

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

North Central Electric Cooperative, Inc.,)	Supreme Court
)	Case No. 20130075
Appellant)	
vs.)	
)	
North Dakota Public Service Commission,)	
Otter Tail Power Company and)	
Turtle Mountain Band of Chippewa Indians,)	
)	
Appellees)	
)	
)	

APPEAL FROM THE DISTRICT COURT
ORDER AND JUDGMENT ENTERED FEBRUARY 25, 2013
THE HONORABLE GAIL HAGERTY
SOUTH CENTRAL JUDICIAL DISTRICT,
BURLEIGH COUNTY, NORTH DAKOTA,
CIVIL NO. 08-2012-CV-01464

APPENDIX

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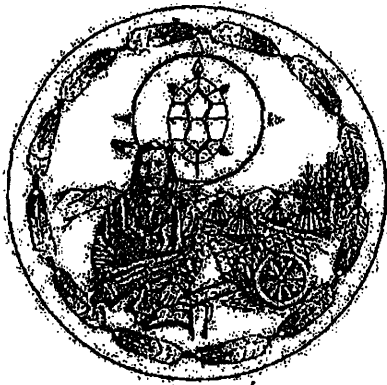
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TABLE OF CONTENTS

Public Service
Commission Docket /Page Number

Letter dated 2/15/12 (Turtle Mountain Band of Chippewa Indians to North Dakota Public Service Commission).....	13	1
Petition to Intervene for Special Appearance to Object to Jurisdiction (by Turtle Mountain Band of Chippewa Indians, 4/25/12).....	18	2
Petition to Intervene for Special Appearance to Object to Jurisdiction (by Zuger Kirmis & Smith for Turtle Mountain Band of Chippewa Indians, 5/1/12)	25	5
Order Granting Intervention	31	7



TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

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Mr. Darrell Nitschke
Executive Secretary and Director of Administration
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0408

February 15, 2012

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

Dear Mr. Nitschke:

This letter is to inform the North Dakota Public Service Commission that the Turtle Mountain Band of Chippewa Indians is aware of the proceedings in the above referenced matter regarding the supply of electric service to the Sky Dancer Casino. To address any doubt that may have been raised by North Central Electric Cooperative in its filings, the Tribe confirms that it is exercising its inherent sovereignty to determine which utility will provide electric service to the Sky Dancer Casino pursuant to the legal precedent set forth in Devils Lake Sioux Indian Tribe v. North Dakota Public Service Comm'n, 896 F. Supp. 955 (D.N.D. 1995).

Please contact our Tribal Attorney, Rjay Brunkow at (701) 550-5596 with any questions or concerns you may have.

Sincerely,

Marie St. Claire,
Chairman

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

North Central Electric Cooperative, Inc.,)

Complainant,)

vs.)

Otter Tail Power Company,)

Respondent.)

**PETITION TO INTERVENE FOR
SPECIAL APPEARANCE TO
OBJECT TO JURISDICTION**

Case No. PU – 11 - 701

PLEASE TAKE NOTICE that pursuant to North Dakota Administrative Code § 69-02-02-05, the Turtle Mountain Band of Chippewa Indians petitions the North Dakota Public Service Commission to intervene in this action by making a special appearance to object to the jurisdiction of the North Dakota Public Service Commission to determine which utility will provide electric service to the Sky Dancer Casino.

The Turtle Mountain Band of Chippewa Indians files this Petition because it has a legal interest which may be substantially affected by this proceeding. The Turtle Mountain Band of Chippewa Indians asserts it possesses the inherent sovereignty to determine which utility will provide electric service to the Sky Dancer Casino. Our position is in opposition to the relief sought by North Central Electric Cooperative in its Complaint.

North Central Electric's Complaint is asking the Public Service Commission to, in effect, assert personal jurisdiction over the Tribe by determining who can provide electric service to the Casino. This Petition is necessary for the Turtle Mountain Band of Chippewa Indians to be heard at the hearing on this matter on May 7, 2012, pursuant to the Order issued by Judge Hoberg indicating the Tribe would need to intervene to be heard. This Petition is only to contest jurisdiction and should not be construed as voluntary general appearance under N.D.R.Civ.P. 4(b)(4). Wallwork Lease & Rental Co. v. Schermerhorn, 398 N.W.2d 127, 129 (N.D. 1986).

This Petition to Intervene will not unduly broaden the issues or delay the proceeding.

Dated this 25th day of April, 2012.

Turtle Mountain Band of Chippewa Indians

By: *Merle St. Claire*
Merle St. Claire, Chairman



TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

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Mr. Darrell Nitschke
Executive Secretary and Director of Administration
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0408

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

Dear Mr. Nitschke:

Enclosed for filing please find the Turtle Mountain Band of Chippewa Indians' Petition to Intervene in this case. The Turtle Mountain Band of Chippewa Indians seeks to intervene in this action for the limited purpose of asserting its inherent sovereignty to determine which utility will provide electric service to the Sky Dancer Casino. We believed our letter filing of February 15, 2012, was sufficient to make the Commission aware of our position with respect to North Central Electric Cooperative's Complaint. However, we have learned North Central may argue that the previous letter filing was not sufficient to assert Tribal jurisdiction over service to the Sky Dancer Casino. Accordingly, the Turtle Mountain Band of Chippewa Indians seeks to intervene in this case to remove any argument as to our jurisdiction over this matter.

We are aware oral argument has been set in this case for May 7, 2012. To the extent necessary, we waive any requirement of notice of the hearing on May 7th.

The original Petition to Intervene and seven copies have been filed and the other parties have been served. Please contact our Tribal Attorney Rjay Brunkow at (701) 550-5596 with any questions or concerns you may have.

Sincerely,

A handwritten signature in cursive script that reads "Merle St. Claire".

Merle St. Claire,
Chairman

This Petition to Intervene will not unduly broaden the issues or delay the proceeding.

Dated this 1st day of May, 2012.

By: Clara J. Holloway
Tracy Vigness/Kolb (ID# 05338)
Clara J. Holloway (ID# 06905)
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BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

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

**ORDER GRANTING
INTERVENTION**

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

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.

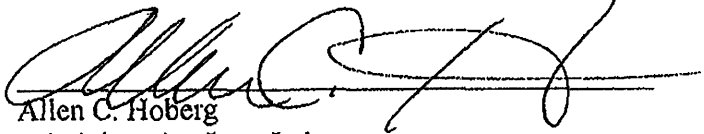
The Tribe's petition to intervene is **granted**.

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 3rd 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 14th Street – Suite 303
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