

CASE NO. 20190127  
Burleigh Co. No. 2018-CV-01142

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IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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Minn-Kota Ag Products, Inc.,

*Appellant,*

v.

North Dakota Public Service Commission, et al.,

*Appellees.*

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**Appellant's Appendix of Exhibits in Support of Appellant Minn-Kota Ag  
Products, Inc.'s Brief in Support of Appeal from the District Court Order  
Affirming a Decision by the North Dakota Public Service Commission**

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**GRAY, PLANT, MOOTY,  
MOOTY & BENNETT, P.A.**  
Loren L. Hansen (ND Bar # 08233)  
500 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402

*Attorneys for Minn-Kota Ag Products, Inc.*

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APPENDIX TABLE OF CONTENTS

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	<b>Page</b>
Docket for Case No. 08-2018-CV-01142 .....	A-1—A-5
Agency Docket Card PU-17-96 .....	A-6—A-11
CR Ex. 1 - Application for Permanent Authority .....	A-12—A-15
CR Ex. 26 - OTP-1 PU-17-96 .....	A-16
CR Ex. 72 - Petition to Intervene and Request to Present Comments .....	A-17—A-24
Order Denying Petition to Intervene of Minn-Kota Ag Products, Inc. ....	A-25—A-29
CR Ex. 78 - Petition Reconsider Petition to Intervene .....	A-30—A-43
Order Denying Reconsideration .....	A-44—A-45
March 29, 2018, Findings of Fact, Conclusions of Law and Order .....	A-46—A-55

Notice of Appeal and Specification of Error .....A-56—A-62

*TransCanada Keystone Pipeline*, PU-06-421, Order on Motions to Intervene  
(Index # 128, Ex. A to Minn-Kota Memorandum In Support of Appeal) A-63—A72

Order dated March 11, 2019 ..... A-73—A-77

Notice of Appeal ..... A-78—A79

GP:4841-3256-1308 v1

**REGISTER OF ACTIONS**  
**CASE NO. 08-2018-CV-01142**

Minn-Kota Ag Products, Inc. vs. North Dakota Public Service Commission,  
et al.

§  
§  
§  
§  
§

Case Type: **Administrative Appeal**  
Date Filed: **04/27/2018**  
Location: **-- Burleigh County**  
Judicial Officer: **Reich, David E**

**PARTY INFORMATION**

<b>Appellant</b>	<b>Minn-Kota Ag Products, Inc.</b>  Breckenridge, MN 56520	<b>Attorneys</b> <b>Loren Lee Hansen</b> <i>Retained</i> 612-632-3000 x0000(W)  <b>Kermit Jeffrey Nash</b> <i>Retained</i> 612-632-3000 x0000(W)
<b>Appellee</b>	<b>Dakota Valley Electric Cooperative Inc.</b> Edgeley, ND 58433	<b>Kimberly Joy Radermacher</b> <i>Retained</i> 701-883-5125 x0000(W)
<b>Appellee</b>	<b>North Dakota Public Service Commission</b> Bismarck, ND 58505	<b>Zachary Evan Pelham</b> <i>Retained</i> 701-223-2890 x0000(W)
<b>Appellee</b>	<b>Otter Tail Power Company</b> Fergus Falls, MN 56536	<b>Cary Roger Stephenson</b> <i>Retained</i> 218-739-8200 x0000(W)

**EVENTS & ORDERS OF THE COURT**

<b>DISPOSITIONS</b>	
03/11/2019	<b>Dismissed</b> (Judicial Officer: Reich, David E)
<b>OTHER EVENTS AND HEARINGS</b>	
04/27/2018	<b>Notice Index # 1</b> <i>Notice of Appeal and Specifications of Error in Case No. PU-17-96 before the North Dakota Public Service Commission</i>
04/27/2018	<b>Service Document Index # 2</b> <i>Affidavit of Mailing of Notice of Appeal and Specification of Error in Case No. PU-17-96 before the North Dakota Public Service Commission</i>
04/27/2018	<b>Civil Filing Index # 3</b> <i>Undertaking on Appeal to District Court</i>
04/27/2018	<b>Service Document Index # 4</b> <i>Affidavit of Mailing of Undertaking of Appeal to District Court / Nitschke at ND PSC / Garber at Dakota Valley Electric Coop / Atty Stenehjem ND AG / Atty Ragermacher for Dakota Valley Electric Coop / Atty Stephenson for Otter Tail Power Co. / Atty Pelham and Atty Smith NDAREC</i>
04/27/2018	<b>Notice of Assignment and Case Number Index # 5</b>
05/23/2018	<b>Notice Index # 6</b> <i>Notice to Appellant of Estimated Costs</i>
05/23/2018	<b>Service Document Index # 7</b> <i>Service Document - Notice to Appellant of Estimated Costs</i>
05/29/2018	<b>Notice Index # 8</b> <i>Notice of Appearance (Pelham)</i>
05/29/2018	<b>Service Document Index # 9</b> <i>Affidavit of Service on Hansen, Nash, Radermacher, Stephenson, Jeffcoat-Sacco</i>
06/20/2018	<b>Certificate of Record Index # 10</b> <i>Certificate of Record on Appeal</i>
06/20/2018	<b>Exhibit Index # 11</b> <i>CR Exhibit 1 Application for Permanent Authority</i>
06/20/2018	<b>Exhibit Index # 12</b> <i>CR Exhibit 2 Commission Motion to issue Notice of Opportunity for Hearing</i>
06/20/2018	<b>Exhibit Index # 13</b> <i>CR Exhibit 3 Notice of Opportunity for Hearing</i>
06/20/2018	<b>Exhibit Index # 14</b> <i>CR Exhibit 4 Affidavit of Service Notice</i>
06/20/2018	<b>Exhibit Index # 15</b> <i>CR Exhibit 5 Return Receipt</i>
06/20/2018	<b>Exhibit Index # 16</b> <i>CR Exhibit 6 Protest and Request for Hearing</i>
06/20/2018	<b>Exhibit Index # 17</b> <i>CR Exhibit 7 Return Receipt</i>

06/20/2018 **Exhibit Index # 18**  
*CR Exhibit 8 Request for ALJ*

06/20/2018 **Exhibit Index # 19**  
*CR Exhibit 9 Commission Motion to assess fee*

06/20/2018 **Exhibit Index # 20**  
*CR Exhibit 10 Temporary Authority Application*

06/20/2018 **Exhibit Index # 21**  
*CR Exhibit 11 Letter designating ALJ - Patrick Ward*

06/20/2018 **Exhibit Index # 22**  
*CR Exhibit 12 Letter re Temporary Authority*

06/20/2018 **Exhibit Index # 23**  
*CR Exhibit 13 Letter enclosing Commission Motion*

06/20/2018 **Exhibit Index # 24**  
*CR Exhibit 14 Commission Motion to retain counsel - Zachary Pelham*

06/20/2018 **Exhibit Index # 25**  
*CR Exhibit 15 Letter enclosing Commission Motion*

06/20/2018 **Exhibit Index # 26**  
*CR Exhibit 16 Receipt Filing Fee*

06/20/2018 **Exhibit Index # 27**  
*CR Exhibit 17 Commission Motion to issue Notice of Hearing*

06/20/2018 **Exhibit Index # 28**  
*CR Exhibit 18 Notice of Hearing*

06/20/2018 **Exhibit Index # 29**  
*CR Exhibit 19 Affidavit of Service Notice of Hearing*

06/20/2018 **Exhibit Index # 30**  
*CR Exhibit 20 Return receipt*

06/20/2018 **Exhibit Index # 31**  
*CR Exhibit 21 Return receipt*

06/20/2018 **Exhibit Index # 32**  
*CR Exhibit 22 Letter re Court Reporter*

06/20/2018 **Exhibit Index # 33**  
*CR Exhibit 23 Letter enclosing witness and exhibit lists, exhibits*

06/20/2018 **Exhibit Index # 34**  
*CR Exhibit 24 Witness list*

06/20/2018 **Exhibit Index # 35**  
*CR Exhibit 25 Exhibit list*

06/20/2018 **Exhibit Index # 36**  
*CR Exhibit 26 Hrg Exhibit OTP 1*

06/20/2018 **Exhibit Index # 37**  
*CR Exhibit 27 Hrg Exhibit OTP 2*

06/20/2018 **Exhibit Index # 38**  
*CR Exhibit 28 Hrg Exhibit OTP 3*

06/20/2018 **Exhibit Index # 39**  
*CR Exhibit 29 Hrg Exhibit OTP 4*

06/21/2018 **Letter Index # 40**  
*Re: Briefs*

06/21/2018 **Exhibit Index # 41**  
*CR Exhibit 30 Hrg Exhibit OTP 5*

06/21/2018 **Exhibit Index # 42**  
*CR Exhibit 31 Hrg Exhibit OTP 6*

06/21/2018 **Exhibit Index # 43**  
*CR Exhibit 32 Hrg Exhibit OTP 7*

06/21/2018 **Exhibit Index # 44**  
*CR Exhibit 33 Hrg Exhibit OTP 8*

06/21/2018 **Exhibit Index # 45**  
*CR Exhibit 34 Hrg Exhibit OTP 9*

06/21/2018 **Exhibit Index # 46**  
*CR Exhibit 35 Hrg Exhibit OTP 10*

06/21/2018 **Exhibit Index # 47**  
*CR Exhibit 36 Hrg Exhibit OTP 11*

06/21/2018 **Exhibit Index # 48**  
*CR Exhibit 37 Hrg Exhibit DVEC 1*

06/21/2018 **Exhibit Index # 49**  
*CR Exhibit 38 Hrg Exhibit DVEC 2*

06/21/2018 **Exhibit Index # 50**  
*CR Exhibit 39 Hrg Exhibit DVEC 3*

06/21/2018 **Exhibit Index # 51**  
*CR Exhibit 40 Hrg Exhibit DVEC 4*

06/21/2018 **Exhibit Index # 52**  
*CR Exhibit 41 Hrg Exhibit DVEC 5*

06/21/2018 **Exhibit Index # 53**  
*CR Exhibit 42 Hrg Exhibit DVEC 6*

06/21/2018 **Exhibit Index # 54**  
*CR Exhibit 43 Hrg Exhibit DVEC 7*

06/21/2018 **Exhibit Index # 55**  
*CR Exhibit 44 Hrg Exhibit DVEC 8*

06/21/2018 **Exhibit Index # 56**  
*CR Exhibit 45 Hrg Exhibit DVEC 9*

06/21/2018 **Exhibit Index # 57**  
*CR Exhibit 46 Hrg Exhibit DVEC 10*

06/21/2018 **Exhibit Index # 58**  
*CR Exhibit 47 Hrg Exhibit DVEC 11*

06/21/2018 **Exhibit Index # 59**  
*CR Exhibit 48 Hrg Exhibit DVEC 12*

06/21/2018 **Exhibit Index # 60**  
*CR Exhibit 49 Hrg Exhibit DVEC 13 (Protected Document - placeholder)*

06/21/2018 **Exhibit Index # 61**  
*CR Exhibit 50 Hrg Exhibit DVEC 14*

06/21/2018 **Exhibit Index # 62**  
*CR Exhibit 51 Hrg Exhibit DVEC 16*

06/21/2018 **Exhibit Index # 63**  
*CR Exhibit 52 Letter enclosing late filed exhibits*

06/21/2018 **Exhibit Index # 64**  
*CR Exhibit 53 Hrg Exhibit OTP LF1*

06/21/2018 **Exhibit Index # 65**  
*CR Exhibit 54 Hrg Late filed exhibit OTP LF5 (redacted)*

06/21/2018 **Exhibit Index # 66**  
*CR Exhibit 29 Hrg Exhibit OTP 4*

06/21/2018 **Exhibit Index # 67**  
*CR Exhibit 3 Notice of Opportunity for Hearing - Corrected*

06/22/2018 **Exhibit Index # 68**  
*CR Exhibit 76 Order Admitting Gregory R. Merz Pro Hac Vice*

06/22/2018 **Exhibit Index # 69**  
*CR Exhibit 77 Order Denying Petition to Intervene*

06/22/2018 **Exhibit Index # 70**  
*CR Exhibit 78 Petition Reconsider Petition to Intervene and Request to Present Comments*

06/22/2018 **Exhibit Index # 71**  
*CR Exhibit 79 Objection to Petition to Reconsider*

06/22/2018 **Exhibit Index # 72**  
*CR Exhibit 80 Order Denying Reconsideration*

06/22/2018 **Exhibit Index # 73**  
*CR Exhibit 81 Commission Motion to adopt Findings of Fact, Conclusions of Law and Order*

06/22/2018 **Exhibit Index # 74**  
*CR Exhibit 82 Findings of Fact, Conclusions of Law and Order*

06/22/2018 **Exhibit Index # 75**  
*CR Exhibit 83 Service documents*

06/22/2018 **Exhibit Index # 76**  
*CR Exhibit 84 Return receipt*

06/22/2018 **Exhibit Index # 77**  
*CR Exhibit 85 Letter closing OAH file*

06/22/2018 **Exhibit Index # 78**  
*CR Exhibit 86 Transcript of the electronic record of 23 October 2017 formal hearing*

06/22/2018 **Exhibit Index # 79**  
*CR Exhibit 87 Transcript of the electronic record of 20 December 2017 work session*

06/22/2018 **Exhibit Index # 80**  
*CR Exhibit 88 Transcript of the electronic record of 5 February 2018 work session*

06/22/2018 **Exhibit Index # 81**  
*CR Exhibit 90 Hrg Exhibit OTP LF5 (Protected Document - placeholder)*

06/22/2018 **Exhibit Index # 82**  
*CR Exhibit 91 Docket Card*

06/22/2018 **Exhibit Index # 83**  
*CR Exhibit 55 Letter enclosing late filed exhibits*

06/22/2018 **Exhibit Index # 84**  
*CR Exhibit 56 Hrg Exhibit DVEC LF2*

06/22/2018 **Exhibit Index # 85**  
*CR Exhibit 57 Hrg Exhibit DVEC LF3*

06/22/2018 **Exhibit Index # 86**  
*CR Exhibit 58 Hrg Exhibit DVEC LF4*

06/22/2018 **Exhibit Index # 87**  
*CR Exhibit 59 Service documents*

06/22/2018 **Exhibit Index # 88**  
*CR Exhibit 60 Letter enclosing Application for Protection of Information*

06/22/2018 **Exhibit Index # 89**  
*CR Exhibit 54 Hrg Late filed exhibit OTP LF5 (redacted)*

06/22/2018 **Exhibit Index # 90**  
*CR Exhibit 61 Application for Protection of Information*

06/22/2018 **Exhibit Index # 91**  
*CR Exhibit 62 Hrg Late filed exhibit DVEC LF5 (redacted)*

06/22/2018 **Exhibit Index # 92**  
*CR Exhibit 63 Hrg Late filed exhibit DVEC LF5 (Protected Document - placeholder)*

06/22/2018 **Exhibit Index # 93**  
*CR Exhibit 64 Service documents*

06/22/2018 **Exhibit Index # 94**  
*CR Exhibit 65 Post Hearing Argument*

06/22/2018 **Exhibit Index # 95**  
*CR Exhibit 66 Closing Argument and Brief*

06/22/2018 **Exhibit Index # 96**  
*CR Exhibit 67 Order Granting Request for Protection of Information*

06/22/2018 **Exhibit Index # 97**  
*CR Exhibit 68 Reply to Otter Tail Power Company's Post Hearing Argument*

06/22/2018 **Exhibit Index # 98**  
*CR Exhibit 69 Reply to Dakota Valley Electric Cooperative s Closing Argument and Brief*

06/22/2018 **Exhibit Index # 99**  
*CR Exhibit 70 Proposed Findings of Fact, Conclusions of Law and Order*

06/22/2018 **Exhibit Index # 100**  
*CR Exhibit 71 Proposed Findings of Fact, Conclusions of Law and Order*

06/22/2018 **Exhibit Index # 101**  
*CR Exhibit 72 Petition to Intervene and Request to Present Comments*

06/22/2018 **Exhibit Index # 102**  
*CR Exhibit 73 Objection to Petition to Intervene and Request to Present Comments*

06/22/2018 **Exhibit Index # 103**  
*CR Exhibit 74 Motion to Admit Gregory R. Merz Pro Hac Vice with supporting documentation*

06/22/2018 **Exhibit Index # 104**  
*CR Exhibit 75 Response to Petition to Intervene and Request to Present Comments*

06/25/2018 **Stipulation / Agreement Index # 105**  
*Stipulation on Briefing Schedule*

06/25/2018 **Proposed Order Index # 106**  
*proposed Order on Briefing Schedule (filed by Pelham)*

06/25/2018 **Service Document Index # 107**  
*Affidavit of Service (Loren Lee Hansen, Kermit Nash, Kimberly Radermacher, Cary Stephenson, Illona Jeffcoat-Sacco)*

06/26/2018 **Order Index # 108**  
*on Briefing Schedule*

06/26/2018 **Notice Index # 109**  
*Notice of Entry of Order*

06/26/2018 **Service Document Index # 110**  
*Affidavit of Service on Hansen, Nash, Radermacher, Stephenson, Jeffcoat-Sacco*

06/28/2018 **Exhibit Index # 111**  
*Corrected CR Exhibit 90 Docket Card*

06/29/2018 **Service Document Index # 112**  
*Affidavit of Electronic Service*

06/29/2018 **Exhibit Index # 113**  
*CR Exhibit 92 Hearing Exhibit DVEC 13 (protected exhibit)*

06/29/2018 **Exhibit Index # 114**  
*CR Exhibit 93 Hearing Late Filed Exhibit DVEC LF 5 (protected exhibit)*

06/29/2018 **Exhibit Index # 115**  
*CR Exhibit 94 Hearing Late Filed Exhibit OTP LF 5 (protected exhibit)*

07/03/2018 **Service Document Index # 116**  
*Affidavit of Service by Regular Mail*

07/06/2018 **Certificate Index # 117**  
*Certification for Protected Exhibits and Correction to Prior Certification*

07/06/2018 **Service Document Index # 118**  
*Affidavit of Electronic Service*

07/12/2018 **Service Document Index # 119**  
*Affidavit of Service by Regular Mail - serving Loren Hansen, Kimberly Radermacher, Cary Stephenson*

07/13/2018 **Exhibit Index # 120**  
*Exhibit #: 1. Exhibit Description: CR Exhibit 26 Hrg Exhibit OTP 1. (Received)Defendant*

07/13/2018 **Exhibit Index # 121**  
*Exhibit #: 2. Exhibit Description: CR Exhibit 27 Hrg Exhibit OTP 2. (Received)Defendant*

07/13/2018 **Exhibit Index # 122**  
*Exhibit #: 1. Exhibit Description: CR Exhibit 37 Hrg Exhibit DVEC 1. (Received)Defendant*

07/13/2018 **Exhibit Index # 123**  
*Exhibit #: 3. Exhibit Description: CR Exhibit 39 Hrg Exhibit DVEC 3. (Received)Defendant*

07/13/2018 **Exhibit Index # 124**  
*Exhibit #: 4. Exhibit Description: CR Exhibit 40 Hrg Exhibit DVEC 4. (Received)Defendant*

07/13/2018 **Exhibit Index # 125**  
*Exhibit #: 4. Exhibit Description: Substation Exhibit DVEC 4. (Received)Defendant*

07/13/2018 **Exhibit Index # 126**  
*Exhibit #: 10. Exhibit Description: CR Exhibit 46 Hrg Exhibit DVEC 10. (Received)Defendant*

07/20/2018 **Brief Index # 127**  
*Minn-Kota AG Products' Memorandum in Support of Appeal with Exhibit A*

07/20/2018 **Exhibit Index # 128**  
*Exhibit A - Order on Motions to Intervene and Reopen*

07/20/2018 **Service Document Index # 129**  
*Affidavit of Electronic Service / PSC / Nitschke / Pelham / Smith / Stephenson / Radermacher*

07/20/2018 **Brief Index # 130**  
*Statement in Lieu of Appellee Brief filed on behalf of Otter Tail Power Company*

07/20/2018 **Service Document Index # 131**  
*Affidavit of Service filed on behalf of Otter Tail Power Company*

08/17/2018 **Brief Index # 132**  
*Brief of Appellee North Dakota Public Service Commission*

08/17/2018 **Service Document Index # 133**  
*Affidavit of Electronic Service on all parties*

08/17/2018 **Brief Index # 134**  
*Dakota Valley Electric Cooperative, Inc.'s Appellee Brief*

08/17/2018 **Service Document Index # 135**  
*Certificate of Electronic Service on Otter Tail; Minn-Kota; and PSC (Kimberly Radermacher)*

08/31/2018 **Brief Index # 136**  
*Minn-Kota AG Products' Reply in Support of Appeal*

08/31/2018 **Service Document Index # 137**  
*Affidavit of Electronic Service served on multiple parties*

08/31/2018 **Under Advisement (Judicial Officer: Reich, David E )**  
*No Hearing - Briefs Filed Administrative Appeal*

10/30/2018 **Notice of Hearing Index # 138**  
*- Oral Arguments*

11/21/2018 **Notice Index # 139**  
*Notice of Appearance by Kimberly J. Radermacher on Behalf of Dakota Valley Electric, Inc.*

11/21/2018 **Service Document Index # 140**  
*Certificate of Electronic Service on Minn-Kota; Otter Tail Power; Public Service Commission (Kimberly J. Radermacher)*

11/26/2018 **Civil Hearing (2:30 PM) (Judicial Officer Reich, David E )**  
*- Oral Arguments*  
Result: Hearing Ended

11/26/2018 **Under Advisement (Judicial Officer: Reich, David E )**  
*Hearing Held Administrative Appeal*

03/11/2019 **Order Index # 141**  
*Dismissing Appeal*  
 03/11/2019 **Notice Index # 142**  
*Notice of Entry of Order - UNSIGNED*  
 03/11/2019 **Service Document Index # 143**  
*Affidavit of Electronic Service on Loren Hansen, Kermit Nash, Cary Stephenson, and Kimberly J. Rademacher*  
 03/11/2019 **Notice Index # 144**  
*Notice of Entry of Order (signed)*  
 03/11/2019 **Service Document Index # 145**  
*Affidavit of Electronic Service on Loren Hansen, Kermit Nash, Cary Stephenson, and Kimberly J. Rademacher*

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**FINANCIAL INFORMATION**

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	<b>Appellant Minn-Kota Ag Products, Inc.</b>		
	Total Financial Assessment		80.00
	Total Payments and Credits		80.00
	<b>Balance Due as of 04/12/2019</b>		<b>0.00</b>
04/27/2018	Transaction Assessment		80.00
04/27/2018	E-File Payment	Receipt # 08-2018-6191	(80.00)
		Minn-Kota Ag Products, Inc.	

**PU-17-96**      **Otter Tail Power Company**      Status:Open  
 Description: **Minn-Kota Ag Products Inc. - Richland County**  
 Case Type: Public Convenience & Necessity      Portfolio: Brian Kroshus  
 Date Filed: 2/27/2017      Advisory Staff: Jerry R. Lein  
 Category: Electric      Docket Count: 103

Doc	Filed	Description	Pages:	Exhibit:	Certified to Court
1	2/27/2017	<b>Application for Permanent Authority</b> By: Otter Tail Power Company by Dale Rubish, Operations Manager	4		<input checked="" type="radio"/> Yes <input type="radio"/> No
2	3/15/2017	<b>Commission Motion to issue Notice of Opportunity for Hearing</b> By: Public Service Commission	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
3	3/15/2017	<b>Notice of Opportunity for Hearing</b> By: Public Service Commission	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
4	3/16/2017	<b>Affidavit of Service, Cert. &amp; Reg. Mail - Notice</b> By: Public Service Commission	3		<input checked="" type="radio"/> Yes <input type="radio"/> No
5	3/22/2017	<b>Return receipt - 7015-0640-0006-6993-6163</b> By: USPS	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
6	3/31/2017	<b>Protest and Request for Hearing</b> By: Dakota Valley Electric Cooperative, Inc. by Kimberly Radermacher, Attorney	4		<input checked="" type="radio"/> Yes <input type="radio"/> No
7	4/5/2017	<b>Return receipt - 7015-0640-0006-6993-6170</b> By: USPS	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
8	5/25/2017	<b>Request for Administrative Law Judge</b> By: Public Service Commission	3		<input checked="" type="radio"/> Yes <input type="radio"/> No
9	5/31/2017	<b>Commission Motion to assess filing fee</b> By: Public Service Commission	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
10	6/1/2017	<b>Temporary Authority Permit Application</b> By: Otter Tail Power Company by Dale Rubish	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
11	6/1/2017	<b>Letter designating ALJ - Patrick Ward</b> By: Office of Administrative Hearings by Timothy Dawson, Director	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
12	6/1/2017	<b>Letter enclosing signed Temporary Authority Permit Application</b> By: Public Service Commission by Geri Schmaltz	3		<input checked="" type="radio"/> Yes <input type="radio"/> No
13	6/2/2017	<b>Letter enclosing Commission Motion</b> By: Public Service Commission	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
14	6/16/2017	<b>Commission Motion to retain counsel - Zachary Pelham</b> By: Public Service Commission	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
15	6/19/2017	<b>Letter enclosing Commission Motion</b> By: Public Service Commission	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
16	6/21/2017	<b>Receipt# 9,787 \$175,000.00 Public Convenience &amp; Necessity Filing Fee</b> By: Otter Tail Power Company	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
17	7/26/2017	<b>Commission Motion to issue Notice of Hearing</b> By: Public Service Commission	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
18	7/26/2017	<b>Notice of Hearing</b> By: Public Service Commission	1		<input checked="" type="radio"/> Yes <input type="radio"/> No

6/19/2018

Doc	Filed	Description	Pages:	Exhibit:	Certified to Court
19	7/27/2017	<b>Affidavit of Service, Cert. &amp; Reg. Mail - Notice of Hearing</b> By: Public Service Commission	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
20	8/2/2017	<b>Return receipt - 7015-0640-0006-6993-9294</b> By: USPS	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
21	8/2/2017	<b>Return receipt - 7015-0640-0006-6993-9287</b> By: USPS	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
22	9/6/2017	<b>Letter re Court Reporter</b> By: Public Service Commission	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
23	10/23/2017	<b>Electronic record of 23 October 2017 Formal Hearing</b> By: Public Service Commission	1		<input type="radio"/> Yes <input checked="" type="radio"/> No
24	10/31/2017	<b>Letter enclosing witness and exhibit lists, exhibits</b> By: Patrick Ward, ALJ - Office of Administrative Hearings	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
25	10/31/2017	<b>Witness list</b> By: Patrick Ward, ALJ - Office of Administrative Hearings	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
26	10/31/2017	<b>Exhibit list</b> By: Patrick Ward, ALJ - Office of Administrative Hearings	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
27	10/23/2017	<b>Exhibit OTP-1 - OTP Area Map - Wolf</b> By: Otter Tail Power Company	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
28	10/23/2017	<b>Exhibit OTP-2 - OTP Substation Location Map - Wolf</b> By: Otter Tail Power Company	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
29	10/23/2017	<b>Exhibit OTP-3 - OTP Cost Estimate - Substation - Wolf</b> By: Otter Tail Power Company	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
30	10/23/2017	<b>Exhibit OTP-4 - OTP Estimate - Distribution - Wolf</b> By: Otter Tail Power Company	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
31	10/23/2017	<b>Exhibit OTP-5 - DVEC Service Diagram - Wolf</b> By: Otter Tail Power Company	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
32	10/23/2017	<b>Exhibit OTP-6 - OTP Reliability Indices - Wolf</b> By: Otter Tail Power Company	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
33	10/23/2017	<b>Exhibit OTP-7 - DVEC Outage Restoration Data - Wolf</b> By: Otter Tail Power Company	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
34	10/23/2017	<b>Exhibit OTP-8 - DVEC Proposal</b> By: Otter Tail Power Company	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
35	10/23/2017	<b>Exhibit OTP-9 - OTP - DVEC Rate Comparisons</b> By: Otter Tail Power Company	3		<input checked="" type="radio"/> Yes <input type="radio"/> No
36	10/23/2017	<b>Exhibit OTP-10 - OTP Return on Investment</b> By: Otter Tail Power Company	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
37	10/23/2017	<b>Exhibit OTP-11 - OTP CPCN Application</b> By: Otter Tail Power Company	4		<input checked="" type="radio"/> Yes <input type="radio"/> No
38	10/23/2017	<b>Exhibit DVEC-1 - Map of DVEC Service Area</b> By: Dakota Valley Electric Cooperative, Inc.	1		<input checked="" type="radio"/> Yes <input type="radio"/> No

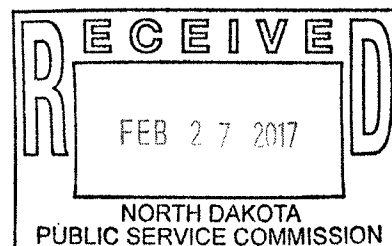
Doc	Filed	Description	Pages:	Exhibit:	Certified to Court
39	10/23/2017	<b>Exhibit DVEC-2 - Minn-Kota Motor List</b> By: Dakota Valley Electric Cooperative, Inc.	4		<input checked="" type="radio"/> Yes <input type="radio"/> No
40	10/23/2017	<b>Exhibit DVEC-3 - Map of DVEC Proposed Extension of Service</b> By: Dakota Valley Electric Cooperative, Inc.	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
41	10/23/2017	<b>Exhibit DVEC-4 - Map of Proposed Minn-Kota and DVEC Facilities</b> By: Dakota Valley Electric Cooperative, Inc.	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
42	10/23/2017	<b>Exhibit DVEC-5 - Diagram of Transformer</b> By: Dakota Valley Electric Cooperative, Inc.	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
43	10/23/2017	<b>Exhibit DVEC-6 - DVEC - Three-Phase Large Commercial Service Rate Schedule</b> By: Dakota Valley Electric Cooperative, Inc.	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
44	10/23/2017	<b>Exhibit DVEC-7 - DVEC - Commercial Incentive Rate Discount</b> By: Dakota Valley Electric Cooperative, Inc.	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
45	10/23/2017	<b>Exhibit DVEC-8 - CPEC Rate Schedule</b> By: Dakota Valley Electric Cooperative, Inc.	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
46	10/23/2017	<b>Exhibit DVEC-9 - DVEC - OTP Rate Comparisons</b> By: Dakota Valley Electric Cooperative, Inc.	10		<input checked="" type="radio"/> Yes <input type="radio"/> No
47	10/23/2017	<b>Exhibit DVEC-10 - OTP System Operating Diagram for 41.6 KV Line</b> By: Dakota Valley Electric Cooperative, Inc.	3		<input checked="" type="radio"/> Yes <input type="radio"/> No
48	10/23/2017	<b>Exhibit DVEC-11 - DVEC Substation Outage History</b> By: Dakota Valley Electric Cooperative, Inc.	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
49	10/23/2017	<b>Exhibit DVEC-12 - DVEC Substation Feeder Outage History</b> By: Dakota Valley Electric Cooperative, Inc.	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
50	10/23/2017	<b>Exhibit DVEC-13 - Load Factor Comparison - Protected Information - 1-page</b> By: Dakota Valley Electric Cooperative, Inc.	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
51	10/23/2017	<b>Exhibit DVEC-14 - OTP Outage History for 41.6 KV Line (2014-2016)</b> By: Dakota Valley Electric Cooperative, Inc.	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
52	10/23/2017	<b>Exhibit DVEC-16 - DVEC Cost Summary of Facilities</b> By: Dakota Valley Electric Cooperative, Inc.	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
53	10/30/2017	<b>Letter enclosing late filed exhibits OTP-LF1 and protected OTP-LF 5</b> By: Otter Tail Power Company by Cary Stephenson, Assoc. General Counsel	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
54	10/30/2017	<b>Exhibit OTP-LF1 - OTP - Policy extensions of service and minimum revenue guarantee calculated by OTP for Minnkota</b> By: Otter Tail Power Company	3		<input checked="" type="radio"/> Yes <input type="radio"/> No
55	10/30/2017	<b>Exhibit OTP-LF5 - Trade secret data as to comparable facilities - Redacted</b> By: Otter Tail Power Company	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
56	11/1/2017	<b>Letter enclosing late filed exhibits DVEC-LF2, DVEC-LF3, and DVEC-LF4</b> By: Dakota Valley Electric Cooperative, Inc. by Kimberly Radermacher, Attorney	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
57	11/1/2017	<b>Late filed exhibit DVEC-LF2 - DVEC - Annual Operating Expenses</b> By: Dakota Valley Electric Cooperative, Inc.	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
58	11/1/2017	<b>Late filed exhibit DVEC-LF3 - DVEC - Projected Annual Rate of Return on investment</b> By: Dakota Valley Electric Cooperative, Inc.	2		<input checked="" type="radio"/> Yes <input type="radio"/> No

Doc	Filed	Description	Pages:	Exhibit:	Certified to Court
59	11/1/2017	<b>Late filed exhibit DVEC-LF4 - History of Capital Credits from DVEC, Allocation and Retirement</b> By: Dakota Valley Electric Cooperative, Inc.	6		<input checked="" type="radio"/> Yes <input type="radio"/> No
60	11/1/2017	<b>Service documents - late filed exhibit DVEC-LF2, DVEC-LF3, and DVEC-LF4</b> By: Dakota Valley Electric Cooperative, Inc. by Kimberly Radermacher, Attorney	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
61	11/1/2017	<b>Letter enclosing Application for Protection of Information, late filed exhibit DVEC-LF5</b> By: Dakota Valley Electric Cooperative, Inc. by Kimberly Radermacher, Attorney	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
62	11/1/2017	<b>Application for Protection of Information - Exhibit DVEC-13</b> By: Dakota Valley Electric Cooperative, Inc. by Kimberly Radermacher, Attorney	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
63	11/1/2017	<b>Late filed exhibit DVEC-LF5, redacted</b> By: Dakota Valley Electric Cooperative, Inc.	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
64	11/1/2017	<b>Late filed exhibit DVEC-LF5 - Trade secret data as to comparable facilities, 1-page</b> By: Dakota Valley Electric Cooperative, Inc.	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
65	11/1/2017	<b>Service documents - late filed exhibit DVEC-LF5</b> By: Dakota Valley Electric Cooperative, Inc. by Kimberly Radermacher, Attorney	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
66	11/7/2017	<b>Post Hearing Argument</b> By: Otter Tail Power Company by Cary Stephenson, Assoc. General Counsel	15		<input checked="" type="radio"/> Yes <input type="radio"/> No
67	11/7/2017	<b>Closing Argument and Brief in Opposition to Application for CPCN</b> By: Dakota Valley Electric Cooperative, Inc. by Kimberly Radermacher, Attorney	19		<input checked="" type="radio"/> Yes <input type="radio"/> No
68	11/15/2017	<b>Order Granting Request for Protection of Information - Exhibit DVEC-13</b> By: Patrick Ward, ALJ - Office of Administrative Hearings	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
69	11/14/2017	<b>Reply to Otter Tail Power Company's Post Hearing Argument</b> By: Dakota Valley Electric Cooperative, Inc. by Kimberly Radermacher, Attorney	14		<input checked="" type="radio"/> Yes <input type="radio"/> No
70	11/14/2017	<b>Reply to Dakota Valley Electric Cooperative's Closing Argument and Brief</b> By: Otter Tail Power Company by Cary Stephenson, Assoc. General Counsel	12		<input checked="" type="radio"/> Yes <input type="radio"/> No
71	11/21/2017	<b>Proposed Findings of Fact, Conclusions of Law and Order</b> By: Otter Tail Power Company by Cary Stephenson, Assoc. General Counsel	13		<input checked="" type="radio"/> Yes <input type="radio"/> No
72	11/21/2017	<b>Proposed Findings of Fact, Conclusions of Law and Order</b> By: Dakota Valley Electric Cooperative, Inc. by Kimberly Radermacher, Attorney	10		<input checked="" type="radio"/> Yes <input type="radio"/> No
73	12/20/2017	<b>Electronic record of 20 December 2017 Work Session</b> By: Public Service Commission	1		<input type="radio"/> Yes <input checked="" type="radio"/> No
74	2/1/2018	<b>Petition to Intervene and Request to Present Oral and Written Comments</b> By: Minn-Kota Ag Products, Inc. by Kermit Nash, Attorney	8		<input checked="" type="radio"/> Yes <input type="radio"/> No
75	2/2/2018	<b>Objection to Petition to Intervene and Request to Present Oral and Written Comments</b> By: Dakota Valley Electric Cooperative, Inc. by Kimberly Radermacher, Attorney	7		<input checked="" type="radio"/> Yes <input type="radio"/> No
76	2/5/2018	<b>Electronic record of 5 Feb. 2018 Work Session</b> By: Public Service Commission	1		<input type="radio"/> Yes <input checked="" type="radio"/> No
77	2/12/2018	<b>Motion to Admit Gregory R. Merz Pro Hac Vice with supporting documentation</b> By: Gray, Plant, Mooty, Mooty & Bennett, P.A. by Gregory Merz, Attorney	12		<input checked="" type="radio"/> Yes <input type="radio"/> No

Doc	Filed	Description	Pages:	Exhibit:	Certified to Court
78	2/12/2018	<b>Response to Petition to Intervene and Request to Present Oral and Written Comments</b> By: Otter Tail Power Company by Cary Stephenson, Assoc. General Counsel	4		<input checked="" type="radio"/> Yes <input type="radio"/> No
79	2/19/2018	<b>Order Admitting Gregory R. Merz Pro Hac Vice</b> By: Patrick Ward, ALJ - Office of Administrative Hearings	4		<input checked="" type="radio"/> Yes <input type="radio"/> No
80	2/19/2018	<b>Order Denying petition to Intervene of Minn-Kota Ag Products, Inc.</b> By: Patrick Ward, ALJ - Office of Administrative Hearings	5		<input checked="" type="radio"/> Yes <input type="radio"/> No
81	3/5/2018	<b>Petition Reconsider Petition to Intervene and Request to Present Oral and Written Comments</b> By: Minn-Kota Ag Products, Inc. by Gregory Merz, Attorney	28		<input checked="" type="radio"/> Yes <input type="radio"/> No
82	3/12/2018	<b>Objection to Petition to Reconsider Petition to Intervene and Request to Present Oral and Written Comments</b> By: Dakota Valley Electric Cooperative, Inc. by Kimberly Radermacher, Attorney	8		<input checked="" type="radio"/> Yes <input type="radio"/> No
83	3/13/2018	<b>Order Denying Reconsideration</b> By: Patrick Ward, ALJ - Office of Administrative Hearings	3		<input checked="" type="radio"/> Yes <input type="radio"/> No
84	3/29/2018	<b>Commission Motion to adopt Findings of Fact, Conclusions of Law and Order</b> By: Public Service Commission	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
85	3/29/2018	<b>Findings of Fact, Conclusions of Law and Order</b> By: Public Service Commission	10		<input checked="" type="radio"/> Yes <input type="radio"/> No
86	4/2/2018	<b>Affidavit of Service, Cert. &amp; Reg. Mail - Order</b> By: Public Service Commission	12		<input checked="" type="radio"/> Yes <input type="radio"/> No
87	4/9/2018	<b>Return receipt - 7017-2400-0001-0889-8539</b> By: USPS	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
88	5/1/2018	<b>Letter closing OAH file</b> By: Patrick Ward, ALJ - Office of Administrative Hearings	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
89	5/1/2018	<b>APPEAL - Notice of Appeal and Specifications of Error</b> By: Minn-Kota Ag Products, Inc. by Loren Hansen, Attorney	10		<input type="radio"/> Yes <input checked="" type="radio"/> No
90	5/1/2018	<b>APPEAL - Undertaking on Appeal to District Court</b> By: Minn-Kota Ag Products, Inc. by Loren Hansen, Attorney	4		<input type="radio"/> Yes <input checked="" type="radio"/> No
91	5/1/2018	<b>APPEAL - Affidavit of Sarah Bagwell</b> By: Minn-Kota Ag Products, Inc. by Loren Hansen, Attorney	2		<input type="radio"/> Yes <input checked="" type="radio"/> No
92	5/15/2018	<b>APPEAL - Notice to Appellant of Estimated Costs</b> By: Public Service Commission	4		<input type="radio"/> Yes <input checked="" type="radio"/> No
93	5/23/2018	<b>Receipt# 10,027 \$1,800.00 Transcript Request</b> By: Gray, Plant, Mooty, Mooty & Bennett, P.A.	1		<input type="radio"/> Yes <input checked="" type="radio"/> No
94	5/23/2018	<b>APPEAL - EFileAndServe - Notice to Appellant of Estimated Costs</b> By: Public Service Commission	4		<input type="radio"/> Yes <input checked="" type="radio"/> No
95	5/23/2018	<b>APPEAL - EFileAndServe - Service Document</b> By: Public Service Commission	4		<input type="radio"/> Yes <input checked="" type="radio"/> No
96	5/29/2018	<b>APPEAL - E-file to Court, Notice of Appearance - Zachary Pelham</b> By: Public Service Commission by Zachary Pelham, SAAG	3		<input type="radio"/> Yes <input checked="" type="radio"/> No
97	5/29/2018	<b>APPEAL - E-file to Court, Service Document</b> By: Public Service Commission by Zachary Pelham, SAAG	3		<input type="radio"/> Yes <input checked="" type="radio"/> No

6/19/2018

Doc	Filed	Description	Pages:	Exhibit:	Certified to Court
98	6/7/2018	<b>APPEAL - Transcript of the electronic record of 23 October 2017 formal hearing</b> By: Public Service Commission	519		<input checked="" type="radio"/> Yes <input type="radio"/> No
99	6/7/2018	<b>APPEAL - Transcript of the electronic record of 20 December 2017 work session</b> By: Public Service Commission	79		<input checked="" type="radio"/> Yes <input type="radio"/> No
100	6/7/2018	<b>APPEAL - Transcript of the electronic record of 5 February 2018 work session</b> By: Public Service Commission	30		<input checked="" type="radio"/> Yes <input type="radio"/> No
101	6/8/2018	<b>APPEAL - Letter notifying appellant of additional expenses</b> By: Public Service Commission	2		<input type="radio"/> Yes <input checked="" type="radio"/> No
102	6/18/2018	<b>Receipt# 10,042 \$222.00 Remaining balance for Transcript Request</b> By: Gray, Plant, Mooty, Mooty & Bennett, P.A.	1		<input type="radio"/> Yes <input checked="" type="radio"/> No
103	10/30/2017	<b>Exhibit OTP-LF5 - Trade secret data as to comparable facilities - Protected - 11-pages</b> By: Otter Tail Power Company	1		<input checked="" type="radio"/> Yes <input type="radio"/> No



**Public Service Commission  
State of North Dakota**

Otter Tail Power Company )  
 Fergus Falls, Minnesota )  
 Customer's Name Minn-Kota Ag. Products Inc. )  
 Customer's location by )  
 Nearest city Barney )  
 Public Convenience and Necessity )

**Application For  
Permanent Authority**

Otter Tail Power Company, for its Application to the Public Service Commission of North Dakota, respectfully alleges:

**I.**

The full name of the applicant is Otter Tail Power Company, and the post office address of its principal office is Fergus Falls, Minnesota. Applicant is a public utility corporation, subject to the jurisdiction of, and regulation by, the Public Service Commission of North Dakota, under Title 49, NDCC, as amended. Applicant's Articles of Incorporation, as well as its Annual Report, are on file with the Commission, having been filed in Case No. PU-08-292, and are incorporated herein by reference, and the Commission is requested to take official notice of the same.

**II.**

This Application is made pursuant to the provisions of Chapter 49-03, NDCC, as amended, and the Rules of Practice and Procedure promulgated by the Commission.

**III.**

Applicant has been requested by Minn-Kota Ag. Products Inc.  
 (hereinafter referred to as the Customer), to provide electric service to it at a point located in  
NE 1/4 Section 10 Barney twp. In Section NE 1/4 of 10, Township T-132-N, Range R-50-W,  
Barney Township, Richland County, North Dakota, as shown on the attached  
 map, marked Exhibit "A" and made a part hereof by reference. The mailing address of the customer is  
90 8th St. N Breckenridge, MN 56520. The customer will need electric service on the 1st  
 day of May, 20 17.  
 Service at: Rural Barney Township Section 10

**IV.**

The service required by the Customer at said location is 3 phase phase service, and the length of the extension will be approximately \_\_\_\_\_ feet, as shown by Exhibit "A". The location of the proposed service is within the economic service area of Applicant, and service will be extended under the provisions of the rates, rules and regulations applicable to Applicant as approved by the Commission. It is Applicant's public utility obligation to furnish the requested service, and the public convenience and necessity require, and will be subserved by, Applicant furnishing the requested electric service to this Customer at said location.

**V.**

Submitted with this Application, is an Appearance herein by the Customer, in which the Customer states to the Commission that it desires electric service from Applicant as a public utility subject to the jurisdiction of, and regulation by, this Commission. In said Appearance, the Customer also waives Notice of Opportunity for Hearing and Notice of Hearing upon this Application, and requests the Commission to issue an Order and Certificate of Public Convenience and Necessity authorizing this requested and needed service.

**1 PU-17-96 Filed: 2/27/2017 Pages: 4**  
**Application for Permanent Authority**

VI.

The extension  will  will not cross any railway tracks.

Wherefore, Applicant prays for the entry of an Order and Certificate of Public Convenience and Necessity authorizing Applicant to extend the requested and needed service to the Customer.

Otter Tail Power Company

By Dale Rubish

Its Operations Manager

State of North Dakota )

) SS

County of Richland )

Dale Rubish

, being duly sworn, on oath says he is an Operations Manager of Otter Tail Power Company, and the person who executed the foregoing Application on behalf of Otter Tail Power Company, and is authorized to verify this Application on behalf of the Company; that he has read the foregoing Application and knows the contents thereof, and the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters, he believes them to be true.

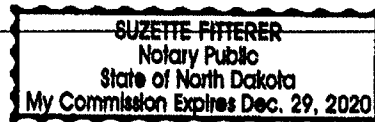
Subscribed and sworn to before me this 20<sup>th</sup> day of February, 2017.

Dale Rubish

Suzette Fitterer

Notary Public, Richland County,

North Dakota. My commission expires



(Notary Seal)

ADMISSION OF SERVICE

Personal service of the foregoing Application by true and correct copy thereof is hereby admitted this 27 day of February, 2017.

George M. Shultz III

(Customer)

Before the Public Service Commission  
State of North Dakota  
Case No. \_\_\_\_\_

In the Matter of the Application of Otter Tail  
Power Company for an Order and Certificate  
To Extend Service to  
Minn-Kota Ag. Products Inc. New Elevator Rural Barney  
at the Location Stated Herein

APPEARANCE BY CUSTOMER

Minn-Kota Ag. Products Inc., (hereinafter referred to as the Customer)  
hereby makes a voluntary appearance in this matter and states the following to the Commission:

I.

Customer desires electric service from Otter Tail Power Company as a public utility subject to the jurisdiction of and regulation by this Commission, and has requested said public utility to provide Customer with electric service at the point located as stated in the Application in this matter.

The Customer further states the need of and has demanded service at said location for the reasons that are set forth in the Application herein. The Customer waives Notice of Opportunity for Hearing and Notice of Hearing upon said Application, or a hearing thereon, and requests the Commission to issue an Order and Certificate of Public Convenience and Necessity authorizing this requested and needed service, and that provision be made therein authorizing the extension of immediate service.

II.

All of the allegations of the Application herein are admitted as true and correct.

Wherefore, the undersigned, being the Customer involved herein, prays for the entry of an Order and Certificate of Public Convenience and Necessity by the Commission, authorizing the Applicant to extend the requested and needed service to this Customer at said location, subject to such appropriate and proper conditions to be appended to and made a part of such Order and Certificate as the Commission may determine, said Order and Certificate to become final as may be set forth in the conditions appended thereto; and for such other and further relief as may be proper in the premises.

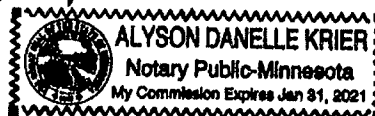
Witnesses:

[Signature]  
[Signature]

\_\_\_\_\_  
[Signature]  
(Customer)

Notary Public, Wilkin County  
~~Minnesota~~  
~~North Dakota~~. My commission expires 01/31/2021

[Signature] (NOTARIAL SEAL)





# WHEN IT COMES TO WATER, Don't Be A Drip!

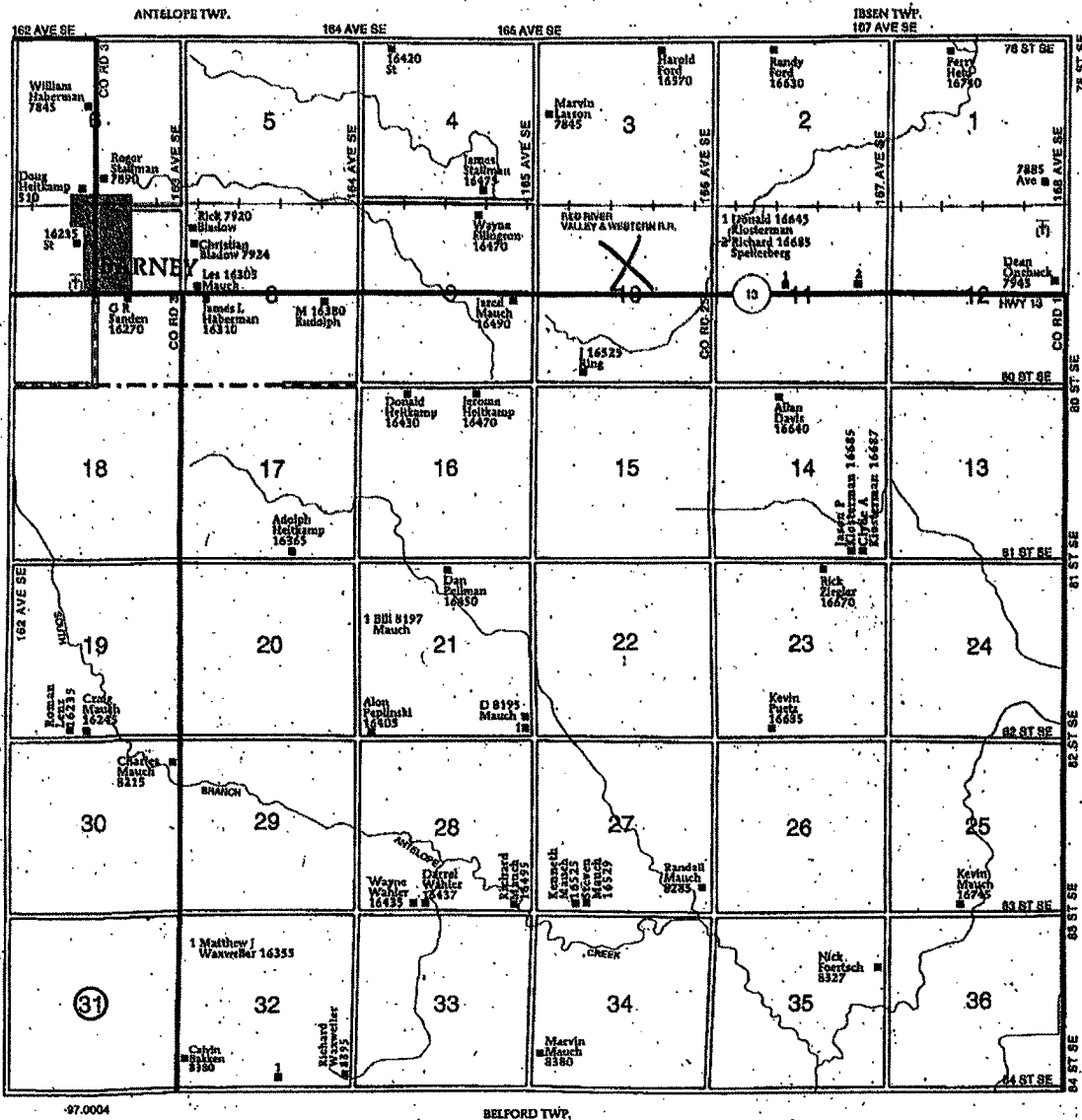
It may seem like a drop in the bucket, but you really can make a difference when it comes to conserving our most precious natural resource.

T-132-N

## BARNEY DIRECTORY

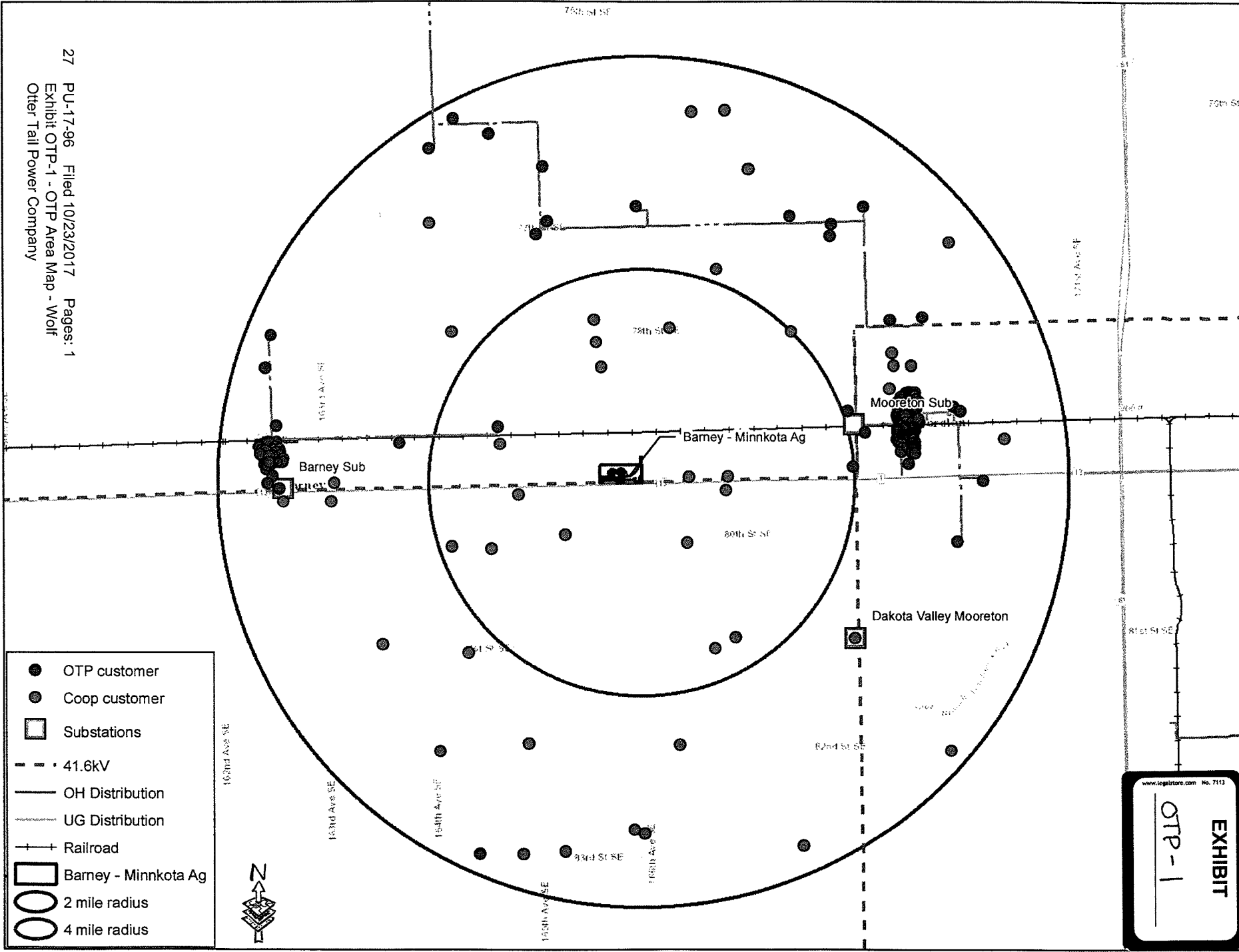
R-50-W

(Roads - Dimes or Points)



-97.0004

BELFORD TWP.



27 PU-17-96 Filed 10/23/2017 Pages: 1  
 Exhibit OTP-1 - OTP Area Map - Wolf  
 Otter Tail Power Company



80 SOUTH EIGHTH STREET  
500 IDS CENTER  
MINNEAPOLIS, MN 55402  
MAIN: 612.632.3000  
FAX: 612.632.4444

CR Exhibit 72 Petition to Intervene and Request to Present  
Comments

08-2018-CV-01142

KERMIT J. NASH  
ATTORNEY  
DIRECT DIAL: 612.632.3426  
DIRECT FAX: 612.632.4426  
KERMIT.NASH@GPMLAW.COM

February 1, 2018

Via U.S. Mail & Email: [dnitschke@nd.gov](mailto:dnitschke@nd.gov)

Darrell Nitschke  
Executive Secretary  
ND Public Service Commission  
600 E. Boulevard Avenue  
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. respectfully submits its Petition to Intervene and Request to Present Oral and Written Comments.

An electronic copy of this filing is also being sent to you at [dnitschk@nd.gov](mailto:dnitschk@nd.gov) and to the North Dakota Public Service Commission at [ndpsc@nd.gov](mailto:ndpsc@nd.gov).

Please feel free to contact me at (612) 632-3426 or by email at [kermit.nash@gpmlaw.com](mailto:kermit.nash@gpmlaw.com) if you have any questions.

Very truly yours,

Kermit J. Nash  
Attorney

Enclosure

cc: Kimberly J. Radermacher (via U.S. Mail and email: [kimrader@radermacherlaw.com](mailto:kimrader@radermacherlaw.com))  
Cary Stephenson (via U.S. Mail and email: [cstephenson@otpc.com](mailto:cstephenson@otpc.com))  
Zachary Pelham (via U.S. Mail and email: [zep@pearce-durick.com](mailto:zep@pearce-durick.com))  
Zachary Smith (via U.S. Mail and email: [zsmith@ndarec.com](mailto:zsmith@ndarec.com))

74 PU-17-96 Filed 02/01/2018 Pages: 8  
Petition to Intervene and Request to Present Oral and Written Comments  
Minn-Kota Ag Products, Inc.  
Kermit Nash, Attorney

**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**

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

Minn-Kota Ag Products, Inc. (“Minn-Kota”) respectfully submits this Petition, pursuant to the North Dakota Administrative Code, Section 69-02-02-05 of the rules of practice and procedure of the North Dakota Public Service Commission (“Commission”), to intervene in the above-referenced matter and to present oral and written comments in support of Otter Tail Power Company’s Application for a Certificate of Public Convenience and Necessity. In support of its petition, Minn-Kota states as follows:

1. Minn-Kota is in the process of constructing a state-of-the-art grain handling facility located on Highway 13, two miles east of Barney, North Dakota (“Facility”). The Facility will have ten steel bins with a capacity of 2.9 million bushels. When completed, the Facility will have a load out capacity of 80,000 bushels per hour, which will enable 110 rail cars to be loaded in less than eight hours. Minn-Kota anticipates that the Facility will be operational by the middle of June 2018 and plans to put the Facility into full service by July 1 of 2018. The Facility will use large electric motors to power augers and conveyors that will move the grain. The Facility will serve numerous area farmers. The plans for the current Facility will essentially be the first phase of many anticipated expansion phases for Minn-Kota.

2. Otter Tail Power Company (“OTP”) has made a proposal to provide electricity to the Facility. OTP is currently providing electricity to Minn-Kota pursuant to a temporary agreement.

3. Dakota Valley Electric Cooperative (“DVE”) also made a proposal to provide electricity to the Facility.

4. Access to reliable, reasonably priced electricity is critical to the success of the Facility. Based on careful review of the two competing proposals, Minn-Kota determined that OTP’s proposal would meet its needs and that DVE’s proposal would not. Accordingly, Minn-Kota has made a request to OTP to serve as Minn-Kota’s electricity provider.

5. Pursuant to the North Dakota Territorial Integrity Act, N.D.C.C. 49-02 *et seq.*, OTP applied to the Commission for a Certificate of Public Convenience and Necessity (“CPC&N”) in order to provide service to Minn-Kota.

6. DVE has objected to OTP’s application.

7. In determining whether to grant a CPC&N under the Territorial Integrity Act, the Commission must consider the following ten factors:

- a. From whom does the customer prefer electric service?
- b. What electric suppliers are operating in the general area?
- c. What electric supply lines exist within at least a two-mile radius of the location to be served, and when were they constructed?
- d. What customers are served by electric suppliers within at least a two-mile radius of the location to be served?
- e. What are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service?
- f. Which of the available electric suppliers will be able to serve the location in question more economically and still earn an adequate return on its investment?
- g. Which supplier’s extended electric service would best serve orderly and economic development of electric service in the general area?
- h. Would approval of the applications result in wasteful duplication of investment or service?

- i. Is it probable that the location in question will be included within the corporate limits of a municipality within the foreseeable future?
- j. Will service by either of the electric supplier in the area unreasonably interfere with the service or system of the other?

8. George Schuler IV of Minn-Kota testified at the hearing in support of OTP's application for the CPC&N. If permitted to intervene, OTP would continue to support OTP's application.

9. Minn-Kota's interests are not adequately represented by either party to the proceeding. DVE's interest, in opposing OTP's application, is the opposite of Minn-Kota's interests and is also contrary to the public interest. Although the interests of Minn-Kota and OTP are generally aligned, they are not identical. Obtaining a reliable source of power is critical to the viability of the Facility; indeed, the outcome of this case may have a significant role in whether the Facility succeeds or fails. Thus, for Minn-Kota, the stakes are extremely high. For OTP, Minn-Kota is just one customer among many and the impact on OTP if its application for a CPC&N is denied will be relatively modest.

10. Good cause exists to allow Minn-Kota's intervention at this time. Minn-Kota believes that it has a unique perspective on many of the issues before the Commission and that its written and oral comments will be helpful to the Commission in its consideration, in particular, of issues that were the focus of discussions at the most recent working session, held on December 20, 2017. At that time, the Commission had extensive discussion regarding, in particular, whether granting OTP's application would result in wasteful duplication of facilities and the impact of the Commission's decision on the public interest.

11. If permitted to intervene and granted leave to provide the Commission with oral and written comments Minn-Kota intends to address, among other things, the following points, summarized in Paragraphs 12-17.

12. Duplication of Facilities and Service Reliability – OTP’s proposal is to construct a substation adjacent to the Facility, which would be fed by a line running along the boundary of Minn-Kota’s property and served by OTP’s existing line. Initially, Minn-Kota would be the only customer served by the substation, although the additional capacity would be available to serve other customers in the future, including Minn-Kota’s future expansion of the Facility. DVE’s proposal, in contrast, is to provide service from a distant substation, connected to the Facility by nearly 16 miles of underground cables. Because of the benefit of OTP’s proposed service, which benefits are not provided by DVE’s proposal, not only for Minn-Kota but for all customers served by the electric grid in the area, facilities to be constructed under OTP’s proposal cannot properly be seen as “wasteful.”

13. The Minn-Kota facility will use electric motors that produce, in the aggregate, 4,000 horsepower. Those motors will place a substantial burden on the grid, especially at start-up, which could have an adverse impact on electric service to other customers. One of the issues that the Commission discussed at its December 20 working session was the use of “soft start” motors which could mitigate concerns about the potential for other customers to experience brown out or other disruptions when the facility motors are started up. Because OTP’s proposal is to initially provide a dedicated substation for the Facility, the need for soft start motors will be reduced – enabling more efficient operation of the Facility – and the potential for adverse impact on other customers will be eliminated.

14. At the working session, there was discussion regarding DVE’s offer to “waive,” in part, its requirements that Minn-Kota use soft start motors. Minn-Kota believes that DVE’s waiver proposal is inadequately defined and presents two concerns. First, waiving soft start requirements, although superficially responding to Minn-Kota’s desire for maximum efficiency,

will put other customers at risk, by increasing the likelihood that customers served by the grid in that portion of the state will experience brown outs or other service disruptions, especially when the Facility's motors start up. Second, DVE cannot provide any assurance that its waiver proposal would not result in the degradation of service for other DVE customers served by that same part of the electricity grid. If it is determined that the waiver of the soft start requirement results in an undue amount of disruption of service to other customers, Minn-Kota may, sooner rather than later, be required to retrofit the Facility with soft start motors – resulting in unnecessary expense and business interruption – and/or to pay DVE's expenses to augment the grid to enable it to provide sufficiently stable service.

15. Public Interest – Concerns about reliable service affect not just Minn-Kota but the public generally. As described above, the load that Minn-Kota's Facility requires that the electric service be sufficiently robust in order to avoid any adverse effect on other customers. OTP's proposal, because it involves a dedicated service, eliminates the potential for adverse effects on other customers.

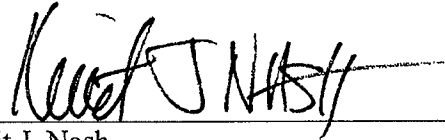
16. The Facility, when it becomes operational, will elevate the equivalent of 70 semi truck loads of grain per hour 160 feet upwards in conjunction with every other part of the Facility. A loss of power will cause chain and belt conveyors to stop working, which will cause grain to fall backwards into the elevator legs and plug the system. Such an occurrence would, at best, require the Facility to shut down so that the system can be cleaned out and restarted or, at worst, result in substantial damage to expensive equipment. Here, too, the harm to Minn-Kota would also hurt the public. If the Facility is required to go offline for any significant period of time, farmers and grain haulers in the area who depend on the Facility will need to find an alternative outlet.

17. The OTP proposal will accommodate anticipated future expansion of the Facility; the DVE proposal will not. Thus, OTP also will benefit the public interest by expanding employment opportunities and increasing economic activity in the region.

18. Allowing intervention by Minn-Kota will not result in any prejudicial delay in completing the proceeding. Allowing Minn-Kota to provide oral and written comments will not require any undue delay and such comments are likely to assist the Commission in its decision-making. OTP's CPC&N application relates solely to service to be provided to Minn-Kota. No other party will be affected.

For the foregoing reasons, Minn-Kota respectfully requests that it be permitted to intervene in the proceeding. Additionally, Minn-Kota requests leave to provide the Commission with oral and written comments regarding the issues to be determined.

Dated: February 1, 2018



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Kermit J. Nash  
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**North Dakota Public Service Commission Docket No: PU-17-96**

**Certificate of Electronic Service**

State of Minnesota    )  
                                  )ss  
County of Hennepin    )

I, Kermit J. Nash, do hereby certify that on February 1, 2018, I served the following document:

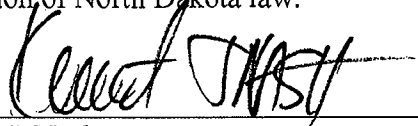
**Minn-Kota Ag Products Inc.'s Petition to Intervene and  
Request to Present Oral and Written Comments**

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

**Public Service Commission at ndpsc@nd.gov  
Darrell Nitschke at dnitschk@nd.gov  
Kimberly Radermacher at kimrader@radermacherlaw.com  
Cary Stephenson at cstephenson@otpc.com  
Zachary Pelham at zep@pearce-durick.com  
Zachary Smith at zsmith@ndarec.com**

To the best of my knowledge, information and believe, such address is the actual email addresses of the parties intended to be served. That the above documents were duly e-mailed and served in accordance with the applicable provision of North Dakota law.

Dated: February 1, 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**

**ORDER DENYING PETITION TO INTERVENE OF MINN-KOTA AG PRODUCTS, INC.**

On February 1, 2018, Minn-Kota Ag Products, Inc. (“Minn-Kota”) submitted a Petition to Intervene and Request to Present Oral and Written Comments to the Public Service Commission pursuant to Section 69-02-02-05 of the Public Service Commission Rules of Practice and Procedure. One of the parties to the original proceeding, Dakota Valley Electric Cooperative, Inc. (“DVEC”), submitted objections to the request to intervene on February 2, 2018. Otter Tail Power (“OTP”) supports the request. PSC staff takes no position.

The North Dakota Public Service Commission with authority granted under N.D.C.C. § 28-32-28 of the Administrative Agency's Practices Act has adopted rules for allowing petitions for intervention at § 69-02-02-05 of the North Dakota Administrative Code. Those rules provide that any person with a “substantial interest” in a proceeding may petition to intervene so long as “the intervention would not unduly broaden the issues or delay the proceeding.” The rule also provides that “a petition to intervene in any proceeding must be filed at least 10 days prior to the hearing, but not after except for good cause shown.” (Emphasis added.)

DVEC has argued that under the above rule, Minn-Kota’s right to intervene has long passed and it has not shown good cause for intervening more than three months after the evidentiary hearing. It should be noted, one of the principals of Minn-Kota,

George Schuler, IV, did testify at length regarding his feelings about Minn-Kota's preferences for OTP as service provider at the hearing. In addition to the hearing already taking place over three months ago, the PSC has held a couple of work sessions since that time.

Therefore, assuming Minn-Kota meets the substantial interest test, the only basis to grant a petition for leave to intervene at this point would be for good cause shown because the petition is not timely. Minn-Kota asserts in its petition that its interests had not been "adequately represented by either party to the proceeding." However, OTP has argued that same position and Minn-Kota has previously made many of the same arguments it attempts to make now through the testimony of Mr. Schuler at the hearing. In my opinion, the issues have been substantially and thoroughly laid before the Commission and the Commission can make a reasoned and intelligent decision on the certificate of public convenience and necessity as to the appropriate provider of electric service for this Minn-Kota facility. I also believe there is more than sufficient alignment between the interests of Otter Tail Power and Minn-Kota regarding the arguments that have already been presented and that the interests of Minn-Kota have been adequately represented in front of the commission both at the hearing and in the work sessions subsequent to the hearing.

I conclude that Minn-Kota has not shown the requisite good cause required by the rules and the Administrative Agencies Practices Act for its late attempt to intervene and submit additional information to the commission in this hearing.

THEREFORE, the Petition to Intervene and Request to Present Oral and Written Comments of Minn-Kota in this proceeding is in all things DENIED.

Dated this 19th day of February, 2018.

State of North Dakota  
OFFICE OF ADMINISTRATIVE HEARINGS

By: 

Patrick J. Ward ID#03626

Administrative Law Judge

ZUGER KIRMIS & SMITH

PO Box 1695

Bismarck, ND 58502-1695

701-223-2711

[pward@zkslaw.com](mailto:pward@zkslaw.com)

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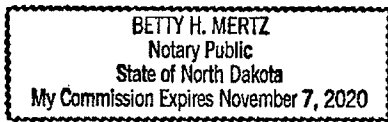


Val Leopold

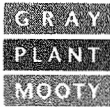
Subscribed and sworn to before me, today, February 19, 2018.

Betty H. Mertz  
NOTARY PUBLIC

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CR Exhibit 78 Petition Reconsider Petition to Intervene and Request to Present Comments



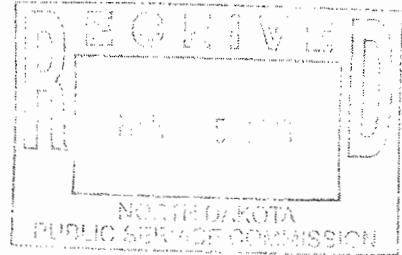
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GREGORY R. MERZ  
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GREGORY.MERZ@GPMLAW.COM

March 5, 2018

Via U.S. Mail & Email: [dnitschke@nd.gov](mailto: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. respectfully submits its Petition Reconsider its Petition to Intervene and Request to Present Oral and Written Comments and Certificate of Service in the above-referenced matter.

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

Please feel free to contact me at (612) 632-3426 or by email at [gregory.merz@gpmlaw.com](mailto:gregory.merz@gpmlaw.com) if you have questions.

Very truly yours,

Gregory R. Merz  
Attorney

cc: Patrick J. Ward, Administrative Law Judge (via U.S. Mail and email: [pward@zkslaw.com](mailto:pward@zkslaw.com))  
Kimberly J. Radermacher (via U.S. Mail and email: [kimrader@radermacherlaw.com](mailto:kimrader@radermacherlaw.com))  
Cary Stephenson (via U.S. Mail and email: [cstephenson@otpc.com](mailto:cstephenson@otpc.com))  
Zachary Pelham (via U.S. Mail and email: [zep@pearce-durick.com](mailto:zep@pearce-durick.com))  
Zachary Smith (via U.S. Mail and email: [zsmith@ndarec.com](mailto:zsmith@ndarec.com))

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81 PU-17-96 Filed 03/05/2018 Pages: 28  
Petition Reconsider Petition to Intervene and Request to Present Oral and Written Comments  
Minn-Kota Ag Products, Inc.  
Gregory Merz, Attorney

**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**

**MINN-KOTA AG PRODUCTS, INC.'S PETITION RECONSIDER ITS  
PETITION TO INTERVENE AND REQUEST TO PRESENT ORAL  
AND WRITTEN COMMENTS**

Minn-Kota Ag Products, Inc. ("Minn-Kota") respectfully submits this Petition, pursuant to the North Dakota Administrative Code, Sections 69-02-06-02 and 69-02-02-05 of the rules of practice and procedure of the North Dakota Public Service Commission ("Commission"), to reconsider Minn-Kota's Petition to Intervene in the above-referenced matter and to present oral and written comments in support of Otter Tail Power Company's Application for a Certificate of Public Convenience and Necessity. In support of its petition, Minn-Kota states as follows:

1. On February 19, 2018, Minn-Kota's February 1, 2018 Petition to Intervene and Request to Present Oral and Written Comments of Minn-Kota in this proceeding was denied. (Docket Item 80). Pursuant to North Dakota Administrative Code, Section 69-02-06-02, Minn-Kota respectfully requests that the commission reconsider that order.
2. Pursuant to North Dakota Administrative Code, Section 69-02-02-05 Minn-Kota has a substantial interest in this proceeding and there is good cause to allow this intervention even though Minn-Kota's Petition for Intervention was not filed at least ten days before the hearing.

### **Substantial Interest**

3. It is undisputed that Minn-Kota is in the process of constructing a state-of-the-art grain handling facility located on Highway 13, two miles east of Barney, North Dakota ("Facility"). The Facility represents a significant investment (approximately \$20,000,000) in an economically depressed area of the state. When the first phase of the facility is completed, it will have ten steel bins with a capacity of 2.9 million bushels, it will have a load out capacity of 80,000 bushels per hour, which will enable 110 rail cars to be loaded in less than eight hours. This will benefit the area's producers and overall economy.

4. The Facility will use large electric motors to power belt and chain conveyers in conjunction with large legs that will move the grain. The Facility will serve numerous area farmers. The plans for the current Facility will be the first phase of several anticipated expansion phases for Minn-Kota.

5. Otter Tail Power Company ("OTP") has made a proposal to provide electricity to the Facility. OTP is currently providing electricity to Minn-Kota pursuant to a temporary agreement.

6. Dakota Valley Electric Cooperative ("DVE") also made a proposal to provide electricity to the Facility.

7. Access to reliable, reasonably priced electricity is critical to the success of the Facility. Based on careful review of the two competing proposals, Minn-Kota determined that OTP's proposal would meet its needs and that DVE's proposal would not. As such, Minn-Kota has a substantial interest to intervene.

8. Minn-Kota anticipates that the Facility will be operational by the middle of June 2018 and plans to put the Facility into full service by July 1 of 2018. As such, Minn-Kota has no interest in unduly broadening the issues or delaying the proceeding in contravention of the intervention rule. See N.D. Admin Code § 69-02-02-05. Rather, Minn-Kota intends to offer its position and support in an efficient manner such that a decision can be made with a complete record.

#### Good Cause Shown

9. Under the Commission's Rules, a petition to intervene "must be filed at least ten days prior to the hearing, but not after except for good cause shown." N.D. Admin Code § 69-02-02-05(2). It is undisputed that Minn-Kota's petition fell outside that window of time. However, Minn-Kota has good cause to intervene.

10. "Good cause" is not defined in the applicable section of the Administrative Code, nor is it defined in the Administrative Agencies Practice Act. However, "good cause" to intervene has been shown where a non-party's interests may be "substantially affected" by the action being considered by the Commission. *TransCanada Keystone Pipeline, LP*, Case No. PU-06-421, Order on Motions to Intervene and Reopen, Dkt. No. 250 (Nov. 7, 2007).

11. In the TransCanada proceeding, the Commission held a hearing on September 5, 2007. See *TransCanada Keystone Pipeline, LP*, Case PU-06-421, 2008 WL 10590490 (N.D.P.S.C. Feb 21, 2008) (Findings of Fact Conclusions of Law and Order). Despite having notice of the hearing, the City of Fargo did not intervene before the hearing. See *TransCanada Keystone Pipeline, LP*, Case No. PU-06-421, Order on Motions to

Intervene and Reopen, Dkt. No. 250 (Nov. 7, 2007). Rather, the City of Fargo moved to intervene on October 23, 2007. *Id.* In that matter, similar to the instant matter, the party opposing the intervention argued that Fargo's petition was not timely and that its interests had been adequately represented at the hearing. *Id.* The Commission, however, found that Fargo had good cause to intervene because it had "interests that may be substantially affected" by the proceeding. *Id.* Here, Minn-Kota certainly has interests that may be "substantially affected" by the proceeding. Indeed, Minn-Kota's \$20,000,000 investment depends on having reliable and affordable power. The Otter Tail Power solution meets that need, and the Dakota Valley solution does not.

12. Moreover, while Otter Tail Power and Minn-Kota have some overlapping interests in this matter, Otter Tail Power may not adequately represent Minn-Kota's interests. Indeed, Otter Tail Power has a number of interactions with the Commission. For Otter Tail Power, this is one of many matters; and, undoubtedly its overall strategy as a company is informed by these many interactions. This one application for a Certificate of Public Convenience and Necessity is likely not material to Otter Tail's business. For Minn-Kota, however, this application is critical. Minn-Kota, therefore, has every incentive to make sure that the record is complete and that all of the applicable evidence has been properly considered. Minn-Kota will be "substantially affected" by the outcome of this proceeding. As such, good cause exists for Minn-Kota's intervention. Minn-Kota, therefore, respectfully requests that the commission reconsider the order denying Minn-Kota's intervention.

13. If Minn-Kota is permitted to intervene it offers the following additional argument and evidence.

#### **Argument and Evidence**

14. Pursuant to the North Dakota Territorial Integrity Act, N.D.C.C. 49-02 *et seq.*, OTP applied to the Commission for a Certificate of Public Convenience and Necessity ("CPC&N") in order to provide service to Minn-Kota.

15. In determining whether to grant a CPC&N under the Territorial Integrity Act, the Commission considers the following ten factors:

- a. From whom does the customer prefer electric service?
- b. What electric suppliers are operating in the general area?
- c. What electric supply lines exist within at least a two-mile radius of the location to be served, and when were they constructed?
- d. What customers are served by electric suppliers within at least a two-mile radius of the location to be served?
- e. What are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service?
- f. Which of the available electric suppliers will be able to serve the location in question more economically and still earn an adequate return on its investment?
- g. Which supplier's extended electric service would best serve orderly and economic development of electric service in the general area?
- h. Would approval of the applications result in wasteful duplication of investment or service?
- i. Is it probable that the location in question will be included within the corporate limits of a municipality within the foreseeable future?
- j. Will service by either of the electric supplier in the area unreasonably interfere with the service or system of the other?

a. *Customer preference*

16. "While not controlling, customer preference has long been recognized as a proper consideration for the Commission in deciding whether a certificate of public convenience and necessity should be issued." *Capital Elec. Cooperative, Inc. v. North*

*Dakota Public Service Com'n*, 877 N.W.2d 304, 307 (N.D. 2016) (collecting cases). Minn-Kota has a strong preference for OTP. Minn-Kota's preference, however, is not an arbitrary one. Rather it is based on many of the factors that the Commission also considers. Specifically, OTP will offer a more reliable solution and a more economical solution.

b. *What electric suppliers are operating in the general area*

17. Both OTP and DVE are operating in the general area. Indeed, DVE gets its power for this area from the same OTP 41.6 kV transmission line that OTP would tap to provide service to Minn-Kota. (See Dkt. No. 67, pp 4-5; Dkt. No. 66, p.6; Dkt. No. 27.)

c/d. *What electric supply lines & customers exist within at least a two-mile radius of the location to be served, and when were they constructed.*

18. DVE primarily argues that this factor weighs in its favor because it has 20 members on its power distribution network in the two-mile radius, whereas OTP only has 2 customers in that two mile radius. (Dkt. No. 67 at ¶ 11.) DVE's argument assumes that this factor is a rigidly applied formula. It is not. Indeed, the "two-mile" analysis is not based on statute, nor has it been rigidly applied in published cases.

19. In 1969, the North Dakota Supreme Court set forth the list of factors to be considered when determining whether to issue a CPC&N. *Application of Otter Tail Power Co.*, 169 N.W.2d 415, 418 (N.D. 1969). The "factors include: the location of the lines of the suppliers; the reliability of the service which will be rendered by them; which of the proposed suppliers will be able to serve the area more economically and still earn an adequate return on its investment; and which supplier is best qualified to

furnish electric service to the site designated in the application and which also can best develop electric service in the area in which such site is located without wasteful duplication of investment or service." *Id.* Nowhere in this seminal case is a rigid "two-mile" rule.

20. More recently, the North Dakota Supreme Court held that a preponderance of the evidence supported the Commission's decision to grant a CPC&N. *Capital Elec. Cooperative, Inc. v. North Dakota Public Service Com'n*, 877 N.W.2d 304 (N.D. 2016). In reviewing the Commission's determination in *Capital Electric*, the Court addressed, among other factors, the Commission's findings on the number of customers in a one mile radius and in a two mile radius. *Id.* at 307. The Court, however, did not prescribe those rigid boundaries. Instead, in affirming the Commission, the Court stated that "the number of customers served by electric suppliers in the *larger vicinity* should be considered for assessing capacity requirements in determining the orderly development of electrical service." *Id.* at 307-308 (emphasis added). The Court held that "[e]ven if [rural electric cooperative] serves customers closer to the [proposed customer's] site, this does not preclude the Commission from considering the number of customers served in *the larger area* for the purpose of examining duplication of services." *Id.* at 308 (emphasis added).

21. Here, when assessing the "orderly development of electrical service" the focus on "the larger area" should not be a rigid, and arbitrary, two miles. Rather, it should include the nearby towns of Barney and Moorton. OTP provides service to the scores more customers in the larger area, including the residents and businesses in

those communities that are just outside of the two-mile guideline. (Dkt. No. 66 at p. 6.; Dkt. No. 27) When considering the larger area, OTP's solution allows for an orderly development of electrical service in the area in a manner that is not wastefully duplicative.

22. Moreover, the parties agree that: (1) DVE and OTP have supply lines within the two-mile radius; (2) Both DVE and OTP will have to add supply lines to serve Minn-Kota; and (3) The parties agree that DVE would have to add approximately 3,960 feet of distribution line to serve Minn-Kota and that OTP would have to add a substation and approximately 1,000 feet of distribution. (Dkt. No. 71 at ¶¶ 13-16; Dkt. No. 72 at ¶¶ 14-16.). The addition of the substation on the Minn-Kota site will allow for a more orderly and reliable development of electrical service in this area than the continued expansion of DVE's distribution lines. These are the critical considerations and tend to favor the OTP solution.

*e. The differences between the electric suppliers available to serve the area with respect to reliability of service.*

23. This factor weighs heavily in favor of the OTP solution. As an initial matter, in an attempt to question the reliability of OTP's solution, DVE argues that the OTP solution relies on a 41.6 kV overhead transmission line that has "over 40 miles of exposure." (Dkt. No. 69 at ¶ 11.) This is a red herring. Both DVE and OTP receive their power in this area from the same OTP 41.6 kV transmission line that OTP would tap to provide service to Minn-Kota. (See Dkt. No. 67, pp 4-5; Dkt. No. 66, p.6; Dkt. No. 27.). If that 41.6 kV line goes down, then neither OTP nor DVE would have power. As such,

service reliability comparisons need to look at the distribution networks as they relate to the Minn-Kota site.

24. Barr Engineering's Paul Kaeding is an expert, professional engineer – licensed in North Dakota and many other states – with over 50 years of experience as an electrical engineer, including in the design and evaluation of power generation and distribution systems. *See Exhibit 1 (resume); see also* <https://www.barr.com/page/26/company-directory/PFK> (Barr Engineering engineer profile, last accessed Feb. 27, 2018).

25. Mr. Kaeding was recently hired to provide an independent review of the documents submitted to the Commission and offer an opinion of which utility will provide better service to Minn-Kota. Mr. Kaeding's full opinion is attached hereto as **Exhibit 2**. In summary, he finds that the OTP solution will provide more reliable service. In particular, the OTP solution offers lower system impedance, which should reduce the need for soft starters and the risk of service disruptions (i.e. brownouts). The OTP solution also offers a reduced risk of faults and downtime due to distribution system faults as a result of better site access. These realities make the OTP solution more reliable for Minn-Kota.

26. Moreover, these realities also result in better service to the other customers, including DVE's customers, in the area. As Mr. Kaeding notes, the OTP solution appears to have been modeled to accommodate the Facility's load, but DVE's does not appear to have the same robustness. Exhibit 2 at 3. DVE proposes an experimental approach with respect to the necessity of soft start motors and Facility

operations. *Id.* As such, Minn-Kota's operation might affect adjacent utility customers, or vice versa. *Id.* at 4.

*f. What supplier will be able to serve the location in question more economically and still earn an adequate return on investment?*

27. Each party argues that it will be able to serve the location economically and still earn an adequate return on its investment. (Dkt. No. 71 at ¶ 42; Dkt. No. 72 at ¶ 33.) Put another way, both suppliers maintain that this is a sound business move for them. Therefore, this factor is essentially neutral with respect to the suppliers. But the economics are not neutral with respect to Minn-Kota. Even DVE concedes in its proposed findings of fact and conclusions of law that "Otter Tail's rates will likely result in a savings to [Minn-Kota] over time . . ." (Dkt. No. 72 at ¶ 33.).

*g. What supplier's extended electric service would best serve orderly and economic development of electric service in the general area?*

28. As already noted, the OTP solution for this facility will greatly benefit the orderly and economic development of electric service in the general area. The OTP-proposed substation will initially only serve the first phase of the Minn-Kota facility. However, because of the robustness of the OTP solution and the improved reliability of the solution, the OTP solution will better allow for expansion of the Minn-Kota facility, which George Schuler IV testified about at the hearing. Moreover, the OTP solution would be able to better serve any other industrial expansion in the area due to the lack of other customers on the OTP substation.

29. On this factor, it is important to note that Minn-Kota's \$20,000,000 facility is a substantial economic development in this economically depressed area of the state.

The general area will benefit from it, but only to the extent it is successful. It has a better shot to be successful if it is profitable. And, ultimately, whether the facility is profitable depends on the facility to operate consistently at full-power and with reasonable operating costs. The OTP solution is more reliable, and as previously noted, DVE concedes in its proposed findings of fact and conclusions of law that "Otter Tail's rates will likely result in a savings to [Minn-Kota] over time . . ." (Dkt. No. 72 at ¶ 33.) As such, this factor weighs in OTP's favor.

*h. Would approval of the applications result in wasteful duplication of investment or service?*

30. There is no wasteful duplication in the OTP solution. It is undisputed that that: (1) DVE and OTP have supply lines within the two-mile radius; (2) Both DVE and OTP will have to add supply lines to serve Minn-Kota; and (3) The parties agree that DVE would have to add approximately 3,960 feet of distribution line to serve Minn-Kota and that OTP would have to add a substation and approximately 1,000 feet of distribution. (Dkt. No. 71 at ¶¶ 13-16; Dkt. No. 72 at ¶¶ 14-16.) Put another way, any solution will require new services and the DVE solution requires far more extension of its already extended distribution system. Indeed, DVE would have to trench its distribution line right under the 41.6 kV transmission line that OTP would tap directly. To the extent there is duplication, DVE's is more wasteful in that it requires more underground feeder line. (*Compare* Dkt. No. 27 *with* Dkt No. 40.).

31. The OTP solution has the added public benefit it that it would accommodate anticipated future expansion of the Facility, which is good for the area

producers; as well as potentially other expansions. The DVE proposal will not. Thus, OTP also will benefit the public interest by expanding employment opportunities and increasing economic activity in the region.

*i/j. Is it probable that the location in question will be included within the corporate limits of a municipality within the foreseeable future? Will service by either of the electric supplier in the area unreasonably interfere with the service or system of the other?*

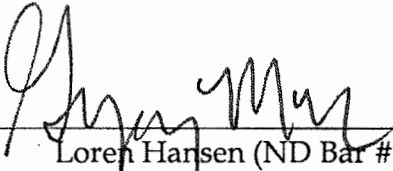
32. No party contends these factors are controlling here. Minn-Kota agrees.

### **Conclusion**

33. Allowing intervention by Minn-Kota will not result in any prejudicial delay in completing the proceeding. Allowing Minn-Kota to provide oral and written comments will not require any undue delay and such comments are likely to assist the Commission in its decision-making. OTP's CPC&N application relates solely to service to be provided to Minn-Kota. No other party will be affected.

34. For the foregoing reasons, Minn-Kota respectfully requests that the Commission reconsider its decision to deny Minn-Kota the opportunity to intervene and allow Minn-Kota to intervene in the proceeding. Minn-Kota requests leave to provide the Commission with oral and written comments consistent with the above paragraphs so that the Commission can make its decision on a complete record.

Dated: March 5, 2018

  
Loren Hansen (ND Bar # 08233)  
Gregory Merz (Admitted pro hac vice,  
ND. Bar #P01258)  
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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**

**ORDER DENYING RECONSIDERATION**

This administrative law judge issued an Order Denying Petition to Intervene of Minn-Kota Ag Products, Inc. on February 19, 2018 (Docket #80). Thereafter, Minn-Kota Ag Products, Inc. filed a Petition to Reconsider the Petition to Intervene and a Request to Present Oral and Written Comments (Docket #81). On March 12, 2018, Dakota Valley Electric Cooperative filed an objection to Minn-Kota Ag Products, Inc.'s Petition for Reconsideration of Petition Intervene and Request to Present Oral and Written Comments with cover letter.

I have reviewed the above documents and considered the Petition for Reconsideration. For all of the reasons outlined below and in the original Order Denying Petition to Intervene, this request for reconsideration is hereby in all things DENIED.

In addition, through the process of its Petition to Reconsider, Minn-Kota Ag Products, Inc., which is not a party to the action, makes a brash attempt to insert evidence, exhibits, and argument into the record without having been granted the right to intervene in the proceeding and after the hearing in this matter has been completed and the matter closed. I believe Minn-Kota Ag Products, Inc. has arrived much too late to the dance, and hereby Order that additional evidence or argument which Minn-Kota

Ag Products, Inc. has attempted to put forward its Petition to Reconsider is procedurally improper and should be stricken from the record.

Minn-Kota Ag Products, Inc. failed to timely intervene and has not shown good cause as to why and, therefore, the Petition for Reconsideration is DENIED.

Furthermore, Dakota Valley did request in its response to the Petition that attempts by Minn-Kota Ag Products, Inc. to provide unsolicited improper testimony evidence or argument be stricken and wholly disregarded by the Commission. IT IS SO ORDERED. The content of paragraphs 3 through 32 and Exhibits 1 and 2 of Minn-Kota Ag Products, Inc.'s Petition to Reconsider its Petition to Intervene and Request to Present Oral and Written Comments are ordered stricken completely from inclusion in the record.

The record in this case is closed to additional evidence and argument, and the matter is ripe for consideration by the full Commission.

Dated this 13<sup>th</sup> day of March, 2018.

State of North Dakota  
OFFICE OF ADMINISTRATIVE HEARINGS

By: 

Patrick J. Ward ID#03626

Administrative Law Judge  
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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**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**March 29, 2018**

**Appearances**

Commissioners Randy Christmann, Julie Fedorchak, Brian Kroshus.

Zachary Pelham, Special Assistant Attorney General, 314 E. Thayer Ave., P.O. Box 400 Bismarck, ND 58502-0400, appearing on behalf of the Public Service Commission Advisory Staff.

Kim Radermacher, Attorney at Law, 27 Center Ave., P.O. Box 597, LaMoure, ND 58458, appearing on behalf of Dakota Valley Electric Cooperative.

Cary Stephenson, Associate General Counsel, Otter Tail Power Company, 215 S. Cascade Street, Fergus Falls, Minnesota 56537, appearing on behalf of Otter Tail Power Company.

Patrick J. Ward, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, ND 58503, appearing as Administrative Law Judge.

**Preliminary Statement**

On February 27, 2017, Otter Tail Power Company (Otter Tail) Filed an application for a Certificate of Public Convenience and Necessity (of PC&N) to extend electric service to Minn-Kota Ag Products, Inc. (Minn-Kota) at a point located in NE ¼ of Section 10, T132N, R50W (Barney Township), Richland County, as shown in a map attached to the application. Also submitted with the application was a statement from the customer stating it desires Otter Tail to provide electric services at the requested location.

On March 15, 2017, the Commission issued a Notice of Opportunity for Hearing, which provided until April 11, 2017 for filing written objection based on the issue of public convenience and necessity.

On March 31, 2017, Dakota Valley Electric Cooperative (Dakota Valley) filed its Protest and Request for Hearing.

On July 26, 2017, the Commission issued a Notice of Hearing scheduling a public hearing to be held on October 23, 2017 in the Commission Hearing Room, 12<sup>th</sup> Floor, State Capitol, Bismarck, North Dakota 58505. The notice identified the following issues to be considered:

1. From whom does the customer prefer electric service?
2. What electric suppliers are operating in the general area?
3. What electric supply lines exist within at least a two-mile radius of the location to be served, and when were they constructed?
4. What customers are served by electric suppliers within at least a two-mile radius of the location to be served?
5. What are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service?
6. Which of the available electric suppliers will be able to serve the location in question more economically and still earn an adequate return on its investment?
7. Which supplier's extended electric service would best serve orderly and economic development of electric service in the general area?
8. Would approval of the applications result in wasteful duplication of investment or service?
9. Is it probable that the location in question will be included within the corporate limits of a municipality within the foreseeable future?
10. Will service by either of the electric supplier in the area unreasonably interfere with the service or system of the other?

On October 23, 2017, a public hearing was held as scheduled.

On February 1, 2018, Minn-Kota filed a Petition to Intervene and Request to Present Oral and Written Comments.

On February 2, 2018, Dakota Valley filed its Objection to Petition to Intervene and Request to Present Oral and Written Comments.

On February 12, 2018, Otter Tail filed its Response to Petition to Intervene and Request to Present Oral and Written Comments.

On February 19, 2018, the Administrative Law Judge denied Minn-Kota's. Petition to Intervene and Request to Present Oral and Written Comments.

On March 5, 2018, Minn-Kota filed a petition to reconsider, which was objected to by Dakota Valley on March 12, 2018.

The Administrative Law Judge denied Minn-Kota's Petition to Reconsider on March 13, 2018.

Having heard and considered these matters, the Commission makes its:

### **Findings of Fact**

1. The applicant, Otter Tail Power Company, is an investor owned electric utility providing retail electric service to customers in North Dakota under the regulatory jurisdiction of this Commission.
2. The protestant, Dakota Valley Electric Cooperative, Inc. is an electric distribution cooperative providing retail electric service to its members in North Dakota.
3. The customer, Minn-Kota Ag Products, Inc., is a corporation organized under the laws of North Dakota.

#### ***From whom does the customer prefer electric service?***

4. Otter Tail's application included an appearance form signed by the customer, Minn-Kota, requesting that Otter Tail provide service to Minn-Kota at the site identified in the application.
5. At the public hearing, Minn-Kota representative George Schuler IV testified that Minn-Kota is a family-owned, closely held corporation that is building a \$20 million commercial grain handling facility at the Minn-Kota site. The new Minn-Kota facility is designed to receive 20,000 bushels of grain per hour. The facility will have a storage capacity of approximately 3 million bushels and is specifically designed to load Burlington Northern & Santa Fe (BNSF) 120 car unit trains. Minn-Kota plans to start operating the new facility in June 2018.
6. Mr. Schuler testified Otter Tail's General Service rate structure is better suited to Minn-Kota's operational characteristics and size than Dakota Valley's rate structure, which features a higher demand charge. Schuler testified that based on his experience at Minn-Kota's smaller Wahpeton grain handling facility served by Dakota Valley, Minn-Kota is concerned that it may be forced to operate the new facility sub-optimally to minimize the impact of Dakota Valley's higher demand charge. This could include limiting drying operations to certain times, limiting the intensity of loading operations, and otherwise restricting operations that make sense commercially but for triggering high demand charges.

7. Mr. Schuler estimated that Otter Tail service will cost Minn-Kota approximately \$100,000 less in annual electric charges than Dakota Valley service. Schuler testified Otter Tail service would better enable Minn-Kota to grow and reinvest in the new facility and to provide local producers a competitive advantage when selling their crops.

8. Mr. Schuler testified that he believed Otter Tail's plan to extend service to Minn-Kota offered better reliability and outage restoration performance than Dakota Valley's plan because of the limited amount of distribution line exposure under Otter Tail's plan. Mr. Schuler explained the negative financial impacts faced by Minn-Kota, including demurrage charges from BNSF, for delays caused by outages and service interruptions, noting that any amount of risk reduction was worthwhile from a business perspective.

9. Mr. Schuler testified that Otter Tail's plan to extend service allowed Minn-Kota greater flexibility and potential cost savings concerning the number and size of electric motors that would require soft start devices. These devices limit the impact on the distribution system caused when large motors are started. Dakota Valley policy requires soft starts for motors with more than 30 horsepower. However, Dakota Valley testified that it did not see that policy as being a forced requirement on Minn-Kota given its distance from the substation.

10. Mr. Schuler testified that Minn-Kota prefers to receive its electric service from a provider whose rates and services are subject to regulatory oversight and approval by an independent agency with an opportunity for customer input.

11. The Commission finds the customer prefers electric service from Otter Tail.

***What electric suppliers are operating in the general area?***

12. Otter Tail and Dakota Valley are the only electric suppliers operating in the general area of the Minn-Kota site.

***What electric supply lines exist within at least a two-mile radius of the location to be served, and when were they constructed?***

13. Otter Tail owns and operates a 41.6 kV transmission line adjacent to the Minn-Kota site, running parallel to and on the northside of North Dakota Highway 13. Otter Tail's 41.6 kV transmission line is fed from Otter Tail's Wahpeton transmission substation. The transmission line was put into service as a 41.6 kV transmission facility in approximately 1970.

14. Dakota Valley has distribution lines throughout the two-mile radius. Dakota Valley has three-phase service with an existing three-phase cabinet approximately 3,960 feet to the east of the Minn-Kota point of service. Dakota Valley's three phase distribution line extending from its Mooreton distribution substation to the existing three phase cabinet was put in service in approximately 2013.

15. Otter Tail would serve the Minn-Kota facility by tapping its 41.6 kV transmission line adjacent to the Minn-Kota site. This tap would feed a 40' x 60' distribution substation with a partially depreciated transformer to be constructed by Otter Tail on the Minn-Kota site on property leased from or purchased from Minn-Kota. Otter Tail would extend three phase 12.5 kV underground 4/0 jacketed distribution cable approximately 1,000 feet from the new distribution substation to the Minn-Kota point of service.

16. Dakota Valley would extend three-phase service from its existing three-phase cabinet that is served from its Mooreton distribution substation located approximately three miles south and east of the cabinet. This extension would consist of approximately 3,960 feet of new underground three-phase 4/0 jacketed cable, an additional three-phase cabinet, and up to two new 1500 kVA transformers.

***What customers are served by electric suppliers within at least a two-mile radius of the location to be served?***

17. Otter Tail serves two customers within a two-mile radius of the Minn-Kota site. Dakota Valley serves approximately 18 customers within a two-mile radius of the Minn-Kota site.

***What are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service?***

18. Dakota Valley's Mooreton distribution substation is served by the same Otter Tail 41.6 kV transmission network as would serve Otter Tail's proposed distribution substation. Therefore, Otter Tail and Dakota Valley have similar transmission service risks and any meaningful differences in reliability between the electric suppliers are differences in each provider's proposed distribution service to Minn-Kota.

19. Otter Tail's plan to extend service to Minn-Kota results in shorter distribution line length and less distribution line exposure than Dakota Valley's plan. As measured from each provider's respective distribution substation and Minn-Kota's point of service, Otter Tail would serve Minn-Kota through approximately 1,000 feet of underground three phase distribution line. Dakota Valley would serve Minn-Kota through approximately four miles of underground three phase distribution line.

20. Engineering evidence presented at the hearing indicates that the risk of service voltage fluctuations, service interruptions, outages and the length of outages generally increases with the length of distribution line serving or connected to a customer. In this context, Otter Tail's plan to extend service has less risk of outages to Minn-Kota.

21. Dakota Valley's Mooreton distribution substation serves approximately 255 other Dakota Valley customers. The transformer feeder at the Mooreton substation from which Dakota Valley would serve Minn-Kota serves approximately 52 other Dakota Valley customers. Otter Tail's proposed distribution substation located on property, leased or purchased from Minn-Kota, would initially serve only Minn-Kota.

22. Engineering testimony presented at the hearing indicates that voltage fluctuations, interruptions and outages at service points fed from a transformer feeder can negatively affect electric service to other customers fed from that same feeder. In this context, Otter Tail's plan to extend service to Minn-Kota has less risk of voltage fluctuations, service interruptions, and outages than does Dakota Valley's plan.

23. The Customer Average Interruption Duration Index (CAIDI) measures the average length of time of service interruptions experienced by an electrical provider's customers. CAIDI is not weighted or measured by customer densities. Otter Tail presented evidence showing Dakota Valley's system five-year weather normalized CAIDI average is 114.18 minutes and Otter Tail's system five-year weather normalized CAIDI average is 64.6 minutes.

24. Otter Tail's proposal to serve Minn-Kota's large motor load on a dedicated circuit from a dedicated substation it will have to construct may offer a higher level of reliability. However, the Commission finds that both Otter Tail and Dakota Valley would provide reliable service to Minn-Kota.

***Which of the available electric suppliers will be able to serve the location in question more economically and still earn adequate return on its investment?***

25. Otter Tail's estimated aggregate cost to extend service to Minn-Kota is \$235,870. The primary expense reflected in this figure is the distribution substation Otter Tail intends to install.

26. Dakota Valley's estimated aggregate cost to extend service to Minn-Kota is \$93,640. The primary expense reflected in this figure is the cost of extending three phase underground distribution line to Minn-Kota's point of service.

27. Otter Tail intends to serve Minn-Kota under Otter Tail's General Service Rate for Secondary Service (rate code 401) and current rate riders, which are part of Otter Tail's Commission-approved tariff and available to all Otter Tail customers. Dakota Valley intends to serve Minn-Kota under its board-approved rate schedule for three-phase large commercial service and Dakota Valley's Commercial Incentive Rate Discount.

28. Otter Tail estimates the annual cost to Minn-Kota for service under Otter Tail's General Service rate and applicable riders is \$251,136. This figure assumes that Minn-Kota has a peak demand of 1,504 kW, annual energy consumption of 2,591,444 kWh, and a load factor of 23 percent.

29. Otter Tail projects that Minn-Kota will save \$108,743 annually with Otter Tail service vs. Dakota Valley service. This cost difference is based on a comparison between Otter Tail and Dakota Valley using Otter Tail's projected load factor, peak demand and energy consumption assumptions noted in the preceding paragraph. If Dakota Valley waives its power factor penalty the annual cost difference is projected to be \$66,607 annually.

30. Dakota Valley provided Minn-Kota a proposal in March 2017, which estimated annual electric service charges of \$316,160, less an annual discount which declines over nine years.

31. In arriving at estimated costs, Otter Tail and Dakota Valley used different assumptions about Minn-Kota's load factor and peak demand. Dakota Valley's estimated annual cost to the customer figure assumes a peak demand of 11,874 kW, annual energy of 2,846,400 kWh, and a load factor of 33 percent.

32. Dakota Valley has higher demand (KW) charges and lower energy (kWh) charges compared to Otter Tail. Therefore, higher peak demand would increase Dakota Valley's bills more than it would increase Otter Tail bills. Load factor is expressed as a ratio of actual kWh energy usage divided by maximum possible annual kWh energy usage. A higher load factor would increase bills for Otter Tail customers more than for Dakota Valley customers.

33. Otter Tail and Dakota Valley independently estimated Minn-Kota's load factor by reviewing the load factors of other facilities they respectively serve. Otter Tail also based its load factor estimate on discussions with Minn-Kota. Dakota Valley did not discuss load factor with Minn-Kota.

34. Otter Tail and Dakota Valley each estimated Minn-Kota's peak demand and energy usage based in part on a review of comparable facilities and Minn-Kota's operational characteristics. Otter Tail also discussed demand estimates with Minn-Kota to ensure that it accurately estimated demand based on the facility's performance characteristics. Dakota Valley did not discuss demand estimates with Minn-Kota.

35. Otter Tail estimates annual revenues from Minn-Kota of \$251,136. After adjusting Otter Tail's estimated annual revenue by \$28,116 for the annual return requirement of 8.62 percent on Otter Tail's incremental investment to serve the location; and down by \$64,786 for the annual cost of fuel and purchased power to serve the location, there is net contribution to Otter Tail's system costs of \$158,234.

36. Dakota Valley estimated annual revenues from Minn-Kota ranging from \$275,524 to \$306,035 over a nine-year discount period. Dakota Valley projected it would earn 3.19 percent on the capital deployed to extend service to Minn-Kota, and a net first-year contribution to common system costs of \$16,728.

37. The Commission finds that either supplier could earn a sufficient return on its investment to extend service to the customer. Dakota Valley would extend service more economically while Otter Tail's ongoing costs of providing service would be more economical.

***Which supplier's extended electric service would best serve orderly and economic development of electric service in the general area?***

38. Both Otter Tail and Dakota Valley have been providing electric service to the general area near the Minn-Kota site for decades. Otter Tail serves the towns of Barney and Mooreton, which are approximately three miles away from the Minn-Kota site. Dakota Valley provides electric service to a majority of the rural customers in the area.

39. Otter Tail provides distribution service to the communities of Mooreton and Barney approximately 2.3 and 3.1 miles respectively from the Minn-Kota site, but has no distribution facilities within the general area of the site.

40. Dakota Valley, and Central Power Electric Cooperative, have made investments in the Mooreton substation and associated distribution facilities to serve the general area. Dakota Valley's cost to extend service to the site is less than Otter Tail's because of these previous investments.

41. An extension of three-phase service by Dakota Valley to the Minn-Kota site would bring Dakota Valley's service further west along the Highway 13 corridor, which would benefit Dakota Valley's system and future expansion in the area.

42. Dakota Valley's extension of service to Minn-Kota would best serve orderly and economic development of electric service in the general area.

***Would approval of the applications result in wasteful duplication of investment or service?***

43. Service by Otter Tail to the Minn-Kota facility would require construction of a new substation while the existing Mooreton substation is fully capable of serving the facility.

44. Dakota Valley, and Central Power Electric Cooperative, have made investments in the Mooreton substation and associated distribution facilities to serve the general area. Approval of Otter Tail's application to serve the Minn-Kota facility would result in wasteful duplication of service and investment.

***Is it probable that the location in question will be included within the corporate limits of a municipality in the foreseeable future?***

45. The Minn-Kota site is approximately 2.3 miles west of the City of Mooreton, and 3.1 miles east of the City of Barney.

46. It is not probable that the municipal boundaries of Mooreton or Barney will be extended to include the Minn-Kota site in the foreseeable future.

***Will service by either of the electric suppliers in the area unreasonably interfere with the service or system of the other?***

47. Service by Otter Tail to Minn-Kota will not interfere with Dakota Valley service or operations. Service by Dakota Valley to Minn-Kota will not interfere with Otter Tail service or operations.

***Balance and Weight of Factors***

48. The Commission finds that the public convenience and necessity does not require the granting of a Certificate of Public Convenience and Necessity to Otter Tail because:

- a. While the customer prefers electric service from Otter Tail, customer preference is not controlling in the issue of public convenience and necessity.
- b. Dakota Valley has more customers and electric supply lines within a one-mile and two-mile radius of the location.
- c. The evidence indicates that either electric supplier would serve the Minn-Kota site with sufficient reliability.
- d. Existing cooperative distribution facilities allow Dakota Valley to extend service to the Minn-Kota site more economically, though Otter Tail's ongoing costs of service would be less depending on load characteristics and potential future capital credit distributions.
- e. Dakota Valley's extension of service would best serve the orderly and economic development of the area.
- f. Approval of Otter Tail's application would result in wasteful duplication of investment or service

**Conclusions of Law**


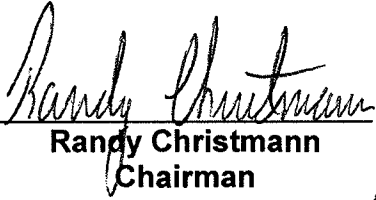

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding.
2. Public convenience and necessity does not require the granting of a Certificate of Public Convenience and Necessity to the applicant in this proceeding.

From the foregoing Findings of Fact and Conclusions of Law, the Commission issues its:

**Order**

The Commission Orders Otter Tail Power Company's application for a Certificate of Public Convenience and Necessity to extend service to Minn-Kota Ag Products, Inc. is denied.

**PUBLIC SERVICE COMMISSION**

 _____ <b>Brian Kroshus</b> Commissioner	 _____ <b>Randy Christmann</b> Chairman	 _____ <b>Julie Fedorchak</b> Commissioner
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IN DISTRICT COURT, COUNTY OF BURLEIGH, STATE OF NORTH DAKOTA

Minn-Kota Ag Products, Inc.	)	
	)	Case No. _____
Appellant,	)	
	)	
v.	)	
	)	<b>NOTICE OF APPEAL AND</b>
North Dakota Public	)	<b>SPECIFICATIONS OF ERROR IN</b>
Service Commission,	)	<b>CASE NO. PU-17-96 BEFORE THE</b>
Otter Tail Power Company,	)	<b>NORTH DAKOTA PUBLIC</b>
Dakota Valley Electric Cooperative	)	<b>SERVICE COMMISSION</b>
	)	
Appellees.	)	

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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 County 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)  
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**EXHIBIT A**

Order on Motions to Intervene and  
Reopen

**STATE OF NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**TransCanada Keystone Pipeline, LP  
30-Inch Crude Oil Pipeline/Cavalier to Sargent  
Counties  
Siting Application**

**Case No. PU-06-421**

**TransCanada Keystone Pipeline, LP  
Keystone Pipeline  
Public Convenience & Necessity**

**Case No. PU-07-152**

**ORDER ON MOTIONS TO INTERVENE AND REOPEN**

**November 7, 2007**

**Background**

On April 11, 2007, TransCanada Keystone Pipeline, LP ("Keystone") filed an application for a waiver of procedures and time schedules, and consolidated applications for a certificate of corridor compatibility and a route permit authorizing construction of approximately 218 miles of 30-inch crude oil pipeline and associated facilities ("Keystone Pipeline") in Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom, and Sargent Counties of North Dakota, Case No. PU-06-421.

Also on April 11, 2007, TransCanada filed an application for a certificate of public convenience and necessity (PCN) under N.D.C.C. chapter 49-03.1 to construct and operate the Keystone Pipeline, Case No. PU-07-152.

On October 19, 2007, the North Dakota Water Users Association filed a letter in Case No. PU-06-421 requesting that the Public Service Commission ("Commission") reopen the record to consider issues relating to the safeguards in the routing and construction of the Keystone Pipeline in the context of water supply issues for eastern North Dakota.

On October 23, 2007, Eric R. Johnson, City Attorney for the City of Fargo, North Dakota ("Fargo"), filed a Motion to on behalf of Fargo to Intervene in the captioned proceedings. Fargo states that the siting of the Keystone Pipeline along the proposed route would present potential public health and safety risks that may adversely affect the welfare of a substantial number of citizens of North Dakota due to undesirable impacts upon the water supply of Fargo and other North Dakota communities who will rely on water resources that either arise in or flow through Lake Ashtabula and the Sheyenne River Basin now and in the future. Fargo requests that if adequate protection of these water resources is not made part of the Keystone Pipeline project, that the

Commission deny any certification of public convenience and necessity and deny the issuance of any certificate of corridor compatibility and route permit authorization.

The city of Fargo requests the Commission to:

1. Grant the City of Fargo's Motion for Intervention to Appear as a party; and,
2. Grant the City of Fargo's request under N.D. Admin. Code §69-02-06-01 to reopen the proceedings in these matters to receive competent and relevant information and materials submitted with the Motion, and any other such information, materials, and testimony that may be presented during any reopened proceedings.

On October 26, 2007, Keystone filed its Objection to Motion for Intervention to Appear as a Party and Motions to Reopen the Hearing Records, and on November 2, 2007, Keystone filed a Supplemental Objection. Keystone argues that the City of Fargo had notice of the hearings and yet chose not to participate. Keystone states that Fargo was legally provided notice of the hearings pursuant to N.D.C.C. §49-22-13 in that the Commission caused legal notice to be published in the Fargo Forum in May and July, and legal notice of the continued September hearings was published twice in August. In addition to the legal notice, the news media covered the hearings in Valley City and Park River, and hearings were covered in the paper, on the radio and television in Fargo. Keystone argues that Fargo has not alleged any "good cause" for its ignoring the legal notice and publicity until after the hearings had been completed.

Keystone argues that no legal authority exists to grant intervention to Fargo at this late date. Keystone states that the Motion by Fargo is not timely filed. Keystone points out that N.D. Admin. Code §69-02-02-05 provides that a petition to intervene in any proceeding must be filed at least 10 days prior to the hearing, but not after except for good cause shown. In these proceedings hearings were held on July 23 and 24, 2007 and continued on September 5 and 6, 2007. The petition by Fargo was not filed until all of the hearings had been completed, and briefs and proposed findings were filed with the Commission.

Keystone argues that N.D. Admin. Code §69-02-02-05 provides that the Commission may grant intervention by a party only when intervention would not unduly broaden the issues or delay the proceeding. Since all that is left for the Commission to do is issue its order, intervention by Fargo at this late stage in the proceedings would unduly delay the proceedings. Keystone points out that N.D.C.C. §49-22-08.1 requires that the Commission to issue an order no later than six months after the filing of a completed application, and that the Commission has already extended the deadline from November 2, 2007 to December 12, 2007.

Keystone argues that the issues raised by Fargo and the North Dakota Water Users have been addressed at hearings. Keystone states that the concern regarding water protection, and specifically the Sheyenne River and Lake Ashtabula area, was

expressed by public witnesses who attended and participated in hearings held by the Commission, and the Commission also raised issues and questioned witnesses concerning the safety and risk to the Sheyenne River and Lake Ashtabula. Keystone states that these are the issues Fargo and the North Dakota Water Users Board are seeking to raise. Keystone states that while Fargo neglected to attend and participate in the hearings, water resource protection, risk assessment and emergency response planning as well as public health and safety issues were addressed by testimony and evidence submitted from Keystone as well as from Department of Health witnesses at the hearings. Keystone states that Fargo does not offer any new evidence for the Commission to consider; it only raises a question about the risk of a possible spill and the potential impact on the Sheyenne River and Lake Ashtabula.

Keystone argues that Fargo has not met the statutory requirement for reopening this proceeding. Keystone states that N.D. Admin. Code §69-02-06-01 requires that a motion to reopen a proceeding after the close of hearing must set forth the facts claimed to constitute the grounds requiring reopening, including any material changes of fact or law alleged to have occurred since the conclusion of the hearing. Keystone states that the Commission may reopen a proceeding if it finds that the conditions of fact or law have so changed as to require reopening, or that the public interest so requires. Keystone states that Fargo neither states the relevant statutory provision nor alleges that any material changes in fact or law has occurred since the close of the hearing. Therefore, Keystone states that the sole criterion to consider is whether the public interest requires reopening the record at this time.

Keystone asserts that the public interest does not require granting of Fargo's motion to reopen. Keystone states that the issues Fargo seeks to address relate to alleged potential injury to water supply systems that now and in the future will rely on Lake Ashtabula and the Sheyenne Basin. Keystone states that those issues were addressed by competent testimony at the hearing by Keystone's expert witness, and were subject to cross-examination by Commission staff and intervenors as well as questioning by the Commissioners. Keystone also points out that the North Dakota Department of Health testified that the proposed Keystone route is safe.

Keystone states that the Commission has the ability to consider letters and other materials as part of the record without intervention and without reopening the hearing and without causing undue delay. Keystone points out that Administrative Law Judge Al Wahl has outlined a process available to the Commission to consider Fargo's concerns and the concerns of the North Dakota Water Users without reopening the record in this proceeding. Keystone states that the Commission has indicated its intent to follow that procedure with respect to a significant amount of late-filed information, that there is no reason to treat Fargo's late-filed information differently. Keystone states that in these circumstances, the public interest is fully protected.

Keystone argues that granting intervention or reopening the proceeding would substantially impede the final determination in this matter. Furthermore Keystone states

that granting Fargo's motion would set a bad precedent because interested persons would be able to sit back and observe hearings in a case, and when hearings are over, seek to intervene.

Keystone states that if this motion to intervene or motion to reopen is granted, there will be no closure to hearings, and proceedings would drag on costing utilities and the Commission in time and resources. Keystone asserts there will be adverse impacts to the company if the Commission grants the requests to intervene or reopen the hearings. The impacts include:

1. Undue delay in the issuing of a corridor and route permit;
2. A delayed construction start will result in not completing work in North Dakota in 2008 as currently planned.
3. Delays will result in incompleteness of reclamation on some property which will inconvenience landowners for a greater length of time; and
4. Delays will likely significantly increase project costs.

Keystone argues that Fargo's motion is not related to the PC&N case, Case No. PU-07-152. Keystone states that the issues raised by Fargo are route and corridor issues and that Fargo does not address any of the issues in the PC&N case. Keystone argues that the record for the PC&N case is complete.

On November 5, 2007, Fargo filed a Response to the Supplemental Objection. Fargo states that any harm from a small delay should be balanced with the Commission's obligation to provide a reasonable opportunity for Fargo to appear and participate in view of the nature, scope and importance of this pipeline siting and routing matter. Fargo also states that there appears to have been no evidence introduced as to the nature of the oil that will be pumped through the pipeline, and that it is the understanding of Fargo's consultants that the crude oil to be transported through the pipeline may contain extremely hazardous substances. Fargo also contends that comments offered during the hearings did not probe in any substantive way into the safety concerns being expressed by Fargo.

### **Discussion**

Section 28-32-28 of the North Dakota Century Code provides:

An administrative agency may grant intervention in an adjudicative proceeding to promote the interests of justice if intervention will 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. The agency may impose conditions and limitations upon the intervention. The agency shall give reasonable notice

of the intervention to all parties. An administrative agency may adopt rules relating to intervention in an adjudicative proceeding.

Section 69-02-02-05 of the North Dakota Administrative Code provides in part as follows:

Any person with a substantial interest in a proceeding may petition to intervene in that proceeding by complying with this section. 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. The commission may impose conditions and limitations on an intervention to promote the interests of justice.

Section 69-02-02-05(2) of the North Dakota Administrative Rules provides 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."

The Commission finds that good cause exists for granting the City of Fargo's motion for intervention in that Fargo has legal and public health interests that may be substantially affected by the siting of this pipeline. The Commission also finds that Fargo's intervention will not unduly broaden the issues or delay the proceeding, and that intervention will promote the interests of justice. The intervention will be limited to safety and public health issues relating to the water supply of the City of Fargo from Lake Ashtabula and the Sheyenne River.

The City of Fargo has also filed a motion under Section 69-02-06-01 to reopen the proceedings in Case Nos. PU-06-421 and PU-07-152. In a letter to the Commission dated October 18, 2007, the North Dakota Water Users Association also requested that the Commission reopen the record in Case No. PU-06-421 to consider issues relating to the safeguards in the routing and construction of the TransCanada Keystone Pipeline in the context of water supply issues for eastern North Dakota.

Section 69-02-06-01 of the North Dakota Administrative Code provides authority for the Commission to reopen a proceeding for the purpose of taking additional evidence. The rule provides:

69-02-06-01. Petition to reopen. At any time after the conclusion of a hearing, but before the final order is issued or a rule is adopted, any party may file a petition to reopen the proceeding for the purpose of taking additional evidence.

1. Contents. The petition must set forth clearly the facts claimed to constitute the grounds requiring reopening the proceeding, including

any material changes of fact or law alleged to have occurred since the conclusion of the hearing.

2. **Service.** A copy of the petition to reopen must be served by the petitioning party upon all parties and a certificate to that effect must be attached to the petition when filed with the commission. The original and seven copies must be filed with the commission.
3. **Responses.** Within ten days following the service of a petition to reopen, any other party may file a response. The response must be served on the parties and the original response and certification of service and seven copies must be filed with the commission. Failure to file a response is a waiver of any objection to the granting of the petition.
4. **Order to reopen.** If the Commission has reason to believe the conditions of fact or law have so changed as to require, or that public interest requires, the reopening of a proceeding, the commission may issue an order to reopen.

The Commission finds that public interest requires the reopening of the proceedings in Case No. PU-06-421. The issues raised by Fargo concerning the health and safety of its citizens who rely on water supply from Lake Ashtabula and the Sheyenne River involve the public interest and cannot be ignored by the Commission in the interest of expediency.

The North Dakota Water Users Association is not a party in Case No. PU-06-421, and it has not petitioned to intervene as a party in the proceeding. Under Section 69-02-06-01 of the North Dakota Administrative Code, only parties to a proceeding may petition to reopen.

Fargo's Motion for Intervention to Appear as a Party and Motion to Reopen Proceedings is for both Case Nos. PU-06-421 and PU-07-152. The issues raised by Fargo relate only to Case No. PU-06-421.

### Order

The Commission orders:

1. The City of Fargo's Motion to Intervene as a Party and Motion to Reopen Proceedings for Case No. PU-06-421 is GRANTED.
2. The City of Fargo's Motion to Intervene as a Party and Motion to Reopen Proceedings for Case No. PU-07-152 is DENIED.
3. The North Dakota Water Users Association's request to reopen proceedings in Case No. PU-06-421 is DENIED.

4. Admission as an intervenor shall not be construed as recognition by the Commission that an intervenor might be aggrieved by an order of the Commission in this case.
5. The intervention, as authorized under Section 69-02-02-05 of the North Dakota Administrative Code, is limited to the safety and public health issues relating to the water supply of the City of Fargo from Lake Ashtabula and the Sheyenne River.

**PUBLIC SERVICE COMMISSION**

  
Tony Clark  
Commissioner

Voting Nay  
Susan E. Wefald  
President

  
Kevin Cramer  
Commissioner

**DISSENT AND CONCURRING OPINION IN PART**

**Commissioner Susan E. Wefald**

**November 7, 2007**

**TransCanada Keystone Pipeline, LP  
30-Inch Crude Oil Pipeline/Cavalier to  
Sargent Counties  
Siting Application**

**Case No. PU-06-421**

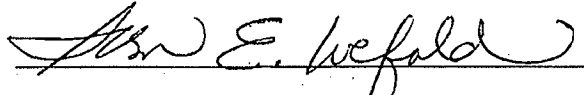
I voted no on this order because it sets bad precedence for the Commission to allow intervention at this very late stage in the process. The Commission must follow established legal procedures when making decisions on siting pipelines, and other siting cases. The Commission received the application from the City of Fargo to intervene and reopen the proceedings almost two months after all hearings had been completed, and after all late filed exhibits and proposed findings and fact and conclusions of law had been filed by existing parties with the Commission. Dakota Resource Council and the citizens it represents intervened in a timely manner and participated in all hearings. Mr. and Mrs. Capp intervened in a timely manner and participated in all hearings. It creates unacceptable regulatory uncertainty for the future for the Commission to so completely change the normal process of collecting information and making a decision in this case.

I am especially concerned about the impact this decision could have on parties with limited funds. Parties with limited funds do not have money to repeat steps in the procedure, and may be disadvantaged by actions of this kind by the Commission.

It was not necessary to take this very unusual step. The Administrative Law Judge in this case, Judge Al Wahl, sent information to the Commission setting out a process for the Commission to include information which it wished to consider in its final order. The process was to notice the information to the parties and provide an opportunity for the parties to comment and request a hearing if necessary to cross examine the person providing the information. The Commission is using this process for quite a few letters and comments it has received in the last few weeks. This process would also have worked well to incorporate the information received from the City of Fargo which has been docketed in this case in numbers 181, 201, and 217.

Therefore, I disagree with Ordering Clause number one of the Commission's Order: The City of Fargo's Motion to Intervene as a Party and Motion to Reopen Proceedings for Case PU-06-421 is GRANTED.

I concur with Ordering Clauses two and three.

A handwritten signature in black ink, reading "Susan E. Wefald", written over a horizontal line.

Susan E. Wefald, Commissioner

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

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

Minn-Kota Ag Products, Inc.	)	
	)	
Appellant,	)	<b>NOTICE OF APPEAL</b>
	)	
v.	)	
	)	
North Dakota Public	)	Appeal From the District Court in
Service Commission,	)	Burleigh County
Otter Tail Power Company,	)	Case No. 08-2018-cv-01142
Dakota Valley Electric Cooperative	)	
	)	
Appellees.	)	

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**NOTICE OF APPEAL**

To: North Dakota Public Service Commission, Otter Tail Power Company,  
Dakota Valley Electric Cooperative, and their attorneys of record:

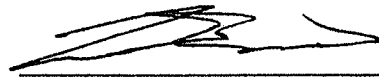
Minn-Kota Ag Products, Inc. ("Minn-Kota") by and through their undersigned attorneys, hereby appeal to the North Dakota Supreme Court from the Rule 58(a) Entry of Judgment of the District Court for Burleigh County dated March 11, 2019 (Case No. 08-2018-cv-01142 at Docket No. 141), as well as the Findings of Fact, Conclusions of Law and Order for Judgment dated March 11, 2019 on which the Judgment was based.

A concise preliminary statement of the issues:

1. Whether the district court erred when it held that Minn-Kota lacked standing to bring an appeal from a decision by the North Dakota Public Service Commission ("PSC").

2. Whether the PSC erred when it failed to issue a certificate of public convenience and necessity to Otter Tail Power Company ("OTP") so that OTP could provide power to a newly built Minn-Kota facility.
  
3. Whether the PSC and district court erred when by denying Minn-Kota the opportunity to intervene.

Dated this 18th day of April, 2019.



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GP:4848-9419-5604 v1