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EL04-031

DOCKET NO.

# Public Utilities Commission of the State of South Dakota

[illegible]

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October 8, 2004

RECEIVED  
OCT 12 2004  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Ms. Karen E. Cremer  
Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

RE: Whetstone / Ottertail / Victory Farms Service Rights Exception

Dear Karen:

The fully-executed Petition arrived here from Harvey Oliver yesterday. Harvey has entrusted the filing to me and I have today been advised by your office that one original and ten (10) copies should be submitted. They are enclosed.

Harvey tells me that the Petition will, as a matter of course, find its way onto your Docket and that we will hear from you by letter as to other or further requirements or, hopefully, approval.

Best personal regards.

Sincerely yours,

QUAINTANCE LAW OFFICE P.C.

John C. Quaintance  
JCQ:LG

Enclosures: Original and Ten (10) Copies of Petition  
e. Mr. Harvey A. Oliver - Letter Only  
Mr. Peter Orradre - Letter and Petition  
Mr. David Nuss - Letter and Petition  
Mr. Kevin Souza - Letter and Petition  
Ottertail Power Company - Letter and Petition

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

**RECEIVED**  
**OCT 12 2004**  
**SOUTH DAKOTA PUBLIC**  
**UTILITIES COMMISSION**

**PETITION OF WHETSTONE VALLEY ELECTRIC COOPERATIVE, INC., OTTERTAIL POWER COMPANY AND VICTORY FARMS, MILBANK, SOUTH DAKOTA. FOR SERVICE RIGHTS EXCEPTION**

The purpose of this petition is to request approval from the Public Utilities Commission for a service rights exception with regard to a service extension to Victory Farms, Milbank, South Dakota.

Victory Farms, a dairy operation, maintains a dry cow facility and manager residence in Grant County, South Dakota located in the East One Half of the Northwest Quarter of Section 34, Township 120 North, Range 48 West of the 5<sup>th</sup> P.M., Grant County, South Dakota. The location of Victory Farm's dry cow facility and manager residence is presently in the service territory of Whetstone. Victory Farms has been operating the dry cow facility and manager residence on generator.

OtterTail Power Company serves the Victory Farms main dairy facility, which is located approximately one mile from the dry cow facility and manager residence. Victory Farms has constructed, at its sole expense, a line from the dairy facility to the dry cow facility and manager residence and OtterTail has advised Victory Farms that the customer owned line may be used to provide OtterTail power to the dry cow facility and manager residence if this Petition is approved.

Whetstone, OtterTail, and the consumer, Victory Farms, all request that the Public Utilities Commission authorize a service rights exception, to the dry cow facility and manager residence located in the East One Half of the Northwest Quarter of Section 34, Township 120 North, Range 48 West of the 5<sup>th</sup> P.M., Grant County, South Dakota for so long as those facilities shall be used for agricultural and related residential purposes and allow OtterTail Power Company to serve the aforescribed parcel. Whetstone shall retain the right of service to any new commercial or residential facility or service that may be developed on any portion of the parcel as described. The service rights exception shall survive the transfer of the aforescribed real property provided that the real property continues to be used as a site for agricultural and related residential purposes. For the avoidance of doubt, nothing herein or in any related documentation of the service rights exception shall preclude Victory Farms or subsequent owners of the aforescribed real property from replacing, expanding or remodeling existing facilities or adding additional agricultural facilities to be served by OtterTail.

Whetstone shall serve any and all other customers and facilities within its assigned service area and by the filing of this petition does not consent to the extension of service to any other customer or facility other than the dry cow facility and manager residence and additions, expansions thereto in the East One Half of the Northwest Quarter of Section 34, Township 120 North, Range 48 West of the 5<sup>th</sup> P.M., Grant County, South Dakota as limited by this petition.

Wherefore the undersigned hereby request that the Public Utilities Commission grant the foregoing petition and authorize a service rights exception, as limited in this petition, for the purpose of allowing OtterTail Power Company to serve the East One Half of the Northwest Quarter of Section 34 , Township 120 North , Range 48 West of the 5<sup>th</sup> P.M. , Grant County, South Dakota which is presently located within the service territory assigned to Whetstone.

Dated this 24 day of September, 2004.

Whetstone Valley Electric Cooperative,  
Inc.

By: [Signature]

Its: G.M.

Dated this 13 day of September, 2004.

OtterTail Power Company

By: [Signature]

Its: Area Manager

Dated this 20 day of September, 2004.

Victory Farms

By: [Signature]

A General Partner

**South Dakota Public Utilities Commission**  
**WEEKLY FILINGS**  
**For the Period of October 6, 2004 through October 13, 2004**

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 report. Phone: 605-773-3201

**ELECTRIC**

**EL04-030      In the Matter of the Filing by Xcel Energy for Approval of its Revised Rate  
Sheets for its Occasional Delivery Energy Service and Time of Delivery  
Energy Service.**

On October 7, 2004, Xcel Energy submitted for Commission approval revised rate sheets for the Occasional Delivery Energy Service and Time of Delivery Energy Service. The tariffs are consistent with those the Commission approved in its January 3, 2003 order, Docket EL02-021.

Staff Analyst: Michele Farris  
Staff Attorneys: Karen Cremer/Sara Harens  
Date Filed: 10/07/04  
Intervention Deadline: 10/29/04

**EL04-031      In the Matter of the Joint Request for an Electric Service Rights Exception  
between Whetstone Valley Electric Cooperative, Inc. and Otter Tail Power  
Company.**

On October 12, 2004, Whetstone Valley Electric Cooperative, Inc., Otter Tail Power Company and Victory Farms filed a joint petition to request Commission approval of a service rights exception. The petition requests the Commission to authorize a service rights exception to the Victory Farms' dry cow facility and manager residence located in the East 1/2 of the NW 1/4 of Section 34, Township 120 North, Range 48 West of the 5th P.M., Grant County, South Dakota, for so long as those facilities shall be used for agricultural and related residential purposes and allow Otter Tail Power Company to serve the above described parcel.

Staff Analyst: Michele Farris  
Staff Attorneys: Karen Cremer/Sara Harens  
Date Filed: 10/12/04  
Intervention Deadline: 10/29/04

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# Richards & Oliver

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\* Also Licensed in  
North Dakota  
Minnesota

October 25, 2004

**RECEIVED**  
**OCT 27 2004**  
**SOUTH DAKOTA PUBLIC**  
**UTILITIES COMMISSION**

Pam Bonrud  
Executive Director  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501-5070

Re: Victory Farms / Whetstone Electric Services Rights Exception Doc#EL04-031

Dear Ms. Bonrud:

This correspondence will articulate a number of public interest factors that will be met should the Commission grant the petition for the Victory Farms / Whetstone Services Rights Exception .

I am authorized to state on behalf of both Victory Farms and Whetstone that both parties are in agreement with the factors that I have addressed in this correspondence.

(1) In agreeing to the Service Rights Exception, Victory Farms has agreed to reimburse Whetstone Electric Cooperative for any stranded investment together with the cost of removing the stranded investment, and in addition thereto, an amount equal to the formula amount contained in SDCL 49-34A-50. Thus the rate payers of Whetstone will not experience any losses should the petition be granted. In fact Whetstone will realize a revenue gain in an amount equal to the sum of 25% of the gross revenue received from the power sales that would have accrued to Victory Farms over a period of seven years per the formula. This will result in a significant immediate payment of future margins to Whetstone.

(2) Victory Farms had been requesting that Whetstone install a three phase service for the principal reason that Victory believed that a three-phase service would eliminate any arguable stray voltage. If Whetstone were to install the three phase

service for that purpose, the cost of the three phase service would essentially amount to a duplication of service, in that the current line was adequate (from Whetstones point of view) to serve the Victory Farms facility. Thus by granting the petition the Commission will avoid duplication of a service which would have been constructed for the sole reason of satisfying the consumer. That duplication of service and its cost would either have to be borne by Victory or by the ratepayers of Whetstone.

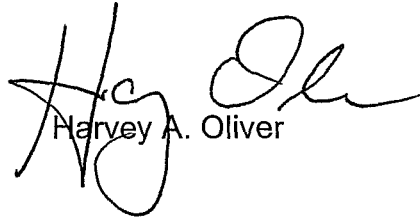
(3) Under the contemplated Service Rights Exception, Ottetail Power will not be required to expend any of its funds to extend service to the Victory Farms dry cow facility. Thus Ottetail Power Company will incur no cost, yet at the same time will gain a new customer without having to extend additional investment. These additional margins will therefore inure to the benefit of Ottetail ratepayers.

(4) The present petition for the Service Rights Exception has as its principle motive the resolution of a dispute between Victory Farms and Whetstone regarding quality of service. Victory Farms believes that stray voltage emanates from Whetstone facilities. Whetstone of course denies the allegation. In the absence of the Commissions grant of the Service Rights Exception petition, it is anticipated that Victory Farms would make a quality of service complaint to the Public Utilities Commission. The parties anticipate that the attorney's fees and experts fees which would be incurred by both sides in presenting a quality of service complaint and in defending the same before the Public Utilities Commission, given the resources available to both entities would probable exceed \$50,000.00 on each side and could well exceed \$100,000.00 on each side. Those expenses would of course be paid by the consumer, Victory Farms and the ratepayers of Whetstone Electric Cooperative. Additionally the Public Utilities Commission would expend some amount of staff time and resources in order to properly resolve a complicated stray voltage case where both parties anticipate submitting voluminous materials, testimony and expert witnesses. Thus granting the petition would resolve the controversy between Victory Farms and Whetstone thus saving tens of thousands of dollars in expenses, attorneys fees, and experts fees which would be incurred by the ratepayers of Whetstone and by the consumer Victory Farms. Additionally, the Public Utilities Commission and the taxpayers would avoid expending substantial expense and time resolving a quality of service complaint between Whetstone and Victory when a resolution of that issue can be achieved through the granting of this petition.

In summary Whetstone and its ratepayers benefit by virtue of the fact that a dispute with Victory is resolved thus avoiding significant litigation expense and further results in Whetstone receiving all of its stranded investment, cost to remove plant as well as receiving a significant amount of future revenues pursuant to the SDCL 49-34A-50 formula. Ottetail and its ratepayers receive a new customer without making any additional investment thus obtaining additional profit margins without incurring any cost. Victory Farms gets what they have strongly desired, Ottetail as a power supplier and they too avoid having to incur significant attorney's fees and expert fees in litigating a quality of service complaint. The Public Utilities Commission and the taxpayers avoid having to expend tax resources on hearing a hotly contested quality of service

complaint that would most certainly involve days if not weeks of testimony. A case of this significance, I would expect, would require the Public Utilities Commission to devote significant staff time as well as perhaps even retaining the services of experts to help decide the case. No matter which way the Public Utilities Commission would decide a quality of service complaint in this instance, one of the parties would be unhappy and probably would not put an end to the matter. Granting the petition would end the controversy between these two parties and would avoid having the Public Utilities Commission devote its precious and limited resources to the case.

Sincerely,

A handwritten signature in black ink, appearing to read "Harvey A. Oliver". The signature is stylized with a large "H" and "O".

Harvey A. Oliver

HAO/de  
cc: John Quaintance



**QUAINTANCE LAW OFFICE P.C.**

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October 27, 2004

**RECEIVED**

**OCT 29 2004**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

Ms. Pam Bonrud  
Executive Director  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501-5070

RE: Victory Farms / Whetstone Electric Services Rights Exception  
Doc# ~~EL~~04-031

Dear Ms. Bonrud:

I am South Dakota counsel for Victory Farms. This will confirm Harvey Oliver's letter representation of October 25, 2004 that Victory Farms is in agreement with the public interest factors addressed in Mr. Oliver's letter of October 25, 2004. I would be remiss if I did not clarify that, of course, the pending Application is in lieu of any other proceedings before the PUC arising out of Mr. Oliver's July 29, 2004 correspondence to Jeff Smith of the PUC beginning an initial complaint process. It is not intended to be dispositive of any other matters.

Thank you.

Sincerely yours,

QUAINTANCE LAW OFFICE P.C.

John C. Quaintance  
JCQ:LG

c: Mr. Harvey A. Oliver  
Mr. Peter Orradre - Enclosure

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

IN THE MATTER OF THE JOINT REQUEST )  
FOR AN ELECTRIC SERVICE RIGHTS )  
EXCEPTION BETWEEN WHETSTONE VALLEY )  
ELECTRIC COOPERATIVE, INC. AND OTTER )  
TAIL POWER COMPANY )

ORDER GRANTING  
APPROVAL OF AN  
EXCEPTION TO THE  
ASSIGNED ELECTRIC  
SERVICE TERRITORY  
EL04-031

On October 12, 2004, Otter Tail Power Company (Otter Tail) and Whetstone Valley Electric Cooperative, Inc. (Whetstone) filed a joint request to the Public Utilities Commission for approval of an Electric Service Rights Exception. The exception would allow Otter Tail to provide electrical service to the Victory Farms' dry cow facility and manager residence located in the East 1/2 of the NW 1/4 of Section 34, Township 120 North, Range 48 West of the 5th P.M., Grant County, South Dakota, for so long as those facilities shall be used for agricultural and related residential purposes.

At its regularly scheduled meeting of November 30, 2004, the Commission considered the matter. Commission Staff recommended approval of the joint request.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL 49-34A, specifically 49-34A-42 and 49-34A-55. Further, the Commission finds that Otter Tail may provide electrical service to the Victory Farms' dry cow facility and manager residence located on the above described property for so long as those facilities shall be used for agricultural and related residential purposes as it will avoid unnecessary duplication of facilities, provide adequate electric service to all customers affected, and promote the efficient use and development of the electric systems of Otter Tail and Whetstone. Further, the Commission finds that an exception to the assigned service territory is in the public interest and the request shall be granted. It is therefore

ORDERED, that the request seeking approval of an exception to the assignment of service territory is hereby granted.

Dated at Pierre, South Dakota, this 10<sup>th</sup> day of December, 2004.

**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: Alaine Kolbo

Date: 12/13/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner