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MAY 02 2012

PUBLIC SERVICE COMMISSION

May 2, 2012

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

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 Intervention 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
Tracy Kolb - via electronic mail only
Turtle Mountain Tribe, Rjay Brunkow - via electronic mail only
Wayne Martian, North Central Electric Cooperative, Inc.

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Objection to Intervention by Turtle Mountain Band of Chippewa Indians

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.

The Tribe's petition to intervene asserts "North Central's Complaint is asking the Public Service Commission to, in effect, assert personal jurisdiction over the Tribe by determining who can provide electric service to the Casino."

North Central does not ask the Public Service Commission to assert personal jurisdiction over the Tribe, directly or "in effect." North Central did not make the Tribe a respondent. It is Otter Tail, not the Tribe, that is accused of violating the Territorial Integrity Law. North Central is asking the Commission to assert its jurisdiction over Otter Tail to determine that its extension of its service and facilities to the Casino is a violation of the Territorial Integrity Act, and to make its cease and desist order against Otter Tail. If the Tribe intervenes, it subjects itself to the jurisdiction of the PSC.

This proceeding under the Territorial Integrity Act is not about jurisdiction over the Tribe. NCEC has invoked the Commission's jurisdiction over the activities of Otter Tail. Otter Tail denies the Commission has jurisdiction and it

lacks standing to assert the Tribe's sovereignty to defeat the Commission's jurisdiction.

The Commission's jurisdiction over the Tribe is not an issue, so there is no reason for the Tribe's intervention, no reason to unduly broaden the issues or delay proceedings about the Commission's exercise of its jurisdiction over Otter Tail's activities.

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. The side effect on the Tribe will not be the result of the Commission's exercise of jurisdiction over the Tribe.

The Tribe's customer preference for service from Otter Tail might be a factor for the Commission's consideration if this were a case where Otter Tail had requested a certificate of public convenience and necessity under the Territorial Act, but this is not such a case. This is a case where a complaint has been filed against Otter Tail for violation of the Territorial Act on two counts, interference with NCEC and construction without authority from the Commission. On both counts, customer preference is not relevant or material. The Tribe's intervention is not relevant, material or necessary to a determination of NCEC's complaint or of Otter Tail's motion to dismiss.

II. THE PUBLIC SERVICE COMMISSION HAS JURISDICTION OVER OTTER TAIL'S ACTIVITIES ON THE TURTLE MOUNTAIN INDIAN RESERVATION.

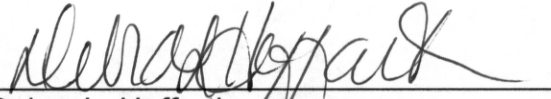
The North Dakota Supreme Court and the Public Service Commission have already decided the issue regarding the Commission's jurisdiction over Otter Tail's activities on the Turtle Mountain Indian Reservation. Application of Otter Tail Power Co., 354 N.W.2d 701, 705 (1984). In that case, the Supreme Court 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.

CONCLUSION

The jurisdiction issue affecting the Commission's jurisdiction Otter Tail's activities on this reservation were resolved nearly 20 years ago. The intervention of the Tribe is not necessary for the Commission's to make a determination on North Central's Complaint about Otter Tail's activities.

Dated this 2nd day of May, 2012.

PRINGLE & HERIGSTAD, P.C.

A handwritten signature in black ink, appearing to read "Debra L. Hoffarth", written over a horizontal line.

Debra L. Hoffarth

Attorneys for North Central Electric Cooperative, Inc.

P.O. Box 1000

Minot, ND 58702

701-852-0381

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 May 2, 2012, I served a copy of the attached:

Objection to Intervention by Turtle Mountain Band of Chippewa Indians

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

Paul R. Sanderson psanderson@zkslaw.com
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Jill Stanislawski

Jill Stanislawski

Subscribed and sworn to before me this 2nd day of May, 2012.

MALAURA SORENSEN
Notary Public
State of North Dakota
My Commission Expires Jan. 7, 2015

Maura Sorensen

Notary Public, State of North Dakota