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April 30, 2012

RECEIVED

APR 30 2012

PUBLIC SERVICE COMMISSION

Mark Gruman  
ND Public Service Commission  
600 East Boulevard Avenue, Dept 108  
Bismarck ND 58505-0408

Via Electronic Mail and US Mail  
[ndpsc@nd.gov](mailto:ndpsc@nd.gov)

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

Dear Mr. Gruman:

Enclosed for filing in the above-named matter, please find an original and seven copies of North Central Electric Cooperative, Inc.'s Objection to "Petition to Intervene for Special Appearance to Object to Jurisdiction" by Turtle Mountain Band of Chippewa Indians in regards to the above-named matter.

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/jcs

cc Paul R. Sanderson - via electronic mail only  
Bruce Gerhardson - via electronic mail only  
ALJ Alan Hoberg- via electronic mail only  
Turtle Mountain Tribe, Rjay Brunkow - via electronic mail only  
Wayne Martian, North Central Electric Cooperative, Inc.

23 PU-11-701 Filed: 4/30/2012 Pages: 17  
Objection to Petition to Intervene for Special  
Appearance to Object to Jurisdiction

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

North Central Electric Cooperative, Inc. )  
)  
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 April 30, 2012, I served a copy of the attached:

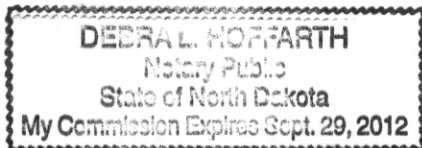
North Central Electric Cooperative, Inc.'s Objection to  
"Petition to Intervene for Special Appearance to Object to Jurisdiction"  
by Turtle Mountain Band of Chippewa Indians

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

Paul R. Sanderson [psanderson@zkslaw.com](mailto:psanderson@zkslaw.com)  
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*Jill Stanislawski*  
\_\_\_\_\_  
Jill Stanislawski

Subscribed and sworn to before me this 30<sup>th</sup> day of April, 2012.



*Debra Hoffarth*  
\_\_\_\_\_  
Notary Public, State of North Dakota

**BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

North Central Electric Cooperative, Inc.	)	
	)	
Complainant,	)	
	)	<b>Case No. PU-11-701</b>
vs.	)	
	)	
Otter Tail Power Company,	)	
	)	
Respondent.	)	

**OBJECTION TO “PETITION TO INTERVENE FOR SPECIAL APPEARANCE TO OBJECT TO JURISDICTION” BY TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS**

On April 26, 2012, The Turtle Mountain Band of Chippewa Indians (the Tribe), through Chairman Merle St. Claire, petitioned to intervene in this matter “for the limited purpose of asserting its inherent sovereignty to determine which utility will provide electric service to the Sky Dancer Casino” and asserts its Petition is only to contest jurisdiction and is not a general appearance. April 26, 2012 Letter from Chairman St. Claire; Petition to Intervene for Special Appearance to Object to Jurisdiction, p. 1. On April 27, 2012, attorney Rjay Brunkow filed a Notice of Appearance on behalf of the Turtle Mountain Band of Chippewa Indians. Chairman St. Claire and Mr. Brunkow are not licensed attorneys in the State of North Dakota. See Exhibits 1 and 2.

**I. THE TRIBE’S INTERVENTION IS NOT NECESSARY TO DETERMINE THE MERITS OF THIS CASE.**

Intervention in a Public Service Commission proceeding is governed by North Dakota Administrative Code § 69-02-02-05. Intervention is allowed by a person who has a substantial interest in the proceeding. “An intervention may be

granted if the petitioner has a statutory right to be a party to the proceeding; or the petitioner has a legal interest which may be substantially affected by the proceeding, and the intervention would not unduly broaden the issues or delay the proceeding.” N.D.ADMIN.CODE § 69-02-02-05. In this case, the Turtle Mountain Tribe is the customer that requested service from Otter Tail Power. Its participation is not necessary to decide the merits of this case. Customer preference is not the single focus of the Territorial Integrity Act.

In addition to intervening in the matter, the Turtle Mountain Band of Chippewa Indians wants to appear only to contest jurisdiction and claims its appearance is not a general appearance. See Petition to Intervene for Special Appearance to Object to Jurisdiction, p. 1. The Turtle Mountain Band of Chippewa Indians cites Wallwork Lease and Rental Co. for the proposition that its petition is a special appearance. Id., at p. 1. This Petition to Intervene is not a special appearance. Despite the Tribe’s assertion of a “special appearance” - a sort of heads I win, tails you lose one way procedural street - the Tribe must be in or out; it cannot intervene and then avoid the orders of the Public Service Commission. Of course a special appearance is not a general appearance, but if the outcome of a special appearance objection to jurisdiction is a decision that the forum does have jurisdiction, then the party objecting to jurisdiction is bound, as happened in the Wallwork case cited by the Tribe.

Wallwork involved a lease for grain-drying equipment and the party objecting to jurisdiction was the Defendant, a resident of Minnesota. 398 N.W.2d 127, 128 (N.D. 1986). The Court in that case determined there was jurisdiction

for the North Dakota courts to hear the matter because the parties had corresponded regarding an extension to answer the complaint and settlement negotiations had occurred after the commencement of the action. Id. at 130. The Turtle Band of Chippewa Indians previously filed a letter on February 17, 2012 indicating the same information in its Petition to Intervene. See Chairman St. Claire's February 17, 2012 letter. This letter did not object to jurisdiction of the Public Service Commission.

Evidently, the Tribe's purpose for intervention in this case is to short-circuit the Commission's jurisdiction over Otter Tail's activities, to head off a decision and order against Otter Tail's activities that the Tribe does not want for Otter Tail. That may happen, but if that happens it will be the consequence of the Commission's jurisdiction over Otter Tail. In order to participate in this matter, the Turtle Mountain Band of Chippewa Indians must be in or out of the proceeding. The Turtle Mountain Band of Chippewa Indians cannot intervene and then not want to abide by the orders of the Public Service Commission. The Turtle Mountain Band of Chippewa Indian's participation is not necessary, as customer preference is only one of many factors that the Public Service Commission will consider in determining the merits of this matter.

**II. THE TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS IS NOT REPRESENTED BY A LICENSED ATTORNEY.**

The Turtle Mountain Tribe cannot file pleadings unless it is represented by counsel licensed in the state of North Dakota. N.D.CENT.CODE § 27-11-11; State of North Dakota v. Riemers, 2008 ND 191, ¶ 9, 757 N.W.2d 50; Griggs v. Missouri, 2009 WL 2900254 (W.D.Mo. 2009) (stating "...pro se representation of

an Indian tribe is not typically allowed. Counsel is required for purposes of representing the interests of an entire tribe.”). The Motion to Intervene was signed by Chairman Merle St. Claire and a Notice of Appearance was later filed by Rjay Brunkow. Neither are licensed North Dakota attorneys. Any pleadings filed by the non-attorney agent are void and cannot be considered. Riemers, 2008 ND 191, ¶ 10. Without counsel licensed in the State of North Dakota, the Turtle Mountain Band of Chippewa Indians should not be allowed to intervene.

**III. THE PUBLIC SERVICE COMMISSION AND THE NORTH DAKOTA SUPREME COURT HAVE ALREADY DETERMINED THAT CUSTOMER PREFERENCE ON THE TURTLE MOUNTAIN INDIAN RESERVATION IS NOT BINDING ON THE PUBLIC SERVICE COMMISSION.**

The North Dakota Supreme Court and the Public Service Commission have already decided the issue regarding the Public Service Commission’s jurisdiction over Otter Tail’s on the Turtle Mountain Indian Reservation. Application of Otter Tail Power Co., 354 N.W.2d 701, 705 (1984). In that case, the Supreme Court noted that the BIA had sold its electrical system to Otter Tail in 1968. Id. at 703. The contract between the BIA and Otter Tail provided that Otter Tail would provide electrical service “in conformance with the rules and regulations of the Public Service Commission of the State of North Dakota.” Id. The North Dakota Supreme Court found that “Otter Tail’s argument realistically must be interpreted as a concession that there is no ‘Indian jurisdiction’ question in this case.” Id. at 705-06. This case is still good law and has not been overruled. The Public Service Commission and the North Dakota Supreme Court

have already determined that the PSC has the authority to make determinations on Indian reservations. Id.

The Public Service Commission can take judicial notice of the adjudicated facts in that case. N.D.R.EV. 201; N.D.ADMIN.CODE § 69-02-05-08; N.D.CENT.CODE § 28-32-24(7). Judicial notice can be taken of adjudicative facts that are accurate and readily determined “by resort to sources whose accuracy cannot reasonably be questioned.” Farm Credit Bank v. Huether, 454 N.W.2d 710, 714 (N.D. 1990). The Public Service Commission should take judicial notice of its own proceedings and the proceedings of the North Dakota Supreme Court in the Application of Otter Tail Power Co., 354 N.W.2d 701 (1984).

### **CONCLUSION**

The Public Service Commission’s jurisdiction over Otter Tail’s activities on this reservation was resolved nearly 20 years ago. Customer preference is only one of the many factors to consider in this case. The intervention of the Turtle Mountain Band of Chippewa Indians is not necessary for the Public Service Commission to make a determination on North Central’s Complaint regarding Otter Tail’s activities and thus should not be allowed. Additionally, the Turtle Mountain Band of Chippewa Indians cannot intervene unless represented by counsel licensed in the State of North Dakota.

Dated this 30<sup>th</sup> day of April, 2012.

PRINGLE & HERIGSTAD, P.C.



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Salmon, Robert Edward  
Sambor, Christina Anne  
Samuelson, Ashley Marie  
Sanchez, Estee Ann  
Sand, Rosellen M.  
Sandberg, Ryan David  
Sandberg, Simone M.  
Sandberg, Theodore Thomas  
Sanden, James M.  
Sanders, Michael Bradford  
Sanderson, Paul Reginald  
Sandin, Toni Marie  
Sandness, Paul Kent  
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Schildkraut, Ryan Jacob  
Schill, Andrew Daniel  
Schimmelpfennig, Jerel C.  
Schirado, Jon David  
Schirado, Mark Lester  
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Schlossman, William A.  
Schmalenberger, Allan L.  
Schmalenberger, Melissa Lee  
Schmidt, Robin Ann  
Schmidt, Ronald G.  
Schmidt, Susan

**Exhibit 1**

Schmidt, William Delaney  
Schmit, Peter Allan  
Schmitt, Joseph M.  
Schmitz, Cathy Lynn Howe  
Schmitz, Jay Anthony  
Schmitz, Orell D.  
Schmitz, Samuel Henry  
Schneider, Jasper John  
Schneider, Lea Ann  
Schneider, Mark G.  
Schneider, Mary Joe Deutsch  
Schneider, McLain Joseph  
Schneider, Scott J.  
Schneider, Steven C.  
Schneider, Thomas J.  
Schoenwald, Bruce A.  
Schoepf, Michael D.  
Schoonover, Dale John  
Schreiner, Lance Daryl  
Schuchmann, Bernard  
Schuetzle, Jordan Thomas  
Schuler, Scott D.  
Schultz, Andrew Jerome  
Schultz, Charles Scott  
Schultz, Darin Wayne  
Schultz, Robert John  
Schulz, Douglas William  
Schulz, Norlyn E.  
Schuman, Darla Jane  
Schurman, Duane H.  
Schwandt, Daniel E.  
Schwandt, Gregory R.  
Schwarz, Justin Jon  
Schwarz, Todd A.  
Schweigert, David Del  
Schweigert, Suzanne Marie  
Schwendiman, Jeremy Carl  
Scouton, David Earl  
Scully, Francis James  
Scurry, Michael Ernest  
Seado, Paul C.  
Sear, John David  
Seaton, Thomas Jackson  
Seaworth, Hugh Patrick  
Seaworth, Janet Demarais  
Seaworth, Mary Ellen  
Secrest, T L.  
Seeger, Nathan Lee  
Seibel, Ted  
Seibel, Troy Thomas  
Seidl, Rebecca Ross  
Seidl, Scott Frederick  
Seierstad, Richard Dean  
Selbo, Greg B.

Selinger, Brenda L.  
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Selland, Charlotte Louise  
Selzer, Renata June Olafson  
Senechal, Alice R.  
Senger, Dave F.  
Serum, Jeffrey J.  
Seurer, Jerad Gordon  
Sever, Stacey Lynn  
Severin, William C.  
Severson, Nathan Dale  
Shaft, Grant Harrison  
Shaheen, Anthony J.  
Shanbour, Brian Michael  
Sharbono, Randy Alan  
Shasky, Brett M.  
Sheeley, Charles Justin  
Sheets, Jeffrey Lee  
Sheppard, Alan J.  
Sherer, Mark Conrad  
Sherman, William E.  
Shively, Erica Jo  
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Shook, Dale Robert  
Shoop, Donald H.  
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Sickler, Jonathan Lee  
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Simpser, Zeviel Troper  
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Sitek, Steven Michael  
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Sjue, Garth H.  
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Skala, Mary Frances  
Skar, Charlotte Jo  
Skonseng, Jeffrey David  
Slaathaug Moen, Lynn Erin  
Sleger, Erika Lee  
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Slorby, Tom P.  
Smestad, Jennifer Osgood

Smith, Andrea H.  
Smith, Craig Cordell  
Smith, David Justin  
Smith, Derek  
Smith, Donna Marie  
Smith, Kirk  
Smith, Mollie Mae  
Smith, Richard E T  
Smith, Robert Lawrence  
Smith, Sean O.  
Smith, Sean Brendan  
Smith, Shana Metteauer  
Smith, Sheldon A.  
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Smith, Zachary Blaine  
Smith-Heinert, Amber Leigh  
Snortland, Steven Ray  
Snyder, Arthur Frank  
Snyder, Robert John  
Sobalvarro, Richard W.  
Soderstrom, Reed Alan  
Sogard, David B.  
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Soggie, Marnie Renell  
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Spahr, Marina  
Spain, Larry R.  
Speier, Gary J.  
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Spiry, A William  
Splitt, Ronald G.  
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Stephens, Robin Moug  
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Stock, Robert Brandon  
Stokes, Arthur Warren  
Stonelake-Hopkins, Kari  
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Storlie, Kristine Lee  
Storslee, Steven A.  
Stowman, David L.  
Straley, David Joshua  
Strand, Scott Michael  
Strankowski, Amy Marie  
Strege, Fred  
Strinden, Jon E.  
Stroup, Robert L.  
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Sturdevant, Michael G.  
Stutsman, Hal S.  
Suelzle, Anne Cathrine Grimsrud  
Suelzle, Christopher Vernon  
Suess, John A.  
Suhr, Lloyd Clayton  
Sullivan, Daniel Johnston  
Sullivan, John T.  
Summers, Anne Elizabeth  
Sundby, Elizabeth Jane  
Sunde, Anita Ann  
Sundeen, Ross Leon  
Sundling, R Raymond  
Sutter, David Allen  
Svingen, Rueben Kristian  
Swanson, Howard D.  
Swanson, Joshua Allen  
Swanson, Susan Aileen  
Swartzendruber, Nick Andrew  
Sweeney, Christopher Thayne  
Swenseth, Kelly Jane  
Swenson, Bradley Jay  
Syring-Petrocchi, Tina Anne

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Backes, Jon William  
Backes, Orlin W.  
Backman, Kimberly A.  
Bacon, Cathy Lynn  
Bader, Mary Beth Juelke  
Baek, Kyongbin  
Baer, Jacob  
Baer, Larry Michel  
Baer, Richard B.  
Baer, Zenas  
Bahr, Douglas Alan  
Bahrenburg, Matthew Otto  
Bailey, Susan Lynne  
Bailly, David R.  
Bair, Thomas Bruce  
Baird, LaRoy  
Baker, Alan  
Baker, Jason Don  
Bakke, Randall Joseph  
Balaban, Steven  
Ball, Zachary Thomas  
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Barari, David Samad  
Barber, Katie Marie  
Barker, Darin Bruce  
Barnwell, Jacy Brie  
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Barron, Sarah Susan  
Bass, Jodi Ann  
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Bata, Linda Elizabeth  
Bateman, Courtney Ringsak  
Baumann, Eric Paul  
Baumstark, Beth Angus  
Beach, Kenneth Lee  
Beall, Ashley Elizabeth  
Bearfield, Laura Anne  
Beaton, Timothy J.  
Beauchene, Mark Anthony  
Beaudoin, David D.  
Beaudry, Gary Michael  
Becker, Donald R.  
Behler, Bradley John  
Behm, Stephen John  
Bekkedahl, Bruce Oliver  
Bell, Craig Steven  
Bender, Lawrence  
Bendish, Annette Marie  
Benner, Robert G.  
Benson, Anthony Swain

**Exhibit 2**

Benson, Asmundur Swain  
Benson, Lisa Maria  
Benson, Ronnie George  
Berg, Bradley W.  
Berg, Douglas James  
Berg, Mary Christianson  
Berg, Weston L.  
Berger, Laura Louise  
Bergeson, Brian Lyle  
Bergian, Cheryl F.  
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Bergman, William Eric  
Bergquist, Harold John  
Berkowitz, Nikos C.  
Bernhardt, Jason Ryan  
Bernstein, Ryan Mark  
Bertrand, Amanda Rose  
Bertsch, Daniel E.  
Bertsch, Leann Katherine  
Besser, Steven Vernon  
Bialke, Joseph Paul  
Bidegaray, Daniel B.  
Binder, Jessica Jo  
Bird Bear, Thomas Paul  
Birst, Aaron Grayson  
Bissonette, Lee R.  
Bitz, Dennis J.  
Bitz, Steven Mark  
Bjella, Brian R.  
Bjornson, Jodi Billing  
Bjornson, John D.  
Black, David Fabian  
Black, David W.  
Black, Tam J.  
Blazer, Brenda L.  
Bliss, David Rodger  
Block, Lynn Marie  
Bloomquist, Mark Andrew  
Blumer, Mark Taylor  
Bode, John Charles  
Boechler, Jeanette  
Boeck, David  
Boeckel, Craig A.  
Boehm, Stanley John  
Boening, Adair Riopelle  
Boening, Mark Rainer  
Bogner, Jon  
Bohlman, Bruce E.  
Bohmann, Angela Maureen  
Bolda, David Paul  
Bolinske, Robert V.  
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Boon, Joel Ryan

Boone, Stephen James  
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Brendel, John Patrick  
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Brennan, John Lawrence  
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Bring, Mark B.  
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Brotten, Elizabeth Marie Sorenson  
Brovold, Jay  
Brown, Jill Nadine  
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Brown, Phillip J.  
Brudvik, Brett Anderson  
Brudvik, William J.

Brugamy, Dean  
Bruggman, Colette Nicolson  
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Bruner-Kaufman, Rachel Ann  
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Brutlag, Paul  
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Buckley, R. Bruce  
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Bueide, Daniel Allen  
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Burdick, Birch Peterson  
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Burns, Craig B.  
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Butler, David Charles  
Butts, Jason Richard  
Byars, Bruce Wayne  
Bye, Kermit Edward  
Byers, Jonathan R.  
Byrne, Thomas Edward