

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Minn-Kota Ag Products, Inc.,

Appellant,

v.

North Dakota Public Service Commission,
Dakota Valley Electric Cooperative, Inc., and
Otter Tail Power Company,

Appellees.

Case No. 08-2018-CV-1142

ORDER

INTRODUCTION

[¶1] This is an appeal from an Administrative Law Judge's ("ALJ") Order denying Minn-Kota's Petition to Intervene, and from the North Dakota Public Service Commission's ("Commission") *Findings of Fact, Conclusions of Law and Order* denying Otter Tail Power Company's ("Otter Tail") application for a certificate of public convenience and necessity. Minn-Kota Ag Products, Inc. ("Minn-Kota") alleges that it was error to (1) deny Minn-Kota's Petition to Intervene, and (2) deny Otter Tail's application for a certificate.

[¶2] Otter Tail, while considered an Appellee for purposes of this appeal, filed a Statement in Lieu of Appellee Brief indicating it takes the same position as Minn-Kota. Dakota Valley Electric Cooperative, Inc. ("Dakota Valley") and the Commission filed Appellee Briefs. A hearing on this matter was held on November 26, 2018.

LAW AND DECISION

[¶3] The Administrative Agencies Practice Act, N.D.C.C. ch. 28–32, governs an appeal from a Commission decision. *Capital Elec. Coop., Inc. v. N.D. Pub. Serv. Comm'n*, 2016 ND 73, ¶ 6, 877 N.W.2d 304. A district court shall affirm the order of an agency unless:

1. The order is not in accordance with the law.
2. The order is in violation of the constitutional rights of the appellant.
3. The provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions of law and order of the agency are not supported by its findings of fact.
7. The findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the appellant.
8. The conclusions of law and order of the agency do not sufficiently explain the agency's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge.

N.D.C.C. § 28-32-46.

[¶4] The Commission's decisions on questions of law are fully reviewable. *Capital Elec. Coop., Inc. v. City of Bismarck*, 2007 ND 128, ¶ 30, 736 N.W.2d 788. In reviewing the Commission's findings of fact, however, this Court will not substitute its judgment for that of the Commission or make independent findings. *Voigt v. N. Dakota Pub. Serv. Comm'n*, 2017 ND 76, ¶ 9, 892 N.W.2d 149. Rather, in reviewing the Commission's findings of fact, this Court determines only "whether a reasoning mind reasonably could have determined that the factual conclusions reached were proved by the weight of the evidence from the entire record." *Voigt*, 2017 ND at ¶ 9 (internal quotations omitted).

[¶4] Minn-Kota appeals from the ALJ's decision to deny its Petition to Intervene. Minn-Kota submitted a Petition to Intervene pursuant to N.D. Admin. Code § 69-02-02-05, allowing any person with a substantial interest in a proceeding to petition to intervene at least ten days prior to the hearing, but not after except for good cause shown. Minn-Kota's Petition was submitted more than three months after the evidentiary hearing. Minn-Kota was thus required to show good cause for the substantial delay in filing its Petition.

[¶5] Minn-Kota's Petition articulated nothing more than the bare assertion that "[g]ood cause exists to allow Minn-Kota's intervention at this time." [DE 101 ¶ 10] Minn-Kota offered no reasons for its late Petition. Minn-Kota's arguments that information it would provide would likely assist the Commission in its decision making do not address the reason Minn-Kota took so long to file its Petition. The ALJ determined that Minn-Kota had failed to show good cause, and denied the Petition in its entirety. This Court gives deference to an ALJ's findings. See *N.D. Sec. Comm'r v. Juran & Moody, Inc.*, 2000 ND 136, ¶ 22, 613 N.W.2d 503. Based upon a review of the Petition and the ALJ's Order, this Court agrees with the ALJ and finds that Minn-Kota had not shown good cause for the delay in filing its Petition to Intervene. The ALJ's decision to deny Minn-Kota's Petition to Intervene is **hereby AFFIRMED**.

[¶6] The issue now becomes whether Minn-Kota has standing to bring the remainder of its appeal. Standing is necessary for judicial review through appeal of an administrative order. *Shark v. U.S. W. Commc'ns, Inc.*, 545 N.W.2d 194, 196 (N.D. 1996). The North Dakota Supreme Court articulated a three-part test for determining whether or not a person has

standing to appeal from a decision of an administrative agency:

[A]ny person who is directly interested in the proceedings before an administrative agency who may be factually aggrieved by the decision of the agency, and who participates in the proceeding before such agency, is a “party” to any proceedings for the purposes of taking an appeal from the decision.

Washburn Pub. Sch. Dist. No. 4 of McLean Cty. v. State Bd. of Pub. Sch. Educ., 338 N.W.2d 664, 666 (N.D. 1983) (quoting *Application of Bank of Rhame*, 231 N.W.2d 801, 808 (N.D.1975)).

[¶7] This Court finds based upon a review of the record that Minn-Kota is an interested party and is factually aggrieved by the decision of the agency. Minn-Kota argues that it meets the third prong of “participation” for three reasons: (1) Otter Tail filed an Appearance by Customer, executed by Minn-Kota, (2) a Minn-Kota employee offered limited testimony at the hearing, and (3) Minn-Kota attempted to intervene.

[¶8] Minn-Kota signed an Appearance by Customer. [DE 11] However, it was filed by Otter Tail in support of its application. This Court does not find that this meets participation as a party. Rather, this Court finds it more akin to participation as a witness, which is not enough to meet the “participation” requirement for standing.

[¶9] Regarding Minn-Kota’s employee’s testimony at the hearing, this Court finds that it likewise does not amount to “participation.” By Minn-Kota’s own admission, its employee was at the hearing only as a witness, not as a party. “Participation” in the context of standing requires more than an employee’s limited testimony at a hearing.

[¶10] Finally, because the decision to deny Minn-Kota’s Petition to Intervene was proper, Minn-Kota is unable to meet the “participation” requirement on the grounds of a mere

attempt to intervene. Therefore, as a matter of law, Minn-Kota lacks standing to bring this appeal.

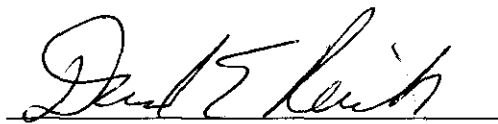
[¶11] From the court's review of the record, it appears that the Commission's decision to deny Otter Tail's application for a certificate of public convenience and necessity was the process of rational application of the facts to the law and that decision would have been affirmed. However, because the court has determined that Minn-Kota lacks standing to bring this appeal, it is unnecessary for the court to address the remaining issues raised on appeal.

CONCLUSION

[¶12] Because the court has determined that Minn-Kota lacks standing to bring this appeal, the appeal is hereby DISMISSED.

Dated March 11, 2019.

BY THE COURT:



David E. Reich
District Judge