

Hamre, John G.

From: Kim Radermacher <kimrader@radermacherlaw.com>
Sent: Friday, August 13, 2021 2:18 PM
To: -Info-Public Service Commission; Dawson, Timothy J.; Hamre, John G.; Johnson, Brian L.; Paul Sanderson; Schuh, John M.; Steven C Ekman; paul@stevenekmanlaw.com; office@stevenekmanlaw.com
Subject: NOTICE OF APPEAL - Nodak Electric Cooperative, Inc. v. Otter Tail Power Company - PU-20-356
Attachments: Nodak.Notice_Appeal_Specifications_Error.pdf; Nodak.CES.Notice_Appeal.pdf
Importance: High

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Dear all:

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

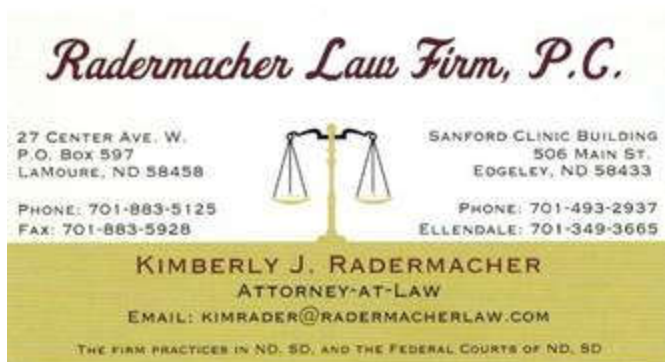
- 1) **Nodak Electric Cooperative, Inc.'s Notice of Intent to Appeal and Specifications of Error in Case No. PU-20-356 Before the North Dakota Public Service Commission**
- 2) **Certificate of Electronic Service**

Per the Clerk of Court for Burleigh County, I am no longer required to file an undertaking on appeal at the outset of the appeal. As such, you will find that it has not been included at this time.

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

Thank you,

Kimberly J. Radermacher
Attorney-at-Law



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- c. That in Paragraph 20 of its Findings of Fact, the Commission erred in concluding that the 1968 service area agreement between Nodak Electric and Otter Tail required filing with the Commission, notice of the filing being issued and/or approval by the Commission of the service area agreement and therefore the Commission is without jurisdiction to settle disputes under the agreement.
- d. That in Paragraph 21 of its Findings of Fact, the Commission erred by eluding that the City of Drayton would be required to sign, participate in and/or approve the 1968 service area agreement between Nodak Electric and Otter Tail.
- e. That in Paragraph 23 of its Findings of Fact, the Commission erred in concluding that the necessary permits to bore under Interstate 29 were obtained by Otter Tail. The permit was never admitted into evidence and there is insufficient evidence in the record to conclude that any necessary permits have been obtained by Otter Tail.
- f. That in Paragraph 25 of its Findings of Fact, the Commission erred in failing to acknowledge that Nodak Electric's proposed extension also does not violate National Electric Safety Code, nor are there any statutory or regulatory prohibitions relative to Nodak Electric's design proposal.
- g. That in Paragraph 27 of its Findings of Fact, the Commission erred in determining that there would be no service interruptions or impacts to Nodak Electric's existing customers.
- h. That in Paragraph 28 of its Findings of Fact, the Commission erred in determining that none of Nodak Electric's infrastructure will be taken or impacted by Otter Tail's extension into McFarland's Addition.
- i. That in Paragraph 33 of its Findings of Fact, the Commission erred by improperly relying on testimony given by Nodak Electric's Witness Einarson in determining whether Otter Tail has made investments for possible expansion into McFarland's Addition. No testimony or evidence was received by Otter Tail to support that Otter Tail had made investments to plant in contemplation of growth west of I-29 and Einarson's testimony was mere speculation as to other areas around the City of Drayton and not specifically to McFarland's Addition.
- j. That in Paragraph 4 of its Conclusions of Law, the Commission erred by concluding that the 1968 service areas agreement and terms of the agreement do not meet the prerequisites provided by the legislature to grant Commission review.

- k. That in Paragraphs 6 and 7 of its Conclusions of Law, the Commission erred by not finding physical interference with Nodak Electric's facilities by Otter Tail.
- l. That in Paragraph 8 of its Conclusions of Law, the Commission erred by not including reference to Nodak Electric's current infrastructure in and near McFarland's Addition and by concluding that Nodak Electric customers will not experience an interruption of service as a result of Otter Tail's designed extension, and Nodak Electric will not lose existing infrastructure or customers from Otter Tail's extending service to McFarland's Addition.
- m. That in Paragraph 9 of its Conclusions of Law, the Commission erred by concluding that Nodak Electric did not meet the burden necessary to demonstrate that Otter Tail's extension into McFarland's Addition will cause interference with Nodak Electric's service. That the Commission also erred in not considering economic interference in determining overall interference with Nodak Electric's service as part of its determination on this factor.
- n. That in Paragraph 10 of its Conclusions of Law, the Commission erred by concluding that it must look at just existing facilities to determine whether extension in this case would constitute a duplication of capital-intensive facilities and services.
- o. That in Paragraph 12 of its Conclusions of Law, the Commission erred by concluding that an extension by Otter Tail that is close to three times in length and cost to that of Nodak Electric's proposed extension is "relatively minor."
- p. That in Paragraph 13 of its Conclusions of Law, the Commission erred by concluding that Otter Tail has made capital expenditures to serve the area, particularly any area west of 1-29. The record is devoid of any reference to any such investment made by Otter Tail as Otter Tail has no customers or infrastructure outside of its overhead transmission line in the vicinity of the proposed Love's Truck Stop site.
- q. That in Paragraph 14 of its Conclusions of Law, the Commission erred by concluding that Nodak Electric does not have extensive system in place to serve the annexed territory or that there is not unreasonable duplication of facilities and services by Otter Tail with regard to its proposed extension in the area.
- r. That in Paragraph 2 of its Order, the Commission erred by dismissing Nodak Electric's Complaint and denying Nodak Electric's Request for Relief.

Dated this 12th day of August, 2021.

RADERMACHER LAW FIRM, P.C.

By  _____

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IN DISTRICT COURT, BURLEIGH COUNTY, NORTH DAKOTA

Nodak Electric Cooperative, Inc.,)
Appellant,)
-vs-)
North Dakota Public Service Commission;)
Otter Tail Power Company; and)
City of Drayton,)
Appellees.)

CERTIFICATE OF ELECTRONIC SERVICE

Case No.

STATE OF NORTH DAKOTA)
)ss
COUNTY OF LAMOURE)

[1] I, Kimberly J. Radermacher, do hereby certify that on August 13, 2021, I served the following documents:


A. NOTICE OF APPEAL AND SPECIFICATIONS OF ERROR IN CASE NO. PU-20-356 BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

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

- North Dakota Public Service Commission at ndpsc@nd.gov
- ALJ Timothy J. Dawson at tjdawson@nd.gov
- John Hamre at jghamre@nd.gov
- Brian L. Johnson at brljohnson@nd.gov
- Paul Sanderson at psanderson@esattorneys.com
- John M. Schuh at jschuh@nd.gov
- Steven Ekman at Steven@ekman.com and office@stevenekmanlaw.com
- Paul Anderson at paul@stevenekmanlaw.com

[3] To the best of my knowledge, information and belief, such addresses are the actual email/postal addresses of the parties intended to be served. That the above document was duly e-mailed or mailed in accordance with the applicable provisions of North Dakota law.

Dated this 13th day of August, 2021.



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