

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

North Central Electric Cooperative, Inc., )  
Complainant, ) **RECEIVED** **ORDER STRIKING BRIEF**  
vs. ) **MAY 10 2012**  
Otter Tail Power Company, ) **PUBLIC SERVICE COMMISSION** **Case No. PU-11-701**  
Respondent. ) **OAH File No. 20120087**

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At approximately 11:00 a.m. on May 7, 2012, the Intervener, the Turtle Mountain Band of Chippewa Indians (the "Tribe"), through its counsel and, apparently, its co-counsel, filed a "Special Appearance Objecting To Jurisdiction" (a "Brief"), filing it and serving it by email attachment on the Procedural Hearing Officer ("Hearing Officer"), counsel for the other parties and on counsel for the Tribe. The filing occurred while the May 7 hearing on this matter was actually occurring in the Commission's hearing room.

On May 8, 2012, North Central filed an "Objection To Special Appearance Objecting to Jurisdiction Filed By Turtle Mountain Band Of Chippewa Indians On May 7, 2012." Otter Tail has not filed any response nor does the Hearing Officer expect one.

Although the Hearing Officer had closed his file on this matter on May 8, 2012, the Commission has asked that the Hearing Officer rule on North Central's objection.

North Central objects to the Tribe's Brief as "untimely, includes evidentiary statements, and not within the April 23, 2012, Order."

The Tribe has been granted intervention in this matter. The Tribe asserts that its intervention was for the limited purpose of objecting to jurisdiction. It appeared that the Tribe

would be making an appearance at the hearing to present oral argument, and the Tribe did so through counsel.

It is clear from the Hearing Officer's April 23, 2012, Prehearing Conference Summary and Stipulations and the Stipulation entered by North Central and Otter Tail with Hearing Officer approval, as well as from the progress in this matter to date, i.e. up until and including the hearing, that no further evidence was to be presented, and that the May 7 hearing was solely for the presentation of oral argument by the parties, including the Tribe. The Hearing Officer specifically stated in his Prehearing Conference Summary and Stipulations:

The parties agreed that unless a request for an evidentiary hearing is specifically made, the hearing scheduled for May 7, 2012, will be held only for the purpose of oral argument on a motion to dismiss and argument for summary disposition of the Complaint. If a request for an evidentiary hearing is made, and an evidentiary hearing is held on May 7, 2012, or otherwise, only parties, including any interveners, will be allowed to present evidence. If no request for an evidentiary hearing is made, only parties, including any interveners, will be allowed to make oral argument at the hearing on May 7, 2012. A request for an evidentiary hearing must be made prior to 5:00 p.m. on May 4, 2012.

In other words, it appeared that all that remained was for the parties to make oral argument at the May 7 hearing.

It is clear that no party, including the Tribe, made a request for an evidentiary hearing on May 7. North Central did make a contingent request for an evidentiary hearing if the Hearing Officer did not approve the Stipulation entered between North Central and Otter Tail, but the Hearing Officer did approve the Stipulation and he stated that the hearing was for oral argument only. It is also clear that all of the parties, including the Tribe, had an opportunity to present oral argument at the May 7 hearing. No briefing, other than what had already been submitted by the parties pursuant to Otter Tail's Motion to Dismiss, was expected or requested. It is also clear that the Tribe's Brief contains both facts and argument, facts not already in evidence in this matter via

the Prehearing Conference Summary and Stipulations, the Stipulation, and the agreement of the parties.

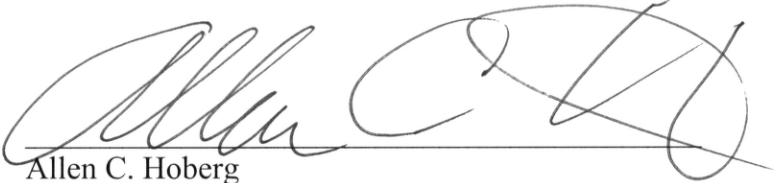
Because the Tribe did not request an evidentiary hearing, because further briefing was not expected or requested, because the Tribe had the same opportunity as the other parties to present oral argument at the May 7 hearing, and because the Tribe's Brief contains facts not already in evidence in this matter and not a part of any agreement between the parties, the Brief is **stricken** from the record and may not be considered by the Commission in its deliberations in this matter.

All that remains is for the parties, North Central and Otter Tail, to file proposed findings of fact and conclusions of law and a proposed order for the Commission's consideration.

Dated at Bismarck, North Dakota, this 9<sup>th</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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Respondent. )

CERTIFICATE  
OF SERVICE

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

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The undersigned certifies that true and correct copies of the **ORDER STRIKING**  
**BRIEF** were mailed, regular mail, on the 9 day of May, 2012, to:

Debra L. Hoffarth  
Pringle & Herigstad  
PO Box 1000  
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Paul Sanderson  
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Bruce Gerhardson  
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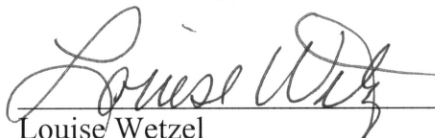
Tracy Vigness Kolb  
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Rjay Brunkow  
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Belcourt, ND 58316

and that a true and correct copy of the above document was mailed, inside mail, at the State  
Capitol on the 9 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

  
Louise Wetzel