



OFFICE OF ADMINISTRATIVE HEARINGS

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May 16, 2012

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RECEIVED

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PUBLIC SERVICE COMMISSION

M s. Ilona Jeffcoat-Sacco
General Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505

Re: North Central Electric Coop, Inc. v. Otter Tail Power Company - Case No. PU-11-701,
OAH Case No. 20120087 - Order Striking Brief - further response

Dear Ms. Jeffcoat -Sacco:

This letter will serve as the Hearing Officer's response to the Tribe's "Response To Objection To The Special Appearance Objecting To Jurisdiction By The Turtle Mountain Band Of Chippewa Indians."

As you know, pursuant to North Central's objection to the Tribe's brief, i.e. the Tribe's "Special Appearance Objecting To Jurisdiction By The Turtle Mountain Band Of Chippewa Indians," which objection I received on May 7, 2012, I issued an "Order Striking Brief" on May 9, 2012, which the Commission filed on May 10, 2012. Then, on May 10, 2012, I received Otter Tail's response to the Tribe's brief. I issued a response letter on May 10, 2012, which the Commission filed on May 11, 2012. On May 11 the Commission also filed the Tribe's "Response To Objection To The Special Appearance Objecting To Jurisdiction By The Turtle Mountain Band Of Chippewa Indians. " a response to North Central's objection. This letter is a further response, a response to the Tribe's response.

In the Tribe's response, the Tribe asserts that its brief should in its entirety be made a part of the record in this matter. It asserts that the Tribe was not granted intervention until May 4, 2012, and its brief was timely filed, as soon as possible after it was granted intervention. It asserts that there were no limitations placed on the Tribe's intervention and it ought to be able to present evidence (facts) to support its objection.

First, the hearing on May 7, 2012, was a hearing on a motion to dismiss and summary disposition. No additional factual presentations were requested or expected because the parties, North Central and Otter Tail, had stipulated to the facts. All of the briefs on the motions in this matter had been submitted by the parties long before the prehearing conference that was held on April 23, 2012. At the prehearing conference, it was clear that there were no factual disputes and all that remained was oral argument and the parties requested that oral argument be made at the May 7 hearing. At the prehearing conference, Otter Tail indicated that the Tribe may file a petition to intervene to contest jurisdiction based on the letter the Tribe filed on February 15, 2012, which stated its exercise of inherent sovereignty in selecting Otter Tail, so that the Tribe, too, would be allowed to participate in the hearing.

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On April 26, 2012, the Tribe did petition to intervene, but intervention was not granted. The Tribe petitioned again on May 1, 2012, and intervention was granted. The hearing officer in his May 3, 2012, Order Granting Intervention, stated, "[t]his 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."

At the May 7, 2012, hearing all parties, including the Tribe, were allowed to make oral argument. Counsel for the Tribe made oral argument. At the May 7 hearing, the Tribe did not object to the restriction in the hearing officer's order allowing only oral argument. It did not request to be allowed to present any evidence. It did not state that it would be filing a brief. At the conclusion of the Tribe's oral argument, when one of the Commissioners asked a question requiring a factual response by counsel for the Tribe, North Central objected and that objection was sustained.

Although neither the hearing officer nor the Commission requested further briefing in this matter, the Tribe, as the May 7 hearing was in progress, filed by email attachment its brief, which the hearing officer did subsequently strike from the record.

For the reasons stated in his Order Striking Brief, and in his May 10, 2012, response letter, and because there was a specific limitation placed on the Tribe's intervention, both implied, considering the late intervention and the progress of the matter at the time of the hearing, and stated, in the Order Granting Intervention, the Tribe's brief should not be considered in its entirety, or in part, as a part of the record in this matter. The Tribe was given full opportunity to make oral argument in this matter as intended and as limited in the Order Granting Intervention.

Again, the hearing officer will not be changing his Order Striking Brief.

Sincerely,



Allen C. Höberg
Administrative Law Judge, Procedural Hearing Officer

Cc: Debra Hoffarth
Mark Gruman
Rjay Brunkow
Paul Sanderson
Bruce Gerardson
Tracy Vigness Kolb