

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
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: May 2, 2007

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

ORDER DETERMINING SERVICE RIGHTS

PROCEDURAL HISTORY

On May 2, 2006, Otter Tail Corporation d/b/a Otter Tail Power Company (Otter Tail) filed a petition under Minn. Stat. § 216B.42, subd. 1, for authority to provide electric service to an ethanol plant being developed in the assigned service area of a neighboring utility, Lake Region Electric Cooperative (Lake Region or the Cooperative).¹

Lake Region opposed Otter Tail's request, stating that it was fully prepared to serve the ethanol plant.

The plant's developer, Otter Tail Ag Enterprises, LLC, did not join in the petition or intervene in the proceeding, but it did indicate a preference to receive service from Otter Tail.

On June 9, 2006, the Commission issued its Notice and Order for Hearing, referring the case to the Office of Administrative Hearings for contested case proceedings. That office assigned Administrative Law Judge Richard C. Luis to the case. Judge Luis held evidentiary hearings and received post-hearing briefs and proposed findings from the two parties to the case, Otter Tail and Lake Region.

On December 21, 2006, the Administrative Law Judge (ALJ) filed his Findings of Fact, Conclusions, and Recommended Order (the ALJ's Report) and returned the official record of the contested case proceeding to the Commission. The ALJ's Report recommended granting Otter Tail's petition.

¹ While a small portion of the property surrounding the plant lies within Otter Tail's assigned service area, most of the plant property, including the point of delivery for electric service, lies within the Cooperative's service area. Neither party argued that this fact should affect the outcome of this proceeding.

On January 10, 2007, Lake Region filed exceptions to the ALJ's Report, and on January 22, Otter Tail filed replies to exceptions.

On March 22, 2007, the case came before the Commission, the parties presented oral argument, and the record closed under Minn. Stat. § 14.61, subd. 2.

Having reviewed the entire record and having heard the arguments of all parties, the Commission makes the following findings, conclusions, and Order.

FINDINGS AND CONCLUSIONS

I. Factual and Statutory Background

A. Assigned Service Areas in General

In 1974 the Minnesota Legislature determined that the orderly development of economical statewide electric service required granting electric utilities exclusive service rights within designated service areas:

It is hereby declared to be in the public interest that, in order to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public, the state of Minnesota shall be divided into geographic service areas within which a specified electric utility shall provide electric service to customers on an exclusive basis.

Minn. Stat. § 216B.37.

The statute required the Commission to establish these assigned service areas by April 12, 1975, articulated principles and guidelines for setting service area boundaries, and encouraged utilities to agree on boundaries and submit them to the Commission for approval. The statute also carved out four exceptions to the general rule that a utility must serve every customer within its assigned service area and must not serve any customer located anywhere else:²

- (1) It permitted utilities to serve customers within another utility's assigned service area if the other utility consented in writing.³
- (2) It permitted utilities to serve their own utility property and facilities, even if the property and facilities were in another utility's assigned service area.⁴

² Minn. Stat. § 216B.40.

³ Minn. Stat. § 216B.40.

⁴ Minn. Stat. § 216B.42, subd. 2.

- (3) It permitted utilities to serve buildings located within another utility's assigned service area if those buildings (a) were located on homestead property that lay at least in part within the assigned service area of the utility seeking to serve; and (b) were under construction as of April 11, 1974.⁵
- (4) It permitted utilities to serve very large customers located outside municipalities and within other utilities' assigned service areas, if the Commission found such service to be in the public interest after notice and hearing and consideration of six statutory factors.⁶

It is the fourth exception – the large customer located outside a municipality – that is at issue in this case.

B. The Exception at Issue

The text of the statutory exception under which Otter Tail seeks the right to serve the ethanol plant is set forth below:

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.

Minn. Stat. § 216B.42, subd. 1.

⁵ Minn. Stat. § 216B.421.

⁶ Minn. Stat. § 216B.42, subd. 1.

II. Positions of the Parties

The parties agreed that the proposed ethanol plant met the location and load requirements of Minn. Stat. § 216B.42, subd. 1 and that the six factors listed there must be evaluated to determine which of the two utilities should serve the plant. They agreed that Otter Tail had the burden of proof and that neither party had an advantage over the other under factors one and two, the electric service requirements of the load and the availability of an adequate power supply to serve it.

They agreed that Otter Tail had the advantage on factor five, customer preference, since the customer preferred service from Otter Tail, but they disagreed on how reasonable and objective that preference was. They disagreed on which party had the advantage as to factors three, four, and six, with each party claiming the advantage.

III. The Administrative Law Judge's Report

The Administrative Law Judge agreed with the parties that Minn. Stat. § 216B.42, subd. 1 applied; that which utility should serve turned on the six factors listed in the statute; and that neither party prevailed on factors one and two. He did not explicitly find that factor three – improvement of the electric system, including related economic factors – favored either party, but he did find that service by Otter Tail would improve both its electric system and its economics, while service by the Cooperative would improve only its economics.

He did not explicitly find that factor four – proximity of adequate facilities to deliver service – favored either party. He did find that the Cooperative's facilities were significantly closer but that they would require additions and upgrades costing approximately \$836,500 to serve the plant. He found that Otter Tail could construct the facilities required to serve the plant for some \$1,076,396 and that these facilities would be useful for serving other parts of Otter Tail's service area.

The ALJ found that factor five – customer preference – favored Otter Tail, finding not only that the customer had chosen Otter Tail over the Cooperative but that the record supported that choice.

In regard to factor six – “other pertinent factors” – the ALJ found that “[t]here are pertinent factors, particularly concerning reliability, affecting the ability of each utility to serve the OTAE [the ethanol plant] load. On the whole, these factors support OTAE's choice of OTP as the utility to serve the load at issue in this matter.”⁷

⁷ ALJ's Report, Conclusion 9, page 15.

Overall, he concluded that the factors set forth in § 216B.42, subd. 1 favored Otter Tail and that its petition should be granted.

IV. Summary of Commission Action

The Commission concurs with the parties and the ALJ that Minn. Stat. § 216B.42, subd. 1 applies in this case and that which utility should serve turns on the six factors listed in the statute.

The Commission has examined the entire record in this case, weighing the facts presented under each of the six statutory factors in light of the public interest goals set forth in the Public Utilities Act at Minn. Stat. §§ 216B.01 and 216B.37. The Commission reaches a different conclusion than the Administrative Law Judge, finding that, overall, the record demonstrates that assigning service rights to Lake Region will serve the public interest more effectively than assigning service rights to Otter Tail.

V. Decision-making Framework

The Commission begins with the proposition that assigned service areas serve a high public purpose and that maintaining their integrity is critical to public interest goals articulated by the Legislature –

Exclusive service arrangements have long been required in Minnesota for compelling public policy reasons. The Legislature has found them necessary to encourage the development of coordinated statewide electric service, to eliminate or avoid unnecessary duplication of utility facilities, and to promote economical, efficient, and adequate electric service to the public. Minn. Stat. § 216B.37.

The contribution of exclusive service arrangements to avoiding duplication of facilities and to promoting coordinated electric service is obvious. Less obvious, but even more important, is their contribution to ensuring reliable and adequate service throughout the state.

The generation, transmission, and distribution of electricity is an extremely capital-intensive business. To meet the needs of their customers, utilities must be willing and able to commit large amounts of capital to building and maintaining the facilities necessary to deliver power throughout their service territories and to all their customers. Since power plants require years of planning and construction, utilities must also be willing to commit these resources years in advance of actual need. . . .⁸

⁸ See Minn. Stat. § 216B.04, requiring public utilities to provide service within 90 days of any application for service.

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Historically, exclusive service arrangements have been the *quid pro quo* for utilities' obligations to build, buy, or lease the capacity necessary to serve all comers. That is why the Legislature considered exclusive service arrangements essential to the development of reliable and adequate electric service throughout the state.⁹

In the Matter of the Exception to the Assigned Service Area Agreement Between Northern States Power Company d/b/a Xcel Energy and Wright-Hennepin Cooperative Electric Association, Docket No. E-002, 148/SA-01-1123, Order Rejecting Challenge to Exception Agreement (E-002, 148/SA-01-1123).

The centrality of assigned service areas to Minnesota energy policy means not only that Otter Tail has the burden of proof in this case but that proper analysis of its petition must occur within the context of the broad public policy goals articulated in Minn. Stat. § 216B.37.¹⁰

Further, the Commission does not read § 216B.42, subd. 1 as a statute designed primarily to facilitate customer choice, but as a statute designed primarily to ensure that new industrial customers in rural areas receive adequate electric service without (a) imposing hardship on small rural utilities, who might be incapable of serving large new loads without unreasonably high levels of new investment or (b) imposing hardship on new industrial customers, who might otherwise face the excessive rates required to support unreasonably high levels of new investment.

While § 216B.42 does not explain its purpose, it was enacted in 1974 as part of the assigned service area provisions of the original Public Utilities Act. It has never been amended, suggesting that its core concerns were those of the original Act – ensuring adequate and reliable service throughout the state without ramping up costs.¹¹ The statutory factors set forth for consideration – which point to an overriding concern with the utility's ability to serve the specific load at issue given its system configuration and existing resources – confirm this view.

⁹ In the Matter of the Petition of Inland Steel Mining Company and Northern Electric Cooperative Association for Approval of the Purchase and Sale of Electricity at Retail, Docket No. E-130/SA-95-1262, ORDER DENYING PETITION (August 13, 1996) at 13-14.

¹⁰ This is consistent with the Commission's analysis in the only other case adjudicated under Minn. Stat. § 216B.42, subd. 1, *In the Matter of the Petition of Cold Spring Granite Company for a Service Extension from Northern States Power Company*, Docket No. E-002, 141/SA-85-84, Order Granting Petition (July 25, 1985).

¹¹ Minn. Stat. §§ 216B.01, 216B.37.

The Commission therefore approaches Otter Tail's petition with the broad public interest, not customer choice, as its touchstone. The issue is not whether the other five factors set forth in § 216B.42 support the customer's preference, but whether service by the petitioning utility would serve the public interest more effectively than service by the assigned utility, considering the six statutory factors.

The six statutory factors are analyzed below. This analysis persuades the Commission that the weight of the evidence demonstrates that service by Lake Region will serve the public interest more effectively than service by Otter Tail.

VI. The Six Statutory Factors

A. Factors One and Two – *Adequate Power Supply and the Service Requirements of the Load*

The parties stipulated, and the ALJ found, that neither party had an advantage over the other as to factors one and two: the electric service requirements of the load to be served and the availability of an adequate power supply.

The Commission agrees with the parties and the ALJ that both utilities have ready access to the power supply required to serve the plant and that the plant has no special service requirements that one utility could meet more easily than the other. With neither utility having an advantage on factors one and two, those factors support granting service rights to the assigned utility.

B. Factor Three – *Development or Improvement of Utility's System, Including Related Economic Factors*

1. Introduction and Background

The assigned utility, Lake Region, has a substation within 900 feet of the plant. It proposes to serve the plant from this substation, upgrading the existing transformer to provide primary service and adding a new transformer to provide backup capacity. These upgrades would cost approximately \$836,500. Serving the plant would not exhaust the upgraded facilities' capacity, and the Cooperative noted that the facilities would be used to serve future load growth. It did not identify specific future loads it would serve.

The Cooperative did, however, identify substantial, system-wide economic benefits that serving the plant would bring: a 4% increase in load factor on both coincident and non-coincident peak, a 15% increase in sales, and a 7.6% increase in margins. These economic benefits would be the equivalent of adding 4,354 new members to the Cooperative's current membership of 25,000, an increase of more than 17%.

Otter Tail proposes to serve the plant by building a new substation adjacent to it, providing backup capacity through an upgraded line from its Edgetown substation to the new substation. These new facilities would cost approximately \$1,076,396. The Company states that growth in the Fergus Falls portion of its service area makes a new substation necessary within three to five years in any case, multiplying the usefulness of the \$1,076,396 investment required to serve the plant and making the substation a system improvement of the sort referenced in § 216B.42, subd. 1, under factor three.

Since Otter Tail has over five times as many customers as Lake Region, the economic benefits it would derive from serving the plant are relatively smaller. The Company did not introduce evidence as to how serving the plant would affect its load factor, sales, or profitability. It did emphasize the economic benefits of using the new substation to delay the need to construct new facilities to serve the growing Fergus Falls area, estimating those benefits at \$210,000 per year for three to five years.

The ALJ did not explicitly find that factor three favored either party, but he did find that service by Otter Tail would improve both its electric system and its economics, while service by the Cooperative would improve only its economics. This finding clearly played a significant role in his determination that an overall analysis of the six statutory factors favored granting service rights to Otter Tail.

2. Commission Action

The Commission finds that factor three does not cut in favor of Otter Tail and may well cut in favor of the Cooperative.

Otter Tail's ability to use some of the capacity of its new substation to serve Fergus Falls would contribute to the development or improvement of its electric system, as would Lake Region's ability to use its substation upgrades to serve as yet unrealized future growth. The improvements to Otter Tail's system would be more immediate; they would permit the utility to defer additional substation construction for three to five years. At the same time, however, the related economic benefits that would accrue to Lake Region's system would be much more significant than the related economic benefits that would accrue to Otter Tail's system.

Otter Tail's economic benefits are relatively small in relation to its size (approximately \$210,000 per year), short-term (three to five years), and local (the Fergus Falls area). The Cooperative's economic benefits, on the other hand, are large (the equivalent of increasing membership by 17%), long-term (for the life of the ethanol plant), and system-wide (affecting everyone on the system).

Further, maintaining strong rural utilities – and affordable rates for rural households and businesses – is a core goal of the Public Utilities Act, and permitting Lake Region to obtain the economic benefits of serving the ethanol plant would clearly serve this goal. For all these reasons, the Commission cannot conclude that factor three favors service by Otter Tail.

Since Otter Tail does not have an advantage over Lake Region as to factor three, that factor supports granting service rights to the assigned utility.

C. Factor Four – *Proximity of Adequate Facilities to Serve the Load*

The assigned utility, Lake Region, has a substation located within 900 feet of the plant. It can serve the plant by upgrading the transformer that is already there and adding a second transformer for backup capacity. These upgrades would cost approximately \$836,500.

Otter Tail has no facilities in the area, but proposes to build a new substation adjacent to the plant to serve it and to upgrade an existing transmission line to provide backup capacity. These improvements would cost approximately \$1,076,396. The ALJ's Report notes that these facilities could also be used to serve new loads in nearby portions of Otter Tail's service area.

Factor four clearly favors Lake Region. Lake Region has facilities capable of serving the plant within 900 feet of where it will be built; Otter Tail has no facilities in the area. Lake Region's facilities-related costs to serve the plant would be some \$240,000 lower than Otter Tail's. And Otter Tail's construction of facilities to serve a load the Cooperative already has facilities in place to serve would violate a cardinal principle of the Public Utilities Act, avoiding unnecessary duplication of facilities.¹²

Finally, the ALJ's observation that Otter Tail's new substation could be used to serve future loads applies equally to the facilities of both utilities; all utility facilities are constructed with future needs in mind. And in fact, siting facilities to meet the needs of ratepayers within a utility's own assigned service area may well yield sounder siting decisions than siting facilities to serve lucrative loads outside the utility's assigned service area.

For all these reasons, the Commission concludes that factor four favors service by Lake Region, the assigned utility.

D. Factor Five – *Customer Preference*

1. Introduction and Background

As part of its initial planning process, the ethanol plant's Board of Governors retained an Independent energy consultant, Al Haman of Star Energy Services, to rate the electric service proposals submitted by Lake Region and Otter Tail. Mr. Haman compared the two proposals in

¹² This principle appears both in the Act's initial statement of purpose, Minn. Stat. § 216B.01, and in its introduction to its assigned service area provisions, Minn. Stat. § 216B.37.

twelve categories and rated each utility’s proposal from one to five, in an Executive Summary delivered in advance of his final report, two weeks after the proposals were submitted. The results are set forth below.

<i>Comparison Scale: Poor 1 2 3 4 5 Best</i>	LREC	OTP
Quality of electric distribution facilities	4	4
Quality of substation monitoring and control	5	1
Quality of plant voltage monitoring	4	3
Ability to detect electrical outage to plant	5	5
Reliability of electric transmission line	4	4
Reliability of electric distribution line	4	4
Ability to provide backup of primary substation	4	1
Availability of spare parts	4	4
Response to outages	4	4
Ability to quote firm electric rates for 5 years	5	1
Ability to quote firm electric rates for 2008, 2009	5	1
Availability of energy efficiency rebates	4	5

Mr. Haman rated Otter Tail’s proposal lower than the Cooperative’s in five categories, equal to the Cooperative’s in six categories, and higher than the Cooperative’s in one category. He suggested that the Board follow up with both utilities to ensure clarity and to explore the potential for fine-tuning the proposals. The Board clearly followed up with Otter Tail, and its proposal was clarified and refined. Follow-up with the Cooperative was less extensive and was apparently confined to one question about the plant’s eligibility for capital credits.

Three days after Star Energy Services submitted Mr. Haman’s final report, the Board voted unanimously to accept Otter Tail’s proposal. Energy Star Services was not present at the meeting, and a letter to the Cooperative explaining the decision two months later did not mention its report or any of its evaluation criteria. Instead, the letter drew mainly upon the personal experience and impressions of the Board members, who cited the following reasons for selecting Otter Tail:

- (1) They expected shorter response and repair times from Otter Tail because its headquarters are closer to the plant.
- (2) Although Otter Tail’s rates are higher, they expected greater rate stability from Otter Tail, because it is rate-regulated.

- (3) Otter Tail was thought to offer more energy efficiency incentives and rebates.
- (4) Otter Tail was considered well-staffed to provide engineering and technical assistance, especially in terms of planning for plant expansion
- (5) “There were comments about Lake Region’s history of service interruptions on ag sites” from Board members who were Lake Region customers.
- (6) “There were comments on the stability of Lake Region in light of recent press, concerns about Lake Region’s equity situation and condition.”
- (7) Otter Tail’s larger size and its experience in serving three other ethanol plants gave the Board more confidence in Otter Tail’s ability to provide reliable service.
- (8) Otter Tail’s plan to provide back-up service from a different substation than the one providing primary service increased the Board’s confidence in its reliability.

Lake Region disputed the substantive accuracy of each of these reasons and attributed the selection of Otter Tail to bias, pointing out that Otter Tail is the fourth-largest investor in the ethanol plant and that an Otter Tail employee sits on the Board. (This Board member abstained when the Board voted on which utility should serve the plant.)

2. Commission Action

The Commission concurs with the Cooperative that the reasons the Board gives for preferring service from Otter Tail are not substantively persuasive and are, at points, factually inaccurate. At the same time, it is not clear that they are mere pretexts. Consumers frequently make choices based on factors other than exhaustive factual analysis, without being motivated by bias or similar factors.

Further, Minn. Stat. § 216B.42, subd. 1 does not limit consideration of customer preference to cases in which the weight of the evidence supports that preference. If it did, there would be no reason to list customer preference as a separate factor. It seems clear that the Legislature wanted customer preference considered, perhaps in part because the customer, whose interests are at stake, may well recognize factors that elude a less self-interested observer.

Customer preference is not a “black box” factor, however, nor is it the ultimate factor; its significance rises or falls with the accuracy and relevance of the facts supporting that preference and their relationship to the public interest. The customer in this case has unambiguously chosen

Otter Tail as its preferred provider, and the Commission recognizes that preference by finding that factor five cuts in favor of Otter Tail.

The Commission will deal with the accuracy and relevance of the facts supporting that choice, and their relationship to the public interest, under factor six, examined below.

E. Factor Six – *Any and All Pertinent Factors Affecting Ability to Furnish Adequate Service to Fulfill Customers’ Requirements*

Factor six is a catchall category, there to ensure consideration of relevant issues or factors that do not fit neatly into the first five categories. In this case, the ALJ treated specific issues relating to reliability as pertinent factors under the statute and found that they supported the customer’s preference to receive service from Otter Tail.

The ALJ identified three main factors – the downwind location of Otter Tail’s proposed substation, the geographic separation of Otter Tail’s primary and back-up transformers, and the potential for Otter Tail to acquire back-up transmission from a second source in the future – as supporting Otter Tail’s claim to superior reliability.

First, the Commission notes, as explained above, that whether these factors support the customer’s preference is not the issue; the issue is whether and how these factors affect the public interest determination the Commission must make.

Second, the Commission respectfully disagrees with the ALJ that these factors redound to the benefit of Otter Tail. The downwind location of Otter Tail’s proposed facilities offers negligible reliability benefits vis-a-vis the location of the Cooperative’s facilities, which are also out of the path of prevailing winds. The geographic separation of Otter Tail’s primary and back-up transformers offers few reliability advantages, since service from both transformers terminates at a common point at the substation, from which it will be distributed to the plant. And Otter Tail’s potential for acquiring an alternative, additional transmission source offers no reliability advantage at this point, since such an acquisition is not part of any existing infrastructure plan, short-term, long-term, or intermediate-term.

Nor do the concerns raised by the ethanol plant’s Board and cited without findings on accuracy by the ALJ cut in favor of granting service to Otter Tail. The Board’s general belief that Otter Tail’s service is more reliable than the Cooperative’s is not supported by substantial evidence and is contradicted by record evidence that Otter Tail ranks last among area utilities in transmission reliability, while the Cooperative ranks first.¹³

¹³ ALJ’s Report, Finding 53.

Similarly, the Board's conviction that Otter Tail can and will respond to outages more promptly than Lake Region is unsupported in the record, which suggests that response times by the two utilities are similar, if not indistinguishable.¹⁴ And the Board's conclusion that Otter Tail's history of serving three other ethanol plants would render it more reliable than Lake Region is equally unsupported.

Lake Region is a member-cooperative of Great River Energy, a generation and transmission cooperative that provides both wholesale power and specialized technical expertise to its members. Great River Energy is the second largest utility in the state, has extensive experience serving large commercial and industrial loads, and currently serves seven ethanol plants. Lake Region has full access to this expertise for use in serving the ethanol plant.

Finally, rate issues were identified as other pertinent factors at some points in this proceeding. Lake Region's rates are lower. Otter Tail offered or provided unspecified energy efficiency rebates, which the ALJ found "help close the gap in prices" between the two utilities.¹⁵ The record does not state how much of a gap remains. And the Board stated that it believed it would find greater rate stability with Otter Tail than the Cooperative, because Otter Tail is a rate-regulated utility.

Rate issues do not cut in favor of Otter Tail. First, its rates for service to the plant exceed the Cooperative's by some \$47,600 per year, at least before the energy efficiency rebates, whose amounts and duration are not in the record, are applied. Nor is there any factual basis for the Board's hope that Otter Tail will offer greater rate stability than Lake Region. Not only does the record show that the Cooperative's wholesale provider has indicated that it expects no rate increases for the next five years,¹⁶ but Otter Tail's rates will presumably change within the next year, since it will be filing a general rate case this fall.

Further, the Commission rejects any suggestion that the rates of cooperatives are less reasonable, stable, or predictable than the rates of investor-owned utilities, concurring with the Legislature that these utilities do not require rate regulation because they are already effectively regulated and controlled by their members.¹⁷

¹⁴ See ALJ's Report, Finding 16, placing the Cooperative's standard response time at 50 to 55 minutes, and Exhibit 8, placing Otter Tail's response time for the Fergus Falls area (the area near the ethanol plant) at 17 to 124 minutes.

¹⁵ ALJ's Report, Finding 57.

¹⁶ TR. Vol. 2, p. 222.

¹⁷ Minn. Stat. § 216B.01. And in fact, the statute provides an opportunity for the members to elect rate regulation, should they conclude that member regulation has become inadequate. Minn. Stat. § 216B.026.

On the basis of the examination set forth above, the Commission concludes that the two utilities are similarly situated in regard to factor six. Since Otter Tail does not have an advantage over Lake Region as to factor six, that factor supports granting service rights to the assigned utility.

VII. Conclusion

The large-customer exception statute does not provide a self-executing formula for awarding service rights, but a set of factors to guide the Commission in determining where the public interest lies in these unusual cases. The Commission has carefully examined the entire record in this case and concludes, for the reasons set forth above, that the public interest requires that service rights be awarded to Lake Region Electric Cooperative.

The Commission will so order.

ORDER

1. The petition of Otter Tail Corporation d/b/a Otter Tail Power Company to serve the ethanol plant being developed by Otter Tail Ag Enterprises, LLC near Fergus Falls, Minnesota, is hereby denied.
2. The Commission finds that the public interest requires that service to the ethanol plant identified in paragraph one be provided by the assigned utility, Lake Region Electric Cooperative.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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