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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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Case Number	08-2021-CV-01508
Case Style	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,)	NODAK ELECTRIC COOPERATIVE, INC.'S
)	RESPONSE TO THE CITY OF DRAYTON'S
-vs-)	REQUEST FOR ORAL ARGUMENT
)	
Otter Tail Power Company,)	Case No. PU-20-356
Respondent.)	

[1] Nodak Electric Cooperative, Inc. (hereinafter "Nodak Electric"), by and through special counsel Kimberly J. Radermacher, submits the following response to the City of Drayton's (hereinafter "Drayton") Request for Oral Argument.

LAW AND ARGUMENT

[2] On or about June 8, 2021, Drayton filed with the Commission a Request for Oral Argument on Otter Tail's Motion to Dismiss and other issues. Drayton states that its request is being made pursuant to North Dakota Administrative Code § 69-02-04-09(2) and argues that the importance of the constitutional issues raised in Otter Tail's Motion to Dismiss and their impact on public interest warrant oral argument. The request appears to be a regurgitation of the exact same request made by Otter Tail on or about June 3, 2021.

[3] On or about December 4, 2020, Otter Tail filed a request to amend issues at the hearing that was originally scheduled in front of the full commission on December 8, 2020. Specifically, Otter Tail wanted to amend the issues from the regular ten factors the Commission would hear in a Territorial Integrity Act case down to two issues: whether the property at issue in this dispute is located within the corporate limits of the City of Drayton; and whether Nodak Electric possesses a franchise with the City of Drayton to provide electric service within the corporate limits of the City of Drayton. The hearing on December 8, 2020, had to be continued due to Otter Tail's request and

a petition to intervene by Drayton. On or about December 11, 2020, ALJ Dawson entered an order allowing Drayton to intervene. Thereafter, a prehearing conference was held, and Otter Tail was provided a deadline by which to file its proposed Motion to Dismiss, with additional deadlines being set for responses by the parties. On December 11, 2020, Otter Tail filed a 19-page brief along with its Motion to Dismiss setting forth the grounds it believed supported its motion. On January 7, 2021, Otter Tail filed an additional nine-page brief in support of its Motion to Dismiss. Drayton never joined in the Motion to Dismiss brought by Otter Tail, nor has it ever submitted its own motion or response relative to the merits of Otter Tail's Motion to Dismiss.

[4] A Notice of Hearing on Otter Tail's Motion to Dismiss and Nodak Electric's Complaint was issued on March 3, 2021. Per Docket Nos. 35 and 36, Drayton received personal service of the Notice of Hearing, which was set for April 16, 2021. At no time between March 3, 2021, and April 16, 2021, did Drayton's counsel file a Notice of Appearance or otherwise appear in the proceedings. The hearing was held on April 16, 2021, in front of the full Commission, as scheduled. Charles Olson, the Mayor of Drayton, testified at the proceedings as part of Otter Tail's case in chief. Olson, on behalf of Drayton, appeared to indicate that Drayton did not intend to be represented by counsel, nor submit any closing arguments on its own behalf. No closing argument, reply to closing argument or proposed findings were ever submitted by Drayton by the deadlines set by ALJ Dawson.


[5] As argued previously, Nodak Electric believes that the time for oral argument on the Motion to Dismiss has passed. A full evidentiary hearing was had in this matter, at which time Otter Tail presented evidence and argument in support of its Motion to Dismiss. Otter Tail has been provided over five opportunities to argue the basis for its Motion to Dismiss, which it has fully taken

advantage of. Drayton, on the other hand, never bothered to join in Otter Tail's Motion to Dismiss or submit a response of any kind. Drayton has no procedural right to request oral argument on a motion it did not take part in and waived any such right when it failed to file a response or otherwise appear. Drayton also did not take part in the April 16th hearing other than to provide testimony. Because it was an intervenor, it had the right to present its own case, cross examine witnesses and submit closing documents. However, Drayton knowingly chose not to. The evidentiary nature of the proceedings is now closed and there is nothing more Drayton can add to the record. Otter Tail has exhaustively argued this matter and there is nothing more to argue. Otter Tail and Drayton have both been afforded every opportunity to make their respective cases when it was appropriate for them to do so. For the Commission to grant Drayton's request for oral argument would result in procedural error, further delay this matter and cause undue expense to the parties.

CONCLUSION

[6] Based on the reasons set forth herein, as well as the evidence that has been entered on the record in this matter, the undersigned respectfully requests that the Commission deny the City of Drayton's Request for Oral Argument.

Dated this 15th day of June, 2021.



Kimberly J. Radermacher (#05856)
Special Counsel for Nodak Electric Coop.
P.O. Box 103 – 506 Main St.
Edgeley, ND 58433
Telephone: (701) 883-5125
kimrader@radermacherlaw.com

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

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

STATE OF NORTH DAKOTA)
)ss
COUNTY OF LAMOURE)

[1] I, Kimberly J. Radermacher, do hereby certify that on June 15, 2021, I served the following documents:


A. Nodak Electric Cooperative, Inc.’s Response to the City of Drayton’s Request for Oral Argument

[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
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 15th day of June, 2021.



Kimberly J. Radermacher (#05856)
Special Counsel for Nodak Electric
P.O. Box 103 – 506 Main St.
Edgeley, ND 58433
Telephone: 701-883-5125
kimrader@radermacherlaw.com