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March 7, 2016



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

RE: Notice of Comment Period Issued: February 26, 2016
In the Matter of the Complaint by PKM Electric Cooperative, Inc. Alleging that
Otter Tail Power Company has Violated the Exclusive Service Area Provisions of Minn.
Stat. §§ 216B.37 to 216.43
MPUC Docket No. E131, 017/C-15-176

Dear Mr. Wolf:

Otter Tail Power Company (OTP) is filing this letter in response to the Commission's February 26, 2016 Notice of Comment Period in the above-referenced docket. These comments are offered to confirm OTP's support for the settlement and to clarify OTP's position regarding how service-by-exception arrangements have historically been handled in this State.

The resolution of this docket reflects the cooperation of PKM Electric Cooperative, Inc. (PKM), the Minnesota Department of Commerce, Division of Energy Resources (Department), Enbridge Energy, Limited Partnership's (Enbridge) and OTP to reach the constructive outcome reflected in the Stipulation and Settlement Agreement and Agreement for Service by Exception, filed February 24, 2016 in this matter (the Settlement and Stipulation). OTP supports the dismissal of this case according to the terms of the February 24, 2016 Joint Dismissal filed by OTP and PKM. OTP also appreciates the support of the Settlement and Stipulation by the Department and Enbridge. OTP and PKM have also agreed to work together to cause OTP's service-by-exception to Enbridge's Donaldson Facility to be noted on the Commission's service area maps,¹ consistent with the recommendation of the Department in its February 3, 2016 letter to the Honorable James Mortenson.

In addition to reiterating its support of the Settlement and Stipulation, the Department's March 3, 2016 letter comments recommend the Commission take whatever action it considers appropriate regarding the other service-by-exception arrangements not at issue in this case. This recommendation involves more than just the parties to this case and seems more appropriate for a separate, generic proceeding. OTP also believes the recommendation could benefit from some clarification.

Firstly, service-by-exception (whether under Minn. Stat. § 216B.40 or Minn. Stat. § 216B.42) is an exception to the general rule that each electric utility shall have the exclusive right to provide retail

¹ See Paragraph 5 of the Settlement and Stipulation, attached to the Joint Dismissal.

service to all customer in their assigned electric service area.² Service-by-exception arrangements “are essential tools for ... ensuring coordinated, statewide electric service: avoiding the unnecessary duplication of facilities; and promoting economical, efficient, and adequate statewide service throughout the state,” as the Commission has noted.³ There are many examples where OTP (and other utilities) had facilities located closer to a customer that resides in the service area of another utility. Rather than requiring the assigned utility to install more facilities than are needed to serve the customer, service-by-exception allows the utilities to work together to achieve service in the most economic manner. Service-by-exception arrangements are particularly valuable in very sparsely populated areas (like those served by OTP and PKM) to provide more efficient, cost-effective service.⁴

Secondly, service-by-exception is separate and distinct from changing a service area boundary. For example, the Public Utilities Act establishes service-by-exception as being separate and distinct from service areas.⁵ There are also separate statutory provisions governing exceptions (Minn. Stat. § 216B.40 and Minn. Stat. § 216B.42) and boundary changes (Minn. Stat. § 216B.39, subd. 3). The difference between a service-by-exception and a boundary change has important implications for the items marked on the Commission’s service area maps.

The Commission’s service area maps identify service areas and service area boundaries.⁶ While there are some service-by-exception arrangements noted on the maps, the maps have not historically been required to show all such arrangements. For example, in directing the Commission to establish service area maps, the Legislature required the maps to “accurately and clearly show the boundaries of the assigned service area of each electric utility.” Further, when the maps were initially developed in 1975, each utility was directed to file “with the commission a map or maps showing all if its electric lines outside of incorporated municipalities” and a “list of municipalities in which it provides service.”⁷ There was (and is) no requirement to either map or list service to specific customers,

² See Minn. Stat. § 216B.40.

³ See, e.g., Application of Redwood Falls, p. 8

“Exception agreements are essential tools for achieving the three goals of the assigned service area statutes - ensuring coordinated, statewide electric service: avoiding the unnecessary duplication of facilities; and promoting economical, efficient, and adequate statewide service throughout the state - because they grant utilities the flexibility necessary to avoid making expensive and duplicative investments to serve customers whose needs could be met more economically by a non-assigned provider.”

Docket No. E-002, 148/SA-01-1123, Order Rejecting Challenge to Exception Agreement, p. 7 (Oct. 17, 2001)

“The Public Utilities Act permits a utility to provide service within another utility the second utility ‘consents thereto in writing.’ These consensual service arrangements, called ‘service by exception,’ are common. Shifts in population and property use often make it more efficient for a neighboring utility, rather than the assigned utility, to serve customers on the assigned utility’s periphery. Exception agreements therefore normally take effect without Commission action.

Docket No. E002, 141/SA-85-84, Order Granting Petition, p. 2-3 (July 25, 1985)(concluding that large load exception is directed towards meeting the goals set forth in Minn. Stat. § 216B.37)

⁴ Ex. 100, Brause Direct, p. 25, ln. 4-p. 26, ln. 5.

⁵ The Public Utilities Act clarifies that Minn. Stat. § 216B.40 service-by-exception occurs “*within* the assigned service area” of the consenting utility and that a large customer receiving service under Minn. Stat. § 216B.42 is not required “to take electric service *from* the electric utility having the assigned service area where the customer is located...”. Minn. Stat. §§ 216B.40, 42.

⁶ Minn. Stat. § 216B.39, subd. 2 (“[T]he commission shall ... establish the assigned service area or areas of each electric utility and shall prepare or cause to be prepared a map or maps to accurately and clearly show the boundaries of the assigned service area of each electric utility.”)(emphasis added).

⁷ Minn. Stat. § 216B.39, subd. 1.

including exception customers.⁸ As indicated in Attachments 1 and 2 to the Department's March 3, 2016 letter in this docket, both OTP and PKM have service-by-exception arrangements,⁹ and historically, neither OTP nor PKM have recorded these exceptions. OTP also notes that most, if not all, of OTP's other neighboring electric providers have service-by-exception customers that are not recorded on the Commission's maps.

Thirdly, the Commission's recent transition to digital maps did not involve identifying individual service-by-exception arrangements on those digital maps, but rather focused on converting the existing paper service area boundary maps to an electronic form.¹⁰ However, because the electronic maps allow for much more specific, granular information to be layered over the boundaries than did the old paper maps, it may be that the creation of electronic boundary maps will make it possible for the Commission to add information to the maps, such as specific service-by-exception arrangements. Still, it may require significant administrative effort to accomplish such a task. Whether to undertake the step of requiring all service-by-exception arrangements to be included on the service area maps may require input from other parties.

OTP appreciates the opportunity to provide these comments and will provide any additional information that would be helpful and will cooperate in any direction determined by the Commission.

Sincerely,

/s/ *BRUCE GERHARDSON*
Bruce Gerhardson
Associate General Counsel

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Enclosures
By electronic filing
c: Service Lists

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.”

⁹ Ex. 106, Brause Rebuttal, p. 26, ln. 26 - p. 27, ln. 6; Ex. 1, Schmidt Direct, p. 4, ln. 10-14

¹⁰ Docket No. E999/CI-12-957, Order Adopting Official EUSA Digital Map and Establishing Procedures for Future Service Territory Boundary Changes, p. 1 (Apr. 9, 2014)

“The Commission asked utilities to review the EUSA boundaries, correct any inaccuracies, and identify boundary disagreements with adjacent utilities. Since that time, corrections and updates have been made to the EUSA digital map with utility input through an informal process.

On December 3, 2012, the Commission issued an order directing utilities to continue the informal process of confirming and correcting the digital service map boundaries until May 1, 2013.”

[*hereinafter* Digital Mapping Order] MnGeo, the agency that developed the digital map, also confirmed the digital mapping process was not intended to document service to each and every customer:

“Please remember that exceptions were never in the scope of the project to create the statewide service territory map. Some of the utilities chose to provide them to MnGeo as part of the project. They are 100% voluntary and incomplete. In addition, there are differences in opinion on what constitutes an exception.”

Ex. 119, E-mail from Norm Anderson, Geospatial Project Manager, to Patrick Zomer, April 28, 2015, Subject: Re: Electric Utility Service Areas.

CERTIFICATE OF SERVICE

**RE: In the Matter of the Complaint by PKM Electric Cooperative, Inc. Alleging that Otter Tail Power Company has Violated the Exclusive Service Area Provisions of Minn. Stat. §§ 216B.37 to 216.43
MPUC Docket No. E131, 017/C-15-176**

I, Jana Hrdlicka, hereby certify that I have this day served a copy of the following, or a summary thereof, on Mr. Daniel P. Wolf and Sharon Ferguson by e-filing, and to all other persons on the attached service list by electronic service or by First Class mail.

**Otter Tail Power Company
Comments**

Dated this **7th** day of **March 2016**.

/s/ JANA HRDLICKA

Jana Hrdlicka
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