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STATE OF NORTH DAKOTA

CASE NO. 20190127
Burleigh Co. No. 2018-CV-01142

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Minn-Kota Ag Products, Inc.,

Appellant,

v.

North Dakota Public Service Commission, et al.,

Appellees.

Brief of Appellant Minn-Kota Ag Products, Inc.

Appeal from the District Court Order Affirming a Decision by the North Dakota Public Service Commission

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Oral Argument Requested

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Statement of the Issues

1. Whether the district court erred when it held that Minn-Kota lacked standing to bring an appeal from a decision by the North Dakota Public Service Commission.
2. Whether the Commission erred when it failed to issue a certificate of public convenience and necessity to Otter Tail Power Company so that Otter Tail could provide power to a newly built Minn-Kota facility.
3. Whether the Commission and district court erred by denying Minn-Kota the opportunity to intervene.

Oral Argument Requested

Pursuant to N.D. R. App. P. 28(h), Minn-Kota believes Oral Argument would be helpful to the Court because of the combination of substantive and procedural questions involved in this appeal.

Statement of the Case

[1] Minn-Kota Ag Products, Inc. ("Minn-Kota") appeals from the district court's decision to affirm the North Dakota Public Service Commission's order denying Otter Tail Power Company's application for a certificate of public convenience and necessity, as well as the Commission's denial of Minn-Kota's petition to intervene in support of Otter Tail's application. Minn-Kota asks this Court to reverse the Commission's decision on the merits and order that a certificate be issued, or in the alternative, to remand for further proceedings with Minn-Kota as an intervenor.

[2] This case arises out of Minn-Kota's construction and operation of a $20 million grain handling facility near Barney, North Dakota (the "Facility"). Minn-Kota received proposals to provide electric power for the Facility from Otter Tail Power Company

("Otter Tail"), an investor-owned utility, and Dakota Valley Electric Cooperative ("Dakota Valley"), a rural electric cooperative. Based on a careful review of the competing proposals, Minn-Kota selected Otter Tail's proposal as the one that best met its needs. In particular, because of the harm that could potentially result in the event of an interruption of electric power, Minn-Kota had a heightened need for reliable service and determined that Otter Tail offered far greater reliability at significantly lower cost.

[3] In order to provide service outside the municipal limits of Barney, Otter Tail was required by the Territorial Integrity Act to apply for a certificate of public convenience and necessity from the Public Service Commission. Along with its application, Otter Tail filed an Appearance by Customer on behalf of Minn-Kota, stating that Minn-Kota made a "voluntary appearance in this matter" and prayed for relief granting a certificate to Otter Tail. Minn-Kota's representative testified at the October 23, 2017, public hearing advocating in support of Otter Tail's application. Minn-Kota later filed a petition to intervene on February 1, 2018, shortly after the Commission convened a work session to exchange preliminary views on Otter Tail's application.

[4] On February 19, 2018, an Administrative Law Judge denied Minn-Kota's petition to intervene and subsequently denied Minn-Kota's motion for reconsideration of that intervention decision. On March 29, 2018, the Commission issued its Findings of Fact, Conclusions of Law and Order denying Otter Tail's application.

[5] Pursuant to the Administrative Agencies Practices Act, Minn-Kota appealed to the district court both the Commission's order on Otter Tail's application for a certificate of public convenience and necessity and the decision denying Minn-Kota's petition to intervene. Otter Tail did not separately appeal the denial of its application. The district

court did not consider the merits of Minn-Kota's appeal of the Commission's order because the district court concluded that Minn-Kota had not sufficiently participated in the proceedings below to have standing to challenge the decision. The district court also concluded, however, that Minn-Kota's motion to intervene was properly denied because it was filed after the public hearing had occurred and Minn-Kota had not provided good cause for the delay in its petition. The district court did not consider whether Minn-Kota had good cause to intervene in light of all circumstances in the case. This appeal follows.

Factual Background

I. Description of Minn-Kota and its Barney Grain Handling Facility

[6] Minn-Kota Ag Products is a grain elevator and agriculture supply business located the southern Red River Valley. Minn-Kota has locations in Barney, Wahpeton, and Wyndmere, North Dakota, as well as in Kent and Breckenridge, Minnesota. CR Ex. 86[1] (October 23, 2017, Hrg. Tr. at 174:16 – 21). Minn-Kota is a fourth generation family-owned business. CR Ex. 86 (Hrg. Tr. at 174:1 – 4).

[7] This case concerns a grain handling facility that Minn-Kota built near Barney (the "Facility"). Minn-Kota invested more than $20 million in order to construct a state-of-the art facility is now the largest in Minn-Kota's network. *See* CR Ex. 86 (Hrg. Tr. 177:11 – 18; 183:17 – 21). The Facility replaced a much smaller elevator that Minn-Kota had owned and operated in Barney for over 60 years until it sold the elevator to a local farmer. CR Ex. 86 (Hrg. Tr. at 206:16 – 207:5). The Facility operates year round, with irregular and unpredictable peak demand requirements. *See* CR Ex. 86 (Hrg. Tr. at

[1] References to "CR" are to the exhibit numbers in the Certified Record before the agency.

177:22 – 179:3); CR Ex. 65 (Otter Tail Post Hearing Argument at p. 2). Operations at the Facility began in July 2018 and Minn-Kota expects the Facility will have an operational life of 40 years. CR Ex. 86 (Hrg. Tr. at 177:19 – 22; 179:25 – 180:4).

[8] The Facility is designed to provide area grain producers with a competitive advantage because it will be able to offer discounted freight rates that are lower than rates offered by smaller elevators that are only capable of shipping two or three railcars at a time. CR Ex. 86 (Hrg. Tr. at 176:20 – 177:10).

[9] Access to reliable, affordable electricity is critical to the Facility's success. Trains that receive grain at the Facility operates on a strict schedule. Once a train arrives, Minn-Kota only has a limited amount of time to complete loading. If loading is not completed in the allotted amount of time, Minn-Kota must pay a penalty, resulting in higher shipping costs. CR Ex. 86 (Hrg. Tr. p. 177: 23 – 178:17). Additionally, service interruptions, if they occur, require Minn-Kota to shut down the Facility for as much as a day to a day and a half in order to clean grain out of the legs before getting the Facility up and running again. CR Ex. 86 (Hrg. Tr. at 186:1 – 23). An interruption of the Facility's electric service that occurs during harvest season or when Minn-Kota has a train to load could have huge financial implications for Minn-Kota. CR Ex. 86 (Hrg. Tr. at 186:1 – 23).

II. Minn-Kota's Preference for Otter Tail Power as its Provider of Electric Service for the Facility

[10] During construction of the Facility, Minn-Kota received proposals to provide electric power for the Facility from both Otter Tail, an investor-owned utility, and Dakota Valley, a rural electric cooperative. Based on a careful evaluation of the proposals it

received from both companies, Minn-Kota chose Otter Tail as its preferred provider. CR Ex. 86 (Hrg. Tr. at 180:9 – 12; 181:11 – 188:1).

[11] Minn-Kota based its decision on the fact that the proposal from Otter Tail offered more reliable service at lower cost. CR Ex. 86 (Hrg. Tr. at 181:11 – 188:1). Indeed, Dakota Valley's service would cost approximately $70,000 to $110,000 more annually than Otter Tail's service. CR Ex. 34 (OTP-9). Not only was the estimated cost significantly less under the Otter Tail proposal, Otter Tail offered to construct a substation on Minn-Kota's property to provide greater reliability. CR Ex. 86 (Hrg. Tr. at 187:19 – 25).

[12] Additionally, because Otter Tail is a rate-regulated utility, Minn-Kota could be assured that Otter Tail would have to go through a regulatory process in order to raise its rates, thus providing a greater degree of predictability than would be the case with Dakota Valley, whose rates are not regulated by the Public Service Commission. CR Ex. 86 (Hrg. Tr. at 188:17 – 23). Having Otter Tail provide electric service will facilitate Minn-Kota's ability to re-invest in and expand the Facility. CR Ex. 86 (Hrg. Tr. at 184:11 – 25; 91:19 – 92:4).

[13] Even more importantly, however, the nature of the Facility's operations made the reliable availability of electric power a prime concern and the Otter Tail proposal offered significantly better reliability. CR Ex. 86 (Hrg. Tr. at 185:2 – 187:1). Large loads, like the Facility, can often cause voltage drops and other types of disruptions on the system. CR Ex. 86 (Hrg. Tr. at 37:19 – 39:3). Because Otter Tail would construct a new substation on Minn-Kota's property that would initially serve only the Facility, this

would eliminate the concern that the amount of power needed to start up the large electric motors that power the Facility might cause disruptions. *Id.*

[14] Dakota Valley, by contrast, would serve multiple customers in addition to the Facility, and do so from a power source much further away. Additionally, Dakota Valley's proposal would provide service via substantially more underground cable than Otter Tail's design (more than four miles for Dakota Valley compared to 1000 feet for Otter Tail), which takes longer to repair than overhead cable. CR Ex. 86 (Hrg. Tr. at 40:11 – 22). As a result, in the event of an outage, the amount of time to restore service would likely be greater under the Dakota Valley proposal than would be the case for Otter Tail.

[15] Minn-Kota's choice was further supported by the experiences it had had with the two providers. Otter Tail provides service to Minn-Kota's facility in Wyndmere and previously provided service to Minn-Kota's former facility in Barney and Minn-Kota was consistently satisfied with Otter Tail's service. CR Ex. 86 (Hrg. Tr. at 180:13 – 181:5). Otter Tail has been very flexible in working out any issues that have arisen and outages have been few and short-lived. CR Ex. 86 (Hrg. Tr. at 180:13 – 181:5). Dakota Valley, on the other hand, provides electricity to Minn-Kota's facility in Wahpeton. Minn-Kota's experience there has been that it has had to limit its operations at its Wahpeton facility by reducing the number of fans in operation in order to avoid being charged Dakota Valley's very high demand charge. CR Ex. 86 (Hrg. Tr. at 182:23 – 183:16). By selecting Otter Tail as its electricity provider for the Facility, Minn-Kota intended to avoid similar constraints on its ability to operate the Facility at peak performance. CR Ex. 86 (Hrg. Tr. at 183:17 – 184:6).

III. Proceedings Before the North Dakota Public Service Commission

[16] On February 27, 2017, Otter Tail filed with the Commission its Application for Permanent Authority, requesting a certificate of public convenience and necessity in order to serve Minn-Kota's Barney grain handling facility. A-12[2] (CR. Ex. 1). Along with its Application, Otter Tail filed an Appearance by Customer, executed on behalf of Minn-Kota, that confirmed that Minn-Kota wished to receive electric service from Otter Tail and admitting the allegations contained in Otter Tail's Application. A-14 (CR. Ex. 1). On March 15, 2017, the Commission issued its Notice of Opportunity for Hearing, finding that Otter Tail had made a prima facie showing that it should be permitted to serve Minn-Kota and directing that any written objections to the Application be filed by April 11, 2017. CR. Ex. 3. On March 31, 2017, Dakota Valley filed a Protest and Request for Hearing objecting to Otter Tail's Application. CR. Ex. 6.

[17] At the Commission's request, an Administrative Law Judge was assigned to serve as procedural judge presiding over proceedings convened for the purpose of determining Otter Tail's Application. CR Exs. 8 and 11. On July 26, 2017, the Commission issued a Notice of Hearing that identified the issues to be considered in determining whether to grant Otter Tail's Application.

1. From whom does the customer prefer electric service?
2. What electric suppliers are operating in the general area?
3. What electric supply lines exist within at least a two-mile radius of the location to be served, and when were they constructed?
4. What customers are served by electric suppliers within at least a two-mile radius of the location to be served?

[2] Citations to A-__ are page references to documents reprinted in the appendix.

5. What are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service?

6. Which of the available electric suppliers will be able to serve the location in question more economically and still earn an adequate return on its investment?

7. Which supplier's extended electric service would best serve orderly and economic development of electric service in the general area?

8. Would approval of the applications result in wasteful duplication of investment or service?

9. Is it probable that the location in question will be included within the corporate limits of a municipality within the foreseeable future?

10. Will service by either of the electric suppliers in the area unreasonable interfere with the service or system of the other?

CR Ex. 18.

[18] An evidentiary hearing was held on October 23, 2017, at which time the Commission admitted testimony and exhibits into the record. CR. Ex. 23; *see also* CR Ex. 86 (10/23/17 hearing transcript). Among those advocating in support of the Application was George Schuler IV, Minn-Kota's grain division and logistics manager, who is a member of its board of directors and a minority owner. *Id.*

[19] The Commission convened a work session on December 20, 2017. CR Ex. 87 (12/20/17 working session transcript). During that work session, the Commissioners expressed their preliminary views regarding how the factors to be considered in determining Otter Tail's application for a certificate of public convenience and necessity should be weighed. In particular, the Commission's discussion at the work session focused on whether Otter Tail's application would result in "wasteful duplication" of facilities, as well as the impact of the decision on the public interest. *Id.* at 3:4 – 7:5. The Commissioners also questioned whether Dakota Valley would be bound by its testimony

at the hearing waiving a requirement of soft start motors and whether that would resolve Minn-Kota's concern about Dakota Valley's service. *Id.* at 5:6 – 6:19. Dakota Valley's testimony on this came after that of George Schuler, who was therefore not asked whether it resolved Minn-Kota's concerns.

[20] Because Minn-Kota had a unique perspective on these and other issues before the Commission, and because Minn-Kota no longer felt that its interest in the issuance of the certificate was sufficiently aligned with or adequately represented by Otter Tail's appearance before the Commission, Minn-Kota filed a Petition to Intervene and Request to Present Oral and Written Comments on February 1, 2018. A-17. Minn-Kota's petition summarized the additional information it wished to present and how that information would bear on the Commission was to consider, including the issue of soft starts and Dakota Valley's purported "waiver" of the requirement. A-21 at ¶ 14.

[21] On February 5, 2018, the Commission convened a working session where the Commissioners discussed Minn-Kota's intervention request. *See* CR Ex. 88 (transcript of 2/5/18 working session). At that working session, the Commission took no position on the merits of the request and, instead, referred the issue to the ALJ for a determination. On February 19, 2018, the ALJ issued an Order Denying Petition to Intervene. A-25.

[22] On March 5, 2018, Minn-Kota requested reconsideration of the decision denying its petition to intervene. A-30 (CR Ex. 78). In its reconsideration request, Minn-Kota provided more detail regarding the arguments and evidence that it would offer if permitted to intervene, thus enabling the Commission to make a decision of such great importance to Minn-Kota on a more complete record. By way of an offer of proof, Minn-Kota submitted with its request for reconsideration a letter from a Professional Engineer

that reviewed technical deficiencies in Dakota Valley's proposal that were not present in Otter Tail's proposal. On March 13, 2018, the ALJ issued an order denying the reconsideration request, concluding Minn-Kota was "much too late to the dance," and ordered that all but the first two introductory paragraphs of Minn-Kota's request be stricken, *see* A-45, which includes not only the exhibits filed in support, but also the statement regarding good cause included in ¶ 9 – 12.

IV. The Public Service Commission's Decision and Minn-Kota's Appeal

[23] The Commission issued its Findings of Fact, Conclusions of Law and Order denying Otter Tail's application on March 29, 2018. A-46. In the section of the Order concerning the balancing and weighing of factors, the Commission expressly addressed six of the ten factors. It concluded that two of those factors (reliability, economy) favored neither party, one factor (customer preference) favored Otter Tail, and three factors favored Dakota Valley (customers and supply lines within one and two miles of the location to be served, orderly and economic development, wasteful duplication of investment). A-54 at ¶ 48.

[24] On April 27, 2018, Minn-Kota filed a Notice of Appeal and Specifications of Error in Burleigh County District Court, challenging both the Commission's decision on the merits, as well as the ALJ's decision to deny Minn-Kota's petition to intervene. The notice observed that, although Minn-Kota was denied intervention below, Minn-Kota fit within the definition of "party" under N.D.C.C. § 28-32-01 and therefore had a right to appeal pursuant to N.D.C.C. § 28-32-42. Otter Tail did not file its own appeal of the Commission's decision, but instead filed a Statement in Lieu of Appellee Brief indicating that it shared the position articulated by Minn-Kota. *See* A-73 at ¶ 2.)

[25] On appeal, Minn-Kota explained that the Commission's refusal to allow Minn-Kota to intervene was exacerbated by its failure to properly analyze the reliability of the two proposals Index # 127 (July 20, 2018, Appellant's Brief at ¶¶ 36 – 42), its failure to properly analyze the existing service to customers in the relevant geographic area (*Id.* at ¶ 45), and failed to properly analyze the potential of "wasteful duplication" in Otter Tail's proposal (*Id.* at ¶¶ 52 – 54).

[26] Minn-Kota also argued that the denial of its petition to intervene deprived Minn-Kota of a fair hearing in front of the Commission. Specifically, Minn-Kota had attempted to demonstrate that it had pertinent technical information regarding the proposals that should be considered by the Commission, and that the denial of Minn-Kota's petition therefore deprived the Commission of important evidence in making its decision. (*Id.* at ¶ 31.)

[27] On March 11, 2019, the district court affirmed the decision of the Commission. As to the Commission's denial of Minn-Kota's petition to intervene, the district court observed that the petition was filed three months after the hearing, and that "Minn-kota was thus required to show good cause *for the substantial delay* in filing its Petition." A-75 at ¶ 4, emphasis added). Giving deference to the ALJ's determination, the court concluded that the petition was properly denied because Minn-Kota had failed to sufficiently explain the delay. (*Id.* at ¶ 5.)

[28] The district court did not address the merits of Minn-Kota's appeal of the Commission's decision. Instead, the court determined that there was a threshold issue of whether Minn-Kota had standing to bring the remainder of its appeal. (*Id.* at ¶ 6.) The court agreed that Minn-Kota was an interested party to the Commission's proceedings

and that Minn-Kota was factually aggrieved by its decision. (*Id.* at ¶ 7.) But the court concluded that Minn-Kota had not sufficiently "participated" in the proceedings below to meet the three-part test for standing to appeal an administrative decision, stating that Minn-Kota's role was "more akin to participation as a witness, which is not enough to meet the 'participation' requirement for standing." (*Id.* at ¶ 8.)

[29] This appeal follows.

Argument

I. Minn-Kota's participation in the proceedings below falls within this Court's broad interpretation of standing under the Administrative Agencies Practice Act.

[30] Under North Dakota's Administrative Agencies Practice Act ("AAPA"), a party has standing to bring an appeal when (1) it participates in the proceedings before the agency; (2) it is interested in the proceedings before an agency; and (3) it may be factually aggrieved by the agency's decision. *Application of Bank of Rhame*, 231 N.W.2d 801, 808 (N.D. 1975). Minn-Kota had an Appearance by Customer filed on its behalf, testified in support of Otter Tail's application before the Public Service Commission's proceedings below, and was denied further involvement pursuant to its motion to intervene.

[31] The district court held that Minn-Kota did not have standing to pursue its appeal of the Commission's decision, erroneously concluding that Minn-Kota's participation was more akin to that of a witness than a party, and therefore failed to satisfy the first of the three prongs of the standing test had not been met. The district court's conclusion is not only unsupported by legal authority, it is also contrary to this court's liberal treatment of standing in the administrative context. Because the district court's error was in the

interpretation and application of the AAPA, it is a question of law reviewed by this Court de novo. *See Johnson v. Taliaferro*, 2011 ND 34, ¶ 9, 793 N.W.2d 804, 806 (interpretation and application of statute is a question of law).

A. Standing under the AAPA should not be applied narrowly, and any doubt must be resolved in favor of the party seeking appeal.

[32] The AAPA provides that "[a]ny party to any proceeding heard by an administrative agency . . . may appeal." N.D.C.C. § 28-32-42(1). The statute defines a party as "each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party." N.D.C.C. § 28-32-01(9). This Court has instructed that "narrow or limited construction should not be placed on statutory provisions governing who may be party for purposes of appeal of review." *Application of Bank of Rhame*, 231 N.W.2d 801, 806 (N.D. 1975).

[33] A person or entity has standing to appeal an administrative decision if it: (1) participates in the proceeding before an administrative agency, (2) is directly interested in the proceeding, and (3) is factually aggrieved by the agency's decision. *Bank of Rhame,* 231 N.W. 2d 801, 808; *see also Shark v. U.S. West Commc'ns*, 545 N.W.2d 194 (1996). This requirement of standing is intended to prevent courts from being "called upon to decide purely abstract questions" by focusing on appellants that have a sufficiently "personal stake in the outcome of the controversy as to justify exercise of the court's remedial powers on [its] behalf." *Shark*, 545 N.W.2d at 198 (internal quotation marks omitted). But in the administrative context, "[a]ny doubt on the question of standing involving a decision by an administrative body should be resolved in favor of permitting

the exercise of the right of appeal by any person aggrieved in fact." *Rhame* 231 N.W.2d at 808.

[34] The district court acknowledged that Minn-Kota easily met the second and third prongs of this test, but concluded that Minn-Kota did not sufficiently participate in the proceeding below to constitute a "party" with standing to appeal. Specifically, the court concluded that Minn-Kota's role was "more akin to participation as a witness, which is not enough to meet the 'participation' requirement for standing." A-76 at ¶ 8. No legal authority supports the court's conclusion that a customer's testimony in support of a company's petition is insufficient under the *Bank of Rhame* standard. Indeed, the district court's holding is contrary to *Bank of Rhame* in that it appears to assume that only an electrical company applying for a petition has standing to appeal, rather than the customer supporting the company's application.

[35] This Court held in *Bank of Rhame* that standing under the AAPA was not limited to an applicant for relief in an administrative hearing—who is usually set out in the title of the action and whose standing is not in question. *Bank of Rhame*, 231 N.W.2d at 808. Instead, "[t]he question of who are parties to the proceedings must be determined from the record rather than from the entitlement of the proceedings. The information as disclosed by the record constitutes the basis upon which a determination can be made as to who are parties to the proceeding." *Id.*

[36] A proper review of the record demonstrates that Minn-Kota did participate in the proceedings below as a customer advocating its position to the Commission in support of Otter Tail's application, and therefore has standing to appeal that decision before this Court.

B. Minn-Kota participated in the proceedings below as the sole customer affected by the decision and was denied further involvement by the Commission.

[37] When the *Bank of Rhame* test is properly applied, Minn-Kota's participation below should establish its standing to pursue this appeal for at least three reasons: (1) an Appearance by Customer was filed on behalf of Minn-Kota requesting relief from the Commission; (2) Minn-Kota's representative offered testimony at the hearing in this proceeding supporting its position; an (3) Minn-Kota attempted to intervene and participate more fully in this matter, but was denied intervention.

1. Minn-Kota participated by filing an appearance and praying for relief from the Commission.

[38] First, in support of Otter Tail's Application, Minn-Kota executed a notarized Appearance by Customer, stating Minn-Kota's desire to receive electric service from Otter Tail. A-14. This document stated that Minn-Kota "hereby makes a voluntary appearance in this matter," and specifically prayed for an order and certificate of public convenience and necessity by the Commission authorizing Otter Tail to provide the requested service. *Id.* The fact that Minn-Kota submitted a written appearance praying for relief from the Commission should alone be sufficient "participation" under the liberal construction of the definition of party. *See Bank of Rhame,* 231 N.W.2d at 803.

[39] The district court, however, disregarded Minn-Kota's Appearance by Customer because it was filed by Otter Tail in support of Otter Tail's application rather than by Minn-Kota itself, which the court felt was "more akin to participation as a witness." A-76 at ¶ 8.) While it is certainly true that Minn-Kota supported Otter Tail's application, the district court's conclusion ignores the fact that Minn-Kota's written appearance

specifically prayed for relief from the Commission—something that a "mere" witness usually does not do in a proceeding. If the district court's conclusion was based on the unstated assumption that Minn-Kota's appearance had to be asserted by an attorney representing its interests at the hearing, it is certainly in error and contrary to the liberal treatment of standing this Court has said should apply to administrative proceedings.

[40] The fact that Otter Tail filed the appearance rather than Minn-Kota is neither surprising nor noteworthy—Otter Tail was the applicant seeking the certificate, and Minn-Kota, as the sole customer at issue, supported that application. The district court's illogical conclusion seems to be that Minn-Kota, as the customer to be served, was somehow required to file its own application on behalf of Otter Tail to "participate" in the Commission's consideration. This is inconsistent with the standard set forth in *Bank of Rhame*.

2. Minn-Kota participated by testifying in support of its position during the October 2017 hearing.

[41] George Schuler IV, Minn-Kota's grain division and logistics manager and a director and minority owner of the company, testified in support of Otter Tail's application at the October 23, 2017, evidentiary hearing. The district court again dismissed this involvement as merely that of a "witness." But Schuler was not simply providing neutral technical information to the Commission—his testimony laid bare what Minn-Kota's position was and why it wanted the Commission to grant the certificate. As noted above, the district court offered no authority in support of its conclusion that standing under *Bank of Rhame* required more than this, especially when combined with Minn-Kota's Appearance by Customer.

[42] To the contrary, Minn-Kota's efforts to make its position known to the Commission demonstrate precisely why Minn-Kota's efforts differ from the role of other customers that have been deemed to have not participated in Commission proceedings for the purpose of standing inquiries. In *Shark v. U.S. West Communications*, for example, this Court concluded that a customer who had submitted a pre-hearing letter to a single commissioner had not significantly participated in the proceeding and lacked standing to appeal. *Shark*, 545 N.W.2d at 198-99. But the customer in *Shark* had done no more in his letter than provide "an expression of general interest" and was "not acting on behalf or at the request of any party." *Id.* at 198 n.1. Moreover, the customer had specifically "presented no position to the PSC" about the dispute in question. *Id.* at 199. Minn-Kota, by contrast, has unquestionably presented its position to the Commission in support of Otter Tail's application, and its testimony in support of that position is precisely the type of participation that this Court found lacking in *Shark*.

3. Minn-Kota participated by attempting to intervene.

[43] Finally, Minn-Kota's attempt to intervene in the proceedings below, although unsuccessful, is a separate and sufficient reason that Minn-Kota has standing to appeal the Commission's decision. Indeed, this Court has previously noted that the legislative history of N.D.C.C. § 28-32-01 suggests that the definition of "party" was specifically intended to benefit would-be intervenors if their petitions for intervention were denied. *Shark*, 545 N.W.2d at 197 & n.1. When the legislature added language to the statute in 1977 clarify that "party" meant anyone named or admitted as a party or *properly seeking and entitled as of right to be admitted* as a party, it "was intended to confer upon would-

be intervenors the right to seek judicial review if their petitions for intervention were denied." *Id.* (comparing North Dakota's AAPA to the Model State Procedure Act).

[44] Considering Otter Tail did not pursue its own appeal of the Commission's decision, Minn-Kota's attempt to intervene below provides even more reason to allow it standing to challenge the merits of the Commission's decision. Although Minn-Kota and Otter Tail both advocated for the same result below, Otter Tail's stakes in the outcome of this case were more limited, given that Minn-Kota was but one of its many customers and given Otter Tail's status as a party that is regulated by, and must regularly appear before, the Commission. The ALJ's conclusion that intervention was not necessary because Minn-Kota's interests were sufficiently represented by Otter Tail has proven false, and now Minn-Kota is the only party that can seek to advance the administration of justice through the adversarial system.

[45] The public policy behind the standing doctrine strongly supports including Minn-Kota as a party for appeal. As this Court stated in *Bank of Rhame*, "our judicial process is designed for, employs, and relies heavily upon the adversary system for its administration of justice." 231 N.W.2d at 807. This principle "applies throughout the various stages of the judicial process, including appeal." *Id.* Moreover, the problems that the standing doctrine are meant to prevent—review of abstract questions by those with general rather than particularized interest in a controversy—are not present here. *See Shark*, 545 N.W.2d at 198.

[46] For these reasons, the district court was wrong to conclude Minn-Kota's participation was insufficient to confer standing to appeal the Commission's decision and should be reversed.

II. The merits of the Commission's decision should be reversed because they are based on legally erroneous assumptions that are not supported by facts or law.

[47] Because the district court erroneously concluded Minn-Kota had no standing to appeal the Commission's decision, the court did not consider Minn-Kota's arguments regarding the numerous errors in the Commission's decision. The record below demonstrates, however, that the Commission's decision to deny the certificate was in error and should be reversed by this Court because it was based on incorrect legal assumptions and because it is unsupported by the facts relied upon by the Commission.

[48] Although Minn-Kota maintains that all of the errors it identified in briefing below are important, three of those errors, in particular, demonstrate why reversal of the Commission's decision is necessary: (1) the Commission's conclusion that both solutions would provide sufficient reliability ignored that the proposals were not equal in terms of reliability; (2) the Commission's conclusion that Dakota Valley served more customers within the area was based on an arbitrary and inappropriate bright-line geographical boundary; and (3) the Commission's analysis of "wasteful duplication" erroneously assumed that any duplication is wasteful.

[49] The AAPA sets forth the following grounds, among others, for reversal of an agency decision: 1) The order is not in accordance with the law; 2) The rules or procedure of the agency have not afforded the appellant a fair hearing; 3) The findings of fact made by the agency are not supported by a preponderance of the evidence; 4) The conclusions of law and order of the agency are not supported by its findings of fact; 5) The findings of fact made by the agency do not sufficiently address the evidence presented by the appellant. N.D.C.C. § 28-32-46.

[50] This standard of review requires the Court to determine: (1) if the agency's findings of fact are supported by a preponderance of the evidence; (2) if the agency's conclusions of law are sustained by the findings of fact; and, (3) if the agency decision is supported by the conclusions of law. *Montana-Dakota Utilities Co. v. Public Service Comm'n*, 413 N.W.2d 308, 310 (N.D. 1987). If the Court does not affirm the Commission's order, it must modify or reverse the order and remand the matter to the Commission for disposition in accordance with the Court's decision. *Id.*

A. The Commission erroneously treated the "reliability" of each proposals as a simple binary that either existed or did not.

[51] One of the factors to be considered by the Commission was the differences, if any, between the proposals with respect to reliability of service. In issuing its decision, however, the Commission did not analyze the scope of those differences but instead concluded that the factor favored neither party because both were "sufficiently reliable." This conclusion fails to apply the actual factor as announced by the Commission and is not supported by the facts presented at the hearing.

[52] The Commission's analysis of reliability of the two competing proposals was simplistically premised on the unfounded assumption that "reliable" is a bipolar quality: Either service is reliable or it is not. However, the Commission's own factual findings acknowledge that the two proposals were not equal in terms of reliability, as the Commission's conclusion erroneously suggests. Rather the Commission's findings reflect that the Otter Tail Power proposal offered greater reliability, both for Minn-Kota and for other customers, than did the Dakota Valley proposal. A-50-51 at ¶¶ 19, 20, 22. The Commission's conclusion that both proposals would provide sufficient reliability

failed to take into account and was contrary to, the Commission's findings regarding the relative reliability of the two proposals and the undisputed evidence regarding the benefits that would derive from the greater reliability provided by Otter Tail.

[53] First, the Commission found that Otter Tail's 1,000 feet of distribution line offered less distribution line exposure than Dakota Valley's approximately four-mile distribution network. A-50 at ¶ 19. The Commission, however, makes no factual findings that support the conclusion that the four-mile network that Dakota Valley proposed to build (21 times as long as Otter Tail's proposal) would be sufficiently reliable for this project. This is especially troubling because the Commission expressly acknowledged that the "[e]ngineering evidence presented at the hearing indicates that the risk of service, voltage fluctuations, outages, and the length of outages generally increases with the length of distribution line serving or connected to a customer." A-50 at ¶ 20.

[54] The Commission's conclusion is also directly contradictory with its conclusion in *Capital Elec. Coop., Inc. v. N. Dakota Pub. Serv. Comm'n*, 2016 ND 73, 877 N.W.2d 304 (N.D. 2016) ("*Capital Electric II*"). In that matter "[t]he proposed extension of [public utility's] three-phase system to serve the site is shorter than the proposed extension of [electrical coop's] three-phase system" supported issuing the certificate. *Capital Electric II*, 2016 ND 73, at ¶ 4. The Commission's contrary conclusion here is legal error.

[55] Second, the Commission also recognized that "[e]ngineering testimony presented at the hearing indicates that voltage fluctuations, interruptions and outages at service points fed from a transformer feeder can negatively affect electric service to other customers fed from that same feeder." CR Ex. 82 (Order at ¶ 22). Otter Tail's plan was

better in this regard. *Id.* This is, of course, supported by the fact that Otter Tail's proposal had only 1,000 feet from the feeder to the customer, which would serve only one customer—Minn-Kota. A-50 at ¶¶ 19, 21.

[56] By contrast, the Dakota Valley plan requires the construction of 3,960 feet of additional distribution line to connect the Facility to Dakota Valley's Mooreton substation, and adds to the existing four-miles of distribution in the area. A-49-50 at ¶¶ 14, 19). This, alone, should weigh heavily in favor of granting the certificate to Otter Tail. *Capital Electric II*, 2016 ND 87 at ¶ 4, 15 (recognizing that "[public utility's] substation is located closer to the [Customer] Site providing less voltage drop and less line length on which a fault could occur."). Here, the Commission simply ignored the facts that demonstrate the substantial reliability benefits of Otter Tail's plan to provide service that required a much shorter feeder to a to-be-constructed substation in concluding that both Otter Tail and Dakota Valley offered "sufficient reliability."

[57] Third, the Commission expressly acknowledged that "Otter Tail's proposal to serve Minn-Kota's large motor load on a dedicated circuit from a dedicated substation it will have to construct may offer a higher level of reliability." A-51 at ¶ 24. This finding, too, fails to support its conclusion that both Otter Tail and Dakota Valley would be equally reliable. *Id.* In any event, the correct legal analysis isn't binary and the facts as found by the Commission show Otter Tail to be *more* reliable than Dakota Valley.

B. The Commission's analysis of the customers served within the vicinity of Minn-Kota's facility is erroneous because it is based on an arbitrary and inappropriate bright-line geographical radius.

[58] The Commission found that both suppliers operated in the area of Minn-Kota's facility. A-49 at ¶ 12. While the Commission accurately found that Dakota Valley served

16 more customers in the two-mile radius than Otter Tail Power, A-50 at ¶ 17, that rigid (and arbitrary) two-mile test understates Otter Tail's presence in the area. *See* A-16 (showing scores of Otter Tail customers just outside of the two-mile radius.) While the two-mile radius has been used by the Commission in the past, it is not a rigidly prescribed test. Instead, in affirming the Commission in *Capital Electric II*, the Court stated that "the number of customers served by electric suppliers in the larger vicinity should be considered for assessing capacity requirements in determining the orderly development of electrical service." 2016 ND 73 at ¶ 12.

[59] In *Capital Electric II*, the Court held that "[e]ven if [rural electric cooperative] serves customers closer to the [proposed customer's] site, this does not preclude the Commission from considering the number of customers served in the larger area for the purpose of examining duplication of services." *Id.* Here, the Commission committed legal error by using a two-mile radius as a bright line and ignoring the scores of customers served by Otter Tail in the larger area. The Commissioner's even noted at the December 20 work session that the two-mile radius was an arbitrary cut off and that they were not sure of its origins or justification. CR Ex. 87 Tr. at 11:8 – 12:16. Looking to the larger area makes sense where, as here, the location to be served is just outside the municipal limits of the utility's service territory. As did the investor-owned utility in *Capital Electric II*, Otter Tail serves more customers in the larger area. *See* A-16; CR Ex. 87, Tr. at 11:10-12.

[60] Indeed, in the Commission's initial formulation of the issues, the question to be determined was: What customers are served by electric suppliers within *at least* a two-mile radius of the location to be served? CR Ex. 18 (emphasis added). This more flexible

test, which was consistent with previous decisions of the North Dakota Supreme Court applying the Territorial Integrity Act, evidently went by the wayside in the Commission's final decision. The arbitrary limit of a two-mile radius was overly restrictive and led to an improper result, where a more inclusive area supported the issuance of the certificate. *See Capital Electric II* 2016 ND 73 at ¶ 12.

C. The Commission's analysis of "wasteful duplication" is erroneous because it assumed that any duplication is wasteful.

[61] One of the factors to be considered by the Commission is whether there is "wasteful duplication." *Capital Electric II*, 2016 ND 73 at ¶ 7. As this Court has previously recognized, "it may not always be possible to prevent some of the actual duplication of distribution facilities which may occur in practice when cooperatives extend their existing electrical systems." *N. States Power Co. v. Pub. Serv. Comm'n*, 452 N.W.2d 340, 344 (N.D. 1990). The Commission's conclusion in this case, however, appears to assume that *any* duplication is wasteful,[3] which is not the proper standard under North Dakota law.

[62] The correct analysis is whether the duplication is "wasteful." *Capital Electric II*, 2016 ND 73 at ¶ 24-25. When considering whether there is wasteful duplication, the Commission should consider both whether the service or investment is wasteful. *Id.* In concluding that the Otter Tail plan would result in "wasteful duplication," the Commission here failed to take into account the substantial advantages offered by the

[3] The Otter Tail solution is only "duplicative" if one accepts the Commission's flawed premise, addressed above, that reliability is binary—a solution is either reliable or it is not. Because the Commission already found that the Otter Tail solution is a *better* solution, it is not "duplicative" because it is *more* reliable.

Otter Tail proposal in terms of reliability, lower cost, and public benefits. Thus, the Commission committed reversible error when it focused on what it perceived to be duplication—a perception driven by the fact that Dakota Valley provides service in the rural area outside the Barney municipal limits—without considering whether any such duplication was, in fact, "wasteful." *See* A-53 at ¶¶ 43-44.

[63] With respect to the potential duplication of service, the Commission's technical expert observed that the service proposed by Otter Tail was "stronger." As the Commission's technical expert observed:

> But my point with the -- with the soft start, bringing them up, is the underlying circuits, Otter Tail's is stronger and that's why it doesn't need those soft starts earlier and there's no other customers on there to be affected. Otter Tail's straight off of that 41.6kV line and the co-op's is going through a distribution system.
>
> And that's where I go back to the duplication, whether it's wasteful…
>
> So if you're looking at it, the duplication gives the customer a stronger service coming straight off of that 41.6 and it gives them stronger service for less money.

CR 87 (12/20/17 Working Session Tr. at 6:13 – 7:3). None of this testimony establishes "wasteful" duplication. To the contrary, it demonstrates Otter Tail's service provided added value and a better fit for Minn-Kota's use.

[64] In *Capital Electric II*, the Commission recognized that the public utility's solution would provide some duplication, but it recognized that the solution was not wastefully duplicative in part because the service provided by the public utility was a better fit for the customer's use. *Id.* 2016 ND 73 at ¶ 24-25. The same is true here. As such, the Otter Tail solution is not wasteful duplication of service. The only fact cited by the Commission for the proposition that the technically better solution is "wasteful" is that

OTP "will require construction of a new substation while the existing [Dakota Valley] Mooreton substation is fully capable of serving the facility." A-53 at ¶ 43. But the Dakota Valley solution is not as reliable and, therefore, not "fully capable."

[65] There is also not a wasteful duplication of investment. As was the case in *Capital Electric II*, both electric suppliers here would need to invest to construct extensions or upgrade facilities to serve the customer. *See Capital Electric II*, 2016 ND 73 at ¶ 24. And just like the situation in *Capital Electric II*, the overall cost to the customer would be less with the public utility. *Id.* at ¶ 4. Given that the Otter Tail solution would ultimately provide better service—as admitted by the Commission's technical expert—and that the overall cost to the customer would be less, the Commission should have held that there was no wasteful duplication and counted this factor in favor of the issuance of the certificate. *See Id.* at ¶ 25.

III. The Commission's failure to allow Minn-Kota to intervene was based on a legally erroneous application of the good cause standard.

[66] As demonstrated above, the record in front of the Commission supports reversal of its decision and Minn-Kota has sufficient standing to present that argument before this Court. In the alternative, however, this Court should, at a minimum, remand for further proceedings because the Commission's failure to allow Minn-Kota to intervene and supplement the record was reversible error.

[67] The Commission's failure to permit Minn-Kota to intervene in the proceeding precluded Minn-Kota from an opportunity to, among other things, petition the Commission to reopen the proceeding for the purpose of taking additional evidence pursuant to North Dakota Administrative Code, Section 69-02-06-01. Fundamentally,

this left Minn-Kota—the sole customer at issue and the most impacted party—unrepresented, and unable to present its best position. It also prevented the Commission from making a decision critical to the success of Minn-Kota's Facility on a full and complete record.

[68] The AAPA provides that if a motion to intervene is not filed at least ten days before the hearing, it can only be granted upon good cause shown by the moving party. Although it is undisputed that Minn-Kota did not file its motion to intervene until after that ten-day window had passed, both the ALJ and the district court misapplied the good-cause standard to Minn-Kota's motion, interpreting it to specifically require reasons for the delay rather than properly considering good cause for intervention in light of all the circumstances.

[69] The question of whether a party has a right to intervene is a question of law that this Court reviews *de novo*.[4] *See Eichhorn v. Waldo Twp. Bd. of Supervisors*, 2006 ND 214, ¶ 13, 723 N.W.2d 112. "Intervention has historically been liberally granted in North Dakota." *Id.*

[4] Although the right to intervene is reviewed de novo, any findings of fact are reviewed under a clearly erroneous standard of review. *Eichhorn*, 2006 ND 214, ¶ 13. The district court below stated that it gave deference to the ALJ's findings. A-75 at ¶ 5.) The ALJ, however, did not issue any findings of fact in rejecting Minn-Kota's petition. Indeed, the only fact reviewed by the ALJ was that Minn-Kota's petition was not filed at least 10 days before the hearing, which is not in dispute. It was therefore erroneous for the district court to give deference to the ALJ's *legal* conclusion that Minn-Kota failed to show the requisite good cause required by the AAPA.

A. The district court and ALJ improperly required Minn-Kota to show good cause for its delay in filing a motion to intervene.

[70] Under the Commission's Rules, a petition to intervene "must be filed at least ten days prior to the hearing, but not after except for good cause shown." N.D. Admin Code § 69-02-02-05(2). "Good cause" is not defined in the applicable section of the Administrative Code, nor is it defined in the AAPA. However, "good cause" to intervene has been shown where a non-party's interests may be "substantially affected" by the action being considered by the Commission. *See* A-64 (*TransCanada Keystone Pipeline, LP*, Case No. PU-06-421, Order on Motions to Intervene and Reopen, (Nov. 7, 2007)). Indeed, the *TransCanada* proceeding demonstrates specifically that the Commission allows intervention of interested parties after a hearing has occurred, even when there has been no showing as to why a timely motion was not filed.

[71] In the *TransCanada* proceeding, the Commission held a hearing on September 5, 2007. *See TransCanada Keystone Pipeline, LP*, Case PU-06-421, 2008 WL 10590490 (N.D.P.S.C. Feb 21, 2008) (Findings of Fact Conclusions of Law and Order). Despite having notice of the hearing, the City of Fargo did not intervene before the hearing. *See* A-64 (*TransCanada Keystone Pipeline, LP*, Case No. PU-06-421, Order on Motions to Intervene and Reopen (Nov. 7, 2007)). Rather, the City of Fargo moved to intervene on October 23, 2007, more than a month and a half after the hearing. *Id*. In that matter, similar to the present case, the party opposing the intervention argued that Fargo's petition was not timely and that its interests had been adequately represented at the hearing. *Id*. The Commission, however, found that Fargo had good cause to intervene because it had "interests that may be substantially affected" by the proceeding. *Id*. The

Commission's finding of good cause did not address, much less require explanation, of why the City of Fargo's motion was not filed until well after the 10-day window set forth in statute.

[72] Although Minn-Kota cited the *TransCanada* case before the ALJ and the district court, neither decision addressed this precedent. Instead, the ALJ concluded that Minn-Kota "failed to timely intervene and has not shown good cause as to why" and that it "has arrived much too late to the dance." A-44. The district court similarly concluded that Minn-Kota "was thus required to show good cause for the substantial delay in filing its Petition." A-75 at ¶ 4.) This focus on only the reason for delay rather than broader circumstances is not justified under North Dakota law.

[73] Outside of the administrative context, this Court has reversed denials of motions to intervene where a district court improperly concluded that a petition came was too late to intervene. *See Quick v. Fischer*, 417 N.W.2d 843, 845 (N.D. 1988) (reversing denial of motion to intervene filed after judgment was entered). Rather than focus on the reason for delay, "[t]he most important consideration in deciding whether a motion for intervention is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case." *Brigham Oil and Gas, L.P. v. Lario Oil & Gas Co.*, 2011 ND 154, ¶ 40, 801 N.W.2d 677, 689 (quoting *Federal Practice and Procedure* by Wright, Miller and Kane). This is the same analysis the Commission considered in allowing the City of Fargo to intervene in *TransCanada*. *See* A-68.

[74] By contrast, neither the ALJ nor the district court found that prejudice would occur if Minn-Kota were allowed to proceed—neither decision even considered the question. As Minn-Kota explained in its petition, the additional comments would not

require undue delay and would simply assist the Commission's decision making with more complete information. *See* A-23 at ¶ 18. Indeed, any prejudice caused by a delay in deciding Otter Tail's application would have been experienced by Minn-Kota, as the only customer to be served, rather than Dakota Valley or any other party. *Id.*

B. Minn-Kota had good cause to intervene when judged in the light of all circumstances of the case.

[75] Even when a motion to intervene comes after final judgment has been entered—unlike Minn-Kota's petition, which came after the Commission's hearing but before its decision—this Court has noted that the request should be considered by "weigh[ing] the lapse of time in the light of all the circumstances of the case." *Quick*, 417 N.W.2d at 845.

[76] Considering the circumstances of this case, Minn-Kota's motion should have been granted, even though falling outside the 10-day window set forth in the statute. Minn-Kota's motion was filed before Commission had issued its Order, and like the City of Fargo in *TransCanada*, Minn-Kota certainly had interests that would be "substantially affected" by the Commission's proceedings. Minn-Kota's $20,000,000 investment depends on having reliable and affordable power. The Otter Tail solution meets that need, and the Dakota Valley solution does not. As Minn-Kota attempted to show in its Petition to Intervene, there were significant technical deficiencies with Dakota Valley's proposal that were not present in the Otter Tail solution.

[77] While Otter Tail and Minn-Kota may have had overlapping interests in the proceedings below, Otter Tail could not be said to adequately represent Minn-Kota's interests when it has not even chosen to appeal the Commission's decision. Indeed, Otter Tail Power has a number of interactions with the Commission. For Otter Tail Power, this

was one of many matters; and, undoubtedly its overall strategy as a company is informed by these many interactions. This one application for a certificate of public convenience and necessity is likely not material to Otter Tail's business. For Minn-Kota, however, this application is critical. Minn-Kota, therefore, has every incentive to make sure that the record is complete and that all of the relevant evidence has been properly considered. A-31 (Minn-Kota's Petition for Reconsideration).

[78] Indeed, Minn-Kota's petition came in part as a response to questions raised at the December 20 work session regarding Minn-Kota's opposition to the use of soft start motors and whether Dakota Valley's testimony, which came after the testimony of George Schuler, waived this requirement and resolved Minn-Kota's objections. More specifically, the Commissioner's questioned whether this issue essentially changed Schuler's testimony after the fact. *See* CR 87 Tr. at 5:12 – 14. Such circumstances warranted response and clarification from Minn-Kota.

[79] Because Minn-Kota will be substantially affected by the Commission's decision, and because its petition to intervene came at a time when Minn-Kota still could present important and relevant information for the Commission's decision without prejudice to the other parties, this case should be remanded for further proceedings with Minn-Kota as an intervening party.

Conclusion

[80] Minn-Kota, as the sole customer to be served under Otter Tail's application for a certificate of public convenience and necessity, has standing to appeal the Commission's denial of that application because of Minn-Kota's participation in the proceedings below. On the record as it stands, the Commission's decision must be reversed and the certificate

of public convenience and necessity should be issued. In the alternative, the Commission erred by denying Minn-Kota's intervention because it improperly focused on Minn-Kota's reasons for delay rather than reviewing the petition in light of all circumstances. Accordingly, the matter should be remanded for further proceedings with Minn-Kota as an intervenor.

Dated: July 18, 2019

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Certificate of Compliance

The undersigned, as attorney for Appellant Minn-Kota Ag Products, Inc. and as the author of the above brief, hereby certifies, in compliance with Rule 32 of the North Dakota Rules of Appellate Procedure, that the brief was prepared with size 12 proportional typeface (Times New Roman) and the brief, including cover, table of contents, and table of authorities, but not including this certificate, is a total of 36 pages.

Dated: July 18, 2019

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CASE NO. 20190127
Burleigh Co. No. 2018-CV-01142

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Minn-Kota Ag Products, Inc.,

Appellant,

v.

North Dakota Public Service Commission, et al.,

Appellees.

CERTIFICATE OF SERVICE

State of Minnesota)
)ss.
County of Hennepin)

I, Sarah E. Bagwell, being duly sworn deposes and says that I am over the age of 18 years and not a party to this action and that on the 18th day of July, 2019 in portable document format, the following document:

Brief of Appellant Minn-Kota Ag Products, Inc. Appeal from the District Court Order Affirming a Decision by the North Dakota Public Service Commission

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Sarah E. Bagwell

Subscribed and sworn to before me
this 16 day of July, 2019.

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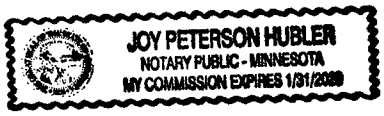

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