

March 29, 2016

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

**RE: Response of the Minnesota Department of Commerce to the March 7, 2016
Comments of Otter Tail Power Company
In the Matter of the Complaint by PKM Electric Cooperative, Inc. Against Otter Tail
Power Company**
Docket No. E131,E017/C-15-176
Docket No. E999/CI-12-957

Dear Mr. Wolf:

The Minnesota Department of Commerce, Division of Energy Resources (Department) provides this response to the Comments of Otter Tail Power Company (Otter Tail or Company) that were filed on March 7, 2016. The Department's March 3, 2016, letter in this matter noted the likely inaccuracy of the Commission's digital electric service area maps with respect to Otter Tail's service and possibly as to many other electric utilities, and recommended that the Commission take whatever action it considers appropriate to ensure that the official electric utility service area maps accurately reflect electric utilities' obligations to serve particular areas in Minnesota. While it intends no inference, whatsoever, that Otter Tail or other utilities acted inappropriately, the Department was surprised at the potential level of inaccuracy of the Commission's digital electric service area maps and questioned the usefulness of the maps in the event they are significantly inaccurate.

Otter Tail provided in its March 7th response a description of how it believes service-by-exception arrangements have been handled in Minnesota in the past, and stated that the Commission has not required utilities to delineate on maps specific service-by-exception agreements for individual customers. Additionally, the Company included the following sentence:¹

¹ Otter Tail Comments at 3 (March 7, 2016). Otter Tail's citation appears to be to the Commission's June 27, 2007, ORDER DETERMINING COMPENSATION, in *In re Application of the City of Redwood Falls to Extend its Assigned Service Area into the Area Presently Served by Redwood Electric Cooperative*, Docket E-135, 298/SA-05-1274 (Application of Redwood Falls). That matter was reversed in part by the Court of Appeals, *In Re City of Redwood Falls*, 756 N.W.2d 133, 138-39 (Minn. Ct. App. Sept. 30, 2008).

There was (and is) no requirement to either map or list service to specific customers including exception customers.[Footnote 8]

Footnote 8: Application of Redwood Falls, p. 10

[T]here is no companion requirement that exception agreements be approved by the Commission and/or recorded on the official service area maps kept on file by the Department of Commerce. While recording exceptions is a good practice, and one the Commission encourages, it is not a threshold statutory requirement.

The Company suggested that a generic proceeding might be an appropriate vehicle to further consider service area map accuracy.

The Department would support a generic proceeding if the Commission concludes that it is necessary to do so and wishes to proceed in that manner. Although it does not necessarily agree with Otter Tail's legal analysis, the Department simply notes its view that the Commission has the authority, on a going-forward basis, to ensure that electric utilities that are parties to service area agreements are doing so in writing, whether those agreements reflect large portions of service areas or relate only to a small portion of a service area involving a single customer. Minnesota law requires all service-by-exception agreements that allow one utility to provide electric service in another's utility's exclusive service territory to be in writing,² and in addition, that older pre-Minnesota Public Utilities Act contracts "executed on or before 12 months from April 12, 1974" must be filed with, and approved by, the Commission.³

The statutory requirement of written contracts regarding service in another utility's service area was affirmed by the Minnesota Court of Appeals in which the court also noted this requirement is fundamental to the Minnesota Public Utilities Act, which requires the Commission to provide coordinated statewide electric service and to establish and maintain assigned service area maps, as follows in relevant part:⁴

The plain language of the MPUA prohibits a utility from providing service in a territory assigned to another utility **unless the assigned utility "consents thereto in writing."** Minn.Stat. § 216B.40. Absent such written consent, the right to provide services is governed by the assigned service areas, as established and modified by the commission. See Minn.Stat. § 216B.39, subds. 2-3 (2006).

...

Although our decision here is controlled by the plain language of the statute, we note that **the requirement of written consent is**

² Minn. Stat. § 216B.40 (2014).

³ Minn. Stat. § 216B.39, subd. 4 (Supp. 2015). This is the sort of contract that was at issue in the present matter.

⁴ *In Re City of Redwood Falls*, 756 N.W.2d 133, 138-39 (Minn. Ct. App. Sept. 30, 2008) (emphasis added).

consistent with the MPUA's overriding purpose of providing "coordinated statewide electric service." Minn. Stat. § 216B.40. In support of this purpose, the MPUA requires the commission to establish and maintain assigned service area maps, which are to be modified only after notice and hearing. Minn.Stat. § 216B.39, subd. 3. And there are limited enumerated circumstances under which the utilities are permitted to provide services outside their assigned service areas. See Minn. Stat. § 216B.40, .42, .421 (2006) (identifying four exceptions, including written consent); see also *In re Petition by Rochester for Order Establishing Rights to Provide Electric Serv.*, 478 N.W.2d 329, 331 (Minn.App.1991) (explaining that, given purposes of the MPUA, this court must "closely examine any alleged exceptions to exclusive service territory rights"), review denied (Minn. Jan. 30, 1992). Each of these statutory procedures promotes certainty and, accordingly, the "coordinated statewide electric service" envisioned by the legislature.

The court of appeals stated its concern that if utilities were permitted "to make undocumented adjustments to assigned service areas," the Public Utilities Act's objective to coordinate statewide electric service would be undermined.⁵ The Department, too, is concerned about such an outcome and about the time that was necessary in this proceeding to sort out basic facts about service rights.

While the Department believes that the Commission has been clear in recent proceedings that all service-area changes should be reflected in service-area maps, if further clarity is needed, then perhaps as an initial step, the Commission could order utilities to file all of their written agreements, if they have not already done so, so that the Commission and the public is made aware of the entity that, according to the contracting parties, has the obligation to serve particular areas and/or customers. In any event, the Department appreciates Otter Tail's comments and its willingness to participate in a generic proceeding in this regard.

Sincerely,

/s/ DALE V. LUSTI
Financial Analyst

⁵ See *Id.* at 138.

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Reply Comments**

Docket No. E131,017/SA-15-176

Dated this 29th day of March 2016

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Peter	Beithon	pbeithon@otpc.com	Otter Tail Power Company	P.O. Box 496 215 South Cascade Street Fergus Falls, MN 565380496	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
William	Black	bblack@mmua.org	MMUA	Suite 400 3025 Harbor Lane North Plymouth, MN 554475142	Electronic Service	No	OFF_SL_15-176_Official CC Service List
Thomas R	Brause	tbrause@otpc.com	Otter Tail Power Company	PO Box 496 215 S Cascade St Fergus Falls, MN 56538-0496	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Dennis R	Eicher	dennis@eicherconsulting.com	D.R. Eicher Consulting, Inc.	28947 River Ridge Rd NW Isanti, MN 55040	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Svetlana	Fedje	sfedje@otpc.com	Otter Tail Power Company	215 S Cascade St Fergus Falls, MN 56537	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Marc	Fournier	marc.fournier@state.mn.us	Public Utilities Commission	Suite 350121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
John R.	Gasele	kgasele@fryberger.com	Fryberger Buchanan Smith & Frederick PA	700 Lonsdale Building 302 West Superior Street Duluth, MN 55802	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Bruce	Gerhardson	bgerhardson@otpc.com	Otter Tail Power Company	PO Box 496 215 S Cascade St Fergus Falls, MN 565380496	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Emerald	Gratz	emerald.gratz@state.mn.us	Office of Administrative Hearings	PO Box 64620 Saint Paul, Minnesota 55164-0620	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Bryce	Haugen	bhaugen@otpo.com	Otter Tail Power Company	215 S Cascade St Fergus Falls, MN 56538	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Mark	Helland	mhelland@otpco.com	Otter Tail Power Company	215 South Cascade Street Fergus Falls, MN 56537	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Jim	Horan	Jim@MREA.org	Minnesota Rural Electric Association	11640 73rd Ave N Maple Grove, MN 55369	Electronic Service	No	OFF_SL_15-176_Official CC Service List
Arshia	Javaherian	arshia.javaherian@enbridge.com	Enbridge Energy	26 East Superior Street Suite 309 Duluth, MN 55802	Electronic Service	No	OFF_SL_15-176_Official CC Service List
Richard	Johnson	Rick.Johnson@lawmoss.com	Moss & Barnett	150 S. 5th Street Suite 1200 Minneapolis, MN 55402	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Harold	LeVander, Jr.	hlevander@felhaber.com	Felhaber, Larson, Fenton & Vogt, P.A.	Suite 2100 444 Cedar Street St. Paul, MN 551012136	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Richard	Macke	macker@powersystem.org	Power System Engineering, Inc.	10710 Town Square Dr NE Blaine, MN 55449	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Peter	Madsen	peter.madsen@ag.state.mn.us	Office of the Attorney General-DOC	Bremer Tower, Suite 1800 445 Minnesota Street St. Paul, Minnesota 55101	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Sara G	McGrane	smcgrane@felhaber.com	Felhaber Larson	220 S 6th St Ste 2200 Minneapolis, MN 55420	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
James R	Mortenson	james.mortenson@state.mn.us	Office of Administrative Hearing	PO Box 64620 Saint Paul, MN 55164-0620	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Matt	Olsen	molsen@otpc.com	Otter Tail Power Company	215 South Cascade Street Fergus Falls, MN 56537	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Dean	Pawlowski	dpawlowski@otpc.com	Otter Tail Power Company	PO Box 496 215 S. Cascade St. Fergus Falls, MN 565370496	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
David G.	Prazak	dprazak@otpc.com	Otter Tail Power Company	P.O. Box 496 215 South Cascade Street Fergus Falls, MN 565380496	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Mark	Remer	mremmer@otpc.com	Otter Tail Power Company	215 South Cascade St Fergus Falls, MN 56537	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Charles	Riesen	criesen@minnkota.com	PKM Electric Cooperative	406 North Minnesota Street PO Box 108 Warren, MN 567620108	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Richard	Salmen	rsalmen@felhaber.com	Felhaber Larson Fenlon & Vogt P.A.	220 S 6th St Ste 2200 Minneapolis, MN 55402	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Michael	Schmidt	mschmidt@minnkota.com	PKM Electric Coop Inc	PO Box 108 406 North Minnesota St Warren, MN 56762	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Steve	Schoeneck	sschoeneck@otpc.com	Otter Tail Power Company	215 South Cascade Street Fergus Falls, MN 56538	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	Ste 122 9100 W Bloomington Frwy Bloomington, MN 55431	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Cary	Stephenson	cStephenson@otpc.com	Otter Tail Power Company	215 South Cascade Street Fergus Falls, MN 56537	Electronic Service	No	OFF_SL_15-176_Official CC Service List
Stuart	Tommerdahl	stommerdahl@otpc.com	Otter Tail Power Company	215 S Cascade St PO Box 496 Fergus Falls, MN 56537	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Kevin	Walli	kwalli@fryberger.com	Fryberger, Buchanan, Smith & Frederick	380 St. Peter St Ste 710 St. Paul, MN 55102	Electronic Service	No	OFF_SL_15-176_Official CC Service List
Jason	Weiers	jweiers@otpc.com	Otter Tail Power Company	215 South Cascade Street PO Box 496 Fergus Falls, MN 56538	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Randi	Winter	rwinter@felhaber.com	Felhaber Larson	Felhaber Larson 220 South Sixth Street, Suite 2200 Minneapolis, MN 55402	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List
Patrick	Zomer	Patrick.Zomer@lawmoss.com	Moss & Barnett a Professional Association	150 S. 5th Street, #1200 Minneapolis, MN 55402	Electronic Service	Yes	OFF_SL_15-176_Official CC Service List