

## Hamre, John G.

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## Filing Accepted

Envelope Number: 4452015

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.
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<b>Filing Description</b>	CR Exhibit 15 Request to Amend Issues at Hearing
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**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

Nodak Electric Cooperative, Inc.	)	Case No. PU-20-356
	)	
Complainant,	)	
	)	
vs.	)	<b>REQUEST TO AMEND</b>
	)	<b>ISSUES AT HEARING</b>
	)	
Otter Tail Power Company,	)	
	)	
Respondent.	)	

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Respondent Otter Tail Power Company (“Otter Tail”) submits this formal request to amend the issues to be considered at the hearing in this matter identified in the Commission’s Notice of Hearing dated November 9, 2020.

In its Notice of Hearing, the Commission identified ten issues to be considered, which are the issues the Commission typically considers under the Territorial Integrity Act when an electric public utility must secure a certificate of public convenience and necessity before extending service to a new customer outside the corporate limits of a municipality. See e.g., Capital Elec. Coop., Inc. v. N. Dakota Pub. Serv. Comm'n, 2016 ND 73, ¶ 7, 877 N.W.2d 304. However, the present case is not a Territorial Integrity Act case, as Otter Tail is not seeking to extend service to a customer outside the corporate limits of a municipality. Otter Tail asserts the property at issue in the case, McFarland’s Addition, was annexed into the City of Drayton in August 2019. Otter Tail also asserts it possesses the only franchise with the City of Drayton to provide electric service within the corporate limits of the City of Drayton.

Therefore, Otter Tail contends the threshold issues the Commission should be addressing at the hearing are:

1. Is the property at issue in this dispute located within the corporate limits of the City of Drayton; and
2. Does Nodak Electric Cooperative possess a franchise with the City of Drayton to provide electric service within the corporate limits of the City of Drayton.

Otter Tail asserts that if the property in question is located in the corporate limits of the City of Drayton and if Nodak Electric Cooperative does not possess a franchise with the City of Drayton to provide electric service within the corporate limits of the City of Drayton, the Commission lacks authority to interfere with the City of Drayton's constitution right to grant a franchise to an electric provider under North Dakota Constitution Article VII, § 11. See Capital Elec. Coop. v. City of Bismarck, 2007 ND 128, ¶ 13, 736 N.W.2d 788.

Therefore, Otter Tail respectfully requests the Notice of Hearing be amended to include the two issues identified above.

Dated this 4th day of December, 2020.

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