commission's jurisdiction over state-owned, nonprofit, and cooperative utilities because they are governed by other bodies and owe duties to their constituents and members.

North Dakota case law has long recognized this rationale. In *MDU v. Johansson*, 153, N.W.2d 414, (N.D. 1967), the court noted that electrical cooperatives, whose customers are also members of the cooperative, "are in control and have a voice in the policies of the cooperative.... If the policies of the cooperative are not satisfactory to the consumers, they as member have the power to change them." *Id.* at 422. As such it was appropriate for Legislature to exempt electrical cooperatives from the kind of oversight applicable to public utilities. *Id.* The self-regulation by their North Dakota board membership, it was thought, would adequately ensure that the public interest in the state would be protected as these North Dakota distribution cooperatives endeavored to plan, develop and construct their distribution facilities throughout the

¹³ Great River Energy is formed under Minnesota Statute 308A.101(2), which provides the powers of electric cooperatives in Minnesota:

Electric cooperative purpose. An electric cooperative may only be formed by cooperatives engaged in the generation, transmission, and distribution of electric energy for the purpose of financing, or refinancing, the construction, improvement, expansion, acquisition, and operation of electric generating plants and electric transmission and distribution lines, systems, facilities and equipment and related facilities of *its members*. (Emphasis added).

According to GRE's 2006 Amended and Restated Articles of Incorporation its common stock "may be purchased, owned, and held only by member distribution cooperatives of [GRE]." To date, CPA, UPA, or GRE has never had a member in North Dakota.

state. GRE can make no such claim. Its interests and governing structure are strictly designed to serve the interests of its members and customers in Minnesota.

The lack of unity of interest between GRE as a service provider, and North Dakota end users demonstrates the need for Commission oversight. The owners of GRE are Minnesota distribution cooperatives. The interest of these Minnesota entities in the proposed offering of electrical services in North Dakota is the interest of an investor, and nothing more. GRE's Board's fiduciary responsibilities flow to its Minnesota members, not the proposed North Dakota customers. The unity of purpose assumed to exist in the laws respecting North Dakota distribution cooperatives where electrical cooperative members own and govern the services they receive is lacking for GRE. GRE has all the interest and incentives of an investor, with no effective oversight in North Dakota. If GRE is authorized to offer service as it proposes, at a minimum given these circumstances, the Commission is well-justified in treating GRE as an investor-owned public utility. GRE should be required to obtain a CPCN before being permitted to serve the Energy Park. Such action is entirely consistent with the Commission's obligation to protect the public interest in North Dakota.

4. GRE's provision of service to the Falkirk Mine, and *McLean Electric* litigation related thereto has little relevance to GRE's current request. The *McLean Electric* case is easily distinguished

It is anticipated GRE will argue that it has the authority to provide the electric service at issue based on *McLean Electric Cooperative, Inc. v. Cooperative Power Association and United Power Association*. In *McLean*, McLean Electric Cooperative, a North Dakota distribution cooperative, challenged whether GRE's predecessor organizations Central Power Authority and United Power Authority ("CPA/UPA") could provide electrical service to Falkirk Mine, a lignite mining facility located in McLean's service territory. The mine was located adjacent to Coal

Creek Station, a generation plant owned and operated by CPA/UPA. The sole purpose of the mine was to provide lignite coal to Coal Creek Station. McLean brought the action against CPA/UPA years after CPA/UPA had started service to the mine.¹⁴

Ruling against McLean Electric Cooperative, the Federal District Court of North Dakota determined that CPA/UPA was an electrical cooperative within the meaning of N.D.C.C. Chapter 10-13-01, and not precluded from serving its own coal load at the Falkirk Mine. The Court stressed that because Falkirk Mine was created for the sole purpose of providing CPA/UPA's Coal Creek Station with lignite, a "unique history" and a "degree of interrelationship" existed between the parties, therefore the foreign G&T cooperative was not serving a "retail customer."¹⁵

That the *McLean* Court recognized a foreign G&T cooperative as an electrical cooperative under Chapter 10-03-01 with authority to serve its own coal load in a unique, closed-circuit relationship does not, and cannot confer a right to a foreign G&T cooperative to serve electrical loads anywhere it desires in rural North Dakota.

There are significant differences between the *McLean* situation and the current matter. First, GRE's past involvement in the Spiritwood Industrial and Energy Parks do not present any "unique history" or "interrelationship" between any of the parties involved in this matter. In the Falkirk case, the electric customer existed for the sole purpose of providing lignite to the G&T cooperatives' power plant. But for Coal Creek Station's existence, Falkirk Mine would not have required electricity. Here, GRE's anticipated customers do not exist to serve Spiritwood Station with electric or thermal generation inputs. GRE has not offered any indication that Spiritwood Station is even required to supply electricity to the Energy Park. To the contrary, GRE has

¹⁴ *McLean Electric Cooperative v. Cooperative Power Association and United Power Association*, A-94-40.

¹⁵ *Id.*

indicated that it will dispatch Spiritwood Station in the ordinary course, meaning when economic to do so. GRE may very well supply CHS from MISO. Because CHS only requires electricity for its proposed fertilizer plant, and electricity is readily available in the area, the argument that CHS is being constructed based upon Spiritwood Station's existence is a fallacy.

Second, the *McLean* case did not involve a territorial dispute between a public utility previously authorized by the Commission to serve the area and a cooperative implicating the TIA, which is the present case. For this reason, the parties in the Falkirk dispute never requested a determination from the Commission; rather they requested the REA determine the parties' rights. While the Court analyzed the terms and provisions of the laws governing electric cooperatives in general, it did not provide any interpretation of G&T cooperatives rights under the TIA. The TIA specifically addresses territorial conflicts between cooperatives and public utilities, and not conflicts between the cooperatives themselves. As such the Court had little reason to analyze the *McLean* case under N.D.C.C. 49-03.

More importantly, if the *McLean* case can be construed to permit a foreign G&T cooperative to serve North Dakota customers in areas of the G&T cooperative's choosing, when there is no nexus between generation and service, the idea of the orderly and efficient development of electrical services will have been turned on its head, undermining the goals and purposes of the TIA.

In *Capital Electric Cooperative, Inc. v. Public Service Commission*, the Court determined that "the primary purpose of the [TIA] was to minimize conflicts between suppliers of electricity and wasteful duplication of investment in capital-intensive utility franchises."¹⁶ Here ratification of GRE's position would allow foreign cooperatives to essentially swoop in to serve loads anywhere in the state, creating conflict with North Dakota distribution cooperatives and in the

¹⁶ *Capital Electric Cooperative v. Public Service Commission*, 534 N.W.2d 58 (N.D. 1995).

case of Otter Tail, conflict with a public utility that has already made substantial investments in the Energy Park service area in reliance on CPCNs issued by the Commission. The cost of such conflict, in the form of duplication of services, stranded assets, and lost growth opportunities, will be borne by North Dakota utility rate payers.

Finally, construing *McLean* in the manner advocated by GRE will call into question the meaning and authority of CPCNs issued by the Commission. The TIA was created to promote the orderly development of electrical facilities. For these reasons, the TIA requires that public utilities obtain a CPCN from the Commission prior to extending service outside of municipalities. As previously discussed, the Commission has issued CPCNs authorizing Otter Tail to provide electric service to the Spiritwood area including the property upon which the proposed Energy Park will be located. For the Commission to ignore these Orders and allow GRE to supply electricity to the Energy Park would be to diminish the ultimate purpose of the TIA and CPCNs altogether

III. REQUEST FOR RELIEF

Based on the foregoing, Otter Tail requests the Commission to deny GRE's request in a manner that prohibits GRE from carrying out its proposal. If nothing else, GRE should be treated as a public utility, and be required to obtain CPCNs before providing any end-use electrical service in the Energy Park. If the Commission is not prepared to prohibit GRE from acting on its plan, the Commission would well served by making clear that GRE's plan poses significant, unresolved factual and legal questions, and that any action taken by GRE in the face of such questions will be at GRE's risk. Anything less from the Commission could be construed by GRE and others as acquiescence by silence; an implied waiver of the agency's regulatory oversight of the issues presented by these matters. Not only might GRE assume it has the

Commission's acquiescence if the Commission fails to declare its concerns, the stage could be set for other foreign cooperatives to seek loads in established service areas without any opportunity for regulatory oversight or treatment under the Territorial Integrity Act. The Commission could trigger the kind of unregulated development that the TIA and the CPCN process are designed to avoid. The applicability and enforceability of Commission-ordered CPCNs would be jeopardized, undermining the Commission's authority and ability to regulate electrical services in North Dakota.

Finally, by taking this conservative approach the Commission will not impair or impede development of the Spiritwood Industrial/Energy Park. Electrical service is and remains available from Otter Tail Power based on previously issued CPSNs. There is no basis for CHS or other potential tenants of the Energy Park to demur based on lack of service.

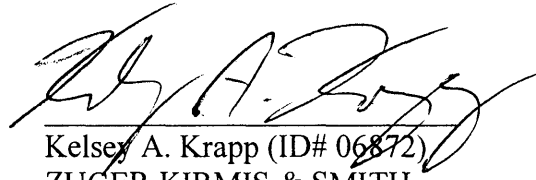
Dated this 30th day of November, 2012.

By:

/S/ Bruce Gerhardson
Bruce Gerhardson
Associate General Counsel
Otter Tail Power Company
215 S Cascade St.
Fergus Falls, MN 56538-0496
Telephone: 218-739-8475

/S/ Cary Stephenson
Cary Stephenson (ID# 05017)
Attorney at Law
Otter Tail Power Company
PO Box 9156
Fargo, ND 58106-9156

Paul R. Sanderson (ID# 05830)
ZUGER KIRMIS & SMITH
Attorneys for Otter Tail Power Company
P.O. Box 1695
Bismarck, ND 58502
Telephone (701) 223-2711

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

Kelsey A. Krapp (ID# 06872)
ZUGER KIRMIS & SMITH
Attorneys for Otter Tail Power Company
P.O. Box 1695
Bismarck, ND 58502
Telephone (701) 223-2711

APPENDIX A

LEGAL & FACTUAL HISTORY:

ELECTRIC COOPERATIVES & THE TERRITORIAL INTEGRITY ACT

A. Electric Cooperatives

The Rural Electrification Act of 1936 enabled the newly-created Rural Electrification Administration (REA) to provide funding to rural electric cooperatives for the purpose of extending electrical service to America's rural communities not being served by public utilities. According to the National Rural Electric Cooperative Association (NRECA), "rural electrification is the product of *locally owned* rural electric cooperatives that got their start by borrowing funds from REA to build lines and provide service on a not-for-profit basis."¹ (Emphasis added.)

Rural electric cooperatives established their service areas in the early 20th Century by providing electric service beyond public utilities' territories, which were primarily located in municipalities. As between the cooperatives, service territories were divided geographically by private agreement in the earliest days of rural electrification.

As evidenced by the NRECA definition above, the traditional application of the term "rural electric cooperative" refers to locally-owned distribution cooperatives that provide end-use retail electricity to their members. For the purposes of this brief, the terms "rural electric cooperative" (REC) and distribution cooperative shall be synonymous.

North Dakota Century Code Chapter 10-13 was enacted in 1957 and governs electric cooperatives, generally. At that time, North Dakota RECs traditionally received wholesale electrical power from the U.S. Department of Energy's Western Area Power Administration

¹ <http://www.nreca.coop/members/History/Pages/default.aspx>

(WAPA) and small-scale generation and transmission (G&T) cooperatives owned and operated with other local RECs in contiguous geographical areas. NRECA accurately distinguishes the purpose and nature of the two different types of electric cooperatives: “Distribution cooperatives are the foundation of the rural electric network. They deliver electricity to retail customers. Generation & Transmission cooperatives provide wholesale power to distribution co-ops through their own generation or by purchasing power on behalf of the distribution members.”² In effect, G&T cooperatives exist for the sole purpose of providing wholesale electric generation and transmission to its owner-member RECs. As time progressed, G&T cooperatives merged and grew to serve more RECs and larger geographical territories.

When N.D.C.C. 10-13 was drafted and enacted, the large-scale G&T cooperatives that exist today were nothing more than an idea. A few years later in 1965, the distribution cooperative members of the North Dakota Association of Rural Electric Cooperatives (NDAREC) drafted the Territorial Integrity Act (TIA), discussed below. At that time, the region’s first large-scale G&T cooperative, Basin Electric Power Cooperative, was in its infancy. Further, foreign G&T cooperatives such as GRE had no presence in North Dakota until the 1970s. The large-scale G&T cooperatives have grown tremendously with time,

B. The Territorial Integrity Act

The Territorial Integrity Act of 1965 added Subsections 01.1 through 01.5 to North Dakota Century Code Chapter 49-03, which governs electric utility franchises.³ The TIA requires public utilities to obtain a certificate of public convenience and necessity (CPCN) from the Public Service Commission prior to construction and operation of electric facilities beyond municipal limits or existing service areas.

² <http://www.nreca.coop/members/Co-opFacts/Documents/AnnualMeetingFactSheet.pdf>

³ *Territorial Integrity Act*, S.L. 1965, ch. 319 § 2.

The legislative history of the TIA clearly establishes that the drafters intended its benefits to be conferred upon locally-owned distribution cooperatives alone.⁴ Clarence Welander, Chairman of the NDREC Legislative Committee, that the TIA was drafted by the NDREC Legislative Committee, which was comprised of representatives from distribution cooperatives across the state, for the purpose of protecting distribution cooperatives' territories.⁵ The testimony of James L. Grahl, Manager of the newly-created Basin Electric, provides further indication of TIA's intent to protect distribution cooperatives: "Basin has a direct and vital interest in seeing that the areas now served by our North Dakota member cooperatives are protected, and not subject to being whittled away."⁶ It is important to note that Grahl did not provide any indication that the TIA was meant to protect G&T cooperatives such as Basin.

The underlying purpose of the TIA was for RECs to "hold on to the rural areas that are rightfully theirs."⁷ Most notably, Clifton Odegard of the NRECA testified:

Preserving the right to serve an area developed by a cooperative is essential if rural electric systems are to overcome their handicaps of low density, limited revenue and high capital investment. . . We are not asking the Legislature for the right to go into the monopoly, franchised, high-density areas in the cities. All this legislation seeks is the protection of our own rural territory, developed by us in good faith, from the encroachment of *other suppliers*.⁸

(Emphasis added). Many TIA proponents offered stories and instances of public utilities sprawling into REC territory and "pirating" customers. The language of the law was written to correct these specific actions by public utilities, but the fundamental purpose of the TIA was to

⁴ Testimony before the legislature was obtained from the N.D. Legislative Service. Copies will be made readily available by Otter Tail upon the Commission's request.

⁵ *Testimony of Clarence Welander, Chairman of the North Dakota Rural Electric Cooperatives' Legislative Committee.*

⁶ *Statement on House Bills 724, 726, and 727 by James L. Grahl, General Manager, Basin Electric Power Cooperative, Before the House General Affairs Committee of the North Dakota Legislature, February 5, 1965.*

⁷ Senate Committee on Industry, Business and Labor, February 25, 1965 Minutes.

⁸ *Testimony of Clifton Odegard, Buxton, North Dakota, Member of Board of Directors of National Rural Electric Cooperative Association.*

protect distribution cooperatives from *any* supplier, as suggested by Odegard. Because territorial disputes had only existed between RECs and public utilities, the TIA accounted for only this history and failed to contemplate other potential conflicts.

Throughout the years, the North Dakota Supreme Court has accounted for the aforementioned legislative history while also interpreting the TIA's purpose from an economic perspective. In *Capital Electric Cooperative, Inc. v. Public Service Commission*, the Court determined that "the primary purpose of the [TIA] was to minimize conflicts between suppliers of electricity and wasteful duplication of investment in capital-intensive utility franchises."⁹

⁹ Capital Electric Cooperative v. Public Service Commission, 534 N.W.2d 58 (N.D. 1995).

APPENDIX B

LEGAL & FACTUAL HISTORY:

GREAT RIVER ENERGY, SPIRITWOOD, & OTTER TAIL'S INTEREST

A. Great River Energy

Cooperative Power Association (CPA) and United Power Association (UPA) were G&T cooperatives owned by several RECs with service territory in Minnesota and Wisconsin. In 1998, these distribution cooperatives effectively merged CPA and UPA to form Great River Energy under Minnesota Statute 308A.101(2), which provides the powers of electric cooperatives in Minnesota:

Electric cooperative purpose. An electric cooperative may only be formed by cooperatives engaged in the generation, transmission, and distribution of electric energy for the purpose of financing, or refinancing, the construction, improvement, expansion, acquisition, and operation of electric generating plants and electric transmission and distribution lines, systems, facilities and equipment and related facilities of *its members*.

(Emphasis added). The GRE merger was completed in 2006.

According to GRE's 1998 Articles of Incorporation, only the distribution cooperatives of CPA or UPA may be stockholders and members of GRE. After the formal merger effectively terminated CPA and UPA, the 2006 Amended and Restated Articles of Incorporation reiterated that common stock "may be purchased, owned, and held only by member distribution cooperatives of [GRE]." The Restated Bylaws require that only holders of common stock, distribution cooperatives, may be members of GRE. To date, CPA, UPA, or GRE has never had a member in North Dakota. Currently, GRE is owned by the 28 distribution cooperatives in Minnesota and Wisconsin which it serves. Those 28 members provide end-use electricity to

“nearly 645,000 member-consumers — or about 1.7 million people.”¹ GRE is controlled by an elected board of directors comprised of representatives from each of GRE’s distribution cooperatives.

GRE provides service to its owner-member by generating more than 2,800 megawatts (MW) of electricity at 11 power plants. It transfers that electricity to its member RECs over nearly 4,500 miles of transmission lines and more than 100 substations. In North Dakota, GRE owns and operates two coal-fired power plants: Coal Creek Station and Stanton Station. GRE also owns Spiritwood Station, but it is currently not operating.

Due to the nature and relationship of distribution cooperatives and G&T cooperatives discussed in Appendix A, GRE does not provide end-use electricity to retail customers. GRE does, however, provide end-use electricity to the Falkirk Mine from which it receives lignite coal to fuel Coal Creek Station. Falkirk Mine was created for the sole purpose of providing lignite to CPA/UPA for use at Coal Creek Station. Falkirk Mine has no other customers.

B. Spiritwood Station, the Spiritwood Industrial Park, and Otter Tail’s Involvement

On November 6, 2007, Governor John Hoeven led a groundbreaking ceremony for Spiritwood Station, GRE’s 99 MW coal-fired generation plant located in the Spiritwood Industrial Park near Spiritwood, North Dakota, roughly eleven (11) miles east of Jamestown.² The Industrial Park was originally designed to include Spiritwood Station, an expansion to the existing Cargill malting plant, and a proposed 100 million gallon ethanol plant. Governor Hoeven’s office “helped forge the alliance” between the three parties involved: GRE, Cargill, and the Newman Group.³

¹ <http://www.greatriverenergy.com/aboutus/whoweare/>

² http://www.greatriverenergy.com/aboutus/pressroom/050806_spiritwood.html

³ http://www.greatriverenergy.com/aboutus/pressroom/110607_spiritwood_groundbreak.html

As a combined heat and power plant, Spiritwood Station was ultimately constructed where it now sits for the purpose of providing steam, but not electricity, to the other members of the Spiritwood Industrial Park: Cargill's malting facility and the Newman Group's ethanol plant, Spirit Ethanol.⁴ From an electrical supply standpoint, "The decision to build Spiritwood Station was made when Great River Energy faced a strong growth in demand for electricity by its member cooperatives in the mid 2000s."⁵ Numerous indications in GRE materials and press releases reveal that they intended for the electricity generated from Spiritwood Station be transmitted to its members in Minnesota and Wisconsin. Additionally, GRE intended to sell excess electricity to the Midwest Independent Transmission System Operator (MISO) "for the regional market" due to favorable electric prices at the time.⁶

Because Otter Tail had been providing service in the Spiritwood area since 1925, the parties agreed that electricity to the Industrial Park was to be provided by Otter Tail. GRE has specifically acknowledged Otter Tail as the "local service provider" of electricity in a number of its publications related to the Industrial Park. In fact, on the map provided to the Commission by GRE, Otter Tail's existing substation has been marked on the Energy Park property as "Utility Distribution".

The North Dakota Public Service Commission has issued three CPCNs authorizing Otter Tail to extend electrical service to the area. First, the Commission issued an Order granting Otter Tail with a CPCN to provide electrical service to the Ladish Malting Company's facilities near Spiritwood in 1974. Ladish was purchased by Cargill in 1991. On July 16, 2007, Otter Tail filed an Application of Permanent Authority to extend electric distribution service to the Spirit Ethanol, on the property where the Energy Park is proposed to be located. After Northern Plains

⁴ Id.

⁵ <http://www.greatriverenergy.com/makeelectricity/newprojects/spiritwoodstation.html>

⁶ http://www.greatriverenergy.com/makeelectricity/newprojects/spiritwood_fact_sheet.pdf

Electric Cooperative withdrew its objection to Otter Tail's application, Commission granted the CPCN as requested on October 24, 2007. On September 6, 2007, Otter Tail filed an Application of Permanent Authority to extend electric distribution service to the property where GRE would construct its Spiritwood Station. After Notice and Opportunity for Hearing, no objections to Otter Tail's application were received and the Commission granted the CPCN as requested on October 3, 2007.

Since obtaining the three CPCNs to extend electrical service to the Industrial Park, Otter Tail has invested substantial amounts of materials and resources in order to adequately serve the anticipated electrical demands of the area.

According to information obtained from GRE's website, when the United States was hit with economic recession of 2008, GRE's growth in demand for electricity became "marginal" and prices for electricity on the open market decreased.⁷ Additionally, GRE lost one of its future steam customers when the Newman Group cancelled its Spirit Ethanol project. Despite the unanticipated escalation of costs, decrease in electric demand, and loss of steam customers, GRE continued with the construction of Spiritwood Station instead of cutting its losses. When Governor Hoeven announced the project, GRE anticipated that Spiritwood Station would cost \$157 million.⁸ By the time construction was completed in 2011, GRE had reportedly spent between \$350 million and \$437 million on the plant.⁹

Due to increasing costs of coal and drastically reduced costs of natural gas, steam is now capable of being produced by natural gas sources at preferential rates. Electrical demand also

⁷ <http://www.greatriverenergy.com/makeelectricity/newprojects/spiritwoodstation.html>

⁸ http://www.greatriverenergy.com/aboutus/pressroom/050806_spiritwood.html

⁹ The following news articles have reported on GRE's costs associated with Spiritwood Station:

http://bismarcktribune.com/news/opinion/editorial/spiritwood-station-decision-not-the-end/article_7d56b134-20f7-11e1-b260-0019bb2963f4.html ; <http://www.prairiebizmag.com/event/article/id/13058/> ; and <http://www.startribune.com/business/134647533.html?refer=y>

remains too low to economically place Spiritwood Station online. As a result, GRE does not have any steam customers in the Spiritwood Industrial Park and its completed power plant sits idle. Cargill acquires steam from other sources.

This Appendix includes three news articles, cited above, that provide additional insight into GRE's financial difficulties related to this project and their decision to "mothball" the Spiritwood Station.

C. JSDC and the Spiritwood Energy Park

The Jamestown Stutsman Development Corporation (JSDC) is a quasi-governmental organization that exists to promote business development in the Jamestown area. JSDC is governed by a Board of Directors comprised of Stutsman County Commissioners, Jamestown City Council members, Jamestown Area Chamber of Commerce members, and other business leaders.¹⁰ JSDC oversees the Economic Development Fund (EDF), which appropriates sales and property taxes from the City of Jamestown and Stutsman County for the purpose of economic development.¹¹ Although JSDC has broad authority to seek out and promote development using EDF appropriations, the Jamestown City Council and Stutsman County Commission must review and grant final approval for all projects recommended by JSDC.¹²

JSDC was a stakeholder in the Newman Group, which planned to build the Spirit Ethanol plant in the Spiritwood Industrial Park. On April 21, 2009, the Stutsman County Commission approved JSDC's proposal to de-obligate themselves from the Spirit Ethanol project.¹³ Under JSDC's proposal, the Newman Group would sell its property and interest in the Industrial Park to

¹⁰ <http://www.growingjamestown.com/elements/downloads/JSDC%20Bylaws%202003.pdf>

¹¹ EDF Guidelines can be found in the following documents:

<http://www.growingjamestown.com/elements/downloads/JSDCChecklist.pdf> and

http://www.growingjamestown.com/elements/pdf/2012_JSDC_Policies_and_Procedures.pdf

¹² Id.

¹³ http://www.co.stutsman.nd.us/minutes/4.21.2009_minutes.pdf

JSDC and GRE.¹⁴ The Stutsman County Commission also approved a request by GRE for funds in the amount of \$300,000 to create 24 jobs at Spiritwood Station.¹⁵

GRE and JSDC followed through with the proposal and purchased the Industrial Park property planned for the Spirit Ethanol plant, renamed it Spiritwood Energy Park, and created a jointly-owned organization named Spiritwood Energy Park Association (SEPA). The purpose of SEPA is to attract new industrial businesses to the Energy Park by offering shared infrastructure and a landlord-tenant relationship where SEPA “would own and operate the land and improvements and the individual tenants would pay their pro rata share” in operating expenses.¹⁶

In early 2011, SEPA announced that its first tenant may be Dakota Spirit AgEnergy, a biorefinery that would utilize steam from Spiritwood Station to produce ethanol and other byproducts.¹⁷ Dakota Spirit AgEnergy is a wholly-owned subsidiary of GRE. It is Otter Tail’s understanding that this project is still in the early planning stages and no official actions have commenced.

In the September 12, 2012 press release provided to the Commission by GRE, Governor Jack Dalrymple and CHS, Inc. announced that CHS “is taking steps towards construction” of a nitrogen fertilizer plant to be located in the Energy Park. According to GRE, the CHS project would not require steam from GRE’s Spiritwood Station.

GRE now seeks to provide electricity to CHS and all future tenants of the Energy Park, despite the Commission’s numerous Orders granting Otter Tail with “permanent” CPCNs to extend electrical service the entire Industrial Park area, specifically including the Energy Park property. In its request for jurisdictional determination, GRE states that its electric supply to

¹⁴ Id.

¹⁵ Id.

¹⁶ <http://www.growingjamestown.com/data/upfiles/SEPA%20Project%20Brief.pdf>

¹⁷ <http://www.dakotaspitagenergy.com/documents/2011.03.29DakotaSpiritAgEnergynewsrelease.pdf>

customers in the Energy Park may come directly from Spiritwood Station *or* from MISO. This is an important distinction because CHS will not require steam from Spiritwood Station and nothing in GRE's proposal suggests that the "mothballed" power plant will come online if they are allowed to serve electricity to CHS. In essence, GRE is proposing to create a private service territory founded solely upon a landlord-tenant relationship which would allow them to simply tap into the electrical grid and claim North Dakota customers as their own, regardless of whether such territory is located in areas served by public utilities or locally-owned RECs.

D. Otter Tail's History and Investments in Spiritwood

Otter Tail Power Company is a regulated electric public utility currently serving 57,130 customers in North Dakota. Otter Tail began serving the Jamestown Customer Service Center (CSC) area in 1925. The Jamestown CSC serves approximately 18,332 customers in 62 different communities, including Spiritwood. Approximately 32% of Otter Tail's North Dakota customers are located in the Jamestown CSC area.

Since the Commission issued a CPCN for Otter Tail to serve the Ladish Malting facility in 1974, Otter Tail has invested substantially in the Spiritwood Industrial Park area. Acting in reliance on the Commission's issuance of the CPCNs referenced above, Otter Tail has installed facilities built to serve Spiritwood Station and the property now known as the Spiritwood Energy Park.

Until GRE's recent request for jurisdictional determination, it was understood by all parties involved or associated with the Spiritwood Industrial/Energy Park that Otter Tail would supply electricity, while Spiritwood Station would provide steam to any such customers that required these services.



Spiritwood Station decision not the end

DECEMBER 08, 2011 2:00 AM • TRIBUNE EDITORIAL

Great River Energy put \$437 million into the construction of the 99-megawatt, coal-fired Spiritwood Station, a combined heat and power plant near Jamestown. It was to go online on Jan. 1. But lack of demand for electricity and loss of a major customer for the plant's steam resulted in a decision to not fire up the plant.

Mothballing Spiritwood Station until at least 2013 is a huge blow to Great River Energy's owners, 28 Minnesota electric cooperatives and eventually to the 650,000 customers buying Great River Energy electricity in the region. Some call it buyer's remorse.

It's also a blow, indirectly, to the people who live and work in coal country and in the Jamestown area.

Spiritwood Station was wisely dual purpose, in that steam from the plant was to be used to operate a malting plant and a bio-refinery - a corn-ethanol plant and a biomass, or cellulosic, ethanol plant. The bio-refinery will need steam beginning in 2013. The hope is there will be enough demand then to justify lighting the power plant's boilers.

Since construction began on the Spiritwood Station in 2007, the "great" recession struck, markets tanked and demand for power fell off. Company officials say if Spiritwood Station came online now, it would lose money half of the time.

Those that chalk up the idling of Spiritwood Station as the end of the era of coal are missing a couple of points.

The decline in demand for electricity isn't long term; rather, it's a function of economies in Minnesota, Wisconsin and Iowa that continue to struggle in the aftermath of the recession. Demand for electricity will return. And it will take wind and oil and coal all to provide a share of that power.

Also, Spiritwood Station is a new generation, cleaner-burning power plant. It was to use lignite coal from the Falkirk Mine that had been dried and had some of the mercury and sulfur removed. Having it online would mean more environmentally friendly electricity on the grid. Instead, older power plants continue to operate and this new, greener power source from coal sits idle. It's not a good trade.

We hope that in the coming year, the business conditions develop that make it prudent to bring Spiritwood Station online. It will be good for business, the environment and for job creation in the Jamestown area.

StarTribune

New power plant idled by economy

Article by: DAVID SHAFFER

Star Tribune

January 9, 2012 - 10:59 AM

Minnesota's second-largest electric company has spent \$437 million on a recently completed coal-burning power plant 85 miles west of Fargo.

Built with the encouragement of North Dakota's political leaders, the plant burns lignite mined in that state. It has best-available pollution controls and draws city wastewater instead of fresh water. At full power, the new plant could supply about 63,000 homes.

Instead, owner Great River Energy is shutting it down.

While investing hundreds of millions of dollars in power plants always carries risks, the tale of the Spiritwood Station is an extreme case. The head of an industry trade group couldn't remember another new U.S. coal plant built to supply power all the time that was immediately mothballed.

A combination of factors made Spiritwood a financial drag on Great River Energy (GRE), a Maple Grove-based wholesale cooperative serving 650,000 customers from the Iowa state line to the Canadian border. These included slower-than-expected growth in electricity demand, lower prices on power sales to the grid and the loss of a key industrial customer for some of the plant's steam.

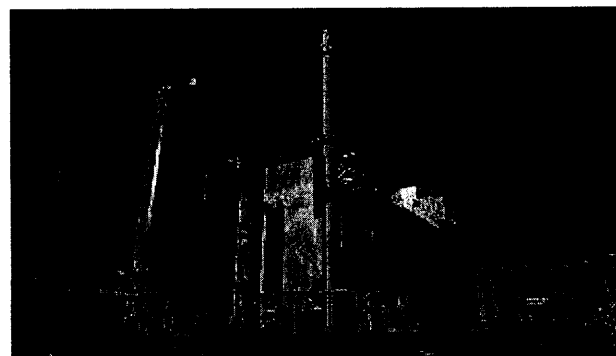
"We could run it, and lose money half the time," said Rick Lancaster, vice president for generation at GRE.

Shutting it down isn't cheap, either. GRE said it has budgeted \$30 million next year to maintain the plant and to cover interest on bonds and some depreciation. Nine employees have been hired to maintain the plant, whose boilers and turbines ran for several weeks of testing that ended this month, Lancaster said.

GRE, which is owned by 28 Minnesota electric cooperatives, expects to keep the plant off-line until 2013, perhaps longer.

Even critics of coal point out that Spiritwood is cleaner-burning than other operating coal plants. But free-market pricing and grid bottlenecks can mean that cleaner energy sources, even wind power, are unable to compete against dirtier generators.

"GRE is being penalized for being an environmental innovator," said Brad Crabtree, policy director for the Great Plains Institute, a Minneapolis-based nonprofit that works with industries on environmental issues and has received funding from the co-op and other utilities. "They invested extra resources to do the right thing environmentally and to build the most



The \$437 million Spiritwood Station plant will remain off-line until 2013, perhaps later, says its owner, Great River Energy.

, Great River Energy

Great River Energy

Business: Nonprofit wholesale electric supplier owned by 28 member cooperatives serving rural and suburban Minnesota.

Headquarters: Maple Grove.

History: Formed in 1999 by merger of United Power Association of Elk River and Cooperative Power of Eden Prairie.

Employees: 850.

Customers: 650,000.

Assets: Owns 11 power plants, including two major coal-fired units in North Dakota, transmission lines and substations; contracts for wind power and other generation.

2010 revenue: \$847 million.

SPIRITWOOD STATION

Location: 85 miles west of Fargo.

Cost: \$437 million.

Output: 99 megawatts of electricity; co-generates steam heat for nearby industries.

Fuel: Lignite coal that is dried and refined at another Great River Energy power plant, using technology that boosts fuel efficiency and reduces sulfur and mercury.

Backup: Natural gas-fired boilers kick in to supply steam for industrial customers when coal boiler's entire steam output is needed to generate electricity at full power. Gas boilers can't produce electricity directly.

Source: Great River Energy

efficient advanced-combustion power plant in the Midwest region, but they are not rewarded in the marketplace."

The lignite burned at Spiritwood is first processed elsewhere using technology that GRE developed to dry the coal and remove some of the mercury and sulfur. While generating electricity, the plant also can produce steam for sale to nearby industries, a highly efficient process known as co-generation.

Douglas Biden, president of the Electric Power Generation Association, an industry trade group, said few coal-fired plants have been getting built in recent years because of concerns about future federal regulations related to global warming – often called carbon taxes or offsets – that could make them more expensive to operate. Spiritwood avoided Minnesota's carbon-offset rules because the state Legislature exempted it.

"It is probably the only coal plant built for base load that was completed and then mothballed," Biden said.

Another environmentalist sees the fate of Spiritwood Station as confirmation that coal power plants are no bargain.

"They are a huge risk for companies," said Mark Trechock, staff director of the Dakota Resource Council, a North Dakota environmental group. "They are very expensive, and coal prices are going up. ... It just doesn't pay."

Lancaster, of GRE, rejects such end-of-coal arguments. He said the plant is a victim of market forces. Indeed, regional pricing for electricity has been so low that the co-op reported losing money last year when selling its wind power on the grid.

Bad breaks from start

Spiritwood Station has gotten bad breaks almost from the beginning.

In 2006, North Dakota's former governor asked GRE to consider a power plant that also would supply steam to a large malt plant in Spiritwood, N.D., owned by Cargill and to a new ethanol plant proposed for a nearby industrial park.

At the time, GRE's electricity demand was growing, and the co-op envisioned a need for more generation.

When construction of Spiritwood began in October 2007, it immediately faced higher prices for steel and other commodities, causing the cost to grow from \$277 million to \$350 million, Lancaster said. Soon the financial crisis and housing recession hit.

In 2008, power demand by the co-op's customers fell. Forecasts of future needs were cut, and the price of power sold to the grid dropped, Lancaster said. Then the ethanol plant project was canceled, taking away a key steam customer and making the power plant less efficient to run.

GRE decided to keep building Spiritwood Station rather than incur a \$190 million loss, regulatory filings say. But it delayed the plant's completion, and deferred \$87 million in bond interest during the slowed construction, Lancaster said.

Still needing a second steam customer, GRE says it intends to create one. The co-op has acquired land and launched a joint venture to build a corn-ethanol plant and a second biomass, or cellulosic, ethanol plant.

It won't be the co-op's first venture into ethanol. It co-owns a large plant at one of its other North Dakota power stations. Lancaster said the goal is to have the new corn-ethanol plant at Spiritwood in full operation by the end of 2013. The cellulosic plant, using technology from Inbicon of Denmark, would come later.

That timetable means GRE may have to generate power at Spiritwood in 2013 at reduced output, Lancaster said. It's not technically feasible to quickly cycle coal-fired boilers on and off for peak loads only.

All of this has left the 28 member co-ops and their customers waiting for an unusual set of economic jigsaw pieces to fall in place – and paying a price in the meantime.

David Shaffer • 612-673-7090

Published November 02, 2012, 02:10 PM

Spiritwood Station will begin operating in 2015

JAMESTOWN, N.D. - The Spiritwood Station generating plant will begin operating in about two years, according to filings made by Great River Energy with the Minnesota Public Utilities Commission Thursday.

By: Keith Norman, Forum Communications

JAMESTOWN, N.D. - The Spiritwood Station generating plant will begin operating in about two years, according to filings made by Great River Energy with the Minnesota Public Utilities Commission Thursday.

"Our filing states we intend to be fully operational to provide steam to customers' facilities that require steam by January 2015," said Lyndon Anderson, communications supervisor for GRE.

The 99-megawatt coal-fired electric generating plant was completed in August 2011. The plant went through a testing and commissioning process and then was shut down because of lack of demand for electricity in Minnesota. The plant has sat idle since.

Construction on the Spiritwood Station generating plant, which is being built near Spiritwood, N.D., began in 2006. The plant cost about \$350 million to construct and was intended to produce steam for use at the Cargill Malt plant and electricity for the Minnesota markets.

Anderson said the 2015 startup is planned to coincide with the need for steam energy for multiple plants at the Spiritwood Energy Park. The planned CHS Inc. nitrogen fertilizer plant is slated for completion in 2016.

However, this plant will not utilize steam from Spiritwood Station to convert natural gas from the Oil Patch of western North Dakota to nitrogen fertilizer.

Cargill Malt will utilize steam whenever it is available from the Spiritwood Station and is currently using other energy sources.

The start date for the planned Dakota Spirit AgEnergy ethanol plant is still unknown. The plant is awaiting approval by the Environmental Protection Agency for its renewable fuel standards permit.

Dakota Spirit AgEnergy will process 65 million gallons of ethanol per year from corn during its first phase. A second-phase expansion anticipates an additional 10 million gallons per year of ethanol produced from biomass such as corn stover or wheat straw.

"We can't move until we get a permit," Anderson said. "We can't even speculate on any construction start at this time."

An EPA comment period garnered nine comments concerning the facility.

"The comment period has just ended Oct. 11," said Cathy Milbourn, senior press officer for the EPA, in an email reply to a request for comments. "And EPA is in the process of reviewing those comments. At this point the agency does not have a timeline to take final action."

Anderson said he is hopeful the EPA can conclude the process in the next two months.

"They are replying to some of the comments," Anderson said. "We are hoping to receive approval by the end of the year."

At that point, plans could be finalized including construction start dates and planned completion dates.

Norman can be reached at 701-952-8452 or by email at knorman@jamestownsun.com

Tags: great river energy, north dakota, oil patch, natural gas, energy, updates, spiritwood, coal, power, ethanol, fertilizer, steam

More from around the web

- [Salesforce's Loss Swells To \\$220 Million \(Fox Business\)](#)
- [UPDATE: Oppenheimer Downgrades Rockwell Collins \(COL\) to Perform on Valuation \(InvestingChannel\)](#)
- [Small businesses still slow on cloud uptake \(AVG\)](#)
- [Why You Should Cancel Your Cell Phone Contract \(Daily Finance\)](#)
- [Best Small Hotels in Paris \(Departures.com\)](#)
- [Facebook Soars as Lockup Expires \(Fox Business\)](#)
- [10 Great Work-at-Home Jobs \(Kiplinger\)](#)
- [Straight talking IT for small businesses \(AVG\)](#)
- [Photography: Edinburgh, Scotland \(Away.com\)](#)
- [Lakshmi Mittal Declared Persona Non Grata as France Weighs Options \(InvestingChannel\)](#)

[?]

COMMISSIONERS
BEN J. WOLF, PRESIDENT • BRUCE HAGEN • RICHARD A. ELKIN



AL BUMANN
SECRETARY

PUBLIC SERVICE COMMISSION

BISMARCK 58501

September 3, 1974

Mr. Les Robinson
Otter Tail Power Company
Jamestown, North Dakota

RE: PSC Case No. 8758
Order dated August 27, 1974
Otter Tail Power Company to
extend electric service to
Ladish Malting Company,
Spiritwood, North Dakota

Dear Sir:

Please take notice of the correction listed below
and contained in the above captioned order:

Page 2, paragraph 2, line 2:

correct "July 23, 1973" to "July 23, 1974".

PUBLIC SERVICE COMMISSION:

Al Bumann
Secretary

ABcc

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

* * * * *

53
file

In the Matter of the Application of)
Otter Tail Power Company for Authority)
to Extend Electric Service to)
Ladish Malting Company, Spiritwood,)
North Dakota.)
-----)

CASE NO. 8758

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER



PRELIMINARY STATEMENT

On July 31, 1973, Otter Tail Power Company (hereafter OTP) filed with the Commission an Application requesting authority to extend its electric distribution facilities to provide service to the location above captioned.

The Public Service Commission (hereafter PSC) issued its Notice of Opportunity for Hearing on August 9, 1973 by which all interested parties were given the opportunity to file objections or requests for hearing before the PSC. Tri-County Electric Cooperative, Inc. (hereafter Tri-County) on August 17, 1973, filed an objection to the granting of the application in the instant case and requested a hearing. A Conditional Order and Certificate authorizing OTP to extend service to the location in question, subject to certain conditions contained therein, was issued by the PSC on July 30, 1973.

A public hearing was held, pursuant to notice, before Wallace Owen, Chief Engineer as hearing examiner, on the 13th day of May, 1974 at Bismarck, North Dakota, in the State Capitol Building at which time and place the following appearances were entered:

MR. R. W. WHEELER of Wheeler, Wolf, Wefald & Durick, P.C.,

After hearing and receipt of the briefs of the parties and at the request of the protestant, the matter was reopened to permit the protestant to offer further evidence concerning its contention that it should be the electric supplier selected to serve the load in question.

Pursuant to said request, a further hearing was held on July 23, 1973, before Ray H. Walton as hearing examiner in the office of the PSC, Bismarck, North Dakota, with the same parties being present and participating therein.

Upon consideration of the evidence of record, the exhibits and briefs of the parties as well as the proposed Findings of Fact, Conclusions of Law, and Order submitted, the Public Service Commission now makes its:

FINDINGS OF FACT

I.

The Applicant, OTP, is an electric utility providing electric service to the general public in portions of North Dakota, South Dakota, and Minnesota; the applicant is authorized to do business in the state of North Dakota, and its Articles of Incorporation and annual reports are on file with this Commission.

II.

The Protestant, Tri-County, is a rural electric cooperative organized under the provisions of the Electric Cooperative Act of this state and provides electric service to its members in the rural areas of Stutsman and other counties in the state of North Dakota.

III.

Ladish Malting Company owns and operates a large, terminal grain elevator recently constructed in Section 22, Township 140 North, Range 62 West, immediately south of the unincorporated village of Spiritwood, North Dakota. It has contracted for the construction of a malting plant upon its property in said section adjacent to the elevator which is used exclusively to handle its barley purchases.

IV.

Ladish Malting requires three-phase electric service for the operation of its said barley elevator. When its malting plant is

completed (about April 1, 1975), its KW demand will increase from about 320 KW to 1,620 KW. Its energy consumption will increase from about 56,000 KWH per month to over 860,000 KWH.

V.

Otter Tail Power Company has been serving electric consumers in the unincorporated community of Spiritwood with electricity since 1925 from the Spiritwood substation located on its 41.6 KV transmission line which runs east and west through the community enabling the applicant to provide three-phase electric service in the area.

VI.

The applicant presently serves fourteen electric customers, exclusive of Ladish Malting Company, in said Section 22, and a total of forty electric consumers located within one mile of the Ladish Malting Company plant.

VII.

Tri-County owns and operates a 7,200 volt rural electric distribution line providing single-phase electric service to two consumers in the adjoining section. While it serves five consumers within approximately one mile of the Ladish Malting Company's plant site, it has no customers in said Section 22.

VIII .

OTP's cost in new distribution facilities to provide three-phase power for the Ladish Malting Company elevator is \$22,928.00; the related additional revenues would exceed \$20,000.00 annually.

IX.

The operation of the new malting plant will require a very reliable electric service because an outage, even though of short duration, could cause a loss of several hundred thousand dollars.

X.

the existing load would increase annual revenues to an estimated \$157,472.00.

XI.

Tri-County proposes to construct a new, separate distribution system for the Ladish plant, tapping a 115 KV line of the Bureau of Reclamation passing through the area at a cost of between \$223,800 and \$293,800.

XII.

Ladish Malting Company reviewed service proposals submitted to it by both OTP and Tri-County. It prefers the service of Otter Tail Power Company.

XIII.

Tri-County explicitly reserves the right by its Articles of Incorporation to limit the sale of electricity to any member it serves.

XIV.

The applicant, through its area development office, has worked with the malting industry for a number of years to obtain the establishment of a malting plant in its service area.

CONCLUSIONS OF LAW

I.

OTP can more economically extend its system to provide the electric energy requirements of the Ladish Malting Company at Spiritwood, North Dakota, than can Tri-County.

II.

The extension of the distribution facilities of OTP to serve the Ladish Malting Company at Spiritwood, North Dakota, is consistent with the orderly development of electric service in the area.

III.

The proposed electric service of OTP to serve the Ladish Malting Company plant is more reliable than that which could be offered by Tri-County.

IV.

Where existing electric distribution facilities can be made adequate to serve new industry in the area, that is preferable to the establishment of a new, duplicating distribution system in the same area.

V.

The granting of the instant application is consistent with the public interest.

VI.

Public convenience and necessity require the granting of the instant application.

ORDER

WHEREFORE, IT IS HEREBY ORDERED that a Certificate of Public Convenience and Necessity be issued to Otter Tail Power Company authorizing it to provide electric service to Ladish Malting Company in Section 22, Township 140 North, Range 62 West, Stutsman County, North Dakota.

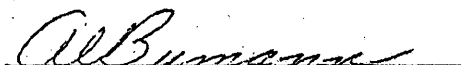
Dated at Bismarck, North Dakota, this 27th day of August, 1974.

(S E A L)

PUBLIC SERVICE COMMISSION:

s/s _____
BEN J. WOLF, President

ATTEST:


Secretary

s/s _____
RICHARD A. ELKIN, Commissioner

DISSENTING OPINION BY COMMISSIONER BRUCE HAGEN:

I believe the electric service requirements of the Ladish Malting Company, Spiritwood, North Dakota, should be supplied by Tri-County Electric Cooperative, Inc.

An extremely large annual load is involved in this case. The electric service to be supplied in this case is, in effect, a totally new distribution system in a rural area. It would not duplicate an existing distribution system.


The rural area adjacent to Spiritwood is already served by

The initial costs involved to both applicant and protestant are similar.

Tri-County Electric Cooperative's consumer density per mile of line is low and the addition of the malting plant would be significant. The effect of the load on Tri-County Electric Cooperative's other consumers would be beneficial, and would enable Tri-County to make capital investments in its system to benefit its consumers from revenues that are not otherwise available.

s/s _____
BRUCE HAGEN, Commissioner

ATTEST:


Secretary

July 30, 1973


Mr. Al Bumann, Secretary
Public Service Commission
State Of North Dakota
Bismarck, North Dakota 58501

Dear Mr. Bumann:

Enclosed is an application in duplicate for a Certificate of Public Convenience and Necessity for Ladish Malting Company of Spiritwood, North Dakota.

Please address all correspondence regarding this application to Mr. W. K. Nye, Vice President, Electrical, Fergus Falls, with a copy to me.

Yours very truly,



District Manager

LMRobinson/bjb
Enc.

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

In the Matter of the Application of)
Otter Tail Power Company)
for an Order and Certificate to ex-)
tend electric service to)
Ladish Malting Company at)
Spiritwood , North Dakota.)

See file 8758

CASE NO. 8758

NOTICE OF OPPORTUNITY FOR HEARING

On July 31, 1973, Otter Tail Power Company
an electric public utility, filed its Application, pursuant to Chapter
49-03, NDCC, as amended, to provide electric service to _____
Ladish Malting Company, in Spiritwood, North Dakota.

Submitted with the Application is a written appearance executed by
the customer, Ladish Malting Company, stating that (it) he
desires electric service to be provided by the Applicant, to a _____
at a service location described as follows:

W/2 of Section 22, Township 140 North,
Range 62 West, Stutsman County, North Dakota.

It is alleged that immediate electric service at said point is needed
and demanded.

NOTICE IS HEREBY GIVEN that any interested party has the legal right
to file written objection, based on the issue of public convenience and
necessity, with the Commission on or before the 29th day of _____
August, 1973, in which case this matter will be set for hearing.
In the event no objections are received within the time herein specified,
the Application may be granted as prayed for without a hearing.

Dated at Bismarck, North Dakota, this 9th day of August,
1973.

(S E A L)

PUBLIC SERVICE COMMISSION:

Al Bismarck
Secretary

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

In the Matter of the Application of)
Otter Tail Power Company for an Order)
and Certificate to Extend Service to)
LADISH MALTING CO.)
SPIRITWOOD, NORTH DAKOTA)
at the Location Stated Herein.)

Case No. _____

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 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, 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 Ladish Malting Co. (hereinafter referred to as the Customer), to provide electric service to him at a point located in West 1/2 in Section 22, Township 140, Range 62, Stutsman County, North Dakota, as shown on the attached map, marked Exhibit "A" and made a part hereof by reference. The address of the customer is Spiritwood, North Dakota. The customer will need electric service on the 1st day of July, 19 73.

IV.

The service required by the Customer at said location is 3 phase service, and the length of the extension will be approximately 200 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 rules and regulations applicable thereto. 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 he 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, 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.

VI.

The extension (~~will~~) (will not) cross any railway tracks. If so, name the railway company None

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 Lester M. Robinson
Its District Manager

STATE OF North Dakota)
COUNTY OF Stutsman)SS

Lester M. Robinson, being duly sworn, on oath says that he is a District 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.

Lester M. Robinson

Subscribed and sworn to before me this 9th day of May, 1973.

Kay McKinzie
Notary Public, _____ County,
North Dakota. My Commission expires:

(Notarial Seal)

Notary Public, STATE OF N. DAK.
My Commission Expires SEPT. 12, 1978

ADMISSION OF SERVICE

Personal service of the foregoing Application by true and correct copy thereof is hereby admitted this 18 day of MAY, 1973.

x John G. Lashak
(Customer)

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

LADISH MALTING CO.

SPIRITWOOD, NORTH DAKOTA

at the Location Stated Herein.

APPEARANCE BY CUSTOMER

LADISH MALTING CO.

(hereinafter

referred to as the Customer) hereby makes a voluntary appearance in this matter and states the following to the Commission:

I.

He 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 him with immediate electric service at the point located as stated in the Application in this matter.

The Customer further states that he is in need of and has demanded immediate 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 immediately 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
Temporary Order and Certificate as the Commission may determine, said Temporary
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
cases.

LADISH MALTING CO.

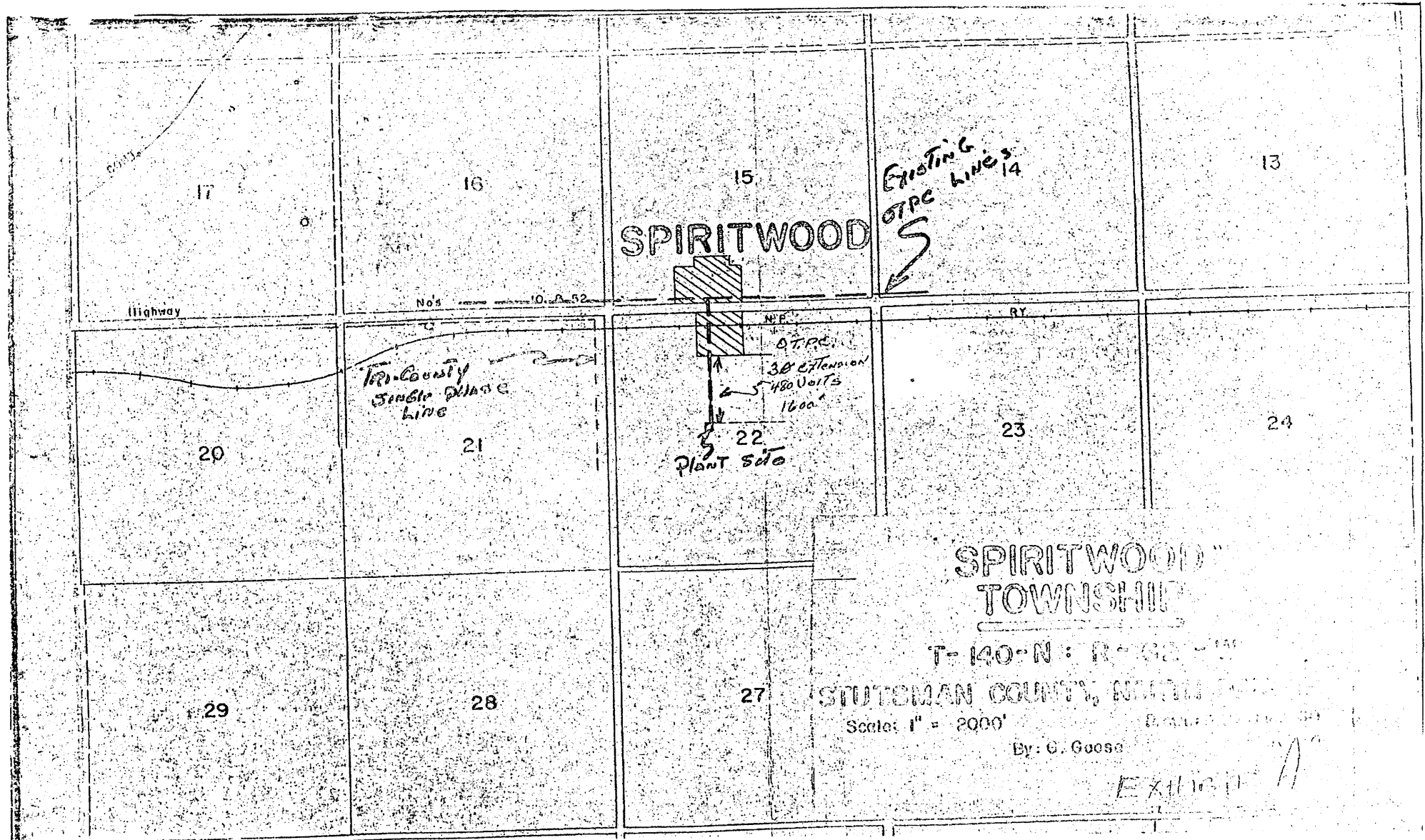
By: John H. Ladish
(Customer)

WISCONSIN
STATE OF ~~WISCONSIN~~) SS
COUNTY OF MILWAUKEE)

JOHN H. LADISH, being duly sworn, on oath
the President of
says that he is the Customer making the foregoing Appearance; that he has read
the foregoing Application and knows the contents thereof, and that 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.

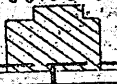
Subscribed and sworn to before me this 18th day of May, 1973.

J. M. Ladwig
Notary Public, Milwaukee County,
Wisconsin ~~Notary Public~~. My Commission Expires
My Commission Expires Feb. 6, 1977 (NOTARIAL SEAL)



SPIRITWOOD

EXISTING
O.T.P.C. LINES 14



O.T.P.C.
30' extension
480 Volts
1600'

22
Plant Site

Twp. County
Single Phase
line

**SPIRITWOOD
TOWNSHIP**

T-140-N : R-68-W

STATSMAN COUNTY, NORTH DAKOTA

Scale: 1" = 2000'

By: G. Gooss

EXHIBIT

COMMISSIONERS
RICHARD A. ELKIN, PRESIDENT • DEN J. WOLF • BRUCE HAGEN



PUBLIC
SERVICE
COMMISSION

PSO

BISMARCK 58501

August 9, 1973

Mr. Les Robinson, Mgr
Otter Tail Power Company
Jamestown, North Dakota

*Rec 9/14/73
A.M.P.*

Dear Mr. Robinson:

This will confirm your request by telephone of July 30, 1973 wherein you have asked permission to extend your service immediately to Ladish Malting Company at the following location: W/2 of Sec. 22-140N-62W, Stutsman Co., N.D.

Permission to do so has been granted by Commissioner Wolf on July 30, 19 73.

However, I am instructed to point out to you that such permission to extend your service immediately was granted in order to assure electric service to the customer herein and a formal application for authority must be received in this office no later than ten (10) business days from the date of this letter. Failure to comply with this requirement to apply in that time without prompt written explanation showing good cause for the delay will be deemed an abandonment of your application, and appropriate Commission action will be taken.

In addition, such extension must be made from the most economical point of service.

Sincerely yours,

PUBLIC SERVICE COMMISSION

By *Al Burnham*
Secretary

ABcc

315 Second Street Southeast
PO Box 2220
Jamestown, North Dakota 58402-2220
701 252-0540
800 257-4044
www.otpco.com



July 16, 2007

Mr. Jon Mielke, Secretary
North Dakota Public Service Commission
State Capitol - 12th Floor
Bismarck ND 58505-0480

Dear Mr. Mielke:

Enclosed is an application in duplicate for a Certificate of Public Convenience and Necessity for Spirit Ethanol LLC.

Please address all correspondence regarding this application to Mr. Bruce Gerhardson, Associate General Counsel, Fergus Falls with a copy to me.

Yours very truly,

A handwritten signature in cursive script that reads "Leon Kremer".

Leon Kremer
Operations Manager
Otter Tail Power Company
PO Box 2220
Jamestown ND 58402 2220

Enclosure



Public Service Commission
State of North Dakota

COMMISSIONERS

Susan E. Wefald, President
Kevin Cramer
Tony Clark

Executive Director
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.nd.gov/psc
e-mail: ndpsc@nd.gov
TTY 800-366-6888 or 711
Fax 701-328-2410
Phone 701-328-2400

July 3, 2007

Mr. Leon Kremeier,
Operations Manager
Ottetail Power Company

Dear Mr. Krelmeier,

This will confirm your request to extend electric service to Spirit Ethanol located in Section 21, T140N, R62W, Stutsman County, North Dakota. Temporary authority was granted by Commissioner Tony Clark on July 3, 2007.

Permission to extend service was granted in order to assure electric service to the customer. The extensions must be made from the most economical point of service.

Formal applications for authority must be received in this office no later than 10 business days from the date of this letter. Failure to comply with this requirement will be deemed an abandonment of your application and appropriate Commission action will be taken.

Sincerely,

Paula Kent
Public Utilities Division



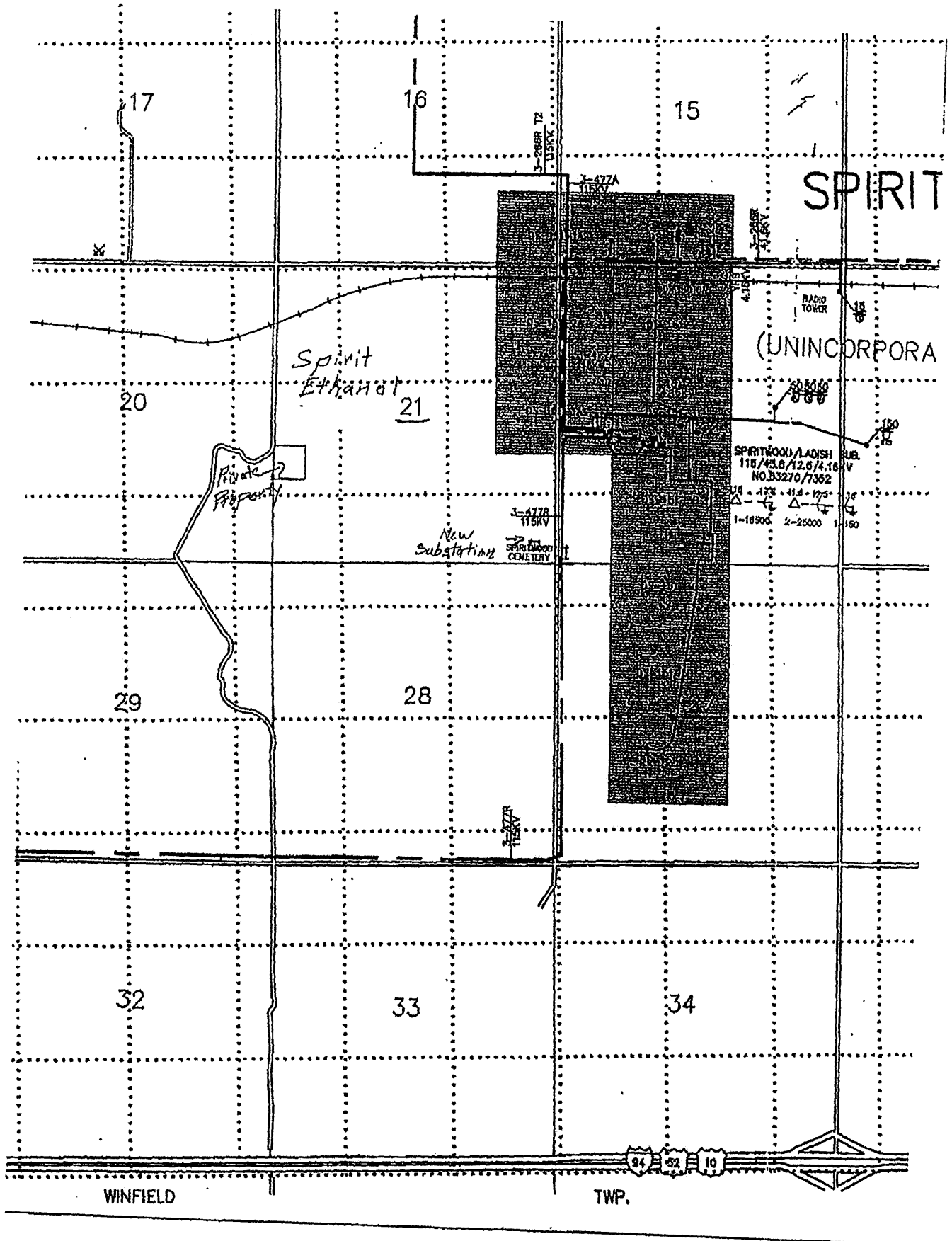
TEMPORARY AUTHORITY PERMIT
 NORTH DAKOTA PUBLIC SERVICE COMMISSION
 PUBLIC UTILITIES
 SPN 90560 (8-96)

Date	Time	<input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.	Name of Utility	Telephone Number
May 30, 2007	11:00		Otter Tail Power Company	701-252-0540
Name of Person Calling			Name of Coop Serving	
Leon Kremaier, Operations Manager			Northern Plains Coop	
Name of Customer		Location		
Spirit Ethanol		Sec 21 Twp 140 N R 62 W		
Address			County	
			Stutsman	
City			State	Zip Code
Spiritwood ND			ND	58481
Name of Nearest City			Distance to the City	
Spiritwood			1/2 Mile	
When will service be extended?		Type of Service		
September 2007		<input type="checkbox"/> Residence <input type="checkbox"/> Storage <input type="checkbox"/> Grain Bin <input checked="" type="checkbox"/> Other Ethanol Plant		
Extension Length to Most Economical Point of Service		Extension		
Single Phase		<input type="checkbox"/> Overhead <input checked="" type="checkbox"/> Underground		
Utility: 1,000 Feet Coop: 3/4 Mile				
Has customer signed request for service?		Will cooperative protest application?		
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name of Person Contacted (PSC Use)		Date of Contact (PSC Use)	Time (PSC Use)	
			<input type="checkbox"/> a.m. <input type="checkbox"/> p.m.	
Estimated Cost of Extension		Estimated Revenue		
\$1.1 Million		\$415,000 per month		
Under what rate filed with the Public Service Commission will customer be served?				
603 Large Commercial				
Will extension cross over coop lines?		Will extension cross over railroad tracks?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Temporary Authority Authorized By		Date Authorized		
<input type="checkbox"/> Telephone <input type="checkbox"/> Letter				
Authorized By (Name of Commissioner)				

Extension must be made from most economical point of service.

Comments:

Northern Plains Coop has single phase 3/4 mile away. They have 3 phase 3 miles away.



Electric Service Agreement

Work Order No. _____

(Overhead) Service Extension
 (Underground)

M.R. No. _____

Rate No. _____

THIS AGREEMENT, by and between Spirit Ethanol
of Spiritwood North Dakota herein called the "Customer," and the
OTTER TAIL CORPORATION, a Minnesota corporation, herein called "Otter Tail," WITNESSETH:

In Consideration of the mutual promises contained below, the parties agree as follows:

1. All electric power is to be delivered and received pursuant to the provisions of this agreement and shall be approximately 480/4160 volts, slight variations in frequency and voltage to be allowed, 3 phase, delivered at the Customer's Ethanol Plant located on Section 21 Township 140N Range 62 W County of Stutsman, State of North Dakota.
2. Otter Tail will make the extension of lines, overhead or underground, necessary to provide electric service, as requested, to the electric service entrance of the above-described property, except for service poles to be owned by the Customer. Otter Tail shall not be responsible for surface restoration due to underground installation except the initial backfill.
3. The Customer grants to Otter Tail, its successors and assigns, the perpetual right, privilege and easement for the construction, operation, extension, maintenance and repair or removal of electric transmission lines, either overhead or underground, necessary to provide the electric service described herein, including the necessary fixtures and all other devices in connection therewith; together with the right to permit the attachment of other wires to the poles or in a common trench for purposes of telecommunications or cable communication systems. Further right, privilege and easement is granted Otter Tail to place, position and locate the butts of the main poles, pole structures or underground wires over, across or under the Customer's real property in such manner and location as the parties may mutually agree. Otter Tail shall have the right of ingress and egress at all reasonable times, for the purpose of the perpetual right, privilege and easement granted hereby and shall have the right to cut down and trim trees as reasonably necessary to keep the wires of these electric lines clear, so as to be maintained in accordance with Otter Tail's standards of construction and maintenance. The Customer agrees to provide, without cost to Otter Tail, such other rights of way or permits (including railroad permits), as may be necessary.
4. The Customer agrees to purchase and receive from Otter Tail electric energy in accordance with rules and regulations established by Otter Tail and filed with the appropriate regulatory agency and agrees to pay for electrical energy in accordance with Otter Tail's rate... schedule as filed with the Public Service Commission or such superseding rate as may be published in the future.
5. The title and ownership of all lines and extensions and equipment furnished by Otter Tail shall be and remain in Otter Tail, as personal property, and shall not be owned by nor become a part of the real property of the Customer.
6. In view of the investment required of Otter Tail to furnish electric service to the Customer's location, the conditions under which service will be supplied and the inability of expected revenue to support the investment, the Customer agrees to pay, in advance of service, a connection fee of \$1.00. This connection fee shall be in lieu of any guaranteed minimum charge (other than such monthly and seasonal minimum charges which may be part of the rate applicable to this service).
7. In the event Otter Tail is required to change the service lines for any reason other than normal maintenance or inadequate capacity, the party requiring the change shall pay all costs connected with the change.
8. Does not apply.
9. Where the Customer requests electric service and service is provided by means of an underground service lateral, owned and installed by Otter Tail, the Customer shall, except for backfilling, assume, at his own expense, the necessary land restoration, including but not limited to, yard maintenance, grass planting, and trench leveling.
10. Where Customer has blocked or restricted access to Otter Tail facilities through plantings, construction, pavement, etc., all costs of obtaining access for maintenance, repairs or replacement of said facilities, whether underground or overhead, together with all costs of site restoration, including but not limited to trenching, tree removal, earth removal, reconstruction or repaving, shall be the responsibility of the Customer.
11. No liability shall attach to Otter Tail for any failure to deliver electric power hereto due to acts of God, or any other cause whatsoever except its own voluntary act or any neglect to exercise reasonable care and diligence in performance of the agreement herein contained, and Otter Tail shall have the right to suspend temporarily the delivery of electric power hereunder for the purpose of making repairs or improvements of its system.
12. This agreement shall go into effect on the date of initiation of service and shall continue in effect for a period of ten years and thereafter shall remain in effect from year to year unless terminated by either party by notice within at least sixty days.
13. The rights and obligations of this agreement shall extend to and be binding upon the respective heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the dates appearing opposite their respective signatures.

6/1/07 Date 2007

6/1/07 Date 2007

Duaine Espegard
Duaine Espegard Customer
OTTER TAIL CORPORATION
By: [Signature]
John [Name]

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

SPIRIT ETHANOL

at the Location Stated Herein.

Section 21 Twn 140N Range 62W

APPEARANCE BY CUSTOMER

Spirit Ethanol (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 immediate electric service at the point located as stated in the Application in this matter.

The Customer further states the need of and has demanded immediate 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 immediately 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 Temporary Order and Certificate as the Commission may determine, said Temporary 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:

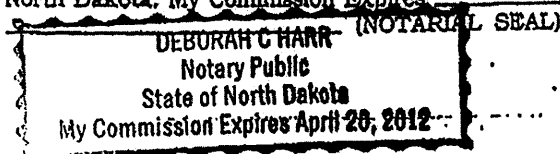
[Signature]

[Signature]

Duaina Espégaard
(Customer)

Deborah C. Harr

Notary Public, _____ County,
North Dakota. My Commission Expires _____



VI.

The extension ~~(will)~~ (will not) cross any railway tracks. If so, name the railway company _____

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 Corporation
By: Leon Kremeier
Leon Kremeier
Its Operations Manager

State of North Dakota)

) SS

County of Stutsman)

Leon Kremeier, being duly sworn, on o:

says that he is an Operations Manager of Otter Tail Corporation, an the person who executed the foregoing Application on behalf of Otter Tail Corporation, and is authoria to verify this Application on behalf of the Company; that he has read the foregoing Application and kno 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.

Leon Kremeier
Leon Kremeier

Subscribed and sworn to before me this 18th day of June, 2007

Cynthia A. Willey
Notary Public, Stutsman County
North Dakota. My commission expires 2-14-09

CYNTHIA A. WILLEY (Notarial Seal)
Notary Public
State of North Dakota
My Commission Expires February 14, 2009
ADMISSION OF SERVICE

Personal service of the foregoing Application by true and correct copy thereof is hereby admitted th:

18th day of June, 2007

Duaine Espegard
Duaine Espegard (Customer)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Otter Tail Power Corporation
Spirit Ethanol – Spiritwood, ND
Public Convenience and Necessity**

Case No. PU-07-503

NOTICE OF OPPORTUNITY FOR HEARING

July 19, 2007

On July 18, 2007, Otter Tail Power Corporation, an electric public utility, filed an application under Chapter 49-03, N.D.C.C. to extend service to Spirit Ethanol at a location one half mile from Spiritwood, North Dakota.

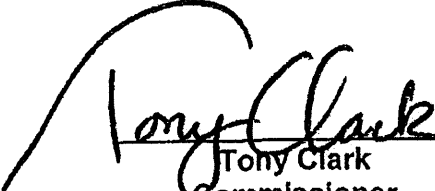
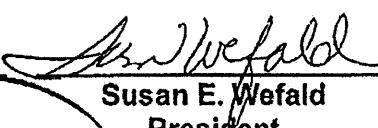
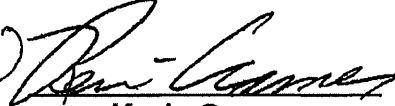
Submitted with the application was a statement from the customer, Spirit Ethanol, that it desires electric service to be provided by the applicant at a point located in:

**Section 21, Township 140N, Range 62W, Stutsman County,
North Dakota**

Otter Tail Power Corporation states that electric service is needed at this location immediately, and the applicant has made a prima facie showing that it should serve the customer.

Any interested party has the right to file written objection, based on the issue of public convenience and necessity, with the Commission by **August 9, 2007**, and the matter will then be set for hearing. If no objections are received by that date, the application may be granted as requested.

PUBLIC SERVICE COMMISSION

 Tony Clark Commissioner	 Susan E. Wefald President	 Kevin Cramer Commissioner
--	---	--

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Certificate of Public Convenience and Necessity

Certificate Number 5326

This is to certify that public convenience and necessity require, and permission is granted for Otter Tail Corporation, to serve Spirit Ethanol LLC in Section 21, Township 140N, Range 62W, Stutsman County, North Dakota.

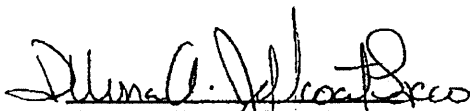
This certificate is issued in accordance with the Order of this Commission dated October 24, 2007 in Case No. PU-07-503, and is subject to the conditions and limitations noted in the Order.

This certificate is conditioned upon Otter Tail Corporation securing the franchise or other authority of the proper municipal or other public authority for the exercise of these rights and privileges.

Bismarck, North Dakota, October 24, 2007.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Director


Commissioner

APPROVED

DATE: 10-24-07
893

MOTION

October 24, 2007

Otter Tail Corporation
Spirit Ethanol LLC
Spiritwood, North Dakota
Public Convenience and Necessity

Case No. PU-07-503

I move the Commission adopt the Order and issue a Certificate of Public Convenience and Necessity authorizing Otter Tail Corporation to extend electric service to Spirit Ethanol LLC at a location in Stutsman County, North Dakota, Case No. PU-07-503.

pfk

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Power Corporation
Spirit Ethanol – Spiritwood, ND
Public Convenience and Necessity

Case No. PU-07-503

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Paula Kent deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **19th day of July, 2007**, she deposited in the United States Mail, Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Notice of Opportunity for Hearing

The envelopes were addressed as follows:

Bruce Gerhardson
Associate General Counsel
Otter Tail Power Corporation
215 S Cascade St
Fergus Falls MN 56538-0496
Cert. No. 7007 0710 0001 5987 6800

Jay Jacobson
Alliance Manager
Dakota Valley Electric Cooperative, Inc.
14051 Highway 13
Milnor ND 58060-0159
Cert. No. 7007 0710 0001 5987 6794

Paula Kent further deposes and says that on the **19th day of July, 2007**, she deposited in the United States Mail, Bismarck, North Dakota, **two** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Leon Kremeier
Operations Manager
Otter Tail Power Corporation
PO Box 2220
Jamestown ND 58402-2220

ND Association of RECs
P O Box 727
Mandan ND 58554

Each address shown is the respective addressee's last reasonably ascertainable post office address.

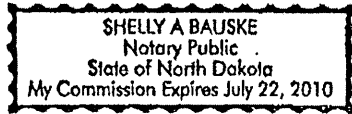
Paula Kent

Subscribed and sworn to before me
this 19th day of July, 2007.

Shelly A Bauske

Notary Public

SEAL



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Otter Tail Corporation
Spirit Ethanol – Spiritwood, ND
Public Convenience and Necessity**

Case No. PU-07-503

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Paula Kent deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 26th day of **October, 2007**, she deposited in the United States Mail, Bismarck, North Dakota, **three** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

**Motion
Order
Certificate**

The envelopes were addressed as follows:

Bruce Gerhardson
Associate General Counsel
Otter Tail Corporation
215 S Cascade St
Fergus Falls MN 56538-0496

Jay Jacobson, Alliance Manager
Northern Plains Electric Cooperative
PO Box 180
Carrington, ND 58421-0180

Cert. No. 7007 0710 0001 5987 9917

Cert. No. 7007 0710 0001 5987 9924

Lowell Stave
Alliance Manager
c/o Northern Plains Electric Cooperative
1515 W. Main
PO Box 180
Carrington, ND 58421-0180

Cert. No. 7007 0710 0001 5987 9931

Paula Kent further deposes and says that on the 26th day of October, 2007, she deposited in the United States Mail, Bismarck, North Dakota, two envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Leon Kremeier
Operations Manager
Otter Tail Corporation
PO Box 2220
Jamestown ND 58402-2220

ND Association of RECs
P O Box 727
Mandan ND 58554

Each address shown is the respective addressee's last reasonably ascertainable post office address.

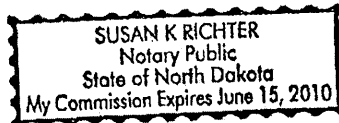
Paula Kent

Subscribed and sworn to before me
this 26th day of October 2007.

Susan K. Richter

Notary Public

SEAL



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Otter Tail Corporation
Spirit Ethanol LLC
Spiritwood, North Dakota
Public Convenience and Necessity**

Case No. PU-07-503

ORDER

October 24, 2007

On July 16, 2007, Otter Tail Corporation (Otter Tail), an electric public utility, filed an application under Chapter 49-03, N.D.C.C. to extend electrical service to Spirit Ethanol LLC at a location in Stutsman County, North Dakota.

On July 19, 2007, the Commission issued a Notice of Opportunity for Hearing in this proceeding. The Notice provided if no objections were received by August 9, 2007, the application would be granted as requested.

On August 16, 2007, Northern Plains Electric Cooperative, Inc. (Northern Plains) filed a late objection to the application for permanent authority, asking the Commission to consider the objection despite its late filing.

On August 29, 2007, Otter Tail filed a Motion to Dismiss Objection and to Grant Application for Public Convenience and Necessity.

On September 4, 2007, the Commission issued a Notice of Hearing scheduling the hearing on the permanent authority application for October 5, 2007.

On October 1, 2007, Northern Plains filed a letter indicating their intent to withdraw their objection.

On October 3, 2007, the Public Service Commission approved a Motion permitting the withdrawal of the objection by Northern Plains and canceling the hearing scheduled for October 5, 2007.

No other objections were received.

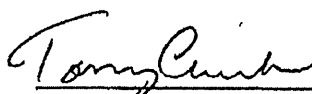
Order

The Commission orders:

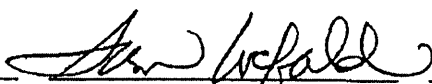
Otter Tail Corporation is issued Certificate of Public Convenience and Necessity No. 5326 authorizing the provision of electric distribution service to Spirit Ethanol LLC at a location in:

Section 21, Township 140N, Range 62W, Stutsman County, North Dakota

PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Susan E. Wefald
President



Kevin Cramer
Commissioner

315 Second Street Southeast
PO Box 2220
Jamestown, North Dakota 58402-2220
701 252-0540
800 257-4044
www.otpc.com



August 30, 2007

Mr. Jon Mielke, Secretary
North Dakota Public Service Commission
State Capitol - 12th Floor
Bismarck ND 58505-0480

Dear Mr. Mielke:

Enclosed is an application in duplicate for a Certificate of Public Convenience and Necessity for Spiritwood Station. GRE

Please address all correspondence regarding this application to Mr. Bruce Gerhardson, Associate General Counsel, Fergus Falls with a copy to me.

Yours very truly,

A handwritten signature in cursive script that reads "Leon Kremeier".

Leon Kremeier
Operations Manager
Otter Tail Power Company
PO Box 2220
Jamestown ND 58402 2220

Enclosure

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Certificate of Public Convenience and Necessity

Certificate Number 5331

This is to certify that public convenience and necessity require, and permission is granted for Otter Tail Corporation, to serve Spiritwood Station in the SW 1/4 of Section 22, Township 140N, Range 62W, Stutsman County, North Dakota.


This certificate is issued in accordance with the Order of this Commission dated October 3, 2007 in Case No. PU-07-640, and is subject to the conditions and limitations noted in the Order.


This certificate is conditioned upon Otter Tail Corporation securing the franchise or other authority of the proper municipal or other public authority for the exercise of these rights and privileges.

Bismarck, North Dakota, October 3, 2007.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Director


Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Corporation
Northern Plains Electric Cooperative
Spiritwood Station, Spiritwood, ND
Public Convenience and Necessity

Case No. PU-07-640

ORDER

October 3, 2007

On September 6, 2007, Otter Tail Corporation, an electric public utility, filed an application under Chapter 49-03, N.D.C.C. to extend electrical service to Spiritwood Station near the town of Spiritwood in Stutsman County, North Dakota.

On September 7, 2007, the Commission issued a Notice of Opportunity for Hearing in this proceeding. The Notice provided if no objections were received by September 28, 2007, the application would be granted as requested. No objections have been received.

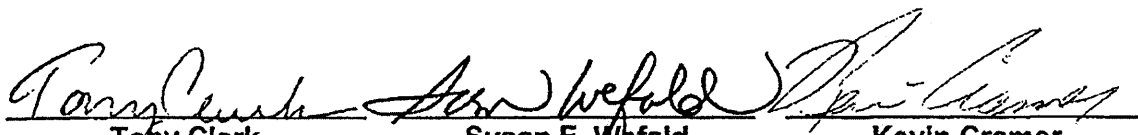
Order

The Commission orders:

Otter Tail Corporation is issued Certificate of Public Convenience and Necessity No. 5331 authorizing the provision of electric distribution service to Spiritwood Station at a point located in the

SW $\frac{1}{4}$ of Section 22, Township 140N, Range 62W, Stutsman County, North Dakota

PUBLIC SERVICE COMMISSION



Tony Clark Susan E. Wefald Kevin Cramer
Commissioner President Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Corporation
Spiritwood Station, Spiritwood, ND
Public Convenience and Necessity

Case No. PU-07-640

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Shelly A. Bauske deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 10th day of **October, 2007**, she deposited in the United States Mail, Bismarck, North Dakota, **three** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

**Order
Certificate of Public Convenience and Necessity**

The envelopes were addressed as follows:

Bruce Gerhardson
Associate General Counsel
Otter Tail Corporation
215 S Cascade St
Fergus Falls MN 56538-0496
Cert. No. 7007 0710 0001 5987 7838

Jay Jacobson, Manager
Northern Plains Cooperative
Dakota Valley Electric Cooperative, Inc.
14051 Highway 13
Milnor, ND 58060-0159
Cert. No. 7007 0710 0001 5987 7845

Lowell Stave, Manager
Northern Plains Electric Cooperative, Inc.
Dakota Valley Electric Cooperative, Inc.
PO Box 180
Carrington, ND 58421-0180
Cert. No. 7007 0710 0001 5987 7869

Shelly A. Bauske further deposes and says that on the 10th day of October, 2007, she deposited in the United States Mail, Bismarck, North Dakota, two envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Leon Kremeier
Operations Manager
Otter Tail Corporation
PO Box 2220
Jamestown ND 58402-2220

ND Association of RECs
P O Box 727
Mandan ND 58554

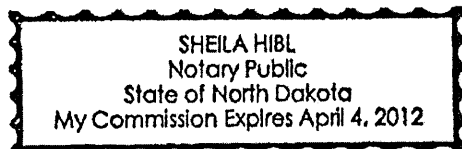
Each address shown is the respective addressee's last reasonably ascertainable post office address.

Shelly A Bauske

Subscribed and sworn to before me
this 10th day of October 2007.

Sheila Hibel
Notary Public

SEAL



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Corporation
Spiritwood Station, Spiritwood, North Dakota
Public Convenience and Necessity

Case No. PU-07-640

NOTICE OF OPPORTUNITY FOR HEARING

September 7, 2007

On, 2007, Otter Tail Corporation, an electric public utility, filed an application under Chapter 49-03, N.D.C.C. to extend service to ~~Spiritwood Station~~ at a location in Stutsman County, North Dakota.

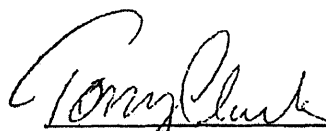
Submitted with the application was a statement from the customer, Great River Energy, that it desires electric service to be provided for a substation by the applicant at a point located in:

**SW ¼ of Section 22, Township 140N, Range 62W, Stutsman
County, North Dakota**

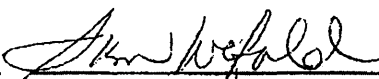
Otter Tail Corporation states that electric service is needed at this location immediately, and the applicant has made a prima facie showing that it should serve the customer.

Any interested party has the right to file written objection, based on the issue of public convenience and necessity, with the Commission by **September 28, 2007**, and the matter will then be set for hearing. If no objections are received by that date, the application may be granted as requested.


PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Susan E. Wefald
President



Kevin Cramer
Commissioner



Public Service Commission
State of North Dakota

COMMISSIONERS

Susan E. Wefald, President
Kevin Cramer
Tony Clark

Executive Director
Ilona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.nd.gov/psc
e-mail: ndpsc@nd.gov
TTY 800-366-6888 or 711
Fax 701-328-2410
Phone 701-328-2400

August 29, 2007

Leon Kremeier
Operations Manager
Otter Tail Corporation
PO Box 2220
Jamestown ND 58402-2220

Dear Mr. Kremeier:

This will confirm your request to extend electric service to Spiritwood Station for the station at a point located in the SW ¼ of Section 22, T140N, R62W, Stutsman County, North Dakota. Temporary authority was granted by Commissioner Tony Clark on August 29, 2007.

Temporary

Permission to extend service was granted in order to assure electric service to the customer. The extensions must be made from the most economical point of service.

Formal applications for authority must be received in this office no later than ten business days from the date of this letter. Failure to comply with this requirement will be deemed an abandonment of your application and appropriate Commission action will be taken.

Sincerely,

Paula Kent

Paula Kent
Public Utilities Division



TEMPORARY AUTHORITY PERMIT
NORTH DAKOTA PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES
 SFN 50580 (6-96)

Date August 21, 2007	Time 01:00	<input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.	Name of Utility Otter Tail Power Company	Telephone Number 701-252-0540
Name of Person Calling Leon Kremer Operations Manager			Name of Coop Serving Northern Plains Coop	
Name of Customer Spiritwood Station		Location Sec SW 1/4 22 Twp 140 N R 62 W		
Address			County Stutsman	
City Spiritwood			State ND	Zip Code 58481
Name of Nearest City Spiritwood			Distance to the City 1 mile	
When will service be extended? November 16, 2007		Type of Service <input type="checkbox"/> Residence <input type="checkbox"/> Storage <input type="checkbox"/> Grain Bin <input type="checkbox"/> Other _____		
Extension Length to Most Economical Point of Service Utility: 300 feet No Adequate Coop: Coop Facility		Extension <input checked="" type="checkbox"/> Overhead <input type="checkbox"/> Underground		
Has customer signed request for service? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Will cooperative protest application? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Name of Person Contacted (PSC Use)		Date of Contact (PSC Use)	Time (PSC Use) <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.	
Estimated Cost of Extension Temp Service 12.5 Volt \$187,000 Perm Service 115 Volt \$200,000		Estimated Revenue \$161,200 Month \$ 53,100 Month		
Under what rate filed with the Public Service Commission will customer be served? 603 Large Commercial				
Will extension cross over coop lines? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Will extension cross over rail-road tracks? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Temporary Authority Authorized By <input type="checkbox"/> Telephone <input type="checkbox"/> Letter		Date Authorized		
Authorized By (Name of Commissioner)				

Extension must be made from most economical point of service.

Comments:

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

SPIRITWOOD SUBSTATION

at the Location Stated Herein.
Southwest 1/4 of Section 22 Township 140N
Range 62 W Stutsman County

APPEARANCE BY CUSTOMER

Spiritwood Station (hereinafter referred to as the Customer) hereby makes a voluntary appearance in this matter and states the following to the Commission:

1.

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 immediate electric service at the point located as stated in the Application in this matter.

The Customer further states the need of and has demanded immediate 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 immediately 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 Temporary Order and Certificate as the Commission may determine, said Temporary 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:

Great River Energy - [Signature]
(Customer)

CYNTHIA A. WILLEY
Notary Public
State of North Dakota
My Commission Expires February 14, 2009

Cynthia A Willey
Notary Public, Stutsman County,
North Dakota. My Commission Expires 2-14-09
(NOTARIAL SEAL)

Electric Service Agreement

Work Order No. _____

(Overhead) Service Extension
 (Underground)

M.R. No. _____

Rate No. _____

THIS AGREEMENT, by and between Spiritwood Station
of Spiritwood ND 58481 herein called the "Customer," and the
OTTER TAIL CORPORATION, a Minnesota corporation, herein called "Otter Tail," WITNESSETH:

In Consideration of the mutual promises contained below, the parties agree as follows:

1. All electric power is to be delivered and received pursuant to the provisions of this agreement and shall be approximately 115.5 Volts, slight variations in frequency and voltage to be allowed, 3 phase, delivered at the Customer's _____ located on SW 1/4 Sec 22 Twp 140N
Rt 62 Wd _____ County of Stutsman, State of North Dakota
2. Otter Tail will make the extension of lines, overhead or underground, necessary to provide electric service, as requested, to the electric service entrance of the above-described property, except for service poles to be owned by the Customer. Otter Tail shall not be responsible for surface restoration due to underground installation except the initial backfill.
3. The Customer grants to Otter Tail, its successors and assigns, the perpetual right, privilege and easement for the construction, operation, extension, maintenance and repair or removal of electric transmission lines, either overhead or underground, necessary to provide the electric service described herein, including the necessary fixtures and all other devices in connection therewith; together with the right to permit the attachment of other wires to the poles or in a common trench for purposes of telecommunications or cable communication systems. Further right, privilege and easement is granted Otter Tail to place, position and locate the butts of the main poles, pole structures or underground wires over, across or under the Customer's real property in such manner and location as the parties may mutually agree. Otter Tail shall have the right of ingress and egress at all reasonable times, for the purpose of the perpetual right, privilege and easement granted hereby and shall have the right to cut down and trim trees as reasonably necessary to keep the wires of these electric lines clear, so as to be maintained in accordance with Otter Tail's standards of construction and maintenance. The Customer agrees to provide, without cost to Otter Tail, such other rights of way or permits (including railroad permits), as may be necessary.
4. The Customer agrees to purchase and receive from Otter Tail electric energy in accordance with rules and regulations established by Otter Tail and filed with the appropriate regulatory agency and agrees to pay for electrical energy in accordance with Otter Tail's rate schedule as filed with the Public Service Commission or such superseding rate as may be published in the future.
5. The title and ownership of all lines and extensions and equipment furnished by Otter Tail shall be and remain in Otter Tail, as personal property, and shall not be owned by nor become a part of the real property of the Customer.
6. In view of the investment required of Otter Tail to furnish electric service to the Customer's location, the conditions under which service will be supplied and the inability of expected revenue to support the investment, the Customer agrees to pay, in advance of service, a connection fee of 0. This connection fee shall be in lieu of any guaranteed minimum charge (other than such monthly and seasonal minimum charges which may be part of the rate applicable to this service).
7. In the event Otter Tail is required to change the service lines for any reason other than normal maintenance or inadequate capacity, the party requiring the change shall pay all costs connected with the change.
8. In the event of the failure of the Customer to make any payment required by this agreement, it is understood and agreed that Otter Tail is authorized to discontinue service and remove, without legal process, any and all of the extensions of lines and other property installed by Otter Tail under the terms of this agreement.
9. Where the Customer requests electric service and service is provided by means of an underground service lateral, owned and installed by Otter Tail, the Customer shall, except for backfilling, assume, at his own expense, the necessary land restoration, including but not limited to, yard maintenance, grass planting, and trench leveling.
10. Where Customer has blocked or restricted access to Otter Tail facilities through plantings, construction, pavement, etc., all costs of obtaining access for maintenance, repairs or replacement of said facilities, whether underground or overhead, together with all costs of site restoration, including but not limited to trenching, tree removal, earth removal, reconstruction or repaving, shall be the responsibility of the Customer.
11. No liability shall attach to Otter Tail for any failure to deliver electric power hereto due to acts of God, or any other cause whatsoever except its own voluntary act or any neglect to exercise reasonable care and diligence in performance of the agreement herein contained, and Otter Tail shall have the right to suspend temporarily the delivery of electric power hereunder for the purpose of making repairs or improvements of its system.
12. This agreement shall go into effect on the date of initiation of service and shall continue in effect for a period of ten years and thereafter shall remain in effect from year to year unless terminated by either party by notice within at least sixty days.
13. The rights and obligations of this agreement shall extend to and be binding upon the respective heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the dates appearing opposite their respective signatures.

8-27, 2007
Date

8-28, 2007
Date

Great River Energy
Customer
OTTER TAIL CORPORATION
By: [Signature]
[Signature]

Public Service Commission
State of North Dakota

Otter Tail Corporation)
Fergus Falls, Minnesota)
Customer's Name Spiritwood Station)
Customer's location by)
nearest city Spiritwood)
Public Convenience and Necessity)

Application For
Permanent Authority

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

I.

The full name of the Applicant is Otter Tail Corporation, and the post office address of its principal office is Fergus Falls, Minnesota. Applicant is a public utility corporation, subject to the jurisdiction of, a 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, 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.

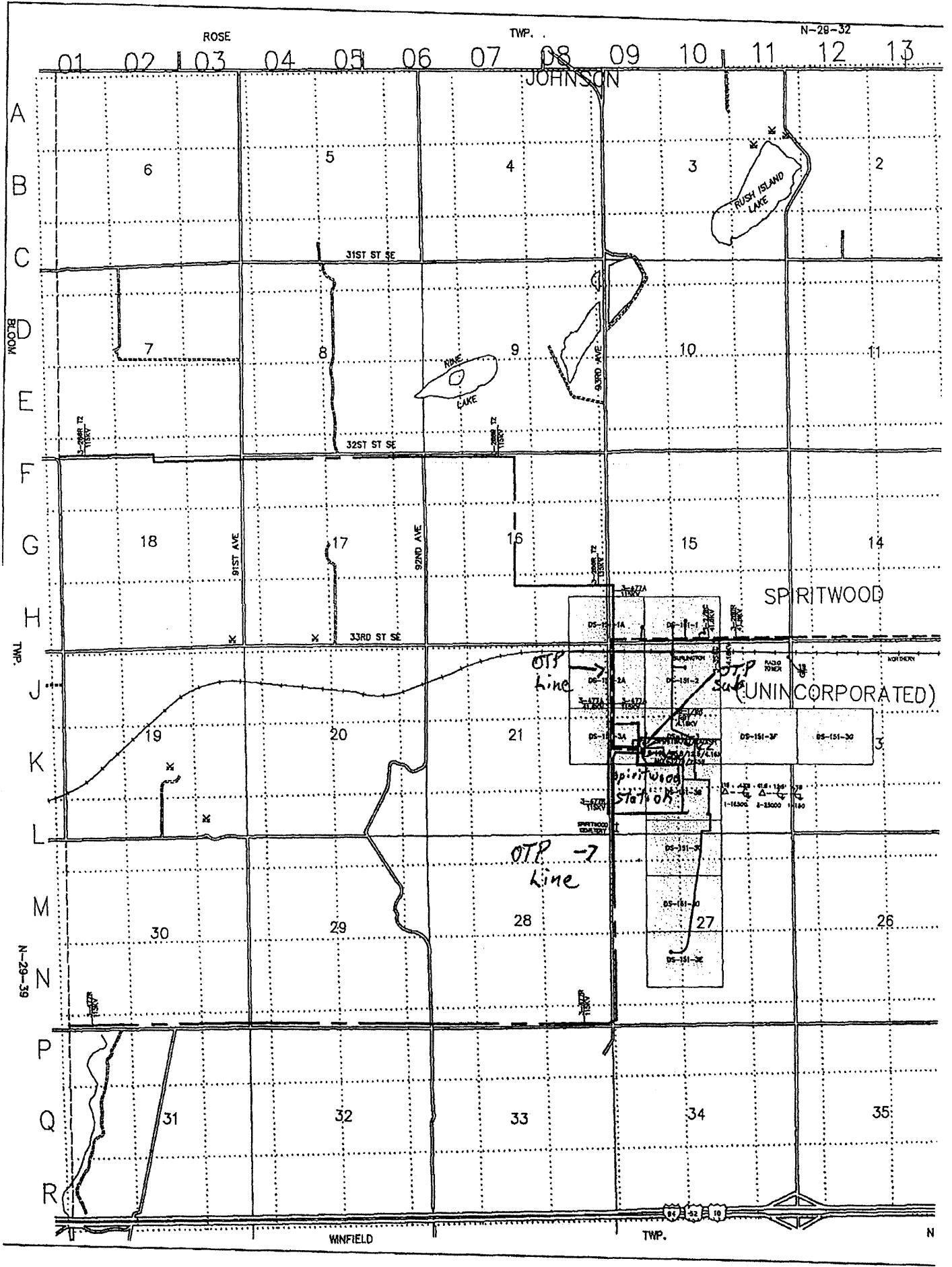
Applicant has been requested by Spiritwood Station (hereinafter referred to as the Customer), to provide electric service to him at a point located in Southwest Quarter (SW 1/4) in Section Twenty Two (22) Township One Hundred Forty North (140 N), Range Sixty Two West (62) Stutsman County, North Dakota, as shown on the attached map, marked Exhibit "A" and mentioned in a part hereof by reference. The address of the customer is Spiritwood ND. The customer will need electric service on the 16th day of November, 2007. Service at: Coal Generating Plant

IV.

The service required by the Customer at said location is ~~Two~~ 12.5/Perm 115/ Three (3) phase service and the length of the extension will be approximately 300 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 rules and regulations applicable thereto. 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 he 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, 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.



ROSE

TWP.

N-28-32

01 02 03 04 05 06 07 08 09 10 11 12 13

JOHNSON

A
B
C
D
E
F
G
H
J
K
L
M
N
P
Q
R

BLOOM

TWP.

N-29-39

SPIRITWOOD

(UNINCORPORATED)

Spiritwood Station

OTP -7 line

OTP line

WINFIELD

TWP.

N

6 5 4 3 2
7 8 9 10 11
18 17 16 15 14
19 20 21 22 23
30 29 28 27 26
31 32 33 34 35

31ST ST SE

32ST ST SE

33RD ST SE

91ST AVE

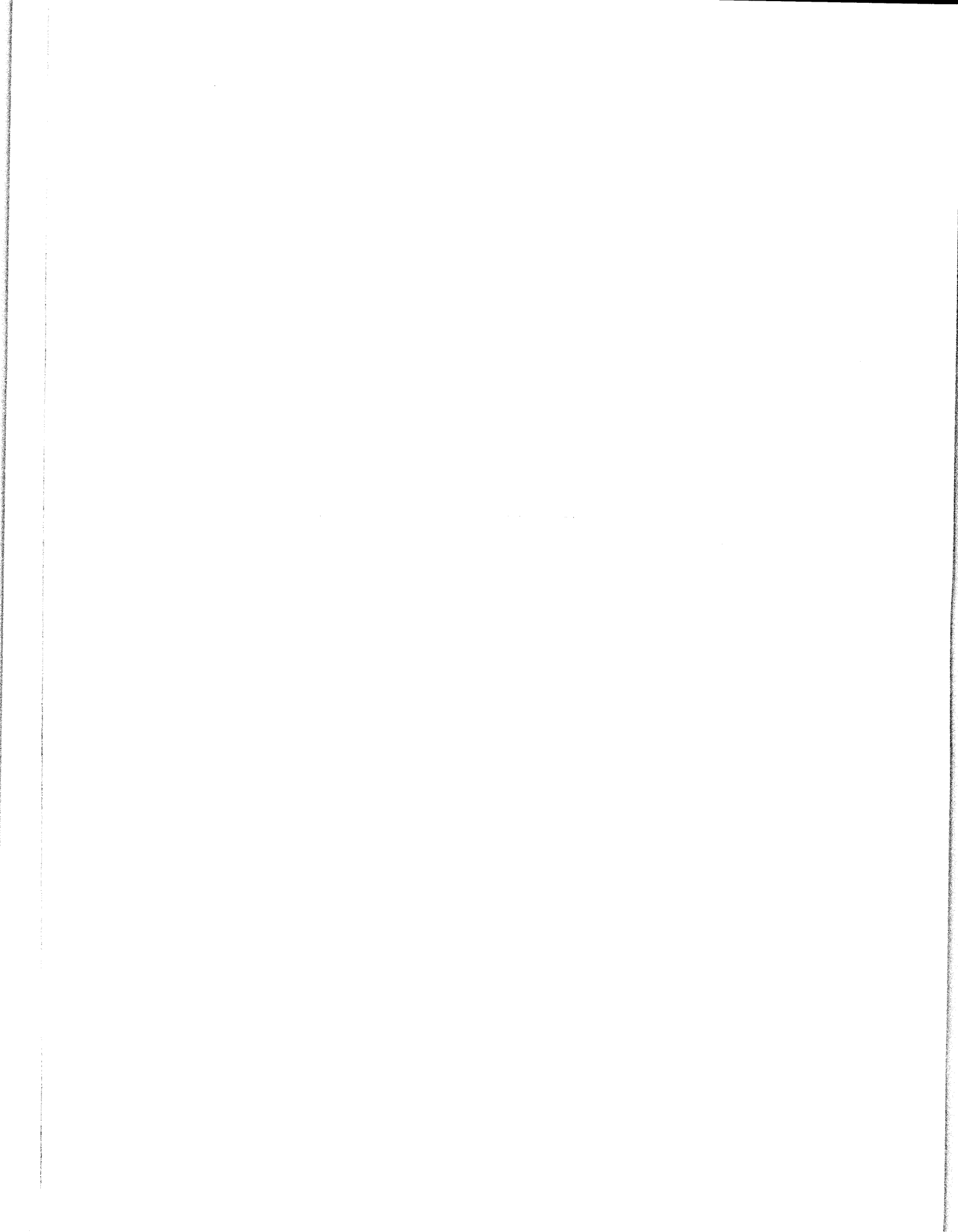
92ND AVE

93RD AVE

RUSH ISLAND LAKE

RINE LAKE

DS-151-1A DS-151-1
DS-151-2A DS-151-2
DS-151-3A DS-151-3
DS-151-4A DS-151-4
DS-151-5A DS-151-5
DS-151-6A DS-151-6
DS-151-7A DS-151-7
DS-151-8A DS-151-8
DS-151-9A DS-151-9
DS-151-10A DS-151-10
DS-151-11A DS-151-11
DS-151-12A DS-151-12
DS-151-13A DS-151-13
DS-151-14A DS-151-14
DS-151-15A DS-151-15
DS-151-16A DS-151-16
DS-151-17A DS-151-17
DS-151-18A DS-151-18
DS-151-19A DS-151-19
DS-151-20A DS-151-20
DS-151-21A DS-151-21
DS-151-22A DS-151-22
DS-151-23A DS-151-23
DS-151-24A DS-151-24
DS-151-25A DS-151-25
DS-151-26A DS-151-26
DS-151-27A DS-151-27
DS-151-28A DS-151-28
DS-151-29A DS-151-29
DS-151-30A DS-151-30
DS-151-31A DS-151-31
DS-151-32A DS-151-32
DS-151-33A DS-151-33
DS-151-34A DS-151-34
DS-151-35A DS-151-35



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

In the Matter of the Request of
Great River Energy for
Jurisdictional Determination

Case No. PU-12-767

CERTIFICATE OF SERVICE

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on November 30, 2012, I served a copy of the attached:

Otter Tail Power Company's Brief in Opposition to Great River Energy's Request for Jurisdictional Determination

by placing a true copy in a postage paid envelope or envelopes addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Bismarck, North Dakota.

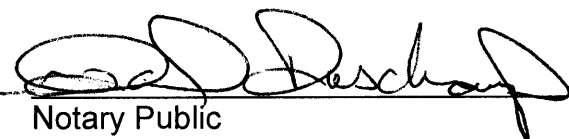
Eric J. Olson
Vice President and General Counsel
Great River Energy
12300 Elm Creek Boulevard
Maple Grove, MN 55369-4718

Donna L. Stephenson
Associate General Counsel
Great River Energy
12300 Elm Creek Boulevard
Maple Grove, MN 55369-4718



Brenda Vitek

Subscribed and sworn to before me, today, November 30, 2012.



Notary Public

GAIL DESCHAMP
Notary Public
State of North Dakota
My Commission Expires July 10, 2014