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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY)
KOSCIUSKO RURAL ELECTRIC MEMBERSHIP)
CORPORATION FOR THE INDIANA UTILITY)
REGULATORY COMMISSION TO (1) CHANGE)
THE ASSIGNED SERVICE AREA BOUNDARIES)
ON U.S.G.S. FACET MAP R-5-1 TO INCLUDE ALL)
OF A SINGLE TRACT OF LAND AND)
INDUSTRIAL AGRIBUSINESS OPERATION)
LOCATED IN VAN BUREN TOWNSHIP OF)
KOSCIUSKO COUNTY, INDIANA, WITHIN)
KOSCIUSKO RURAL ELECTRIC MEMBERSHIP)
CORPORATION'S ASSIGNED SERVICE AREA)
PURSUANT TO I.C. §8-1-2.3-6(3), AND (2))
AUTHORIZE KOSCIUSKO RURAL ELECTRIC)
MEMBERSHIP CORPORATION TO PROVIDE)
INTERIM POWER TO THE AFFECTED AREA)
PENDING FINAL ORDER.)

CAUSE NO. 43507

FINAL ORDER

APPROVED: APR 15 2009

BY THE COMMISSION:

Jeffrey L. Gole, Commissioner
Lorraine Hitz-Bradley, Administrative Law Judge

On June 3, 2008, Kosciusko Rural Electric Membership Corporation ("KREMC" or "Petitioner") filed a Verified Petition requesting a change, pursuant to I.C. § 8-1-2.3-6(3), in the assigned service area on U.S.G.S. Facet Map R-5-1.

Pursuant to notice duly published as required by law, proof of which was incorporated into the record of this Cause by reference, a public evidentiary hearing regarding this matter was held on January 6, 2009 at 9:30 a.m. in Room 224 of the National City Center Indianapolis, Indiana. Petitioner, the Office of the Utility Consumer Counselor ("OUCC"), and Respondent Northern Indiana Public Service Company ("NIPSCO"), were all present and participated in the hearing. Mr. Steve Rhodes, Mr. Kip Tom, and Mr. Bruce Goslee testified on behalf of KREMC. Mr. Donald Babcock, Mr. Charles Turman, and Mr. Ryan Carr testified on behalf of NIPSCO. The OUCC did not present witnesses or testimony in this matter. No members of the public appeared or otherwise sought to testify.

The Commission, having duly examined and considered all of the evidence of record, the arguments of counsel presented in this Cause, and the applicable law now finds as follows:

1. Commission Jurisdiction and Notice. Due, proper and legal notice of the public hearing in this Cause was given and published by the Commission as required by law. Petitioner KREMC is a rural electric distribution cooperative organized under the Rural Electric

Membership Corporation Act with its principal business office located in Warsaw, Indiana. Respondent NIPSCO is a public utility with its principal business office located in Hammond, Indiana. The Petitioner and Respondent in this Cause are electricity suppliers within the meaning of I.C. § 8-1-2.3-1 *et seq.*, and Petitioner has requested relief pursuant to I.C. § 8-1-2.3-6. Therefore, the Commission has jurisdiction over the parties to and the subject matter of this proceeding.

2. **Requested Relief.** As described in KREMC's June 3, 2008 Verified Petition, Tom Farms LLC ("Tom Farms") is the owner of certain real estate and operates a business at a location in Kosciusko County intersected by a boundary line between KREMC's and NIPSCO's assigned service areas. KREMC requests an order of the Commission finding that Tom Farms' land and business affected by the Petition can best be provided by KREMC alone, and approving and ordering a change in service boundaries on U.S.G.S. Facet Map R-5-1 so that Tom Farms' entire affected contiguous real estate and agribusiness operation is included within KREMC's certified assigned service area.¹

3. **The Land and Business Operation That is the Subject of the Petition in Dispute.** The land and business operation affected by these proceedings is comprised of a contiguous tract of land and associated agribusiness facilities and operations, located in the general vicinity of the intersection of County Road 900 N and Old State Highway 15 in Van Buren Township of Kosciusko County, Indiana. At the time the Petition in this Cause was filed the land consisted of approximately 2,739 contiguous acres, 1,120 of which are owned by Tom Farms and the rest of which are leased and operated by Tom Farms pursuant to long-term leases.² The 32-acre parcel is located in NIPSCO's assigned service territory and prior to this action, no service had been provided to it by any entity. Tom Farms' contiguous land and business operation is therefore intersected by a boundary between KREMC's and NIPSCO's assigned service areas. This entire area is depicted on Exhibit KET-1 to Petitioner's Exhibit 4 (the pre-filed direct testimony of Petitioner's witness Kip Tom).

The grain processing facility requires three-phase electrical service. Petitioner KREMC presently has three-phase electrical distribution facilities immediately adjacent to the Tom Farms property where the grain processing facility is located. Respondent NIPSCO's closest three-phase electrical service terminates 2+ miles from the land on which the grain processing facility is located. Petitioner KREMC's substation closest to the Tom Farm agribusiness affected by this Cause, and which it currently serves and would continue to serve the grain processing facility if its Petition is granted, is located approximately 2 miles from the grain processing facility. The NIPSCO substation from which it would serve the grain processing facility if KREMC's Petition were denied is located approximately 5.5 miles from the grain processing facility. KREMC's Petition was filed at the request of Tom Farms, which has asserted that its entire agribusiness

¹ KREMC also requested by its Verified Petition that the Commission find an emergency exists and allow KREMC to provide emergency power to Tom Farms' contiguous tract and agribusiness operation pending a final order. By an August 27, 2008 Interim Order in this Cause we approved an interim arrangement by the parties for KREMC to provide service to that part of the Tom Farms Property located on U.S.G.S. Facet Map R-5-1 on which Tom Farms has constructed a new grain facility, pending the final order in this Cause.

² After the Petition was filed Tom Farms acquired additional land north, south and west of the grain processing facility and contiguous to the 2,739 acres.

operation at this location is an integrated operation that can best be served by just one electricity supplier, that being KREMC.

4. **Applicable Law and Precedent.** KREMC seeks a change in the assigned service area on U.S.G.S. Facet Map R-5-1 pursuant to the Electricity Suppliers' Service Area Assignments Act ("Territory Act"). The Territory Act's legislative findings and declaration of policy are as follows:

Sec. 1. Legislative Findings and Declaration of Policy. It is declared to be in the public interest that, in order to encourage the orderly development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, to prevent the waste of material and resources, and to promote economical, efficient, and adequate electric service to the public, the currently unincorporated areas of Indiana shall be divided into designated geographic areas within which an assigned electricity supplier has the sole right to furnish retail electric service to customers.

I.C. § 8-1-2.3-1. Previously, this Commission has found that "the whole intent of the mapping statute is to strongly encourage the supply of a particular customer by only one electric supplier." *Pub. Serv. Co. of Ind. and Tipmont R.E.M.C.*, Cause No. 38219, at 5 (Ind. Util. Regulatory Comm'n May 18, 1988.)

Once assigned service areas are established under the Territory Act, the boundaries may only be changed pursuant to I.C. § 8-1-2.3-6. That part of I.C. § 8-1-2.3-6 which applies to these proceedings is as follows:

(3) In the case where a landowner owns a single tract of land that is intersected by the boundary lines of two (2) or more assigned service areas, and retail electric service can best be supplied by only one (1) electricity supplier, or in the case where a customer or customers are housed in a single structure or constitute a single governmental, industrial, or institutional operation, and the electricity suppliers involved are unable to agree which shall furnish the electric service, any of the electricity suppliers may submit the matter to the commission for its determination based upon public convenience and necessity. If, after notice and hearing, the commission determines that one (1) or more electricity suppliers are to supply the required retail electric service and the boundaries of an assigned service area are to be changed, the assigned service area maps of the electricity suppliers shall be changed to reflect the new boundaries.

I.C. § 8-1-2.3-6(3) identifies two circumstances where a change of assigned service area boundaries may be appropriate: (1) where a single tract of land is split by two utilities' service

boundaries and retail electric service can best be served by only one supplier, and (2) where a customer or customers are housed in a single structure or constitute a single governmental, industrial or institutional operation, and the electric suppliers cannot agree on which shall furnish the electric service. The first circumstance is referred to as a “split site”, while the second is referred to as an “integrated operation”. These circumstances can both be present, as they appear to be in this instance. KREMC argues that Tom Farms falls into both the split site and integrated operation categories. NIPSCO disputes that Tom Farms can best be served by only one electricity supplier, and NIPSCO disputes that Tom Farms is an integrated industrial operation.

In one split site case involving a single tract of land with multiple apartment buildings, the Commission held that “[i]n previous cases involving I.C. 8-1-2.3-6-(3), we have found several factors relevant to our determination of public convenience and necessity . . . where our objective is limited to determining whether the apartment complex must be served by one utility rather than two, only the first two factors—adequate and reliable service and duplication of facilities—are directly relevant”. *Shelby County REMC*, Cause No. 41164 at 4 (Ind. Util. Regulatory Comm’n Aug. 5, 1998). Under the facts in that case, where both suppliers would have had to extend facilities, the Commission determined that both suppliers could provide adequate and reliable service, and there was no evidence that one utility already had “facilities in place to serve the complex which would be duplicated by the second utility.”

In another 1998 case involving both a split site *and* a single governmental operation (the Air Trade Center owned by the Wayne-Allen County Airport Authority), the Commission held that “[i]n a case filed under Section 6(3), we are to base our decision on the public convenience and necessity, which describes a broad array of factors we may in our discretion consider. . . . Before we proceed to determine where to move the boundary and which utility should be authorized to serve the Air Trade Center, however, we must first decide whether service to the site or operation in question should be supplied by only one provider.” *Indiana Michigan Power Co.*, Cause No. 41021 at 15 (Ind. Util. Regulatory Comm’n Aug. 26, 1998).

In a subsequent cause involving a horseracing park, including among other things, the track, grandstand, paddock, and stables, the Commission stated that although it was clear that the property was a single tract of land, “PSI and RushShelby disagree as to whether retail electric service to the entire tract of land can best be served by only one supplier. Therefore, the Commission must determine whether the Public Convenience and Necessity require that both suppliers provide electricity to the site or that the boundary line be revised so that the entire site lies within the service territory of either PSI or RushShelby.” *RushShelby Energy REMC*, Order in Cause No. 42154 at 3 (Ind. Util. Regulatory Comm’n Sep. 4, 2002). Thus, the Commission made the “best-served” determination by consideration of public convenience and necessity evidence.

While prior Commission orders give some guidance to the Commission relative to the issues in dispute in this proceeding, each disputed “territory case” presents unique facts and circumstances that must be considered and weighed by the Commission in reaching its ultimate determination as to the affected boundary line. In deciding these cases we have considered a number of public convenience and necessity factors, including but not limited to service

reliability, "plurality", duplication of facilities and customer preference, but have found that the relevant factors are not mutually exclusive, and that no single factor controls in these cases.

5. **The Parties' Evidence.**

a. **Petitioner KREMC's Case-in-Chief.**

1. **Steve Rhodes' Direct Testimony.** Petitioner's President and CEO, Steve Rhodes, sponsored Petitioner's Exhibits 1, 2 and 3, respectively, consisting of the Verified Petition filed in this Cause, Petitioner's Submission of Amended Exhibit A to its Petition and the Pre-filed Direct Testimony of Mr. Rhodes, all of which were admitted into evidence. By his prefiled direct testimony, Mr. Rhodes testified that he is responsible for directing and overseeing all of KREMC's operations, that he has worked in various positions in the electric cooperative industry for over 20 years, and has both a B.S. and an MBA degree. He testified that KREMC's Petition was filed at the request of Tom Farms so that an expansion of a Tom Farms agribusiness operation located in KREMC's service area, which expansion extends into NIPSCO's service area, can also be included in KREMC's service area. He testified that the specific Tom Farms agribusiness operation that caused the request for boundary line change consists of approximately 2,739 acres, 1,120 of which are owned by Tom Farms and the rest of which he understands are being leased by Tom Farms, all located adjacent to Old State Road 15 just north of Leesburg, Indiana. He testified that the existing boundary line between KREMC's territory and NIPSCO's territory was established on February 3, 1984 in Cause No. 36299-S 207(x); that when those service boundaries were established a residence and some irrigation facilities on the land that now comprises the current Tom Farms business operation were served with electricity; that electric service for more irrigation, office operations, etc., were added later; and that 32 acres recently acquired by Tom Farm for a new grain facility, which KREMC requests be included in its service area, were not served with electricity by any electricity supplier when the current boundary line was established or before they were acquired by Tom Farms.

Mr. Rhodes stated that KREMC now provides three-phase and single-phase service to the Tom Farms operation at this location through multiple meters and under KREMC's large power and residential tariffs. Mr. Rhodes said that three-phase service has been requested by Tom Farms for a new grain processing facility adjacent to other Tom Farms facilities at this location. An exhibit attached to Mr. Rhodes' pre-filed written testimony shows the location of the property now in NIPSCO's service area that KREMC is requesting be included in KREMC's service area is a 1,045 foot by 1,320 foot parcel containing 32 acres. He testified that the projected 3-year revenue from service to the grain processing facility would exceed the construction costs for interim service pending a final order, and that KREMC should be reimbursed by NIPSCO for those costs if the Commission does not order a change in the service area boundaries as requested by KREMC, because NIPSCO would need and could use all of those facilities.

Mr. Rhodes testified that service by KREMC to the entire Tom Farms property and business operation described by the Petition would not require any duplication of facilities, but that service by NIPSCO to the Tom Farms agribusiness operation expansion would require

duplication of facilities because NIPSCO does not presently have three-phase service adjacent to the grain processing facility. He testified that to serve the grain processing facility, NIPSCO would need to construct more than 2 miles of three-phase distribution service to a place where KREMC already has those facilities. This would be a waste of materials and resources in Mr. Rhodes' opinion, and would constitute inefficient provision of electric service. He also testified that service to the Tom Farms property as proposed by KREMC would not require any upgrades by KREMC in its transmission or distribution facilities.

Mr. Rhodes testified that he believed it would be beneficial for Tom Farms to have just one electricity supplier from the standpoint of billing, outage restoration, reliability and system maintenance. He testified that because the Tom Farms operation would be at the end of a NIPSCO radial line there would be more frequent voltage fluctuations that could negatively impact reliability of service.

Mr. Rhodes testified that he had discussed the provision of electricity to the Tom Farms property with NIPSCO representatives in an attempt to reach an agreement concerning a change in the boundary line, but that NIPSCO did not want to change the boundary line. He testified that he believed adverse consequences would result to both KREMC and to the Tom Farms property if the Commission does not change the boundary line to include the entire Tom Farms property and business operation within KREMC's service area, because Tom Farms would be then forced to deal with two electric companies serving just one business complex, leading to confusion with regard to billing issues and, more importantly, outage and maintenance situations.

Mr. Rhodes stated that the primary cause of outages in the service by KREMC to the Tom Farms property has been normal storm-related outages and outages by NIPSCO, which provides bulk delivery of power to the KREMC distribution substations. In general Tom Farms is very satisfied with the minimal level of KREMC outages experienced over the years. He testified that KREMC's headquarters is located on County Road 250 East near U.S. 30, approximately 9 miles from the affected Tom Farms property. He believes NIPSCO's closest repair and maintenance facilities are 15 miles away. Finally, he testified that KREMC has no expectation of requesting an additional boundary line change relative to the Tom Farms business operation.

On cross-examination by counsel for NIPSCO, Mr. Rhodes testified that KREMC has a lineman on call "24/7" and has a call center that operates around the clock to handle calls from customers. He testified that if a call came in to the call center after hours, the call center would notify the lineman on call and that lineman would respond to the situation. He testified that if KREMC served a three-phase motor that burned up, a determination of the responsibility for that occurrence as between KREMC or the customer would depend on the circumstances. For example, in case of an act of God, the utility would not be responsible, but if an outage or loss of phase resulted from a lack of maintenance or negligence by KREMC, then KREMC would be responsible. Mr. Rhodes stated that he would recommend that three-phase customers install surge protectors and loss of phase protection.

Mr. Rhodes testified that he believed that the cost to install poles on a conductor for three-phase service on a per-mile basis is about \$40,000 per mile, but the cost varies among

companies and situations. He testified that even if NIPSCO believed it cost about \$150,000 per mile to install poles and three-phase service, and to the extent NIPSCO already had poles in place that it could use to supply three-phase service, it might still cost more than \$40,000 per mile for NIPSCO to extend service. That would seem to be a waste of resources, especially given the fact that KREMC already has three-phase service running directly in front of the Tom Farms property.

Mr. Rhodes testified that although he does not have specific training in the design of electric systems and is not familiar with all of NIPSCO's system needs, he makes decisions concerning efficient provision of electric service every day and oversees those decisions. He believed that in general, services at the end of a long radial line are subject to more voltage fluctuations and service issues. He testified that he believed a "voltage fluctuation" could go either way, but that a voltage drop is defined as when voltage drops below the normal. He acknowledged that the frequency of voltage fluctuations is felt by all customers on a circuit regardless of the location of that customer on the circuit. He testified that KREMC would expend whatever funds are necessary to address the voltage fluctuation demands of its customers and that KREMC's members would ultimately bear those costs. Mr. Rhodes acknowledged that there is always someone at the end of every circuit, that if NIPSCO were to serve the grain dryer it will be the end of the circuit, and that the customer at the end of a radial line should typically have greater concerns than anyone on that circuit. He stated that KREMC had not performed any studies to determine what impact there would be on the customer at the end of any radial line if KREMC serves the new grain dryer.

2. Kip Tom's Direct Testimony. Kip Tom, the managing and majority ownership member of Tom Farms, sponsored his pre-filed written testimony, offered and admitted into evidence as Petitioner's Exhibit 4. Mr. Tom explained why Tom Farms prefers that KREMC supply power to the entire agribusiness operation affected by the requested change adjacent to Old State Road 15 north of Leesburg, Indiana. He described Exhibit KET-1 to his testimony as a map showing the agribusiness operation located on contiguous parcels of land owned and leased by Tom Farms, which together constitute a single tract of land for an agribusiness operation. He testified that his Exhibit KET-1 also shows the general location and nature of electricity service provided to this operation, as well as the area where the new grain facility is being added to this agribusiness operation. He testified that not all of the Tom Farms agribusiness operations are shown on Exhibit KET-1, and that his company owns, leases and farms other land scattered through Kosciusko, Elkhart, Noble, Whitley and Huntington Counties. He said that the Tom Farms agribusiness operation is a family-owned business that has been engaged in farming operations in several northern Indiana counties since 1836. The family's first farming operation was located at 8542 North Harper Road near Leesburg, Indiana, and Tom Farms, LLC was organized in 1992. He testified that today Tom Farms is engaged in farming operations on over 12,000 acres in several northern Indiana counties, with 8,248 located in Kosciusko County, including the 2,739-acre agribusiness operation directly affected by the requested boundary line change. He stated that all of the leases for this particular operation are long-term leases that have been in place for between 25 to 64 years. Tom Farms expects to continue leasing and operating all of that leased property for the foreseeable future. He testified that the 32-acre parcel acquired for the new grain facility is included within the 1,120 acres of owned land, and all of the land integral to this operation is contiguous and together constitutes a

single property for purposes of this operation. He testified that Tom Farms' agribusiness production activities at this location include irrigated corn production, irrigated soybean production, irrigated seed and corn production, tomato production and grain conditioning and storage, in addition to the Tom Farms business headquarters and residence facilities for his parents and employees.

Mr. Tom testified that the new grain processing facilities will be a much-needed addition to this agribusiness operation that would allow Tom Farms to reduce its logistics cost of grain movement, improve its grain conditioning efficiencies and add much-needed storage capabilities, and that it would complement the entire Tom Farms business. He testified that the grain facility addition to the affected business operation was needed because in the past Tom Farms has only leased and rented commercial and on-farm storage. In addition, Tom Farms was in need of this new grain processing, conditioning and storage plant, and the more efficient grain conditioning will help it remain competitive given higher current energy costs. He also testified that the grain facility was needed to lower the logistics costs and movement of grain from field production to this site of conditioning and storage. He testified that the new grain storage facility would be integrated with the other leased and rented existing grain storage facilities, but would add more storage at this particular site and its integrated operations, and enable Tom Farms to phase out older, inefficient infrastructure at other locations. Mr. Tom testified that Exhibit KET-1 shows all of the points at which electricity is used by this particular operation. He testified that one of the properties leased for this operation receives electricity from NIPSCO, but that the owner pays the bills for electric service for both the residence and irrigation, and that the cost of the irrigation electricity is included in the rent paid by Tom Farms.

Mr. Tom testified that Tom Farms prefers that its primary supplier of electricity, KREMC, serve the new grain processing component of the Tom Farms agribusiness. He testified that Tom Farms has had a long business relationship with KREMC, which services all its other electric service needs at this location, including irrigation, livestock operations, maintenance facilities and the associated residence and business office facilities. He testified that KREMC provides excellent service to the Tom Farms operations and that Tom Farms has fewer power interruptions with KREMC. He testified that if served by NIPSCO, the grain processing facility would be at the end of the supply line and could experience surges or low voltage issues. While KREMC already has three-phase service facilities to the location, NIPSCO's nearest available three-phase 480-volt power supply is several miles away. He testified that Tom Farms' experience with the service it has received from KREMC has been excellent, and that with the more than 65 irrigation systems it has and the immediate seasonal need that is often required for its Tom Farms' production, KREMC has always performed expedited service 24/7.

Mr. Tom testified that he discussed his electric service needs for the new grain processing expansion of the affected Tom Farms business operation with NIPSCO at great length beginning early February of 2008, and that those discussions confirmed Tom Farms' belief that its entire operation at this location can best be served by KREMC. He testified that receiving the rest of Tom Farms' electricity services for the business operation from KREMC, while receiving service from NIPSCO to the new grain processing component of the business operation, was not acceptable to Tom Farms because the new grain plant is an expansion of the existing

agribusiness operation. He testified that the location of the new grain facilities is less than 500 feet outside the present KREMC service area, and the 32-acre parcel on which these facilities are located constitutes little more than 1% of the total land comprising this agribusiness operation; that to have just this very small part of the Tom Farms integrated agribusiness at this location served by an electricity supplier different from the one that provides the rest of the operation's electricity, and which he believes could not serve it as adequately or efficiently, made no sense to him.

On cross-examination by NIPSCO's counsel, Mr. Tom testified, relative to his education and experience, that he has been involved in short-course education programs at Purdue University and attends executive MBA program courses at Harvard every year. He testified that Tom Farms operates about 70 irrigation systems, that he has participated in schools conducted by various vendors of that equipment, and that his experience relative to electric circuits and systems is more practical than theoretical. He explained what functions the grain dryer performs and how its electric motors keep air moving through the grain and move the grain via conveyors. He testified that the fall harvest season is when most of the conditioning occurs, but grain may come into the facility at other times as well, and that the conditioning of the grain at the grain processing facility is done with fans that basically draw outside air in to bring the grain to the same temperature. He testified that if there were no grain drying facilities available corn, for example, could rot. He testified that there is insufficient storage in Indiana to hold the entire state's crop and the grain processing facility is one way to avoid being economically disadvantaged at times of grain demand and supply imbalances. He testified that Tom Farms' reasoning for building the grain processing facility is that before it had that facility, Tom Farms had rented bins from various landlords all across the area it farms; that all of these bins were old, inefficient dryers, and because of logistical reasons and high fuel costs, Tom Farms decided to build a facility close to the center of its operations. He testified that other grain storage facilities were located anywhere from 15 to 28 miles away. He testified that Tom Farms' investment in the new grain processing facility is approximately \$2.6 million. He testified Tom Farms would not likely sell the grain facility to an unrelated entity because the grain dryer is strategic to Tom Farms' long-term plans. He testified that Tom Farms uses computers and other computer equipment as part of its business operations and that surge protectors are used for that equipment.

Mr. Tom testified that Tom Farms very recently has acquired additional parcels of land north and south of the grain plant, and also to the northwest of the grain plant, on which Tom Farms will be installing KREMC-served irrigation pivots.

In connection with cross-examination questions from NIPSCO's counsel, Mr. Tom was asked to read a partial definition of "agriculture" and a partial definition of "industry" from the 1981 copyright version of Webster's New Collegiate Dictionary, which definitions were offered and admitted into evidence by NIPSCO's counsel as Respondent's Exhibit CX-1. Mr. Tom testified that the contiguous land identified on Exhibit KET-1 to his testimony is an industrial operation because agriculture is an industry, and Tom Farms' part of that industry is production of food, fiber and energy; and that Tom Farms deploys manufacturing processes.

Mr. Tom testified that Tom Farms engages in farming operations in locations other than the 2,739 contiguous acres at issue in the Petition; and that those operations are part of Tom

Farms' total company operations; but that the operation depicted on KET-1 is the core where all of Tom Farms' manufacturing takes place as far as adding value to its grain and products. In response to a question regarding the point at which the Tom Farms farming operations became an industrial operation, Mr. Tom testified that today agriculture is not a lifestyle as many people want to embrace it, but is a manufacturing business, and that is how Tom Farms looks at it. He testified that when Tom Farms took its business from a loose entity structure to something more organized, and deployed standard operating procedures and manufacturing principles, that is when they considered it industrial manufacturing. He testified that property taxes for the contiguous land are assessed at the agricultural rate and that Tom Farms files federal taxes using Schedule F for farmers.

Mr. Tom acknowledged that Tom Farms receives electric service from several electric providers throughout its operations and acknowledged that in paragraph 5 of Exhibit C to KREMC's Petition (Mr. Tom's affidavit in support of emergency/interim service) the first sentence indicates that all of the electric service to the agribusiness operation at issue is connected to and served by just one meter, but that there are in fact multiple meters.

Mr. Tom testified that in February 2008, Tom Farms requested electric service from NIPSCO by August 15, and provided information concerning the load requirements of the grain dryer within weeks. He testified that Tom Farms contacted NIPSCO many times because NIPSCO never returned phone calls or other correspondence. In response to questions from NIPSCO's counsel concerning Mr. Tom's direct testimony that Tom Farms could experience surges or low voltage issues with service from NIPSCO, Mr. Tom testified that past experience was the basis for that statement. He testified that Tom Farms does not use surge protectors for its irrigation equipment, but does use loss of phase protection in some cases where they have had problems, such as where NIPSCO has provided three-phase service to an electrical irrigation motor. He testified that Tom Farms does not have loss of phase protection on the systems served by other electrical providers, because Tom Farms has never had a problem with any of them.

Finally, with respect to NIPSCO's cross-examination, Mr. Tom accepted NIPSCO's counsel's estimated electric service cost calculations that Tom Farms' bills from KREMC for service not including the grain facility would come to roughly \$45,000 a year and that expected electric annual service charges from the grain dryer would be approximately \$30,000, although those estimates might be a little high and the costs would vary from year to year.

On re-direct examination by KREMC's counsel, Mr. Tom drew on a photocopy of Exhibit KET-1 (Mr. Tom's pre-filed direct testimony) the additional parcels of land that Tom Farms had most recently acquired and added to its agribusiness operation at issue. That copy was marked as Petitioner's Re-Direct Examination Exhibit 1. Petitioner's Re-Direct examination shows that all of those parcels are contiguous to the 2,739 acre agribusiness operation at issue. Mr. Tom identified on Petitioner's Re-Direct Exhibit 1 the location of the meters that would serve the irrigation use on those tracts. Petitioner's Re-Direct Exhibit 1 was then offered and admitted into evidence. In referencing the property depicted on Exhibit KET-1 to Mr. Tom's pre-filed direct testimony, Mr. Tom testified that the contiguous area depicted on Exhibit KET-1 is the single agribusiness operation that he referred to throughout his testimony.

In response to questions from the bench following Mr. Tom's re-direct, Mr. Tom testified that Tom Farms is a growing family business and that given the opportunity it might plan further expansion, but that he could not anticipate any likelihood that the Commission would be asked to approve another boundary line modification as a result of any such expansion. He also testified that another piece of land that Tom Farms had been contemplating as a site for the grain processing facility would have been within KREMC's service area.

b. Respondent NIPSCO's Case-in-Chief.

1. Donald L. Babcock's Testimony. The pre-filed testimony of Donald L. Babcock, NIPSCO's Director of Economic Development, was received into the record as Respondent's Exhibit 1. Mr. Babcock testified that he graduated from Purdue-Calumet with a Bachelor's Degree in Mechanical Engineering, and from the University of Chicago with a Master's Degree in Business Administration, and has been in the energy business over 30 years holding numerous jobs with NIPSCO. He testified that the Tom Farms grain processing facility is currently located within NIPSCO's electric service territory and that NIPSCO provides electric service to commercial and residential customers in the immediate area, including a "limited type" of three-phase electric service to an adjacent commercial customer. He testified that NIPSCO provides gas service to the grain processing facility and estimated that the nearest Tom Farms facility to the grain process facility is an irrigation pump located approximately a half-mile away; the area between the grain processing facility and the irrigation pump consists solely of open farmland. He opined that the grain processing facility is physically and functionally independent from other Tom Farms facilities because of its distance from other Tom Farms facilities and because, in his opinion, it is not part of a physically integrated process. He stated that there is no pre-existing silo or production process that requires the grain processing plant to be placed where it has been placed, and opined that the facility could instead be located anywhere in proximity to Tom Farms' fields and still perform its function. He also stated his opinion that the grain processing facility is functionally independent because if its operations were discontinued, the rest of Tom Farms would continue to operate.

Mr. Babcock testified that he does not believe electric service to the contiguous area of the affected Tom Farms business operation as described by Petitioner's witness Kim Tom can best be supplied by only one electricity supplier, because in his opinion the grain processing facility is physically and functionally independent from the rest of the Tom Farms contiguous operations. He testified that the grain processing facility will already be receiving a bill from NIPSCO because NIPSCO is providing gas service to the facility. In addition, Tom Farms has operations in 5 Indiana counties and receives electric service from 5 different utilities, including NIPSCO in both Kosciusko and Elkhart Counties. This leads him to assume that Tom Farms has adequate administrative processes in place to handle its bill payment obligations, including any additional gas and electric service from NIPSCO.

Mr. Babcock testified that NIPSCO is able to provide adequate and reliable service to the grain processing facility, and that NIPSCO's customer service records do not reveal any record of service complaints from Tom Farms concerning the gas or electric service from NIPSCO. He testified that NIPSCO is able to respond in a timely manner to service outages in Kosciusko County from NIPSCO's Goshen operating headquarters. He stated that during daily operations,

two journeyman linemen are scheduled to cover the workload and an additional lineman is scheduled for the service truck for service restoration in the event of an outage. He said that the two journeyman linemen report to a location in Warsaw, Indiana at which equipment and material are stored for normal and emergency work. He said that if additional linemen are needed they report to the Goshen operations headquarters, from which they proceed to various jobsites and customer facilities. He testified that after-hours support is provided by one or both of the two linemen on stand-by, one of whom covers most of Kosciusko County, and the other lineman covers an area in Elkhart County, each of whom is dispatched out of a separate NIPSCO dispatching center, and when called they leave directly from their homes in fully equipped bucket trucks. He testified that due to their training and equipment, these linemen can routinely handle the vast majority of trouble calls by themselves, and that upon arrival at a trouble call site the lineman's immediate responsibility is to take whatever action necessary to make the area safe. He testified that NIPSCO's linemen generally have over 20 years of experience and that NIPSCO routinely receives compliments on its service levels.

Mr. Babcock testified that he did not think the fact that NIPSCO will need to install more than 2 miles of three-phase distribution service in order to serve the grain processing facility should be determinative of the outcome of this proceeding, because he believed issues other than duplication of service affecting public convenience and necessity may not be considered absent a demonstration by the petitioning utility that electric service to the entire property at issue is best provided by just one electricity supplier. He also opined that since the service area boundary between KREMC and NIPSCO was established in 1984 after KREMC's three-phase service line adjacent to the grain processing facility was constructed, proximity of the affected property to KREMC's three-phase line had already been taken into account in connection with the establishment of that boundary line, and therefore NIPSCO should have the sole right to furnish retail electric service to customers pursuant to those boundaries.

Mr. Babcock also testified that extension of three-phase service by NIPSCO to the grain processing facility could be beneficial to other customers, for example, the business next door to the grain processing facility that is presently receiving three-phase service through "an open delta configuration of the two-phase primary service that is presently available" from NIPSCO. He stated that if NIPSCO extends three-phase service to the grain processing facility, NIPSCO would also upgrade the two-phase primary service to three-phase service at no charge to the other customer. That would improve power quality for that customer and possibly extend the life of that customer's equipment. He testified that if NIPSCO were to extend three-phase service to serve the grain processing facility, NIPSCO would install larger wire than required by the grain processing facility at no cost to Tom Farms, which should improve NIPSCO's ability to serve additional customers and handle load growth. Mr. Babcock also opined that the different costs for extension and provision of service by the two utilities (\$89,536 for NIPSCO and \$20,201 for KREMC) should be viewed in the context of the expected revenues, which he estimated to be roughly \$30,000 per year. The new load from the grain processing facility would be a good investment for either utility.

Lastly with regard to NIPSCO's costs of extension of service to provide three-phase service to the grain processing facility, Mr. Babcock opined that, "depending on conditions", the 30-month gross revenue calculation required by the Commission's rules concerning extension of

service could be satisfied, and in his opinion if both NIPSCO and KREMC were able to extend service within the calculation required by the Commission's service extension rule then the duplication of facilities resulting from NIPSCO extending three-phase service to the grain processing facility where KREMC already has three-phase service in place should not be an issue. However, he also testified that while it is NIPSCO's practice to require new customers to execute a guaranteed revenue contract, based on information provided by Tom Farms, NIPSCO estimated that the 30-month gross revenues it would realize would be close to \$15,000 less than its estimated cost of extending three-phase service to the grain facility. He testified that NIPSCO was willing to make an accommodation to Tom Farms by extending the time frame for generating revenues equivalent to NIPSCO's estimated cost of construction from 30 to 60 months, subject to approval from the Commission. He testified that this should reduce any concerns Tom Farms may have about its ability to guarantee the required revenues.

Mr. Babcock also proposed that KREMC be permitted to continue serving the grain processing facility it now serves on an interim basis, pending final order in this Cause, until NIPSCO extends three-phase service to that location and for a minimum of 2 years from the initial date of electric service to the grain processing facility. Finally, Mr. Babcock testified that NIPSCO requests the Commission deny KREMC's requested change in service area boundaries and opined that the change of assigned service areas should involve more than the current preference of a customer with physically and functionally independent operations. Mr. Babcock asserted that this case presents great concern to NIPSCO because it suggests that large farms may be able to force changes in electric service area boundaries based on an argument that an agribusiness with widespread operations is equivalent to a single industrial operation under applicable Indiana statutes, and that a large farm must be served by only one electricity supplier.

On cross-examination by KREMC's counsel, Mr. Babcock testified that he has never managed or operated an agribusiness of any kind. He was asked whether the discontinuation of one assembly line in a plant that nonetheless continued to operate would mean that entire factory or assembly line did not constitute a single business operation. Mr. Babcock testified that he believed that some components of an assembly line could be outsourced to someone else.

2. Charles W. Turman's Testimony. Charles W. Turman's direct pre-filed testimony was received into the record as Respondent's Exhibit 2. Mr. Turman testified that he is an electrical systems planning engineer for NIPSCO and that he graduated from Purdue University with a Bachelor's Degree in Electrical Engineering and has worked for NIPSCO for the past 30 years as an engineer in various departments. He testified that he is a part of a team whose goal is to ensure that NIPSCO's electric distribution system is available, reliable and economical for its customers. His primary duties involve the development of technical plans and strategies for system expansion and upgrade. He testified that NIPSCO provides electricity in the immediate vicinity of the Tom Farms grain processing facility to commercial and residential customers, many of which are located along Old State Road 15. He testified that NIPSCO has a two-phase 12kV line running parallel to Old State Road 15, mounted on the same poles used by NIPSCO for a 69kV transmission line. He testified that NIPSCO provides three-phase service to a commercial customer located next to the Tom Farms grain processing facility from its two-phase line by connecting two transformers in an open delta configuration, but that this transformer configuration cannot be used for Tom Farms' grain processing facility. Mr. Turman

testified that the open delta transformer configuration that now supplies this customer is suitable only for small three-phase loads such as single motors and irrigation pumps, and that in order to provide three-phase service to the Tom Farms grain processing facility, NIPSCO would need to extend a three-phase circuit approximately 2 miles from a point in the town of Leesburg. Exhibit CWT-1 to Mr. Turman's written testimony depicted how NIPSCO would make that extension. He testified that NIPSCO would provide a dual-source radial feed to the grain processing facility from its Monoquet substation, which has two 69kV sources and an automatic 69kV changeover. He testified that this line could be manually switched to NIPSCO's Oswego substation if the Monoquet substation should ever fail. He also testified that NIPSCO proposes using a wire of sufficient size that it would have the future option of establishing a three-phase tie between its Monoquet and Milford substations to give NIPSCO improved flexibility and reliability. He testified that NIPSCO prefers that its Monoquet substation serve the grain processing facility, with the Oswego substation as a back-up, because of the present load-serving capabilities of each of these substations. He testified that, in the event of an interruption of the circuit NIPSCO preferred as a source, its Monoquet substation could automatically switch to an alternate source in 20 seconds. In the event of a transformer failure at the Monoquet substation, the circuit serving the Tom Farms facility could be manually switched to NIPSCO's Oswego substation which is also equipped with an automatic primary changeover capability.

Mr. Turman testified that he disagreed with KREMC witness Rhodes' testimony to the effect that NIPSCO's service to the grain processing facility may be subject to more frequent voltage fluctuations that could negatively impact the reliability of NIPSCO's service. He believed NIPSCO's service to Tom Farms at the end of a radial line would not necessarily subject Tom Farms to more frequent voltage fluctuations. He said that Tom Farms is more likely to be the cause of voltage fluctuations when starting its large motors, and that was one of the reasons he decided that Tom Farms would be best served by NIPSCO's Monoquet substation from the south rather than NIPSCO's Milford substation from the north. He said that the circuits that originate at the Monoquet and Oswego substations are constructed with a size of wire that would reduce the effect of voltage fluctuations caused by Tom Farms when starting its large motors, and that NIPSCO's 12kV circuit from Monoquet is built under NIPSCO's overhead 69kV circuit. He testified this would have a shielding effect for lightning strikes and help to protect the 12kV distribution circuit below, and that the poles supporting the 69 kV circuits are taller, thicker and stronger than typical distribution poles. He testified that NIPSCO's use of a radial line to provide three-phase service to the grain processing facility would not mean that NIPSCO's electric service would be less reliable than the service provided by KREMC, because reliability is a function of both the 12kV circuits and 69kV circuits that provide electric power, which are equally important when determining reliability. He acknowledged that with regard to 12kV service and because of its service configuration, KREMC may in some circumstances be able to restore 12kV outages more quickly than NIPSCO, but with regard to 69kV service that stands behind the 12kV service NIPSCO would have an advantage because NIPSCO's radial line can be sourced from two different 69kV circuits that can be automatically switched, while outages on KREMC's 69kV circuits would require KREMC to employ manual switching. He opined that because KREMC's primary 69kV service is supplied by the same source of power as NIPSCO's primary 69kV service, NIPSCO would always be able to restore 69kV outages more quickly than KREMC.

Mr. Turman testified that he has recommended to NIPSCO that it install a heavier size wire than that upon which NIPSCO's cost estimate for extension of service to the Tom Farms grain processing facility was based, so that NIPSCO could build up the infrastructure in this area and provide additional capacity for future growth and reliability. He indicated that Tom Farms would not be required to pay for those infrastructure upgrades. He testified that this upgrade would also allow NIPSCO to provide three-phase service to a commercial customer presently served by the open delta transformer configuration, without any charge to that NIPSCO customer for the upgrade.

On cross-examination, Mr. Turman acknowledged that he had never operated or managed an agribusiness. With respect to his direct testimony to the effect that, if NIPSCO were to extend three-phase service to provide service to the Tom Farms grain processing facility it would also be able to provide "true" three-phase service to NIPSCO's nearby commercial customer presently served by the open delta transformer configuration, he said that he was not suggesting that NIPSCO's current customer was not being adequately served by NIPSCO.

Following cross-examination of Mr. Turman, the Presiding Administrative Law Judge asked him if there would be differences in voltage response based on a substation that is closer versus one that is farther away from the load, and Mr. Turman acknowledged there would be. In response to a follow-up question as to whether there is a specific length or distance where that difference would appear or whether difference would simply increase based on the length of the line, Mr. Turman stated that there would be a difference based on the length of the line; that the difference would also be affected by the design and construction of the line, what size wire is used and how much load is on the line, but that the voltage fluctuation would be directly proportional to the distance, all other things being equal.

3. Ryan T. Carr's Testimony. Ryan T. Carr's pre-filed written testimony was received into the record as Respondent's Exhibit 3. Mr. Carr testified that he graduated from Purdue University with a degree in electrical and computer engineering in 2005 and has subsequently been employed by NIPSCO as a field engineer with responsibility for planning and maintaining NIPSCO's Goshen gas system. He testified that his main responsibility as a field engineer is to evaluate new customers' requirements for gas and electric service, compare them to NIPSCO's existing facilities, and engineer a solution to make those two services meet, which typically involves extending a primary line and setting a transformer for electric service, or installing new mains off existing facilities and running a service for gas. He testified that he was first contacted by Tom Farms about service to the proposed grain processing facility by Kris Tom on January 22, 2008, at which time Kris Tom asked whether NIPSCO could provide gas service for a new facility to be potentially built on North Harper Road south of its intersection with County Road 900 North. Mr. Carr testified that on January 23, he advised Kris Tom that he could not tell Mr. Tom definitively if NIPSCO could provide that gas service because NIPSCO would have to extend a main along North Harper Road, and that Mr. Carr needed to hear from NIPSCO's gas system planner to determine whether NIPSCO could handle the expected load at that location. Mr. Carr stated that Kris Tom had advised him that the grain dryer would most likely run from September until November each year. Mr. Carr testified that communications with Kris Tom continued regularly with updates to Mr. Tom on the status of NIPSCO's gas system modeling and updates from Mr. Tom concerning a change of

location of the facility to its current location on County Road 900 North, and it was eventually determined that NIPSCO could serve the gas load at the new location. Mr. Carr testified that he worked closely with Tom Farms and that NIPSCO completed the gas service installation on October 20, 2008.

With regard to electric service, Mr. Carr testified that at some point before April 3, 2008 Tom Farms realized that a new electric load was not in KREMC's electric territory and furnished electric load information to Mr. Carr. On April 15, he notified Kris Tom that NIPSCO did not have three-phase power nearby. He testified this caused "panic", because Tom Farms was expecting to have power in late June. Mr. Carr testified that he then began work on an estimate to bring three-phase power to the current location of the grain processing facility, and that a complete estimate and sample Guaranteed Revenue Contract were sent to Tom Farms on May 9. At that time he had a discussion with Kris Tom, in which Mr. Carr summarized how the Guaranteed Revenue Contract, an example of which was attached to Mr. Carr's testimony, would work. He said that the contract required Tom Farms to guarantee \$89,536.19 of revenue over the course of 30 months. Mr. Carr testified that thereafter he did not hear from Tom Farms again about extending three-phase electric service. He testified it was his understanding that the cost of the extension was an important consideration to Tom Farms. Mr. Carr testified that if Tom Farms had decided to execute the Guaranteed Revenue Contract, NIPSCO's scheduler had indicated that would take 6 – 8 weeks to extend service.

Mr. Carr testified that the availability of three-phase power could spark additional requests for service and that he understood that a business located next door to the grain processing facility could benefit from the use of three-phase power. He testified that if NIPSCO ultimately prevails in this proceeding, NIPSCO would make use of the equipment installed by KREMC to serve the grain facility, and that NIPSCO has reviewed the list of equipment installed by KREMC to serve the grain processing facility and is willing to purchase all of that equipment from KREMC at KREMC's cost for the installation.

On cross-examination, Mr. Carr testified that the customer located near the grain processing facility referenced by Mr. Carr in his testimony has not requested service from NIPSCO other than what it is presently receiving, and that NIPSCO's service to that customer is adequate, but that Mr. Carr believed it is possible that it could be better and more reliable. However, he also testified that the present service is now reliable, that NIPSCO has not had any problems providing the service the customer wants, and that the customer has not asked for anything more than it now has.

c. Petitioner KREMC's Rebuttal Testimony.

1. Rebuttal Testimony of Steve Rhodes. Mr. Rhodes' pre-filed rebuttal testimony was received into the record as Petitioner's Exhibit 5. Mr. Rhodes testified that he did not agree with all of NIPSCO's direct testimony, but by his rebuttal testimony would address only certain of that testimony with which he particularly disagreed. With regard to NIPSCO's witness Babcock's assertion that duplication of facilities should not be considered when determining whether the Tom Farms business operation (as depicted on Amended Exhibit A to KREMC's Petition) could best be served by one electricity supplier, Mr. Rhodes said he

believed the Commission can and should consider whether the additional facilities NIPSCO acknowledges it would need to construct would duplicate facilities already available and in use in order to serve the Tom Farms agribusiness. He testified that after consulting with Tom Farms he came to the same conclusion Tom Farms had: KREMC service to the entire Tom Farms agribusiness at this location, including the grain processing facility, could avoid duplication of services and lessen the number of service problems that would otherwise occur because of the location of the grain processing facility at the end of the NIPSCO radial line. He testified that it could also lessen confusion in responding to service calls. He testified that for all these and the other reasons presented in other testimony in support of Petitioner, he believed the public interest could best be served by the requested change in assigned service area.

On cross-examination and in response to a question as to whether KREMC would be confused in responding to service calls relating to service to the grain dryer if NIPSCO were to serve it, Mr. Rhodes testified that he believed there could be greater confusion on the part of the customer, NIPSCO or KREMC. He testified that one customer being served by two entities leaves the door open for confusion, and that this confusion could extend to any one of the three parties involved, Tom Farms, NIPSCO or KREMC.

2. Rebuttal Testimony of Bruce R. Goslee. The pre-filed written rebuttal testimony of Bruce R. Goslee, KREMC's Manager of Engineering and Operations, was received into the record as Petitioner's Exhibit 6. He testified that he has been in the energy business for almost 35 years and worked for Public Service of Indiana as a lineman and foreman before joining KREMC in 1985, as a lineman, then a lead lineman, and for the last 6½ years as Manager of Engineering and Operations. He testified that he has an Associate's Degree in Business Administration from Indiana Wesleyan University. He testified that his primary responsibilities are to oversee and manage 27 engineering and operations personnel and all of their associated duties, and all work functions related to KREMC's Engineering and Operations Department. He also oversees and manages all outside contractors that perform work for KREMC.

Mr. Goslee testified, regarding NIPSCO's witness Turman's assertion that NIPSCO's service to Tom Farms at the end of a radial line would not necessarily subject to Tom Farms to more frequent voltage fluctuations, that NIPSCO consumers and Tom Farms could both experience a voltage fluctuation when Tom Farms starts large motors at its grain processing facility, and that this could affect NIPSCO customers from Tom Farms back toward NIPSCO's Monoquet substation. He testified that based on wire size and distance, the percent in voltage fluctuation from starting a 125HP motor could be greater when served by NIPSCO, and that if Tom Farms started more than one large motor the percentage dip in voltage would be greater, thus causing a larger voltage fluctuation. With respect to outage restoration, he testified that KREMC should be able to restore service to Tom Farms in a more timely manner, just from the standpoint of having less line to patrol during an outage. He testified that while NIPSCO would have approximately 5½ miles of line to patrol to determine the cause of an outage, KREMC would have only 2 miles of lines to patrol and that this, along with NIPSCO's plan to serve Tom Farms from a radial feed, compared to KREMC's feed approximately 2 miles from its Maple Leaf substation, enables KREMC to provide better restoration of service for Tom Farms than NIPSCO. He testified that while it is not meant to be critical of NIPSCO, based upon response

time and voltage fluctuations it was his professional opinion that KREMC would be better able to provide reliable and dependable service to Tom Farms.

On cross-examination, Mr. Goslee testified that KREMC does not advise customers to install surge protection and loss of phase protection, but that it may be prudent to do so. Mr. Goslee testified that KREMC's service would be dual-sourced to the grain dryer and that the alternative source is approximately 5 miles away. He testified that for approximately half this distance the wire size is 336 ACSR and for the other half it is 1/0 ACSR, and that while the 1/0 ACSR is a smaller diameter wire which does not have as much carrying capacity, the service quality to Tom Farms would in his opinion be identical or nearly identical to the service quality from the primary source. He testified that no in-house calculations have been performed with respect to the capabilities of the alternate source relative to the primary source, but that the studies by KREMC's outside consultant indicate that the alternative source would be sufficient. He testified that he has not determined the magnitude of the voltage drop that would be experienced in NIPSCO's circuit when compared to the two REMC circuits. He said that he had not seen NIPSCO's calculations relative to the difference in magnitude of voltage drop that would be experienced on NIPSCO's circuit as compared to the two KREMC circuits, but would have no reason to disagree with those calculations, and that NIPSCO's alternate source, if NIPSCO were to serve the grain processing facility, would be sufficient. He acknowledged that everyone on a circuit experiences voltage fluctuation, but that the magnitude of the fluctuation can vary among customers. He testified that he had no reason to suggest that NIPSCO would not be in compliance with standards set by the Commission and other standards for electric service. He acknowledged that it is prudent practice for any facility that uses large motors to design their systems to prevent simultaneous hard starts, and that in his discussions with Tom Farms he was advised that Tom Farms will not be starting more than one large motor at a time.

With respect to NIPSCO having automatic switches to change the source of power from one source or another whereas KREMC would need to manually switch sources on the 12kV side, Mr. Goslee testified that KREMC would never energize a line automatically without patrolling if it had been knocked out or lost power. Mr. Goslee testified that he did not know whether the stronger distribution poles would be less likely to suffer an outage than a smaller, thinner pole, and that it would have a lot to do with maintenance programs and the age of the pole. He acknowledged that if a 12kV distribution circuit was shielded by a 69kV circuit from lightning strikes, that shielding would improve reliability relative to lightning strikes. In response to a question concerning the basis of Mr. Goslee's professional opinion that KREMC would be able to provide more reliable and dependable service to Tom Farms, Mr. Goslee stated he believed KREMC is more reliable because it is closer to Tom Farms, is local, and it knows the Tom Farms facilities. He testified that NIPSCO covers a lot more territory and is much bigger, but he believes KREMC does an excellent job on reliability to its members.

Following completion of cross-examination by Mr. Goslee, the Presiding Administrative Law Judge asked Mr. Goslee if he had independent knowledge of NIPSCO's voltage drop calculations. Mr. Goslee testified that he did not have independent knowledge of those calculations. With respect to the alternate line that KREMC has for serving the grain drying facility and under what condition KREMC would find itself using that source, he testified that it would be used if KREMC lost its Maple Leaf substation, but that does not occur frequently. He

testified that if KREMC lost its Maple Leaf substation it would be due to a loss of service to the substation from NIPSCO or possibly a problem with KREMC's 12kV circuit.

3. Rebuttal Testimony of Kip Tom. Kip Tom's pre-filed rebuttal testimony was received into the record as Petitioner's Exhibit 7. In response to NIPSCO witness Babcock's estimation that the nearest Tom Farms facility to the new grain processing facility was an irrigation pump located a half-mile away, Mr. Tom testified that this irrigation facility extends to within 300 feet of the new grain processing facility, and is used to irrigate a portion of the field located around the grain plant. With respect to Mr. Babcock's opinion stated in his prefiled written testimony that the Tom Farms grain processing facility is "physically and functionally independent" from other Tom Farms facilities, Mr. Tom said while he does not hold himself out as an expert in the generation and distribution of electricity, he does believe he knows more about the Tom Farms agribusiness operations than does Mr. Babcock. He acknowledged that while the total Tom Farms business operations are widespread and include separate business operations at several locations, just as many other large businesses do, the business operation affected by this case is just one of many Tom Farms "factory floors". He testified that there are different uses of electricity within this operation, for example, irrigation motors, office operations, etc., but that the Tom Farms business location and operation at issue constitutes an integrated process and single agribusiness operation just as a large automobile assembly plant with assembly lines, office facilities, storage facilities, parking lots, etc., is a single business operation.

Mr. Tom also disagreed with Mr. Babcock's statement that the grain processing facility could "be located anywhere in proximity to Tom Farms fields and still perform its function". He testified that the new grain processing facility for the operation at issue in this proceeding was located to be integrated with all other uses of electricity for that business operation, and that if the grain processing facility would have been placed any further to the east, for example, it would have conflicted with the irrigation equipment used for this operation.

With respect to NIPSCO witness Babcock's statement that a search of NIPSCO's customer records indicated that there is no record of any service complaint from Tom Farms regarding either gas or electric service for at least the last three years, Mr. Tom testified that those records do not appear to be accurate. He testified that Tom Farms has called NIPSCO multiple times to complain about single phasing or surges in service, and that as a result of these service problems Tom Farms has had to rebuild electric motors. He said that each time NIPSCO claims the problem is not its fault and he does not know why NIPSCO's records do not reflect these instances, but he personally knows they did occur. He testified that while Tom Farms was not particularly happy with NIPSCO's service, it has been very satisfied with KREMC's service. He said that he understood that for certain other business operations, Tom Farms may be stuck with NIPSCO's service, but in this instance and because the new grain processing facility is to be part of a single business operation operated on property bisected by a boundary line between NIPSCO and KREMC's territory, he believes the operation can best be served by just one electricity supplier and that is why he requested KREMC to petition for a change in boundaries.

With respect to Mr. Babcock's testimony that electric revenues to be produced by the grain processing facility are potentially variable and largely outside the control of Tom Farms,

Mr. Tom testified that he suspected that the downward variability would be greater than the upward variability, i.e., there is more chance for the use of electricity to be less than projected, rather than greater. Mr. Tom also testified that Tom Farms' request that KREMC petition the Commission for a change in boundary lines to allow the Tom Farms agribusiness operation involved in this proceeding be served with just one electricity supplier – KREMC – was not caused by any concerns Tom Farms has about its ability to guarantee revenues to NIPSCO. He testified that Tom Farms asked that the boundary line be changed because it is Tom Farms' opinion that it is best for this operation that it be served by just one electricity supplier. He testified that Tom Farms has a large successful agribusiness operation and it has never had any concerns about its ability to guarantee any revenues reasonably required by NIPSCO for extension of facilities. He testified that Tom Farms has, however, had concerns about the likelihood NIPSCO could timely extend the service for which it requested a revenue guarantee. He testified that notwithstanding NIPSCO witness Carr's testimony that NIPSCO had "worked closely" with Tom Farms to complete the extension of gas service to the new grain processing facility, the fact is that extension had been requested in January 2008, and was not completed until October 2008, long after Tom Farms had hoped for and expected its completion. Therefore, Tom Farms could not help but have serious doubts as to whether NIPSCO would have installed three-phase electric service within 6 – 8 weeks as described in Mr. Carr's testimony.

On cross-examination, with respect to the proximity of Tom Farms' existing facilities to its new grain processing facility and his disagreement with NIPSCO witness Babcock's statement that it is a half-mile away, Mr. Tom explained that the irrigation facility adjacent to the grain processing facility consists of a 1,320 foot long irrigation system with another 200 – 280 foot arm on the end that pivots in a circle; as it makes its circle it actually crosses the grain drying facility's acreage. In response to a question on cross-examination as to whether Tom Farms has installed loss of phase protection and surge protection for the irrigation pump located on State Road 15 south of Milford, Mr. Tom testified that with respect to that pump served by NIPSCO, phase protection has been installed, but not surge protection, but in no other cases has phase protection been installed.

In response to a question concerning whether the irrigation pumps will be in operation at times that the grain processing facility is operational, Mr. Tom testified that while the grain drying facility will run twelve months a year, the demand will vary throughout the year and is typically lighter during peak use of the irrigation system. He testified that Tom Farms has a large number of irrigation pumps that are on the circuit that would be used by the grain dryer and that Tom Farms has never had any problems to date with that. In response to a question about whether or not it would be prudent to have surge protection and loss of phase protection on equipment, Mr. Tom testified that it could be prudent, but not always necessary and that Tom Farms has never had a problem with surges from KREMC. He testified that since he installed loss of phase protection on the irrigation pump served by NIPSCO, that pump has not had to be rebuilt.

Mr. Tom testified that he does not believe other farmers would want to use the grain processing facility if Tom Farms' need for it diminished, because storage capacity and grain conditioning are two separate functions.

In response to re-direct questions by KREMC's counsel concerning how widespread the Tom Farms business organization operations are, Mr. Tom testified that Tom Farms has an operation in Argentina, and with respect to its domestic production it has many "footprints", including the operation at issue in this proceeding, an Elkhart County operation, a Noble County operation, a Whitley-Huntington County operation and a Marshall County operation, but that with respect to this particular proceeding Tom Farms is asking only that the boundary lines be changed so KREMC can serve the particular business operation depicted by Exhibit KET-1 to his direct testimony and not any other of the Tom Farms operations.

6. **Discussion, Findings and Conclusions.** There appears to be no dispute among the parties that the Tom Farms agribusiness, which includes the new grain processing facility, and which is the subject of KREMC's Petition, consists of 2,739 contiguous acres of land and is intersected by an existing boundary between the assigned service territories of KREMC and NIPSCO on U.S.G.S. Facet Map R-5-1. It is reasonable to conclude, and we do conclude, that this 2,739 acres constitutes a "single tract of land which is intersected by the boundary lines of two or more assigned service areas" as contemplated by I.C. §8-1-2.3-6(3). However, the parties are in dispute over whether Tom Farms can best be served by only one utility. We find and conclude that Tom Farms' contiguous tract of land used for its agribusiness operation affected by this proceeding, which includes the 32-acre parcel upon which the grain dryer is situated, can best be served by one utility. We base this conclusion on our consideration of and findings concerning a number of factors, including duplication of facilities, plurality, customer preference, and service reliability, and we discuss our particular findings with respect to these factors below. Thus, we find and conclude that the 2,739 contiguous acres at issue in this dispute constitute a "split site" case under I.C. §8-1-2.3-6(3).

The parties also disagree as to whether the Tom Farms agribusiness operation on this 2,739 acres constitutes a single industrial operation. NIPSCO asserts that the Tom Farms grain processing facility is functionally and physically independent from the rest of the Tom Farms operation. In addition, NIPSCO asserts that the Tom Farms agribusiness is not an "industrial" operation. However, we are persuaded by the testimony of the manager of Tom Farms that the agribusiness operation on the contiguous 2,739 acres in Van Buren Township of Kosciusko County is a single integrated operation. He testified that "there are different uses of electricity within this operation, for example, irrigation, motors, operations, etc." and that "the Tom Farms business location and operation depicted by Exhibit A [to the Petition] constitutes an integrated process and single agribusiness operation just as much as a large automobile assembly plant with assembly lines, office facilities, equipment storage facilities, parking lots, etc., is part of a single business operation." Rebuttal Testimony of Kip Tom at 2. With respect to whether the Tom Farms agribusiness is an "industrial operation", Mr. Tom testified that "agriculture is an industry, and our part of that is production of food, fiber and energy. We deploy manufacturing processes in that plan." Tr. at A-60. Responding to a cross-examination question as to when the Tom Farms business became an industrial operation, he testified that:

Today agriculture is not a lifestyle, as many people want to embrace it as; it is a manufacturing business, and that's how we look at it.

So, I would say when we took our business from our loose entity structure to something more organized and then the deployment of standard operating procedures and manufacturing principles, that's when we considered it industrial manufacturing.

Tr. at A-63.

Tom Farms states that the contiguous acreage constitutes an integrated agricultural operation, including irrigation, offices, fields, and the recently-added grain dryer. The evidence of Tom Farms describes the entire contiguous property as an integrated operation: growing, harvesting and operational functions all occur on the acreage, and the addition of the 32-acre parcel and attendant facilities adds grain finishing to the package. We are not persuaded by NIPSCO's evidence regarding the meaning of "agricultural" and "industry", which attempted to cast doubt on Tom Farms' facilities as a "single...industrial...operation" under I.C. 8-1-2.3-(6)(3). We therefore find based on the testimony and evidence that the grain processing facility is an integral part of the operation of Tom Farms' business operation, as contemplated by I.C. §8-1-2.3-6(3).

For the foregoing reasons, we find that the Tom Farms agribusiness operation and land fall into both the split site and integrated operation categories. KREMC and NIPSCO do not agree concerning which electricity supplier should serve this land and operation. Therefore, the Commission must determine whether the public convenience and necessity require that the service territory boundary line be revised so that the entire Tom Farms property lies within the service territory of KREMC, as KREMC has requested.

In previous cases involving I.C. §8-1-2.3-6(3), we have found several factors to be relevant to our determination of public convenience and necessity, including: (1) adequate and reliable electric service; (2) duplication of facilities; (3) financial abilities of the utilities to serve the customer; (4) historical service to the area; (5) plurality; and (6) customer preference. We have stated that these factors are neither mutually exclusive nor all inclusive. *See, PSI Energy, Inc.*, Order in Cause No. 42255, at 3 (Ind. Util. Regulatory Comm'n Dec. 4, 2002); *RushShelby Energy REMC*, Order in Cause no. 42154 at 4 (Ind. Util. Regulatory Comm'n Sep. 4, 2002); *Kosciusko REMC*, Order in Cause No. 40946, at 4-5 (Ind. Util. Regulatory Comm'n Apr. 14, 1999).

We conclude, based on our review of and findings concerning these factors, that the boundary line as it now exists on U.S.G.S. Facet Map R-5-1 should be changed to include the 32-acre parcel containing the grain processing facility owned and operated by Tom Farms as depicted by Exhibit KET-1 to Mr. Tom's pre-filed direct testimony (Petitioner's Exhibit 4) wholly within KREMC's assigned service area.

A. **Service Reliability.** KREMC and NIPSCO do not agree as to whether the Tom Farms business operation can more reliably and adequately be served by NIPSCO or by KREMC. We find from the evidence that both Petitioner and Respondent can adequately and reliably serve this customer, but because the substation from which KREMC would serve the new Tom Farms grain processing facility is closer than the substation from which NIPSCO

would serve the grain processing facility, and because the grain processing facility would be at the end of a NIPSCO radial line, we find that service to the grain processing facility might be more adequately and reliably provided by KREMC. With respect to every boundary line dispute, one utility's substation is going to be closer to the boundary line, and some customer always has to be at the end of any radial line. If the Commission only considered service adequacy and reliability in reaching a decision, that might result in a finding in KREMC's favor. However, in this case, we do not believe the public interest factor of reliability can be given as much weight as other public interest factors considered in this Cause.

B. Duplication of Facilities. It is not disputed that KREMC already has the three-phase service necessary to serve the Tom Farms grain processing facility in place and immediately adjacent to that facility, while NIPSCO would need to extend three-phase service from a point more than 2 miles away, at considerable cost. While NIPSCO indicates that extension of three-phase facilities by it might be useful to better serve other NIPSCO customers now or in the future, it acknowledges that its current service to other customers is adequate as is, and there have been no requests for three-phase service from other customers that would require extension of three-phase service in the vicinity of the Tom Farms grain processing facility. The legislature's findings and declaration of policy requiring the division of unincorporated areas of Indiana into designated assigned service areas is to "eliminate or avoid unnecessary duplication of electric utility facilities, to prevent the waste of material and resources, and to promote economical, efficient and adequate electric service to the public." Taking these factors into account, the duplication of electric utility facilities that would result from extension of three-phase service by NIPSCO to serve the Tom Farms grain processing facility is unnecessary and is not the most prudent and efficient way to provide electric service to that facility. Thus the evidence concerning this public interest factor favors the granting of KREMC's Petition.

C. Financial Abilities. Although NIPSCO expressed some concern that the 30-month revenues from the grain facility load would not cover its cost of extending three phase service for that facility, and KREMC has no cause for such concern because it already has three phase service for the facility in place, there is no evidence to suggest that either party does not have the financial ability to serve Tom Farms. Accordingly, this factor is not determinative in this proceeding.

D. Historical Considerations. KREMC has historically supplied all of the electricity consumed by the Tom Farms operation at this location, prior to the addition of the 32-acre parcel. Therefore, we find that this factor weighs in favor of KREMC.

E. Plurality. The evidence of record is that only a little more than one percent of Tom Farms' contiguous property is located within NIPSCO's service area³ and Mr. Tom testified that "to have just this very small part of our integrated agribusiness at this location served by an electricity supplier different than the one that serves our company for the rest of the operation's electricity, and which cannot serve it as adequately or efficiently, makes no sense to me." Direct Testimony of Kip Tom at 6. We find that the "plurality" public interest factor weighs heavily on the side of KREMC.

³ This percentage may be even lower, given the additional parcels purchased by Tom Farms since the inception of this Cause.

F. **Customer Preference.** It is uncontroverted that the affected customer, Tom Farms, prefers KREMC as its electricity supplier for its business operations located on the 2,739 contiguous acres upon which the agribusiness at issue is located. The evidence reflects that the Petition was filed at the request of Tom Farms because of its strong belief that its business operation on these contiguous acres is an integrated industrial operation that could be best served by one electricity supplier, that being KREMC.

The fact that a customer has been previously served by the utility may support management's stated preference, as it indicates that it is based on actual experience and not prejudice. *In the Matter of the Petition of Knox Co. Rural Elec. Membership Corp. for a Change of Service Area Boundaries*, Cause No. 39587 (Ind. Util. Regulatory Comm'n June 1, 1994); upheld at *Knox Co. Rural Elec. Membership Corp. v. PSI Energy, Inc.*, 663 N.E.2d 182 (Ind. App. 1996) ("Knox County"). The ability to provide adequate, reliable and economical service and customer preference are interrelated and mutually supportive and should be "accorded significant weight. The remaining factors should be given relatively less weight." *In the Matter of the Petition of Kosciusko Co. Rural Elec. Membership Corp.*, Cause No. 40946 (Ind. Util. Regulatory Comm'n Apr. 14, 1999). See also, *In the Matter of the Joint Petition of PSI Energy, Inc. and Delta Faucet Co.*, Cause No. 39686 (Ind. Util. Regulatory Comm'n Nov. 30, 1994.)

Customer preference is strongly in favor of KREMC, based on Tom Farms' prior experience and historical usage in the contiguous acreage, a desire to avoid confusion in the case of outages or other problems, the proximity of KREMC services to the acreage, and the relative cost. The evidence indicates that the cost to extend service to Tom Farms Grain Dryer is \$23,000 for KREMC and \$89,000 for NIPSCO. NIPSCO is asking the Commission to waive the requirement that the cost be reimbursed in thirty (30) months, instead extending repayment to a total of five (5) years (60 months). This implicitly recognizes that NIPSCO's cost is disproportionately higher and places a potential burden on Tom Farms. The reasons articulated by Tom Farms appear to satisfy the requirement that the preference be based on factual, rather than prejudicial or emotional, bases. The consequence of rejecting Tom Farm's preference is to place a much larger potential financial burden on them with no appreciable benefit. Commission precedent has recognized the importance of customer preference as it relates to economic development; in this case, the choice of KREMC over NIPSCO would reduce a potential burden on the business.

All of the public interest factors, in the aggregate, tip the scales in favor of KREMC. KREMC needs to deploy fewer resources to meet the customer's needs, resulting in significantly lower costs. KREMC has historically provided service to the bulk of the customer's integrated agricultural operation (fields, offices, irrigation) and is strongly preferred by the customer. KREMC's substation is closer and its voltage drop percentage lower than NIPSCO's. KREMC has provided adequate and reliable service to the customer in the past, and NIPSCO has not previously provided the 32-acre parcel with service. It would be necessary for NIPSCO to install 2+ miles of new service to meet the customer's needs, with concomitantly higher costs. KREMC already has service readily available to Tom Farms. NIPSCO did not make a persuasive showing that the acreage should not be considered a part of Tom Farms' integrated operation. In addition, there was no probative evidence regarding the percentage of usage to be consumed on the 32-

acre parcel as compared to Tom Farms' total usage for the contiguous tract; what testimony was offered on this issue was speculation. These factors and our resulting decision are in harmony with previous decisions of the Commission. *In the Matter of the Petition of PSI Energy, Inc.*, Cause No. 40008 (Ind. Util. Regulatory Comm'n Dec. 13, 1995); *In the Matter of the Petition of Kosciusko Co. REMC*, Cause No. 40946 (Ind. Util. Regulatory Comm'n Apr. 14, 1999); *In the Matter of the Petition of PSI Energy, Inc.*, Cause No. 42255 (Ind. Util. Regulatory Comm'n Dec. 4, 2002). A finding in favor of KREMC also addresses the legislative mandates to prevent the waste of material and resources and to promote economical, efficient and adequate electric service. Therefore, we conclude the public convenience and necessity require that the assigned service area boundary on U.S.G.S. Facet Map R-5-1 be changed to include the 32-acre parcel on which the Tom Farms grain processing facility is located within KREMC's assigned service area.

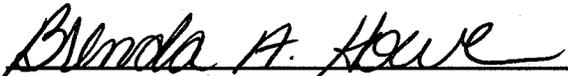
IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Petitioner Kosciusko Rural Electric Membership Corporation's Petition for change of the assigned service area boundaries on U.S.G.S. Facet Map R-5-1 as proposed by its Petition filed in this Cause on June 3, 2008, as amended with respect to the Exhibit A thereto on August 6, 2008, shall be and is hereby approved.
2. Within thirty (30) days of the date of this Order, Petitioner Kosciusko County REMC and Respondent Northern Indiana Public Service Company shall coordinate with the Commission's technical staff to update the service territory mapping system to reflect the change in assigned service areas hereby approved.
3. This Order shall be effective on and after the date of its approval.

GOLC, LANDIS, SERVER AND ZIEGNER CONCUR; HARDY ABSENT:

APPROVED: APR 15 2009

I hereby certify that the above is a true and correct copy of the Order as approved.



Brenda A. Howe

Secretary to the Commission