

## Hamre, John G.

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## Filing Accepted

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<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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**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

Nodak Electric Cooperative, Inc.,	)	
Complainant,	)	
	)	<b>NODAK ELECTRIC COOPERATIVE, INC.'S</b>
-vs-	)	<b>CLOSING ARGUMENT</b>
	)	
Otter Tail Power Company,	)	Case No. PU-20-356
Respondent.	)	

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[1] Nodak Electric Cooperative, Inc., by and through special counsel Kimberly J. Radermacher, submits the following closing argument and brief in support of its Complaint against Otter Tail Power Company relative to the proposed Love’s Travel Stop site near Drayton, North Dakota.

**PROCEDURAL HISTORY**

[2] This matter came before the North Dakota Public Service Commission (hereinafter “Commission”) on Complaint by Nodak Electric Cooperative, Inc. (hereinafter “Nodak Electric”) alleging that Otter Tail Power Company (hereinafter “Otter Tail”) is planning to commence construction of an extension of its public utility plant and system and of its transmission and distribution lines to serve Love’s Travel Stop to be located in McFarland’s Addition in the City of Drayton, which is in Nodak Electric’s service territory. That by doing so, Otter Tail threatens to interfere with Nodak Electric’s service and system and would result in a wasteful duplication of facilities. *See* Dkt. #1.

[3] On or about December 11, 2020, Otter Tail filed a Motion to Dismiss claiming that the Commission does not have authority to invalidate the City of Drayton’s franchise with Otter Tail to provide electric service to McFarland’s Addition within the City of Drayton. *See* Dkt. #26-29. On December 28, 2020, Nodak Electric responded that the Commission does have authority to address the issues raised in Nodak Electric’s Complaint by virtue of the provisions found in Chapter 49-03 of

the North Dakota Century Code. *See* Dkt. #30. Specifically, Nodak Electric contends that pursuant to N.D.C.C. § 49-03-01.3 that while “Sections 49-03-01 through 49-03-01.5 shall not be construed to require any such electric public utility to secure such order or certificate for an extension of its electric distribution lines within the corporate limits of any municipality within which it has lawfully commenced operations...**such extension or extensions shall not interfere with existing services provided by a rural electric cooperative or another electric public utility within such municipality; and provided duplication of services is not deemed unreasonable by the commission.**” (emphasis added). N.D.C.C. § 49-03-01.4, provides that “if any electric public utility or electric transmission provider violates or threatens to violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with or threatens to interfere with the service or system of any other electric public utility or rural electric cooperative, the commission, after complaint, notice, and hearing as provided in chapter 28-32, shall make its order restraining and enjoining the electric public utility or electric transmission provider from constructing or extending its interfering lines, plant, or system. In addition to the restraint imposed, the commission shall prescribe any terms and conditions as the commission deems reasonable and proper.”

[4] On March 3, 2021, the Commission issued a Notice of Hearing. *See* Dkt. #34. A hearing before the Commission was subsequently held on April 16, 2021. *See* Dkt. #41-60. At the hearing, Administrative Law Judge Timothy Dawson ordered that the parties submit written closing arguments and briefs addressing the three issues taken up at the hearing. Those three issues are as follows:

1. Whether the Commission should grant Otter Tail’s motion to dismiss?
2. Whether Otter Tail’s extension would interfere with existing services provided by Nodak Electric?

3. If there would be a wasteful duplication of services, whether the duplication of services would be unreasonable?

### **LAW AND ARGUMENT**

[5] In 1965, the Territorial Integrity Act...was adopted at the request of the North Dakota Association of Rural Electric Cooperatives to provide ‘territorial protection’ for rural electric cooperatives and to prevent public utilities from ‘pirating’ rural areas.” See N.D.C.C. Chapter 49-03 and Prepared Testimony of Clarence Welander, Chairman of North Dakota Association of Rural Electric Cooperatives, February 25, 1965, Minutes of Senate Industry, Business and Labor Committee regarding House Bill 724. “The primary purpose of the Act was to minimize conflicts between suppliers of electricity and wasteful duplication of investment in capital-intensive utility facilities.” Cass County Electric Coop., Inc. v. Northern States Power Co., 419 N.W.2d 181 (N.D.1988). See also Capital Elec. Co-op., Inc. v. Public Service Com'n of State of N.D., 534 N.W.2d 587 (N.D. 1995). The Territorial Integrity Act provides the foundation on which this case rests.

#### **ISSUE 1: Whether the Commission Should Grant Otter Tail’s Motion to Dismiss?**

[6] As previously stated, Otter Tail believes that the Commission is without authority to interfere with a franchise granted to Otter Tail by the City of Drayton to serve McFarland’s Addition and ultimately the proposed Love’s Travel Stop site and therefore Nodak Electric’s Complaint must be dismissed. Nodak Electric would argue that the Commission has authority to not only hear the merits of Nodak Electric’s Complaint, but to grant Nodak Electric the relief it seeks therein. The Commission’s authority is derived from the provisions set forth in Chapter 49-03 of the North Dakota Century Code. Under N.D.C.C. § 49-03-01, “if **any** electric public utility in constructing or extending its line, plant, or system, **unreasonably interferes with or is about to interfere**

unreasonably with the service or system of any other electric public utility, or any electric cooperative corporation, the commission, on complaint of the electric public utility or the electric cooperative corporation claiming to be injuriously affected, after notice and hearing as provided in this title, may order enforcement of this section with respect to the offending electric public utility and prescribe just and reasonable terms and conditions." (emphasis added).

[7] Other applicable provisions under N.D.C.C. Chapter 49-03 that apply to the nature of Nodak Electric's Complaint include N.D.C.C. §§ 49-03-01.3 and 49-03-01.4. Specifically, N.D.C.C. § 49-03-01.3 states that "Sections 49-03-01 through 49-03-01.5 shall not be construed to require any such electric public utility to secure such order or certificate for an extension of its electric distribution lines within the corporate limits of any municipality within which it has lawfully commenced operations; provided, however, that such extension or extensions shall not interfere with existing services provided by a rural electric cooperative or another electric public utility within such municipality; and provided duplication of services is not deemed unreasonable by the commission." (emphasis added). N.D.C.C. § 49-03-01.4, provides that "if any electric public utility or electric transmission provider violates or threatens to violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with or threatens to interfere with the service or system of any other electric public utility or rural electric cooperative, the commission, after complaint, notice, and hearing as provided in chapter 28-32, shall make its order restraining and enjoining the electric public utility or electric transmission provider from constructing or extending its interfering lines, plant, or system. In addition to the restraint imposed, the commission shall prescribe any terms and conditions as the commission deems reasonable and proper."

[8] Over the years, Nodak Electric has made substantial improvements to its facilities near the City of Drayton in contemplation of further development in territory Nodak Electric believes is rightfully its to serve under the Territorial Integrity Act and the service area agreement between Nodak Electric and Otter Tail. According to Steve Breidenbach, Engineering Manager for Nodak Electric, Nodak Electric has been serving the area dating back to the 1940's and made upgrades to its system as late as 2009. Nodak Electric has a single-phase service that intersects the entirety of McFarland's Addition and has three-phase service within 350 feet of the proposed transformer pad for Love's Travel Stop. The annexation of the single-phase service into city limits, and action by the Public Service Commission if Otter Tail's relief is granted, would paralyze Nodak Electric's ability to further extend off of portions of that line. This coupled with the fact that the extension of Otter Tail's facilities in service territory belonging to Nodak Electric will interfere with Nodak Electric's facilities and result in an unreasonable duplication of services, it is evident that the Commission has authority to hear and decide the merits of Nodak Electric's Complaint as provided by law.

[9] Otter Tail claims that because it possesses a franchise to serve the City of Drayton that Nodak Electric is automatically precluded from serving Love's proposed service station and the Public Service Commission is without authority to hear this matter. First, the franchise held by Otter Tail to serve the City of Drayton is not exclusive. In its brief and at the hearing in this matter, Otter Tail erroneously claims that "given the City of Drayton's ordinance adopting the Resolution directing Otter Tail, its only franchisee, to furnish electric service to all residents within the City, Nodak has no right to provide service to McFarland's Addition..." Neither the Ordinance dated in 2011, nor the Resolution dated in 2020, specifically state what Otter Tail alleges. Furthermore, Otter Tail's Chris Waltz testified neither the Ordinance dated 2011, nor the Resolution dated in

2020 was exclusive. Rather, said documents grant Otter Tail permission to build plant to provide electric service to the City and the inhabitants thereof. Nowhere in the documents is said right specifically exclusive to Otter Tail, nor can it be under N.D.C.C. § 40-05-01(57). Furthermore, no evidence has ever been provided that the City of Drayton has an ordinance prohibiting an entity from providing electrical service within the City of Drayton without a franchise, as such ordinance does not exist. This fact makes this case distinguishable from the facts in Montana-Dakota Utilities Company v. Divide County School District No. 1, 193 N.W.2<sup>nd</sup> 723 (N.D. 1971). In that case, the City of Crosby passed Ordinance No. 220, which prohibited any electrical supplier from furnishing electricity to the inhabitants of the city of Crosby without first obtaining a franchise. Because of this specific ordinance, the North Dakota Supreme Court held that Burke-Divide Rural Electric Cooperative was not in compliance with N.D.C.C. Sections 10-13-01(1) and 10-13-03(1) because it was supplying power to persons in rural areas who were receiving central station service. Specifically, the Court stated “[W]here any such person resides within or seeks service for facilities within a city defined as a rural area which is receiving central state service, such person cannot be served within the corporate limits, in the absence of a franchise, **where the city has in existence an ordinance prohibiting such service in the absence of a franchise.** (emphasis added). *Id.* at 730. Charles Olson, the mayor of Drayton, was called by Otter Tail to testify at the hearing. Otter Tail introduced three different exhibits relative to action taken by the City of Drayton in relation to the franchises given to Otter Tail and the annexation of McFarland’s Addition. Nowhere in Olson’s testimony or included in the exhibits was evidence that the City of Drayton has an ordinance requiring a franchise to provide electrical services inside the city limits of Drayton. To the contrary, Olson acknowledged that Nodak Electric is in fact providing electrical service to a service station

located within city limits and has been doing so since the 1980s. See Exhibit NODAK-11, Dkt. #55. Olson indicated that since Nodak Electric was already providing electrical service to the site at the time of annexation that he did not see any issue with Nodak Electric continuing to serve the load without a franchise.

[10] In Cass County Electric Coop., Inc. v. Northern States Power Co., 419 N.W.2d 181 (N.D. 1988), Northern States Power Company tried making a similar argument to Otter Tail's regarding the ability of a rural electric cooperative to serve members who are receiving or can receive central station service. The North Dakota Supreme Court held that "Section 49-03-01.3, N.D.C.C., implicitly recognizes that a rural electric cooperative may lawfully provide electric services within a municipality which is served by an electric public utility. We are required to construe together all statutes relating to the same subject matter so as to harmonize them, if possible, and give full force and effect to the legislative intent (citations omitted). We believe it is possible to harmonize these provisions...Thus, when a 'rural area' is annexed by a municipality, its population in effect 'changes' because it has become united with that of the municipality of which it is now a part. In view of Sec. 49-03-01.3, which specifically contemplates the possibility of continued electric service by a cooperative within an annexed area, we conclude that Sec. 10-13-04 does not prohibit Cass from providing electric service in South Pointe." *Id.* at Page 185. Furthermore, the Court declined to adopt language found in Tri-County Electric Cooperative, Inc. v. Elkin, 224 N.W.2d 785, 794 (N.D. 1974) and the Divide case and held that it is not persuasive authority for the proposition that cooperatives are statutorily precluded from serving new customers within an annexed area. Otter Tail's reliance on the Divide case is misplaced and its arguments derived from what appears to be no longer good case law is unavailing.

[11] It is also worth noting that in the Divide case, the city of Crosby had twice declined to issue a limited franchise to the REC. No such action has ever been taken by the City of Drayton. While Nodak Electric had expressed to the City of Drayton that it would be willing to get a franchise if one was needed, the issue was never formally brought before the city council and voted on. Nodak has maintained its position that it was lawfully serving the areas annexed into the City of Drayton by virtue of a 1968 service area agreement it has with Otter Tail. Because the City of Drayton does not have an ordinance in place prohibiting electrical service from being provided without a franchise and is in fact presently allowing such practice to occur, the Commission is not precluded from hearing this matter as provided for in Chapter 49-03 of the North Dakota Century Code.

[12] Furthermore, Nodak Electric would allege that the Commission has authority and jurisdiction to hear this matter by virtue of the now existing ordinances within the City of Drayton. Otter Tail's Exhibit OTP-1, which is the franchise Otter Tail has with the City of Drayton, states in Section 9 that "**this contract shall be subject to any present or future laws of a regulatory nature enacted by the State of North Dakota, or any amendment or addition to such laws, and further shall be subject to the rules and regulations laid down by the Public Service Commission of the State of North Dakota.**" (emphasis added). Otter Tail attempted to argue through the testimony of Chris Waltz, Manager of Sales and Economic Development for Otter Tail, that this provision was only included because Otter Tail's rates are subject to regulation by the Commission and for no other reason. This argument is not compelling. Section 8 of the franchise specifically addresses the issue of rates and what authority the Commission has in that regard. Section 9 is independent of Section 8 and does not appear to be limited in any way. Because of this, Nodak Electric would argue that any amendment to the franchise and expansion of services by Otter Tail in the City of Drayton

would be subject to the scrutiny and jurisdiction of the Commission and in particular, the authority granted to the Commission under Chapter 49-03.

[13] Finally, by virtue of the 1968 service agreement entered into between the parties, Nodak Electric has the sole right to serve the proposed site for the Love's Travel Stop. Otter Tail attempts to argue that N.D.C.C. § 49-03-06, which was passed in 2005, invalidates the 1968 service area agreement. This argument fails. In reviewing the legislative history relative to SB 2412, nowhere does it indicate that N.D.C.C. § 49-03-06 would have retroactive application to already existing service area agreements, but rather to agreements reached subsequent to the enactment of said statute. Prior to 2005, there appears to be no requirement that service area agreements be approved by the Public Service Commission or cities that may be affected by such agreements. Otter Tail acknowledged in testimony that it knew that the 1968 agreement existed but did not realize it also addressed the City of Drayton. Both parties provided testimony that they have been operating under the agreement since its inception, including after the passage of N.D.C.C. § 49-03-06 in 2005. Otter Tail has not attempted at any time to invalidate or rescind the 1968 service area agreement except in the context of this case.

**ISSUE 2: Whether Otter Tail's Extension Would Interfere With Existing Services Provided By Nodak Electric?**

[14] It is Nodak Electric's contention that Otter Tail's extension of service to the Love's Travel Stop site would interfere with existing services provided by Nodak Electric. In determining this issue, the Commission must look at the services generally in the area and not just services provided to actual customers as Otter Tail suggested during the hearing. See Cass County Electric Coop., Inc. v. Northern States Power Co., 419 N.W.2d 181 (N.D. 1988), 186-88. "The Commission must look at

the existing electric facilities that [Nodak Electric] and [Otter Tail] have in place in the area and determine whether extension of [Otter Tail's] services...would constitute an unreasonable duplication of capital-intensive facilities and services already provided by [Nodak Electric]." *Id.*

While it is true that Nodak Electric currently serves no customers in McFarland's Addition, the same holds true for Otter Tail. Where the parties differ is that Nodak Electric has significant facilities already in the area constituting and surrounding McFarland's Addition. Otter Tail does not. Currently Nodak Electric has a single-phase service that intersects the entire width of McFarland's Addition and also runs parallel thereto. It also has three-phase directly adjacent to McFarland's Addition that would be used to extend service to the Love's Travel Stop site. Based on the siting of the Love's Travel Stop transformer, Nodak Electric would have to extend its existing three-phase service by approximately 350 feet at an estimated cost to Nodak Electric of \$19,037.50. Otter Tail, on the other hand, has no single-phase or three-phase distribution lines on the west side of I-29. It only has a transmission line. The only plausible way that Otter Tail can extend service to the area is by boring under I-29 and extending off of its facilities to the east of I-29. Otter Tail's proposed extension would be approximately three times longer than Nodak Electric's and come at a cost approximately three times more than that proposed by Nodak Electric. While no physical estimation of cost was provided by Otter Tail at the time of the hearing, Tyler Jacobson, Senior Engineer for Otter Tail, testified that the cost of the proposed extension is estimated to be in excess of \$52,000.00. No evidence was provided to show how Otter Tail came up with those numbers or exactly what facilities were going to be used to extend service. Jacobson did indicate that the numbers had been revised since the original proposal but did not state how. At the time Nodak Electric requested discovery in this matter, Otter Tail did not appear to have any numbers to

provide; although, it seems they were available as early as 2019 according to Jacobson's testimony. Jacobson also testified that the bore for Otter Tail's proposed extension would occur approximately "50 feet, give or take" north of where Nodak Electric's underground line is currently located under I-29. Nodak Electric is a bit skeptical about this proposed extension. Otter Tail indicated that it had a permit to bore under I-29. To date, no such permit has been provided as evidence. Fifty feet, give or take, doesn't leave a lot of room for error, particular given that Otter Tail didn't even have Nodak Electric's underground facilities properly depicted on the map laying out its proposed extension. Both parties can agree that Otter Tail would have to extend service under one of Nodak Electric's overhead lines. However, it is not clear if Otter Tail will have to cross over Nodak Electric's underground lines in the area. Otter Tail admits that to cross over Nodak Electric's underground lines would not be an ideal extension of service and appeared to want to avoid that at all costs. However, it is plausible that this could occur if Otter Tail has to move south with its extension under I-29. As proposed, Otter Tail would have to bore through not only the main lanes of I-29, but both on and off ramps located in the area. If Otter Tail would extend further south, it could avoid the ramps. However, this would result in crossing over Nodak Electric's underground lines in up to two additional spots. Such a crossing as proposed would significantly interfere with Nodak Electric's facilities located in the area and create a serious safety hazard when digging.

[15] Not only would Otter Tail's proposed extension potentially interfere physically with Nodak Electric's facilities, it would also interfere economically. As stated in the Cass County Electric case, the Commission must not limit this inquiry to just existing members in the area. Nodak Electric officials testified that it extended service in and around McFarland's Addition the way it did due to the prospect of future growth. Nodak Electric not only sized the line in contemplation of this, but

also upgraded lines in 2009 and extended three-phase service into the area. Mylo Einarson, President and CEO of Nodak Electric, testified that the west side of I-29 throughout the state has been seeing a lot of growth and so it made sense to make the investment when updating its facilities in the Drayton area. Because of this prior investment, Nodak Electric is able to extend service at a significantly reduced cost. If the Commission rules in favor of Otter Tail, its determination would effectively strand Nodak Electric's single-phase line because it was annexed into city limits. In that scenario, if any cooperative service is needed north or south of McFarland's Addition, Nodak Electric and its members would be looking at increased costs for extending service that would not have otherwise existed but for said annexation. While the existing single-phase line could still be used to continue providing power to already existing members on that line, it would become worthless for any future development.

[16] Furthermore, Nodak Electric projects that the Love's Travel Stop load could bring in annual gross revenues ranging from \$57,000.00 to \$98,000.00 (depending on if load management is used). Based on the lowest proposed net revenue, after taking into consideration cost of power and other expenses, Nodak Electric could still recoup its investment for just the extension to the Love's Travel Stop in less than four years. The net revenue could also be used to recoup prior investment made by Nodak Electric in the area, as well as reduce overall electric costs for all Nodak Electric members. As Einarson testified, commercial loads are ideal loads to have due to the revenue that they bring in for the electric cooperative. When one of those loads goes to a public utility when it was originally in the electric cooperative's territory, the cooperative as a whole is financially impacted. If the Commission rules in favor of Otter Tail in this instance, going forward, when more territory is annexed into a municipality, it results in additional property being contiguous to the municipality

and opens up the door to more of the cooperative's service territory being usurped by the city and the public utility without any oversight from the Commission. It is evident that based on the facts submitted at the hearing in this matter, as well on file herein, it is evident that Otter Tail's proposed extension of service would interfere with Nodak Electric's existing services.

**ISSUE 3: If There Would Be a Wasteful Duplication of Services, Whether the Duplication of Services Would Be Unreasonable?**

[17] “The Territorial Integrity Act was enacted by the Legislature in 1965. It amended Sections 49-03-01 and 49-03-05, N.D.C.C., which required a public utility, before beginning construction or operation of a public utility plant or system, or an extension thereof, to obtain from the PSC a certificate of public convenience and necessity. (citations omitted). The primary purpose of the Act was to keep to a minimum wasteful duplication of capital-intensive utility services and conflicts between suppliers of electricity. Cass County Electric Coop., Inc. v. Northern States Power Co., 419 N.W.2d 181 (N.D. 1988), 186-188. The cases decided under this Act [prior to the Cass County Electric case] have thus far generally involved situations where an electric public utility seeks to serve customers in rural areas outside the corporate limits of a municipality.” *Id.* The Cass County Electric case was “the first time a cooperative in North Dakota has attempted to prevent a utility extension within a municipality on the grounds that the extension interferes with the economic viability of the cooperative's system.” *Id.* “In determining interference with existing services and unreasonable duplication of services, the PSC must not look solely at actual customers in the area. Rather the PSC must look at the existing electric facilities that the rural electric cooperative and the public utility have in place in the area and determine whether the extension of services into the area would constitute an unreasonable duplication of capital-intensive facilities and services

provided by the other entity.” *Id.* at 186-87.

[18] When Love’s Travel Stop chose its proposed location in Drayton, it thought it could dictate who its electrical service provider would be without any regard to the Territorial Integrity Act or whose service territory it intended to build in. The City of Drayton never gave such a request a second thought, as Charles Olson testified that “what Love’s wants is what the City wants and that’s what Love’s is going to get.” Nodak Electric was never given a fair opportunity at the local level to defend its territory and protect its facilities in and around McFarland’s Addition. According to Otter Tail and the City of Drayton, Nodak Electric was not to interfere and just step away peacefully. It is an easy request to make when it is not their business that could be impacted by the loss of facilities and prospective revenue. Otter Tail simply is not the logical choice for providers when it comes to serving the Love’s Travel Stop load as it is not currently physically situated in such a way to readily provide service to the site. It would require a substantial extension by Otter Tail to bring service to the site, which is not necessary as Nodak Electric is already at Love’s Travel Stop’s front door.

[19] As previously stated, Nodak Electric has single-phase and three-phase service in direct proximity to McFarland’s Addition. Nodak Electric can bring the desired three-phase service to Love’s Travel Stop by extending its three-phase service west of the area by 350 feet. The extension as proposed is minimally invasive and would cost less than \$20,000.00 to do. Otter Tail has no distribution facilities located on the west side of I-29. The only way it can extend service is by boring under I-29. This extension is three times that of Nodak Electric’s in both length and cost. It would require an extensive bore under I-29 as the proposed route not only intersects the south and north bound lanes, but both the on and off ramps. Nodak Electric already has facilities going under

I-29, although those relate to the single-phase service currently intersecting McFarland's Addition. Nodak Electric's extension of three-phase service would only require trenching across a county road just west of the site. It is evident based on the testimony that Nodak Electric has already made significant improvements to its facilities in the area of McFarland's Addition. Those improvements date back to at least 2009, although Nodak Electric has had facilities in the area dating back to the 1940's. Otter Tail has made no similar improvements to the area as it serves no consumers on the west side of I-29 anywhere in the vicinity of the proposed Love's Travel Stop. In order to do so, it would have to make a substantial investment - one Nodak Electric has already made because it is Nodak Electric's territory and it is currently serving members in close proximity. While Otter Tail may argue that investing in excess of \$52,000.00 in plant is not unreasonable, the Commission needs to keep in mind that this extension is three times that of Nodak Electric's and it is not a logical extension of Otter Tail's services. At this time, Otter Tail's extension of service to the Love's Travel Stop would be only for the benefit of Love's Travel Stop and no other customer of Otter Tail's. Future development in that area by Otter Tail is limited, if not impracticable, unless the City of Drayton annexes additional property into city limits or Otter Tail obtains a Certificate of Public Convenience and Necessity from the Commission.

[20] Furthermore, Nodak Electric can serve the load just as economically, if not more economically, than Otter Tail. Figures presented at the time of the hearing show that if Love's Travel Stop would implement a generator as part of its load management that Nodak Electric could serve the load at a significant cost savings to Love's Travel Stop when compared to Otter Tail. Even without load management, Nodak Electric's rates are still competitive with Otter Tail's, particularly when taking into account capital credits that ultimately get returned back to the member. Otter

Tail will likely argue that it can serve Love's Travel Stop more economically as it originally projected Nodak Electric's cost of service to be in excess of \$30,000.00 annually over that of Otter Tail's rates. However, the numbers estimated by Otter Tail were not accurate and were unfortunately used by Love's Travel Stop when making its decision in who it wanted to supply power. Otter Tail also misstated to the customer that controlled power equated to interruptible power meaning that Love's Travel Stop would be without power at certain parts of the day. However, that is simply untrue. Nodak Electric can extend electrical service to Love's Travel Stop and provide power more economically than Otter Tail can. The numbers entered into evidence, as well as the maps depicting the proposed extensions of service and what each power supplier has for facilities in the area, clearly indicate that Otter Tail's proposed extension of service would be duplicative, wasteful and unreasonable.

[21] The facts of this case on the issue of wasteful duplication of services are analogous to those found in the Capital Electric (Boulder Ridge) case. See Capital Electric Cooperative, Inc., v. City of Bismarck, 736 N.W.2d 788 (N.D. 2007). In that case, the Commission found, and the North Dakota Supreme Court upheld, that MDU's extension of service in the Boulder Ridge addition of Bismarck would have "interfere[d] with and constitute[d] an unreasonable duplication of investment and available facilities and services in Boulder Ridge provided by Capital." *Id.* at ¶134. The same holds true for this case.

### **CONCLUSION**

[22] Based on the foregoing, Nodak Electric respectfully requests that Commission deny Otter Tail's Motion to Dismiss and grant Nodak Electric the relief requested in its Complaint, namely to enjoin Otter Tail from extending service to the proposed Love's Travel Stop in McFarland's Addition

to the City of Drayton, North Dakota.

Dated this 30<sup>th</sup> day of April, 2021.

A handwritten signature in cursive script, appearing to read "Kim Radermacher", written in black ink over a horizontal line.

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**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

Nodak Electric Cooperative, Inc.,	)	
Complainant,	)	
	)	<b>CERTIFICATE OF ELECTRONIC SERVICE</b>
-vs-	)	
	)	
Otter Tail Power Company,	)	Case No. PU-20-356
Respondent.	)	

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STATE OF NORTH DAKOTA    )  
                                          )ss  
COUNTY OF LAMOURE        )

[1] I, Kimberly J. Radermacher, do hereby certify that on April 30, 2021, I served the following documents:

**A. Nodak Electric Cooperative, Inc.’s Closing Argument**

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

North Dakota Public Service Commission at [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
ALJ Timothy J. Dawson at [tjdawson@nd.gov](mailto:tjdawson@nd.gov)  
John Hamre at [jghamre@nd.gov](mailto:jghamre@nd.gov)  
Brian L. Johnson at [brljohanson@nd.gov](mailto:brljohanson@nd.gov)  
Paul Sanderson at [psanderson@esattorneys.com](mailto:psanderson@esattorneys.com)  
John M. Schuh at [jschuh@nd.gov](mailto:jschuh@nd.gov)

[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 30<sup>th</sup> day of April, 2021.



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