

Hamre, John G.

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Filing Accepted

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Case Number: 08-2021-CV-01508

Case Style: Nodak Electric Cooperative, Inc. vs. North Dakota Public Service Commission, et al.



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Filing Details	
Court	Burleigh County - South Central District
Case Number	08-2021-CV-01508
Case Style	Nodak Electric Cooperative, Inc. vs. North Dakota Public Service Commission, et al.
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Document Details	
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**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

Nodak Electric Cooperative, Inc.,)	
Complainant,)	
)	COMPLAINT
-vs-)	
)	Case No.
Otter Tail Power Company,)	
Respondent.)	

[1] Nodak Electric Cooperative, Inc. (hereinafter “Nodak”) is a “rural electric cooperative” under N.D.C.C. § 49-03-01.5(6). Nodak is an interested electric cooperative corporation under ND.C.C. § 49-03-05.

[2] Otter Tail Power Company (hereinafter “Otter Tail”) is an “electric public utility” under N.D.C.C. § 49-03-01.5(2). Its principal office address is 215 South Cascade Street, P.O. Box 496, Fergus Falls, MN, 56538-0496.

[3] Otter Tail threatens to begin the construction of an extension of its public utility plant and system and of its transmission and distribution lines to serve a customer to be located in McFarland’s Addition located in Section 26, Township 159 North, Range 51 West, Pembina County, North Dakota (the place to be served), without first obtaining from the Commission a certificate that public convenience and necessity require or will require such construction and service.

[4] The place to be served is now located within the corporate limits of the City of Drayton, North Dakota because it was annexed in after the site was chosen by the customer. This also resulted in some of Nodak’s facilities being annexed into the City of Drayton. Nodak contends that a service area agreement between Nodak and Otter Tail dictates that Nodak should serve

the site.

[5] The place to be served is also located in Nodak's service area. Nodak has a single-phase line that intersects the place to be served and a three-phase line that is directly adjacent to the place to be served. Based on the initial site plan provided by the customer, Nodak could extend service off of the single-phase line already located on the place to be served or extend three phase service by 350 feet to the proposed location of the customer's transformer. Otter Tail's extension of service would require boring under Interstate 29 and crossing over Nodak's already existing lines, as Otter Tail has no facilities adjacent to the property capable of serving the load.

[6] Otter Tail's construction of an extension of its public utility plant and system and of its transmission and distribution lines to serve a customer at the place to be served threatens to interfere with Nodak's service and system and is wasteful duplication of facilities.

[7] The allegations are shown by the attached affidavit of Mylo R. Finarson, with accompanying exhibits.

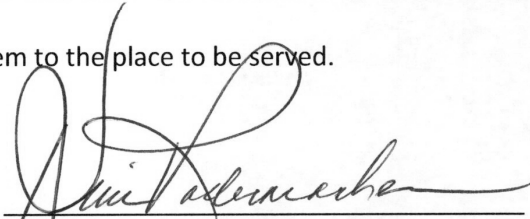
[8] Otter Tail's construction of an extension of its public plant and system and of its transmission and distribution lines to the place to be served is a violation of N.D.C.C. §§ 49-03-01 through 49-03-01.5.

[9] Otter Tail is subject to the jurisdiction of the Public Service Commission. Application of Otter Tail Power Co., 354 N.W.2d 701 (N.D. 1984); Application of Otter Tail Power Co., 451 N.W.2d 95, (N.D. 1990).

[10] Therefore, pursuant to N.D.C.C. §§ 49-02-02 (2), (4), 49-03-01.1, 49-03-01.4, and 49-03-05, Nodak requests the Commission, with or without notice, to make its order restraining,

enjoining and requiring Otter Tail to cease and desist from constructing an extension of its electric public utility plant and system to and from serving any customer at the place to be served and to require Otter Tail to conform to the laws of this State, until the further order of the Commission after hearing after due notice and that Otter Tail be ordered to remove any extension of its electric public utility plant and system to the place to be served.

Dated this 21st day of July, 2020.



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**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

Nodak Electric Cooperative, Inc.,)	
Complainant,)	
)	AFFIDAVIT IN SUPPORT OF COMPLAINT
-vs-)	
)	Case No.
Otter Tail Power Company,)	
Respondent.)	

[1] I, Mylo R. Einarson, declare on oath:

[2] I am President and CEO of Nodak Electric Cooperative, Inc. (hereinafter "Nodak"). I make this declaration in support of Nodak's attached complaint against Otter Tail Power Company (hereinafter "Otter Tail").

[3] Nodak provides electric service to rural customers outside of the City of Drayton, North Dakota. Otter Tail primarily provides electric service to the City of Drayton pursuant to a franchise agreement dated May 3, 2011. There is also a service area agreement involving Nodak and Otter Tail that encompasses the service location that is in dispute and the subject of this Complaint.

[4] On February 23, 2019, a consulting engineer, Paul Bryant of CEI, contacted Nodak regarding the proposed location for a new Love's Truck Stop (hereinafter "Love's") to be located west of I-29 and in Nodak's service territory (see attached map which is incorporated by reference herein). Paul inquired about the cost for extending service and asked for transformer pad specifications so they could build in their design to pour a pad for the transformer. On May 30, 2019, Steve Breidenbach, Nodak's Engineering Manager, had asked Paul if Nodak could get a site plan for Love's, which was emailed to Nodak the same day the request was made. On

June 10, 2019, Steve once again talked with Paul and indicated that Nodak and Love's should start the paperwork for the new service. The application for membership was sent to Paul as he had indicated that all contact for Love's was supposed to be routed through him. Shortly thereafter, Nodak learned that the City of Drayton was seeking to annex the Love's site into the city limits of Drayton. Because of this, Paul felt that Otter Tail, not Nodak, should serve the site and therefore did not follow through with submitting the application for membership to Nodak. On April 13, 2020, the City of Drayton passed a resolution authorizing Otter Tail to serve the site. Nodak received a request for a line locate, seemingly indicating that Otter Tail is moving ahead with extending its service. This was all done despite the fact that Nodak has repeatedly expressed its willingness to serve Love's, objected to Otter Tail serving the load, and the service area agreement between the parties.

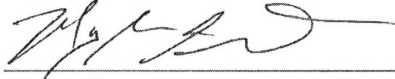
[5] By way of background, Nodak and Otter Tail had a service area agreement that was signed in April 1958. At the end of 1960, maps for each of the relevant townships had been negotiated, drawn and signed by both parties. Since then, each time a change to a map was made, a new one was drawn and signed by the parties and replaced in the file. In February 1968, a new agreement was signed by the parties that referenced "the attached maps" and has all those signed maps from 1960 attached to it. The new agreement was almost verbatim from what was in the 1958 agreement except it changed some language referring to what happens when a municipality annexes area between the existing city limits and the territory boundary where the cooperative has existing facilities and/or consumers. The service area boundaries were drawn outside the existing city limits in some cases up to a mile, and in some cases the cooperative had existing members or infrastructure in that area. The initial agreement provided

for the sale of those facilities and accounts from the Nodak to Otter Tail once the property was annexed. The subsequent agreement took that out and provided for an option to sell if all parties agreed. This was only for newly annexed property inside the service area boundary. The two parties apparently met annually for some period of time to discuss the agreement. It is assumed that at some point the parties stopped meeting because there were not any changes to the maps. (See attached map and agreements, which are incorporated by reference herein). According to the agreement and maps, Nodak and not Otter Tail, would have the right to provide electric service to the site, despite the subsequent annexation of said territory into the city limits of Drayton.

[6] Otter Tail's construction of an extension of its public utility plant and system and of its transmission and distribution lines to serve Love's would interfere with Nodak's service and system and is wasteful duplication of facilities. Nodak has a single-phase line that intersects the Love's service location and a three-phase line that is directly adjacent to the service location. Based on the initial site plan provided by Love's, Nodak could extend service off of the single-phase line already located on the property or extend three phase service by 350 feet to the proposed location of Love's transformer. Otter Tail's extension of service would require boring under Interstate 29 and crossing over Nodak's already existing lines, as Otter Tail has no facilities adjacent to the property capable of serving the load. Due to the annexation of the service location into the city limits by the City of Drayton, Nodak now has facilities located within the City of Drayton.

[7] Otter Tail has not obtained from the Public Service Commission a certificate that public convenience and necessity require or will require such construction and service by Otter Tail.

Dated this 21 day of July, 2020.



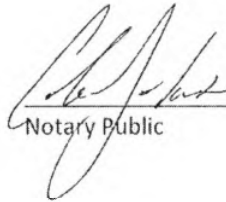
Mylo R. Einarson, President and CEO
Nodak Electric Cooperative, Inc.

STATE OF NORTH DAKOTA)

COUNTY OF GRAND FORKS)

The foregoing instrument was subscribed and sworn to before me on the 21 day of July, 2020.

(SEAL)



Notary Public