

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: March 12, 2015**Agenda Item #2

Company: PKM Electric Cooperative, Inc.; Otter Tail Power Company

Docket No. **E131, E017/C-15-176**

In the Matter of the Complaint by PKM Electric Cooperative, Inc. Against
Otter Tail Power

Issue(s): What procedures should be used by the Commission to decide this matter?

Staff: Marc Fournier651-201-2214

Michelle Rebholz651-201-2206

Relevant Documents

Initial Filing Complaint by PKM Electric Cooperative, Inc.
Arising From an Assigned Service Area Violation by Otter Tail Power February 24, 2015

Comments of PKM Electric Cooperative Inc. March 6, 2015

Comments of the Minnesota Department of Commerce March 6, 2015

Verified Answer and Comments
on Procedures of Otter Tail Power..... March 6, 2015

Petition for Intervention and Comments of Enbridge..... March 6, 2015

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

This document can be made available in alternative formats (i.e., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.

I. Statement of the Issue(s)

1. What procedures should be used by the Commission to decide this matter?

II. Relevant Statutes

A number of statutes are relevant to this complaint.

First, state law establishes the right of exclusive service areas, with one exception: Minn. Stat. §216B.40 states that except as provided in sections 216B.42 and 421, each electric utility shall have the exclusive right to provide electric service at retail to each and every customer in its assigned service area, and no electric utility shall provide service within the assigned are of another utility unless that utility has consented in writing.

Second, state law also establishes another exception to the right of exclusive service areas:

216B.42 SERVICE EXTENSION IN CERTAIN SITUATIONS.

§ Subdivision 1. Large customer outside municipality.

Notwithstanding the establishment of assigned service areas for electric utilities provided for in section 216B.39, customers located outside municipalities and who require electric service with a connected load of 2,000 kilowatts or more shall not be obligated to take electric service from the electric utility having the assigned service area where the customer is located if, after notice and hearing, the commission so determines after consideration of following factors:

- (1) the electric service requirements of the load to be served;
- (2) the availability of an adequate power supply;
- (3) the development or improvement of the electric system of the utility seeking to provide the electric service, including the economic factors relating thereto;
- (4) the proximity of adequate facilities from which electric service of the type required may be delivered;
- (5) the preference of the customer;
- (6) any and all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfill customers' requirements.

Third, state law dictates the timing of a complaint filed with the Commission related to service areas:

Minn. Stat. § 216B.43

Upon the filing of an application under section 216B.42 or upon complaint by an affected utility that the provisions of sections 216B.39 to 216B.42 have been violated, the commission shall hold a hearing, upon notice, within 30 days after the filing of the complaint, and shall render its decision within 30 days after the hearing. (*Staff note:* staff believes this statute is satisfied by the handling of this complaint on the March 19th agenda and the Order that will follow the Commission's decision.)

III. Parties' Comments

PKM: PKM respectfully requests that the Commission: (1) hold a hearing as required under Minn. Stat. § 216B.43; (2) issue an order determining Otter Tail is in violation of the exclusive service area provisions of the Minnesota Public Utilities Act, and (3) issue an order determining PKM has the exclusive right to extend electric service to the Donaldson Pump Station. (see pages 1-3 of PKM's initial filing)

PKM submits that this matter is very simple to decide. There are no material facts in dispute. The electric service map attached to the Complaint clearly shows that the Donaldson Pump Station is located entirely within PKM's exclusive service area. PKM has not consented to Otter Tail Power Company providing service to this customer. In fact, PKM has informed Otter Tail Power Company that it intends to provide service to this customer. No other information is necessary for the Commission to make a decision. The Comments of the parties and the arguments of counsel will be sufficient.

DOC: PKM should be offered the opportunity to respond in order to ensure a balanced record. Therefore, allowing further record development through the Commission's typical comment/reply comment process may provide an adequate record upon which a Commission decision can be reached. However, there may be differences of opinion and fact that may be most appropriately vetted through a contested case proceeding.

The DOC recommends that the procedure to be followed in this matter be chosen upon hearing from both PKM and OTP as to the extent to which there are disagreements as to fact. (see pages 1 and 2 of the DOC comments.)

Enbridge: Enbridge also supports OTP's request that the Complaint filed by PKM be dismissed for the reasons describe in the comments above. If the MPUC does not dismiss the Complaint, a contested case proceeding should be held to fully evaluate Complaint. (Please see Pages 1 to 4 of Enbridge's comments).

OTP: The facts in the Verified Answer fully support dismissal of the Complaint without the need for further factual development. Those facts show that OTP's continued exclusive service of all high-voltage needs at the Enbridge's Donaldson Facility should include the Additional Donaldson Equipment, which is the fourth expansion of service at the Donaldson Facility since 1961 when OTP began providing service to the Donaldson Facility. OTP's exclusive service is supported by the statutory and Commission-recognized requirement of service to a single customer only from a single utility and by PKM's prior consent. (see pages 1 to 13 of OTP's Verified Answer.)

If PKM's Complaint is not dismissed, OTP makes an Alternative Request for the Commission to confirm OTP's authority to serve the Additional Donaldson Equipment pursuant to Minn. Stat. § 216B.42 (authorizing service to large customers in areas outside municipalities). OTP has included this Alternative Request in order to prevent delay and/or duplication of effort associated with conducting a second, separate proceeding if the Commission were to determine that further

development of facts or a confirmation of authority is necessary. If the Commission makes such a determination, the Commission should submit all issues, including the issues underlying the Complaint and OTP's Alternative Request, to a single contested case.

Minn. Stat. § 216B.42 supports OTP's exclusive service to the Additional Donaldson Equipment because the Additional Donaldson Equipment: (1) is located outside of a municipality; and (2) has a connected load of 2,000 kW or more. For such loads, the Commission is authorized to approve a request to obtain service from a provider other than the provider in whose service area the customer is located based on the criteria of Minn. Stat. § 216B.42. Continued provision by OTP of all high-voltage needs of the Donaldson Facility, including the Additional Donaldson Equipment, is fully supported by the Minn. Stat. § 216B.42 factors. (see pages 13-15 of OTP's Verified Answer.)

IV. Staff Discussion

Staff believes that given the nature of the issues before the Commission, further record development is necessary. The issues go directly to the heart of regulation theory and a determination should not be made without full record development. Staff believes that there are additional facts that need to be discovered in order for the Commission to make a just, reasonable, and thoughtful determination.

Some of those factual developments staff believes is needed:

- The factual criteria outlined in Minn. Stat. §216B.42, including but not limited to Enbridge's load requirements, and the proximity of each utility's facilities to its pumping station, for purposes of finding an exception to the exclusive service area right in Minn. Stat. §216B.40;
- Whether the Donaldson pumping station is being constructed as a standalone facility as alleged by PKM, or whether it is simply an expansion of existing operations there, as alleged by OTP;
- Whether PKM has consented in writing to OTP previously providing service to the Donaldson pumping station via a 1960 and 1967 agreement, as OTP alleges in its Answer.

Staff believes these issues (including the possible confirmation of OTP's authority to serve additional Donaldson equipment) turn on facts that are best developed through formal evidentiary proceedings. As such, Staff recommends that the Commission refer the matter to the Office of Administrative Hearings for contested case proceedings.

At this time, staff cannot recommend granting PKM's complaint solely because the Commission-approved service area maps do not reflect OTP's service to the Donaldson pumping station. The electronic map approved by the Commission in April 2014 was adopted as the official map "...without prejudice to any utility."¹ The proceeding undertaken by the

¹ ORDER ADOPTING OFFICIAL EUSA DIGITAL MAP AND ESTABLISHING PROCEDURES FOR

Commission was a media change—a move from the Commission’s outdated paper service area maps to an electronic one. The Commission temporarily instituted an informal process for utilities to submit updates to the map; however, as listed in staff briefing papers for the item, there were changes some utilities submitted that were not incorporated into the map, either due to incomplete information or because it was not clear whether both utilities agreed to the boundary change. Staff explained that this is what led to the recommendation to adopt the map without prejudice:

For this reason, the Commission’s December 3, 2012 Order indicated its intent to declare the electronic service area map as the official map, without prejudice. The addition of the term “without prejudice” would allow utilities to reach agreement with adjoining utilities on those [existing] “gaps and overlaps,” seek mediation, or bring a dispute before the Commission, if necessary.²

Consistent with the language in the Order, the parties have a service area dispute, and the electronic service area map will be one relevant factor among other factors which could help the Commission reach a decision.

Staff notes that OTP has requested a Commission determination by July 1, 2015. Staff suggests that if the matter is referred to the OAH, the parties and ALJ determine timing matters.

V. Commission Options

1. Refer the matter to the Office of Administrative Hearings for further record development of all issues.
2. Dismiss the complaint.
3. Further develop the record via a Commission paper proceeding.
4. Determine that Otter Tail is in violation of the exclusive service area provisions of Minnesota Statutes and issue an order determining that PKM has exclusive right to extend electric service to the Donaldson Pump Station.

VII. Staff Recommendation

Staff recommends option #1.

FUTURE SERVICE TERRITORY BOUNDARY CHANGES, Docket E999/CI-12-957, Order Issued April 9, 2014, p. 2.

² Staff Briefing Papers for April 1, 2014 agenda meeting (submitted in eDockets March 24, 2014), Docket E999/CI-12-957, page 4.