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MAY 11 2012

**PUBLIC SERVICE COMMISSION**

May 8, 2012

Mr. Mark Gruman  
N.D. Public Service Commission  
600 East Boulevard Avenue, Dept 108  
Bismarck, North Dakota 58505-0408

Re: North Central Electric Cooperative v Otter Tail Power Company  
PSC Case No. PU 11-701

Dear Mr. Gruman:

Enclosed for filing in the above entitled matter, please find the original and seven copies of the Response to Objection to Brief in surief in Support of the Special Appearance and Objection to Jurisdiction of the North Dakota Public Service Commission filed on behalf of the Turtle Mountain Band of Chippewa Indians.

Sincerely,

Larry M. Baer

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MAY 11 2012

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

North Centra Electric Cooperative, Inc. )  
 )  
 Complainant, )  
 )  
 vs )  
 )  
 Ottertail Power Company, Inc. )  
 )  
 Respondent. )

Case No. PU-11-701

**RESPONSE TO OBJECTION TO THE  
 SPECIAL APPEARANCE OBJECTING TO JURISDICTION  
 BY THE TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS**

North Central Electric Cooperative, Inc., objects to the Special Appearance Objecting to Jurisdiction and Brief in Support thereof as filed by the Turtle Mountain Band of Chippewa Indians for the following reasons:

1. It is file untimely; and
2. It contains "evidentiary statements" outside the scope of the statement of assumed facts set forth by the Administrative Law Judge dated April 23, 2012.

**Timeliness.**

It was not until the afternoon of Friday, May 4, 2012, that the Turtle Mountain Band of Chippewa Indians were granted permission to intervene. (See Case Docket Entry #31) Prior to such date, the Tribe had no authority to file its brief in support of its special appearance

objecting to jurisdiction. On the very next business day, Monday, May 7, 2012, the Tribe filed its Brief in Support of the Tribe's Special Appearance to Object to the Jurisdiction of the North Dakota Public Service Commission in the instant case. Copies were served via internet email transmission to all parties of record on May 7, 2012, with an original and seven copies (copies were mailed on May 8, 2012) sent by U.S. Mail to the Commission.

Its hard to imagine how much faster North Central expects the Tribe to respond. As further discussed below, permission to intervene the day before a hearing creates significant obstacles to instantaneous reaction by a governmental body. Appropriate meetings must be held and authority granted before further action may be taken. It is both unreasonable and impractical to expect the Tribe to have acted on the exact same day the Order granting the Tribe a right of intervention was filed with the Commission.

### **Evidentiary Statements**

If, in fact, the Tribe is bound by a stipulated statement of facts agreed to before Order granting its right to intervene, the Commission is perfectly free to ignore or redact any "facts" outside the scope of the stated "facts" of the Order dated April 23, 2012. The Commission and its staff are a lay person "jury" incapable of setting aside "facts" to which they have been exposed which are found by the Administrative Law Judge to be outside the scope of the hearing held. However, the Tribe objects to any limitation being placed upon its statement of the "facts" to be considered by the Commission. The Tribe further objects to the denial of its opportunity to present witnesses and evidence in support of its objection to the jurisdiction of the Commission at the Hearing conducted May 7, 2012.

The Order granting the Tribe a right to intervene was not filed with the Commission until

May 4, 2012. . (See Case Docket Entry #31) No conditions or limitations were placed upon the Tribe's intervention as is permitted by § 69-02-02-05, N.D.Admin.Code. On May 7, 2012, the very next business day, the Tribe appeared before the Commission, ready and willing to submit evidence and testimony on its behalf within the scope of the noticed hearing, but was denied the right to do so. Such denial violated the due process rights of the Tribe to appear and be heard in this matter by restricting the Tribe to "facts" felt important to the Commission and the two electric utilities then appearing before the Commission, and ignoring equally relevant and admissible evidence and testimony to support the Tribe's legal arguments. Denial was premised upon the alleged failure of the Tribe to timely request an evidentiary hearing before 5:00 p.m., May 4, 2012, the same date the Administrative Law Judge entered his Order permitting the Tribe to intervene.

The Commission's own code of administrative procedure provides: "This article shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented." §69-02 01-10, N.D.Admin.Code. In the instant case, the Commission's Order dated April 23, 2012, specified "requests for an evidentiary hearing must be made prior to 5:00 p.m. on May 4, 2012.." The tribe was not granted the status of an intervenor until the filing of the Administrative Law Judge's Order on May 4, 2012. Rule 6 of the North Dakota Rules of Civil Procedure on the computation of time specifically expresses the long standing rule that in computing any fixed time to act, one must "exclude the day of the event that triggers the period." N.D.R.Civ.P. 6 (a)(1)(A). That same rule provides that if the "next day" thereafter is a Saturday or Sunday: "if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday." N.D.R.Civ.P. 6

(a)(1)(B). The first available legal date upon which the Tribe could exercise its right to request the admission of evidentiary testimony and exhibits was May 7, 2012 – which it did, but was denied the right to do so.

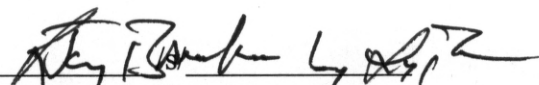
Not only was the denial of the Tribe's right to present evidence and testimony in violation of its legal right to do so, such action is contrary to the principals of comity, the normal courtesy and respect shown between governmental bodies, commonly referred to as comity, as expressed by Rule 7.2 of the North Dakota Rules of Court, and generally described by the United States Supreme Court in Iowa Mutual Insurance Co. V. LaPlante, 480 U.S. 9 (1987). There is a presumption of Tribal regulatory jurisdiction (both adjudicatory and administrative) in all matters involving Indians and Indian lands within the exterior boundaries of their Indian Reservation. Montana v. United States, 450 U.S. 544 (1981); Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134; and Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982). At the very least, the Tribe should have been afforded the opportunity to make a factual record of why it asserts the conduct of electric utilities within the jurisdiction of the Turtle Mountain Tribe directly affects and the health and welfare of the Tribe and falls within the scope of the Tribe's inherent retained sovereignty to make and enforce their own laws for the protection and economic welfare of its membership.


**Conclusion.**

North Central has made every effort possible to prevent the Tribe from appearing before the Commission, filing its objection to intervention, objecting to proffered testimony and evidence at hearing, and now objecting the briefing submitted by the Tribe. Pursuant to the Rules of the Commission, the Rules of Civil Procedure, and in respect for the sovereignty of the

Turtle Mountain Tribe, the Brief filed in support of the Special Appearance Objecting to Jurisdiction filed by the Turtle Mountain Band of Chippewa Indians, should in its entirety, be made a part of the record to be considered by the Commission..

Submitted this 9<sup>th</sup> day of May, 2012.

  
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