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February 14, 2012

Darrell Nitschke
ND Public Service Commission
600 East Boulevard Avenue, Dept 108
Bismarck ND 58505-0408

Via Electronic Mail and US Mail
ndpsc@nd.gov

Re: North Central Electric Cooperative, Inc. v. Otter Tail Power Company
Case Number PU-11-701

Dear Mr. Nitschke:

Enclosed for filing in the above-named matter, please find an original and seven copies of North Central Electric Cooperative, Inc.'s, Brief Responding to Otter Tail's Brief of Motion to Dismiss.

I am also including one additional copy and kindly ask that you stamp as received and return to our office in the envelope provided.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Debra L. Hoffarth
DLH/CS

cc Paul R. Sanderson - via electronic mail only
Bruce Gerhardson - via electronic mail only
Wayne Martian, North Central Electric Cooperative, Inc.

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

COPY

North Central Electric Cooperative, Inc.)
)
 Complainant)
 vs.)
)
 Otter Tail Power Company,)
)
 Respondent.)

Case No. PU-11-701

**NORTH CENTRAL ELECTRIC COOPERATIVE, INC. BRIEF
RESPONDING TO OTTER TAIL’S REPLY BRIEF ON MOTION TO DISMISS**

OTP’s reply brief fails to address the “standing” issue.

“OTP is not raising the defense of sovereign immunity but rather that the Tribe is sovereign over the electric service to its facility....” (OTP Feb 13 Reply Brief, p. 3.) This statement does not merit the conventional remark about a distinction without a difference. There is no distinction and no difference.

OTP lacks standing to assert the Tribe’s interests to defeat the PSC’s authority over OTP’s activities, whatever is the legalistic label to describe or identify the Tribe’s interests. OTP’s selection of the “sovereign” label in lieu of the “sovereign immunity” label used by NCEC does not solve OTP’s problem that it lacks standing.

OTP’s defense “that the Tribe is sovereign” is OTP’s assertion of the Tribe’s self government interests.

“We conclude Otter Tail could not assert the self-government interests of the Tribe to defeat the PSC’s authority over Otter Tail’s activities.”
Otter Tail 1990, 451 N.W.2d at 97-98.

OTP is not the Tribe’s surrogate to assert the Tribe’s interests on behalf of either OTP or the Tribe. The Tribe’s interests may be asserted only by the Tribe, not by OTP.

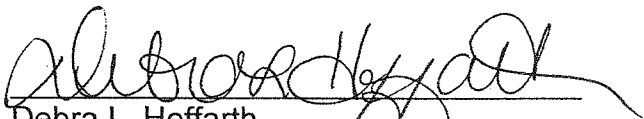
Standing is a threshold issue. OTP cannot pass the threshold. The Tribe might assert its interests, but OTP cannot assert the Tribe's interests however labeled to defeat the Public Service Commission's authority over OTP's activities.

Lacking standing to assert the Tribe's interests to defeat the PSC's jurisdiction over OTP's activities, OTP's motion to dismiss should be denied.

OTP admitted the central fact alleged by North Central, that OTP threatens to and has begun the construction of an extension of its public utility plant and system at the place to be served without first obtaining from the Commission a certificate that public convenience and necessity require or will require such construction. Complaint, ¶ 3; Answer ¶ IV. That admission shows there is no genuine issue as to the central material fact. Because material facts are undisputed, it is appropriate for summary judgment to be entered against OTP under Rule 56(c).

Dated this 14th day of February, 2012.

PRINGLE & HERIGSTAD, P.C.


Debra L. Hoffarth
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BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

North Central Electric Cooperative, Inc.)
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 Complainant)
 vs.)
)
 Otter Tail Power Company,)
)
 Respondent.)

Case No. PU-11-701

STATE OF NORTH DAKOTA)
) ss
 COUNTY OF WARD)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on February 14, 2012, I served a copy of the attached:

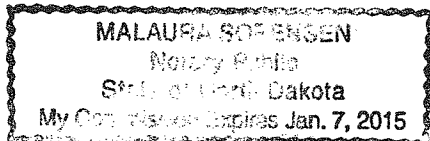
North Central Electric Cooperative, Inc.'s
Brief Responding to Otter Tail's Brief of Motion to Dismiss

by electronic mail upon counsel at the below e-mail addresses:

Paul R. Sanderson psanderson@zkslaw.com
Bruce Gerhardson bgerhardson@otpc.com

Jill Stanislawski
Jill Stanislawski

Subscribed and sworn to before me this 14th day of February, 2012.



Malaura Sorensen
Notary Public, State of North Dakota