

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: April 28, 2016 *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): Should the Commission Grant the Parties Request for Dismissal?

Should the Commission Take Any Other Action?

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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 the Minnesota Department of Commerce February 3, 2016

Letter Regarding Settlement Enbridge Limited Partnership..... February 9, 2016

Order of Dismissal Office of Administrative Hearings February 12, 2016

Petition for Joint Dismissal PKM Electric Cooperative
and Otter Tail Power Company (Trade Secret) February 24, 2016

Letter from the Minnesota Department of Commerce..... March 3, 2016

Comments of Otter Tail Power Company. March 7, 2016

Reply Comments of the Minnesota Department of Commerce..... March 29, 2016

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I. Statement of the Issue(s)

1. Should the Commission Grant the Parties Request for Dismissal?
2. Should the Commission Take Any Other Action?

II. Background

On February 24, 2015, PKM Electric Cooperative, Inc. (PKM), a Minnesota electric utility cooperative, filed a Complaint alleging that Otter Tail Power Company (Otter Tail) is in violation of the exclusive service area provisions of Minn. Stat. §§ 216B.37 to 216.43. The Complaint alleges that Otter Tail has claimed the right to serve a new pump station (Donaldson Pump Station) that Enbridge, Inc. (Enbridge) is constructing near Donaldson, Minnesota, and which is located entirely within the exclusive service area assigned to PKM.

On February 24, 2016, PKM and OTP filed a request that the Commission dismiss the complaint according to the terms of the Public and Non Public Joint Dismissals. The cover letter to the settlement stated that the Department of Commerce-Division of Energy Resources and Enbridge Energy, Limited Partnership support dismissal of the complaint, consistent with the terms of the settlement agreement.

II. Parties' Comments

1. Should the Commission Grant the Parties Request for Dismissal?

PKM and OTP: PKM and OTP request that the Commission dismiss this action according to the terms of the enclosed Public and Not Public Joint Dismissals.

DOC: The DOC supports approval of the parties' Settlement Agreement by the Commission and revision of the Commission's service territory maps to reflect the written service-by-exception in the Settlement Agreement.

Enbridge: Enbridge has no objection to the terms of the settlement agreement, and appreciates the work by both OTP and PKM to reach settlement in this matter. Enbridge joins the Minnesota Department of Commerce, Division of Energy Resources in supporting the Commission's approval of the settlement agreement.

2. Should the Commission Take Any Other Action?

OTP: The DOC's recommendation involves more than just the parties to this proceeding and seems more appropriate for a separate generic proceeding. OTP believes the DOC's 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 service to all customer in their assigned electric service area. 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. 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.

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. 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. 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.” There was (and is) no requirement to either map or list service to specific customers, including exception customers. 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, 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. 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.

DOC: Regarding the Commission's inquiry as to other issues or concerns, the DOC notes a general concern that the Commission's digital electric service area maps likely are inaccurate with respect to Otter Tail Power (Otter Tail) service and possibly that of many other electric utilities. During the course of its investigation in this proceeding, the DOC became aware that Otter Tail provides electrical service to more than 400 customers located in the assigned service territories of other utilities. The DOC also was informed that other utilities provide electrical service to approximately 150 customers within Otter Tail's assigned service territory. The DOC understands that few, if any, of the identified instances have service-by-exception agreements.

The Commission has made concerted attempts, through its Orders dated December 3, 2012 and April 9, 2014 in Docket No. E999/CI-12-957, and Reminders dated April 11, 2013, November 7, 2014 and December 16, 2015, to correct its digital service area map to reflect utilities' obligations to serve customers within particular areas of the state. Otter Tail has not fully informed the Commission regarding customers the Company serves by exception, whether formal exception agreements exist or not and irrespective of whether such agreements have been approved by the Commission.

While it intends no inference, whatsoever, that Otter Tail or other utilities acted inappropriately, the DOC 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.

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

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.¹ The DOC, 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.

¹ In Re City of Redwood Falls, 756 N.W.2d 133, 138-39 (Minn. Ct. App. Sept. 30, 2008).

While the DOC 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.

III. Staff Discussion

Dismissal of Service Area Dispute

Staff applauds the parties' efforts to resolve the issues which they faced in a very contentious proceeding. As such, with all of the issues resolved to the mutual satisfaction of the parties, the Commission should grant PKM Electric Cooperative, Inc. and Otter Tail Power Company's request that this proceeding be dismissed with prejudice.

Broader Service by Exception Issues

Commission staff thanks the DOC for bringing the unmapped exceptions to the Commission's attention. The Commission's official service area map is regularly reviewed by stakeholders and is increasingly gaining attention for new uses, such as for community solar gardens. Staff agrees that the Commission should take all appropriate steps to ensure that this official map is as accurate as possible.

With that being said, the Commission's and DOC's resources are already strained due to a large number of rate cases and other dockets. The 2012-2014 move from paper maps to a single electronic map was a large undertaking and used a large amount of staff time at the Commission and at MnGEO. In addition, in some past dockets, it has been understood that some service by exception arrangements are not permanent.²

Staff suggests a solution that may strike a balance between the need for updating the map with these exceptions and the need to conserve agency resources. First, in the Commission's generic docket to make the service area map electronic, the Commission directed staff to issue a notice every year reminding utilities to file their service area changes with the Commission.³ The notice could also add a reminder to file exceptions. Second, MnGEO plans to roll out a new

² "A change in customer has in the past occasioned a reversion [of a service by exception arrangement] to service by the original utility, or a proceeding before the Commission to sort things out. A service territory boundary change, on the other hand, is permanent." Staff briefing papers, E002, 148/SA-01-1123, September 20, 2001 agenda meeting. Staff would like to engage the utilities and DOC in a discussion about service by exceptions and whether some arrangements are not permanent and how frequently updates would need to be made to the map.

³ E999/CI-12-957.

mapping product which will allow the utilities to make their own updates directly to the Commission's map (with a function built in for the Commission to review and approve those modifications). The roll out of this product would be a good opportunity to engage the utilities on exceptions and have them add their exceptions directly to the map. The Department would be included in this effort.

IV. Commission Options

- A. Should the Commission Grant the Parties Request for Dismissal?
 - 1. Grant the parties' request to dismiss the complaint.
 - 2. Do not grant the parties' request to dismiss the complaint.
- B. Should the Commission Take Any Other Action?
 - 1. Issue a notice of Comment period in Docket No. E999/CI-12-957 to determine the most appropriate way to reflect utilities obligations to serve customers within the state. This would include informing the Commission regarding the customers companies serve by exception. The Commission delegates authority to the Executive Secretary to issue the notice.
 - 2. Take no official action with the understanding that staff will: a) issue annual reminders to all utilities to file not only service boundary changes, but exceptions; and b) engage utilities and the Department in a discussion about filing exceptions as new mapping products are introduced that more easily allow exceptions to be added to maps.
 - 3. Do not take any action at this time.

VII. Staff Recommendation

Staff recommends option A 1 and B 2. (Staff note: Decision options B.2 and B.3 are listed above for discussion purposes, but may not need a motion or vote.)