

EL99-01Z

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EL 99-012
RECEIVED

JUN 28 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION



June 25, 1999

Mr. William Bullard, Director
South Dakota Public Utilities Commission
State Capitol
500 East Capitol Street
Pierre, SD 57501-5070

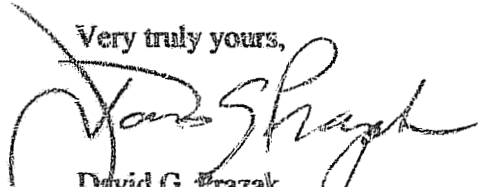
**Re: Electric Service Agreement for the Supply of Bulk Interruptible
Power Between Otter Tail Power Company and Valley Queen Cheese
Factor, Inc.**

Dear Mr. Bullard:

According to South Dakota Codified Law §49-34A and the Commission's previous Order Approving Agreement dated October 23, 1989, Docket F-3837, enclosed for filing please find ten (10) copies of the Electric Service Agreement for the Supply of Bulk Interruptible Power between Otter Tail Power Company and Valley Queen Cheese Factory, Inc. The Agreement is entered into pursuant to Otter Tail's Bulk Interruptible Service Tariff, as on file with the Commission. The energy rate set forth in the Agreement is \$.0205 per kWh. Pursuant to Section 18.5, the Agreement is made subject to Commission approval.

Please let me know if you have any questions with respect to this matter.

Very truly yours,


David G. Prazak
Senior Pricing Analyst
DP:dm

Enclosures

JUN 28 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

**ELECTRIC SERVICE AGREEMENT
FOR THE SUPPLY OF BULK INTERRUPTIBLE POWER**

This Agreement is entered into as of the First day of June, 1999, the "Effective Date," by and between Otter Tail Power Company, a corporation organized and existing under the laws of the State of Minnesota ("Otter Tail"), with its principal place of business located at 215 South Cascade Street, P.O. Box 496, Fergus Falls, Minnesota 56538-0496 and Valley Queen Cheese Factory, Inc., of (hereinafter Valley Queen or Customer), a South Dakota corporation with its principal place of business located at 200 Railroad Ave. E., Milbank, South Dakota. The Effective Date of this Agreement is June 1, 1999.

Background

WHEREAS, uncommitted supplies of power are available to the Otter Tail system during periods of time when the system is not operating at or near its peak capacity, and such power supplies will be available during the period of 1999 through approximately 2004, and such power can be made available on an interruptible basis to Valley Queen without the system incurring any incremental capacity costs; and

WHEREAS, large power customers having loads of 750 kW or greater who assume responsibility for providing an alternative backup power supply are eligible to purchase power from Otter Tail on an interruptible basis under Otter Tail's Bulk Interruptible Service tariff, Rate Designation I-06s, as filed and approved by the South Dakota Public Service Commission (the "Bulk Interruptible Tariff"); and

WHEREAS, the costs of providing interruptible service includes the costs of energy plus a margin, along with the cost of necessary facilities that are installed, and is lower than the cost of non-interruptible, or firm, power, as firm power includes capacity costs;

WHEREAS, Valley Queen desires to purchase bulk interruptible power from Otter Tail to serve the electric requirement needs of its electrode boiler that provides steam used in its dairy production processes and Otter Tail desires to sell such bulk interruptible power to Valley Queen for that purpose.

For the reasons recited above, and in consideration of the mutual covenants and agreements hereinafter stated, the parties to this Agreement mutually agree as follows:

1. SERVICE. Otter Tail agrees to sell and deliver to Customer, and Customer agrees to purchase from Otter Tail at its premises in Milbank, South Dakota, interruptible bulk electric power and energy to serve the electric needs of Valley Queen's electrode boiler in accordance with the Bulk Interruptible Tariff, which is specifically made a part of this Agreement, and in accordance with all other applicable rules and regulations of the South Dakota Public Utilities Commission.
2. RATE. For service under this Agreement, and in accordance with the Bulk Interruptible Tariff, Valley Queen shall pay to Otter Tail an energy charge, on a per kilowatt-hour of electricity consumed, \$0.0205 per kWh. In addition to this charge for energy, Valley Queen shall pay to Otter Tail a monthly fixed charge in the amount of \$1,000 to cover the cost of

installations necessary to provide service. This fixed charge shall be rendered as part of Otter Tail's regular monthly billing, and shall apply irrespective of whether energy is taken or delivered under the Agreement.

3. ENERGY ESCALATION CLAUSE. The Parties agree that in lieu of the standard automatic fuel adjustment clause, a maximum energy escalation rate of 4% per six-month period shall apply. Escalation adjustments under this Section 3 may be applied six months following the effective date of this Agreement, and every six months thereafter.

4. ADDITIONAL FIXED CHARGE. The fixed charge set forth in Section 2 above shall increase to \$3,000 per month for those months that Valley Queen does not use its electrode boiler as the primary source of process steam production. Normal boiler maintenance and repairs or interruption of electric service (as set forth in Section 10 of the Agreement) shall not activate this additional fixed charge.

5. TERM. This Agreement shall be binding on the Parties and each of them for a period of one (1) year from and after the Effective Date, and thereafter for four (4) consecutive one year terms until June 1, 2004 unless cancelled by either Party by giving at least sixty (60) days written notice to the other Party prior to the anniversary date of each year.

6. DETERMINING COST OF ALTERNATIVE FUELS. Under the Bulk Interruptible Tariff, Valley Queen is required to purchase electricity from Otter Tail as long the total cost of electric service offered by Otter Tail under this Agreement and the Bulk Interruptible Tariff is competitive with Valley Queen's existing alternate fuel. The factors required to determine the total cost of electric service and the energy conversion factors used to determine cost competitiveness of alternate fuels is set forth in Exhibit A, which is attached and specifically made a part of this Agreement.

7. NO GUARANTEE OF SUPPLY. Otter Tail makes no warranties and Valley Queen expressly agrees that no warranties or guarantees of any kind are made as to the availability of replacement power and energy after the expiration of the term of this Agreement.

8. DIRECT CUSTOMER INVESTMENT. Valley Queen shall, at its own risk and expense, furnish, install and maintain in good and safe condition, all electric lines, machinery and apparatus which may be required on its side of the point of interconnection and for distributing and utilizing such power and energy, and will indemnify Otter Tail against any and all loss, damage or liability, including liability to any third persons, occasioned or caused by any defect in the condition or construction of such lines, machinery, or apparatus, or any part thereof, or by reason of any negligence on the part of Valley Queen in installing, maintaining, using or operating such lines, machinery or apparatus. The point of delivery shall be the point of interconnection of the Otter Tail facilities and Valley Queen's facilities.

9. POWER DELIVERY. All electric energy to be delivered and received pursuant to the provisions of this Agreement shall be delivered at what is commonly designated as three-phase, approximately 12,500 volts and 60 hertz alternating current and shall be metered at primary voltage of approximately 12,500 volts. Otter Tail shall furnish and install all necessary meters to measure the electricity furnished by Otter Tail to Valley Queen.

10. INTERRUPTION. Interruption of electric service under this Agreement is at the sole discretion of Otter Tail and no liability shall attach to Otter Tail for any failure to deliver such electricity, whether it be for reasons either beyond or within its control and regardless of whether the interruption is scheduled or nonscheduled.

11. BACKUP SERVICE. Valley Queen hereby expressly agrees that upon any interruption of electric service under this Agreement it shall have the sole responsibility for providing any backup service necessary for its continued operations. Valley Queen expressly agrees to hold Otter Tail harmless and to indemnify Otter Tail against any and all loss, damage or liability, including liability to any third parties, arising out of or related to interruption of electrical service. Otter Tail agrees to make every effort to provide at least one hour's notice prior to interruption of service.

12. RESALE. Purchases of electric energy by Valley Queen for resale to third parties, including affiliates, is strictly prohibited under the terms of this Agreement, and any resale or transmission to any third party shall constitute a breach of this Agreement.

13. RIGHTS-OF-WAY. All easements and rights of way necessary to provide and maintain service under this Agreement shall be and the same hereby are granted by Valley Queen to Otter Tail.

14. TITLE. Title and ownership of all electric lines, meters, related equipment owned and installed by Otter Tail shall be and remain the personal property of Otter Tail and shall not become a part of the real estate of Valley Queen.

15. RELATED AGREEMENTS. This Agreement replaces the "Electric Service Agreement, Large Customer Service dated March 4, 1981 (the "March 4, 1981 Agreement") by and between the parties as the March 4, 1981 Agreement relates to interruptible service. The March 4, 1981 Agreement shall continue in effect as it relates to firm service according to the terms of that agreement and it is the intent of the parties that there is to be no conflict between this Agreement and the March 4, 1981 Agreement, and where there are conflicts, the parties agree to amicably resolve the conflict without resort to any legal process if feasible within thirty (30) days of receipt of a written notice by one party to the other party of the existence of such conflict.

16. ASSIGNMENT. Neither Otter Tail nor Valley Queen shall voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other party. Such consent shall not unreasonably be withheld. However, Otter Tail may assign this Agreement and the rights and privileges herein granted to any of the following, without Valley Queen's consent, provided that such assignee assumes in full the obligations of Otter Tail under this Agreement: (a) any cooperative, corporation, partnership, or other entity that controls, is controlled by or is under common control with Otter Tail; (b) any corporation or other entity resulting from the merger, consolidation, or reorganization of Otter Tail; (c) any corporation, partnership, or other entity or person which acquires all or substantially all of the assets of Otter Tail. This Agreement shall inure to and bind the parties' successors and assigns.

17. INDEMNIFICATION AND HOLD HARMLESS.

17.1 Valley Queen to Indemnify Otter Tail. Valley Queen shall indemnify, defend, and save harmless Otter Tail from any liability, loss, or expense arising from or growing out of injury to persons, including death, or property damages incurred by persons other than the parties, which may occur on the electric system of Valley Queen or on its side of the point of delivery unless such loss is solely due to the negligence of Otter Tail.

17.2 Otter Tail to Indemnify Valley Queen. Otter Tail shall indemnify, defend, and save harmless Valley Queen from any liability, loss, or expense arising from or growing out of injury to persons, including death, or property damages for persons other than the parties, which may occur on the electric system of Otter Tail and on its side of the point of delivery unless such loss is solely due to the negligence of Valley Queen.

17.3 Damages in Proportion of Negligence. If such loss or injury is not due to the negligence of either party or is due to the negligence of both parties, any damages recovered therefore shall be borne by the parties in proportion to its negligence. If either party is required to satisfy any claim or judgment recovered for such damages, such party shall have the right of contribution against the other party.

17.4 Each Party Responsible for Actions. It is the intent of this Section 17 that each party be responsible for its own acts and omissions

18. MISCELLANEOUS.

18.1 Entire Agreement and Modification. All previous communications between the parties hereto, either verbal or written, with reference to the subject matter of this Agreement are hereby abrogated. No amendment, modification or waiver of, or consent with respect to any provision of this Agreement shall be effective unless the same shall be in writing and signed by both parties and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

18.2 Savings Clause. If any provision of this Agreement shall be found invalid or unenforceable, in whole or in part, by a court of competent jurisdiction, then such provision shall be deemed to be modified or restricted to the extent and in a manner necessary to render the same valid and enforceable, or if that is not possible, such provision shall be stricken and deleted from this Agreement, as the case may require, and this Agreement shall then be construed and enforced to the maximum extent permitted by law and with the purpose to achieve the fundamental intent of the parties.

18.3 Waiver. Any waiver at any time by either party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall be in writing and shall not be deemed a waiver with respect to any subsequent default or other matter.

18.4 Choice of Laws. This Agreement shall be construed and interpreted in accordance with the laws of the State of South Dakota and excluding any choice of law rules which may direct the application of laws of another jurisdiction.

18.5 Subject to Regulation. This Agreement, along with the attached Exhibit which are made a part of this Agreement, shall be filed with and is subject to the approval of the South Dakota Public Utilities Commission, and to all applicable rules, regulations, and orders of the same.

18.6 Agreement Drafted Jointly. The Parties agree that both parties shared equally in the drafting of the Agreement and/or had full opportunity to provide suggestions and/or language that reflects the intent of the Parties.

WITNESS WHEREOF, the parties hereto have caused this Agreement to become effective as of the date set forth in the first paragraph.

OTTER TAIL POWER COMPANY

By: Ray Gillman

Its: V. P. Mktg. & Dev. 20 Empire

VALLEY QUEEN CHEESE FACTORY, INC.

By: Max Ganszback

Its: PRESIDENT

EXHIBIT A

DETERMINING COST OF ALTERNATIVE FUELS

COST FACTORS. The factors used to determine whether the cost of alternative fuel is lower than electric service under the Agreement are:

A. Btu Conversion Factors

Electricity – 3413 Btu/kWh and 100% annual efficiency

#2 Fuel Oil – 140,000 Btu/gallon and 80% overall annual efficiency

B. Total Cost of Electricity

The Total Cost of Electricity is the sum of the energy charge in \$/kWh, plus the fixed charge based on 12,103,000 kWh/yr., which is \$12,000 divided by 12,103,000 kWh, or \$.00099/kWh.

The formula for the Total Cost of Electricity shall be:

$$\frac{\text{Energy Charge (\$/kWh)} + \text{Fixed Charge (\$/kWh)}}{\text{Btu/kWh} \times \text{Efficiency}}$$

C. Cost of Alternate Fuel

The cost of the Customer's existing alternate fuel is the delivery cost of #2 fuel oil to the Customer's premises in Milbank, South Dakota.

The formula for the Cost of #2 Fuel Oil shall be:

$$\frac{\$/\text{Btu} = \text{Delivered \#2 Fuel Oil Cost (\$/gallon)}}{\text{Btu/gallon} \times \text{Efficiency}}$$

**BULK INTERRUPTIBLE SERVICE
APPLICATION AND PRICING GUIDELINES**

Rate Zones 1 and 9

Code 42-680

APPLICATION OF SCHEDULE: This service will be applicable to interruptible loads of 750 kw or larger by signed contract only.

CONTRACT PERIOD AND FUTURE RESPONSIBILITIES: Contracts will be for a maximum period of five years, renewable only at the Company's option. The customer will be responsible for all energy supply after the contract period. The Company will not guarantee any energy supply to replace the bulk interruptible service after the contract expires.

ENERGY RATE DETERMINATION: An energy rate will be negotiated separately with each customer in order to maximize the margin. The minimum energy rate that will be accepted is the energy cost of service plus a margin of \$0.002 per kwh.

FIXED CHARGE DETERMINATION: A monthly fixed charge will be established to recover Otter Tail's investment related costs. This charge will be determined based on a monthly rate of 1.5% (18% annually) applied to the total installed cost of all Otter Tail supplied equipment.

ENERGY ESCALATION: A maximum energy escalation rate of 4% per six-month period may be established. The actual escalation rate will be determined by the competitive price conditions, contract language and negotiations with the customer.

MINIMUMS: The fixed charge will constitute the minimum payment. In addition, the customer must agree to utilize electricity as long as the total cost of the electricity offered under this rate is competitive with the customer's existing alternate fuel. The factors required to determine the total cost of electricity to the customer and the energy conversion factors used to determine cost competitiveness will be specified in the contract.

OTHER PROVISIONS: Customers will be responsible for backup service when supply of bulk energy is interrupted.

Company will control the interruptions.

Company will not be liable for any loss or damage to customer due to interruptions.

REGULATIONS: General Rules and Regulations govern use under this contract.

GENERAL RULES AND REGULATIONS - ELECTRIC

1. SCOPE OF RULES AND REGULATIONS: These rules and regulations, as applicable, govern electric service provided at the various rate schedules of the Company.

2. APPLICATION FOR SERVICE: Anyone desiring electric service from the Otter Tail Power Company must make application to the Company before commencing the use of the Company's service. The Company reserves the right to require a signed application or written service agreement for the service to be furnished. Receipt of the electric service, however, shall constitute the receiver a customer of the Company subject to its rates, rules and regulations, whether service is based upon service agreement, signed application, or otherwise. All applications and contracts for service shall be made in the legal name of the party desiring service. The customer will be responsible for payment of all service furnished until discontinued.

The Company will not connect a customer for electric service until the customer has obtained all necessary permits from the proper authorities. Service may be denied to any customer for failure to comply with the applicable requirements of these rules, or with the service regulations of the Company on file with any regulatory body having jurisdiction.

A customer applying for service shall pay an appropriate connection charge as established and approved from time to time. The connection charge shall apply to any new customer, a change in name at an existing point of service, and for reconnection following temporary disconnection at the customer's request. The connection charge is subject to the Company's payment policy as provided in the applicable rate schedule.

Subject to its rates, rules and regulations, the Company will use reasonable diligence to furnish continuous service, and customer will be responsible for payment of all service furnished until discontinued.

3. RULES AND SPECIFICATIONS GOVERNING METER AND SERVICE INSTALLATIONS: The Company printed booklet so entitled and as revised from time to time is, by this reference, specifically made a part of these general rules and regulations.

All revisions will be filed with the appropriate State Regulatory Commission.

4. DEPOSITS: The customer may be required to make a deposit to insure payment of bills when due. The amount of deposit will be approximately twice the estimated monthly bill, and will be based on the heaviest month's use.

In case of discontinuance of service for nonpayment of amounts payable, when due, Company will not restore service until all arrears are paid in full and a cash deposit as above required is made, or until other satisfactory credit arrangement is made.

GENERAL RULES AND REGULATIONS (Continued)

5. CONTINUITY OF SERVICE: The Company will use all reasonable care to provide continuous service but does not assume responsibility for a regular and uninterrupted supply of electric service and shall not be liable for any loss, injury or damage resulting from the use of service, or arising from, or caused by the interruption or curtailment of the same.

6. EXTENSION OF SERVICE: The Company will, at its own expense, extend its facilities for supplying electric service when the anticipated revenue from the sale of additional service justifies the expenditure. If it appears to the Company that the expenditure may not be justified, the Company may require the customer to sign a contract guaranteeing a certain minimum amount of revenue over the first three years use of electric service, or such other initial period of service as may be determined by the Company, and to make an advance payment, as determined by the Company, to guarantee payment of this minimum amount of revenue.

If the customer uses the specified minimum of electric service by the end of the said initial period of service, the advance will be refunded to him. However, if the customer uses less than the minimum, the amount of the deficiency will be billed to the customer, or will be deducted from the deposit, and the balance of the deposit, if any, will be refunded to the customer.

7. TEMPORARY SERVICE: Temporary service is defined as service to circuses, carnivals, traveling shows, construction projects and all other purposes which, from their very nature evidently will be of short duration.

A customer taking temporary service shall pay the regular rates applicable to the class or classes of service rendered for all energy used, and, in addition, shall pay the installation and removal cost, less salvage value, of facilities installed by the Company to furnish temporary service to the customer. If service is taken for less than one normal billing period, (a normal billing month), there shall be no prorating of the blocks or of the minimum. Such customer shall be billed as though service had been taken for an entire month.

The Company may require the customer to make an advance deposit sufficient to cover the estimated cost of furnishing temporary service.

8. STANDBY, SUPPLEMENTARY AND EMERGENCY SERVICE: Will be provided only in accordance with special contracts with individual customers or at a Standby, Supplementary Service or Emergency Service Rate which has been filed with and approved by the appropriate regulatory agency. Contracts, when entered into, will be subject to approval by the appropriate regulatory agency. Standby, Supplementary and Emergency Service will include any service where electricity is or will be used on an uncontrolled basis for supplementing or backing up any alternate energy source, including wind and solar systems.

GENERAL RULES AND REGULATIONS (Continued)

9. GASEOUS TUBE LIGHTING: A customer will not be permitted to connect to the Company's lines, any fluorescent, neon or other lighting equipment having similar load characteristics, unless equipment is provided, without expense to the Company, with auxiliaries or other means to correct the power factors of such equipment to not less than 90%.

10. SPECIAL EQUIPMENT: At a customer's request, the Company will make service available to certain special equipment over a separate service line or separate transformer, and through a separate meter with separate billing. If it appears to the Company that its expenditure may not be justified by the anticipated revenue, the rule covering extension of service will apply.

Equipment which, because of its operating characteristics, may interfere with satisfactory service to other customers may, at the Company's option, be served through a separate service and meter with separate billing. When this condition is encountered, the customer shall, at his expense, make the necessary changes to properly correct the existing condition.

11. RURAL METER READINGS: Customers located in rural areas shall, upon request of the Company, each report the reading of his meter monthly on forms provided by the Company. The Company will verify such readings by having one of its employees read such meters at intervals of approximately twelve months.

12. ACCESS TO CUSTOMERS' PREMISES: Company representatives, when properly identified, shall have access to customers' premises at reasonable times for the purpose of reading meters, making repairs, making inspections, removing the Company's property or for any other purpose incident to the service.

13. SERVICE AREAS: Classification of communities for rate purposes shall be determined by the last official federal or state census as published. Rates shall be designated as follows:

- Rate Zone 1 - All communities including unincorporated communities.
- Rate Zone 9 - Rural areas and resort areas.

Customers outside of, but adjacent to or near the city limits of any community, shall be charged the rate applicable to like customers inside the city limits if they are so located that from a practical standpoint they are a part of the community.

14. SERVICE CLASSIFICATION: Rates designated "General Service" are available to any customer in the class of community or service area designated.

Other rates shall apply only to the class of customers designated in the title of the rate, and only under the circumstances, and in accordance with the terms and for types of equipment specified in "Application of Schedule."

GENERAL RULES AND REGULATIONS (Continued)

A "residential" rate may be applied only to an individual residence, flat, private apartment, trailer, fraternity house or sorority house; but including garages and other auxiliary buildings on the premises and used by the residential customer. A residence containing not more than one "light housekeeping" unit in addition to the principal residential unit may be classified as a single unit.

Where the owner, proprietor or operator of a commercial enterprise occupies living quarters in the same building as his commercial enterprise, he may, at his option, have the electricity used in his living quarters separately metered and billed at the applicable residential rate, or this electricity may be included in the central metering to the commercial enterprise, in which case billing shall be at the applicable General Service Rate.

The Farm Service Rate shall apply to any customer carrying on normal farming operations regardless whether the farm is situated within or without the corporate limits of any city or village.

A residence located adjacent to or on a farm, but not being a part of the farm operation, shall be considered simply as a residence in a rural area and shall be metered separately and billed at the proper applicable rate. If such residence is occupied by a family member involved with the operation of the farm, the dwelling may be classified as either residential or farm. Farm classification will allow some or all of the outbuildings to be metered with the residence. If classified residential, only those outbuildings associated with residential usage, such as a garage or storage building, may be metered with the residence.

15. MASTER METERING: Master metering will not be permitted on any building, mobile home park or trailer court where construction began after June 13, 1980. This includes "new" multiple occupancy buildings and "existing" multiple occupancy buildings with master metering that are substantially remodeled or renovated for continued use as such.

Exceptions to this rule include hospitals, nursing homes, transient hotels and motels, dormitories, campgrounds, other residential facilities of a purely transient nature, residential duplexes where the owner occupies one of the two units, central heating or cooling systems, central ventilating systems, central hot water systems, existing mobile home and trailer parks provided the electric charges made by the owner or operator to each tenant thereof shall be equal to such tenant's prorated share of the total amount charged to the owner by the utility company in proportion to the ratio of the square foot floor area of each tenant's unit to the total square foot floor area of the mobile home court or trailer park, and any multiple occupancy building constructed, owned or operated with funds appropriated through the Department of Housing and Urban Development, or any other federal or state government agency.

GENERAL RULES AND REGULATIONS (Continued)

Existing multiple occupancy buildings that are being substantially remodeled or renovated for continued use as such, will be permitted to have master metering only if the owner can demonstrate to the satisfaction of the Public Utilities Commission that conversion to individual metering would be impractical, uneconomical or unfeasible. Existing multiple dwellings currently served on the Residential Service Rate will continue to have each block of the rate schedule and the minimum multiplied by the number of dwelling units, regardless of whether all the units are occupied or not.

Existing farms occupied by two or more families living in separate dwellings, but all concerned with the normal operation of the farm, may be master metered and billed at the standard Farm Service Rate subject to any substantial remodeling or renovation commencing after June 13, 1980.

16. ELECTRIC SERVICE BILL - IDENTIFICATION OF AMOUNTS AND METER READING: Each amount on the Electric Service Bill will be identified by a descriptive reference to the rate schedule under which the amount is computed, or other explanation, and on the same line with the amount. Where codes are used to identify a prorated bill, a cancelled bill, an estimated reading, a meter exchange or other pertinent data, an explanation of each code will be shown on that portion of the face of the bill retained by the customer.

In addition to the above appearing on the standard form for Electric Service Bills, rate schedules for Large General Service may be billed and identified on special bill forms.

17. USE OF SERVICE: Electric service may be used only for the purpose set forth in the respective rate schedules. Electric service is furnished for the use of the customer only, and the customer shall not resell it to other persons.

18. ENERGY DIVERSION: In any suspected case of meter tampering or energy diversion, the customer will be subject to discontinuance of service and prosecution under existing applicable laws. The Company will be entitled to collect from the customer for the unrecorded energy use in an amount estimated from the most current data available and any expenses incurred as the result of any such offense. Billing to the customer will be itemized so as to identify all charges.

19. ESTIMATING DEMANDS: Demands shall be measured as provided in the applicable rate schedule. However, in the absence of a demand meter, the demand may temporarily be estimated from the best information available.

Electric welders may be rated according to the following rule for the purpose of determining minimum monthly charges, or for the purpose of estimating demand in the absence of a demand meter.

GENERAL RULES AND REGULATIONS (Continued)

Electric welders installed and operated on standard 30 ampere or smaller fuses in a 30 ampere switchbox - 5 hp.

Electric welders installed and operated on standard fuses larger than 30 ampere but not larger than 60 amperes in a 60 ampere switchbox - 10 hp.

Electric welders installed and operated on standard fuses larger than 60 amperes but not larger than 100 amperes in a 100 ampere switchbox - 15 hp.

20. ESTIMATING READINGS ON FINAL BILLS: Final readings on meters located in towns where the Company has no resident service representative may be estimated at the time the customer requests that service be discontinued. Estimates will be made on the basis of previous average usage. All estimated readings shall be clearly marked as such.

In the event that the customer shall demonstrate reasons why the estimate is not equitable, an adjustment will be made on a basis satisfactory to the customer and consistent with the best information available.

21. FRACTIONAL MONTH BILLING: Bills will be prorated for a period of less than one month when service is begun or terminated between the regular meter reading dates. Bills shall be prorated for a fraction of a month on a daily basis, except that a period from 24 days to 36 days inclusive shall be considered a normal month due to the normal variation of scheduled meter reading dates. The proration shall apply to both the demand and energy components of the rate. Proration on a daily basis shall also apply when the period between meter readings is more than one month.

22. ADJUSTMENT FOR MUNICIPAL PAYMENTS: In the event that a Municipality collects or receives any payment or payments from the Company for or by reason of the use of the streets, alleys and public places of the Municipality, or for or by reason of the operation of the utility business or any portion or phase thereof in the Municipality, whether such payments be called a tax, assessment, license fee, percentage of earnings or revenues, lump sum payments, or otherwise, or whether such payments are made under the provisions of any ordinance, resolution, franchise, permit, or otherwise, bills for electric service in such Municipality will be increased during the period or periods in which any such payment or payments are collected or received by an aggregate amount approximating the amounts of such payment or payments, and bills rendered under the several rate schedules in effect in such Municipality will be increased by the applicable proportionate part of any such payment or payments.

23. WAIVER OF RIGHTS OR DEFAULT: No delay by the Company in enforcing any of its rights shall be deemed a waiver of its rights, nor shall a waiver by Company of one of customer's defaults be deemed a waiver of any other or subsequent defaults.

South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of June 24, 1999 through June 30, 1999

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact
Delaine Kolbo within five business days of this filing.
Phone: 605-773-3705 Fax: 605-773-3809

ELECTRIC

EL99-012 In the Matter of the Filing by Otter Tail Power Company for Approval of Electric Service Agreement for the Supply of Bulk Interruptible Power between Otter Tail Power Company and Valley Queen Cheese Factory, Inc.

On June 25, 1999, the Commission received a filing from Otter Tail Power Company in accordance with South Dakota Codified Law Section 49-34A and the Commission's previous Order Approving Agreement dated October 23, 1989, Docket F-3837 for an Electric Service Agreement for the Supply of Bulk Interruptible Power between Otter Tail Power Company and Valley Queen Cheese Factory, Inc.

Staff Analyst: Michele Farris
Staff Attorney: Camron Hoseck
Date Filed: 06/25/99
Intervention deadline: 07/16/99

TELECOMMUNICATIONS

TC99-067 in the Matter of the Establishment of Switched Access Rates for the Local Exchange Carriers Association.

The Local Exchange Carrier Association filed tariff sheets implementing the switched access rates necessitated by revisions to its member companies' revenue requirements and switched access minutes of use. There is also one textual correction included in this filing.

Staff Analyst: Harlan Best/Keith Senger
Staff Attorney: Karen Cremer
Date Filed: 06/28/99
Intervention Deadline: 07/16/99

TC99-068 In the Matter of the Establishment of Switched Access Revenue Requirement for Stateline Telecommunications, Inc.

Stateline Telecommunications, Inc. filed a switched access cost study developing a revenue requirement that is included in the revenue requirement used to determine the switched access rates for the Local Exchange Carrier Association.

Staff Analyst: Harlan Best/Keith Senger
Staff Attorney: Karen Cremer

Date Filed: 06/28/99
Intervention Deadline: 07/16/99

TC99-069 In the Matter of the Establishment of Switched Access Revenue Requirement for Brookings Municipal Telephone Company.

Brookings City Municipal Telephone Department filed a switched access cost study developing a revenue requirement that is included in the revenue requirement used to determine the switched access rates for the Local Exchange Carrier Association.

Staff Analyst: Harlan Best/Keith Senger
Staff Attorney: Karen Cremer
Date Filed: 06/28/99
Intervention Deadline: 07/16/99

TC99-070 In the Matter of the Establishment of Switched Access Revenue Requirement for McCook Cooperative Telephone Company.

McCook Cooperative Telephone Company filed a switched access cost study developing a revenue requirement that is included in the revenue requirement used to determine the switched access rates for the Local Exchange Carrier Association.

Staff Analyst: Harlan Best/Keith Senger
Staff Attorney: Karen Cremer
Date Filed: 06/28/99
Intervention Deadline: 07/16/99

TC99-071 In the Matter of the Establishment of Switched Access Revenue Requirement for Sanborn Telephone Cooperative and Sancom, Inc.

Sanborn Telephone Cooperative filed a switched access cost study developing a revenue requirement that is included in the revenue requirement used to determine the switched access rates for the Local Exchange Carrier Association.

Staff Analyst: Harlan Best/Keith Senger
Staff Attorney: Karen Cremer
Date Filed: 06/28/99
Intervention Deadline: 07/16/99

TC99-072 In the Matter of the Establishment of Switched Access Revenue Requirement for Golden West Telecommunications Cooperative, Inc.

Golden West Telecommunications Cooperative, Inc. filed a switched access cost study developing a revenue requirement that is included in the revenue requirement used to determine the switched access rates for the Local Exchange Carrier Association.

Staff Analyst: Harlan Best/Keith Senger
Staff Attorney: Karen Cremer

Date Filed: 06/28/99

Intervention Deadline: 07/16/99

TC99-073 In the Matter of the Establishment of Switched Access Rates for U S WEST Communications, Inc.

U S WEST Communications filed a switched access cost study "specifically in compliance with ARSD 20:10:27:07.... U S WEST Communications is not asking for the Commission to change the switched access rate schedules at this time."

Staff Analyst: Harlan Best/Keith Senger

Staff Attorney: Karen Cremer

Date Filed: 06/29/99

Intervention Deadline: 07/16/99

TC99-074 In the Matter of the Establishment of Switched Access Revenue Requirement for Cheyenne River Sioux Tribe Telephone Authority.

Cheyenne River Sioux Tribe Telephone Authority filed a switched access cost study developing a revenue requirement that is included in the revenue requirement used to determine the switched access rates for the Local Exchange Carrier Association.

Staff Analyst: Harlan Best/Keith Senger

Staff Attorney: Karen Cremer

Date Filed: 06/29/99

Intervention Deadline: 07/16/99

TC99-075 In the Matter of the Establishment of Switched Access Revenue Requirement for Mobridge Telecommunications Company.

Mobridge Telecommunications Company filed a switched access cost study developing a revenue requirement that is included in the revenue requirement used to determine the switched access rates for the Local Exchange Carrier Association. Mobridge Telecommunications Company requests that the Commission allow the use of GVNW's cost study model as opposed to the Commission model for determining Mobridge Telecommunications Company's revenue requirement.

Staff Analyst: Harlan Best/Keith Senger

Staff Attorney: Karen Cremer

Date Filed: 06/29/99

Intervention Deadline: 07/16/99

TC99-076 In the Matter of the Application of CallManage, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Application by CallManage, Inc. for a Certificate of Authority to provide intrastate, interexchange telecommunications services in the State of South Dakota. CallManage is proposing to offer 1+ and 101XXXX direct outbound dialing, 800/888 toll free inbound dialing and travel card service.

Staff Analyst: Dave Jacobson
Staff Attorney: Camron Hoseck
Date Filed: 06/29/99
Intervention Deadline: 07/16/99

TC99-077 In the Matter of the Application of JATO Operating Two Corp. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.

JATO Operating Two Corp.'s (JATO) intends to provide facilities-based and resold competitive local exchange services. JATO requests authority to provide services throughout U S WEST territories.

Staff Analyst: Keith Senger
Staff Attorney: Karen Cremer
Date Filed: 06/30/99
Intervention Date: 07/16/99

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JAN 03 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

VIA FAX AND REGULAR MAIL

FAX Received DEC 30 1999



December 30, 1999

Mr. William Bullard, Director
South Dakota Public Utilities Commission
State Capitol
500 East Capitol Street
Pierre, SD 57501-5070

Re: **In the Matter of Electric Service Agreement for the Supply of Bulk
Interruptible Power Between Otter Tail Power Company and Valley Queen
Cheese, Inc.**

Docket No. EL99-012

Dear Mr. Bullard:

Based on recent conversations with the Commission's counsel, Mr. Cameron Hoesck, it appears there is some question with respect to the effective date of the above referenced Electric Service Agreement between Otter Tail Power Company and Valley Queen Cheese, Inc. The Commission will be considering this matter at its January 6, 2000 regular agenda. Please accept this letter for purposes of clarifying Otter Tail's position on this question.

Background

For the past fifteen (15) years, Otter Tail and Valley Queen have been parties to an electric service agreement that allows Valley Queen to purchase electric energy under Otter Tail's Bulk Interruptible Service Tariff ("Tariff"), Rate Designation I-00S. Under the Tariff, customers are eligible to purchase power from Otter Tail on an interruptible basis if three things are met: (1) the load is 750 kW or greater; (2) there is a contract in place between the parties; and (3) the customer assumes responsibility for providing its own alternative backup power supply. The Tariff provides that the energy rate is to be negotiated separately between Otter Tail and the customer, with the condition that the rate cover Otter Tail's "energy cost of service plus a margin of \$0.002 per kwh." The Tariff further provides that the term of any contract be no longer than five (5) years.

On June 25, 1999, Otter Tail filed the present Electric Service Agreement ("Agreement") with the Commission. The Agreement is essentially identical to the agreements between the parties covering the previous fifteen years, with the notable exception that it increases the energy rate from \$0.01872 per kwh to \$0.0205 per kwh. The Agreement also provides for an

Effective Date as of June 1, 1999. This means, among other things, that the parties agreed that Otter Tail would begin billing Valley Queen under the new rate starting with the June billing cycle. The Agreement is made subject to the approval of the Commission (Section 18.5).

The Commission originally intended to consider this matter at its December 14, 1999 regular meeting. Prior this date, however, Mr. Cameron Hoseck informed the undersigned that because the Commission actually won't be approving the Agreement until after June 1, 1999, there may be some question about the validity of the June 1 Effective Date. As I understand it, Mr. Hoseck is concerned that the prohibition against retroactive ratemaking requires that the Commission approve contracts only on a prospective basis.¹ Here, this would mean that Otter Tail could not begin billing Valley Queen under the new rate until after receiving Commission approval.

In order to give Otter Tail the opportunity to clarify its position, the Commission agreed to move this matter to its January 6 agenda.

Discussion

The issue is whether the general prohibition against retroactive ratemaking prevents the Commission from approving an effective date of an Agreement filed in accordance with the Otter Tail Bulk Interruptible Tariff which precedes the date of actual approval.

We believe the Commission is not prevented from approving a prior Effective Date, for the following reasons.

The prohibition against retroactive ratemaking stems from the long-standing acknowledgement by courts that ratemaking by public utilities commissions is a "quasi-legislative" function, which, like legislation itself, can operate prospectively only. See generally, e.g., *Peoples Natural Gas v. Minnesota Public Utilities Commission*, 369 N.W.2d 530 (1985). In our view, the Commission would not be engaging in retroactive ratemaking by approving a prior Effective Date because the Commission long ago established the rate to be charged under the Tariff. And the rate is one that is to be negotiated between the parties, plus a margin over Otter Tail's cost to serve. The Tariff also contemplates that the rate will be as set forth in the contract between the parties.

Second, on October 23, 1999, the Commission approved a contract that is essentially identical to the one presently before it. See *Order Approving Agreement*, Docket No. F-3637 (attached). In that case, the Commission approved the electric service agreement between Otter Tail and Valley Queen that also contained an effective date for billing purposes as of June 1 of that year -- i.e., prior to its approval date. In filing the present Agreement and asking for a June 1 Effective Date, Otter Tail relied primarily on the Commission's October 23, 1999 Order.

¹ We in no way mean to speak for Mr. Hoseck or to misrepresent his concern. To the extent that we have not captured the essence of his concern, he obviously is very capable of clarifying it.

William Bullard
December 30, 1999
Page 3

To the extent that the Commission now believes that Otter Tail must obtain Commission approval before it can begin billing under the new negotiated rate, the Commission should require this on a prospective basis only – i.e., the time any new agreement is entered into under the Tariff. Because there is no retroactive ratemaking, and because Otter Tail was following Commission precedent specifically related to the Agreement, it would seem unfair if Otter Tail was denied a June 1 Effective Date – and was therefore required to refund Valley Queen the difference between the amount billed under the new versus the old rate since June 1, 1999.

We hope this clarifies Otter Tail's position with respect to this question. We intend to participate by telephone at the Commission's meeting on the 6th and would be happy to answer any questions at that time or before. I can be reached at (218) 739-8350.

Thank you for your consideration.

Very truly yours,



Todd J. Guerrero
Associate General Counsel
T.JG:dm

Enclosures

c: Cameron Hoseck, Esq., Public Utilities Commission (via fax and regular mail)
Duane Bartsch, Otter Tail Power Company

RECEIVED

JAN 03 2000

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF OTTER TAIL POWER COMPANY - BULK)
INTERRUPTIBLE POWER, VALLEY QUEEN)
CHEESE FACTORY, MILBANK, SOUTH)
DAKOTA.)

ORDER APPROVING AGREEMENT

(F-3837)

On August 15, 1989, Otter Tail Power Company filed with the Public Utilities Commission (Commission) its electric service agreement for the supply of bulk interruptible power for Valley Queen Cheese Factory of Milbank, South Dakota. The energy charge per kWh remains the same as in the previous agreement. The monthly fixed charge is now established at \$1,000; previously the charge was \$5,000. The prior agreement expired on June 1, 1989. This filing was made in accordance with the original Bulk Interruptible Power filing which provides that any change in the Agreement or Contract shall be sent to the Commission for approval. The parties recognized in their agreement that committed supplies of power are available to the Otter Tail Power system during periods of time when the system is not operating at or near its peak capacity, and such power supplies will be available during the period of 1989 through approximately 1994. Further, such power can be made available on an interruptible basis without the system incurring any incremental capacity costs.

The Commission Staff has carefully reviewed the terms and conditions of this agreement. On October 11, 1989, the Staff made its recommendations to the Commission which the Commission considered when reviewing this agreement. The Commission has jurisdiction over this matter pursuant to SDCL 49-34A. The Commission determined that this agreement is in the public interest. It is therefore

ORDERED, that this agreement be and hereby is approved on the terms and conditions set forth therein and shall be effective for service rendered on and after the date specified in the agreement.

Dated at Pierre, South Dakota, this 23rd day of October, 1989.

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman
Taska Schoenfelder
TASKA SCHOENFELDER, Commissioner
Kenneth Stofferang
KENNETH STOFFERANG, Commissioner

(OFFICIAL SEAL)



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING BY OTTER)	ORDER APPROVING
TAIL POWER COMPANY FOR APPROVAL OF)	CONTRACT WITH
A CONTRACT WITH DEVIATIONS)	DEVIATIONS
)	EL99-012

On June 28, 1999, the Public Utilities Commission (Commission) received a filing by Otter Tail Power Company (Otter Tail) for approval of a Contract with Deviations with Valley Queen Cheese Factory, Inc. (Valley Queen). The contract replaces an electric service agreement between the parties for large customer service dated March 4, 1981, as it relates to interruptible service. Otter Tail filed the following tariff sheet for Commission approval:

Section No. 4, 3rd Revised Sheet No. 2, cancelling 2nd Revised Sheet No. 2

On January 6, 2000, at its regularly scheduled meeting, the Commission considered the request for approval of the Contract with Deviations. Commission Staff recommended approval.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL 49-34A, specifically, 49-34A-6, 49-34A-8, 49-34A-10, and 49-34A-11. Further, the Commission finds that Otter Tail's request for approval of a Contract with Deviations is just and reasonable and shall be approved (Commissioner Nelson dissenting, on the effective date of June 1, 1999). As the Commission's final decision in this matter, it is therefore

ORDERED, that the request seeking approval of a Contract with Deviations is in the public interest and is hereby granted. It is further

ORDERED, that the above-referenced tariff sheet is effective for service rendered on and after June 1, 1999.

Dated at Pierre, South Dakota, this 12th day of January, 2000.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u><i>Debra Kaelo</i></u>
Date: <u>1/13/00</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner, dissenting
on the effective date of June 1, 1999

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING BY OTTER) TAIL POWER COMPANY FOR APPROVAL OF) A CONTRACT WITH DEVIATIONS))	ERRATA NOTICE EL99-012
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On June 28, 1999, the Public Utilities Commission (Commission) received a filing by Otter Tail Power Company (Otter Tail) for approval of a Contract with Deviations with Valley Queen Cheese Factory, Inc. (Valley Queen). The contract replaces an electric service agreement between the parties for large customer service dated March 4, 1981, as it relates to interruptible service. Otter Tail filed the following tariff sheet for Commission approval:

Section No. 4, 3rd Revised Sheet No. 1, cancelling 2nd Revised Sheet No. 1

On January 6, 2000, at its regularly scheduled meeting, the Commission considered the request for approval of the Contract with Deviations. Commission Staff recommended approval.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL 49-34A, specifically, 49-34A-6, 49-34A-8, 49-34A-10, and 49-34A-11. Further, the Commission finds that Otter Tail's request for approval of a Contract with Deviations is just and reasonable and shall be approved (Commissioner Nelson dissenting, on the effective date of June 1, 1999). As the Commission's final decision in this matter, it is therefore

ORDERED, that the request seeking approval of a Contract with Deviations is in the public interest and is hereby granted. It is further

ORDERED, that the above-referenced tariff sheet is effective for service rendered on and after June 1, 1999.

Dated at Pierre, South Dakota, this 26th day of January, 2000.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u>Melanie Koehn</u>
Date: <u>1/26/00</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner, dissenting
on the effective date of June 1, 1999

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner