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February 2, 2018

North Dakota Public Service Commission
600 E. Boulevard Ave. Dept. 408
Bismarck, ND 58505-0480

RE: PU-17-96
CPCN – Otter Tail Power/Minn-Kota Ag. Products

Dear Commissioners,

Enclosed for docketing in the above captioned case, please find the following:

- A. Dakota Valley Electric Cooperative, Inc.'s Objection to Minn-Kota Ag Products, Inc.'s Petition to Intervene and Request to Present Oral and Written Comments**
- B. Certificate of Service**

As always, please do not hesitate to contact my office should you have any questions or concerns.

Thank you.

Sincerely,
RADERMACHER LAW FIRM, P.C.



Kimberly J. Radermacher

Enclosures

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Otter Tail Power Company
Minn-Kota Ag Products Inc. - Richland County
Public Convenience & Necessity**

Case No. PU-17-96

**DAKOTA VALLEY ELECTRIC COOPERATIVE, INC.'S OBJECTION TO
MINN-KOTA AG PRODUCTS, INC.'S PETITION TO INTERVENE
AND REQUEST TO PRESENT ORAL AND WRITTEN COMMENTS**

[1] Dakota Valley Electric Cooperative, Inc., by and through its counsel Kimberly J. Radermacher, submits the following objections to Minn-Kota Ag Products, Inc.'s Petition to Intervene and Request to Present Oral and Written Comments.

[2] On February 1, 2018, Minn-Kota Ag Products, Inc., filed and served a Petition to Intervene and Request to Present Oral and Written Comments. In its filing, Minn-Kota argues that it should be permitted to intervene and would like to provide what it deems to be clarification on certain issues and additional commentary and argument relevant to the Commission's consideration of the ten factors it must weigh in granting or denying Otter Tail's certificate for public convenience and necessity. Minn-Kota believes that good cause exists to allow its intervention at this time and that if permitted to intervene, it would not result in any prejudicial delay in completing the proceeding. Dakota Valley would adamantly disagree.

[3] Under N.D.C.C. Section 28-32-28, "an administrative agency may grant intervention in an adjudicative proceeding to promote the interest of justice if intervention *would not impair the orderly and prompt conduct of the proceeding* and if the petitioning intervenor demonstrates that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of statute or rule. (emphasis added). The agency may impose conditions and limitations

upon intervention. The agency shall give reasonable notice of the intervention to all parties. An administrative agency may adopt rules relating to an intervention in an adjudicative proceeding.” The Public Service Commission, by way of Chapter 69 of the North Dakota Administrative Code, has rules specific to intervention in its proceedings. Under Section 69-02-02-05, “any person with a substantial interest in a proceeding may petition to intervene in that proceeding *by complying with this section.* (emphasis added). An intervention may be granted if the petitioner has a statutory right to be a party to the proceeding; or the petitioner has a legal interest which may be substantially affected by the proceeding, *and the intervention would not unduly broaden the issues or delay the proceeding.* (emphasis added). The commission may impose conditions and limitations on an intervention to promote the interests of justice.” Further under the rule is the requirement that “a petition to intervene in any proceeding *must be filed at least ten days prior to the hearing, but not after except for good cause shown.*” (emphasis added).

[4] Dakota Valley does not deny that Minn-Kota would be an appropriate intervenor to the extent it has an interest in the outcome of these proceedings. However, Dakota Valley would argue that Minn-Kota’s right to intervene has long passed and that it has not shown good cause for intervening well over three months after the evidentiary hearing that was held in this matter and almost a year from the time that it acknowledged service of Otter Tail’s application for a CPCN. A review of the procedural history of this case is noteworthy. On February 27, 2017, George Schuler IV, on behalf of Minn-Kota, acknowledged Otter Tail’s application for a CPCN and made a customer appearance at that time in support of the application. On March 31, 2017, Dakota Valley submitted a protest to the application and requested a hearing. Yet, Minn-Kota chose not to intervene. On July 26, 2017, a notice of hearing was filed indicating that a hearing would be held in front of the

PSC on the CPCN on October 23, 2017. Yet at no time prior to the hearing, did Minn-Kota choose to intervene. At the hearing, George Schuler IV, testified on behalf of Otter Tail's application and made most, if not all, of the points that Minn-Kota now attempts to raise in its most recent Petition. Yet, there was no word of intervention. At the hearing, several deadlines throughout most of the month of November were imposed on the parties, which Minn-Kota was privy to as representatives of Minn-Kota were present at the hearing. Those deadlines came and went without any submissions or request for intervention made by Minn-Kota. Thereafter, the Commission met for a work session on December 20, 2017, to address this case. Yet, Minn-Kota waited another 42 days after that work session (and 101 days after the evidentiary hearing) to intervene in the hopes of clarifying and answering certain questions that appear to have been raised during the work session.

[5] Allowing Minn-Kota to intervene at this stage of the proceedings would be akin to opening the proverbial Pandora's box and serve only to further delay this matter, something Minn-Kota is clearly hoping to avoid given its projected fully operational date of July 1, 2018. Minn-Kota's proposal to merely provide oral and written commentary must require the Commission to reopen the proceedings to take additional evidence and in doing so, must afford Dakota Valley the right to contradict and rebut the veracity of the evidence/arguments sought to be submitted by Minn-Kota. Would Dakota Valley then also be afforded the opportunity to clarify and provide additional evidence to help answer questions relative to Dakota Valley's operations, including those about capital credits, raised by the Commission during its December work session? Where in the sand would the line be drawn as to what evidence could or could not be presented at this stage of the proceedings? And ultimately, when is this matter going to finally be resolved?

[6] It is evident that Minn-Kota has failed to timely intervene and show good cause as to why there should be an exception to the requirements imposed under North Dakota law. It is Dakota Valley's contention that the intervention by Minn-Kota at this stage of the proceedings is improper, would serve only to unduly broaden the issues, delay the proceedings, and impair the orderly and prompt conduct of the proceedings and should therefore not be permitted.

[7] Furthermore, Dakota Valley would ask that the part of the Petition that attempts to provide unsolicited and improper testimony, evidence and/or argument by Minn-Kota be stricken and wholly disregarded by the Commission. Minn-Kota has not been recognized an intervenor at this time and should have reserved its commentary until such time as the Commission would deem it appropriate. Because of this and the fact that Dakota Valley has not been afforded the opportunity to properly address or rebut the statements made primarily in paragraphs 12-17 of Minn-Kota's Petition, such statements should be stricken and not taken into consideration in any way by the Commission.

CONCLUSION

[8] Based on the foregoing law and argument, Dakota Valley respectfully asks that the Commission deny Minn-Kota Ag Products, Inc.'s Petition to Intervene and Request to Present Oral and Written Comments in its entirety and strike/disregard any commentary and purported evidence as contained in the Petition.

Dated this 1st day of February, 2018.



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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Power Company
Minn-Kota Ag Products Inc. - Richland County
Public Convenience & Necessity

Case No. PU-17-96

CERTIFICATE OF SERVICE (ELECTRONIC AND BY FIRST CLASS MAIL)

STATE OF NORTH DAKOTA)
)ss
COUNTY OF LAMOURE)

[1] I, Kimberly J. Radermacher, do hereby certify that on February 2, 2018, I served the following documents:

- A. Dakota Valley Electric Cooperative, Inc.'s Objection to Minn-Kota Ag Products, Inc.'s Petition to Intervene and Request to Present Oral and Written Comments with Cover Letter**

[2] by sending a true and correct copy thereof via email to:

**North Dakota Public Service Commission at ndpsc@nd.gov
Darrell Nitschke at dnitschk@nd.gov
Zachary E. Pelham at zep@pearce-durick.com
Cary Stephenson at cstephenson@otpc.com
Kermit Nash at kermit.nash@gpmlaw.com**

[3] and by sending an original and seven copies via First Class Mail, United States Postal Service to:

**North Dakota Public Service Commission
600 E. Boulevard Ave. Dept. 408
Bismarck, ND 58505-0480**

[4] To the best of my knowledge, information and belief, such addresses are the actual email/postal addresses of the parties intended to be served. That the above document was duly e-mailed or mailed in accordance with the applicable provisions of North Dakota law.

Dated this 2nd day of February, 2018.



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