

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

<b>IN THE MATTER OF THE COMPLAINT FILED )</b>	<b>FINAL DECISION AND</b>
<b>BY GENE DRONG, COLMAN, SOUTH )</b>	<b>ORDER; NOTICE OF</b>
<b>DAKOTA, AGAINST OTTER TAIL POWER )</b>	<b>DECISION</b>
<b>COMPANY REGARDING THE PROVISION OF )</b>	
<b>SERVICE TO A PROPOSED DEVELOPMENT )</b>	<b>CE06-001</b>
<b>SOUTH OF EGAN )</b>	

On May 8, 2006, the Public Utilities Commission (Commission) received a complaint filed by Gene Drong, Colman, South Dakota (Complainant), against Otter Tail Power Company (OTP) regarding the provision of service to a proposed development south of Egan (Complaint). On May 11, 2006, the complaint was faxed to OTP. Pursuant to ARSD 20:10:01:09, OTP was notified that it must satisfy the complaint or file an answer in writing with the Commission by May 30, 2006. On May 31, 2006, the Commission received an answer from OTP. The Commission issued and served a notice of hearing on July 27, 2006, and the hearing was held as noticed on August 8, 2006. After considering the evidence adduced at the hearing and the arguments of the parties, the Commission voted unanimously to deny the Complaint.

Having considered the evidence and the arguments of the parties at the hearing, the Commission makes the following Findings of Fact, Conclusions of Law and Final Decision and Order:

**FINDINGS OF FACT**

1. Complainant, Gene Drong, currently resides in Colman, South Dakota. He plans to build a new 15,000 square foot home along the Big Sioux River on a parcel of land situated approximately two miles south of Egan, South Dakota. TR 4, 10; Ex OTP 2.
2. Complainant's 212 acre parcel of property has received eligibility to have five homes constructed on it. Complainant has received offers from two builders to build on the property, but has not elected at this time to allow any additional homes to be built on the property. TR 14.
3. OTP alleged in its Answer that Complainant's property at issue in the Complaint lies within OTP's exclusive service area. Complainant produced no evidence to refute this allegation. The evidence at the hearing indicated that Complainant's property at issue in this case lies within OTP's assigned service area as defined in SDCL 49-34A-1(1). Ex Drong 2.
4. Sioux Valley Energy (Sioux Valley) has electric lines in closer proximity to Complainant's property than OTP even though Complainant's building site lies in OTP's service area.
5. Complainant solicited and received proposals to provide electric service to his planned home from both Sioux Valley and OTP. Exs Drong1 and Drong 2. Sioux Valley's proposal quoted an aid-to-construction price of \$8,848 which equaled the 4,360 foot line extension distance times \$1.80 per foot. This proposal did not contain a required minimum billing for service as a part of or in addition to the aid-to-construction lump sum payment. Ex Drong 2.
6. OTP's proposal quoted an aid-to-construction initial payment of \$12,870 (7,150 feet x \$1.80 per foot). OTP's proposal also would require Complainant's and any other homes constructed on

Complainant's property to jointly purchase a minimum of \$6,532.50 in electric service annually for four years or pay a Facility Extension Charge in accordance with OTP's Commission approved tariff as an additional contribution to defray construction costs. Ex Drong 1; Ex OTP 1. The \$6,532.50 in required annual payments equates to approximately \$544 per month for the four year period. Ex Drong 1.

7. Complainant was willing to accept OTP's higher initial payment amount if he wasn't required to pay the minimum annual billings required by OTP's bid. TR 13.

8. OTP calculated the line extension charges for Complainant in accordance with its filed tariff. TR 29, et seq.; Ex OTP 1.

9. The evidence demonstrates that OTP is willing and able to provide adequate service to Complainant's property within its assigned service area at a cost and with a payment structure that is in accordance with its filed tariff. Ex Drong 1.

10. If the monthly charges that would be assessed by Sioux Valley for electric service to Complainant's home were added to Sioux Valley's lump sum aid-to-construction bid, the difference between Sioux Valley's and OTP's bids would be reduced. If one or more additional homes are built on the property, the incremental cost of OTP's Facilities Extension Charge would be reduced significantly, perhaps even to zero. TR 17-19; 29; 36; Ex Drong 1.

11. Although Complainant could end up paying more for OTP to extend service to his property than if Sioux Valley were permitted to extend the service, the difference is not so significant as to justify a finding of inadequate service pursuant to SDCL 49-34A-58 that would in turn justify a service area re-assignment, particularly given the cost of the home and the potential for additional homes to share in re-paying the cost difference, if any.

## CONCLUSIONS OF LAW

1. The Commission finds that it has jurisdiction over this matter pursuant to SDCL 49-34A-58 and 49-34A-59.

2. Except in a few limited circumstances, under the South Dakota Territorial Integrity Act (Act), codified as SDCL 49-34A-1(1), 49-34A-42 through 49-34A-44, and 49-34A-48 through 49-34A-59, ". . . each electric utility has the exclusive right to provide electric service at retail at each and every location where it is serving a customer as of March 21, 1975, and to each and every present and future customer in its assigned service area." SDCL 49-34A-42.

3. The location where Complainant proposes to construct a residence and potentially sell to others who will construct residences lies within the assigned service area of OTP, and OTP accordingly has the exclusive right to provide service at such location unless one of the exceptions to the exclusive right to serve is demonstrated. *Matter of Northwestern Public Service Co. with Regard to Electric Service to Hub City*, 1997 SD 35, 560 N.W.2d 925 (1997) (*Hub City*).

4. Since the involved utilities did not agree on a service rights change, the only exception to the assigned service area that might possibly be applicable in this case is inadequacy of service pursuant to SDCL 49-34A-58.

5. The Commission concludes that the cost difference to Complainant in this case between the assigned utility and the alternative non-assigned provider is not significant enough to overcome the strong preference for honoring territorial integrity expressed in the Act and the cases construing it such as *Hub City*.

6. Complainant's Complaint should accordingly be denied.

It is therefore

ORDERED, that Complainant Gene Drong's Complaint against OTP is denied.

**NOTICE OF DECISION**

PLEASE TAKE NOTICE that this Final Decision and Order; Notice of Decision (Decision) constitutes a final decision and order in this case. Pursuant to SDCL 1-26-32, this Decision will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition therefor and ten copies with the Commission within 30 days from the date of issuance of this Decision. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Decision to the appropriate Circuit Court by serving and filing notice of appeal of this Decision in the circuit court within thirty (30) days after the date of service of this Notice of Decision.

Dated at Pierre, South Dakota, this 3rd day of October, 2006.

<b>CERTIFICATE OF SERVICE</b>
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>Arlene Kolbo</u>
Date: <u>10/4/06</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr  
ROBERT K. SAHR, Chairman

Dustin M. Johnson  
DUSTIN M. JOHNSON, Commissioner

Gary Hanson  
GARY HANSON, Commissioner