

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Otter Tail Power Company
Minn-Kota Ag Products Inc. - Richland County
Public Convenience & Necessity**

Case No. PU-17-96

**DAKOTA VALLEY ELECTRIC COOPERATIVE, INC.'S REPLY TO
OTTER TAIL POWER COMPANY'S POST HEARING ARGUMENT**

[1] Dakota Valley Electric Cooperative, Inc., by and through its counsel Kimberly J. Radermacher, submits the following reply to Otter Tail Power Company's Post Hearing Argument. As stated previously, the Commission must consider ten factors in granting or denying Otter Tail's certificate for public convenience and necessity and how each weigh in favor or opposition of the parties. Those ten factors are as follows:

1. From whom does the customer prefer electric service?
2. What electric suppliers are operating in the general area?
3. What electric supply lines exist within at least a two-mile radius of the location to be served, and when were they constructed?
4. What customers are served by electric suppliers within at least a two-mile radius of the location to be served?
5. What are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service?
6. Which of the available electric suppliers will be able to serve the location in question more economically and still earn an adequate return on its investment?
7. Which supplier's extended electric service would best serve orderly and economic development of electric service in the general area?
8. Would approval of the applications result in wasteful duplication of investment or service?
9. Is it probable that the location in question will be included within the corporate limits of a municipality within the foreseeable future?
10. Will service by either of the electric supplier in the area unreasonably interfere with the service or system of the other?

LAW AND ARGUMENT

QUESTION 1: From whom does the customer prefer electric service?

[2] Otter Tail spends a great deal of its Post Hearing Argument on this factor, even though this

factor is not a controlling factor. It bears repeating that “[c]ustomer preference...invokes consideration by the Public Service Commission, but it is not to be a controlling factor. It is the Public convenience and necessity, after all, with which the Commission is concerned, not private preference.” Tri-County Elec. Co-op., Inc. v. Elkin, 224 N.W.2d 785, (1974)(quoting Tri-City Motor Transportation Co. v. Great Northern Ry. Co., 67 N.D. 119, 270 N.W. 100 (1936), and 42 C.J. Motor Vehicles, Section 121, page 687). “The convenience and necessity which the law requires to support the public service commission's order for the establishment or extension of . . . service is the convenience and necessity of the *public* as distinguished from that of *an individual or any number of individuals*, and this is the primary matter to be considered in determining what constitutes such public convenience and necessity in a particular case, and the propriety of granting a certificate to that effect.” Id. (emphasis added).

[3] Dakota Valley does not dispute that there is a difference between its’ and Otter Tail’s rate structures. However, the amount of the difference between the two is in dispute and up to the Commission to decide. Dakota Valley feels it has made some compelling arguments regarding this issue in its previously submitted Closing Argument. While Minn-Kota faces some unique challenges with its existing facility in Wahpeton, Seth Syverson had testified that these issues could be designed around and will likely not be a factor with the new elevator facility to be located near Barney, North Dakota. The Wahpeton facility currently has a 14% load factor, clearly the worst in relation to the examples provided by Dakota Valley at the hearing. Dakota Valley does not believe the load factor at the new facility will be even remotely close to the Wahpeton facility. With an improved load factor, Minn-Kota would see an improvement in the demand charges. And with an improved load factor, the less difference there would be between Otter Tail’s and Dakota Valley’s

rates.

[3] As to Otter Tail's claim that Otter Tail presents less risk to Minn-Kota, there was simply no evidence produced at the time of the hearing to support this argument. Mr. Schuler is merely speculating as to what reliability "could be" and not as to what reliability "actually is" with regards to either provider. Mr. Schuler indicated that he has no issues with Dakota Valley and reliability at the Wahpeton site. Based on outage statistics provided by Dakota Valley as to the Barney site, there have been very few outages in that area in the last decade and some of those outages were a direct result of issues sustained by Otter Tail on its 41.6 kV transmission line. Otter Tail conveniently did not have sufficient information available to show reliability as to this specific site. Only two years of statistics were provided to Dakota Valley and the Commission as part of this process and just in those two years, the number of outages were almost triple that of Dakota Valley's over the last ten years.

[4] Another argument made by Otter Tail is that Otter Tail offers more flexibility on soft start devices. Dakota Valley offered into evidence the motor list for the proposed Minn-Kota elevator site. A majority of the larger motors on the list were soft start motors. This was not at the request of Dakota Valley. This was a list proposed by Minn-Kota itself without any input from Dakota Valley. At no time did Minn-Kota think it was going to have to take electric service from Dakota Valley at this site. Schuler made that fact known at the hearing. Only one conversation took place between Dakota Valley and Minn-Kota and that is when Dakota Valley provided a proposal regarding what electric service rates may be over a ten-year period at that site. No conversations were had regarding soft start motors and any policy that Dakota Valley has in this regard. Syverson even stated that despite this policy, Dakota Valley waives most soft start motor requirements up

to 75 and 100 horsepower if the member is willing to assume some risk for putting in non-soft starting motors. As such, this argument is not compelling, nor is it supported by any credible evidence.

[5] Otter Tail argues that it is also noteworthy that Minn-Kota desires electric service from Otter Tail because they are rate regulated and that regulated rates reduce business risk and uncertainty. This was also an argument made in the Menards' case and it would appear that this argument is simply a carryover from that case. This issue should have no bearing on preference, or any other factor to be determined by the Commission. Electric rates are subject to change, whether the rates come from an investor owned utility or a rural electric cooperative. Christopher Waltz even testified that between rate increases, Otter Tail implements riders and those riders are highly variable and subject to change. The North Dakota Supreme Court debunks this argument best in the case, Montana-Dakota Utilities Co. v. Johanneson, 153 N.W.2d 414, (1967). The Supreme Court noted that:

In the case of a public utility, the consumer has absolutely no voice in the operation of the business. It is operated for private benefit and profit of the stockholders and is given a virtual monopoly by law in the area where it serves. Unless some supervision is provided for, excessive rates and unjust procedures could be imposed, adopted, and practiced. An electric co-operative, on the other hand, is operated without profit. Its consumers are members of the co-operative and, as members, are in control and have a voice in the policies of the co-operative. The directors selected by the members fix the rates to be charged. Furthermore, if rates are charged which are excessive and bring in more than is needed for maintenance and costs of operation, the excess, under the law, is to be returned to the members, for the law specifically provides that electric co-operatives are to be operated without profit (Sec. 10-13-05, N.D.C.C.) and that, if rates charged produce an excess over what is needed for operation and maintenance and for reserves for improvement, it shall be returned to the members (Sec. 10--13--06, N.D.C.C.). Furthermore, if the policies of the co-operative are not satisfactory to the consumers, they, as members, have the power to change them. But, in the case of a public utility, consumers have absolutely no voice in the operation of the business, in the making of its policies, or in the fixing of its rates.

[6] Otter Tail also states that Dakota Valley did not provide a written contract assuring Minn-Kota that the rates would not change. Otter Tail didn't provide Minn-Kota a contract either and Otter Tail, while regulated by the PSC, can change its rates. Syverson testified that the board approved providing the economic incentive rate and waiving the on-site facility charge and the power factor adjustment charge for Minn-Kota. That was conveyed to Minn-Kota and Minn-Kota determined it wanted to proceed with Otter Tail. At that particular time, what sense would it have made for Dakota Valley to offer a contract to Minn-Kota? Furthermore, while contracts are left for larger loads than Minn-Kota, they are quite rare amongst Dakota Valley's business practices. The board had taken the necessary actions to approve the rates offered to Minn-Kota and Otter Tail has no evidence to support that these incentives and other charge deferrals would have been withdrawn or otherwise not offered to Minn-Kota.

QUESTION 2: What electric suppliers are operating in the general area?

[7] Dakota Valley would agree with Otter Tail in that the Commission can reasonably find that this factor does not favor either Otter Tail or Dakota Valley. While Otter Tail may have some facilities in the "general area," it does not have the extent of distribution lines or customers that Dakota Valley has in the rural areas.

QUESTION 3: What electric supply lines exist within at least a two-mile radius of the location to be served, and when were they constructed?

[8] Otter Tail believes that this factor does not favor either Dakota Valley or Otter Tail. However, Dakota Valley would adamantly disagree. The question relates to *existing* electric supply lines in the two-mile radius, not what is to be constructed. It also does not appear to limit itself to just those lines that could supply power to the proposed site. Within the two-mile radius, Otter Tail has two miles of 41.6 kV overhead transmission line and approximately one-quarter of a mile

of single phase distribution line that feeds one single customer. It has NO other electric supply lines or substations within the two-mile radius. Dakota Valley, on the other hand, has significantly more electric supply lines in the area. Dakota Valley has well over five miles of 3 phase line that goes almost entirely north and south through the two-mile radius, and east and west on the northern and southern edges. There are also several miles of single phase line within the area. Dakota Valley has ten times the number of customers within the two-mile radius than Otter Tail, which naturally equates to more supply lines. The Dakota Valley underground 3 phase line that is proposed to serve this load was installed in 2012, as was most, if not all, of the other Dakota Valley existing 3 phase underground cable in that area. Because of Dakota Valley's existing electric supply lines in the area, Dakota Valley does not have to make a significant investment like Otter Tail in order to extend electric service to the proposed Minn-Kota elevator site. This factor favors Dakota Valley.

QUESTION 4: What customers are served by electric suppliers within at least a two-mile radius of the location to be served?

[9] Otter Tail attempts to play down this factor by minimizing the number of customers Dakota Valley has (“over a dozen”) and maximizing the number of customers Otter Tail has (“two to three”). Syverson testified that Dakota Valley serves 20 members in the two-mile radius. Wolf testified that Otter Tail serves two. Otter Tail also argues that this factor should be given little weight given the number of customers Otter Tail serves outside of the two-mile radius. The Commission must not deviate from what the question asks just because it would benefit Otter Tail to some degree. Based on the evidence presented and what this factor requires, this factor clearly favors Dakota Valley.

QUESTION 5: What are the differences, if any, between the electric suppliers available to serve

the area with respect to reliability of service?

[10] At the hearing on October 23, 2017, SAIDI and CAIDI statistics were provided for both electric suppliers. As stated previously, in comparing SAIDI numbers, it appears that both electric suppliers are very similar. In 2016, Otter Tail's SAIDI was 110.5, while Dakota Valley's was 130.9. In 2015, Otter Tail's was 100.6, while Dakota Valley's was 88. In 2014, Otter Tail was 74.2 and Dakota Valley was 75.5. In 2013, Otter Tail was 99.7 and Dakota Valley was 91.8. And in 2012, Otter Tail was 84.1, while Dakota Valley was 87.8. SAIDI is based on system wide numbers, while CAIDI looks at consumer average. Because CAIDI looks at "consumer" average and not "system" average, it would be unfair for the Commission to give the disparity in CAIDI numbers for Otter Tail and Dakota Valley much weight. Dakota Valley has less than 4200 members, as compared to Otter Tail's close to 60,000 members. Furthermore, Dakota Valley has approximately 1.13-1.2 members per mile of line, according to Syverson; whereas, Otter Tail's transmission and distribution is more condensed as they primarily serve municipalities. Otter Tail is of course going to focus on the CAIDI scores as they put Otter Tail in a more favorable light. However, site specific statistics do not support that Otter Tail has more reliable service and that is the evidence the Commission should be most concerned with. Again, according to information provided by Otter Tail and entered into evidence by Dakota Valley as Exhibit DVEC-14, between May 13, 2014, and November 18, 2016, the Otter Tail Wahpeton substation that would be tapped to serve this load had sustained approximately 15 outages. These outages ranged in duration from less than one minute to close to two hours. According to Wolf of Otter Tail, this outage report does not include scheduled maintenance. It also does not include any data for the year 2017 or any time prior to May 19, 2014. The reason provided for the missing data prior to 2014 was that Otter Tail had undergone

metering changes during that time, which caused the specifics as to this substation to be lost.

[11] Furthermore, while there was “ample testimony” by Otter Tail that their “plan to serve Minn-Kota is inherently more reliable than DVEC’s service plan,” there is simply no evidence to support this. Otter Tail seems to believe that its service won’t carry any risk, yet it fails to acknowledge that the only way Otter Tail can even somewhat economically service this load is from its 41.6 kV overhead transmission line. This overhead line carries plenty of risk with no static wire and exposure to harsh North Dakota weather. Furthermore, Otter Tail intends on utilizing a portion of that line that has over 40 miles of exposure. Syverson testified that Dakota Valley ran tests on this load and there would be no voltage drop or other issues faced by Minn-Kota or others on the line in the terms of reliability.

[12] In its Closing Argument, Otter Tail again makes its argument about overhead versus underground systems and how it relates to reliability. While it is true that Otter Tail will have much less underground distribution line to examine in the event of a suspected fault, it still has a significant amount of transmission line to worry about – over forty miles worth to be exact. Otter Tail’s arguments on this particular issue are pure conjecture and speculation. Furthermore, there is no evidence to support that overhead line is more reliable than underground. Rather, Dakota Valley would argue in the alternative.

[13] As stated previously, in looking at the SAIDI index, the actual outage data relative to the proposed site, and the infrastructure currently located near the site along with the proposed extension of service to be utilized by both entities, Dakota Valley would argue that this factor tips in favor of Dakota Valley.

QUESTION 6: Which of the available electric suppliers will be able to serve the location in question more economically and still earn an adequate return on its investment?

[14] This factor has been belabored at the hearing and in each party's Closing Arguments. This factor will boil down to the issue of rates, as there is no doubt that Dakota Valley's cost of extension is significantly less than that proposed by Otter Tail. Dakota Valley's worst-case scenario for cost of extension is \$93,640.73 and best-case scenario is between \$67,190.73 and \$72,190.73. Otter Tail projects a total investment for extension of \$235,869.00. However, this is a best-case scenario and this amount could exceed \$300,000.00 if the probable 2500 kVA transformer is not able to be utilized. Based on cost of extension alone, this factor would weigh in favor of Dakota Valley.

[15] As for the difference in rates, the determination of this aspect will come down to what the Commission believes is a logical load factor for the proposed Minn-Kota elevator site near Barney. To do so, it will have to determine whose evidence is more credible in that regard. Otter Tail believes that 23% is more logical because Otter Tail had detailed discussions with Schuler and Minn-Kota about what a potential load factor for this facility may be. However, Schuler indicated at the time of the hearing that this facility was going to be one of the biggest elevators in the state. If that is the case, then it should fall in line with some of the other elevators in Dakota Valley's and Northern Plains' territory that have higher load factors. It is evident that this elevator will not perform anything remotely close to Minn-Kota's Wahpeton facility and in comparison, a projected load factor of 23% is awfully low. As pointed out at the hearing, it would behoove Otter Tail and Minn-Kota to project a lower load factor because there is a more significant rate differentiation between Otter Tail and Dakota Valley the lower the load factor gets, which then benefits Otter Tail as to the analysis of this factor and its overall application for a CPCN.

[16] If a 33% load factor is used, Otter Tail's total annual energy cost relative to the proposed

Minn-Kota elevator site near Barney would be \$271,981.05. Taking into account Otter Tail's numbers for Total Energy Cost projected for Dakota Valley, less the Power Factor cost and On-Site Facilities charge that it took into account, Dakota Valley's total annual energy cost during the first nine years of operation would be approximately \$290,942.01. This would result in a total difference between the two of \$18,960.92 annually for the first nine years. However, in utilizing Dakota Valley's updated year ten number for total energy cost set forth on page 7 of Exhibit DVEC-9 of \$306,035.751 less what Otter Tail projects is an 8% blended discount for the first nine years (which amounts to \$24,408.94 annually), Dakota Valley's total projected annual energy cost for those nine years would be approximately \$281,626.81. This would result in a total difference between the two of \$9,645.76 annually for the first nine years. During year 10 and thereafter, there would be an annual difference of approximately \$34,054.66. These numbers are presupposing that there will be no change in rates for either entity.

[17] Otter Tail would prefer to exclude any argument made by Dakota Valley regarding accumulation of capital credits, stating that any return would be delayed and is speculative. At this juncture of the proceedings, most of what the Commission has to base its decision on is speculative. No one knows what rates are going to be or what Minn-Kota's load factor will actually be years from now. What is known is that based on historical data and the business structure of Dakota Valley, Minn-Kota will earn capital credits and will eventually have those capital credits allocated back to them. It is a factor that the Commission must take into consideration in deciding this factor.

¹ Dakota Valley had previously projected \$316,2160.97 as its total annual energy cost by year 10 during its initial assessment of this load on March 13, 2017, which is set forth on page 2 of DVEC-10. However, this number was found to be in error on October 10, 2017, and was updated accordingly.

[18] Otter Tail also questions whether Dakota Valley can earn an adequate return on its investment. Dakota Valley believes that it can. While it is not at the same rate as Otter Tail, it will still earn an adequate return regardless. No other Dakota Valley members are going to be left holding the bag on Dakota Valley's costs of extending service to Minn-Kota. To the contrary, once its initial investment is recouped after year five, Dakota Valley will be seeing a nice return from Minn-Kota that will help keep rate increases for other members at bay. Again, taking into account the potential for capital credits, the highly variable nature of rates, and the known cost of investment by each entity, Dakota Valley would argue that this factor weighs in favor of Dakota Valley.

QUESTION 7: Which supplier's extended electric service would best serve orderly and economic development of electric service in the general area?

[19] Much of the discussion set forth under Question/Factor 6 would apply here as well. The cost for Dakota Valley to extend service to the proposed Minn-Kota elevator site is considerably less than that of Otter Tail. Taking that into consideration, as well as the accrual of capital credits and the economic development incentive being offered by Dakota Valley, Dakota Valley would be positioned to best serve the overall orderly and economic development as it relates to Minn-Kota. Dakota Valley would also serve the orderly and economic development of electric service as it relates to the general area. Dakota Valley currently has three phase line in close proximity to the proposed Minn-Kota elevator site. The extension of service to the site is a logical extension of Dakota Valley's already existing facilities in the area and could be utilized to the advantage of other facilities or members in the future. Dakota Valley's line would bring 3 phase service further down the Highway 13 corridor, which is apt to see more economic development than other areas. Otter Tail's proposed extension essentially benefits Minn-Kota and Minn-Kota only. Wolf testified that

there is no intention at this time of further extending or developing service in that area. Furthermore, if Otter Tail wants to extend service from this location, it would have to get a CPCN, which Dakota Valley would not.

QUESTION 8: Would approval of the applications result in wasteful duplication of investment or service?

[20] As stated previously, the approval of Otter Tail's application would result in wasteful duplication of investment or service. Dakota Valley currently serves a majority of the area surrounding the proposed Minn-Kota elevator site. Dakota Valley has three phase service it can extend off of within .70 miles of the site. While Otter Tail's 41.6 kV transmission line passes by the location, the line by itself cannot service the location. Instead, Otter Tail would have to invest over \$235,000.00 to be able to provide electric service to Minn-Kota. This proposed extension by Otter Tail would serve only to benefit Minn-Kota, while Dakota Valley's extension has the potential to serve others in the area. Otter Tail does not have any other economical means to provide service to the site except as was proposed at the hearing. Wolf testified that tapping into one of its substations near Barney or Mooreton would be too costly as those facilities are located in excess of three miles from the proposed site. Again, the proposed extension by Dakota Valley is a logical extension of its already existing services in close proximity to this site, whereas the same is not true for Otter Tail. This factor weighs in favor of Dakota Valley.

QUESTION 9: Is it probable that the location in question will be included within the corporate limits of a municipality within the foreseeable future?

[21] Both Dakota Valley and Otter Tail concur that this factor does not favor either party.

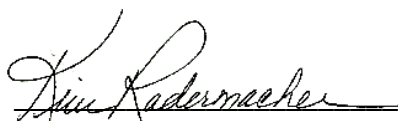
QUESTION 10: Will service by either of the electric supplier in the area unreasonably interfere with the service or system of the other?

[22] Both Dakota Valley and Otter Tail concur that this factor does not favor either party.

CONCLUSION

[23] Dakota Valley respectfully asks that the Commission deny Otter Tail's Application for a Certificate of Public Convenience and Necessity in this matter. Otter Tail has not shown that public convenience and necessity dictates extension of service by Otter Tail to the proposed Minn-Kota elevator site near Barney, North Dakota.

Dated this 14th day of November, 2017.



Kimberly J. Radermacher (#05856)
Attorney for Dakota Valley Electric Coop.
P.O. Box 597 – 27 Center Ave.
LaMoure, ND 58458
Telephone: (701) 883-5125
Fax: (701) 883-5928
kimrader@radermacherlaw.com