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March 12, 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 Reconsider Its 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 RECONSIDER ITS 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 Reconsider Its Petition to Intervene and Request to Present Oral and Written Comments.

[2] On March 5, 2018, Minn-Kota Ag Products, Inc., filed and served a Petition to Reconsider Its Petition to Intervene and Request to Present Oral and Written Comments. Said filing came approximately fifteen days after Administrative Law Judge Patrick Ward's decision denying Minn-Kota's original petition to intervene. In its petition to reconsider, Minn-Kota sets forth additional evidence and argument claiming that it should be entitled to intervene and believes that "good cause" has been shown to permit it to intervene. Dakota Valley once again adamantly disagrees with Minn-Kota's position and arguments.

[3] The rules regarding intervention bear repeating. 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] Minn-Kota includes in its petition a recitation of the ten factors the Commission must consider in granting a CPCN and proceeds to argue how it believes the Commission should rule on the ten factors. Yet, Minn-Kota is not a party to the action at this time and once again, its commentary and attempt to introduce new evidence is highly inappropriate, in contravention to the rules of evidence, and should be disregarded by the Commission. Furthermore, said commentary fails to shed any new light as to how “good cause” has been shown to allow Minn-Kota to untimely intervene. It appears that Minn-Kota has misinterpreted how “good cause” applies to intervention. Minn-Kota is not required to show that it has “good cause” to intervene, rather it has to show “good cause” as to why it did not intervene ten (10) days prior to the date of the hearing in this matter. It is clear from the record that “good cause” has not been shown and

quite frankly, it is because “good cause” does not exist for the late intervention. As stated previously, Minn-Kota made a customer appearance in this matter over a year ago. It was aware, almost a year ago, that Dakota Valley was protesting the CPCN. Yet at no time between March 31, 2017, (the time of Dakota Valley’s protest) and February 1, 2018, which is a period of 307 days, did Minn-Kota seek to intervene. Rather, Minn-Kota waited 111 days past the time set by law to request intervention. If Minn-Kota has such a substantial interest in the outcome of the proceedings, one would surmise that it shouldn’t have waited such an inordinate amount of time to protect those interests. Regardless, Minn-Kota cannot argue that it was not adequately represented in these proceedings or that it was completely without a voice in this matter. After all, Minn-Kota had several representatives present at the time of the hearing on October 23, 2017, and one of them, George Schuler IV, testified for over 53 minutes about Minn-Kota’s concerns and wishes regarding who would serve the load at its Barney facility. And it appears that most of the arguments that Minn-Kota proposes to now make were already made by George Schuler IV at the October 23rd hearing.

[5] Minn-Kota claims in both of its recent petitions that it simply wants to provide commentary and argument and that neither the intervention nor the request to provide commentary/argument will unduly delay the proceedings. Yet, Minn-Kota attaches to its petition for reconsideration a letter and curriculum vitae for one Paul Kaeding, an Electrical Engineer. Mr. Kaeding claims he is providing an independent opinion relative to who would best be able to serve Minn-Kota’s load, which conveniently is Otter Tail, and it appears Minn-Kota is relying on this individual to provide some sort of expert opinion relative to this matter. This in and of itself contradicts Minn-Kota’s position that it merely wants to provide commentary and argument relative to this matter. Rather,

Minn-Kota is seeking to introduce new evidence and in doing so, has shown that it is seeking to provide much more than mere commentary. As such, it is apparent that Minn-Kota's late intervention would serve only to unduly broaden the issues, delay the proceedings, and impair the orderly and prompt conduct of the proceedings.

[6] Dakota Valley would also argue that not only is Minn-Kota's petition to intervene improper, so is its petition to reconsider. Petitions to reconsider in an administrative proceeding are governed by Chapter 69-02 of the North Dakota Administrative Code and Chapter 28-32 of the North Dakota Century Code. Under the Administrative Code provision, it is not entirely clear as to who can petition for reconsideration or what types of orders can be reconsidered. However, when it is read in conjunction with the Century Code, it would seem that Minn-Kota's petition to reconsider is procedurally improper. First, Minn-Kota does not appear to have standing to petition for reconsideration. Second, the order sought to be reconsidered is this matter cannot be defined as a final order of the Commission. Under N.D.C.C. Section 28-32-40,

any *party* before an administrative agency who is aggrieved by the *final order* of the agency, including the administrative agency when the hearing officer is not the agency head or one or more members of the agency head, within fifteen days after notice has been given as required by section 28-32-39, may file a petition for reconsideration with the agency. Filing of the petition is not a prerequisite for seeking judicial review. If the agency's hearing officer issues the agency's final order, the petition for reconsideration must be addressed to the hearing officer, who may grant or deny the petition under subsection 4...The *party* must submit with the petition for reconsideration a statement of the specific grounds upon which relief is requested or a statement of any further showing to be made in the proceeding. The petition must also state whether a rehearing is requested. The petition and any statement shall be considered a part of the record in the proceeding. The administrative agency may deny the petition for reconsideration or may grant the petition on such terms as it may prescribe. If a rehearing is granted, the agency may allow a new hearing or limit the hearing as appropriate. The agency may dissolve or amend the final order and set the matter for further hearing. The petition is deemed to have been denied if the agency does not dispose of it within thirty days after the filing of the petition. Any rehearing must be presided over by

the same person or persons presiding previously at the hearing, if available. Any amended findings, conclusions, and orders must be issued by the same person or persons who issued the previous recommended or final orders, if available. Within thirty days after the close of proceedings upon reconsideration, or as soon thereafter as possible, the agency shall issue and give notice of its order upon reconsideration as required in subsection 3 of section 28-32-39. 5. This section does not limit the right of any agency to reopen any proceeding or rehear any matter under any continuing jurisdiction which is granted to the agency by statute. (emphasis added).

[7] A “party” is defined under N.D.C.C. Section 28-32-01, as each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. Minn-Kota has not been named or admitted as party at this time. Furthermore, Dakota Valley would argue that Minn-Kota has not properly sought nor is entitled as a right to be admitted as a party and therefore, Minn-Kota would not constitute a “party” under the rules. As such, Minn-Kota would not have standing to bring a petition for reconsideration, even if ALJ Ward’s decision was determined to be a final order.

[8] 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. Dakota Valley would also argue that Minn-Kota does not have standing to bring a petition for reconsideration and that because the order denying intervention is not a final order, reconsideration is not appropriate under the rules.

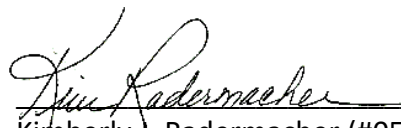
[9] Again, Dakota Valley would ask that the part of the Petition that attempts to provide unsolicited and improper testimony, evidence and/or argument by Minn-Kota be stricken and

wholly disregarded by the Commission. Minn-Kota has not been recognized an intervenor at this time and should have withheld its commentary and opinion from Paul Kaeding (which is full of errors and misinformation) 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 veracity of the statements and opinions made in either of Minn-Kota's petitions, such statements and opinions should be stricken and not taken into consideration in any way by the Commission.

CONCLUSION

[10] Based on the foregoing law and argument, and Dakota Valley's prior submissions on the issue of intervention, Dakota Valley respectfully asks that the Commission deny Minn-Kota Ag Products, Inc.'s Petition to Reconsider its 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 11th day of March, 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 March 12, 2018, I served the following documents:

- A. Dakota Valley Electric Cooperative, Inc.'s Objection to Minn-Kota Ag Products, Inc.'s Petition for Reconsideration of Its 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
Gregory R. Merz at Gregory.Merz@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 13th day of March, 2018.



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