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April 27, 2018

Via U.S. Mail & Email: dnitschke@nd.gov

Darrell Nitschke
Executive Secretary
ND Public Service Commissions
600 E. Blvd. Ave.
Bismarck, ND 58505-0480

Re: Otter Tail Power Company
Case No. PU-17-96
Minn-Kota Ag Products, Inc. – Richland County Public Convenience & Necessity

Dear Mr. Nitschke:

Minn-Kota Ag Products, Inc. hereby serves its Notice of Appeal and Specifications of Error in Case No. PU-17-96 before the North Dakota Public Service Commission, Undertaking on Appeal to District Court and Affidavit of Mailing upon you.

An electronic copy of this filing is also being sent to you at dnitschke@nd.gov and to the North Dakota Public Service Commission at ndpsc@nd.gov.

Please feel free to contact me at (612) 632-3389, if you have questions.

Best Regards,

GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

By

Loren L. Hansen

cc: Wayne Stenehjem (via U.S. Mail and email: ndag@nd.gov)
Bruce Garber (via U.S. Mail and email: bgarber@dakotavalley.com)
Kimberly J. Radermacher (via U.S. Mail and email: kimrader@radermacherlaw.com)
Cary Stephenson (via U.S. Mail and email: cstephenson@otpc.com)
Zachary Pelham (via U.S. Mail and email: zep@pearce-durick.com)
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IN DISTRICT COURT, COUNTY OF BURLEIGH, STATE OF NORTH DAKOTA

Minn-Kota Ag Products, Inc.)
)
 Appellant,)
)
 v.)
)
 North Dakota Public)
 Service Commission,)
 Otter Tail Power Company,)
 Dakota Valley Electric Cooperative)
)
 Appellees.

Case No. _____

**NOTICE OF APPEAL AND
SPECIFICATIONS OF ERROR IN
CASE NO. PU-17-96 BEFORE THE
NORTH DAKOTA PUBLIC
SERVICE COMMISSION**

TO: THE NORTH DAKOTA PUBLIC SERVICE COMMISSION, OTTER TAIL
POWER COMPANY, AND DAKOTA VALLEY ELECTRIC COOPERATIVE

1. PLEASE TAKE NOTICE that Appellant Minn-Kota Ag Products, Inc. (“Minn-Kota”) hereby appeals to the District Court for Burleigh Count from the Findings of Fact, Conclusions of Law and Order in Case Number PU-17-96, issued by the North Dakota Public Service Commission (“Commission”) on March 29, 2018, which denied Otter Tail Power Company’s application for a Certificate of Public Convenience and Necessity (“CPCN”).

2. Ottertail Power Company sought a CPCN for the purpose of providing electrical service to a \$20 million grain handling facility being constructed by Minn-Kota in Richland County, North Dakota, near the town of Barney.

3. Dakota Valley Electric Cooperative (“DVE”) filed a protest of Otter Tail Power Company’s application for a CPCN and requested a hearing before the Commission.

4. As a result of the Commission’s decision denying Otter Tail Power Company’s application for a CPCN, Minn-Kota will be required to receive electric service from DVE, rather than Otter Tail Power Company, which is Minn-Kota’s choice of provider of electric service.

5. “Any party to any proceeding heard by an administrative agency, . . . may appeal from the order within thirty days after notice of the order has been given. . .” N.D.C.C. Sec. 28-32-42. Minn-Kota Ag Products, Inc. (“Minn-Kota”) was denied intervention into Case PU-17-96, but is nevertheless considered a “Party” to the proceeding under the Administrative Agencies Practice Act. N.D.C.C. 28-32-01 et. seq. A “‘Party’ means each person named or admitted as a party *or properly seeking and entitled as of right to be admitted as a party. . . .*” N.D.C.C. 28-32-01(8) (emphasis added). Minn-Kota, therefore, respectfully submits this Notice of Appeal and Specifications of Error, pursuant to the North Dakota Century Code, Section 28-32-42.

Specifications of Error

6. The rules or procedures of the Commission did not afford Minn-Kota a fair hearing in at least the following respects:

- a. The Commission erred in failing to permit Minn-Kota to intervene in the proceeding; and, therefore, precluded Minn-Kota from an opportunity to, among other things, petition the Commission to reopen

the proceeding for the purpose of taking additional evidence pursuant to North Dakota Administrative Code, Section 69-02-06-01.

b. The Commission erred in failing to consider evidence—and struck evidence— offered by Minn-Kota to establish good cause for its intervention and in support of Otter Tail Power Company’s petition, which evidence would have shown:

- i. The significance Minn-Kota’s investment in the facility and the benefits that facility would bring to area farmers and the region, generally;
- ii. Minn-Kota’s specific need for reliable electric service for the facility;
- iii. The risk of harm to Minn-Kota in the event of an interruption in electric service to the facility, as well as the potential for harm to area farmers and the region generally;
- iv. The ways in which the proposal from Otter Tail Power Company to provide electric service would better meet the requirements for operations of the facility, including but not limited to substantially greater reliability and lower cost service;
- v. The risk to Minn-Kota and also to other DVE customers posed by DVE’s unproven proposal to conditionally waive DVE’s standard requirements regarding the use of “soft start” electric motors;

vi. How granting Otter Tail Power Company's petition for a CPCN would facilitate Minn-Kota's plans for expanding the facility in the future, thereby contributing to economic development in the area.

7. The Commission's findings of fact regarding the factors required to be considered under the Territorial Integrity Act, N.D.C.C. ch. 49-03 ("TIA"), are not supported by a preponderance of the evidence in at least the following respects:

a. Although the Commission's findings acknowledge that the service to be provided by Otter Tail Power Company offered greater reliability, the Commission found that either Ottetail Power Company or DVE would provide reliable electric service to Minn-Kota.

b. In connection with its consideration of what customers exist within the area, the Commission erred in failing to consider the proper area and/or give appropriate weight to evidence of the customers served by Ottetail Power Company in the proper area.

c. In connection with its consideration of the reliability of DVE's proposal to provide service to the facility, the Commission erred in failing to consider and/or give appropriate weight to evidence regarding the risk to Minn-Kota and also to other DVE customers posed by DVE's unproven proposal to conditionally waive DVE's standard requirements regarding the use of "soft start" electric motors.

- d. In connection with determining which company would serve the location more economically and still earn an adequate return on its investment, the Commission erred in considering Otter Tail Power Company's and DVE's respective investment, rather than the cost to the customer, to serve the facility.
- e. In connection with determining which proposal would best serve the orderly and economic development of electric service in the general area of the facility, the Commission erred in failing to consider and/or give sufficient weight to evidence regarding the benefits of proposal of Otter Tail Power Company for reliable electricity distribution in the area surrounding the facility.
- f. In connection with determining which proposal would best serve the orderly and economic development of electric service in the area, the Commission erred in facility to consider and/or give sufficient weight to evidence regarding the potential for expansion of the facility and the economic benefits that would derive from such expansion.
- g. In connection with determining whether granting the application for a CPCN would result in wasteful duplication of investment or service, the Commission failed to consider and/or give sufficient weight to evidence regarding the benefits, including but not limited to greater reliability, of the Otter Tail Power Company proposal as compared with the proposal by DVE.

8. The Commission's findings of fact do not sufficiently address the evidence that Minn-Kota presented or attempted to present bearing on the TIA factors as described above.

9. The Commission's conclusions of law regarding the factors required to be considered by the TIA are not supported by its findings of fact in at least the following respects:

a. The Commission's conclusion that either supplier would serve the Minn-Kota facility with sufficient reliability was not supported by the Commission's findings of fact that the Otter Tail Power Company proposal for providing service offered substantially superior reliability.

b. The Commission's conclusion that either supplier would serve the Minn-Kota facility with sufficient reliability was not supported by the Commission's findings of fact that the DVE proposal presented a greater risk of voltage fluctuations that could adversely impact service to other customers.

c. The Commission's conclusion that existing distribution facilities would allow DVE to serve the facility more economically is not supported by the Commission's findings of fact that Otter Tail Power Company would provide more reliable, lower cost service to the Minn-Kota facility while allowing Otter Tail Power Company to earn a reasonable return on investment.

d. The Commission's conclusion that approval of Otter Tail Power Company's application for a CPCN would result in wasteful duplication of facilities is not supported by the Commission's findings of fact that Otter Tail Power Company would provide more reliable, lower cost service to the Minn-Kota facility

10. The Commission's order denying Otter Tail Power Company's application for a CPCN is not in accordance with the law in at least the following respects:

- a. The Commission erred in concluding that the factors required to be considered by the TIA weighed against granting Otter Tail Power Company's application for a CPCN.
- b. For all of the reasons set forth above.

Dated: April 27, 2018

/s/ Loren L. Hansen
Loren Hansen (ND Bar # 08233)
Gregory Merz (Admitted pro hac vice,
ND. Bar #P01258)
Kermit J. Nash (ND Bar # 06513)

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Attorneys for Minn-Kota Ag Products, Inc.

IN DISTRICT COURT, COUNTY OF BURLEIGH, STATE OF NORTH DAKOTA

Minn-Kota Ag Products, Inc.)	
)	Case No. _____
Appellant,)	
)	
v.)	
)	AFFIDAVIT OF MAILING
North Dakota Public)	
Service Commission,)	
Otter Tail Power Company,)	
Dakota Valley Electric Cooperative)	
)	
Appellees.		

Sarah E. Bagwell, being first duly sworn, deposes and says: that she is a citizen of the United States of America, of legal age and is not a party to nor interested in the above-entitled action; that on the 27th day of April, 2018, this Affiant deposited in the mailing department of the United States Post Office at Minneapolis, Minnesota, a sealed envelope with postage thereon duly prepared, containing a true and correct copy of the following documents in this action:

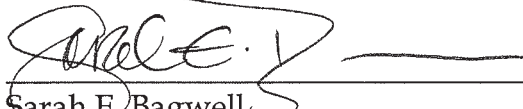
Notice of Appeal and Specifications of Error in Case No. PU-17-96 before the North Dakota Public Service Commission

That said envelope was addressed to the following persons at their known email addresses and U.S. Mail addresses as follows:

Darrell Nitschke North Dakota Public Service Commission 600 East Blvd. Ave. Bismarck, ND 58505-0480	dnitschk@nd.gov ndpsc@nd.gov
Bruce Garber Dakota Valley Electric Cooperative 7296 US 281 Edgeley, ND 58433	bgarber@dakotavalley.com

Wayne Stenehjem North Dakota Attorney General 600 East Boulevard Avenue, Dept. 125 Bismarck, ND 58505	ndag@nd.gov
Kimberly J. Radermacher Attorney for Dakota Valley Electric Cooperative, Inc. 27 Center Avenue, P.O. Box 597 LaMoure, ND 58458	kimrader@radermacherlaw.com
Cary Stephenson Associate General Counsel Otter Tail Power Company 215 S. Cascade Street, P.O. Box 496 Fergus Falls, MN 56536-496	cstephenson@otpc.com
Zachary Pelham Pearce Durick, PLLC 314 East Thayer Avenue Bismarck, ND 58501	zep@pearce-durick.com
Zachary Smith Comm. & Gov. Relations Director Legal Counsel P.O. Box 727 Mandan, ND 58554	zsmith@ndarec.com

The above documents were duly mailed this 27th day of April, 2018 in accordance with the provisions of the North Dakota Rules of Civil Procedure.


 Sarah E. Bagwell

Subscribed and sworn to before me
 this 27th day of April, 2018.


 Notary Public

