

1 **Ontario Energy Board (Board Staff) INTERROGATORY #3 (KEMA Report)**

2
3 **Interrogatory**

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5 Please provide a list of jurisdictions within North America where:

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7 a) Electricity and/or gas distribution service areas are exclusive.
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9 b) Electricity and/or gas distribution service areas are established by legislation. In each
10 case, please explain whether the service areas cover the entire jurisdiction and any
11 requirements for changes to the service areas.
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14 **Response**

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16 This response is for (a) and (b).

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18 In all but a small handful of communities in the United States, a combination of state
19 laws and regulatory practices provide for the exclusive assignment of service areas to
20 utilities as part of the regulatory compact. In 1996, laws or regulations in at least 38 states
21 established exclusivity in utility service territories. Since that time, at least two states
22 have enacted new provisions that encourage utilities to establish exclusive territories.
23 (See response to Wirebury Q#38.)
24

25 While the statutes and legal precedents of some states are more explicit than those of
26 other states, all states have recognized and understood the strong link between a utility's
27 obligation to serve a designated area and its right to serve that area. Furthermore,
28 customer bypass of the local franchised utility is not permitted in any state without the
29 endorsement of the state regulatory commission.
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31 The process by which service areas are established for electric and natural gas utilities are
32 substantially identical in most jurisdictions in the U.S. Likewise, the legal precedents set
33 in the natural gas industry with respect to the regulatory compact, franchise assignments,
34 and service area designations have typically been adopted in the electric industry. As a
35 result, the same general provisions established for the assignment of franchises, permits,
36 licences, ordinances, and other authorizations for regulated electric utilities also apply to
37 natural gas utilities.
38

39 State utility commissions typically resolve issues involving utility service areas by
40 administering state laws that either specifically provide for service territory assignments
41 ("statute states") or that require utilities to obtain a certificate of public convenience and
42 necessity ("certificate states"). In both situations, courts have usually held that a

1 distribution customer may not be serviced by a utility located outside of the franchised
2 service area. In other words, even in states where service areas are not deemed exclusive
3 by law or regulation, they are generally adhered to as exclusive by the utilities concerned
4 and by state utility regulators.

5
6 Nearly half of the states in the U.S. provide service area assignments under a territorial
7 statute or a statute with a different designation but with a structure that produces a similar
8 result. These statutes set the outside boundaries of each certified territory as the midpoint
9 between the existing distribution lines of one utility and the existing distribution plant of
10 the neighboring utility.

11
12 In some states, statute law defines which utility would have the right to serve an entire
13 municipality according to the location of its distribution facilities or the proportion of
14 customers it serviced within the municipality as of a given date. Such laws typically
15 provided for the sale of any other utility's distribution facilities to the utility that was
16 granted the exclusive franchise. Ontario had a similar situation up to the passing of the
17 Energy Competition Act (ECA) in 1998. Under the ECA and other associated statutes
18 and regulations, Ontario has moved away from municipal boundaries being considered in
19 determining service area boundaries.

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21 In "statute states" the utility regulatory commission typically resolves disputes over
22 territories and territorial expansions in accordance with its established rules and
23 guidelines. State commissions also typically resolve issues involving the service of
24 customers in fringe or previously unassigned areas in the event that the interested utilities
25 fail to come to a mutual agreement. If the state commission lacks the authority to resolve
26 the disputes, either the state legislature or state courts decide the matter.

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28 Approximately three-fourths of the states in the U.S. are "certificate states" that define
29 service areas through or in connection with the granting of certificates of public
30 convenience and necessity. Defined utility service areas in these states generally include
31 the franchised areas designated by local governments. Many "certificate states" are also
32 "statute states."

33
34 Certificates of public convenience and necessity have the practical effect of granting
35 exclusive franchise areas so long as a supplier in a given area provides adequate service.
36 If disputes arise out of customer or local government complaints that service has become
37 inadequate, the state commission generally has the authority to resolve the matter.

38
39 Statutes and certificates are intended to prohibit the "cream skimming" of customers, to
40 avoid "the wasteful use of resources," and to discourage the duplication of distribution
41 facilities. Mutual agreements between utilities that call for adjustments to boundaries of
42 distribution service territories are generally allowed and are sometimes required. In most

1 jurisdictions, the entire state has long been divided into exclusive service areas by
 2 legislation or agreements between utilities as approved by utility regulators. Mutual
 3 agreements are strongly preferred over litigation with respect to service area expansions
 4 into new areas where exclusive service territories have not yet been established.

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 6 In the absence of a mutual agreement between utilities to change their service area
 7 boundaries, regulatory commissions and courts in the U.S. have typically relied on the
 8 point-of-use test to resolve territorial disputes. This test upholds the exclusivity of a
 9 service territory, allowing only the utility authorized to serve within a certificated
 10 territory to serve customers within that territory, thereby preserving service area
 11 exclusivity and preventing the duplication of facilities, “cream skimming,” and an
 12 uneconomic “race to serve” customers in new areas.

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 14 The following table lists by state the statutes or regulatory provisions that grant authority
 15 to a utility to serve a service territory. The table demonstrates that the vast majority of
 16 states have a statutory or regulatory basis for granting exclusive service territories for
 17 distribution utilities. In the cases where there is no statutory or regulatory requirement,
 18 exclusive service territories are the norm. For example in New York the courts have
 19 maintained exclusive service territories (see note 8 to the table).

State	Authority to Serve Obtained Under: (1)	Service Territory is Exclusive?	Note
Alabama	Statute	Yes	
Alaska	Certificate	Yes	
Arizona	Certificate	Yes	
Arkansas	Certificate	Yes	
California	Certificate	Yes	
Colorado	Certificate	Yes	
Connecticut	Statute	Yes	
Delaware	Certificate	Yes	
Florida	Statute	Yes	
Georgia	Statute	Yes	See Note (2)
Hawaii	Certificate	No	See Note (3)
Idaho	Certificate	Yes	
Illinois	Statute	Yes	
Indiana	Statute	Yes	
Iowa	Statute	Yes	
Kansas	Statute	Yes	
Kentucky	Statute	Yes	
Louisiana	Statute	No	See Note (4)
Maine	Certificate	Yes	
Maryland	Statute	No	See Note (5)
Massachusetts	Statute	Yes	
Michigan	Certificate	No	See Wirebury Q#38
Minnesota	Statute	Yes	
Mississippi	Certificate	Yes	
Missouri	Statute	No	See Wirebury Q#38
Montana	Statute	Yes	
Nebraska	Statute	Yes	
Nevada	Certificate	Yes	
New Hampshire	Statute	No	See Note (6)
New Jersey	Certificate	Yes	

State	Authority to Serve Obtained Under: (1)	Service Territory is Exclusive?	Note
New Mexico	Certificate	No	See Note (7)
New York	Certificate	No	See Note (8)
North Carolina	Statute	Yes	See Note (9)
North Dakota	Certificate	Yes	
Ohio	Statute	Yes	See Wirebury Q#38
Oklahoma	Statute	Yes	
Oregon	Statute	Yes	
Pennsylvania	Certificate	Yes	
Rhode Island	Certificate	No	See Note (10)
South Carolina	Certificate	Yes	
South Dakota	Statute	Yes	
Tennessee	Certificate	Yes	
Texas	Certificate	No	See Note (11)
Utah	Certificate	Yes	
Vermont	Statute	Yes	
Virginia	Certificate	Yes	
Washington	Statute	No	See Note (12)
West Virginia	Certificate	Yes	
Wisconsin	Statute	Yes	
Wyoming	Certificate	No	See Note (13)

Notes:

- (1) The authority for a state utility regulatory agency to issue a certificate of public convenience and necessity is often set forth in legislation. Some statutes authorize the state regulatory to establish service areas separate from certificates. Many states are both certificate and statute states.
- (2) By in large, Georgia has exclusive territories. In certain circumstances, however, very large customers who are building new facilities have had a one-time opportunity to select among the states existing electricity providers. Georgia has not restructured its electricity market, and the selected provider must offer fully integrated utility service
- (3) The Hawaii Division of Consumer Advocacy reports that at this time only one provider on each island provides electricity service.
- (4) In its investigation into retail access, the Louisiana Public Service Commission acknowledged in December 2001 that transmission and distribution are monopoly services to be provided by a utility within an exclusive service territory.
- (5) There is no competition for transmission or distribution services in Maryland. The state is divided into distinct service territories with no overlap.
- (6) In resolving matters surrounding stranded cost recovery, New Hampshire regulators have recognized the that the utility's obligation to provide service comes in exchange for a protected service area and eminent domain authority. In addition, the construction of redundant parallel electric utility lines is prohibited in the state because it has been deemed contrary to sound economic policy and contrary to the public interest.
- (7) New Mexico utility regulators seek information on utility system expansions that could lead to uneconomic duplicate facilities within a service area. In the event that one utility intends to extend its system in the direction of another utility's existing plant, the expanding utility must file a report with the New Mexico Public Service Commission and copy the report to the utility toward whose facilities the extension is proposed to be made. The other utility may then file a complaint with the state regulators opposing the extension.
- (8) New York utility regulators have been aggressive in preventing uneconomic bypass of the utility delivery systems. For instance, in matters involving the potential for stranded costs as a result of municipalization of investor-owned utility assets, the New York Public Service Commission has recognized that incumbent utilities have designed and operated their systems to meet strict public service requirements imposed by law, including the obligation to serve all customers in its service area regardless of the costs of serving each customer relative to tariff prices which apply to each customer in a class.
- (9) IOUs and Coops have exclusive service areas but municipal utilities do not. Courts settle territorial disputes between municipal utilities.
- (10) Rhode Island's electric restructuring law of 1996 states that no distribution company can provide distribution service to customers in another distribution company's service area that is willing to provide service at comparable terms and prices to customers of a non-regulated power producer.
- (11) A very small number of communities in Texas have granted multiple certificates of convenience and necessity to electric utilities within the same service area. These communities are historical artifacts subject to "grandfather" provisions in the state's Public Utility Regulatory Act (PURA). Chapter 37 of the PURA seeks to prevent new service areas from granting multiple certificates, stating that the Public Utility Commission of Texas (PUCT) "may not grant an additional retail electric utility certificate to serve an area if the effect of the grant would cause the area to be multiply certificated unless the commission finds that the certificate holders are not providing service to any part of the area for which a certificate is sought and are not capable of providing adequate service to the area in accordance with applicable standards." Likewise, the PUCT may examine all areas within

1 municipally owned utility service areas that are also certificated to one or more other retail electric utilities and may amend the
2 retail electric utilities' certificates so that only one utility is certificated to provide distribution services in the area. As in other
3 states where service territory exclusivity is not explicitly established by law or regulation, service territory amendments that
4 eliminate exclusivity are unavailable in Texas as a practical matter. In other words, PURA has been interpreted by the PUCT to
5 provide exclusivity except in the few areas with grandfathered multiple certification. See Wirebury Q#38.

6 (12) Washington does not have legislation governing the assignment of service areas, per se. However, the state legislature has
7 declared that the duplication of electric lines and service of public utilities and cooperatives is uneconomical and contrary to the
8 public interest.

9 (13) When investigating electric industry restructuring, Wyoming regulators and other stakeholders agreed that exclusive service
10 areas for distribution service should be "maintained."

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