

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

North Central Electric Cooperative, Inc., )

RECEIVED

ORDER GRANTING INTERVENTION

Complainant, )

vs.

MAY 04 2012

Otter Tail Power Company, )

PUBLIC SERVICE COMMISSION

Case No. PU-11-701

OAH File No. 20120087

Respondent. )

The petitioner to intervene in this matter is the Turtle Mountain Band of Chippewa Indians (the "Tribe"). On May 1, 2012, the Tribe filed its petition to intervene. The Tribe seeks to intervene in this matter by making a special appearance to object to the jurisdiction of the Commission to determine which utility will provide electric service to the Sky Dancer Casino. The Tribe states it has a legal interest which may be substantially affected by this proceeding. The Tribe states its position is in opposition to the relief sought by North Central in its Complaint. The Tribe states its petition is only to contest jurisdiction and should not be construed as voluntary general appearance under N.D.R. Civ. P. 4(b)(4).

North Central filed an objection to both the Tribe's May 1 petition and the initial petition filed by the Tribe on April 26, 2012, which the hearing officer determined was void. The petitions' contents were virtually identical. North Central states in its initial objection that the Tribe's participation is not necessary because customer preference is only one of many factors that the Commission will consider in determining the merits of this matter. In its later objection North Central appears to state that customer preference is not a factor in determining the merits of this matter. North Central also appears to state that the issues will be unduly broadened if the Tribe intervenes.

Otter Tail does not object to the Tribe's intervention.

On February 15, 2012, the Tribe filed a letter with the Commission stating that the Tribe is aware of this proceeding and the Tribe "confirms that it is exercising its inherent sovereignty to determine which utility will provide electric service to Sky Dancer Casino pursuant to the legal precedent set forth in .... 896 F. Supp 955..." That letter was part of the stipulations agreed upon by the parties at prehearing conference.

The Complaint and Answer in this matter, and the subsequently filed briefs, show that this matter is about the Commission's jurisdiction to determine which utility will provide electric service to Sky Dancer Casino, *i.e.*, the regulatory authority of the Commission *vis-à-vis* Otter Tail and North Central as it concerns Otter Tail's actions pursuant to the Tribe's resolution that Otter Tail will provide electric service to Sky Dancer Casino, and what is the result if the Commission does or does not have jurisdiction in this matter through its regulatory authority.

Under N.D. Admin. Code section 69-02-02-05, the Tribe has a legal interest that may be substantially affected by the proceeding. North Central apparently agrees that customer preference is or might be one of the factors that the Commission will consider in determining the merits of this matter. The issue of jurisdiction over the Tribe is there either directly or indirectly because of the facts not in dispute, including the stipulations. The Tribe's petition will not be unduly broadening the issues. This matter is now about arguing facts which are not in dispute. Thus, the Tribe should be allowed to participate as an intervener in the May 7, 2012, hearing, which will restrict the Tribe, North Central, and Otter Tail to argument on the motion to dismiss and argument for summary disposition.

The Tribe's petition to intervene is **granted**.

It appears from the *Wallwork* case that a party may make other than a general appearance (a special appearance) just to object to the jurisdiction of the court (the tribunal, *i.e.*, the Commission). *See* 398 N.W. 2d 127, 129. It appears that is what the Tribe has done in this matter; it has made a special appearance. However, as noted in North Central's objections, North Central's complaint is against Otter Tail, not against the Tribe. Otter Tail and North Central, and perhaps indirectly the Tribe, will be bound by the Commission's decision regarding the motion to dismiss and any summary disposition of this matter, or other final disposition.

Dated at Bismarck, North Dakota, this 3<sup>rd</sup> day of May, 2012.

State of North Dakota  
Public Service Commission

By:



Allen C. Hoberg  
Administrative Law Judge  
Procedural Hearing Officer  
Office of Administrative Hearings  
2911 North 14<sup>th</sup> Street – Suite 303  
Bismarck, North Dakota 58503  
Telephone: (701) 328-3200

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

**CERTIFICATE  
OF SERVICE**

**Case No. PU-11-701  
OAH File No. 20120087**

.....  
The undersigned certifies that true and correct copies of the **ORDER GRANTING INTERVENTION** were mailed, regular mail, on the 3<sup>rd</sup> day of May, 2012, to:

Debra L. Hoffarth  
Pringle & Herigstad  
PO Box 1000  
Minot, ND 58702-1000

Paul Sanderson  
Zuger Kirmis & Smith  
PO Box 1695  
Bismarck, ND 58502-1695

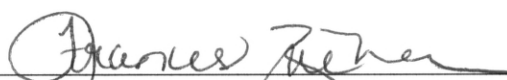
Bruce Gerhardson  
Otter Tail Power Company  
215 South Cascade Street  
Fergus Falls, MN 56538-0496

Tracy Vigness Kolb  
Zuger Kirmis & Smith  
PO Box 1695  
Bismarck, ND 58502-1695

and that a true and correct copy of the above document was mailed, inside mail, at the State Capitol on the 3<sup>rd</sup> day of May, 2012, to:

Mark Gruman  
Public Service Commission  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505

OFFICE OF ADMINISTRATIVE HEARINGS  
Allen C. Hoberg, Administrative Law Judge

  
\_\_\_\_\_  
Frances Zuther