

## Hamre, John G.

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**From:** Kim Radermacher <kimrader@radermacherlaw.com>  
**Sent:** Monday, June 7, 2021 11:43 AM  
**To:** -Info-Public Service Commission; Dawson, Timothy J.; Hamre, John G.; Johnson, Brian L.; Paul Sanderson; Schuh, John M.  
**Subject:** Nodak Electric Cooperative, Inc. v. Otter Tail Power Company - PU-20-356  
**Attachments:** Nodak.Reply\_Argument\_Request.pdf; Nodak\_Email\_Exhibit.pdf; Nodak.CES.Response\_Argument.pdf

\*\*\*\*\* **CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. \*\*\*\*\*

Dear all:

Attached please find the following documents for filing in the above-captioned matter:

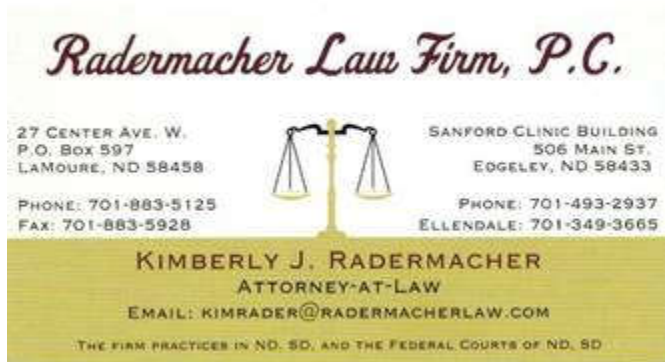
- 1) **Nodak Electric Cooperative, Inc.'s Response to Otter Tail's Request for Oral Argument**
- 2) **Nodak Electric Exhibit 1**
- 3) **Certificate of Electronic Service**

Any questions or concerns, please do not hesitate to contact my office.

Thank you,

*Kimberly J. Radermacher*

*Attorney-at-Law*



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Response to Otter Tail's Request for Oral Argument  
Nodak Electric Cooperative, Inc.  
Kimberly Radermacher, Attorney





**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

Nodak Electric Cooperative, Inc.,	)	
Complainant,	)	<b>NODAK ELECTRIC COOPERATIVE, INC.'S</b>
	)	<b>RESPONSE TO OTTER TAIL'S</b>
-vs-	)	<b>REQUEST FOR ORAL ARGUMENT</b>
	)	
Otter Tail Power Company,	)	Case No. PU-20-356
Respondent.	)	

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[1] Nodak Electric Cooperative, Inc. (hereinafter “Nodak Electric”), by and through special counsel Kimberly J. Radermacher, submits the following response to Otter Tail Power Company’s (hereinafter “Otter Tail”) Request for Oral Argument.

**LAW AND ARGUMENT**

[2] On or about June 3, 2021, Otter Tail filed with the Commission a Request for Oral Argument on its Motion to Dismiss and other issues. Otter Tail states that its request is being made pursuant to North Dakota Administrative Code § 69-02-04-09(2) and argues that the importance of the constitutional issues raised in Respondent’s Motion to Dismiss and their impact on public interest warrant oral argument.

[3] On or about December 4, 2020, Otter Tail filed a request to amend issues at the hearing that was originally scheduled in front of the full commission on December 8, 2020. Specifically, Otter Tail wanted to amend the issues from the regular ten factors the Commission would hear in a Territorial Integrity Act case down to two issues: whether the property at issue in this dispute is located within the corporate limits of the City of Drayton; and whether Nodak Electric possesses a franchise with the City of Drayton to provide electric service within the corporate limits of the City of Drayton. The hearing on December 8, 2020, had to be continued due to Otter Tail’s request and a petition to intervene by the City of Drayton. Thereafter, a prehearing conference was held to

discuss Otter Tail's request to abbreviate the issues. At the prehearing conference, Otter Tail argued that the Commission did not have jurisdiction to hear this matter and that was the basis for its request to abbreviate the issues. Otter Tail was provided a deadline by which to file its proposed Motion to Dismiss, with additional deadlines being set for responses by the parties. On December 11, 2020, Otter Tail filed a 19-page brief along with its Motion to Dismiss setting forth the grounds it believed supported its motion. On January 7, 2021, Otter Tail filed an additional nine-page brief in support of its Motion to Dismiss.

[4] On January 27, 2021, the undersigned reached out to Otter Tail, ALJ Dawson, and the Commission asking for clarification on a proposed hearing date that was set at the prehearing conference in relation to Otter Tail's Motion to Dismiss. At that time, Otter Tail's counsel responded that the date was originally set to hear Otter Tail's Motion to Dismiss, but since neither Otter Tail nor Nodak Electric requested a hearing on the Motion to Dismiss, the date was deemed moot. See Exhibit 1 attached hereto. Otter Tail clearly did not intend to request oral argument on its Motion to Dismiss and did not deem a hearing necessary. However, the Commission scheduled a hearing on Otter Tail's Motion to Dismiss regardless. That hearing was held on April 16, 2021, in front of the full Commission. Otter Tail was represented by two attorneys at the hearing. During the hearing, Otter Tail made a lengthy opening statement setting forth its arguments as to why the Commission should dismiss the matter. Ample testimony and evidence were adduced from both sides during the daylong hearing in front of the Commission. Otter Tail had several witnesses, including the Mayor of Drayton, testify as to the basis of its Motion to Dismiss. On April 30, 2021, Otter Tail filed a 25-page post-hearing brief, a majority of which was spent on the grounds for its Motion to Dismiss. On May 7, 2021, Otter Tail filed an 18-page brief in response to Nodak Electric's


Closing Argument, again addressing Otter Tail's Motion to Dismiss.

[5] Now, 174 days after it filed its Motion to Dismiss, 122 days after the original proposed hearing date on the Motion to Dismiss, and 48 days after a full hearing on this matter, Otter Tail is requesting oral argument on its Motion to Dismiss. Interestingly, the Commission held its first work session on this matter on May 28, 2021. At the work session, it seemed evident that the Commission was going to deny Otter Tail's Motion to Dismiss and grant the relief requested by Nodak Electric in its Complaint. There is not one shred of doubt that this is what is precipitating the request now being made by Otter Tail in its request for oral argument. Otter Tail has been provided over five opportunities to argue the basis for its Motion to Dismiss, which it has fully taken advantage of. There is nothing more to be argued and this matter is ripe for a decision by the Commission. For the Commission to grant Otter Tail's request for argument will only further delay this matter and result in undue expense to the parties.

#### **CONCLUSION**

[6] Based on the reasons set forth herein, as well as the evidence that has been entered on the record in this matter, the undersigned respectfully requests that the Commission deny Otter Tail's Request for Oral Argument.

Dated this 7<sup>th</sup> day of June, 2021.

  
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Kimberly J. Radermacher (#05856)  
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**Kim Radermacher**

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**From:** Paul Sanderson <psanderson@esattorneys.com>  
**Sent:** Wednesday, January 27, 2021 3:06 PM  
**To:** Kim Radermacher; Schuh, John M.; Dawson, Timothy J.; Johnson, Brian L.  
**Cc:** Hamre, John G.; Wetzel, Louise M.  
**Subject:** RE: Case No. PU-20-356, Nodak v. OTP

Kim,

My recollection was that February 1 was referenced as a possible hearing date on the Motion to Dismiss if either party requested a hearing. Neither Otter Tail nor Nodak requested a hearing on the Motion. Therefore, I considered the February 1 date moot.

Paul Sanderson  
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*National Board of Trial Advocacy*  
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**From:** Kim Radermacher <kimrader@radermacherlaw.com>  
**Sent:** Wednesday, January 27, 2021 2:37 PM  
**To:** Schuh, John M. <jschuh@nd.gov>; Dawson, Timothy J. <tjdawson@nd.gov>; Paul Sanderson <psanderson@esattorneys.com>; Johnson, Brian L. <brljohanson@nd.gov>  
**Cc:** Hamre, John G. <jghamre@nd.gov>; Wetzel, Louise M. <lmwetzel@nd.gov>  
**Subject:** Case No. PU-20-356, Nodak v. OTP

I wanted to reach out as I have a note relative to this matter on my calendar for February 1<sup>st</sup>. However, I do not see that a notice of hearing has been issued relative to the Motion to Dismiss so I am not sure if February 1<sup>st</sup> was originally slated to take up that matter or if some other deadline is supposed to correspond with that date. If someone could enlighten me that would be greatly appreciated.

Thanks,  
*Kimberly J. Radermacher*  
*Attorney-at-Law*

