

**Hamre, John G.**

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**Sent:** Tuesday, September 14, 2021 10:30 AM  
**To:** Hamre, John G.  
**Subject:** Filing Accepted for Case: 08-2021-CV-01508; Nodak Electric Cooperative, Inc. vs. North Dakota Public Service Commission, et al.; Envelope Number: 4451905

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## Filing Accepted

Envelope Number: 4451905

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	
<b>Court</b>	Burleigh County - South Central District
<b>Case Number</b>	08-2021-CV-01508
<b>Case Style</b>	Nodak Electric Cooperative, Inc. vs. North Dakota Public Service Commission, et al.
<b>Date/Time Submitted</b>	9/13/2021 3:54 PM CST
<b>Date/Time Accepted</b>	9/14/2021 10:29 AM CST
<b>Accepted Comments</b>	
<b>Filing Type</b>	Exhibit
<b>Filing Description</b>	CR Exhibit 4 Answer to Complaint
<b>Activity Requested</b>	EFileAndServe
<b>Filed By</b>	John Hamre
<b>Filing Attorney</b>	John Schuh

Document Details	
<b>Lead Document</b>	4 - CR Exhibit 4 Answer to Complaint.pdf
<b>Lead Document Page Count</b>	3
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VI. With respect to the allegations contained in Paragraph 5 of the Complaint, denies that the place to be served in the City of Drayton is located in Nodak's service area. OTP admits that both Nodak and OTP have existing service lines near the place to be served in the City of Drayton.

VII. Denies the allegations contained in Paragraphs 6, 7, and 8 of the Complaint.

VIII. With respect to the allegations contained in Paragraph 9 of the Complaint, admits Otter Tail is generally subject to the jurisdiction of the Public Service Commission, but specifically denies the Public Service Commission has jurisdiction over the a municipality's determination of the choice of electric service provider within the municipality pursuant to a lawful franchise.

IX. The allegations in Paragraph 10 of the Complaint contain legal conclusions which are denied and OTP places upon Nodak the legal and factual proof which would justify the legal remedy asserted in this case.

X. Asserts Nodak's Complaint fails to state a cause of action upon which relief can be granted.

XI. Asserts the Public Service Commission lacks jurisdiction over the City of Drayton's determination as to which electric service provider can extend electric service within the City of Drayton pursuant to a lawful franchise.

XII. Asserts OTP possesses a lawful franchise with the City of Drayton, Ordinance No. 51, dated May 3, 2011, to provide electric service within the City of Drayton. Further, the City of Drayton passed a Resolution in April 2020 directing OTP to provide electric service pursuant to the franchise to the property at issue in the Complaint.

XIII. Asserts Nodak does not possess a lawful franchise from the City of Drayton to extend electric service to the place to be served within the boundaries of the municipality.

XIV. Asserts the alleged service area agreement between Nodak and OTP referenced in Paragraph 4 of Nodak's Complaint is not valid and enforceable under N.D.C.C. § 49-03-06.

XV. OTP reserves the right to assert any additional affirmative defenses and claims of avoidance as may be appropriate based upon the facts or issues disclosed during the course of additional investigation and discovery.

**WHEREFORE**, Respondent Otter Tail Power Company demands a hearing on the Complaint and prays Nodak's Complaint be in all things dismissed.

Dated this 17<sup>th</sup> day of August, 2020.

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