



STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

Capital Electric Cooperative, Inc.)
)
Appellant,)
)
vs.)
)
North Dakota Public Service Commission)
and Montana-Dakota Utilities Co., a)
Division of MDU Resources Group, Inc.,)
)
Appellees.)

**NOTICE OF APPEAL
AND SPECIFICATIONS
OF ERROR**

08-2014-CV-02349

TO: NORTH DAKOTA PUBLIC SERVICE COMMISSION AND MONTANA-DAKOTA UTILITIES CO., A DIVISION OF MDU RESOURCES GROUP, INC.

¶1 PLEASE TAKE NOTICE that Appellant Capital Electric Cooperative, Inc. (herein "CEC") appeals to the District Court for Burleigh County, South Central Judicial District, from the "Findings of Fact, Conclusions of Law and Order" of the North Dakota Public Service Commission ("Commission") issued September 17, 2014 and served September 22, 2014 in case no. PU-13-871, wherein the Commission issued to Montana-Dakota Utilities Co. (herein "MDU") a Certificate of Public Convenience and Necessity No. 5845, authorizing MDU to provide electric distribution service to the Menard Site at a location in the NE1/4 of Section 33, Township 139N, Range 77W, Burleigh County, North Dakota (herein "Menard Site").

¶2 CEC specifies the following errors as grounds for the appeal:

65 **PU-13-871** Filed: 10/16/2014 Pages: 6
APPEAL - Notice of Appeal and Specifications of Error

Capital Electric Cooperative Inc.

Matthew Olson, Pringle&Herigstad, P.C.

1. The Order is not in accordance with the law in at least the following respects:
 - a. The Findings of Fact, Conclusions of Law and Order are not in accordance with The Territorial Integrity Act (herein "TIA") – N.D.C.C. Chapter 49-03.
 - b. The Findings of Fact, Conclusions of Law and Order are not in accordance with the Commission's precedent and judicial precedent under the TIA.
 - c. The Findings of Fact, Conclusions of Law and Order do not conform with the primary purpose of the TIA, which is to keep to a minimum wasteful duplication of capital-intensive utility services and conflicts between suppliers of electricity; instead, the Commission's decision will foster both conflict and duplication.
 - d. The Findings of Fact, Conclusions of Law and Order are not in accordance with the TIA when the Commission made various determinations regarding MDU's past franchise and alleged current franchise with the unincorporated village of McKenzie (herein "village of McKenzie") and MDU's ability to serve new customers in village of McKenzie. This determination is not in accordance with the TIA (including, but not limited to N.D.C.C. § 49-03-01.1 and N.D.C.C. § 49-03-01.3) nor is the Commission's determination in accordance with N.D. Const. art. VII, § 11, N.D.C.C. § 40-05-01(57), N.D.C.C. § 40-01-01, N.C.C.C. § 40-05.1-06(1), and related statutes.
 - e. The Commission's determination that MDU currently has a franchise to serve the village of McKenzie is not in accordance with the law.
 - f. The Commission's determination that in deciding who would best serve orderly and economic development of electric service in the general area, the Commission should look to the cost of service to the customer (i.e., the current rate and associated annual savings, etc.), is not in accordance with the law or the Commission's own precedent.
 - g. The Commission's determination that in deciding if the approval of the application will result in wasteful duplication of investment or service, the Commission must look at BOTH if the proposed extension (the actual extension under scrutiny in the proceeding) of facilities will cross the facilities of another supplier AND to if a supplier has crossed another supplier's facility in the past, is not in accordance with the law or the Commission's own precedent.

- h. The Commission's determination that in deciding who would best serve orderly and economic development of electric service in the general area, the Commission should look to how its decision best serves the village of McKenzie, is not in accordance with the law or the Commission's own precedent.
 - i. The Commission's determination that its approval of MDU's application would not result in wasteful duplication of investment or service is not in accordance with the law.
 - j. The Commission's heavy reliance on customer preference in approving MDU's application is not in accordance with the law.
 - k. The Commission's reliance on the current rates in approving MDU's application is not in accordance with the law.
 - l. The Order does not make a proper evaluation of the issues under the law and/or the evidence.
 - m. The Commission's determination that MDU showed that public convenience and necessity reasonably requires MDU's extension is not in accordance with the law.
2. The Findings of Fact made by the Commission are not supported by a preponderance of the evidence in at least the following respects:
- a. The Commission's finding that the village of McKenzie is "immediately northeast and adjacent" to the Menard site is not supported by the evidence.
 - b. The Commission's finding that the northwest corner of the Menard Site is immediately adjacent to the southeast corner of the village of McKenzie is not supported by the evidence.
 - c. The Commission's determination that MDU could provide increased reliability is not supported by the evidence.
 - d. This Commission's determination that additional load requests are likely to result in the village of McKenzie is not supported by the evidence.
 - e. The Commission's finding that MDU will be able to serve the Menard Site more economically and still earn an adequate return on its investment is not supported by the evidence.
 - f. The Commission's determination that MDU holds a franchise to the village of McKenzie is not supported by the evidence.

- g. The Commission's finding that extension of service by MDU best serves orderly and economic development of electric service in the general area is not supported by the evidence.
 - h. The Commission's finding that approval of MDU's application would not result in wasteful duplication of investment or service is not supported by the evidence.
 - i. The Commission's finding that MDU's extension does not unreasonably interfere with CEC's service or system is not supported by the evidence.
 - j. The Commission's finding that MDU's extension to the Menard Site would best serve the village of McKenzie is not supported by the evidence.
 - k. The Commission's finding that MDU's proposed three-phase extension is shorter than CEC's proposed three-phase extension is not supported by the evidence.
 - l. The Commission's finding that MDU's upgrades will improve MDU's electric service within the village of McKenzie is not supported by the evidence.
 - m. The Commission's finding that allude to the fact that additional growth will occur in the village of McKenzie and in the surrounding area and that said growth will be served by MDU is not supported by the evidence.
- 3. The Commission's conclusions of law and order are not supported by its finding of facts.
 - 4. The findings of fact made by the Commission do not sufficiently address the evidence presented to the agency by CEC.

Dated this 15 day of October, 2014.

PRINGLE & HERIGSTAD, P.C.



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STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

Capital Electric Cooperative, Inc.,

Court File No. 08-2014-CV-02349

Appellant,

v.

North Dakota Public Service Commission and
Montana-Dakota Utilities Co., a Division of
MDU Resources Group, Inc.,

AFFIDAVIT OF MAILING

Appellees.

Brenda Conejo being first duly sworn, deposes and says:

That she is a citizen of the United States of America, of legal age and is not a party to nor interested in the above entitled action; that on the 15th day of October, 2014, this Affiant deposited in the mailing department of the United States Post Office at Minot, North Dakota, a sealed envelope with postage thereon duly prepaid, containing a true and correct copy of the following documents in this action:

Notice of Appeal and Specifications of Error

That said envelope was addressed to the following persons at their known address as follows:

Darrell Nitschke
Executive Secretary
North Dakota Service Commission
600 E. Boulevard Ave Dept 408
Bismarck, ND 58505-0480

Dan Kuntz
MDU Resources Group, Inc.
PO Box 5650
Bismarck, ND 58506-5650

Hon. Wayne K. Stenejhem
North Dakota Attorney General
State Capitol
600 E. Boulevard Ave.
Dept 125
Bismarck, ND 58505

The above documents were duly mailed this 15th day of October, 2014 in accordance with the provisions of the North Dakota Rules of Civil Procedure.


Brenda Conejo

Subscribed and sworn to before me this 15th day of October, 2014.

ASHLEY D SORENSEN
Notary Public
State of North Dakota
My Commission Expires Jan. 21, 2020


Notary Public
For the State of North Dakota