

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Petition of Otter Tail Corporation d/b/a Otter Tail Power Company to Serve Otter Tail Ag Enterprises

ISSUE DATE: June 9, 2006

DOCKET NO. E-119,017/SA-06-665

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On May 2, 2006, Otter Tail Corporation d/b/a Otter Tail Power Company (Otter Tail) filed a petition for authority to provide electric service to Otter Tail Ag Enterprises LLC's (Otter Tail Ag's) ethanol processing plant, pursuant to Minn. Stat. § 216B.42. Otter Tail Ag is located in the assigned territory of both Otter Tail and Lake Region Electric Cooperative (Lake Region). Otter Tail Ag did not join in the petition. Otter Tail has requested expedited consideration of its petition, due to its time line for construction of plant and electrical facilities.

On May 22, 2006, the Department of Commerce (the Department) filed comments. The Department reviewed the petition and stated that it believed the information submitted met the requirements of the statute. The Department allowed, however, that because Lake Region's comments would be filed at the same time as its own, the Commission should consider those comments in making its final determination.

On May 22, 2006, Lake Region filed comments, and argued that it is better able than Otter Tail to satisfy the factors in the statute, and that the petition should either be denied or referred to a contested case proceeding. Lake Region argued that the factor of customer preference should not govern the decision, as Otter Tail Ag did not join in the petition. In addition, Lake Region questioned whether Otter Tail's substantial equity contribution in Otter Tail Ag may have improperly influenced Otter Tail Ag's preference.

On June 1, 2006, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over this matter pursuant to Minn. Stat. § 216B.42, which provides that:

Notwithstanding the establishment of assigned service areas for electric utilities . . . customers located outside municipalities and who require electric service . . . 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.

The Commission finds that it cannot resolve the issues raised in the Complaint on the basis of the record before it. Those issues turn on specific facts that are best developed in formal evidentiary hearings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

II. Issues to be Addressed

The issue in this case is whether Otter Tail or Lake Region should be allowed to provide service to Otter Tail Ag in the affected area.

The parties shall address the above issue in the course of contested case proceedings. They may also raise and address other issues relevant to the Complaint.

III. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Richard Luis. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2542.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Stuart Mitchell, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2242; or Kari Zipko, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1408.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and the parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are Otter Tail, Lake Region and the Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference has been scheduled for June 20, 2006, at 9:30 a.m. It will take place at the Small Hearing Room, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

IV. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

V. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers the issues raised in Otter Tail's petition to the Office of Administrative Hearings for contested case proceedings, with a recommendation to be completed within 120 days, as set forth above.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Complaint of the Petition of Otter Tail Corporation d/b/a Otter Tail Power Company to Serve Otter Tail Ag Enterprises MPUC Docket No. E-119,017/SA-06-665
OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Richard Luis, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,
Minneapolis, Minnesota 55401; (612) 349-2542

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____