

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 08-2012-CV-1464

North Central Electric Cooperative, Inc.,

Appellant,

vs.

North Dakota Public Service  
Commission, Otter Tail Power  
Company, and Turtle Mountain Band of  
Chippewa Indians,

Appellees.

ORDER



On October 5, 2012, North Central Electric Cooperative filed a brief, asking this Court to reverse and remand the decision of the Public Service Commission (PSC) and direct them to enter summary disposition in favor of themselves. North Central Electric Cooperative argues that the PSC incorrectly decided they lack regulatory power over the activities of Otter Tail Power Company. On November 5, 2012, Otter Tail Power Company filed a response brief arguing that the PSC was correct in determining that they lack regulatory authority in this situation, because the Turtle Mountain Band of Chippewa has the inherent sovereignty to contract with Otter Tail Power Company.

#### LAW AND DECISION

The Administrative Agencies Practice Act governs this Court's review of an administrative agency's decision to suspend an individual's driving privileges.

**N.D.C.C. § 28-32-46.** "Courts exercise limited review in appeals from administrative agency decisions, and the agency's decision is accorded great deference." *Berger v.*

**N.D. Dep't of Transp.**, 2011 ND 55, ¶ 5, 795 N.W.2d 707. This Court must affirm the agency's decision, unless the decision violates any of the statutorily defined reasons. N.D.C.C. § 28-32-46.

Both parties rely significantly on **Application of Otter Tail Power Co.**, 451 N.W.2d 95 (N.D. 1990) and **Devils Lake Sioux Indian Tribe v. North Dakota Public Service Comm'n**, 896 F.Supp. 955 (D.N.D. 1995) to support their respective positions. Appellants, North Central Electric Cooperative, argue that the controlling authority is the **Application of Otter Tail Power Co.** case, while Appellee, Otter Tail Power Company, assert the narrow exception delineated in **Devils Lake Sioux Indian Tribe v. North Dakota Public Service Comm'n** should be controlling. The three requirements of the *Rooker-Feldman* doctrine have been met which would normally make the decision in **Application of Otter Tail Power Co.** mandatory authority. 460 U.S. 462 (1983). A more recent United States Supreme Court decision indicates this is not always the case. In **Verizon Maryland, Inc. v. Public Service Comm'n of Maryland**, the United States Supreme Court determined that the *Rooker-Feldman* doctrine is inapplicable to the decisions rendered by a state administrative agency. 535 U.S. 635, 644 (2002). This more recent decision would make **Devils Lake Sioux Indian Tribe v. North Dakota Public Service Comm'n** mandatory authority in regards to the instant case.

The Court does not find a recitation of the facts necessary, as both parties have stipulated to the facts contained in the record. After a detailed analysis of the decisions rendered in **Application of Otter Tail Power Co.**, 451 N.W.2d 95 (N.D. 1990) and **Devils Lake Sioux Indian Tribe v. North Dakota Public Service Comm'n**, 896 F.Supp. 955 (D.N.D. 1995), the PSC determined that there was one

material difference between the two cases. The Court in *Devils Lake Sioux Indian Tribe v. North Dakota Public Service Comm'n* stated, "that where the service sought is to a Tribal business located upon Trust land, the necessary nexus between Tribal Interests and inherent sovereignty is present." 896 F.Supp. 955, 961 (D.N.D. 1995). The PSC properly found that the Sky Dancer Casino is tribally owned and is also located on tribal trust property. Due to these facts and the controlling authority, the PSC correctly determined it would be a violation of the Tribe's inherent sovereignty to execute the PSC's power under the Territorial Integrity Act. See *Devils Lake Sioux Indian Tribe v. North Dakota Public Service Comm'n*, 896 F.Supp. 955 (D.N.D. 1995).

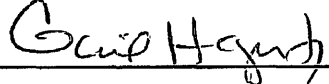
The narrow exception delineated in *Devils Lake Sioux Indian Tribe v. North Dakota Public Service Comm'n* clearly applies to the facts that were before the PSC. 896 F.Supp. 955 (D.N.D. 1995). Based upon the facts before the PSC they could reasonably have concluded that they do not possess any regulatory authority powers over Otter Tail's activities in this situation.

#### CONCLUSION

The PSC's decision is in accordance with the law, supported by a preponderance of the evidence, and their findings sufficiently address the evidence provided by North Central and is accordingly *affirmed*.

January 18, 2013.

BY THE COURT:



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Gail Hagerty  
District Judge

CC: Debra L. Hoffarth Paul R. Sanderson Bruce Gerhardson