

7-14-2021

Dissenting Opinion – Commissioner Brian Kroshus – Case Number PU-20-356

Wasteful Duplication of Service

I dissent from today’s order on case number PU-20-356, Nodak Electric Cooperative, Inc. vs. Otter Tail Power Company Complaint, because it results in unreasonable duplication of service.

The area of dispute is known as the “McFarland’s Addition” located adjacent to the west corridor of Interstate 29 in Pembina County. The intended end-use customer to be served with electrical service is Love’s Travel Stop, currently under construction within the area in dispute.

Love’s Travel Stop initiated contact in February of 2019 with Nodak, seeking electric service from Nodak. The McFarland’s Addition was subsequently annexed into the city of Drayton in August of 2019, after Nodak had already begun the process to extend service to Love’s.

The Commissions responsibilities in matters like this, set forth in Section 49-03-06 of NDCC, include discouraging the wasteful duplication of services, and encouraging cooperative and harmonious interaction and operational efficiency among electric providers operating within the state.

Nodak Electric has an existing distribution facility within the McFarland’s Addition, an underground single-phase distribution line. It also has in service a three-phase distribution line immediately adjacent to the west property line of the McFarland’s Addition providing power to an existing customer. While Love’s Travel Stop desires three-phase service, NDCC does not qualify what type of distribution line qualifies as existing infrastructure.

Nodak Electric testified that it has made previous investments in the area intended to create capacity to serve the vicinity of Drayton, based on the service area agreement between Nodak and Otter Tail, signed by both parties in 1968 and again reviewed in 1972.

Nodak’s distribution line in the McFarland’s Addition was upgraded in 2009, demonstrating a continued commitment to reliably serving load in proximity to the city of Drayton.

Although Otter Tail has a transmission line running parallel and within the western edge of the McFarland’s Addition, a transmission line is not an economical means of providing service to end-use customers without significant investment, which would include the construction and placement of a substation, necessary to “step down” electricity, before placement of a distribution line would even be possible.

The economics do not support service from Otter Tail Power. Cost to provide service from Nodak is \$19,000, significantly less than the \$52,000 necessary for Otter Tail to provide service to the same proposed customer, an unreasonable increase of 273.1 percent.

While it was argued that the \$33,000 additional increase for Otter Tail is not a relevant amount, I disagree. Century Code does not state what unit of measurement is deemed “material,” including dollar amount. The amount is in fact material, given the significant percentage cost difference to provide service between the two electric providers involved in this case. The cost difference, when applied to the thousands of electric service extensions occurring throughout North Dakota each year, would be considerable and certainly not deemed economical by any existing standard.

Simply put, the economics clearly favor Nodak as the service provider for Love’s Travel Stop.

Further, the dollar and percentage increase for Otter Tail to serve the customer must be kept in perspective. While the amount may not be material to a larger publicly traded company such as Otter Tail, the same standard cannot be applied to a smaller member-owned, non-profit utility such as Nodak with a substantially smaller revenue base.

Service Area Agreement

While not eligible for review by the Commission and therefore not a factor in my dissent, the existing service area agreement and associated map, representing the city of Drayton and area in proximity to Drayton, executed by authorized representatives for both parties, defines agreed-upon service area territories for both Nodak and Otter Tail, respectively.

The terms of the agreement and map clearly demonstrates the McFarland’s Addition is within the designated service territory of Nodak.

Again, though not eligible for review by the Commission, that factor does not nullify the legal standing of the executed service area agreement between Nodak and Otter Tail.

Legislative Intent

I find it difficult to believe that the North Dakota Legislature, when creating North Dakota Century Code, intended for annexation of an area into an existing city within the state, to be used as a mechanism to supersede the territorial rights of a rural electric cooperative.

While the basis of my dissent is unreasonable and wasteful duplication of service, as previously defined, I also recognize the troubling precedence set forth by today’s decision.

Larger entities such as Otter Tail Power naturally become more economical with additional load growth while smaller, yet equally important rural electric utilities like Nodak, critical to serving North Dakota’s rural community, become less economical and competitive over time, negatively impacting the homes and businesses they serve and creating an uneven playing field between the two utility types.

Legislative intent supports and promotes orderly development, fair competition and harmonious interaction between electrical providers for the benefit and welfare of the citizens of North Dakota. That threshold has not been met by today’s order in Case Number PU-20-356.