

DIVIDER
STATE OF NORTH DAKOTA
INFORMATION TECHNOLOGY DEPARTMENT
SFN 2053 (4-2002)

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DESCRIPTION

PU-04-560
Montana-Dakota Utilities Co., a Division of MDU Re
Corey Botner - Bismarck, ND
Public Convenience & Nece 04
Filed 10/25/2004 Closed 6/8/2005

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity

Case No. PU-04-560

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **9th day of June, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **three** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order

The envelopes were addressed as follows.

Dan Kuntz
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501
Cert. No. 7004 2890 0000 5451 4786

Ordean "Lars" Nygren
Capital Electric Cooperative
P O Box 730
Bismarck ND 58502-0730
Cert. No. 7004 2890 0000 5451 4793

Don Negaard
Pringle & Herigstad Atty
P O Box 1000
Minot ND 58702-1000
Cert. No. 7004 2890 0000 5451 4809

Sharon Helbling further deposes and says that on the **9th day of June, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **three** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

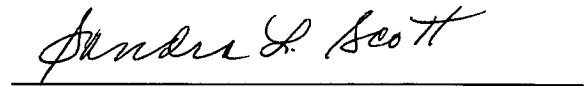
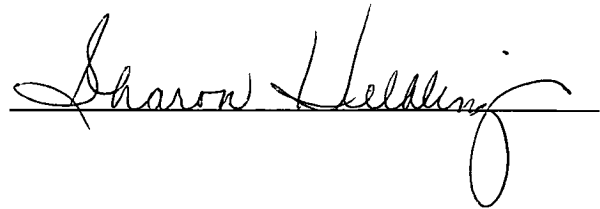
Mack Huncovsky
Montana-Dakota Utilities Co
P O Box 1457
Bismarck ND 58502-1457

ND Association of RECs
P O Box 727
Mandan, ND 58554

Don Ball
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501

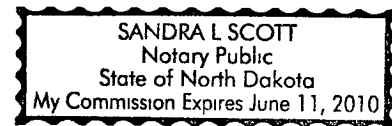
Each address shown is the respective addressee's last reasonably ascertainable post office address

Subscribed and sworn to before me
this **9th day of June, 2005**.



Notary Public

SEAL



APPROVED

DATE: 6-8-05
KMF

MOTION

June 8, 2005

**Montana-Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity**

Case No. PU-04-560

I move the Commission adopt the Order and issue Certificate of Public Convenience and Necessity to Montana-Dakota Utilities Co. to extend electric service to Corey Botner for a residential site near Bismarck, North Dakota, Case No. PU-04-560.

AB/sdh

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity

Case No. PU-04-560

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

June 8, 2005

Appearances

Commissioners Tony Clark, Susan E Wefald and Kevin Cramer.

Daniel S Kuntz, Senior Attorney, MDU Resources Group, Inc , P O Box 5650, Bismarck, ND 58506-5650, appearing on behalf of Montana-Dakota Utilities Co.

Donald A Negaard, Pringle & Herigstad, P.O Box 1000, Minot, North Dakota 58702, appearing on behalf of Capital Electric Cooperative, Bismarck, North Dakota

William W Binek, Chief Counsel, North Dakota Public Service Commission, State Capitol, Bismarck, North Dakota 58505, appearing on behalf of the Public Service Commission

Allen C. Hoberg, Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota 58501-1882, appearing as Hearing Examiner.

Preliminary Statement

On October 11, 2004, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., (Montana-Dakota) submitted a request for authority to extend temporary service for Corey Botner at a residential site located in the NE ¼ of NW ¼, Section 20, Township 138 North, Range 80 West, Burleigh County, North Dakota.

On October 18, 2004, Commissioner Susan Wefald authorized issuance of a Temporary Authority Permit for Montana-Dakota to serve the Botner location. On October 25, 2004, Montana-Dakota Utilities Co. filed its application under Chapter 49-03, N D C C , for a Certificate of Public Convenience and Necessity to extend service for Corey Botner at the residential site location Submitted with the application was a statement from Corey Botner that he desired electric service at the residential site to be provided by Montana-Dakota Utilities Co.

On October 27, 2004, the Commission issued a Notice of Opportunity for Hearing on the application. A protest to the application was filed November 23, 2004 on behalf

of Capital Electric Cooperative (CEC) requesting that Montana-Dakota's application be set for hearing

On December 30, 2004, the Commission issued a Notice of Hearing scheduling a public hearing to begin on February 2, 2005. The notice identified the following issues to be considered:

- 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 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?
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 application 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 unreasonably interfere with the service or system of the other?

The Commission issued a Notice of Rescheduled Hearing on January 25, 2005 rescheduling the Hearing for April 4, 2005.

On April 4, 2005, a public hearing was held as scheduled. On April 14, 2005, Montana-Dakota filed a motion to accept a late filed exhibit

Having heard and considered this matter, the Commission makes its.

Findings of Fact

1. The Applicant, Montana-Dakota, is an investor-owned electric utility providing electric service to customers in North Dakota under the regulatory jurisdiction of this Commission.
- 2 The Protestant, Capital Electric Cooperative is a rural electric cooperative providing electric service to its members in North Dakota

3. The Customer, Corey Botner owns approximately 27 acres of property located adjacent to the city limits of Bismarck immediately to the south of Burleigh Avenue. He intends to construct a home and shop on the property and seeks the extension of single-phase underground electrical service to the building site.

From whom does the customer prefer electric service?

4. Mr. Botner signed a Customer Appearance requesting electric service from Montana-Dakota. He also testified at the hearing in support of his request that electric service be extended by Montana-Dakota to his property.

5. Mr. Botner is an employee of MDU Resources Group, Inc. and testified that he wants to support the business activities of his employer. As an employee of MDU Resources Group, Inc., Mr. Botner receives a discount on electric and natural gas utility services purchased from Montana-Dakota.

6. Montana-Dakota's electric distribution line is already located on Mr. Botner's property. Mr. Botner testified that he does not want electric service facilities of a second electric supplier unnecessarily located on this property.

7. The Commission finds that the Customer prefers electric service from Montana-Dakota.

What electric suppliers are operating in the general area?

8. Montana-Dakota and CEC are the only retail electric suppliers operating in the general area.

What electric supply lines exist within a two mile radius of the location to be served and when were they constructed?

9. Montana-Dakota has several distribution lines within two miles of the Botner property. Its feeder distribution line for this area is a three phase primary line built in 1941 that originates from a substation located near Tacoma Avenue and 12th Street. The line extends south along 12th Street to Burleigh Avenue. The three phase line was extended west on Burleigh Avenue from 12th Street to a location west of Washington Street and also south on Washington Street from Burleigh Avenue to 48th Avenue and west for approximately one and one-half miles. These line extensions were constructed in 1946 and rebuilt in 1961. In 1966 the three phase line on Burleigh Avenue was extended further west to its current location on the Botner property where it continues in a northwesterly direction to the Bismarck lagoon system. In 1970, an underground primary distribution line was extended from Montana-Dakota's South 9th Street substation along a drainage ditch to Washington Street then south to London Avenue and west to the Bismarck lagoon. This extension allows the feeder distribution line along Burleigh Avenue to be looped when necessary.

10. CEC has several distribution lines within two miles of the Botner property. It has a three phase feeder distribution line located along Burleigh Avenue from Washington Street to England Street. This line was built as a single phase line in 1950 on the south

side of Burleigh Avenue. The line was moved to the north side of Burleigh Avenue in 1967. In 1975 the single phase line was converted to a three phase line. CEC also has a feeder distribution line along Washington Street between Burleigh Avenue and CEC's south Washington substation. This line was built in 1950 and converted to a three phase line in 1967. CEC is able to loop feed this area.

11. The facilities needed by either electric supplier to provide electric service to the Botner location include a primary distribution line extension from its existing feeder distribution line to the Botner service location and a transformer at the end of the primary extension.

12. CEC's closest existing facility is its three phase primary distribution line located on the north side of Burleigh Avenue. This facility is approximately 380 feet from the proposed service location for the Botner residence. An extension from CEC's feeder distribution line to the Botner property would require boring of Burleigh Avenue and crossing under the existing overhead feeder distribution line of Montana-Dakota.

13. Montana-Dakota's closest existing facility from which service could be extended to the Botner service location is its three phase primary distribution line located on the south side of Burleigh Avenue. This feeder distribution line is located on the northern edge of Botner's property and is approximately 320 feet from the proposed service location for the Botner home. Montana-Dakota's extension would not cross Burleigh Avenue or CEC's facilities.

14. The Commission finds that both suppliers have three phase primary distribution lines within two miles of the Botner location.

What customers are served by electric suppliers within at least a two-mile radius of the location to be served?

15. Montana-Dakota serves approximately 1,805 customer service locations within two miles of the Botner property. These customer locations include multiple dwelling units such as apartment buildings that have more than one service customer at the location.

16. CEC serves approximately 1,200 customers within two miles of the Botner property.

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

17. Service by either supplier would be from three phase primary feeder distribution lines that can be operated in a looped fashion in the event of an outage.

18. The Commission does not find significant differences between the suppliers with respect to reliability of service.

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?

19. Service by Montana-Dakota requires an underground line extension of 319 feet, and a pad mounted transformer. Montana-Dakota's actual cost of the temporary extension, including engineering services and general administrative overheads, was \$3,590.61. This amount is higher than the amount included in the application for temporary service authority because it includes the cost of a transformer and meter, which are useable at other locations and therefore are not considered part of the cost of a temporary extension. In addition, the actual installation was approximately 42 feet further from Montana-Dakota's feeder distribution line than originally anticipated. The installation was also delayed to enable shared trenching, which increased installation costs because of frozen ground conditions. In addition, some hand trenching was necessary in an area around underground telephone and CATV lines, which was not anticipated at the time the temporary service application was prepared.

20. CEC's cost to extend service to the Botner property would be greater than Montana-Dakota's cost because its feeder line is 60 feet further from the service location and CEC would need to bore Burleigh Avenue for the extension. Boring costs and increased conductor length would result in costs of about \$700 more than Montana-Dakota's costs.

21. Based upon the anticipated service needs at the Botner location, Montana-Dakota estimates that the annual electric consumption for the location will be approximately 12,676 KWh. Montana-Dakota's charges to serve this annual consumption under its current rates would be \$874.80. As an employee of MDU Resources Group, Inc., Mr. Botner receives an employee benefit equal to one-third of the amount billed for his Montana-Dakota gas and electric utility charges. This discount is treated as a part of Mr. Botner's employee compensation and allocated as a labor expense accordingly. Mr. Botner receives this employee discount at his current residential location. The discounted utility service at that location will end at the time that Mr. Botner changes his residence.

22. Montana-Dakota's cost of fuel to supply the estimated annual electric consumption at the Botner location is \$161.00. Subtracting the cost of fuel from the anticipated gross revenues results in estimated annual net revenue of \$713.80 to Montana-Dakota from the provision of service to the Botner location. Montana-Dakota's required rate of return on its net invested capital is 10.016 percent. Based on an investment of \$3,590.61 to extend facilities to the Botner location, Montana-Dakota needs pretax net revenues of \$595.53 to recover its required rate of return on this investment. Accordingly, Montana-Dakota's net revenues from providing electric service at the Botner location will allow it to earn an adequate rate of return on its investment to extend service and also provide a net annual contribution of \$118.27 to common system costs.

23. Based on its current rates, CEC's charges to provide service for the estimated annual electric consumption at the Botner location are \$1,050 15. CEC did not introduce evidence of whether this revenue would produce net revenues to provide an adequate return on its investment

24. The Commission finds that Montana-Dakota can serve the Botner location more economically because Montana-Dakota's distribution line is closer to the location and it is not necessary to bore the road in order to serve the Botner location

25. Although CEC did not introduce evidence on the question of net revenues from its provision of service, the Commission believes that comparing CEC's estimated revenue with CEC's estimated cost of providing service to the location indicated that CEC can earn a positive return on its investment in serving the Botner location.

26 The Commission finds that either Montana-Dakota or CEC can serve the location and earn an adequate return on investment

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

27 In *Otter Tail Power Company/Neil Heitkamp, Public Convenience and Necessity*, PSC Case No PU-401-97-491 (Decided on Rehearing December 31, 1998), the Commission found that service to the customer by Otter Tail Power Company ("Otter Tail") would best serve orderly and economic development of electric service in the general area. One of the primary factors considered by the Commission on rehearing in that case was that an extension of service by the Rural Electric Cooperative (REC) would cross Otter Tail's existing line.

28. The Commission finds that service by Montana-Dakota would best serve orderly and economic development of electric service in the general area Montana-Dakota is able to extend service to the site through a shorter extension at a lower cost, which is a primary consideration of orderly and economic development. Service by Montana-Dakota to the Botner location is a natural extension of service from Montana-Dakota's existing facilities and will not result in checker boarding of customers served by Montana-Dakota and CEC. Service by CEC to the Botner location would require CEC to cross Montana-Dakota's line.

Would approval of the application result in wasteful duplication of investment or service?

29. One factor to be considered in determining whether duplication of facilities has occurred is whether construction of service to a customer from one supplier exceeds the cost to extend service to that same customer from a second supplier In this case, CEC's cost to extend service 380 feet and bore the road exceeds Montana-Dakota's cost to extend service 320 feet.

30 Another factor considered in determining duplication of service is whether a supplier's extension of facilities would need to cross the facilities of another supplier. The Commission has consistently held that one electric supplier crossing the line of another electricity supplier to provide service to a customer indicates a wasteful duplication of facilities. In *Montana-Dakota Utilities Co /Intoil, Public Convenience and Necessity*, PSC Case No. PU-399-93-9 (Decided February 24, 1993) the Commission found that MDU's service extension would cross over the REC's line and concluded that granting of MDU's application would result in wasteful duplication of the REC's existing facilities. The primary purpose of the Territorial Integrity Act is " . . . [T]o keep to a minimum wasteful duplication of capital-intensive utility services and conflicts between suppliers of electricity." *Cass County Electric Cooperative v. Northern States Power Company*, 419 N.W 2d 181, 187 (N D 1988). The question of which electric supplier's facility is duplicative or wasteful is a question of fact for the Public Service Commission to determine. *Northern States Power Company v. Public Service Commission*, 452 N.W 2d 340, 345 (N D 1990).

31 The Commission recognizes that CEC has made significant investment, including the South Washington Street Substation, in the area of the Botner location, but in this instance CEC would have to cross Montana-Dakota's line for CEC to extend its facilities to the Botner location. Montana-Dakota does not need to cross CEC's facilities for a similar extension. The Commission finds that approving Montana-Dakota's application will not result in wasteful duplication of investment or service but that denial of the application will result in wasteful duplication of investment and services.

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

32. There is no evidence of any plans by the City of Bismarck to annex the site. Mr. Botner does not have plans to request annexation of his property to the City of Bismarck.

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

33. Both suppliers acknowledge that extension of service by the other would not physically interfere with the service or system of the other supplier.

34 Montana-Dakota argues that the Area Service Agreement that existed between the parties was void as a matter of law and was cancelled by Montana-Dakota. CEC is not asking the Commission to enforce or construe this agreement. The Area Service Agreement and CEC's franchise with the City of Bismarck have no relevance in the Commission's determination of an application for a Certificate of Public Convenience and Necessity outside the corporate limits of the City of Bismarck. Moreover, CEC did not rely on the Area Service Agreement in constructing the feeder line it would use to serve the Botner location.

35 The Commission finds that extension of service by either supplier would not unreasonably interfere with the service or system of the other.

From the forgoing Findings of Fact, the Commission makes its.

Conclusions of Law

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding.
2. Public convenience and necessity require the granting of a Certificate of Public Convenience and Necessity to the applicant.

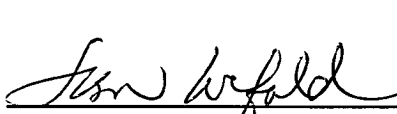
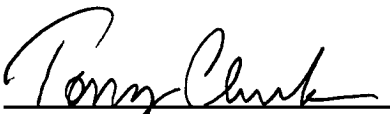
From the foregoing Findings of Fact and Conclusions of Law, the Commission issues its:

Order

The Commission Orders

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. is issued Certificate of Public Convenience and Necessity No. 5247, authorizing the provision of electric distribution service to Corey Botner at a location in the NE ¼ of the NW ¼, Section 20, T138N, R080W, Burleigh County, North Dakota

PUBLIC SERVICE COMMISSION

 _____ Susan E. Wefald Commissioner	 _____ Tony Clark President	Absent _____ Kevin Cramer Commissioner
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PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Certificate of Public Convenience and Necessity

Certificate Number 5247

This is to certify that public convenience and necessity require, and permission is granted for Montana-Dakota Utilities Co., to serve Corey Botner in the NE 1/4 of the NW 1/4 of Section 20, Township 138N, Range 80W, Burleigh County, North Dakota.

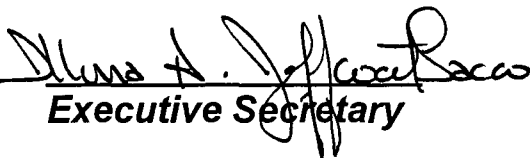
This certificate is issued in accordance with the Order of this Commission dated June 8, 2005 in Case No. PU-04-560, and is subject to the conditions and limitations noted in the Order.

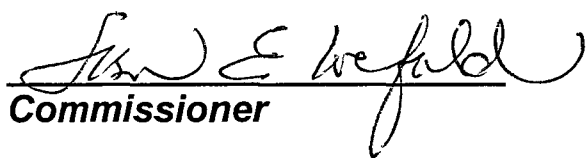
This certificate is conditioned upon Montana-Dakota Utilities Co. securing the franchise or other authority of the proper municipal or other public authority for the exercise of these rights and privileges.

Bismarck, North Dakota, June 8, 2005.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

DONALD A NEGAARD
JAMES E NOSTDAHL
CAROL K LARSON
DAVID J HOGUE
REED A SODERSTROM
BRENT M OLSON
DEBRA L HOFFARTH
SCOTT M KNUDSVIG
ERIKA L SLEGER
RYAN D SANDBERG

PH
LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail pringle@srt.com

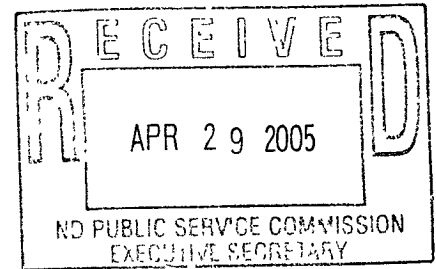
OF COUNSEL
HERBERT L MESHKE

RETIRED
THOMAS A WENTZ
MARK F PURDY
JAN M SEBBY

KENNETH G PRINGLE
(1914-1983)
ROGER O HERIGSTAD
(1919-2003)

April 29, 2005

Ms Illona A Jeffcoat-Sacco
Executive Secretary
PUBLIC SERVICE COMMISSION
600 E Boulevard Avenue, Department 408
Bismarck, ND 58505-0480



**MONTANA-DAKOTA UTILITIES CO.
COREY BOTNER
BISMARCK, NORTH DAKOTA
PUBLIC CONVENIENCE & NECESSITY
CASE NO. PU-04-560**

Enclosed for filing in the above matter are an original and seven copies of the Post-Hearing Brief of Capital Electric Cooperative, Inc , including Certificate of Service Also enclosed are an original and seven copies of a proposed Findings of Fact, Conclusions of Law and Order

An electronic version of these documents will also be forwarded to your office

A handwritten signature in black ink, appearing to be "Don Negaard".

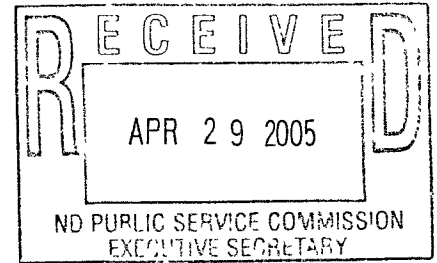
Don Negaard

jt

Enclosures

cc/enc Dan Kuntz, Montana-Dakota Utilities Co

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**



Montana-Dakota Utilities Co.)
Corey Botner)
Bismarck, North Dakota)
Public Convenience and Necessity)

Case No. PU-04-560
POST-HEARING BRIEF OF CAPITAL
ELECTRIC COOPERATIVE, INC.

This Brief is filed by Capital Electric Cooperative, Inc , (Capital Electric) in the matter of an application by Montana-Dakota Utilities Co (MDU) for a Certificate of Public Convenience and Necessity (PC&N) to serve a pilot employed by MDU, Corey Botner. The location of the service is in the NE¼NW¼, Section 20, Township 138 North, Range 80 West, Burleigh County, North Dakota. This is located in a rural area south of the Bismarck city limits.

MDU bears the burden of proof to show its application is in the public interest. In its application, MDU stated the electric service was needed "immediately," yet, to date, no energy has been sold at the location. The original cost estimates filed with the Commission were \$1,649.17 and were actually less than half of the true cost of the installation which totaled \$3,590.61.

The location in question is in an area in which Capital Electric has invested heavily. Capital Electric has installed transmission, substations, and distribution lines to provide reliable service to this area. Granting a PC&N to MDU at this location would cause wasteful duplication of service by MDU, and the application of MDU for a Certificate of Public Convenience and Necessity should be denied.

FACTS

The proposed service request by MDU lies in a rural area, in Capital Electric's service area. It lies across the street from an area within Capital Electric's franchised service area in the City of Bismarck (see attached map, a virtual duplicate of Exhibit P-1). The city limits of the City of Bismarck in this area of Bismarck is Burleigh Avenue. MDU and Capital Electric each have lines running adjacent to and parallel to Burleigh Avenue.

In 1973, MDU and Capital Electric entered into an Area Service Agreement which was approved and adopted by the Bismarck City Council. It was amended in 1990 and 1993.

Since 1973, MDU and Capital Electric have redrawn boundaries and revised service areas in the Bismarck area in an effort to avoid wasteful duplication. In the last 15 years, Capital Electric and its members invested over \$1.8 million in the south Bismarck areas in reliance on the Area Service Agreement, the fact the City of Bismarck approved this arrangement, and the good working relationship between the two utilities that existed at that time. Capital Electric installed a new substation, the South Washington Substation south of the Botner location. This South Washington Substation is specifically for service to this area and has a spare bay or circuit for future growth.

Capital relied on this agreement when it advised the North Dakota Public Service Commission (PSC) on an MDU request for a PC&N in South Port that it was not extending service to a rural area outside Bismarck in 1990 and would not contest MDU's application for a PC&N.

At the hearing, there was discussion about the Area Service Agreement. Capital Electric is not asking the Commission to enforce or construe this agreement. Capital Electric has explained to the Commission how the parties arrived at the position they are in, explained how Capital Electric was given a franchise from the City of Bismarck for the area immediately adjacent to this land and has developed its services in the area for the last 32 years with the blessing of MDU. Capital Electric has also explained why MDU has done virtually nothing in this area for over 30 years. Capital Electric believes this history is relevant to explain the development that has taken place and why Capital Electric is best suited to serve this area going forward.

LAW AND ARGUMENT

First, it should be noted the burden of proof on an application for a PC&N falls on the applicant, MDU. Tri-County Electric Cooperative, Inc. v. Elkin, 224 N.W.2d 785 (N.D. 1974). “[b]efore a public utility shall be permitted to extend its lines into certain areas, it must show that public convenience and necessity reasonably requires such extension.” Tri-County at 791, citing Application of Otter Tail Power Co., 169 N.W.2d 415 (N.D. 1969).

The issues framed by the Commission in its Order for Hearing dated December 30, 2004, were

1 **FROM WHOM DOES THE CUSTOMER PREFER ELECTRIC SERVICE?**

In this case, the MDU employee prefers service from his employer. Capital Electric cannot dispute this fact.

Capital Electric suggests that this case represents a situation where customer preference is of no value in determining public interest. “It is the public convenience and

necessity, after all, with which the Commission is concerned, not private preference ” See, Tri-County, supra, at 792

2 WHAT ELECTRIC SUPPLIERS ARE OPERATING IN THE GENERAL AREA? Two are MDU and Capital Electric

Since 1990, Capital Electric has installed over 300 services in this area and 213 within one mile. Since 1980, a period of 25 years, there have only been 3 or 4 new MDU installations in this area south of Burleigh Avenue. Capital Electric serves all of the west half of this section and virtually all of every surrounding section.

3 WHAT ELECTRIC SUPPLY LINES EXIST WITHIN A TWO-MILE RADIUS OF THE LOCATION TO BE SERVED, AND WHEN WERE THEY CONSTRUCTED?

These lines were shown on maps submitted by the parties. Capital Electric built a line on the south side of Burleigh Avenue (in the approximate location of MDU’s current line) in 1950. In 1967, the Capital Electric line was moved to the north side of Burleigh Avenue. In 1975, Capital Electric upgraded this line to a three-phase line to allow it to serve more diverse loads in the area. Capital Electric also has had a line along Washington Street since 1950. It was upgraded in 1960 and 1967. Capital Electric is able to loop feed this area.

Capital Electric installed services into Tatley Meadows, just to the north and east of this location, in 1976. Capital Electric installed its South Washington Street Substation in 1993. Capital Electric has installed over \$1 million of improvements within one mile of this location in the last 15 years. It installed substantial upgrades in 1993.

4 WHAT CUSTOMERS ARE SERVED BY ELECTRIC SUPPLIERS WITHIN AT LEAST A TWO-MILE RADIUS OF THE LOCATION TO BE SERVED? Capital Electric serves 1,200 accounts within a two-mile radius, MDU serves 1,805 accounts within that radius. Capital Electric submits a more meaningful test is a one-mile radius because a two-mile radius extends across the Missouri River. Capital Electric has 724 customers within a one-mile radius of this account. It appears MDU has less than 30 within one mile based on maps from MDU, Exhibit B.

5 WHAT ARE THE DIFFERENCES, IF ANY, BETWEEN THE ELECTRICAL SUPPLIERS AVAILABLE TO SERVE THE AREA WITH RESPECT TO RELIABILITY OF SERVICE? Capital Electric is the only service provider that has invested heavily in this rural area in the last 30 years. Capital Electric has loop feed capabilities to this area. As such, Capital Electric has spent more to assure reliable 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? With the employee discount in place, MDU will not make a return on this load. It will lose money. Capital Electric's rates are such that it will be competitive with MDU's general rate tariff and still be able to earn an adequate rate of return.

7 WHICH SUPPLIER'S EXTENDED ELECTRIC SERVICE WOULD BEST SERVE ORDERLY AND ECONOMIC DEVELOPMENT OF ELECTRIC SERVICE IN THE GENERAL AREA? Over the past 30 years, Capital Electric is the one who has invested

and served new loads. Capital Electric should serve new loads because of its commitment in the substations and new line built to serve this area.

8 WOULD APPROVAL OF THE APPLICATION RESULT IN WASTEFUL DUPLICATION OF INVESTMENT OR SERVICE? As shown above, Capital Electric has invested heavily in this area. MDU has made little or no investment in this area in the past 30 years, and the action MDU proposes will lead to duplication of the investment Capital Electric has already made to serve the area in question.

9 IS IT PROBABLE THAT THE LOCATION IN QUESTION WILL BE INCLUDED WITHIN THE CORPORATE LIMITS OF A MUNICIPALITY WITHIN THE FORESEEABLE FUTURE? The customer, Botner, has already platted the area. This has been filed with the City and County Planning Commission and was filed in 2005. If this area becomes a part of the city, it will be in the Capital Electric service area as part of the Capital Electric limited franchise with the City of Bismarck. Even if it does not become part of the city, it is in the rural Capital Electric service area and in the area in which Capital Electric has invested heavily.

10 WILL SERVICE BY EITHER OF THE ELECTRIC SUPPLIERS IN THE AREA UNREASONABLY INTERFERE WITH THE SERVICE OR SYSTEM OF THE OTHER? Yes, the checkerboard effect MDU proposes to develop will unreasonably intervene with orderly development of systems and services of Capital Electric.

CONCLUSION

This shot across the bow of Capital Electric is the first to follow 31 years of orderly, planned, and rational development in and around the area of Bismarck. MDU now

attempts to abandon a pattern of development that has served the two utilities and the City of Bismarck with orderly and planned utility development. A city such as Bismarck can extend its zoning authority four miles outside its city limits but obviously lacks the same authority for utility development. Nonetheless, the North Dakota Public Service Commission should adopt this same orderly development concept and deny the application of MDU for a PC&N to serve Corey Botner. Granting the application would only encourage checkerboarding and wasteful duplication of facilities in south Bismarck.

Dated this 29th day of April, 2005

PRINGLE & HERIGSTAD, P C

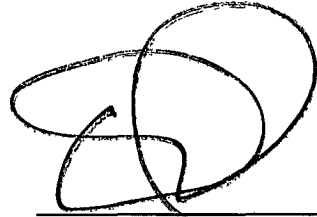


By Don Negaard, ND Bar ID #03598
Attorneys for Capital Electric
Cooperative, Inc
2525 Elk Drive
P O Box 1000
Minot, ND 58702-1000
(701) 852-0381
Fax (701) 857-1361
pringle@srt.com

CERTIFICATE OF SERVICE

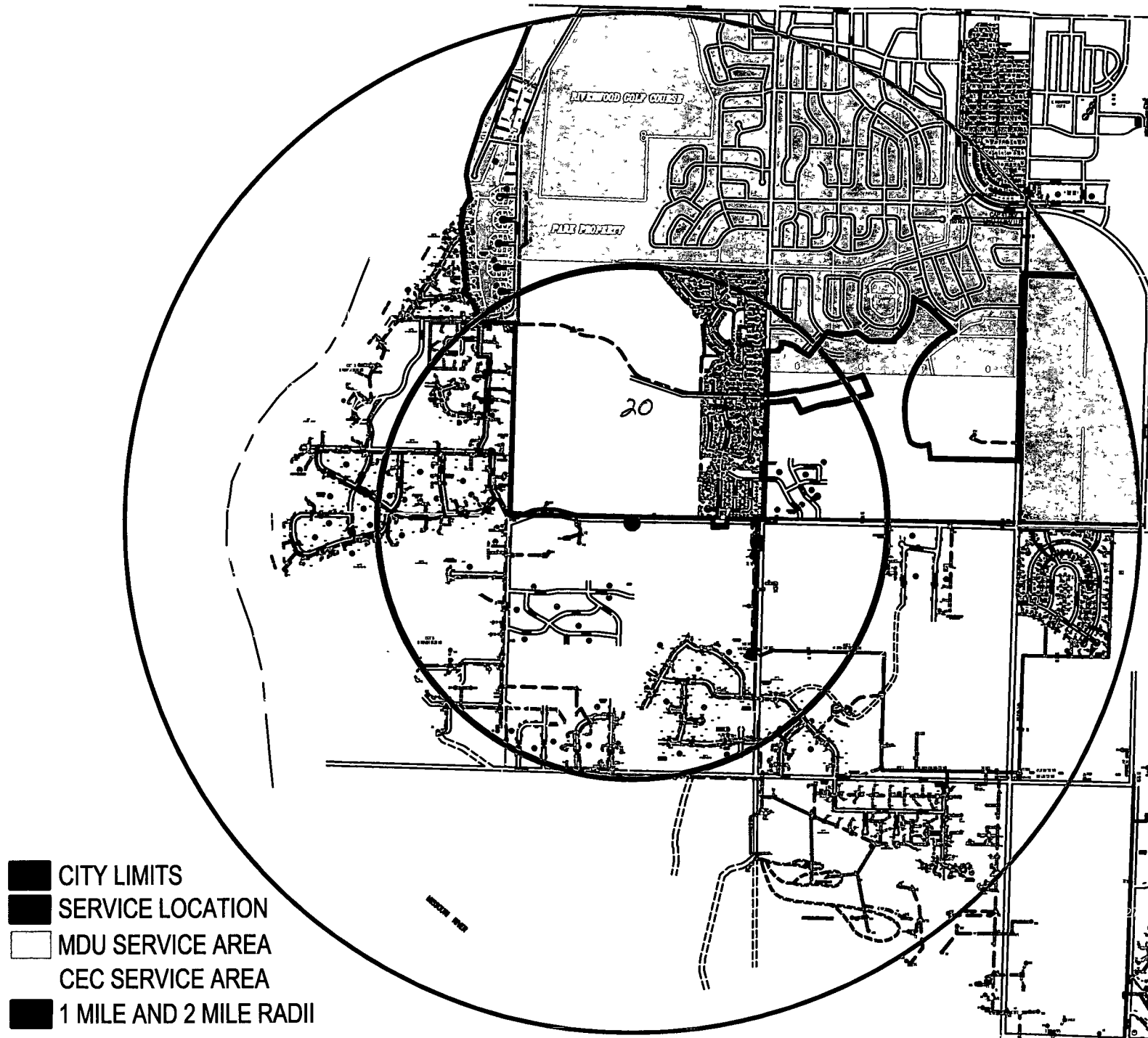
A true and correct copy of the foregoing Brief of Capital Electric Cooperative, Inc ,
was mailed on the 29th day of April, 2005, to the following

Dan Kuntz
Montana-Dakota Utilities Co
400 North 4th Street
Bismarck, ND 58501

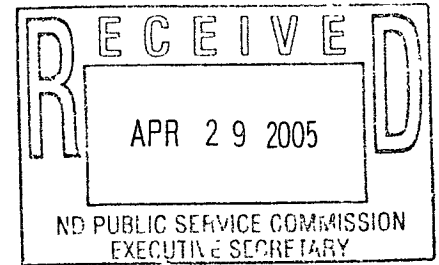
A handwritten signature in black ink, consisting of several overlapping loops and curves, positioned above a horizontal line.

Don Negaard

COREY BOTNER ELECTRIC SERVICE REQUEST



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



Case No. PU-04-560

Montana-Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter came before the North Dakota Public Service Commission (the Commission) on application of Montana-Dakota Utilities Co (MDU) to serve a residential electric load to be located in the Northeast Quarter of the Northwest Quarter, Section 20, Township 138 North, Range 80 West, Burleigh County, North Dakota. The application for service was dated October 25, 2004.

The Commission issued a Notice of Opportunity for Hearing on October 27, 2004. A protest was filed by Capital Electric Cooperative, Inc (Capital Electric), of Bismarck, North Dakota. A hearing was held on April 4, 2005. The Commission makes the following findings of fact, reaches the following conclusions of law, and issues its Order.

FINDINGS OF FACT

I

This application for service was filed by Corey Botner (Botner), a pilot employed by MDU. Botner receives a 33 $\frac{1}{3}$ percent discount on electric service from MDU.

II

The application is for service to a residence and associated loads (the load) of Botner in the Northeast Quarter of the Northwest Quarter, Section 20, Township 138 North,

Range 80 West, Burleigh County, North Dakota This is located outside the Bismarck, North Dakota, city limits

III

The original application for service indicated MDU estimated the cost of service to be \$1,649.17 and the annual revenues from the service to be \$875.00 per year. The actual cost to extend service is over \$3,500.00.

IV

Capital Electric has authority to serve in the city of Bismarck and the rural areas of Burleigh County. Capital Electric is a North Dakota cooperative with headquarters in Bismarck, North Dakota. Capital Electric is a reliable service provider in this area due to its investment in facilities and ability to loop feed power to this area. MDU is also a service provider in this area.

V

The electric service in question is located 319 feet from MDU's three-phase distribution line. It is another 60 feet farther to Capital Electric's three-phase distribution line.

VI

The difference in the cost of service between the two utilities is only the cost of trenching the additional 60 feet under Burleigh Avenue, from Capital Electric's line on the north side of Burleigh Avenue. This cost for Capital Electric to serve this load is about \$700 more than MDU's cost.

VII

Burleigh Avenue is the boundary for the city limits of the City of Bismarck MDU's distribution line is located just south of Burleigh Avenue and Capital Electric's distribution line is located just north of Burleigh Avenue

VIII

The other service loads in the Northwest Quarter of Section 20, Township 138 North, Range 80 West are served by Capital Electric

IX

Within a two-mile radius of this load MDU serves about 1,805 customers Capital Electric serves about 1,200 customers within two miles

X

In the last 25 or 26 years, MDU has only added 3 or 4 new services south of the city limits (Burleigh Avenue) of Bismarck, North Dakota In this same area, in just the past 15 years alone, Capital Electric has added a number of services and has added 724 new services within one mile of this location

XI

Since 1990, Capital Electric has invested \$1,123,870.79 within one mile of this load to serve this area It has invested another \$681,055.25 in a two-mile radius of this load to serve this area

XII

In 1973, Capital Electric and MDU entered into an Area Service Agreement that defined the service areas each utility would serve in the south Bismarck area. This agreement was amended in 1990 and again in 1993.

XIII

This Area Service Agreement has been incorporated into the Franchise Agreement that Capital Electric received from the City of Bismarck in 1973 and again in 1993.

XIV

This Commission makes no finding on the legality of this Area Service Agreement but does find that the parties and the City of Bismarck have demonstrated a history of relying on the agreement in determining which utility would serve loads within and outside the city of Bismarck. As a result, MDU has spent little to upgrade its facilities in this area and the adjacent area is served by Capital Electric.

XV

While there was some discussion about a possible termination of the agreement, the document purporting to terminate this agreement was not introduced into evidence and is not germane to the issues that must be considered by the Commission.

XVI

MDU built its three-phase service wires for distribution in 1966 to serve a sewage treatment plant that is located in Section 17. MDU does not have any services in the Northwest Quarter of Section 20. MDU has a few services in the East Half of Section 20.

Most services in Section 20 are served by Capital Electric and all of the services in the West Half of Section 20 are served by Capital Electric

XVII

The nearest Capital Electric substation is less than a mile from this load, in the east side of Section 20. This is the Washington Street substation and was built by Capital Electric to serve the loads in the south Bismarck area in 1993. It is one-half mile south of Burleigh Avenue on Washington Street. This substation also has a spare circuit for future growth in this area. The nearest MDU substation is over two miles away, in the east Bismarck area.

XVIII

The Capital Electric line on the north side of Burleigh Avenue was originally built on the south side of Burleigh Avenue in 1950. It was moved to the north side of Burleigh Avenue in 1966. It was upgraded sometime after that, from single phase to three phase.

XIX

Capital Electric serves Tatley Meadows which is a residential area in Bismarck in the east part of Section 17. MDU appears to serve only one load in Section 17, the sewage lagoon.

XX

Capital Electric is the only utility serving customers in the South Half of Section 16, or in all of Sections 21 and 28. MDU does serve one load each in Sections 19 and 29. All the other lands in Sections 19 and 29 are served by Capital Electric. All the lands in the South Half of Sections 17 and 18 are served by Capital. Most of the loads served by

MDU in Section 20 appear to be in the Southeast Quarter of the Southeast Quarter of Section 20

XXI

MDU would lose money serving this load because of the discount the employee would receive

XXII

While Capital Electric did not calculate a rate of return and does not do so because it is not an investor-owned utility, the service to this load would help spread out and pay for the investment Capital Electric has made in this area

XXIII

Although MDU serves about 600 more consumers than Capital Electric in a two-mile radius, most of MDU's consumers appear to be located at least one mile away from the proposed service, in Section 8, Section 9, and the north part of Section 16

XXIV

Granting the request of MDU to serve this load would only result in and promote a "checkerboarding" effect in this area

XXV

Besides the Washington Street substation, Capital Electric has also installed new transmission line in the past 15 years to provide more reliable service and loop feed to this south Bismarck area

XXVI

It appears Capital Electric is qualified to serve this load either in or outside the city limits of Bismarck

XXVII

It appears MDU would not have the right to serve this load if it is annexed into the city of Bismarck and would only be allowed to serve this load now if this Commission grants this application

XXVIII

Development of electric services in this area will be more orderly if this load is served by Capital Electric

XXIX

In the long term, it is more economical and will avoid wasteful duplication of transmission, substation, and distribution facilities if Capital Electric serves this load

XXX

It is probable this area will be annexed to the city of Bismarck, but the timing of when that will occur is unclear

XXXI

The service of this load by Capital Electric will not interfere with the facilities of MDU

CONCLUSIONS OF LAW

I

The Commission has jurisdiction over this matter

II

It is not in the public interest for the Commission to grant the application of MDU for a Certificate of public Convenience and Necessity

ORDER

IT IS HEREBY ORDERED that MDU shall not serve Corey Botner in the Northeast Quarter of the Northwest Quarter of Section 20, Township 138 North, Range 80 West, Burleigh County, North Dakota. The application of MDU is denied. The service to this location shall be provided by Capital Electric.

Dated this ____ day of _____, 2005

PUBLIC SERVICE COMMISSION

Anthony T. Clark
Commissioner

Susan E. Wefald
Commissioner

Kevin Cramer
Commissioner

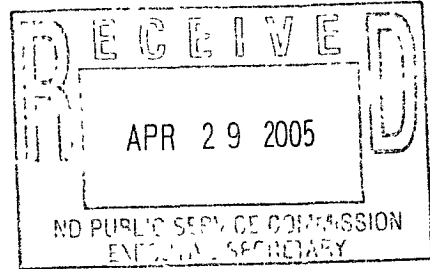
 **MDU RESOURCES**

GROUP, INC

Schuchart Building
918 East Divide Avenue

Mailing Address
PO Box 5650
Bismarck, ND 58506-5650
(701) 222-7900

Direct Dial No
(701) 222-7612
(701) 222-7607 (fax)



April 29, 2005

Ms. Illona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
State Capital – Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

Re: Montana-Dakota Utilities Co./Corey Botner
N.D.P.S.C Case No. PU-04-560

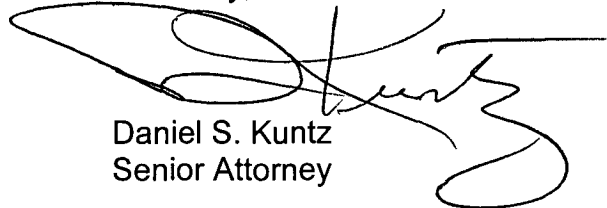
Dear Ms. Jeffcoat-Sacco:

Enclosed for filing in the above referenced proceeding are the original and seven copies of the Post-Hearing Brief of Montana-Dakota Utilities Co and Proposed Findings of Fact, Conclusions of Law and Order submitted on behalf of Montana-Dakota Utilities Co.

Also enclosed is an additional copy of this transmittal letter. Please date stamp the copy and return it to us in the enclosed self-addressed envelope.

Please contact me if you have any questions regarding this filing.

Sincerely,



Daniel S. Kuntz
Senior Attorney

DSK/djv

Enclosure

cc: Donald Negaard
William W. Binek
Don Ball

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity

Case No. PU-04-560

AFFIDAVIT OF SERVICE BY FIRST CLASS MAIL

STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

Dorothy Vedvick deposes and says that:

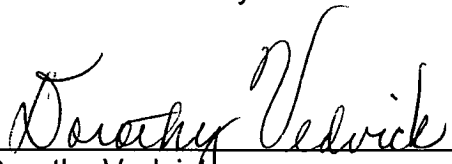
she is over the age of 18 years and not a party to this action and, on the **29th day of April, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, one envelope with fully prepaid, securely sealed and each containing a photocopy of:

**Post-Hearing Brief of Montana-Dakota Utilities Co. and
Proposed Findings of Fact, Conclusions of Law and Order**

The envelope was addressed as follows:

Donald A. Negaard
Pringle & Hergstad, P.C.
2525 Elk Drive
Minot, ND 58702

Each address shown is the respective addressee's last reasonably ascertainable post office address.



Dorothy Vedvick

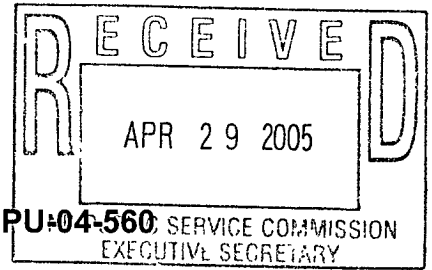
Subscribed and sworn to before me
this **29th day of April, 2005**.



Notary Public



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



**Montana-Dakota Utilities Co./
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity**

Case No. PU-04-560, SERVICE COMMISSION
EXECUTIVE SECRETARY

POST-HEARING BRIEF OF MONTANA-DAKOTA UTILITIES CO.

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., ("Montana-Dakota") submits the following Post-Hearing Brief in support of its application for a Certificate of Public Convenience and Necessity to serve Corey Botner at a location in the NE ¼ of NW ¼, Section 20, T138N, R80W, Burleigh County, North Dakota. Hearing on the application was held April 4, 2005 pursuant to the Commission's Notice of Hearing issued on December 30, 2004 and its Notice of Rescheduled Hearing issued on January 26, 2005.

Argument

The Commission's Notice of Hearing set forth ten issues to be considered in this proceeding. The following four of those issues are consistent with approval of the application for a Certificate of Public Convenience and Necessity although they do not favor either Montana-Dakota or Capital Electric Cooperative ("CEC") as the electric supplier at the Botner location:

1. What electric suppliers are operating in the general area?
2. What customers are served by electric suppliers within at least a two mile radius of the location to be served?

- 3 What are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service?
4. Is it probable that the location in question will be included within the corporate limits of the municipality within the foreseeable future?

Montana-Dakota and CEC are the electric suppliers operating within the general area. Both suppliers serve a large number of customers within a two mile radius of the location to be served. Both suppliers have primary three phase feeder distribution lines in the area that are capable of being looped in the event of a power outage thereby providing comparable reliable electric service to the location. Although the Botner property is adjacent to the Bismarck city limits, there is no evidence that the Botner location will be annexed to the City of Bismarck within the foreseeable future because Mr Botner does not intend to seek annexation. Moreover, both suppliers currently provide electric service within the city limits of Bismarck.

The evidence submitted on the remaining issues in the Notice for Hearing establish, by the overwhelming weight of the evidence, that Montana-Dakota's application for a Certificate of Public Convenience and Necessity should be approved.

a. *From whom does the customer prefer electric service?*

Corey Botner cited four reasons why he requested electric service from Montana-Dakota and why he prefers Montana-Dakota as the electric supplier at his new residential location. Mr. Botner is employed by MDU Resources Group, Inc. and wants to support the business activities of his employer. Mr. Botner previously received electric service from CEC at a different residential location and his experience with the reliability of that service was not as good as the reliability of electric service he currently

receives from Montana-Dakota. In addition, Montana-Dakota's feeder distribution line is already located on Mr. Botner's property and he prefers that facilities for a second electric supplier not be located on the property. Finally, as an employee of MDU Resources, Mr. Botner receives as an employee benefit, a discount on electric and natural gas utility services provided by Montana-Dakota equal to one-third of the cost of those services. The cost of this employee benefit is allocated among the various MDU Resources business organizations. Mr. Botner would not receive this employee benefit if he obtained his electric service from CEC. Even without the employee discount, CEC's electric service rates to Mr. Botner are 20 percent higher than those of Montana-Dakota.

b. What electric supply lines exist within a two mile radius of the location to be served, and when were they constructed?

Both electric suppliers have three phase primary feeder distribution lines within two miles of the Botner location as well as numerous other primary and secondary distribution facilities. Indeed, both suppliers have feeder distribution lines paralleling Burleigh Avenue which is adjacent to the Botner property.

Montana-Dakota first extended a feeder distribution line into the general area in 1941 and has continuously used its facilities to provide electric service in the area. In 1946 Montana-Dakota extended its feeder distribution line and began providing service to the Huber location which is the only service location south of Burleigh Avenue between Washington Street and the Botner residence.

Although CEC asserted at the hearing that Montana-Dakota had not upgraded its feeder distribution line, the line was rebuilt in 1961 and has been maintained in good condition and is not in need of any upgrades at this time to provide reliable service.

CEC built its distribution line along Burleigh Avenue in 1950 and did not upgrade the line to a three phase line until 1975. CEC does not serve any customers off of this line that are located south of Burleigh Avenue between Washington Street and the Botner location.

Montana-Dakota's feeder distribution line has been located on the Botner property since 1966. Montana-Dakota would serve the Botner location from this line. CEC's proposed extension to serve the Botner location would require boring Burleigh Avenue and crossing under Montana-Dakota's feeder distribution line.

c. 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?

There are two aspects to this cost of service issue:

- (1) the cost to extend facilities to the customer location; and
- (2) the annual cost of electric service to the customer.

Both aspects favor Montana-Dakota's application for a Certificate of Public Convenience and Necessity.

Both suppliers agree that based upon the electric requirements for Mr. Botner's intended use of his property, an extension of primary service from either supplier's existing feeder distribution line to the Botner location is necessary. The suppliers also agree that the facilities needed by either supplier to make such an extension of primary

service would be essentially the same except that CEC's feeder distribution facility is located approximately 60 feet further from the Botner service location and would require boring of Burleigh Avenue. CEC's witness testified that the additional cost associated with this boring and the longer conductor length would be approximately \$700.

The second aspect of this issue is the cost of providing electric service to the customer. CEC's charges for providing electric service for Mr. Botner's estimated annual electric service load are 20 percent greater than Montana-Dakota's charges to provide the same service. Montana-Dakota presented evidence that its net revenue from providing electric service to the Botner location, after fuel costs, will allow it to both earn an adequate return on the investment needed to extend service to the Botner location and also provide an annual contribution to common system costs of providing electric service. If it is determined that Mr. Botner is required to contribute to the cost of extending facilities to his location under Montana-Dakota's extension policy, the net amount available for contribution to common system costs would increase.

CEC did not introduce any evidence regarding its ability to serve the location and still earn an adequate return on its investment because it asserted that as a REC it is not required to earn a return on its investment. This position is flawed. Although a REC's capital costs may be different than the capital costs of an investor-owned utility such as Montana-Dakota, there is a cost associated with all capital. If the capital is borrowed, the interest on that borrowed capital is a cost. Alternatively, if the investment for the extension is from equity capital, the equity belongs to CEC's members and it also has a cost in the same manner that Montana-Dakota's equity capital belongs to its shareholders and has a cost. The equity capital has an opportunity cost because if it is

not invested in this project it can be invested in some other manner for the benefit of the REC or its members. Alternatively, the equity could be returned to the REC members for their individual use which has a financial value. Because CEC failed to provide evidence on this aspect of the issue, the entire issue must be decided in favor of Montana-Dakota based upon the undisputed evidence that Montana-Dakota's extension of facilities to the Botner location is more economical and Montana-Dakota will provide electric service to Mr. Botner at a lower cost than will CEC.

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

In Otter Tail Power Company/Neil Heitkamp, Public Convenience and Necessity, PSC Case No. PU-401-97-491 (decided on rehearing on December 31, 1998), the Commission found that service to the customer by Otter Tail Power Company ("Otter Tail") would best serve orderly and economic development of electric service in the general area. One of the primary factors considered by the Commission on rehearing was that an extension of service by the REC would cross Otter Tail's existing line. For the same reason, extension of service to the Botner location by Montana-Dakota would best serve orderly and economic development of electric service in the general area. Although CEC's witness Lars Nygren testified that an extension of service by Montana-Dakota would cause checkerboarding, it is actually CEC's extension of service, that would cross Montana-Dakota's existing facilities used to serve the only other service location south of Burleigh Avenue between Washington Street and the Botner location, that would create checkerboarding.

e. Would approval of the application result in wasteful duplication of investment or service?

The Commission has consistently found that an electric supplier crossing the line of another electric supplier to provide service to a customer indicates a wasteful duplication of service. Montana-Dakota Utilities Co./Intoil, Public Convenience and Necessity, PSC Case No. PU-399-93-09 (February 24, 1993); Otter Tail Corporation/Darwin Remmick, Public Convenience and Necessity, Case No. PU-2805-04-18 (April 5, 2004). Consistent with Supreme Court precedent, the Commission has also recognized that the primary purpose of the Territorial Integrity Act is to minimize the wasteful duplication of capital intensive utility services in conflicts between suppliers of electricity. Otter Tail Corporation/Darwin Remmick, Public Convenience and Necessity, Case No. PU-2805-04-18 (April 5, 2004). See, Cass County Electric Cooperative v. Northern States Power Co., 419 N.W. 2d. 181, 187 (ND 1988).

Although approval of the application would not result in wasteful duplication of investment or service, denial of the application would result in such duplication. On this issue alone, Montana-Dakota's application should be approved.

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

Both suppliers acknowledge that extension of service by the other would not physically interfere with the service or system of the other supplier. CEC, however, pins its protest on its position that it has invested in facilities for the provision of electric service in the general area. Accordingly, CEC apparently maintains that any extension

of service by Montana-Dakota in the area unreasonably interferes with CEC's service and system.

Over Montana-Dakota's objection, CEC introduced as an exhibit its franchise with the City of Bismarck. CEC will undoubtedly argue that Montana-Dakota's application should be denied based on the precedent of the South Pointe subdivision case. See Cass County Electric Co-op v. NSP, 419 N.W.2d 181 (N.D. 1988); Northern States Power Company v. North Dakota Public Service Commission, 452 N W 2d 340 (N.D. 1990). There are substantial differences, however, between Montana-Dakota's application and the South Pointe case.

In South Pointe, Northern States Power ("NSP") and Cass County Electric Cooperative ("Cass") were parties to a territorial agreement that designated Barnes Township, where the South Pointe subdivisions were later developed, to be served by Cass. This agreement was subsequently abandoned by the parties. In 1975, however, Cass and the City of Fargo entered into a franchise agreement that gave Cass a nonexclusive right-of-way for its facilities in areas served by Cass and subsequently annexed by the City. Under this agreement, any area served by Cass which was annexed to the City of Fargo would remain Cass's service area absent an objection by the City or another electric supplier. Objections were required to be filed within 30 days after Cass gave notice of the annexation to the City and other electric suppliers of its intent to serve the annexed area. See, NSP v. Public Service Commission, *supra* at 341.

In 1978 the City of Fargo annexed an area that included the South Pointe subdivisions. Cass subsequently notified the City and NSP that Cass would supply the

annexed area with electricity. NSP did not file an objection. In 1981 Cass installed an underground three-phase distribution line along the south side of 32nd Avenue that was capable of serving the South Pointe subdivisions. Prior to commencement of service to the South Pointe development in 1986, Cass was the only supplier of electricity in the annexed territory. The Commission concluded that NSP's extension of electric service across 32nd Avenue into the South Pointe subdivisions would interfere with and constitute an unreasonable duplication of investment and available facilities and services provided by Cass. *Id.* at 342.

In contrast to South Pointe, the Botner property has not been annexed to the City of Bismarck and there are no plans for such annexation. Therefore, CEC's franchise with the City of Bismarck is not relevant to this proceeding. Moreover, CEC's franchise does not prospectively designate potential future areas of annexation as CEC service areas. The franchise specifically states that "it is limited geographically to the areas within the City described in the Area Service Agreement dated July 5, 1973 executed by Capital Electric Cooperative, Inc. and Montana-Dakota Utilities Co., . . ." (Emphasis Added) It does not prospectively address future areas of annexation. The franchise resolution further provides, consistent with a 1993 amendment to the subsequently cancelled Area Service Agreement, that:

If the Area Service Agreement and Amendments thereto are cancelled by either electric supplier during the term of this franchise, all privileges, rights, obligations, and restrictions as therein stated shall continue to apply to both Capital Electric Cooperative, Inc. and Montana-Dakota Utilities Co.

The language of this resolution and the corresponding 1993 amendment to the Area Service Agreement apply only with respect to the relationship of the suppliers for areas within the City of Bismarck. Certainly, the City of Bismarck did not have

jurisdiction to define the relationship of the parties or the service locations of the parties for areas outside the City of Bismarck, particularly after cancellation of the Area Service Agreement. Nor can the 1993 amendment be interpreted, as CEC suggests, to effectively prohibit cancellation of the Area Service Agreement so long as either supplier holds a franchise with the City of Bismarck. Certainly, if that was the intent of the amendment it would have been stated in more precise language. Rather, the amendment was intended to clarify that service areas within the City of Bismarck in 1993, as defined in the Area Service Agreement, would continue to apply notwithstanding any later cancellation of the Area Service Agreement.

Moreover, there are no “privileges, rights, obligations and restrictions” contained in the 1973 Area Service Agreement governing the Botner property. To the extent the Agreement was intended or interpreted to create exclusive service territories, it was void as a matter of law and could not create any privileges, rights, obligations and restrictions absent approval from an appropriate governmental regulatory authority. As summarized by the Eight Circuit Court of Appeals in Montana-Dakota Utilities Co., v. Williams Electric Cooperative, Inc., 263 F.2d 431 (8th Cir. 1959):

By the great weight of authority in this country, the rule has been promulgated and consistently applied that contracts between quasi-public corporations, having for their object the division of territory between such companies, are against public policy, and being so, are absolutely void, untempered by any application of the “rule of reason.”

The Circuit Court further concluded regarding such an area service agreement:

Examination of the contract discloses that it's sole and only purpose and function was to divide and set apart the territory each was to serve, with the further agreement that neither would solicit the customers of the other party for electric service. . . . In our view, such a contract adversely affects the public interest, and apart from the fact that such contracts are denied

specific enforcement, we further determine that being void, this contract cannot support an action and judgment for damages.

Although the cancelled Area Service Agreement between CEC and Montana-Dakota recognized that the “principal service area” of CEC would be the rural area designated on the service map, it did not pretend to make CEC the exclusive provider in that area. Rather, the parties to the Area Service Agreement recognized, even in the rural areas, “their obligation to avoid any duplication of facilities in order to provide electric service as effectively and economically as possible to the public and to the Cooperative’s members.” To the extent the Area Service Agreement attempted to prohibit a supplier from serving a new customer located outside its service area without the other supplier’s permission, that provision of the agreement, to the extent not cancelled, was void. Montana-Dakota Utilities Co. v. Williams Electric Cooperative, Inc., supra.

Another distinction between this proceeding and the South Pointe case is that when Cass designated the areas of the South Pointe subdivisions as its service area under the franchise agreement in 1978, NSP did not object to the designation. Cass, apparently relying on that designation and lack of objection, invested in facilities in 1981 to provide electric service to the area. This reliance on the designation of a service area and subsequent investment in facilities to serve the area, along with NSP’s proposed extension that would cross those facilities, were the underlying reasons for the Commission’s decision that NSP’s proposed service would duplicate and therefore interfere with the investment and service provided by Cass.

In comparison, CEC did not rely upon either the Area Service Agreement or its Bismarck franchise in constructing the facilities it would use to serve the Botner location.

CEC's distribution line along Burleigh Avenue was constructed in 1950 and last upgraded in 1975 – 18 years before its Bismarck franchise. Indeed, Mr. Botner testified that CEC had not inquired regarding his development plans and CEC acknowledged that none of its facility investment was made for the purpose of serving the Botner property.

Finally and perhaps most importantly, in South Pointe, Cass was the only electrical supplier with facilities within area of the South Pointe subdivisions and the only supplier of electricity in the annexed area prior to the development of the subdivisions. In this case, Montana-Dakota's facilities are the only facilities located on the property to be served. Both suppliers have been providing electric service in the area and Montana-Dakota was actually the first supplier to construct its facilities in the area. In South Pointe, the Commission was instructed by the Supreme Court to "determine whether the extension of NSP's services into South Pointe would constitute an unreasonable duplication of capital-intensive facilities and services already provided by Cass." Cass County Electric Co-op. v. NSP, *supra* at 187. In this case, the obvious answer to the same question is that an extension of Montana-Dakota's facilities to serve Botner would not constitute an unreasonable duplication of CEC's facilities. Rather, denial of Montana-Dakota's application would require CEC to duplicate Montana-Dakota's facilities.

In summary, contrary to CEC's suggestion, approval of Montana-Dakota's application would not interfere with CEC's facilities and investment. CEC's investment was not made to serve the Botner property in reliance on the Area Service Agreement or its Bismarck franchise. CEC's distribution line was constructed more than 20 years

before the Area Service Agreement was signed. The Area Service Agreement did not give CEC an exclusive right to serve a designated area but simply recognized that its principal service area would be outside the city limits. In fact, the Area Service Agreement recognized CEC's obligation to avoid duplication of Montana-Dakota's facilities even in rural areas. The Area Service Agreement was also subject to cancellation and modification. Therefore, CEC could not reasonably rely on its provisions to perpetually provide it with exclusive service areas for purposes of planning and investing in facilities. In South Pointe, the Commission and the Supreme Court found that NSP's extension of service would interfere with and duplicate investments made by Cass in reliance upon its franchise agreement and the lack of objection by NSP to Cass's designation of the South Pointe area as its service area. That type of interference and duplication does not exist by Montana-Dakota's proposed extension to serve Botner. More applicable precedent in this case is the Commission's order in Otter Tail Power Company/Darwin Remmick, Public Convenience and Necessity, Case No. PU-2805-04-18 (April 5, 2004), in which the Commission effectively held that a unilateral claim of a service area and a duplicative facility investment by a REC does not establish an exclusive right to serve the area by the REC.

Extension of Montana-Dakota's facilities to serve the Botner location would not unreasonably interfere with CEC's service or system.

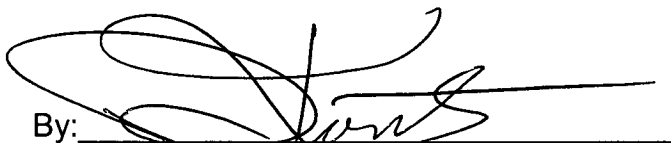
Conclusion

The evidence on the issues identified by the Commission in its Notice of Hearing overwhelming establishes that Montana-Dakota's application for a Certificate for Public Convenience and Necessity to serve the Botner location should be granted. CEC's

protest is based solely on a void and cancelled Area Service Agreement which was not the basis for any reliance by CEC for the investment in its existing facilities that would be used to serve the Botner location. CEC's extension to serve the location would duplicate Montana-Dakota's facilities that are already located on the Botner property and were in service prior to CEC's entry in the area. Montana-Dakota respectfully requests the Commission to grant Montana-Dakota's application for a Certificate for Public Convenience and Necessity to serve Corey Botner at the location designated in the application.

Dated this 29th day of April, 2005

Respectfully submitted,
Montana-Dakota Utilities Co., a Division of
MDU Resources Group, Inc.

By: 

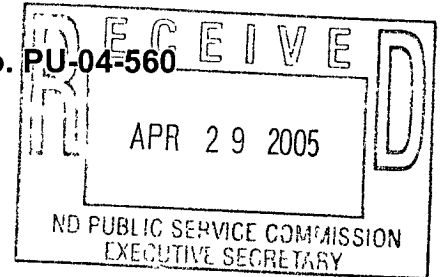
Daniel S. Kuntz (ID #03490)
Senior Attorney
MDU Resources Group, Inc.
918 East Divide Avenue
P.O. Box 5650
Bismarck, ND 58506-5650
(701)222-7612

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Montana-Dakota Utilities Co./
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity**

Case No. PU-04-560



**Montana-Dakota Utilities Co.'s
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

_____, 2005

Appearances

Commissioners Tony Clark, Kevin Cramer and Susan E. Wefald.

Daniel S. Kuntz, Senior Attorney, MDU Resources Group, Inc., P.O. Box 5650, Bismarck, ND 58506-5650, appearing on behalf of Montana-Dakota Utilities Co.

Donald A. Negaard, Pringle & Herigstad, P.O. Box 1000, Minot, North Dakota 58702, appearing on behalf of Capital Electric Cooperative, Bismarck, North Dakota.

William W. Binek, Chief Counsel, North Dakota Public Service Commission, State Capitol, Bismarck, North Dakota 58505, appearing on behalf of the Public Service Commission.

Allen C. Hoberg, Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota 58501-1882, appearing as Hearing Examiner.

Preliminary Statement

On October 11, 2004, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., ("Montana-Dakota") submitted a request for authority to extend temporary service for Corey Botner at a residential site located in the NE ¼ of NW ¼, Section 20, Township 138 North, Range 80 West, Burleigh County, North Dakota.

On October 18, 2004, Commissioner Susan Wefald authorized issuance of a Temporary Authority Permit for Montana-Dakota to serve the Botner location. On October 25, 2004, Montana-Dakota Utilities Co. filed its application under Chapter 49-03, N.D.C.C., for a Certificate of Public Convenience and Necessity to extend service for Corey Botner at the residential site location. Submitted with the application was a statement from Corey Botner that he desired electric service at the residential site to be provided by Montana-Dakota Utilities Co.

On October 27, 2004, the Commission issued a Notice of Opportunity for Hearing on the application. A protest to the application was filed November 23, 2004 on behalf

of Capital Electric Cooperative (“CEC”) requesting that Montana-Dakota’s application be set for hearing.

On December 30, 2004, the Commission issued a Notice of Hearing scheduling a public hearing to begin on February 2, 2005. The notice identified the following issues to be considered:

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 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?
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 application 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 unreasonably interfere with the service or system of the other?

The Commission issued a Notice of Rescheduled Hearing on January 25, 2005 rescheduling the Hearing for April 4, 2005.

On April 4, 2005, a public hearing was held as scheduled. On April 14, 2005, Montana-Dakota filed a motion to accept a late filed exhibit.

Having heard and considered this matter, the Commission makes its:

Findings of Fact

1. The Applicant, Montana-Dakota, is an investor-owned electric utility providing electric service to customers in North Dakota under the regulatory jurisdiction of this Commission.
2. The Protestant, Capital Electric Cooperative is a rural electric cooperative providing electric service to its members in North Dakota.

3. The Customer, Corey Botner owns approximately 27 acres of property located adjacent to the city limits of Bismarck immediately to the south of Burleigh Avenue. He intends to construct a home and shop on the property and seeks the extension of single-phase underground electrical service to the building site.

From whom does the customer prefer electric service?

4. Mr. Botner signed a Customer Appearance requesting electric service from Montana-Dakota. He also testified at the hearing in support of his request that electric service be extended by Montana-Dakota to his property. Mr. Botner previously received electric service from Capital Electric at a different residential location and experienced power outages that causes him concerns regarding the reliability of Capital Electric's service. Mr. Botner is an employee of MDU Resources Group, Inc. and wants to support the business activities of his employer. As an employee of MDU Resources Group, Inc , Mr. Botner receives a discount on electric and natural gas utility services purchased from Montana-Dakota. Finally, Montana-Dakota's electric distribution line is already located on Mr. Botner's property. Mr. Botner does not want electric service facilities of a second electric supplier unnecessarily located on this property.

5. The Commission finds that the Customer prefers electric service from Montana-Dakota.

What electric suppliers are operating in the general area?

6 Montana-Dakota and CEC are the only retail electric suppliers operating in the general area.

What electric supply lines exist within a two mile radius of the location to be served and when were they constructed?

7. Montana-Dakota has several distribution lines within two miles of the Botner property. Its feeder distribution line for this area is a three phase primary line built in 1941 that originates from a substation located near Tacoma Avenue and 12th Street. The line extends south along 12th Street to Burleigh Avenue. The three phase line was extended west on Burleigh Avenue from 12th Street to a location west of Washington Street and also south on Washington Street from Burleigh Avenue to 48th Avenue and west for approximately one and one-half miles. These line extensions were constructed in 1946 and rebuilt in 1961. In 1966 the three phase line on Burleigh Avenue was extended further west to its current location on the Botner property where it continues in a northwesterly direction to the Bismarck lagoon system. In 1970, an underground primary distribution line was extended from Montana-Dakota's South 9th Street substation along a drainage ditch to Washington Street then south to London Avenue and west to the Bismarck lagoon. This extension allows the feeder distribution line along Burleigh Avenue to be looped when necessary.

8. CEC has several distribution lines within two miles of the Botner property. It has a three phase feeder distribution line located along Burleigh Avenue from Washington Street to England Street. This line was built as a single phase line in 1950 on the south side of Burleigh Avenue. The line was moved to the north side of Burleigh Avenue in

1967 and in 1975 the single phase line was converted to a three phase line. CEC also has a feeder distribution line along Washington Street between Burleigh Avenue and CEC's south Washington substation. This line was built in 1950 and converted to a three phase line in 1967.

9. The only facilities needed by either electric supplier to provide electric service to the Botner location is a primary distribution line extension from its existing feeder distribution line to the Botner service location along with a transformer at the end of the primary extension. Such an extension from CEC's feeder distribution line would require boring of Burleigh Avenue and crossing under the existing overhead feeder distribution line of Montana-Dakota. Montana-Dakota's extension would not cross Burleigh Avenue or CEC's facilities.

10. Montana-Dakota's closest existing facility from which service could be extended to the Botner service location is its three phase primary distribution line located on the south side of Burleigh Avenue. This feeder distribution line is located on the northern edge of Botner's property and is approximately 320 feet from the proposed service location for the Botner home. CEC's closest existing facility is its three phase primary distribution line located on the north side of Burleigh Avenue. This facility is approximately 380 feet from the proposed service location for the Botner residence

What customers are served by electric suppliers within at least a two-mile radius of the location to be served?

11. Montana-Dakota serves approximately 1,805 customer service locations within two miles of the Botner property. These customer locations include multiple dwelling units such as apartment buildings that have more than one service customer at the location.

12. CEC serves approximately 1200 customers within two miles of the Botner property.

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

13. Service by either supplier would be from three phase primary feeder distribution lines that can be operated in a looped fashion in the event of an outage. The Commission does not find significant differences between the suppliers with respect to reliability of service.

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?

14. Service by Montana-Dakota requires an underground line extension of 319 feet, and a pad mounted transformer. Montana-Dakota's actual cost of the temporary extension, including engineering services and general administrative overheads, was \$3,590.61. This amount is higher than the amount included in the application for temporary service authority because it includes the cost of a transformer and meter

which are useable at other locations and therefore are not considered part of the cost of a temporary extension. In addition, the actual installation was approximately 42 feet further from Montana-Dakota's feeder distribution line than originally anticipated. The installation was also delayed to enable shared trenching which increased installation costs because of frozen ground conditions. In addition, some hand trenching was necessary in an area around underground telephone and CATV lines which was not anticipated at the time the temporary service application was prepared.

15. CEC's cost to extend service to the Botner property would be greater than Montana-Dakota's cost because its feeder line is 60 feet further from the service location and CEC would need to bore Burleigh Avenue for the extension. Boring costs and increased conductor length would result in costs of about \$700 more than Montana-Dakota's costs.

16. Based upon the anticipated service needs at the Botner location, Montana-Dakota estimates that the annual electric consumption for the location will be approximately 12,676 KWh. Montana-Dakota's charges to serve this annual consumption under its current rates would be \$874.80. As an employee of MDU Resources Group, Inc., Mr. Botner receives an employee benefit equal to one-third of the amount billed for his Montana-Dakota gas and electric utility charges. This discount is treated as a part of Mr. Botner's employee compensation and allocated as a labor expense accordingly. Mr. Botner receives this employee discount at his current residential location. The discounted utility service at that location will end at the time that Mr. Botner changes his residence.

17. Montana-Dakota's cost of fuel to supply the estimated annual electric consumption at the Botner location is \$161. Subtracting the cost of fuel from the anticipated gross revenues results in estimated annual net revenue of \$713.80 to Montana-Dakota from the provision of service to the Botner location. Montana-Dakota's required rate of return on its net invested capital is 10.016 percent. Based on an investment of \$3,590.61 to extend facilities to the Botner location, Montana-Dakota needs pretax net revenues of \$595.53 to recover its required rate of return on this investment. Accordingly, Montana-Dakota's net revenues from providing electric service at the Botner location will allow it to earn an adequate rate of return on its investment to extend service and also provide a net annual contribution of \$118.27 to common system costs.

18. Based on its current rates, CEC's charges to provide service for the estimated annual electric consumption at the Botner location is \$1,050.15. CEC did not introduce evidence of whether this revenue would produce net revenues to provide an adequate return on its investment.

19. Because CEC did not provide evidence on the question of net revenues from its provision of service, the Commission cannot determine whether CEC would earn an adequate return on its investment to extend service to the Botner location. Nonetheless, the Commission finds that Montana-Dakota can both extend service to the

Botner location more economically than can CEC, and also provide annual electric service to the location more economically than CEC, and still earn an adequate return on its investment.

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

20. In *Otter Tail Power Company/Neil Heitkamp, Public Convenience and Necessity*, PSC Case No. PU-401-97-491 (Decided on Rehearing December 31, 1998), the Commission found that service to the customer by Otter Tail Power Company ("Otter Tail") would best serve orderly and economic development of electric service in the general area. One of the primary factors considered by the Commission on rehearing was that an extension of service by the REC would cross Otter Tail's existing line. The Commission finds that service by Montana-Dakota would best serve orderly and economic development of electric service in the general area. Montana-Dakota is able to extend service to the site through a shorter extension at less cost, which is a primary consideration of orderly and economic development. Service by Montana-Dakota to the Botner location is a natural extension of service from Montana-Dakota's existing facilities and will not result in checkerboarding of customers served by Montana-Dakota and CEC. Service by CEC to the Botner location would require CEC to cross Montana-Dakota's line causing duplication of service and checkerboarding of service.

Would approval of the application result in wasteful duplication of investment or service?

21. One factor to be considered in determining whether duplication of facilities has occurred is whether construction of service to a customer from one supplier exceeds the cost to extend service to that same customer from a second supplier. In this case, CEC's cost to extend service 380 feet exceeds Montana-Dakota's cost to extend service 320 feet. Another factor considered in determining duplication of service is whether a supplier's extension of facilities would need to cross the facilities of another supplier. The Commission has consistently held that one electric supplier crossing the line of another electricity supplier to provide service to a customer indicates a wasteful duplication of facilities. In *Montana-Dakota Utilities Co./Intoil, Public Convenience and Necessity*, PSC Case No. PU-399-93-9 (Decided February 24, 1993) the Commission found that MDU's service extension would cross over the REC's line and concluded that granting of MDU's application would result in wasteful duplication of the REC's existing facilities. The primary purpose of the Territorial Integrity Act is ". . . [T]o keep to a minimum wasteful duplication of capital-intensive utility services and conflicts between suppliers of electricity." *Cass County Electric Cooperative v. Northern States Power Company*, 419 N.W.2d 181, 187 (N.D. 1988). The question of which electric supplier's facility are duplicative or wasteful is a question of fact for the Public Service Commission to determine. *Northern States Power Company v. Public Service Commission*, 452 N.W.2d 340, 345 (N.D. 1990). In this instance CEC would cross Montana-Dakota's line for CEC to extend its facilities to the Botner location. Montana-Dakota does not need to cross CEC's facilities for a similar extension.

22. The Commission finds that approving Montana-Dakota's application will not result in wasteful duplication of investment or service but that denial of the application will result in wasteful duplication of investment and services.

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

23. There is no evidence of any plans by the City of Bismarck to annex the site. Mr Botner does not have plans to request annexation of his property to the City of Bismarck.

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

24. The Area Service Agreement that existed between the parties was void as a matter of law and was cancelled by Montana-Dakota. The cancelled Area Service Agreement and CEC's franchise with the City of Bismarck have no relevance in the Commission's determination of an application for a Certificate of Public Convenience and Necessity outside the corporate limits of the City of Bismarck. Moreover, CEC did not rely on the Area Service Agreement in constructing the feeder line it would use to serve the Botner location.

25. The Commission finds that extension of service by either supplier would not unreasonably interfere with the service or system of the other.

From the forgoing Findings of Fact, the Commission makes its:

Conclusions of Law

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. Public convenience and necessity require the granting of a Certificate of Public Convenience and Necessity to the applicant.

From the foregoing Findings of Fact and Conclusions of Law, the Commission issues its:

Order

The Commission Orders:

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. is issued Certificate of Public Convenience and Necessity No. _____, authorizing the provision of electric distribution service to Corey Botner at a location in the NE ¼ of the NW ¼, Section 20, T138N, R080W, Burleigh County, North Dakota.

PUBLIC SERVICE COMMISSION

**Susan E. Wefald
Commissioner**

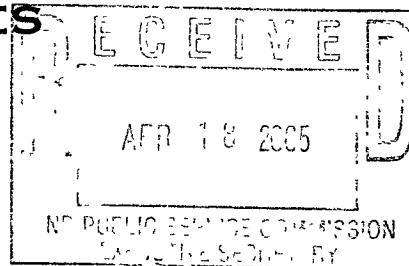
**Tony Clark
President**

**Kevin Cramer
Commissioner**



EMINETH & ASSOCIATES

REGISTERED PROFESSIONAL REPORTERS
P.O. BOX 2655
BISMARCK, NORTH DAKOTA 58502-2655
(701) 255-3513
FAX (701) 255-6079



TO: Mr. William C. Binek
Public Service Commission
State Capitol
600 East Boulevard
Bismarck, ND 58505

RE: Montana-Dakota Utilities Co.,
Corey Botner, Bismarck, ND, PC&N

Case No. PU-04-560

4/14/05

Transcript of hearing in the above matter held in
Bismarck on April 4, 2005

1 copy - enclosed -----

\$272.00

*OK
WMB
4-19-05*

Please make check payable to
Denise M Andahl Inc. at the
above address EIN: 45-0424323

THANK YOU.

Payments not received within 30 days of statement date are subject to a 1½% monthly service charge (18% per annum)

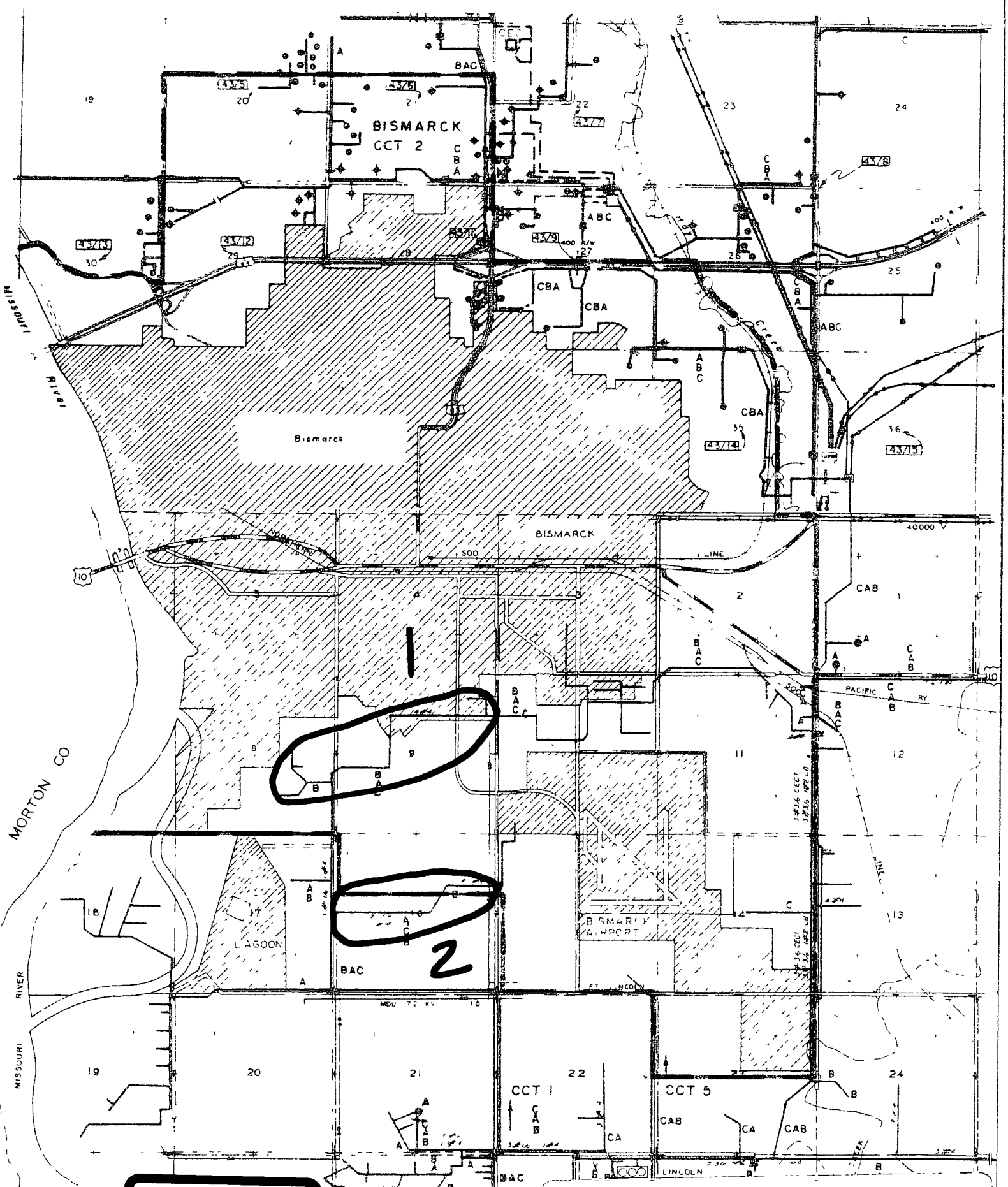


EXHIBIT
P-7

33 PU-04-560

Pages 1

Map

by Capital Electric Coop Inc
Exhibit # P-7
04/04/2005 Comm Legal Illona Pat Jerry, Annette



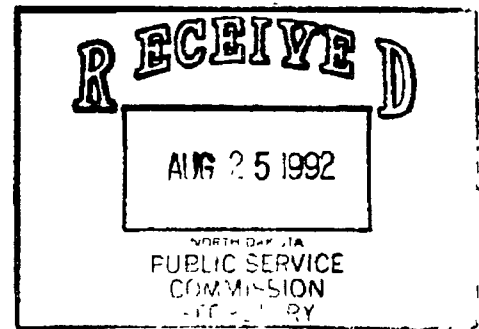
**CAPITAL
ELECTRIC
COOPERATIVE, INC**

4111 State Street North P.O. Box 730 Bismarck North Dakota 58502 0730 Telephone 701 223 1515

August 25, 1992

Public Service Commission
State of North Dakota
600 East Boulevard Avenue
Bismarck, ND 58505-0480

RE Case Number PU-399-92-678
Montana Dakota Utilities
M John Natwick



Dear Commissioners

In regard to the above referenced case, Capital Electric Cooperative is currently supplying temporary electrical service to Montana Dakota Utilities who, in turn, is billing the consumer for electrical consumption

In discussions with Kevin Turnbow, who is the developer of the area, and Orrin Vinger of Montana Dakota Utilities, a request has been made by Mr Turnbow to have Capital Electric Cooperative, Inc provide electrical service to Mills Third Subdivision (see enclosed letter "Attachment #1) A similar letter was sent to MDU by Mr Turnbow Capital Electric currently has service to this area, as is illustrated by the data showing our line extension to serve M John Natwick as approximately 50 feet of secondary wire Conversely, Montana Dakota Utilities would be required to build approximately 5,800 feet of primary underground line to serve this area (see "Attachment #2")

Whereas both Capital Electric Cooperative and Montana Dakota Utilities have entered into a service area agreement which calls for the avoidance of duplication of services, Capital Electric Cooperative is not opposed to a revision in the service area agreement whereby Capital Electric Cooperative would provide service to Mills Third Addition, located in Section 7, Township 138N, Range 80W, Burleigh County, North Dakota, and Montana Dakota Utilities would provide service to a new development known as Southport, located in the NE 1/4 of the NE 1/4 of Section 18, Township 138N, Range 80W, Burleigh County, North Dakota (see "Attachment #3")

Capital Electric Cooperative believes the above modification to the service area agreement would be in the best interest of all parties Montana Dakota Utilities has expressed an interest in this service area agreement modification, pending city approval of the Southport Development

On August 24, 1992, Ron Lipp of Capital Electric Cooperative, Inc visited with Mr John Natwick and asked if he had any objections if Capital Electric Cooperative, Inc would provide him permanent electrical service Mr Natwick conveyed he did not have any objections to Capital Electric providing him service



We Put Value on the

32

PU-04-560

Pages 2

Letter dated 8/5/92 to PSC from Lars Nygren

by Capital Electric Coop Inc

Exhibit # P-6

04/04/2005 Comm Legal, Ilona Pat Jerry, Annette

Public Service Commission
Case Number PU-399-92-678
August 25, 1992
Page 2

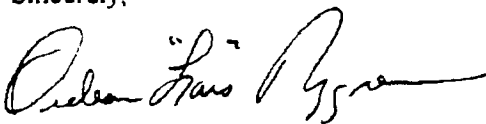
Mr Dave Patience, who is an Engineer for Swenson and Hagen Company and has been extensively involved in the development of Southport, conveyed to us on August 24, 1992 that, assuming everything progressed according to plan, they would anticipate electrical service being required to the Southport Development sometime during the summer of 1993 Mr Patience indicated that the channel just east of Mills Third Addition would be dredged in the fall of 1992 and spring of 1993 In addition, a road near the north end of Mills Third Addition would be removed This would provide for the river channel to flow on the east side of Mills Third Addition.

In light of the anticipated construction, the building of electrical facilities across the channel, either overhead or underground, may not be conducive to the work that is anticipated to be completed on the channel in the next year Accordingly, should the Southport Addition receive the necessary approvals from the City of Bismarck, which is anticipated to occur by October 1, 1992, we would anticipate a service area exchange with Montana Dakota Utilities

Should the approvals for Southport be denied, we would anticipate no exchange of service area and Montana Dakota Utilities building facilities to provide service to Mr John Natwick on Lot 3 of Mills Third Addition.

Capital Electric Cooperative, Inc is not objecting to Montana Dakota Utilities Company providing service to Mr John Natwick However, predicated on our discussions with Montana Dakota Utilities, we would anticipate a swap of the service areas pending City approval of the single family residential portion of the Southport Development

Sincerely,



Ordean "Lars" Nygren
Manager

OLN
Enclosures

cc Orrin Vinger, Montana Dakota Utilities

C. Comm
Legal
Ferry
Patt
Orig - Jacket

11-11-92 PSC
11-11-92 2

LETTER AGREEMENT
AMENDING SERVICE AREA AGREEMENT
BETWEEN
CAPITAL ELECTRIC COOPERATIVE, INC.
AND
MONTANA-DAKOTA UTILITIES CO.

It is intended by the parties hereto to amend the July 5, 1973, Area Service Agreement, as amended, between Capital Electric Cooperative, Inc. and Montana-Dakota Utilities Co., which agreement sets forth and describes the service areas in the City of Bismarck, North Dakota, to be served by Capital Electric Cooperative, Inc., and describes the service areas in the City of Bismarck, North Dakota, to be served by Montana-Dakota Utilities Co.

It is agreed and understood that in the event that the said Service Agreement of July 5, 1973, as amended, is canceled by either Capital Electric Cooperative, Inc. or Montana-Dakota Utilities Co. during the term of either party's existing franchise with the City of Bismarck, North Dakota, that all of the privileges, rights, obligations, and restrictions as contained in such July 5, 1973, Service Agreement, as amended, shall, notwithstanding such cancellation, continue during the term of either party's respective franchise with the City of Bismarck to apply equally to both Capital Electric Cooperative, Inc. and Montana-Dakota Utilities Co.

AGREED TO and made a part of the 1973 Area Service Agreement this

3rd day of June, 1993.

CAPITAL ELECTRIC COOPERATIVE, INC.

MONTANA-DAKOTA UTILITIES CO., a
division of MDU RESOURCES GROUP, INC.

Quene Lasher

Armen Vanyan

31 PU-04-560

Pages 1

Ltr Agreement Amending Service Area
Agreement between Cap Elec & MDU
by Capital Electric Coop Inc

Exhibit # P-5

04/04/2005C Comm Legal Illona Pat Jerry Annette



February 13, 1973

sion for trade-in allowance received on this 13th day of February, 1973, said bids be referred to the Bismarck Police Department for study and recommendation, that the Board shall then take such other and further action with reference to said bids as shall be deemed necessary and expedient

Commissioner Heskin seconded the motion for adoption of the foregoing resolution.

Upon roll call the commissioners voted as follows Ayes, Commissioners Buckingham, Conmy, Heskin, Kunz and President Lahr Nays, none The motion carried and said resolution was declared duly passed and adopted

Appearing before the Board of City Commissioners were Mr. Sid Soma, manager of the Capital Electric Cooperative and Mr. Richard L. Jacobsen, District Manager of Montana-Dakota Utilities Co. relative to area service agreement Messrs. Jacobsen and Soma indicated that area service agreement had been tentatively agreed as follows.

AREA SERVICE AGREEMENT

The Montana-Dakota Utilities Co., (hereinafter referred to as the Company) and Capital Electric Cooperative, Inc., (hereinafter referred to as the Cooperative), in an earnest and sincere effort to avoid misunderstanding and disagreement over areas to be served by each party and to further avoid unnecessary and costly duplication of facilities, agree to the following general conditions

1 Since the Company is and has been the principal supplier of electricity to the area encompassing the City of Bismarck, both parties agree that the Company should continue to serve this area and new areas contiguous to the city as further stipulated and identified in this agreement

2 The Cooperative organized under the laws of the state of North Dakota to supply electricity to consumers in rural areas who are not receiving central station service as identified by law, thereby, both parties agree the Cooperative should continue such service in rural areas and other areas that are stipulated and identified in this agreement.

3 The parties hereto, recognize their obligation to avoid any duplication of facilities in order to provide electric service as efficiently and economically as possible to the public and to the Cooperative's members.

4 It is agreed that the interests of the consumer can best be met by providing that the Company serve those consumers within the area bounded by the heavy dashed black line on the attached map, which shall be made a part of this agreement, as well as any new consumers who come into that area and that the Cooperative will continue to serve its present consumers within the heavy dashed black line and will serve new consumers within the heavy dashed black line only under conditions further stipulated in this agreement. The principal service area of the Cooperative will be that area which lies outside the heavy dashed black line. The agreement shall apply only to area described by the map

5 In the event there is need for either party to this agreement to serve a prospective consumer located in the area served by the other party, such service shall be supplied only with the written consent of the other party, provided that such individual exception shall not in any way alter the basic intentions of the parties, that each shall serve or offer service to the new consumers within their respective service areas

6 In the event it becomes necessary or desirable to trade or sell electric facilities owned by either party, the selling price for such facilities shall be an amount equal to three times the gross annual revenue received from the property during the highest revenue year of the past 5 years. Only the existing facilities of value in serving customer by purchasing party shall be sold. Balance of facilities shall be disposed of as enumerated in Section 7.

7. It is mutually agreed that in the event that either party will terminate service to a consumer or consumers which it has served and it is necessary that one party remove its facilities from such an area, the other party will share the removal costs of direct labor, plus 25% and only in an amount equal to one-half the total labor costs for removing such facilities.

8 It is mutually agreed by both parties that each will continue to serve customers it now has within the boundaries of the other party as stipulated and identified in the agreement. Such customer identification shall be from the books and records of each of the parties as of date of signing of this agreement. If an exchange of customers can be agreed upon by both parties and to the satisfaction of the consumer or consumers, such an exchange can be made.

City of Bismarck
Minute Book
KK - Pages
422-423

appearance
of Mr. Soma
and Mr.
Jacobsen
to file
area Ser-
vice Agree-
ment for
utility
company

9. This agreement will in no way affect the Company's or Cooperative's needs or plans to construct transmission line facilities for the purpose of providing adequate electric power for the consumers in the area it serves

10. This agreement is subject to approval, order, and other actions of the Public Service Commission of North Dakota or any other governmental agencies or bodies having jurisdiction over transactions and service herein covered

11. It is realized that the foregoing instrument will not cover all conditions which may arise, but if followed in good faith by both parties, will serve as a guide to future developments and growth for both organizations, thus it is mutually agreed that this agreement will be reviewed at least once every five years for the purpose of evaluating its operation and to discuss possible modifications which may be desirable to more efficiently carry out the intent of both parties.

12. This agreement shall remain in force from the date hereof until cancelled by either party by giving twelve month's written notice to the other party of such cancellation

MONTANA-DAKOTA UTILITIES CO.

CAPITAL ELECTRIC COOPERATIVE, INC

President

President

ATTEST

ATTEST

Secretary

Secretary

Date

Date

(S E A L)

(S E A L)

The Board of City Commissioners had before it for consideration the recommendation of the City Engineer requesting authorization to advertise for bids for the construction of a storm sewer through the Sanitary Landfill The City Engineer explained that it was necessary that the storm sewer be constructed to provide for the natural water course when the coulee bottom was filled Commissioner Kunz moved that the authorization be given to the City Engineer to advertise for bids for the construction of a storm sewer extension through the Sanitary Landfill of the City of Bismarck. Commissioner Conmy seconded the motion Upon roll call the commissioners voted as follows Ayes; Commissioners Buckingham, Conmy, Heskin, Kunz and President Lahr Nays; none. The motion carried

Authorize
City Engr
to adver-
tise for
bids for
storm sew-
er

The Board of City Commissioners had before it for consideration the recommendation of the City Engineer requesting authorization to employ consulting engineering firm, the firm of Toltz, King, Duvall & Anderson and Associates, Inc of St. Paul to provide for extension of the planning area of the water and sewer utility to provide for the expansion of the utility system in keeping pace with the development of the City of Bismarck. Commissioner Conmy moved that the City Engineer be given the authorization to employ consulting firm. Commissioner Heskin seconded the motion Upon roll call the commissioners voted as follows Ayes; Commissioners Buckingham, Conmy, Heskin, Kunz and President Lahr Nays; none The motion carried.

Authorize
City Engr.
to employ
consulting
engineerin
firm

The Board of City Commissioners had before it for consideration the offer and

AREA SERVICE AGREEMENT

93-22
G.M.W.

The Montana-Dakota Utilities Co., (hereinafter referred to as the Company) and Capital Electric Cooperative, Inc., (hereinafter referred to as the Cooperative), in an earnest and sincere effort to avoid misunderstanding and disagreement over areas to be served by each party and to further avoid unnecessary and costly duplication of facilities, agree to the following general conditions:

1. Since the Company is and has been the principal supplier of electricity to the area encompassing the city of Bismarck, both parties agree that the Company should continue to serve this area and new areas contiguous to the city as further stipulated and identified in this agreement.

2. The Cooperative organized under the laws of the state of North Dakota to supply electricity to consumers in rural areas who are not receiving central station service as identified by law, thereby, both parties agree the Cooperative should continue such service in rural areas and other areas that are stipulated and identified in this agreement.

3. The parties hereto, recognize their obligation to avoid any duplication of facilities in order to provide electric service as efficiently and economically as possible to the public and to the Cooperative's members.

4. It is agreed that the interests of the consumer can best be met by providing that the Company serve those consumers within the area bounded by the heavy dashed black line on the attached map, which shall be made a part of this agreement, as well as any new consumers who come into that area and that the Cooperative will continue to serve its present consumers within the heavy dashed black line and will serve new consumers within the heavy dashed black line only under conditions further stipulated in this agreement. The principal service area of the Cooperative will be that area which lies outside the heavy dashed black line. The agreement shall apply only to area described by the map.

5. In the event there is need for either party to this agreement to serve a prospective consumer located in the area served by the other party, such service shall be supplied only with the written consent of the other party, provided that such individual exception shall not in any way alter the basic intentions of the parties, that each shall serve or offer service to the new consumers within their respective service areas.

6. In the event it becomes necessary or desirable to trade or sell electric facilities owned by either party, the selling price for such facilities shall be an amount equal to three times the gross annual revenue received from the property during the highest revenue year of the past 5 years. Only the existing facilities of value in serving customer by purchasing party shall be sold. Balance of facilities shall be disposed of as enumerated in Section 7.

7. It is mutually agreed that in the event that either party will terminate service to a consumer or consumers which it has served and it is necessary that one party remove its facilities from such an area, the other party will share the removal costs of direct labor, plus 25% and only in an amount equal to one-half the total labor costs for removing such facilities.

8. It is mutually agreed by both parties that each will continue to serve customers it now has within the boundaries of the other party as stipulated and identified in the agreement. Such customer identification shall be from the books and records of each of the parties as of date of signing of this agreement. If an exchange of customers can be agreed upon by both parties and to the satisfaction of the consumer or consumers, such an exchange can be made.

9. This agreement will in no way affect the Company's or Cooperative's needs or plans to construct transmission line facilities for the purpose of providing adequate electric power for the consumers in the area it serves.

10. This agreement is subject to approval, order, and other actions of the Public Service Commission of North Dakota or any other governmental agencies or bodies having jurisdiction over transactions and service herein covered.

11. It is realized that the foregoing instrument will not cover all conditions which may arise, but if followed in good faith by both parties, will serve as a guide to future developments and growth for both organizations, thus it is mutually agreed that this agreement will be reviewed at least once every five years for the purpose of evaluating its operation and to discuss possible modifications which may be desirable to more efficiently carry out the intent of both parties.

12. This agreement shall remain in force from the date hereof until cancelled by either party by giving twelve month's written notice to the other party of such cancellation.

MONTANA-DAKOTA UTILITIES CO.

K. D. M. Gosholt
President

CAPITAL ELECTRIC COOPERATIVE, INC.

Alvin J. Manning
President

ATTEST:

A. J. Hanson
Secretary

ATTEST:

E. Gene Hilker
Secretary

July 5, 1973
Date

(SEAL)

June 22 - 1973
Date

(SEAL)

CAPITAL ELECTRIC COOPERATIVE, INC
4111 STATE STREET
P O BOX 730
BISMARCK, ND 58502-0730

MONTANA-DAKOTA UTILITIES CO
DIVISION OF MDU RESOURCES GROUP, INC
400 NORTH FOURTH STREET
BISMARCK, ND 58501

This Letter of Agreement is intended to amend the 1973 Area Service Agreement between CAPITAL ELECTRIC COOPERATIVE, INC and MONTANA-DAKOTA UTILITIES CO, approved by the Bismarck City Commission, for the areas to be served by the two entities.

HENCEFORTH, it is agreed that CAPITAL ELECTRIC COOPERATIVE, INC shall provide electrical service to all consumers in the Country West II Subdivision located in the SW 1/4 of Section 20, Township 139 North, Range 80 West, specifically described as follows

Beginning at a point in the center of the intersection of Clydesdale Drive and West Century Avenue, thence east along the center line of West Century Avenue a distance of 1,243', thence north along the east property lines of lots 7, 8, 9, 15, 16, 17, 18, and 19, Block 5, continuing north along the same east property lines of lots 1, 2, 3, 4, 5, 6, and 7, Block 10, thence north westerly along the northerly lot lines of lots 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 of Block 10, thence continuing due west to the west section line of Section 20.

THE above described service area joins that portion of the Country West II Subdivision presently being served by CAPITAL ELECTRIC COOPERATIVE, INC in accordance with the original agreement

HENCEFORTH, it is also agreed that MONTANA-DAKOTA UTILITIES CO. shall provide electrical service to all electrical consumers located in the NW 1/4 of Section 21, Township 139 North, Range 80 West, specifically described as follows:

Beginning at a point in the center of the intersection of Arabian Drive and Washington Street, thence north to the common property lines between lots 5, 6, 7, 13, 14, 15, 16, 17, 18, and 19 of Block 5 of French's First Addition, thence easterly along said common property lines to the center of Montreal Street, thence south to the center of the intersection of Montreal Street and Versailles Avenue, thence east to the east property line of lot 11, Block 6 of French's First Addition, thence north and east along the common property line between lot 1, Block 11, North Hills Tenth Addition and lots 1 through 11, Block 6, French's First Addition, thence continuing easterly along the perimeter of lot 1, Block 11, North Hills Tenth Addition to the most easterly point of lot 1, Block 11, North Hills Tenth Addition, thence due east to a point 2,311 54' east of the west section line of Section 21, thence due south to the boundary line of the original agreement.

THE above described service area joins that portion of the North Hills First and Tenth Additions presently being served by MONTANA-DAKOTA UTILITIES CO in accordance with the original agreement

ALL other terms of the 1973 Area Service Agreement, except as amended herein, shall remain in full force and affect.

AGREED to this 25th day of October, 1990.

CAPITAL ELECTRIC COOPERATIVE, INC

BY Quinn Lashley

MONTANA-DAKOTA UTILITIES CO., a
division of MDU RESOURCES GROUP, INC.

BY: Barren Vinger

City of Bismarck
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The Board of City Commissioners then had before it for consideration a request for approval for Community Homes of Bismarck to construct three handicapped accessible duplexes for developmentally disabled persons. \$284,028 of 1992 HOME and \$146,850 of 1993 HOME funds are requested for these units. Two of the duplexes will be located on South Washington Street south of Reno Drive. The remaining unit will be located on Lot 3, Block 5, Pebble Creek Addition.

Approve
3 handi-
capped
duplexes
to be
built

Commissioner Hinman then moved to approve the construction of three handicapped duplexes. Commissioner Sprynczynatyk seconded that motion. Upon roll call the Commissioners voted as follows Ayes Commissioners Sprynczynatyk, Swanson, Hinman, Jensen, and President Sorensen Naves None, the motion carried.

The Board of City Commissioners then had before it for consideration City of Bismarck Refunding Improvement Bonds, Series SCG-1993; Sidewalk, Curb and Gutter Warrant of 1993; Water and Sewer Refunding Revenue Bonds of 1993, Refunding Improvement Bonds of 1993, Series A and Improvement Warrants

Approved
refunding
bonds
for
1993

Commissioner Sprynczynatyk moved the approval of the following resolutions:

INITIAL RESOLUTION FOR REFUNDING
\$750,000
REFUNDING IMPROVEMENT BONDS, SERIES SCG-1993

FINANCING RESOLUTION
\$750,000
SIDEWALK, CURB AND GUTTER WARRANT OF 1993

RESOLUTION AUTHORIZING ISSUANCE OF
\$3,365,000
WATER AND SEWER REFUNDING REVENUE BONDS OF 1993

INITIAL RESOLUTION FOR REFUNDING
\$4,340,000
REFUNDING IMPROVEMENT BONDS OF 1993, SERIES A

FINANCING RESOLUTION
\$96,065
STORM SEWER IMPROVEMENT DISTRICT NO. 317
\$97,190
STORM SEWER IMPROVEMENT DISTRICT NO. 331
\$47,975
WATER IMPROVEMENT DISTRICT NO. 273
\$43,660
WATER IMPROVEMENT DISTRICT NO. 274
\$1,282,900
STREET IMPROVEMENT DISTRICT NO. 286
\$162,690
STREET IMPROVEMENT DISTRICT NO. 287
\$489,920
STREET IMPROVEMENT DISTRICT NO. 288
\$123,490
STREET IMPROVEMENT DISTRICT NO. 289
\$140,635
STREET IMPROVEMENT DISTRICT NO. 290
\$394,500
STREET IMPROVEMENT DISTRICT NO. 291
\$582,510
STREET IMPROVEMENT DISTRICT NO. 292
\$878,465
PARKING IMPROVEMENT DISTRICT NO. 35

(Complete copies of the resolutions, as adopted by the Board of City Commissioners are on file in the City Auditor's office and open for public inspections.)

Commissioner Swanson seconded the motion for the adoption of the resolutions as hereinbefore noted. Upon roll call the Commissioners voted as follows. Ayes Commissioners Sprynczynatyk, Swanson, Hinman, Jensen, and President Sorensen. Naves: None, the motion carried, and the resolutions were declared duly passed and adopted.

The Board of City Commissioners had before it for consideration a request from Capital Electric for renewal of electric service franchise.

Schedule
public
hearing
for
Capital
Electric
Franchise

Mr. Ordean Nygren, Manager of Capital Electric submitted the following letter

The electric service franchise that the City of Bismarck granted to Capital Electric Cooperative, Inc., is up for renewal this summer. After visiting with members of the Bismarck City Commission, it would seem reasonable if consideration of renewal of the service franchise for Capital Electric Cooperative, Inc., could be slightly advanced.

Accordingly, Capital Electric Cooperative, Inc., requests that the Bismarck City Commissioner consider renewal of our 20 year electric service franchise in May 1993.

Commissioner Swanson made a motion to call for a public hearing. Commissioner Hinman seconded that motion. Upon roll call the Commissioners voted as follows. Ayes Commissioners Sprynczynatyk, Swanson, Hinman, Jensen, and President Sorensen. Nays: None, the motion carried

Commissioner Hinman introduced the following ordinance, relative to garbage collections franchise.

ORDINANCE NO. 4512

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 10-11-14 OF THE CITY OF BISMARCK CODE OF ORDINANCES (1986 Rev.) BY AMENDING THE SECTION RELATING TO GARBAGE COLLECTION FRANCHISE; APPLICATION REQUIRED.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA.

Section 1. Amendment. Section 10-11-14 relating to garbage collection franchise; application required is hereby amended and re-enacted as follows:

10-11-14. Garbage Collection Franchise, Application Required

1. Before any franchise is granted, the applicant shall file with the city auditor an application containing such information as may be necessary and helpful to act on the application. All applications for a franchise must be accompanied by a non-refundable application of \$500 00 and proof that the applicant has met the following conditions

a. The applicant shall have collection vehicles which are specifically designed for the sanitary hauling of municipal waste. The collection must pass an initial inspection by a City health inspector.

b. The applicant shall have at least one full-time collection vehicle and shall show proof of access to a complying backup collection vehicle. Applicant may show access by proof of ownership, lease, or other contractual commitment which guarantees availability of the backup collection vehicle within six hours of request.

c. The applicant shall be licensed by the North Dakota State Department of Health and Consolidated Laboratories before operating under any franchise granted by the City.

d. The applicant shall indemnify and save the City and its agents and employees harmless from all and any claims for personal injuries or property damages, and any other claims, costs, including attorney's fees, expenses of investigation and litigation of claims and suits thereon which may arise from its operations under this franchise. For this purpose the company shall carry and at all times maintain on file with the City Auditor, and at all times keep in force, a public liability policy of insurance, insuring the company and the City against any and all liability of not less than \$25,000 property damage, \$250,000 for any one person, personal injury or death, and \$500,000 for any one accident resulting in injury or death. Such policies of insurance or certificate thereof by a company licensed to do business in the State of North Dakota shall be filed with the City Auditor prior to the commencement of such use

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MEETING OF THE BOARD OF CITY COMMISSIONERS

May 25, 1993

The Board of City Commissioners met in regular session on May 25, 1993, at the hour of 5 15 p.m. in the Tom Baker Meeting Room, 221 North Fifth Street, Bismarck, North Dakota. There were present Commissioners Sprynczynatyk, Swanson, Hinman, Jensen, and President Sorensen.

Invocation was presented by a police chaplain of the Bismarck Police Department

Commissioner Hinman moved the approval of the minutes of the Board of City Commissioners' meetings of May 11, 1993. Commissioner Sprynczynatyk seconded that motion. Upon roll call the Commissioners voted as follows: Ayes: Commissioners Sprynczynatyk, Swanson, Hinman, Jensen, and President Sorensen.

The President of the Board of City Commissioners announced the hour had arrived for the hearing on a resolution granting a franchise to Capital Electric Cooperative, Inc, for electrical services.

Lars Nygren appeared before the Board of City Commissioners on the behalf of Capital Electric Cooperative, Inc. He requested that the Board of City Commissioners approve the franchise agreement that was sent out in the addendum to the City Commission agenda.

Commissioner Swanson moved the approval of the following resolution as amended, granting a franchise to Capital Electric Cooperative, Inc.

(A complete copy of the resolution, as adopted by the Board of City Commissioners is on file in the City Coordinator's office and open for public inspection.)

Commissioner Jensen seconded the motion for the adoption of the resolution as herein before noted. Upon roll call the Commissioners voted as follows: Ayes: Commissioners Sprynczynatyk, Swanson, Hinman, Jensen, and President Sorensen. Nays: None, the motion carried, and said resolution was declared duly passed and adopted.

Bob Olheiser, chairperson of the Home Rule Charter Implementation Committee, appeared before the City Commission and gave an overview of the proposed budget ordinance. Bob recommended that the City Commission introduce this ordinance.

Commissioner Hinman introduced the following budget ordinance proposed by the Home Rule Charter Implementation Committee and called for a public hearing at the next scheduled meeting of June 8, 1993

ORDINANCE NO. 4518

AN ORDINANCE TO ENACT SECTION 7-06 OF THE CITY OF BISMARCK CODE OF ORDINANCES (1986 Rev.) RELATING TO TAXATION AND BUDGET.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA

Section 1. Enactment. Section 7-06 relating to taxation and budget is hereby enacted as follows

CHAPTER 7-06

TAXATION AND BUDGET

7-06-01 Taxation. Determination of Levy.

1. The Board of City Commissioners may adopt a budget without regard to the dedication of mill levies to specific purposes. However, unless approved by a vote of the city electors, property taxes from all sources imposed by the Board of City Commissioners shall not exceed the total of levies authorized by the state constitution and state statutes for cities, less the levy not actually needed to fund the Old Age and Survivors Insurance System pursuant to Subsection 52-09-08(c) of the North Dakota Century Code.

2. If the Board of City Commissioners determines that the revenue which may be raised by levies specified in Article 3

Approved minutes

Approved resolution for franchise Capital Electric as amended

Budget ordinance from Home Rule Charter Ord 4518

M 93-22



CAPITAL
ELECTRIC
COOPERATIVE, INC.

4111 State Street North, P O Box 730, Bismarck, North Dakota 58502-0730, Telephone 701-223-1513

June 7, 1993

Dan Dahlgren, City Coordinator
City of Bismarck
221 North Fifth Street
Bismarck, ND 58501

Dear Mr Dahlgren

Enclosed are two executed notices by Capital Electric Cooperative accepting the terms and conditions of the City Franchise granted to Capital Electric Cooperative, Inc on May 25, 1993.

The Capital Electric Cooperative took formal action, accepting the franchise, at their June 3, 1993 board meeting

We greatly appreciate your cooperation in the adoption of the franchise, and will endeavor to work with the City of Bismarck in carrying out the terms of the franchise

After the notice has been executed by the City, please return one copy to my attention for our records

I have also enclosed a Certificate of Insurance from Capital Electric Cooperative's insuror, Federated Rural Electric Insurance Corp , as required by the City of Bismarck Thank you

Sincerely,

Ordean "Lars" Nygren
Manager

OLN
Enclosures



RESOLUTION

A Resolution granting to Capital Electric Cooperative, Inc., a corporation, its successors and assigns, the franchise and right to construct, maintain and operate, within and upon, in and under the streets, alleys and public grounds of the City of Bismarck, North Dakota, an electric distribution system for transmitting and distributing electric energy for public and private use.

WHEREAS, pursuant to law the City has the power to grant a non-exclusive franchise for a term of no more than twenty years; and

WHEREAS, pursuant to city ordinance the City may grant a franchise, by resolution, following public hearing; and

WHEREAS, on the 25th day of May, 1993, a public hearing was held by the Board of City Commissioners; and

WHEREAS, it is in the public interest that a franchise be granted to Capital Electric Cooperative, Inc., for an electric distribution system.

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Bismarck, North Dakota:

Article I. Definitions. As used herein, the following words and terms are defined as follows:

1. "City" means the City of Bismarck, North Dakota.
2. "Franchise" means all of the rights and obligations extended by City to Grantee herein.
3. "Grantee" means Capital Electric Cooperative, Inc.

Article II. Grant of Authority. There is hereby granted by the City to the Grantee, subject to the conditions contained herein, the right and privilege to occupy and use the streets, alleys and public grounds of the City as now, or hereafter constituted, for the purpose of constructing, maintaining and operating, within, upon, in and under the same, an electric distribution system for transmitting and distributing electric energy for public and private use.

1. In order to avoid a duplication of facilities between the Grantee and other electrical franchises, the authority granted Capital Electric under this franchise is limited geographically to the areas within the city described in the Area Service Agreement dated July 5, 1973 executed by Capital Electric Cooperative, Inc., and Montana-Dakota Utilities Co., as modified by Amendment dated October 25, 1990, and any future amendments to the Area Service Agreement agreed to by Grantee and Montana-Dakota Utilities. The Grantee shall enjoy all of the privileges and rights described in the Area Service Agreement. If

the Area Service Agreement and Amendments thereto are canceled by either electric supplier during the term of this franchise, all privileges, rights, obligations and restrictions as therein stated shall continue to apply to both Capital Electric Cooperative, Inc., and Montana-Dakota Utilities Co. A copy of the Area Service Agreement and Amendment are attached as Exhibits A and B to this resolution.

Article III. Grantee's Obligations. Grantee shall maintain an efficient distribution system for furnishing electric energy for public and private use at such reasonable rates as may be approved by and under such orders, rules or regulations as may be issued by any federal or state agency having or obtaining jurisdiction thereof.

Article IV. Non-Exclusive Grant. This franchise shall not be exclusive and shall not be construed to prevent the City from granting to any other party the right to use the streets, alleys and public grounds of the City for like purposes.

Article V. Compliance With Laws and Ordinances. Grantee shall at all times during the life of this franchise comply with all applicable laws and ordinances of the City.

Article VI. Reservation of Rights. City reserves any right it may have, under its police power, or otherwise, to control or regulate the use of the streets, alleys and public grounds by Grantee, and to enact all ordinances necessary and proper in the exercise of that power. City also reserves the right, pursuant to state laws and rules and regulations of the Public Service Commission and the City's Home Rule Charter, as such charter may be amended from time to time, and City ordinances as such ordinances may be amended from time to time, to impose, by ordinance, a reasonable franchise tax for revenue purposes applicable to all franchises of like kind.

Article VII. Conditions on Street Occupancy.

1. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. Wherever feasible and practical, new transmission lines, and existing lines whenever they are modernized, upgraded or extensively rehabilitated, shall be placed underground, or they shall be constructed in a manner that causes minimum interference with the landscape or appearance of the city.

2. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good

condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of six years.

3. In event that at any time during the period of this franchise the City shall lawfully elect to alter, or change the grade of, any street, alley or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

4. The Grantee shall not place poles or other fixtures where the same will interfere with any electric light, water hydrant or water main, or in such a manner as to interfere with the usual travel on said streets, alleys and public ways.

5. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.

Article VIII. Insurance and Indemnification. Grantee shall maintain, at all times during the term of the franchise, liability insurance, insuring Grantee and the City against any and all damages, losses or claims of any nature arising out of Grantee's operations under the franchise, in the minimum amount of \$500,000. A copy of the policy shall be filed with the City at the time of acceptance of the franchise, along with evidence of payment of required premiums and copies of endorsements, and notices of cancellation or non-renewal, during the term of the franchise. Grantee agrees to protect and save harmless the City from any claims for damages or injuries resulting from Grantee's operations under the franchise, and to defend and indemnify the City against all claims, actions, proceedings, costs, damages and liabilities, including attorneys fees.

Article IX. Assignment. Grantee may assign this franchise to another party or corporation, subject to all obligations of the Grantee hereunder, with the consent of the City, which may not be unreasonably withheld.

Article X. Acceptance. Within thirty days after Grantee is notified of adoption of this Resolution, Grantee shall file with the City Auditor its written acceptance of this franchise, subject to all of its terms and conditions.

Article XI. Term. This franchise shall continue and remain in full force and effect for a period of twenty years from the date upon which it is accepted by the Grantee.


Adopted this 25th day of May, 1993.

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

I, Dan Dahlgren, do hereby certify that I am duly appointed and qualified to execute contracts and certify documents on behalf of the City of Bismarck, North Dakota, and that the attached is a full, true and correct copy of the Resolution adopted by the Board of City Commissioners at its meeting of May 25, 1993.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Bismarck, North Dakota, this 26th day of May, 1993.

(S E A L)



Dan Dahlgren, City Coordinator
Bismarck, North Dakota

R2/CAPIT

ACCEPTANCE OF FRANCHISE

CAPITAL ELECTRIC COOPERATIVE, INC., hereby accepts the terms and conditions of that certain Resolution enacted by the governing body of the City of Bismarck, Burleigh County, North Dakota, ~~the same being an ordinance~~ granting to said Company, its successors and assigns, a franchise to construct, maintain and operate, within and upon, in and under streets, alleys and public grounds of said City, an electric distribution system for transmitting and distributing electric energy for public and private use, which ~~ordinance~~ was duly and finally passed, adopted and approved by the governing body of said City on the 25th day of May, 1993

Dated this 3rd day of June, 1993

CAPITAL ELECTRIC COOPERATIVE, INC.

By Quane Lasher
President

ATTEST:

Bernard Falkenstein
Secretary

I, the undersigned, the duly elected, qualified and acting Auditor of the City of Bismarck, State of North Dakota, do hereby certify that I received the within Acceptance of Franchise on this 9th day of June, 1993, and on said date filed the same in my office.

Don Z. Odgers
Auditor

(SEAL OF MUNICIPALITY)


CERTIFICATE OF INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON YOU THE CERTIFICATE HOLDER
 THIS CERTIFICATE IS NOT AN INSURANCE POLICY AND DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE
 POLICIES LISTED BELOW

This is to Certify that

(Name and
address of
insured)

Capital Electric Cooperative, Inc.
 P. O. Box 730
 Bismarck, ND 58502



Federated
 RURAL
 ELECTRIC
 INSURANCE
 CORP.
 P.O. Box 15147
 Lenexa, KS 66285-5147
 1-800-356-8360

is, at the issue date of this certificate, insured by the Company under the policy(ies) listed below. The insurance afforded by the listed policy(ies) is subject to all their terms, exclusions and conditions and is not altered by any requirements, term or condition of any contract or other document with respect to which this certificate may be issued.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EXPIRATION DATE	Limits of Liability in Thousands (000's)		
				EACH OCCURRENCE	AGGREGATE
GENERAL LIABILITY <input checked="" type="checkbox"/> COMPREHENSIVE FORM <input checked="" type="checkbox"/> PREMISES - OPERATIONS <input checked="" type="checkbox"/> EXPLOSION AND COLLAPSE HAZARD <input checked="" type="checkbox"/> UNDERGROUND HAZARD <input checked="" type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS HAZARD <input checked="" type="checkbox"/> CONTRACTUAL INSURANCE <input checked="" type="checkbox"/> BROAD FORM PROPERTY DAMAGE <input checked="" type="checkbox"/> INDEPENDENT CONTRACTORS <input checked="" type="checkbox"/> PERSONAL INJURY	33 ARB 015	1-1-94	BODILY INJURY AND PROPERTY DAMAGE COMBINED	\$1,000	
AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> COMPREHENSIVE FORM <input checked="" type="checkbox"/> OWNED <input checked="" type="checkbox"/> HIRED <input checked="" type="checkbox"/> NON-OWNED			BODILY INJURY AND PROPERTY DAMAGE COMBINED	\$1,000	
EXCESS LIABILITY INCLUDING AUTO & GENERAL <input checked="" type="checkbox"/> UMBRELLA FORM			BODILY INJURY AND PROPERTY DAMAGE COMBINED		
WORKERS' COMPENSATION and EMPLOYER'S LIABILITY			STATUTORY	\$500 (EACH ACCIDENT)	
				\$500 (DISEASE - POLICY LIMIT)	
				\$500 (DISEASE - EACH EMPLOYEE)	
<input checked="" type="checkbox"/> ALL RISK PROPERTY INCL. PHYS. DAMAGE ON VEHICLES					

DESCRIPTION OF OPERATIONS

See attached FORM 14

DATE ISSUED: 5-28-93 sk

NAME AND ADDRESS OF CERTIFICATE HOLDER

City of Bismarck

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES

Shelley W Snyder

 AUTHORIZED REPRESENTATIVE



MISCELLANEOUS ENDORSEMENT

Effective 5-23-93 12:01 a.m. standard time, this endorsement forms a part of Policy No. 33 ARB 015 issued by the Federated Rural Electric Insurance Corporation to: Capital Electric Cooperative, Inc.

THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.

In consideration of the premium charged, Federated and the Insured agree, subject to all provisions of the policy except as modified herein, as follows:

It is agreed that the City of Bismarck is named as an additional insured for the period beginning 5-23-93 and ending 1-1-94 for any loss arising from or as a result of the insured's provision of power to parts of the city, but only as their interest may appear.


Authorized Representative

15 YEAR TOTAL NEW CONSUMERS 312
15 YEAR TOTAL INVESTMENT \$1,804,926.04

1990 - 1994

	WITHIN 1 MILE	New Services	WITHIN 2 MILES	New Services
Service Lines	\$115,313 58	124	\$34,766 43	16
Primary Extensions	\$42,092 65		\$33,737 53	
Replace Cable	\$66,505 22			
Substation	\$282,119 73			
Transmission Line	\$131,569 56		\$277,883 29	
TOTALS	\$637,600.74		\$346,387.25	

1995-1999

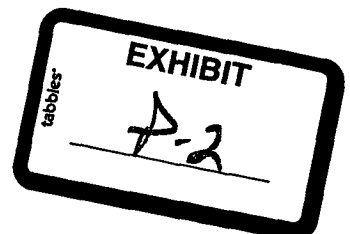
	WITHIN 1 MILE	New Services	WITHIN 2 MILES	New Services
Service Lines	\$36,613 63	38	\$63,074 76	57
Tie Line	\$77,092 80		\$60,900 00	
S Washington Scada	\$69,634 13			
Replace Cable	\$140,353 51			
Primary Extensions	\$23,193 09		\$30,289 88	
Pole Inserts	\$29,650 90			
Re Route Cable			\$13,596 86	
TOTALS	\$376,538.06		\$167,861.50	

2000-2004

	WITHIN 1 MILE	New Services	WITHIN 2 MILES	New Services
Service Lines	\$35,871 96	51	\$30,637 63	26
Primary Extensions	\$49,093 58		\$112,073 74	
Replace Cable	\$24,766 45		\$24,095 13	
TOTALS	\$109,731.99		\$166,806.50	

15 yr total investment:	1 mile	\$1,123,870.79	2 mile	\$681,055.25
15 yr total new services:	1 mile	213	2 mile	99

Total services within 1 mile 724
Total services between 1-2 miles 476
Total services within 2 miles 1200

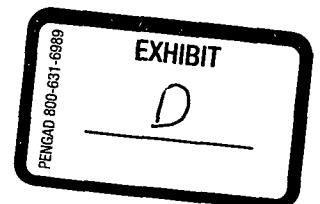


**Montana-Dakota Utilities Co.
C. Botner Electric Extension
Net Contribution to Costs
Case No. PU-04-560**

Total Investment	\$3,590.61	
Authorized Rate of Return	10.016%	
Required Return	\$359.64	
Revenue Required for 10.016% ROR 1/		\$595.53
Estimated Revenues 2/	\$874.80	
Cost of Fuel @ \$.01267	161.00	
Estimated Net Revenues		713.80
Net Contribution to Costs		\$118.27

1/ Income grossed up for tax effect

2/ Based on Residential Rate 10 and annual use of 12,676 Kwh



MONTANA-DAKOTA UTILITIES CO.
CASE NO. PU-04-560
Cost to Extend Service To C. Botner

	<u>Actual</u>
Materials	\$783.69
Labor	630.24
Equipment	173.30
Trench (Contractor)	647.38
Transformer	787.00
Meter	28.00
Subtotal	<u>\$3,049.61</u>
ES & GA (17.74%)	541.00
Total	<u><u>\$3,590.61</u></u>

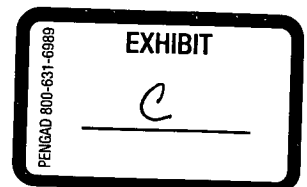
26 **PU-04-560**

Pages 1

MDU, Cost to Extend Service to C. Botner

by Montana-Dakota Utilities Co. a Division of MDU Res
Exhibit # C

04/04/2005 Comm Legal Ilona Pat Jerry Annette



BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA

In the Matter of the Application
of Montana-Dakota Utilities Co.,
a Division of MDU Resources Group, Inc.

CASE NO. _____

APPEARANCE BY CUSTOMER

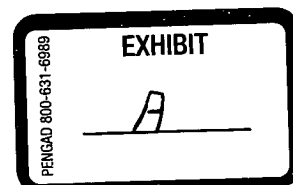
Corey Botner

hereinafter referred to as "Customer", hereby makes a voluntary appearance in this matter and states the following to the Commission:

I.

That he (it) desires electric service from Montana-Dakota Utilities Co. As a public utility subject to the jurisdiction of, and regulation by, this Commission, and has requested said public utility to provide him (it) with immediate electric service at the point located as stated in the Application herein.

That customer further states that he (it) is in need of and has demanded immediate service at said location for the reasons set forth in the Application herein. Customer waives notice of opportunity for hearing and notice of hearing upon said Application, or a hearing thereon, and requests the Commission to issue an Order and Certificate of Public Convenience and Necessity authorizing this requested and needed service, and that provisions be made therein authorizing extension of immediate service.



II.

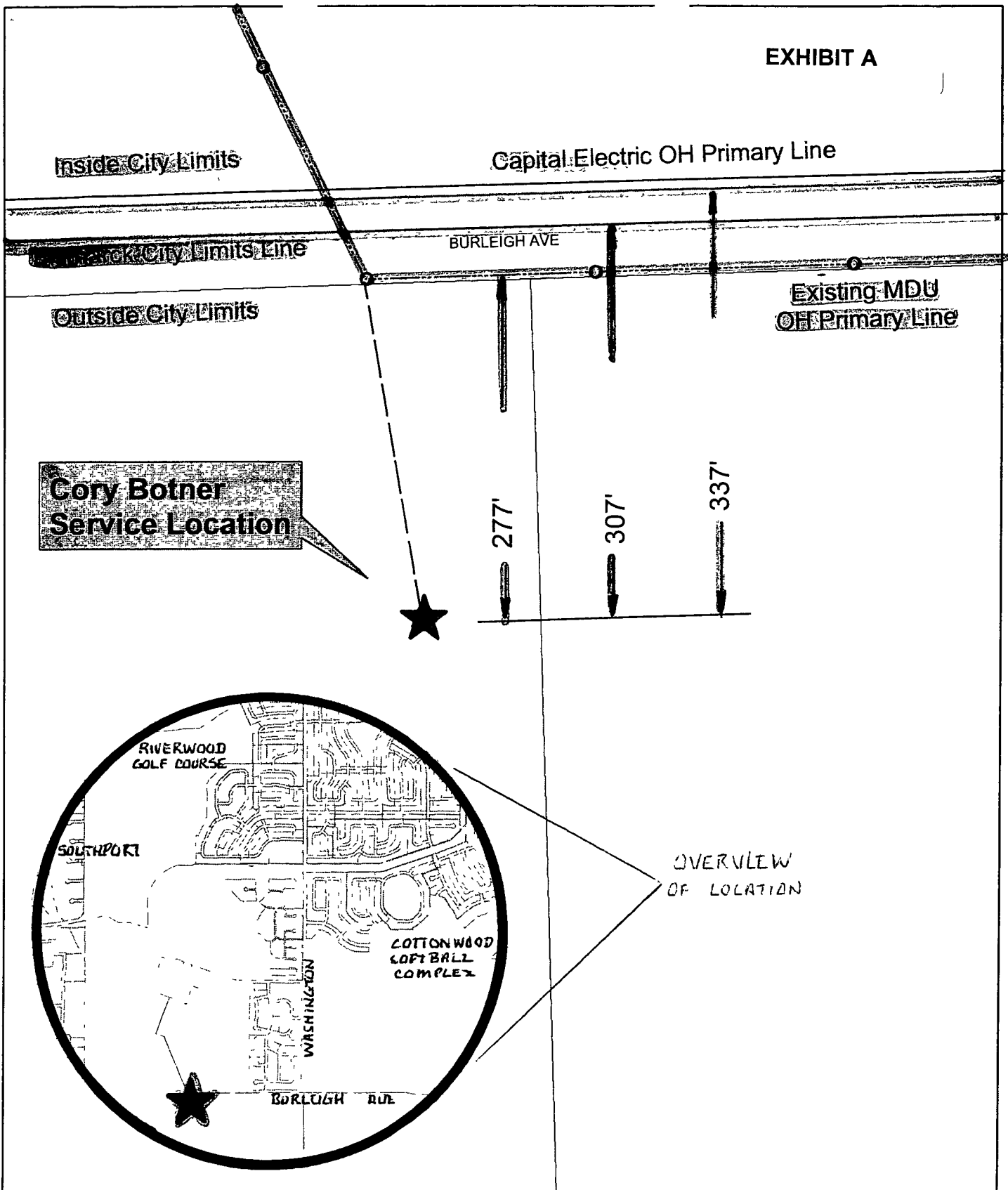
That all the allegations of the Application herein are true and correct.

WHEREFORE, the undersigned, being the Customer involved herein, prays for the entry of an Order and Certificate of Public Convenience and Necessity by the Commission, authorizing the Applicant to immediately extend the requested and needed service to Customer at said location, subject to such appropriate and proper conditions to be appended to and made a part of such Temporary Order and Certificate as the Commission may determine, said Temporary Order and Certificate to become final as may be set forth in the conditions appended thereto; and for such other and further relief as may be proper in the premises.

Dated: 10-7-2004


(Customer)

EXHIBIT A



NE 1/4 of the NW 1/4 of Section 20
Twp 138 N, Rng 80 W

Prepared by: Jayden Veil 224-5838

Corey Botner
Service Request Location

Current Address: 427 Southwood Ave
Service Address: (985?) W. Burleigh Ave

DONALD A NEGAARD
JAMES E NOSTDAHL
CAROL K LARSON
DAVID J HOGUE
REED A SODERSTROM
BRENT M OLSON
DEBRA L HOFFARTH
SCOTT M KNUDSVIG
ERIKA L SLEGER
RYAN D SANDBERG

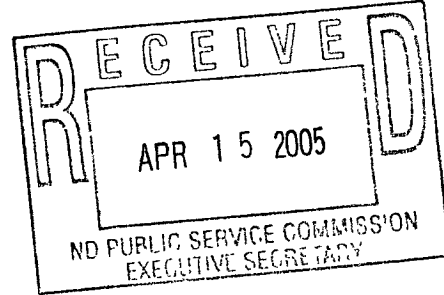
PH
LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail pringle@srt.com

OF COUNSEL
HERBERT L MESSCHKE

RETIRED
THOMAS A WENTZ
MARK F PURDY
JAN M SEBBY

KENNETH G PRINGLE
(1914-1983)
ROGER O HERIGSTAD
(1919-2003)

April 15, 2005



Ms Illona A Jeffcoat-Sacco
Executive Secretary
PUBLIC SERVICE COMMISSION
600 E Boulevard Avenue, Department 408
Bismarck, ND 58505-0480

**MONTANA-DAKOTA UTILITIES CO.
COREY BOTNER
BISMARCK, NORTH DAKOTA
PUBLIC CONVENIENCE & NECESSITY
CASE NO. PU-04-560**

Enclosed for filing in the above matter are an original and seven copies of the Response of Capital Electric Cooperative, Inc , to Late Filed Exhibit E of Montana-Dakota Utilities Co

A handwritten signature in black ink, appearing to be "Don Negaard".

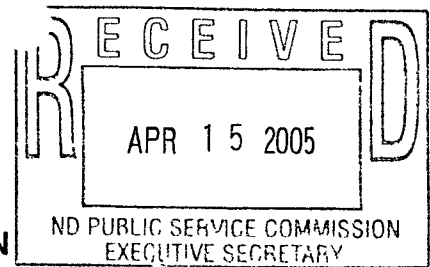
Don Negaard

jt

Enclosures

cc/enc Dan Kuntz, Montana-Dakota Utilities Co

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



Montana-Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity

Case No. PU-04-560

**RESPONSE OF CAPITAL ELECTRIC COOPERATIVE, INC.,
TO LATE FILED EXHIBIT E OF MONTANA-DAKOTA UTILITIES CO.**

Capital Electric Cooperative, Inc , (Capital Electric) hereby resists the Motion to Accept Late Filed Exhibit E of Montana-Dakota Utilities Co (MDU)

MDU cites no procedural rule or other authority that would allow it to file a "late filed exhibit " There is none The record in this case was closed at the end of the hearing Both parties rested their cases MDU did not suggest or ask for the record to be kept open As such, the record is closed

Capital Electric submits it would be an error to grant the motion to "late file an exhibit "

Dated this 15th day of April, 2005

PRINGLE & HERIGSTAD, P C

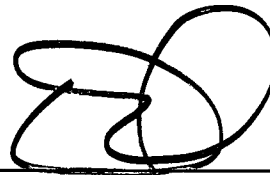
A handwritten signature in black ink, appearing to be "Don Negaard", written over the printed name.

By Don Negaard, ND Bar ID #03598
Attorneys for Capital Electric
Cooperative, Inc
2525 Elk Drive, P O Box 1000
Minot, ND 58702-1000
(701) 852-0381
Fax (701) 857-1361
pringle@srt.com

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Response of Capital Electric Cooperative, Inc , to Late Filed Exhibit E of Montana-Dakota Utilities, Inc , was mailed on the 15th day of April, 2005, to the following

Dan Kuntz
Montana-Dakota Utilities Co
400 North 4th Street
Bismarck, ND 58501

A handwritten signature in black ink, consisting of several overlapping loops and curves, positioned above a horizontal line.

Don Negaard

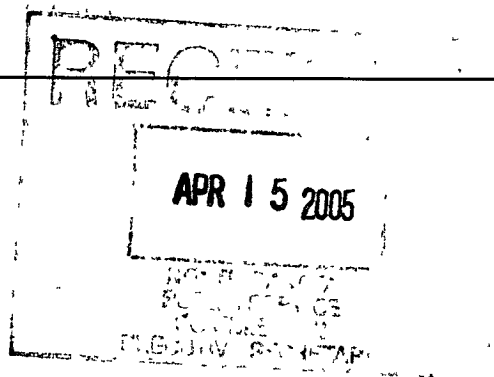
MDU RESOURCES

GROUP, INC.

Schuchart Building
918 East Divide Avenue

Mailing Address
P O Box 5650
Bismarck, ND 58506-5650
(701) 222-7900

Direct Dial No
(701) 222-7612
(701) 222-7607 (fax)



April 14, 2005

Ms. Ilona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
State Capital – Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

Re: Montana-Dakota Utilities Co./Corey Botner
N.D.P.S.C. Case No. PU-04-560

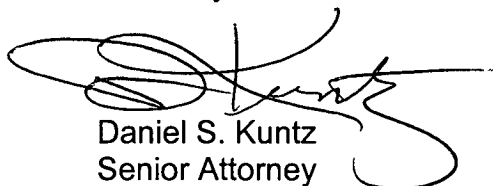
Dear Ms. Jeffcoat-Sacco:

Enclosed for filing in the above referenced proceeding are the original and seven copies of a Motion to Accept Late Filed Exhibit submitted on behalf of Montana-Dakota Utilities Co. By this Motion, Montana-Dakota Utilities Co. requests the Commission to accept the documents attached to the Motion as Late Filed Exhibit E in this proceeding.

Also enclosed is an additional copy of this transmittal letter. Please date stamp the copy and return it to us in the enclosed self-addressed envelope.

Please contact me if you have any questions regarding this filing.

Sincerely,



Daniel S. Kuntz
Senior Attorney

DSK/djv
Enclosure

cc: Donald Negaard
William W. Binek
Don Ball

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Montana-Dakota Utilities Co./
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity**

Case No. PU-04-560

MOTION TO ACCEPT LATE FILED EXHIBIT E

April 14, 2005

The applicant, Montana-Dakota Utilities Co. ("Montana-Dakota"), moves the Commission to accept the attached documents as late filed Exhibit E in this proceeding. During the hearing in this matter, the protestant Capital Electric Cooperative offered plaintiff's Exhibit P-5 which is a letter agreement dated June 3, 1993 between Capital Electric Cooperative and Montana-Dakota. Montana-Dakota objected to admission of this exhibit on the grounds that it is not relevant to the issues set forth in the Notice of Hearing for this proceeding. Nonetheless, the Hearing Officer admitted Exhibit P-5. During cross-examination Capital Electric's witness, Lars Nygren, testified that he believed Exhibit P-5 was prepared by Montana-Dakota. The enclosed late filed Exhibit E consists of a facsimile cover sheet and attachment including a note from Mr. Nygren to Montana-Dakota's representative Orren Vinger which establishes that the document was prepared by Capital Electric's attorney Mark Purdy, a former member of Mr. Negaard's law firm.

To the extent the Commission considers Exhibit P-5, it should admit and consider Exhibit E. The parties disagree regarding the interpretation of Exhibit P-5. Under N.D.C.C. §9-07-19, ambiguities of written agreements such as Exhibit P-5 must be interpreted against the party who drafted the document. Northwest G.F. Mutual

Insurance Co. v. Norgard, 518 N.W.2d 179 (N.D. 1994) Accordingly, Exhibit E is relevant to any consideration of Exhibit P-5 and the ambiguities of Exhibit P-5 must be interpreted against Capital Electric.

For the foregoing reasons, Montana-Dakota requests the Commission to accept Exhibit E as a late filed exhibit in this proceeding.

Dated this 14th day of April, 2005

Respectfully submitted,
Montana-Dakota Utilities Co., a Division of MDU
Resources Group, Inc.

By: 

Daniel S. Kuntz (ND #03490)
Senior Attorney
MDU Resources Group, Inc.
918 East Divide Avenue
P.O. Box 5650
Bismarck, ND 58506-5650
(701)222-7612



CAPITAL
ELECTRIC
COOPERATIVE, INC.

4111 State Street North, P.O. Box 730, Bismarck, North Dakota 58502-0730, Telephone 701-223-1513

FACSIMILE TRANSMISSION COVER SHEET

DATE 5/25/93 TIME 10:36 A.m.
 TO Daren Vinger
 COMPANY NAME MDU
 LOCATION Bismarck
 FAX NO. 221-4329
 PHONE NO. _____
 FROM Barry Rygren PHONE 223-1513
 NUMBER OF PAGES INCLUDING THIS COVER SHEET 2

OUR FAX NO. (701) 223-1557

COMMENTS Mark Purdy, Faxed the enclosed
amendment to me. Please review
and give me a call. Thank
you Barry.



NORTH DAKOTA
CENTENNIAL
1889-1989

LETTER AGREEMENT
AMENDING SERVICE AREA AGREEMENT
BETWEEN
CAPITAL ELECTRIC COOPERATIVE, INC.
AND
MONTANA-DAKOTA UTILITIES CO.

It is intended by the parties hereto to amend the July 5, 1973, Area Service Agreement, as amended, between Capital Electric Cooperative, Inc. and Montana-Dakota Utilities Co., which agreement sets forth and describes the service areas in the City of Bismarck, North Dakota, to be served by Capital Electric Cooperative, Inc., and describes the service areas in the City of Bismarck, North Dakota, to be served by Montana-Dakota Utilities Co.

It is agreed and understood that in the event that the said Service Agreement of July 5, 1973, as amended, is canceled by either Capital Electric Cooperative, Inc. or Montana-Dakota Utilities Co. during the term of either party's existing franchise with the City of Bismarck, North Dakota, that all of the privileges, rights, obligations, and restrictions as contained in such July 5, 1973, Service Agreement, as amended, shall, notwithstanding such cancellation, continue during the term of either party's respective franchise with the City of Bismarck to apply equally to both Capital Electric Cooperative, Inc. and Montana-Dakota Utilities Co.

AGREED TO and made a part of the 1973 Area Service Agreement this _____ day of _____, 1993.

CAPITAL ELECTRIC COOPERATIVE, INC.

MONTANA-DAKOTA UTILITIES CO.

Attest _____

Attest _____

(seal)

(seal)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity

Case No. PU-04-560

AFFIDAVIT OF SERVICE BY FIRST CLASS MAIL

STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

Dorothy Vedvick deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **14th day of April, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, one envelope with fully prepaid, securely sealed and each containing a photocopy of:

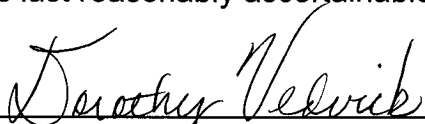
Motion to Accept Late Filed Exhibit

The envelope was addressed as follows:

Donald A. Negaard
Pringle & Herigstad, P.C.
2525 Elk Drive
Minot, ND 58702

William W. Binek
Chief Counsel
North Dakota Public Service Commission
State Capitol
Bismarck, ND 58505

Each address shown is the respective addressee's last reasonably ascertainable post office address.

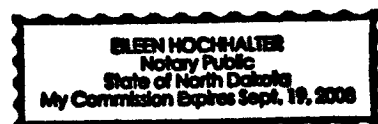
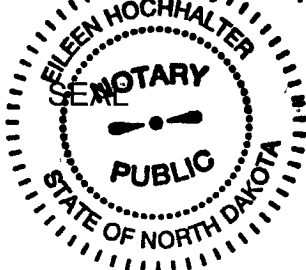


Dorothy Vedvick

Subscribed and sworn to before me
this **14th day of April, 2005**.



Notary Public





OFFICE OF ADMINISTRATIVE HEARINGS

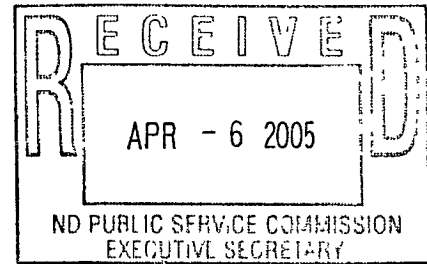
STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C Hoberg
DIRECTOR

701-328-3260
Fax 701-328-3254
oah@state.nd.us
www.state.nd.us/oah

April 5, 2005

Mr. William W. Binek
Hearing Administrator
Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck, ND 58505-0480



Re: Montana-Dakota Utilities Co./Corey Botner
PU-04-560
OAH File No. 20050065

Dear Mr. Binek:

On April 4, 2005, I presided as a procedural administrative law judge in the matter of the Montana-Dakota Utilities Co./Corey Botner application hearing. The hearing is closed. The parties will be filing written closing briefs and proposed findings of fact, conclusions of law, and order on April 29, 2005. Accordingly, I am closing our file on this matter and returning that portion of the record I have in my possession to you. Please find enclosed copies of documents that have been transmitted to us, as well as originals and copies of documents received while the file was in our possession, for filing with the official agency record of this matter, as appropriate.

Thank you for your attention to this matter.

Sincerely,

Allen C. Hoberg
Administrative Law Judge

ACH/eap

Encl.

cc: Mr. Daniel S. Kuntz
Montana-Dakota Utilities Co.
Mr. Donald A. Negaard
Pringle & Herigstad, P.C.



OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA

1707 North 9th Street

Bismarck, North Dakota 58501-1882

Allen C Hoberg
DIRECTOR

701-328-3260

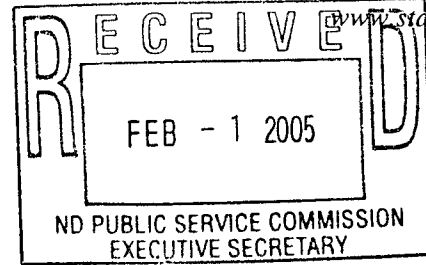
Fax 701-328-3254

oah@state.nd.us

January 31, 2005

www.state.nd.us/oah

Mr. William W. Binek
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480



Dear Mr. Binek:

Thank you for your January 27, 2005, request of the designation of an administrative law judge from the Office of Administrative Hearings to conduct a hearing in the matter of Montana-Dakota Utilities Co., Corey Botner (PU-04-560). I hereby designate myself to be assigned as an administrative law judge to conduct the hearing in regard to this matter. Because the administrative law judge will not be making recommended findings of fact and conclusions of law, or issuing a recommended order, the person or persons who will be making the final administrative decision in regard to this matter (*i.e.*, commission) must be in attendance at the hearing

Please send all additional relevant documents in regard to this matter (correspondence, and other pleadings and documents) to the designated administrative law judge in care of the Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota 58501-1882. I understand the hearing is scheduled for April 4, 2005, beginning at 9:00 a.m., in the Commission Hearing Room, 12th Floor, State Capitol. Because the administrative law judge is requested to conduct the hearing only, the agency must give proper notice of the hearing.

Your request has been assigned OAH File No. 20050065. Please include this number on all future documents and correspondence filed for this matter with the Office of Administrative Hearings.

Sincerely,

Allen C. Hoberg
Director

ACH/eap

cc: Daniel S. Kuntz
Don Negaard



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E Wefald
Kevin Cramer

Executive Secretary
Ilona A. Jeffcoat-Sacco

600 E Boulevard Ave Dept 408
Bismarck, North Dakota 58505-0480
web www.psc.state.nd.us
e-mail ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

January 27, 2005

Daniel S. Kuntz
Montana-Dakota Utilities Co.
400 North 4th Street
Bismarck, N D 58501

Don Negaard
Pringle & Herigstad P.C.
P. O. Box 1000
Minot, ND 58702-1000

Re: Request for Court Reporter
Case No. PU-04-560
Montana-Dakota Utilities Co.
Corey Botner, Bismarck, ND
Public Convenience and Necessity

Dear Mr. Kuntz and Mr. Negaard:

The hearing in the above case has been scheduled for April 4, 2005, beginning at 9 a.m., in the Commission Hearing Room. The Commission will tape record the hearing. If parties would like a court reporter present at the hearing they may do so, and may make their own arrangements. However, if parties would like the Commission to arrange for a court reporter please notify the Commission in writing within ten days of receipt of this letter and our office will make the necessary arrangements.

Parties will pay all costs associated with the court-reporting service.

If you have any questions, please contact us.

Sincerely,


William W. Binek
Hearing Administrator



Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E Wefald
Kevin Cramer

Executive Secretary
Ilona A. Jeffcoat-Sacco

600 E Boulevard Ave Dept 408
Bismarck, North Dakota 58505-0480
web www.psc.state.nd.us
e-mail ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

January 27, 2005

Mr. Allen C. Hoberg
Office of Administrative Hearings
1707 North 9th Street, Lower Level
Bismarck, ND 58501

Re: Montana-Dakota Utilities Co.
Corey Botner, Bismarck, ND
Public Convenience and Necessity
Case No. PU-04-560

Dear Mr. Hoberg:

Enclosed is a request for an administrative law judge in the above case. The Commission has scheduled a hearing for April 4, 2005, beginning at 9 a.m., in the Commission's Hearing Room, 12th Floor, State Capitol, Bismarck. The administrative law judge will serve as a procedural law judge and the hearing will be tape recorded. A copy of the case is enclosed.

Please provide the Commission with a copy of any filings issued by your office in this matter.

If you have any questions, please contact me. Thank you.

Sincerely,


William W. Binek
Hearing Administrator

/sls
Enclosure

c Daniel S. Kuntz
Don Negaard



REQUEST FOR ADMINISTRATIVE LAW JUDGE--APPEAL, APPLICATION, OR PETITION
 NORTH DAKOTA OFFICE OF ADMINISTRATIVE HEARINGS
 SFN 17819 (Rev 03-2001)

Name of Agency, Board, or Commission
 Public Service Commission

The above named agency, board, or commission requests designation of an administrative law judge from the Office of Administrative Hearings for the Hearing in Case No. PU-04-560, Montana-Dakota Utilities Co , Corey Botner, Bismarck, ND, Public Convenience and Necessity application Hearing is set for April 4, 2005, at 9 a m , Commission Hearing Room, 12th Floor, State Capitol (e g , application of [name], appeal of [name], petition of [name]) Authority for the administrative action is found in Title 49 _____ (North Dakota Century Code and/or North Dakota Administrative Code).

Please attach related documents and correspondence.

The administrative action is more fully described as follows
 MDU filed an application for a certificate to extend electric service to Corey Botner, for a residential site near Bismarck, ND Capital Electric Cooperative filed a protest and request for hearing

It requests designation of an administrative law judge (please check one):

- To conduct the hearing and issue recommended findings of fact, conclusions of law, and order.
- To serve as a procedural administrative law judge only (no recommended decision). The agency head will be present at the hearing as required by NDCC 54-57-04(6).
- To conduct the hearing, issue findings of fact, conclusions of law, and a final order.

PLEASE MAKE A REQUEST FOR AN ADMINISTRATIVE LAW JUDGE AT LEAST ONE MONTH BEFORE THE HEARING.

Please list parties, including the agency if it is a Party, and Representation [attorney (or other)] if known, or Agency Contact. (Attach separate list if necessary.)

AGENCY Public Service Commission	Address 600 E Blvd. Ave., Dept 408, Bismarck, ND	Telephone Number 328-2400
Representation William W. Binek, Chief Counsel	Address Same as Above	Telephone Number 328-4088
PARTY Montana-Dakota Utilities Co.	Address 400 N 4th Street, Bismarck, ND	Telephone Number 222-7900
Representation Daniel S Kuntz, Senior Attorney	Address Same as above	Telephone Number 222-7612
PARTY Capitol Electric Cooperative	Address P. O. Box 730, Bismarck, ND 58502-0730	Telephone Number
Representation Don Negaard, Pringle & Herigstad P.C.	Address P. O. Box 1000, Minot, ND 58702-1000	Telephone Number 852-0381

Additional Comments
 Hearing will be tape recorded

(For agencies required to use OAH, notice of hearing will be issued by the administrative law judge, unless a procedural administrative law judge is requested. Other requesting agencies and agencies requesting a procedural administrative law judge should first contact OAH about scheduling a hearing. If notice has already been issued, attach a copy of the notice)

Typed or Printed Name and Title of Requesting Person William W Binek, Hearing Administrator	Date 1-27-05
Signature of Requesting Person x	Telephone Number 328-4088

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity

Case No. PU-04-560

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that

she is over the age of 18 years and not a party to this action and, on the **27th day of January, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **three** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of

Notice of Rescheduled Hearing

The envelopes were addressed as follows

Dan Kuntz
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501
Cert. No. 7003 2260 0001 3517 9374

Ordean "Lars" Nygren
Capital Electric Cooperative
P O Box 730
Bismarck ND 58502-0730
Cert. No. 7003 2260 0001 3517 9381

Don Negaard
Pringle & Herigstad Atty
P O Box 1000
Minot ND 58702-1000
Cert. No. 7003 2260 0001 3517 9398

Sharon Helbling further deposes and says that on the **27th day of January, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **three** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Mack Huncovsky
Montana-Dakota Utilities Co
P O Box 1457
Bismarck ND 58502-1457

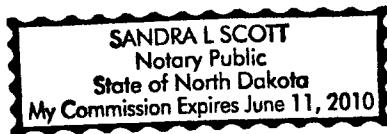
ND Association of RECs
P O Box 727
Mandan, ND 58554

Don Ball
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501

Each address shown is the respective addressee's last reasonably ascertainable post office address

Subscribed and sworn to before me
this **27th day of January, 2005**

SEAL



Sharon Hedding

Sandra L Scott

Notary Public

APPROVED

MOTION

DATE: 1-26-05
KMF

January 26, 2005

**Montana-Dakota Utilities Co.
Corey Botner
Bismark, North Dakota
Public Convenience and Necessity**

Case No. PU-04-560

I move the Commission issue a Notice of Rescheduled Hearing in Montana-Dakota Utilities Co 's application for a Certificate of Public Convenience and Necessity to extend electric service to Corey Botner for a residential site near Bismarck, North Dakota, Case No PU-04-560, rescheduling the hearing for April 4, 2005.

sdh

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity

Case No. PU-04-560

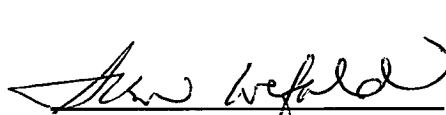
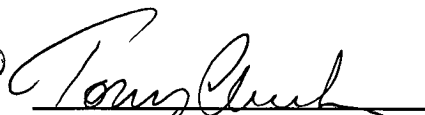
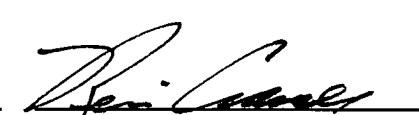
NOTICE OF RESCHEDULED HEARING

January 26, 2005

The hearing in this proceeding which was originally scheduled for February 2, 2005, is rescheduled to **April 4, 2005 at 9 a.m. in the Commission Hearing Room, 12th Floor, State Capitol, Bismarck, North Dakota.**

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400, or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or braille materials please notify Illona Jeffcoat-Sacco, Executive Secretary, at least 24 hours prior to the hearing.

PUBLIC SERVICE COMMISSION

		
Susan E. Wefald Commissioner	Tony Clark President	Kevin Cramer Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity

Case No. PU-04-560

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **30th day of December, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **three** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of

Notice of Hearing

The envelopes were addressed as follows:

Dan Kuntz
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501
Cert. No. 7003 2260 0001 3517 9305

Ordean "Lars" Nygren
Capital Electric Cooperative
P O Box 730
Bismarck ND 58502-0730
Cert. No. 7003 2260 0001 3517 9312

Don Negaard
Pringle & Herigstad Atty
P O Box 1000
Minot ND 58702-1000
Cert. No. 7003 2260 0001 3517 9329

Sharon Helbling further deposes and says that on the **30th day of December, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **three** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

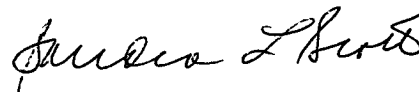
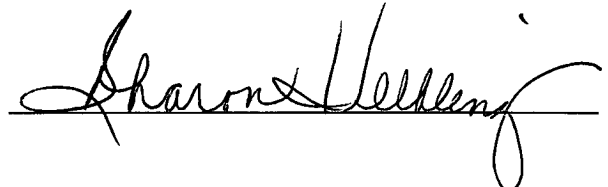
Mack Huncovsky
Montana-Dakota Utilities Co
P O Box 1457
Bismarck ND 58502-1457

ND Association of RECs
P O Box 727
Mandan, ND 58554

Don Ball
Montana-Dakota Utilities Co.
400 N 4th St
Bismarck ND 58501

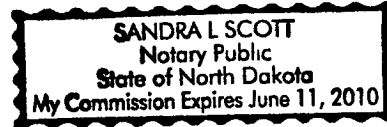
Each address shown is the respective addressee's last reasonably ascertainable post office address

Subscribed and sworn to before me
this **30th day of December, 2004.**



Notary Public

SEAL



MOTION

APPROVED

DATE: 12-30-04
KME

December 30, 2004

**Montana-Dakota Utilities Co.
Corey Botner
Bismark, North Dakota
Public Convenience and Necessity**

Case No. PU-04-560

I move the Commission issue a Notice of Hearing in Montana-Dakota Utilities Co 's application for a Certificate of Public Convenience and Necessity to extend electric service to Corey Botner for a residential site near Bismarck, North Dakota, Case No. PU-04-560

sdh

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity

Case No. PU-04-560

NOTICE OF HEARING

December 30, 2004

On October 11, 2004, Montana Dakota Utilities Co. (MDU) requested authority to extend temporary electric service to Corey Botner for a residential site located in the NE 1/4 of NW 1/4, Section 20, Township 138 North, Range 80 West, Burleigh County, North Dakota. MDU's request for temporary authority was granted on October 18, 2004.

On October 25, 2004, MDU filed an application under North Dakota Century Code Chapter 49-03, for a certificate of public convenience and necessity to extend permanent electric service

On October 27, 2004 the Commission issued a Notice of Opportunity for Hearing, which provided that the matter would be set for hearing if written objection was received by November 29, 2004.

On November 23, 2004, Capital Electric Cooperative filed a Protest requesting that MDU's application be set for hearing.

The Public Service Commission has scheduled a **public hearing** on MDU's application beginning on **February 2, 2005 at 9 a.m. in the Commission Hearing Room, 12th Floor, State Capitol, Bismarck, North Dakota**

The issues to be considered in this matter are

- 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 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?

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 application 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 unreasonably interfere with the service or system of the other?

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400, or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or braille materials please notify Illona Jeffcoat-Sacco, Executive Secretary, at least 24 hours prior to the hearing.

PUBLIC SERVICE COMMISSION

		
Susan E. Wefald Commissioner	Tony Clark President	Kevin Cramer Commissioner

DONALD A NEGAARD
JAMES E NOSTDAHL
CAROL K LARSON
DAVID J HOGUE
REED A SODERSTROM
BRENT M OLSON
DEBRA L HOFFARTH
SCOTT M KNUDSVIG
ERIKA L SLEGER
RYAN D SANDBERG

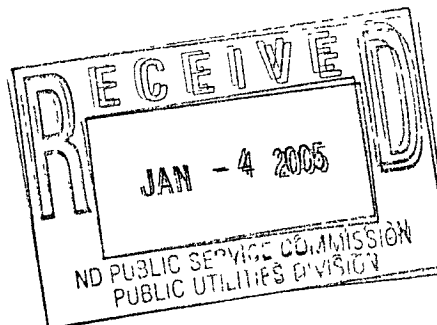
PH
LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail pringle@srt.com

OF COUNSEL
HERBERT L MESCHKE

RETIRED
THOMAS A WENTZ
MARK F PURDY
JAN M SEBBY

KENNETH G PRINGLE
(1914-1983)
ROGER O HERIGSTAD
(1919-2003)

January 3, 2005



Ms Illona A Jeffcoat-Sacco
Executive Secretary
PUBLIC SERVICE COMMISSION
600 E Boulevard Avenue, Department 408
Bismarck, ND 58505-0480

MONTANA-DAKOTA UTILITIES CO.
COREY BOTNER
BISMARCK, NORTH DAKOTA
PUBLIC CONVENIENCE & NECESSITY
CASE NO. PU-04-560

We are in receipt of the December 30 notice of the hearing which has been scheduled in this matter for February 2, 2005, at 9 a m This letter is to advise you that Capital Electric Cooperative personnel and I will not be able to attend the hearing on that date

We would request that the Public Service Commission set a hearing date in April in order to facilitate the schedules of Capital Electric personnel and myself and to allow for completion of discovery in this matter

I would be happy to visit with counsel for the Public Service Commission and Attorney Kuntz in order to arrive at a mutually agreeable date

Thank you for your cooperation and consideration

Don Negaard

jt

cc Daniel S Kuntz
Capital Electric Cooperative, Inc , Attention Ordean "Lars" Nygren
Harlan Fuglesten



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E Wefald
Kevin Cramer

Executive Secretary
Illona A Jeffcoat-Sacco

600 E Boulevard Ave Dept 408
Bismarck, North Dakota 58505-0480
web www.psc.state.nd.us
e-mail ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

December 20, 2004

Don Negaard
Pringle & Heringstad, P.C.
2525 Elk Drive
PO Box 1000
Minot, ND 58702

RE: Montana Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity
Case No. PU-04-560

Dear Mr. Negaard

Thank you for taking time to discuss this case with us on December 16, 2004. Per our conversation, you have agreed not to further challenge the temporary authority granted to Montana Dakota Utilities Co. to provide temporary service to Corey Botner.

It has long been Commission policy that temporary service is not one of the factors the commission uses in deciding permanent authority. Failure to contest temporary service will not harm your claim.

If you have any questions please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Annette Bendish".

Annette Bendish

C: Dan Kuntz

DONALD A NEGAARD
JAMES E NOSTDAHL
CAROL K LARSON
DAVID J HOGUE
REED A SODERSTROM
BRENT M OLSON
DEBRA L HOFFARTH
SCOTT M KNUDSVIG
ERIKA L SLEGER
RYAN D SANDBERG



LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.

2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail pringle@srt.com

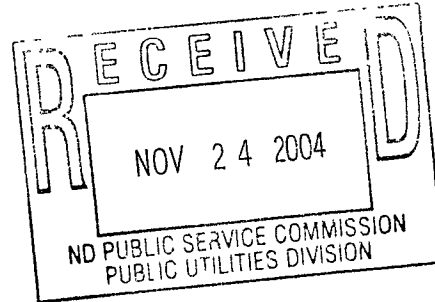
OF COUNSEL
HERBERT L MESHKE

RETIRED
THOMAS A WENTZ
MARK F PURDY
JAN M SEBBY

KENNETH G PRINGLE
(1914-1983)
ROGER O HERIGSTAD
(1919-2003)

November 23, 2004

Ms Illona A Jeffcoat-Sacco
Executive Secretary
PUBLIC SERVICE COMMISSION
600 E Boulevard Avenue, Department 408
Bismarck, ND 58505-0480



**MONTANA-DAKOTA UTILITIES CO.
COREY BOTNER
BISMARCK, NORTH DAKOTA
PUBLIC CONVENIENCE & NECESSITY
CASE NO. PU-04-560**

Enclosed for filing in the above matter are an original and seven copies of a protest. This protest is being filed on behalf of Capital Electric Cooperative, Inc.

Don Negaard

jt

Enclosures

cc/enc Capital Electric Cooperative, Inc , Attention Ordean "Lars" Nygren

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity

Case No. PU-04-560

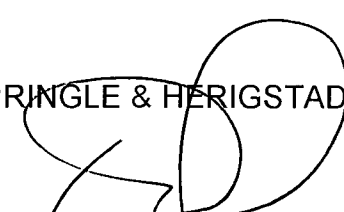
PROTEST

November 23, 2004

Capital Electric Cooperative, Inc , hereby protests the application of Montana-Dakota Utilities Co to extend service to Corey Botner for a residential site near Bismarck, North Dakota, which application was filed on October 25, 2004 Capital Electric Cooperative, Inc , further requests the PSC to hold a hearing, authorize discovery in this matter pending a hearing, and revoke a Temporary Authority Permit authorized on October 18, 2004

Dated this 23rd day of November, 2004

PRINGLE & HERIGSTAD, P C



By Don Negaard, ND Bar ID #03598
Attorneys for Capital Electric
Cooperative, Inc
2525 Elk Drive
P O Box 1000
Minot, ND 58702-1000
(701) 852-0381
Fax (701) 857-1361
pringle@srt.com

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Protest was mailed on the 23rd day of November, 2004, to the following

Dan Kuntz
Montana-Dakota Utilities Co
400 North 4th Street
Bismarck, ND 58501

Mack Huncovsky
Montana-Dakota Utilities Co
P O Box 1547
Bismarck, ND 58502-1547

Don Ball
Montana-Dakota Utilities Co
400 North 4th Street
Bismarck, ND 58501

ND Association of RECs
P O Box 727
Mandan, ND 58554



Don Negaard

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity

Case No. PU-04-560

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **28th day of October, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Notice of Opportunity for Hearing

The envelopes were addressed as follows:

Dan Kuntz
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501
Cert. No. 7003 2260 0001 3517 1279

Ordean "Lars" Nygren
Capital Electric Cooperative
P O Box 730
Bismarck ND 58502-0730
Cert. No. 7003 2260 0001 3517 1286

Sharon Helbling further deposes and says that on the **28th day of October, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **four** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same

Mack Huncovsky
Montana-Dakota Utilities Co
P O Box 1457
Bismarck ND 58502-1457

ND Association of RECs
P O Box 727
Mandan, ND 58554

Pringle & Herigstad Atty
P O Box 1000
Minot ND 58702-1000

Don Ball
Montana-Dakota Utilities Co.
400 N 4th St
Bismarck ND 58501

Each address shown is the respective addressee's last reasonably ascertainable post office address.



A handwritten signature in cursive script, appearing to read "Sharon Helking", is written over a horizontal line.

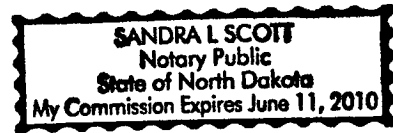
Subscribed and sworn to before me
this **28th day of October, 2004**



A handwritten signature in cursive script, appearing to read "Sandra L Scott", is written over a horizontal line.

Notary Public

SEAL



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity

Case No. PU-04-560

NOTICE OF OPPORTUNITY FOR HEARING

October 27, 2004

On October 25, 2004, Montana-Dakota Utilities Co , an electric public utility, filed an application under Chapter 49-03, N D C.C. to extend service to Corey Botner for a residential site near Bismarck, North Dakota

Submitted with the application was a statement from the customer, Corey Botner, that he desires electric service to be provided by the applicant at a point located in

**NE 1/4 of the NW 1/4 of Section 20, Township 138N, Range
80W, Burleigh County, North Dakota**

Montana-Dakota Utilities Co states that electric service is needed immediately at that location, and the applicant has made a prima facie showing that it should serve the customer.

Any interested party has the right to file written objection, based on the issue of public convenience and necessity, with the Commission by **November 29, 2004**, and the matter will then be set for hearing. If no objections are received by that date, the application may be granted as requested

PUBLIC SERVICE COMMISSION


Susan E. Wefald
Commissioner


Tony Clark
President


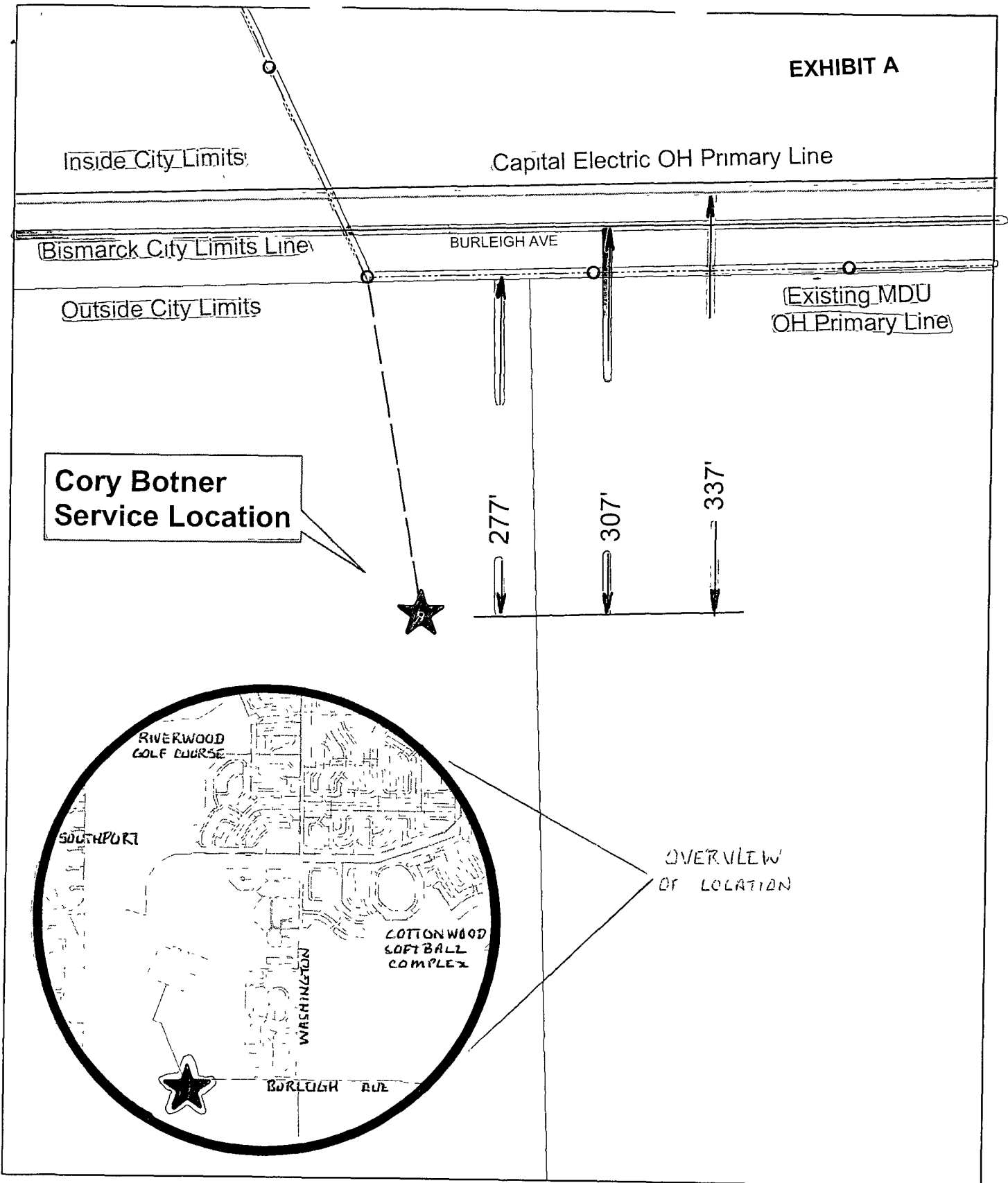

Kevin Cramer
Commissioner

EXHIBIT A



NE 1/4 of the NW 1/4 of Section 20
Twp 138 N, Rng 80 W

Corey Botner
Service Request Location

Current Address: 427 Southwood Ave
Service Address: (985?) W. Burleigh Ave

Prepared by: Jayden Veil 224-5838



MONTANA-DAKOTA

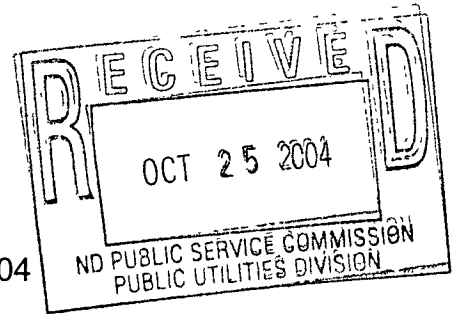
UTILITIES CO.

A Division of MDU Resources Group, Inc

400 North Fourth Street
Bismarck, ND 58501
(701) 222-7900

Direct Dial No
(701) 222-7612

October 22, 2004



Ms. Illona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
State Capitol – Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

RE. Application for Permanent Authority to serve
Corey Botner – Bismarck, North Dakota

Dear Ms. Jeffcoat-Sacco:

Enclosed are an original and one copy of an Application for Permanent Authority to extend electric service to Corey Botner, 427 Southwood Avenue, Bismarck, North Dakota at a location in the NE 1/4 of NW 1/4, Section 20, Township 138 North, Range 80 West, Burleigh County, Bismarck, North Dakota.

Sincerely,

Daniel S. Kuntz
Senior Attorney

DSK/eeh
Enclosures

cc/enc. Capital Electric Cooperative
Mack Huncovsky – Bismarck Office

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA**

In the Matter of the Application)
of MONTANA-DAKOTA UTILITIES CO.,)
a Division of MDU Resources Group,)
Inc., Bismarck, North Dakota,)
for an Order and Certificate to)
Extend Service to Corey Botner)
at Bismarck, North Dakota)

APPLICATION FOR PERMANENT AUTHORITY

MONTANA-DAKOTA UTILITIES CO., for its Application to the Public Service Commission of North Dakota, respectfully alleges:

I.

The full name of Applicant is Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., and the post office address of its principal office is 400 North Fourth Street, Bismarck, North Dakota 58501. Applicant is a public utility subject to the jurisdiction of and regulation by the Public Service Commission of North Dakota, under Title 49, N.D.C.C., as amended. MDU Resources Group, Inc.'s Certificate of Incorporation is incorporated herein by reference, and the Commission is requested to take official notice of the same.

II.

This Application is made pursuant to the provisions of Chapter 49-03, N.D.C.C., as amended, and the Rules of Practice and Procedure promulgated by the Commission

III.

Application has been requested by Corey Botner, hereinafter referred to as "Customer," to provide electric service to him at a new location in the NE¼ of NW¼ of

Section 20, Township 138N, Range 80W, Burleigh County, North Dakota, as shown on the map attached hereto, marked Exhibit "A," and made a part hereof by reference. The Customer's current address is 427 Southwood Avenue, Bismarck, North Dakota 58504. Customer will need electric service at the new location on October 15, 2004.

IV.

The service required by Customer at said new location is single phase service, and the length of the extension will be approximately 277 feet, as shown by Exhibit "A." The location of the proposed service is within the economic service area of Applicant and service will be extended under the provisions of the rules and regulations applicable thereto. It is Applicant's public utility obligation to furnish the requested service, and the public convenience and necessity requires, and will be served by, Applicant furnishing the requested service to this Customer at said new location.

V.

Submitted with this Application is an Appearance by Customer herein, in which Customer states to the Commission that he desires electric service from Applicant as a public utility subject to the jurisdiction of, and regulation by, this Commission. In said Appearance, Customer also waives Notice of Opportunity for Hearing and Notice of Hearing upon this Application, or a hearing thereon, and requests the Commission to issue an Order and Certificate of Public Convenience and Necessity authorizing this requested and needed service

VI

The extension will not cross any railroad tracks.

WHEREFORE, Applicant prays for the entry of an Order and Certificate of Public Convenience and Necessity authorizing Applicant to extend the requested and needed service to Customer

MONTANA-DAKOTA UTILITIES CO.
a Division of MDU Resources Group, Inc.



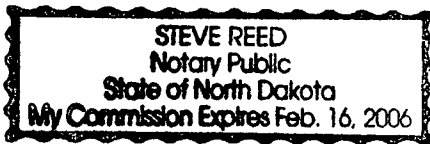
By. Donald R. Ball
Donald R. Ball
Assistant Vice President – Regulatory Affairs

STATE OF NORTH DAKOTA)
)ss.
COUNTY OF BURLEIGH)

Donald R Ball, being first duly sworn, on oath deposes and says that he is the Assistant Vice President - Regulatory Affairs of Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., the Applicant herein, and makes this verification on its behalf; that he has read the foregoing Application and knows the contents thereof, and that the statements made and contained therein are true and correct to the best of his information, knowledge, and belief.

Donald R. Ball
Donald R. Ball

SUBSCRIBED AND SWORN to before me this 20th day of Oct 2004.



(S E A L)

Steve Reed
Steve Reed, Notary Public
Burleigh County, North Dakota
My Commission Expires: 2/16/06

Corey Botner Electric Extension

Materials:

317'	1/0 UG Primary JCT (0 9538)	\$ 302 35
10'	1/0 UG Triplex (0 57)	\$ 5 70
1	1/0 Elbows (19 9077)	\$ 19 91
1	Seal Kit (7 8098)	\$ 7 81
1	1 ph UG Dip Pole	\$ 280 00
Total		\$ 615.77

Equipment & Labor:

3 hrs	3 man Crew (89 14)	\$ 267 42
2 hrs	Line Truck (25 00)	\$ 50 00
15 mi	1 Ton Truck (0 80)	\$ 12 00
Total		\$ 329.42

Contractor:

277'	Trench Joint (1 50)	\$ 415 50
2	Misc Pits	\$ 40 00
Total		\$ 455.50

Sub-Total	\$ 1400.69
ES & GA (17 74%)	\$ 248 48

Total Project Estimate \$ 1649.17

Estimated by J Veil 10/04

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA

In the Matter of the Application
of Montana-Dakota Utilities Co.,
a Division of MDU Resources Group, Inc

CASE NO. _____

APPEARANCE BY CUSTOMER

Corey Botner

hereinafter referred to as "Customer", hereby makes a voluntary appearance in this matter and states the following to the Commission:

I.

That he (it) desires electric service from Montana-Dakota Utilities Co. As a public utility subject to the jurisdiction of, and regulation by, this Commission, and has requested said public utility to provide him (it) with immediate electric service at the point located as stated in the Application herein.

That customer further states that he (it) is in need of and has demanded immediate service at said location for the reasons set forth in the Application herein. Customer waives notice of opportunity for hearing and notice of hearing upon said Application, or a hearing thereon, and requests the Commission to issue an Order and Certificate of Public Convenience and Necessity authorizing this requested and needed service, and that provisions be made therein authorizing extension of immediate service.

II.

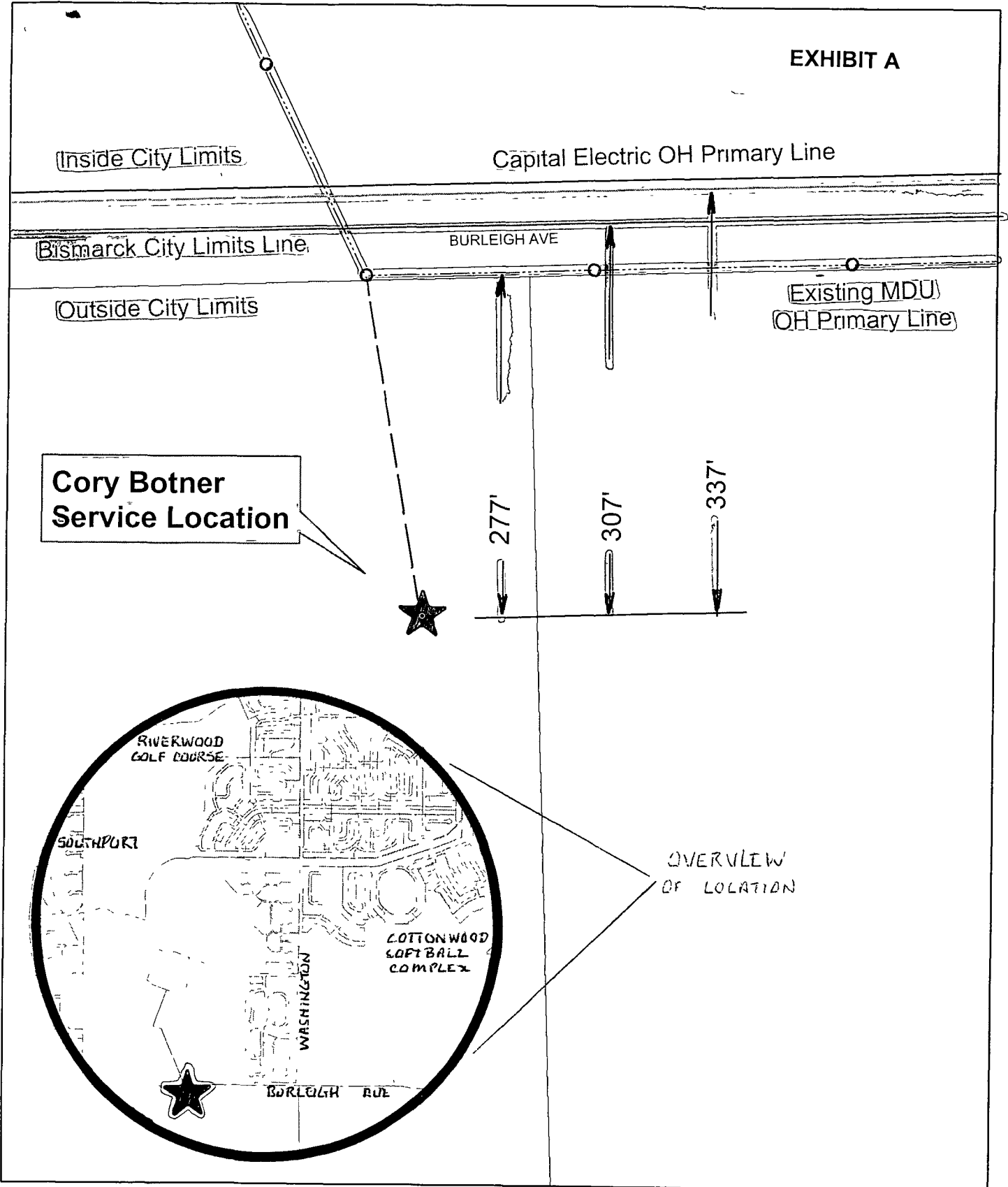
That all the allegations of the Application herein are true and correct.

WHEREFORE, the undersigned, being the Customer involved herein, prays for the entry of an Order and Certificate of Public Convenience and Necessity by the Commission, authorizing the Applicant to immediately extend the requested and needed service to Customer at said location, subject to such appropriate and proper conditions to be appended to and made a part of such Temporary Order and Certificate as the Commission may determine, said Temporary Order and Certificate to become final as may be set forth in the conditions appended thereto; and for such other and further relief as may be proper in the premises.

Dated: 10-07-04

Coley R
(Customer)

EXHIBIT A



NE 1/4 of the NW 1/4 of Section 20
Twp 138 N, Rng 80 W

Corey Botner
Service Request Location

Current Address: 427 Southwood Ave
Service Address: (985?) W. Burleigh Ave

Prepared by: Jayden Veil 224-5838



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E Wefald
Kevin Cramer

Executive Secretary
Illona A Jeffcoat-Sacco

600 E Boulevard Ave Dept 408
Bismarck, North Dakota 58505-0480
web www.psc.state.nd.us
e-mail ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

October 18, 2004

Mack Huncovsky
Montana-Dakota Utilities Co
P O Box 1457
Bismarck ND 58502-1457

Dear Mr Huncovsky.

This will confirm your request to extend electric service to Corey Botner at a point located in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 20, T138N, R80W, Burleigh County, North Dakota. Temporary authority was granted by Commissioner Susan Wefald on October 18, 2004.

Permission to extend service was granted in order to assure electric service to the customer. The extensions must be made from the most economical point of service.

Formal applications for authority must be received in this office no later than ten business days from the date of this letter. Failure to comply with this requirement will be deemed an abandonment of your application and appropriate Commission action will be taken.

Sincerely,


Sharon Helbling
Public Utilities Division

sdh

Facsimile Cover Sheet

To: Ordean "Lars" Nygren
Capital Electric Cooperative
Phone: 223-1513
Fax: 223-1557

From: Sharon Helbling
Company: ND Public Service Commission
Phone: 701-328-4076
FAX: 701-328-2410
E-Mail: sdh@psc.state.nd.us

Date: 10-11-04

**Pages including this
cover page:** 2

Mr. Nygren,

Attached is a request from MDU to extend temporary service to Corey Botner for a residential site near Bismarck, ND.

Can you review this request and let me know whether or not you will protest the application. Thanks.

A handwritten signature in cursive script, appearing to read "Sharon", is positioned at the bottom center of the page.



TEMPORARY AUTHORITY PERMIT
NORTH DAKOTA PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES
 SFN 50560 (6-96)

Date 10/11/04	Time <input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.	Name of Utility Montana-Dakota Utilities Co.	Telephone Number 221-4300
Name of Person Calling Terri Payne for Mack Huncovsky		Name of Coop Serving Capital Electric	
Name of Customer Corey Botner	Location NE $\frac{1}{2}$ of NW $\frac{1}{2}$ Sec 20 Twp 138N R 80W		
Address 427 Southwood Avenue		County Burleigh	
City Bismarck	State ND	Zip Code 58504	
Name of Nearest City Bismarck		Distance to the City 307'	
When will service be extended? October 15, 2004	Type of Service <input checked="" type="checkbox"/> Residence <input type="checkbox"/> Storage <input type="checkbox"/> Grain Bin <input type="checkbox"/> Other _____		
Extension Length to Most Economical Point of Service Utility: 277' Coop: 337'	Extension Phase <u>single</u> <input type="checkbox"/> Overhead <input checked="" type="checkbox"/> Underground		
Has customer signed request for service? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Will cooperative protest application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> unknown		
Name of Person Contacted (PSC Use) <i>Ross Mygren</i>	Date of Contact (PSC Use) 10-15-04	Time (PSC Use) 14:15 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.	
Estimated Cost of Extension \$1,649.17	Estimated Revenue \$875.00/year		
Under what rate filed with the Public Service Commission will customer be served? 10			
Will extension cross over coop lines? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Will extension cross over railroad tracks? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Temporary Authority Authorized By <input checked="" type="checkbox"/> Telephone <input type="checkbox"/> Letter		Date Authorized 10-18-04	
Authorized By (Name of Commissioner) <i>Alan Wefald</i>			

Extension must be made from most economical point of service.

Comments:

PU-04-560

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to
 Don Negaard
 Pringle + Skipton Atty
 PO Box 1000
 Minot ND 58702-1000

2. Article Number
 (Transfer from service label) **7004 2890 0000 5451 4809**

PS Form 3811, February 2004 Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A Signature *Angela Keller* Agent Addressee

B Received by (Printed Name) *Angela Keller* C Date of Delivery

Is delivery address different from item 1? Yes
 If YES, enter delivery address below No
 JAN 10 2005

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4 Restricted Delivery? (Extra Fee) Yes

PU-04-560

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3 Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to
 Dan Kuentz
 Montana - Dakota Utilities Co
 400 N 4th St
 Bismarck ND 58501

2. Article Number
 (Transfer from service label) **7004 2890 0000 5451 4786**

PS Form 3811, February 2004 Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A Signature *AS* Agent Addressee

B Received by (Printed Name) *AS* C Date of Delivery *6-10-05*

Is delivery address different from item 1? Yes
 If YES, enter delivery address below. No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4 Restricted Delivery? (Extra Fee) Yes

PU-04-560

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3 Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to
 Don Negaard
 Pringle + Skipton Atty
 PO Box 1000
 Minot ND 58702-1000

2. Article Number
 (Transfer from service label) **7003 2260 0001 3517 9329**

COMPLETE THIS SECTION ON DELIVERY

A Signature *Angela Keller* Agent Addressee

B Received by (Printed Name) *Angela Keller* C Date of Delivery *JAN 03 2005*

Is delivery address different from item 1? Yes
 If YES, enter delivery address below No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4 Restricted Delivery? (Extra Fee) Yes

PU-04-560

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3 Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits

1 Article Addressed to

Dan Kuntz
 Montana-Dakota Utilities Co
 400 N 4th St
 Bismarck ND 58501

2 Article Number
 (Transfer from service label)

7003 2260 0001 3517 9305

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A Signature Agent Addressee
AL

B Received by (Printed Name) *AL Solberg* C Date of Delivery *1/3/05*

D Is delivery address different from item 1? Yes No
 If YES, enter delivery address below.

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C O D

4 Restricted Delivery? (Extra Fee) Yes

PU-04-560

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to

Ardean "Lars" Nygren
 Capital & Electric Cooperative
 PO Box 730
 Bismarck ND 58502-0730

2. Article Number
 (Transfer from service label)

7003 2260 0001 3517 9312

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
Ardean

B Received by (Printed Name) *Ardean Nygren* C Date of Delivery

D Is delivery address different from item 1? Yes No
 If YES, enter delivery address below

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PU-04-560

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3 Also complete item 4 if Restricted Delivery is desired
- Print your name and address on the reverse so that we can return the card to you
- Attach this card to the back of the mailpiece, or on the front if space permits

1 Article Addressed to

Dan Kuntz
 Montana-Dakota Utilities Co.
 400 N 4th St
 Bismarck ND 58501

2. Article Number
 (Transfer from service label)

7003 2260 0001 3517 1279

PS Form 3811 February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A Signature Agent Addressee
AL

B Received by (Printed Name) *AL Solberg* C Date of Delivery *10/29/04*

D Is delivery address different from item 1? Yes No
 If YES, enter delivery address below

3 Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4 Restricted Delivery? (Extra Fee) Yes

PU-04-560

SENDER: COMPLETE THIS SECTION


- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits

1. Article Addressed to
 Ardean "Kars" Nygren
 Capital Electric Cooperative
 PO Box 730
 Bismarck ND 58502-0730

2. Article Number
 (Transfer from service label) 7004 2890 0000 5451 4793

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A Signature
 X  Agent
 Addressee

B Received by (Printed Name) Pete Keckel C Date of Delivery 6-10-05

D Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4 Restricted Delivery? (Extra Fee) Yes

PU-04-560

SENDER: COMPLETE THIS SECTION


- Complete items 1, 2, and 3 Also complete item 4 if Restricted Delivery is desired
- Print your name and address on the reverse so that we can return the card to you
- Attach this card to the back of the mailpiece, or on the front if space permits

1. Article Addressed to
 Ardean "Kars" Nygren
 Capital Electric Cooperative
 PO Box 730
 Bismarck ND 58502-0730

2. Article Number
 (Transfer from service label) 7003 2260 0001 3517 1286

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A Signature
 X  Agent
 Addressee

B Received by (Printed Name) Nydy C Date of Delivery 10-29-04

D Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4 Restricted Delivery? (Extra Fee) Yes

PU-04-560

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3 Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to
 Ardean "Kars" Nygren
 Capital Electric Cooperative
 PO Box 730
 Bismarck ND 58502-0730

2. Article Number
 (Transfer from service label) 7003 2260 0001 3517 9381

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A Signature
 X  Agent
 Addressee

B Received by (Printed Name) Nydy C Date of Delivery 1-28-05

D Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4 Restricted Delivery? (Extra Fee) Yes

PU-04 560

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3 Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p><i>Myela Keller</i></p>	
	B Received by (Printed Name)	C Date of Delivery
	D Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below <input type="checkbox"/> No	
1. Article Addressed to	3. Service Type	
<i>Don Hegard Printer/Scripted PO Box 1000 Munster IN 58702-1000</i>	<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C O D	
2. Article Number (Transfer from service label)	4 Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
	7003 2260 0001 3517 9398	

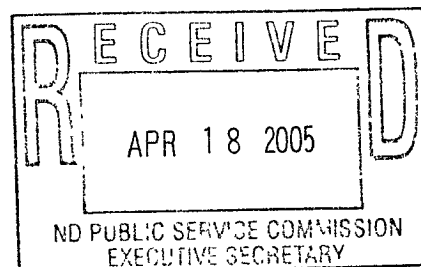
PU-04-560

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3 Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p><i>David Urook</i></p>	
	B Received by (Printed Name)	C Date of Delivery
	D Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below. <input type="checkbox"/> No	
1. Article Addressed to	3. Service Type	
<i>Dan Kuntz Montana-Northwest Utilities Co 400 N 4th St Bismarck ND 58501</i>	<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C O D	
2. Article Number (Transfer from service label)	4 Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
	7003 2260 0001 3517 9374	

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Montana-Dakota Utilities Co.
Corey Botner
Bismarck, North Dakota
Public Convenience and Necessity

Case No.
PU-04-560



TRANSCRIPT OF
HEARING

Taken At
State Capitol
600 East Boulevard
Bismarck, North Dakota
April 4, 2005

34 PU-04-560 Filed 4/18/2005 Pages 177
Copy of Transcript of Hearing & disk

Emineth & Associates Court Reporters

BEFORE MR. ALLEN C. HOBERG
-- HEARING OFFICER --

EMINETH & ASSOCIATES
Court Reporters

BISMARCK, NORTH DAKOTA
(701) 255-3513

A P P E A R A N C E S

COMMISSIONERS PRESENT:

COMMISSIONER SUSAN E. WEFALD
COMMISSIONER TONY CLARK
COMMISSIONER KEVIN CRAMER

MR. WILLIAM C. BINEK
Staff Counsel
Public Service Commission
State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

MS. ANNETTE BENDISH
Public Utility Analyst
Public Service Commission
State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

FOR THE PUBLIC
SERVICE COMMISSION.

MR. DANIEL S. KUNTZ
Senior Attorney
MDU Resources Group, Inc.
918 East Divide Avenue
P.O. Box 5650
Bismarck, North Dakota 58506-5650

FOR THE APPLICANT.

MR. DONALD A. NEGAARD
MS. CAROL LARSON of
Pringle & Herigstad, P.C.
Attorneys at Law
2525 Elk Drive
P.O. Box 1000
Minot, North Dakota 58702-1000

FOR THE PROTESTANT.

C O N T E N T S

APPLICANT'S WITNESSES:

COREY BOTNER

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DONALD R. BALL

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C O N T E N T S (continued)

RON LIPP

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APPLICANT'S EXHIBITS:

No.	Description	Off'd	Rec'd
A	Appearance by Customer Corey Botner	19	19
B	Map	43	44
C	MDU, Cost to Extend Service to C. Botner	43	44
D	MDU, C. Botner Electric Extension Net Contribution to Costs	49	52

1 C O N T E N T S (continued)

2 PROTESTANT'S EXHIBITS:

3	No.	Description	Off'd	Rec'd
4	P-1	Map	80	81
5	P-2	15 Year Total New Customers		
6		312; 15 year Total Investment		
		\$1,804,926.0	90	92
7	P-3	Letter dated March 18, 2005,		
8		to Don Negaard from Dennis		
		Schlenker, with attachments	124	128
9	P-5	Letter Agreement Amending		
10		Service Area Agreement Between		
11		Capital Electric Cooperative,		
		Inc., and Montana-Dakota		
		Utilities Co.	139	140
12	P-6	Letter dated August 25, 1992		
13		to PSC from Lars Nygren	138	138
14	P-7	Map	134	134

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1 (The proceedings herein were had and made
2 of record, commencing at 9:02 a.m., Monday, April
3 4, 2005, as follows:)

4 (Exhibit Nos. P-1, P-2, P-3, P-5, P-6 and
5 P-7 and Exhibits A, B, D and C were premarked for
6 identification.)

7 MR. HOBERG: Let the record show that it's
8 9:00 a.m. on April 4th, 2005. This is the time and
9 place scheduled in the Public Service Commission
10 hearing room in the State Capitol in Bismarck,
11 North Dakota, for the administrative hearing In the
12 Matter of the Application of Montana-Dakota
13 Utilities Company for a certificate of public
14 convenience and necessity to extend permanent
15 electric service to a residential site in Burleigh
16 County, Corey Botner.

17 In January of this year the Office of
18 Administrative Hearings received a request from the
19 Public Service Commission to provide an
20 administrative law judge to preside in this
21 matter. For the record, my name is Allen Hoberg.
22 I'm the hearing officer designated by the
23 Commission.

24 Let's take appearances from the parties
25 starting with the applicant, MDU, followed by the

1 protestant, Capital Electric, then the Commission
2 staff, please.

3 MR. KUNTZ: Daniel Kuntz, appearing for
4 the applicant, Montana-Dakota Utilities Co.

5 MR. HOBERG: And who do you have with you
6 at the table?

7 MR. KUNTZ: I also have with me Mr. Bob
8 Copenhaver and Don Ball.

9 MR. HOBERG: Thank you. Mr. Negaard,
10 please.

11 MR. NEGAARD: For the record, Don Negaard
12 with Pringle & Herigstad, P.C., in Minot. Also
13 with me today is one of my partners, Carol Larson,
14 who works with Capital Electric, the manager seated
15 at the table with me, Capital Electric, is Lars
16 Nygren, and also we have Ron Lipp, who is the
17 engineer from Capital Electric.

18 MR. HOBERG: Thank you, Mr. Negaard. Mr.
19 Binek, please.

20 MR. BINEK: My name is Bill Binek, and I'm
21 here representing the Public Service Commission
22 staff. Staff is acting in the role of commission
23 advisers in this case. We are not taking an
24 adversarial position. With me is Annette Bendish,
25 public utility analyst.

1 MR. HOBERG: Thank you, Mr. Binek. And to
2 my left Public Service Commission members,
3 Commissioner Kevin Cramer, Commission President
4 Tony Clark and Commissioner Susan Wefald. And
5 following a brief summary of the application, I
6 will call on the commissioners for comments,
7 starting with Commissioner Wefald, who has the
8 electric portfolio. And our court reporter today
9 is Denise Andahl.

10 First, a summary of the application. On
11 October 11th of 2004, MDU requested authority to
12 extend temporary electric services to Corey Botner
13 for a residential site located in Burleigh County,
14 North Dakota. MDU's request for temporary
15 authority was granted on October 18th of 2004.

16 October 25th of 2004, MDU filed an
17 application under North Dakota Century Code Chapter
18 49-03 for a certificate of public convenience and
19 necessity to extend permanent electric service.

20 On October 27th of 2004, the Commission
21 issued a notice of opportunity for hearing, which
22 provided that the matter would be set for hearing
23 if written objection was received by November
24 29th.

25 On November 23rd, Capital Electric filed a

1 protest requesting that MDU's application be set
2 for hearing.

3 The Commission initially scheduled a
4 public hearing for February 2nd. At the request of
5 the protestant, the Commission rescheduled, and on
6 January 26th of 2005 issued a notice of rescheduled
7 hearing scheduling the hearing for today.

8 I will now call on the Commission for any
9 comments they have, starting with Commissioner
10 Wefald, please.

11 COMMISSIONER WEFALD: Good morning. I
12 know that each of these cases is very important to
13 the participants, and the last -- we haven't heard
14 one for a while. The last hearing that I'm
15 thinking of was held in -- it was regarding --
16 excuse me, it was not held in, it was regarding a
17 Jamestown certificate of public convenience and
18 necessity that was in dispute. So I'm anxious to
19 get a good record before us and I'm anxious to hear
20 all of your comments. Thank you.

21 MR. HOBERG: Thank you, Commissioner
22 Wefald. Commissioner Clark, please.

23 COMMISSIONER CLARK: Thank you. Good
24 morning to everyone. One thing that I do want to
25 note, and it's something that I brought up at an --

1 actually an administrative meeting of the
2 Commission and I would like both parties to respond
3 to.

4 I'm in a -- I don't know if this is a
5 unique situation ever for a commissioner, but I
6 don't know if it's ever happened before where one
7 of the commissioners is a member of the cooperative
8 that is one of the parties to a case. I am in this
9 particular case because I'm served by Capital
10 Electric, so I'm also a -- because of the
11 membership structure of cooperatives, a member
12 owner. I don't -- at first blush, folks I've
13 talked to on staff and fellow commissioners didn't
14 indicate they saw a conflict of interest with
15 this. I would ask that both parties on the record
16 state if they have a problem with the fact that
17 there is this particular quirk in this case. And,
18 like I said, I don't know that it's happened before
19 in a Public Service Commission case, but I'll
20 certainly hear the case today and both parties can
21 respond and see if there's any need for recusal
22 and, if so, we'll consider that.

23 MR. HOBERG: We'll address that in just a
24 minute, Commissioner Clark.

25 COMMISSIONER CLARK: Thank you.

1 MR. HOBERG: Commissioner Cramer, please.

2 COMMISSIONER CRAMER: I just want to
3 welcome everyone, thank you for being here, and I
4 look forward to a very thorough and good hearing.
5 Thank you.

6 MR. HOBERG: Thank you, Commissioner
7 Cramer. Let's address that right now then.
8 Commissioner Clark has indicated that there's a
9 potential for a conflict of interest at least and
10 at this time he is not recusing himself. Mr.
11 Kuntz.

12 MR. KUNTZ: We would waive any objection.

13 MR. HOBERG: You waive any objection.

14 MR. NEGAARD: We have no problems.

15 MR. HOBERG: Okay. Then we'll proceed
16 with the three commissioners. All right. Here's
17 the hearing procedure we'll follow today. I'll
18 call on the applicant first to present the
19 applicant's case in regard to this matter. Mr.
20 Kuntz, how many witnesses do you have?

21 MR. KUNTZ: Two, Your Honor.

22 MR. HOBERG: Two witnesses. The procedure
23 for the witnesses will then be direct examination
24 by Mr. Kuntz, followed by cross-examination by
25 protestant, Mr. Negaard representing them, then

1 Commission staff, Mr. Binek, I'll allow you to ask
2 any questions that you may have, and then the
3 commissioners, starting with Commissioner Wefald
4 going on down, then I'll allow such further
5 questions of the witnesses as counsel for the
6 parties deem necessary.

7 Mr. Negaard, how many witnesses do you
8 have?

9 MR. NEGAARD: Two, Your Honor.

10 MR. HOBERG: It will be essentially the
11 same procedure there, direct by you, Mr. Negaard,
12 cross by Mr. Kuntz and then Mr. Binek and the
13 commissioners and such further questions as the
14 parties deem necessary.

15 I know there are some exhibits that have
16 been premarked in this matter. As I understand it,
17 the applicant's exhibits are A through whatever.
18 How many exhibits do you have?

19 MR. KUNTZ: I believe four.

20 MR. HOBERG: Four. And Mr. Negaard has
21 six exhibits that have been premarked P1 through
22 P7, but there's no P4 apparently. All exhibits
23 that are offered, we will need eight copies for the
24 Commission and everyone present that's
25 participating.

1 No decision will be reached on this matter
2 today. The proceedings are being transcribed and
3 they will be reviewed by the Commission later, and
4 thereafter the Commission will issue findings of
5 fact and conclusions of law and an order as to
6 whether the application should be issued or denied
7 or as to other appropriate administrative action
8 that should be taken. A party not agreeing with
9 the final decision of the Commission may have
10 appeal rights or other rights under North Dakota
11 Century Code Chapter 28-32 or under the
12 Administrative Code of the Commission, Article
13 69-02.

14 The issues in this matter as listed in the
15 Notice of Hearing are ten issues, as follows: From
16 whom does the customer prefer electric service? is
17 issue number 1.

18 Number 2 is, What electric suppliers are
19 operating in the general area?

20 Issue number 3 is, What electric supply
21 lines exist within a two-mile radius of the
22 location to be served and when were they
23 constructed?

24 Issue number 4 is, What customers are
25 served by the electric suppliers within at least a

1 two-mile radius of the location to be served?

2 Issue number 5 is, what are the
3 differences, if any, between the electric suppliers
4 available to serve the area with respect to
5 reliability of service?

6 Issue number 6 is, Which of the available
7 electric suppliers will be able to serve the
8 location in question more economically and still
9 earn an adequate return on its investment?

10 Issue number 7 is, Which supplier's
11 extended service would best serve orderly and
12 economic development of electric service in the
13 general area?

14 Issue number 8 is, Would approval of the
15 application result in wasteful duplication or
16 investment of or service -- let me say that one
17 again. Would approval of the application result in
18 wasteful duplication of investment or service?

19 Number 9, Is it probable that the location
20 in question will be included within the corporate
21 limits of a municipality within the foreseeable
22 future?

23 And number 10, Will service by either of
24 the electric suppliers in the area unreasonably
25 interfere with the service or system of the other?

1 And, of course, the burden of proof on
2 this matter -- in this matter is on the applicant
3 to show by the greater weight of the evidence that
4 it is entitled to a grant of the application for
5 public convenience and necessity that it is
6 seeking.

7 Any questions about the procedures today,
8 Mr. Kuntz?

9 MR. KUNTZ: No.

10 MR. BINEK: Mr. Negaard?

11 MR. NEGAARD: No.

12 MR. HOBERG: Mr. Binek?

13 MR. BINEK: (Shakes head.)

14 MR. HOBERG: Commissioners?

15 COMMISSIONER WEFALD: No.

16 MR. HOBERG: All right. Did you want to
17 begin with an opening statement, Mr. Kuntz?

18 MR. KUNTZ: Just to state that we'll show
19 the commissioners that Mr. Botner is requesting
20 Montana-Dakota Utilities to provide service to his
21 property which lies just south of Burleigh Avenue.
22 Montana-Dakota already has facilities on the
23 property and is in the best position to serve Mr.
24 Botner's location.

25 MR. HOBERG: Thank you, Mr. Kuntz. Mr.

1 Negaard. Why don't you move the mike over a
2 little.

3 MR. NEGAARD: We tell a jury, or as Paul
4 Harvey would say, please keep an open mind until we
5 have a chance to present our side of the case.

6 We intend to show the Commission during
7 our testimony, and we believe the testimony would
8 show, that Capital Electric has invested heavily to
9 serve this area based on franchises and agreements
10 that are in place, and we intend to show that
11 allowing this certificate to be issued to MDU would
12 constitute and allow checkerboarding or unorderly
13 development in this area south of Bismarck.

14 We think -- we understand the desire by
15 MDU to serve this load, a load of one of its
16 employees, but it's the public convenience and
17 necessity that this Commission is charged with
18 enforcing.

19 So, again, we will show an extensive
20 investment by Capital Electric in this area, that
21 they're the only company that's added new service
22 in this area for a significant amount of time and
23 that we believe that of the criteria chosen by the
24 Commission, that Capital Electric can show that it
25 should be the one that should be allowed to serve

1 this load. Thank you.

2 MR. HOBERG: Thank you, Mr. Negaard. Call
3 your first witness, please, Mr. Kuntz.

4 MR. KUNTZ: We'll call Corey Botner.

5 MR. HOBERG: Mr. Botner, up to the podium,
6 please. I need to swear you in for testimony, Mr.
7 Botner. You can sit down. I need to give an
8 admonition, and this is for the benefit of all of
9 the witnesses today, and that is that the maximum
10 penalty for perjury in this state is a Class C
11 felony, punishable by a maximum five years
12 imprisonment, \$5,000 fine, or both.

13 (Witness sworn.)

14 MR. HOBERG: Thank you. Mr. Kuntz,
15 please.

16 COREY BOTNER,
17 being first duly sworn, was examined and testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. KUNTZ:

21 Q. Would you please tell the commissioners
22 your full name?

23 A. Corey William Botner.

24 Q. What's your residential address, Mr.
25 Botner?

1 A. 427 Southwood Avenue, in Bismarck.

2 Q. Whom are you employed by?

3 A. MDU Resources.

4 Q. What's your position with MDU Resources?

5 A. Pilot.

6 Q. Do you own property in the Northeast
7 Quarter of the Northwest Quarter of Section 20,
8 Township 138, Range 80, Burleigh County?

9 A. Yes.

10 Q. How much property do you own there?

11 A. I have 27 and a half acres.

12 Q. And where is that property in relation to
13 Burleigh Avenue in Bismarck?

14 A. It's on the south side.

15 Q. And it abuts Burleigh Avenue?

16 A. Yes.

17 Q. And in relation to Washington Street?

18 A. It is west of Washington Street.

19 Q. Approximately how far?

20 A. I believe about a quarter-mile.

21 Q. And how long have you owned that property?

22 A. Coming up on two years.

23 Q. And what are your plans for the property?

24 A. The plan is just to build a house and a
25 shop out there.

1 Q. And did you request Montana-Dakota to
2 extend electric service to your property?

3 A. Yes, I did.

4 Q. And when did you do that?

5 A. I believe it was the summer of last year.

6 Q. Mr. Botner, I want to show you what's been
7 marked as Exhibit A. Do you recognize that
8 document?

9 A. Yes, I do.

10 Q. Can you tell us what it is?

11 A. It's an affidavit stating the fact that I
12 wanted MDU to connect me to MDU power on my
13 property.

14 Q. And is that your name that appears on the
15 second page of Exhibit A?

16 A. It is.

17 MR. KUNTZ: We would move the admission of
18 Exhibit A.

19 MR. NEGAARD: No objection.

20 MR. BINEK: No objection.

21 MR. HOBERG: Exhibit A is admitted.

22 Q. (MR. KUNTZ CONTINUING) At the time of
23 your request for Montana-Dakota to serve your
24 property, was anyone providing electric service to
25 any location on the property?

1 A. No.

2 Q. Had Capital Electric ever talked to you
3 about development plans -- your development plans
4 for the property?

5 A. No.

6 Q. Were there any electric facilities located
7 on your property?

8 A. Yes.

9 Q. Can you tell the Commission what those
10 were?

11 A. There was an MDU power pole. It's roughly
12 a hundred feet in from the east boundary of my
13 property, on my property.

14 Q. That was an overhead pole?

15 A. Overhead transmission line, correct.

16 Q. Transmission or distribution?

17 A. I'm not sure.

18 Q. Why did you request Montana-Dakota to
19 provide electric service to your property?

20 A. Well, there was a number of reasons. One
21 of them is reliability. Before my previous -- or
22 this address I'm at now, previously I lived at Fox
23 Island on Harbor Drive for seven years, and in that
24 seven years the power was not reliable coming from
25 Capital Electric. It went out numerous times each

1 year. Actually I believe in the seven years it
2 went out at least seven times. And on my property
3 I'm going to have two large ponds, and in those
4 ponds I'm going to have trout and large aeration
5 pumps, and I don't want to take the chance of the
6 power going out on those.

7 Two is because I'm an MDU employee and
8 they've been a great employer to me and I'd like to
9 reinvest in the company in which I'm employed by.
10 Also, I do receive a discount from MDU being an
11 employee of MDU. And the fourth reason is, because
12 there was already electric service on my property,
13 I didn't see the need to add any other.

14 Q. You mentioned the fact you're going to
15 build a home and a shop and you're going to have
16 some pumps that you have planned. Could you just
17 describe for the Commission what buildings you
18 intend to build on your property?

19 A. A shop, which includes stalls for animals,
20 and in that shop I'll just be running a compressor,
21 a welder and heating. We plan on having a few
22 exotic birds, also, and that's another reason, we
23 wanted to make sure there was always heat available
24 to them. And we're also going to be planning a
25 house, 3,000 plus or minus a few hundred square

1 feet.

2 Q. What about the pumps that you talked
3 about? What's your plans there?

4 A. Well, at least we'll be running at least a
5 couple pumps -- aeration pumps, and they're each
6 going to be a couple horse in size to run. There's
7 going to be a large waterfall and a stream, so we
8 need to continue pumping and aeration of the water
9 down there.

10 Q. Any plans for irrigation on the property?

11 A. I do plan on irrigating. The Soil
12 Conservation is coming in the next week or two to
13 plant roughly around 3,000 trees down there. I
14 will be irrigating them as soon as those are
15 planted.

16 Q. Now, have you started construction on your
17 home yet, Mr. Botner?

18 A. No.

19 Q. And what's the status of that?

20 A. We're going to be building as soon as we
21 possibly can. Just because we're in an urban
22 service boundary, we're getting that planned out
23 with the City Commission.

24 Q. Can you explain to the Commission why you
25 requested Montana-Dakota to extend service last

1 fall and you still haven't started building yet?

2 A. Well, a couple reasons for that. I have
3 equipment out there that I would like to plug in,
4 but it was such a mild winter that I didn't need to
5 plug it in. Also, because there's a bunch of
6 lilacs along Burleigh Avenue that have been there
7 for quite some time, I found some ones that were
8 the same size and Dakota Tree Nursery is now moving
9 them in with a tree spade and I needed the power in
10 immediately last year so it wouldn't get in the way
11 of the tree spade. And when the Soil Conservation
12 comes, they're also going to be planting tree rows
13 above that, and I didn't want any service to be
14 ripped through the trees after they have been
15 planted.

16 Q. Are you currently an electrical customer
17 of Montana-Dakota?

18 A. Yes.

19 Q. And you receive a discount on that
20 service?

21 A. Yes.

22 Q. And do you plan to sell that property when
23 you build on your property along Burleigh Avenue?

24 A. I do.

25 Q. I want to show you what's been marked for

1 identification as Exhibit B, it's a map behind you,
2 and there's a location right in the center of that
3 map. It's marked something to the extent like
4 Botner location. Does that accurately reflect the
5 location of your property, Mr. Botner?

6 A. It does.

7 Q. And are you aware of any plans to annex
8 your property to the City of Bismarck?

9 A. No.

10 Q. Do you have any plans to seek annexation
11 of your property?

12 A. No.

13 MR. KUNTZ: That's all the questions we
14 have for Mr. Botner.

15 MR. HOBERG: Are you offering Exhibit B?

16 MR. KUNTZ: We'll offer it through Mr.
17 Copenhaver.

18 MR. HOBERG: Thank you, Mr. Kuntz. Mr.
19 Negaard, please.

20 CROSS-EXAMINATION

21 BY MR. NEGAARD:

22 Q. Mr. Botner, your application for zoning is
23 still pending, is it not?

24 A. For zoning?

25 Q. Yes.

1 A. No. It's agriculture. Is that what you
2 meant?

3 Q. You've asked for approval of your plan for
4 your property, have you not? Have you filed a plat
5 for your property?

6 A. Oh, with the city, yes.

7 Q. With the County and City Planning
8 Commission; correct?

9 A. Correct.

10 Q. AND that's not yet been approved, has it?

11 A. No.

12 Q. And are you aware that the city intends to
13 annex this property into the City of Bismarck?

14 A. No, they don't. And they told me that
15 they do not force annexation, and they haven't in
16 the past and they don't intend to.

17 Q. Have they told you that they're going to
18 grant your application?

19 A. That they're going to grant it?

20 Q. Yes.

21 A. They will grant it as soon as we come to
22 an agreement on it.

23 Q. Okay. Part of the reason why it's not
24 been granted is because they're in the process of
25 preparing a comprehensive plan for the City of

1 Bismarck in that area, are they not?

2 A. I couldn't tell you what their plans are.

3 Q. Okay. Did you ever talk to Capital
4 Electric about service to your property?

5 A. No.

6 Q. And in your application that you filed
7 last fall, you did say that you needed immediate
8 service at your location, didn't you?

9 A. Yes.

10 MR. NEGAARD: I have nothing further.

11 MR. HOBERG: Thank you, Mr. Negaard. Mr.
12 Binek, please.

13 MR. BINEK: I have no questions.

14 MR. HOBERG: No questions. Commissioner
15 Wefald.

16 EXAMINATION

17 BY COMMISSIONER WEFALD:

18 Q. Yes. I just need to understand, are you
19 connected yet to MDU for electric service? I
20 couldn't quite tell from your answers.

21 A. Yes, Commissioner.

22 Q. Yes, you are?

23 A. Yes.

24 Q. And so a line has been strung to what part
25 of your property now?

1 A. It's approximately 300 feet south of the
2 power pole -- 311, 19 feet, something like that
3 directly south of the power pole.

4 COMMISSIONER WEFALD: All right. Thank
5 you.

6 MR. HOBERG: Thank you, Commissioner
7 Wefald. Commissioner Clark.

8 COMMISSIONER WEFALD: Excuse me. Can I
9 have one follow-up question?

10 MR. HOBERG: Sure.

11 Q. (COMMISSIONER WEFALD CONTINUING) And that
12 started when?

13 A. The power?

14 Q. Mm-hmm.

15 A. It started last fall.

16 Q. It did start last fall?

17 A. Yes.

18 Q. And were you encouraged by MDU in any way
19 to apply to MDU for your -- were there any contacts
20 from MDU when they found you were moving in that
21 they wanted you to apply for MDU service?

22 A. Absolutely not. I approached them.

23 COMMISSIONER WEFALD: Thank you.

24 MR. HOBERG: Thank you, Commissioner.
25 Commissioner Clark, please.

1 COMMISSIONER CLARK: I have nothing.

2 MR. HOBERG: Thank you. Commissioner
3 Cramer, please.

4 EXAMINATION

5 BY COMMISSIONER CRAMER:

6 Q. Thank you. I have some clarifying
7 things. I believe Mr. Kuntz asked you early on if
8 there was electric service already on the property,
9 and did you say there was not?

10 A. Well, I didn't understand the question.
11 There was no outlets or anything for me to plug
12 into, but the MDU pole was already on the property.

13 Q. Okay. Because what I wanted to make sure
14 I was clear on, because later you did state that
15 there was electric service already on the property
16 and that was one of the reasons.

17 A. Yes.

18 Q. So what you're saying, there was some
19 infrastructure there, but there was not?

20 A. Yes.

21 Q. I wanted to get straight.

22 A. I apologize.

23 Q. That's quite all right. That's why we're
24 here. You mentioned that one of the reasons you
25 wanted electricity or power last fall was you were

1 anticipating needing some equipment over the
2 winter, but the mild winter made it unnecessary.
3 What kind of equipment were you going to operate?

4 A. Yes, Commissioner. I have a Bobcat and
5 also a Ditch Witch, and I keep the Bobcat out there
6 and then if it snows heavily, I bring it into town
7 and I clear my driveway and my neighbors' driveways
8 with it. And because it was a mild winter and no
9 big accumulations of snow, I really never needed to
10 use the Bobcat, so --

11 COMMISSIONER CRAMER: Nothing further.
12 Thank you.

13 MR. HOBERG: Thank you, Commissioner.
14 Commissioner Wefald, please.

15 FURTHER EXAMINATION
16 BY COMMISSIONER WEFALD:

17 Q. Was the pole that you're referring to that
18 belonged to MDU, was that right along Burleigh
19 Avenue?

20 A. Yes, Commissioner.

21 COMMISSIONER WEFALD: All right. Thank
22 you.

23 MR. HOBERG: Any further questions by
24 commissioners? Thank you. Mr. Kuntz, did you have
25 any questions?

1 MR. KUNTZ: No followup.

2 MR. HOBERG: No followup. Mr. Negaard,
3 any followup?

4 MR. NEGAARD: No.

5 MR. HOBERG: Thank you, Mr. Botner.

6 MR. KUNTZ: We would call Bob Copenhaver.

7 MR. HOBERG: Mr. Copenhaver, did you hear
8 the admonition I gave in regard to perjury? You
9 need to say yes.

10 THE WITNESS: Yes.

11 (Witness sworn.)

12 ROBERT COPENHAVER,
13 being first duly sworn, was examined and testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. KUNTZ:

17 Q. State your name.

18 A. Robert Thomas Copenhaver.

19 Q. And your business address?

20 A. 909 Airport Road.

21 Q. Whom are you employed by?

22 A. Montana-Dakota Utilities.

23 Q. What's your position with Montana-Dakota?

24 A. I'm the electric superintendent for the
25 Dakota Heartland Region with MDU.

1 Q. How long have you held that position?

2 A. About 25 years -- 26, actually, I guess.

3 Q. Were you employed by Montana-Dakota prior
4 to holding your position as electric
5 superintendent?

6 A. Yes. I was an assistant superintendent
7 here in Bismarck. Before that I was an engineer in
8 Mobridge, South Dakota. And before that I was an
9 engineer -- distribution engineer in Glendive,
10 Montana.

11 Q. In total, how long have you worked for
12 Montana-Dakota in one capacity or another?

13 A. On June 10th, it will be 35 years.

14 Q. Can you describe for the Commission your
15 educational background?

16 A. I have a bachelor of science in electrical
17 engineering with a power background from Montana
18 State University in Bozeman, Montana.

19 Q. What are your job responsibilities as
20 electric superintendent?

21 A. I oversee the construction of the
22 distribution lines in the region and also the
23 operation and maintenance of the electric
24 distribution lines and some of the smaller
25 transmission projects and substation projects

1 within the region.

2 Q. Are you familiar with the location for
3 which Montana-Dakota is seeking a certificate of
4 public convenience and necessity in this
5 proceeding?

6 A. Yes, I am.

7 Q. And what electric suppliers are operating
8 in the general area of this location?

9 A. Montana-Dakota Utilities Company and
10 Capital Electric.

11 Q. Prior to this application did either
12 electric supplier have facilities located on the
13 property?

14 A. Yes. Montana-Dakota had a pole located on
15 the property, three-phase line.

16 Q. Three-phase line?

17 A. Yes.

18 Q. Was that an overhead line?

19 A. Three-phase overhead line, yes, 12,470-
20 volt.

21 Q. How long had that line been on that
22 property?

23 A. It was constructed in 1966.

24 Q. And what was the purpose of that facility?

25 A. The line was extended through that area

1 and then extended up to the northwest to serve the
2 sewage treatment facilities for the City of
3 Bismarck.

4 Q. I want to show you what's been marked as
5 -- Exhibit B behind you is a map. I'll ask Don to
6 pass out the copies. Mr. Copenhaver, Mr. Botner
7 previously testified that the location of his
8 property is approximately in the center of Exhibit
9 B. Are you familiar with that location?

10 A. Yes, I am.

11 Q. And does Exhibit B highlight the major
12 distribution facilities that Montana-Dakota owns
13 within two miles of Mr. Botner's location?

14 A. Yes, it does.

15 Q. Could you, beginning from the east,
16 describe for the Commission what those distribution
17 facilities are and when they were constructed?

18 A. Yes. First off, one of the things that is
19 not highlighted on the drawing is if you start in
20 that northeast corner, we have a distribution
21 substation located just -- if you extend Tacoma
22 Avenue straight down, to the left or to the west on
23 the map, you'll see a little square at the
24 intersection of the drainage ditch. That's a
25 distribution substation. From that point going --

1 COMMISSIONER WEFALD: I'm sorry, I can't
2 find Tacoma Avenue that quickly.

3 THE WITNESS: It's right here.

4 COMMISSIONER WEFALD: Thank you. Okay.

5 THE WITNESS: For the record, that's right
6 in this area.

7 MR. HOBERG: Upper right-hand corner of
8 the map?

9 Q. (MR. KUNTZ CONTINUING) Right at about the
10 end, the northeast corner of the distribution line
11 there.

12 A. The line that was constructed down 12th
13 Street was constructed in -- it's a three-phase
14 12,470-volt phase-to-phase 7,200-volt phase-to-
15 ground line that was constructed in 1941. Then
16 extending west on Burleigh Avenue was a line
17 constructed, it's also -- all of these lines are
18 12,470-volt, 7,200-volt phase-to-ground. That line
19 was constructed in 1946. And then it extended
20 south down Washington Street to the intersection of
21 48th Street, I believe it is, and extended west
22 over to -- at that time was the North Dakota State
23 Prison Farm, which is -- I don't remember the name
24 of it now. That's changed names a couple times.

25 COMMISSIONER CLARK: Missouri River

1 Correctional Facility.

2 THE WITNESS: Missouri River Correctional
3 Facility. Then going back up to the intersection
4 of Burleigh Avenue and Washington Street there's a
5 line that extends over to the Botner property.
6 Most of that line was constructed in 1966. And
7 then it goes up to the northwest to an area --
8 there's sort of a blue highlighted line that meets
9 with a red square. The blue highlighted line is
10 the line that I originally talked about that was
11 extended to serve the sewage treatment facility.
12 Then basically the line comes -- an underground
13 line comes back out of the substation that we had
14 previously talked about, comes along the drainage
15 ditch or the wide -- looks like a road in the
16 middle, sort of the northeast part of the map, and
17 starting at the drainage ditch and Washington
18 Street, extends south to London Avenue and then
19 west -- in a westerly direction to the sewage
20 treatment facility. That was constructed in 1976
21 and is a three-phase 7,200-volt phase-to-ground,
22 12,470-volt phase-to-phase underground line that
23 was installed for an expansion of the sewage
24 treatment facility at that time.

25 Q. (MR. KUNTZ CONTINUING) now, I notice on

1 the map that just east of the Botner location, the
2 south side of Burleigh Avenue, there's kind of a
3 little red X there. Do you see that?

4 A. Yes. That is the Huber residence. Chris
5 Huber, Sr., and Bob Huber live there, and we serve
6 those -- serve those residents.

7 Q. How long have you served those residents?

8 A. I did not find the original cut-in dates
9 for Bob and Christian Huber. Christian gave us the
10 easement -- part of the easements in 1946, as well
11 as the one in 1966. So I believe that Bob might
12 have built his house in '66, I'm not sure when
13 Christian built his.

14 Q. And then along Washington Street and
15 running on 48th Avenue there's some little tick
16 marks there almost. What are those, Mr.
17 Copenhaver?

18 A. Those are extensions -- and I'll stand up
19 and point these out so that the commissioners can
20 see what we're talking about. There are a couple
21 of red lines that come out sort of in the middle of
22 this area. The longer red line is a line that was
23 extended in 1988 -- or 1985 to Fay Charlesworth.
24 And the line below that was extended in '79 to Mr.
25 Radspinner, who was the state fire marshal at the

1 time. Below that are a couple of other residents
2 that were installed on the original -- sometime
3 between 1946 and the '60s. There's also a yellow
4 highlighted line that extends -- there's several
5 individual customers along 48th Street, and then
6 there's a long, yellow highlighted line that goes
7 up into that section, and that was -- the overhead
8 portion was constructed in, I believe it was, 1969,
9 and the underground was extended in 1973, which is
10 the red line that goes up sort of in the middle of
11 this area.

12 Q. Mr. Botner testified earlier that
13 Montana-Dakota did extend service to his proposed
14 location last year; is that correct?

15 A. Yes. We extended service ultimately on
16 December 1st.

17 Q. And what was the distance between
18 Montana-Dakota's existing facilities and the
19 location of Mr. Botner's service load?

20 A. It was 319 feet.

21 Q. And were there any Capital Electric
22 facilities between Montana-Dakota's facilities and
23 the Botner service location?

24 A. No, there were none.

25 Q. What were the closest Capital Electric

1 facilities?

2 A. The closest Capital Electric facilities
3 that I'm aware of were those that were across the
4 street -- across Burleigh Avenue on the north side,
5 which is approximately, I believe, 60 feet.

6 Q. So that would have been a line that
7 parallels the Montana-Dakota line?

8 A. Yes, parallels, and then the
9 Montana-Dakota line crosses over the top of the
10 Capital Electric line basically at that point.

11 Q. Have you determined the number of
12 customers served by Montana-Dakota within a
13 two-mile radius of the Botner location?

14 A. Yes. There are in excess of 1,805
15 customers. The reason I say in excess of that is
16 we basically counted the lots, and there are
17 several large apartment houses and multiple
18 dwellings in that area that were not counted as
19 individual services.

20 Q. They were counted just once?

21 A. Yes.

22 Q. Have you had prepared an exhibit showing
23 Montana-Dakota's costs to extend service to the
24 Botner location?

25 A. Yes, I did.

1 Q. I show you a copy of what's been marked as
2 Exhibit C. Using Exhibit C, Mr. Copenhaver, will
3 you describe to the Commission the costs that were
4 incurred by Montana-Dakota to extend service to Mr.
5 Botner's location?

6 A. Yes. The materials that were used
7 basically consisted of the 15-kV underground
8 primary that descended down the pole in conduit and
9 extended 319 feet south to the transformer location
10 and then was also terminated in the pad-mounted
11 transformer. That would include any connections to
12 the overhead line and any terminations of the
13 underground line.

14 The labor is the labor to install those
15 facilities, as well as install the pad-mounted
16 transformer and the meter for the -- at the
17 location.

18 The equipment charges were the necessary
19 line trucks and foremen's vehicles and any service
20 vehicles that were used to install the facilities.
21 We used a trenching contractor to install -- this
22 is a subcontractor that we used to trench the
23 facilities and also had to expose the underground
24 cables for the telephone and cable TV that were on
25 the property. The transformer is the cost of our

1 25-kVA 7,200-volt to 120-240-volt transformer and
2 box pad that it sets on or the foundation that it
3 sets on, and then the cost of the meter, for a
4 subtotal of \$3,049.61, with our ES & GA overhead of
5 17.74 percent of \$541, and that's for a total then
6 of \$3,590.61.

7 Q. ES & GA, what does that mean, Mr.
8 Copenhaver?

9 A. That is the time that an engineer would
10 put in in designing it, the ES, engineering
11 services, and general administration, any
12 accounting functions or any other nondirect
13 overhead that is charged to installing the
14 facilities.

15 Q. And the labor costs, are those fully
16 loaded labor costs with benefits, and so forth?

17 A. Yes, fully loaded with benefits.

18 Q. Based upon actual time spent?

19 A. Yes.

20 Q. You mentioned that this was a primary
21 service. Would you describe for the record the
22 difference between primary and secondary service?

23 A. Most residential services are secondary
24 service, 120-240 volt service, provides adequate
25 service to most residences in an urban-type

1 setting. In primary service, if we anticipate that
2 there is a high enough load that we need to extend
3 primary to the area, which is 7,200-120 volt phase
4 to ground, we need to extend that so that there is
5 not abnormal voltage drop to the customer. We
6 install the primary service pad-mounted transformer
7 7,200- volt to 120-240 volt, so what that does is
8 that transforms the voltage -- the primary voltage
9 down to a usable voltage for the customer, which is
10 the same as what we have in the outlets in the
11 walls here, and then the 240 would be used for
12 higher demand-type load, whether it be a welder or
13 pumps or air conditioner or if you have electric
14 dryers in your homes.

15 Q. And so why did you determine to extend
16 primary service to this location?

17 A. Mr. Botner explained to us that he was
18 planning on running a couple of two-horsepower
19 pumps for his pond. That, along with the
20 air-conditioning and his shop usage that he had
21 planned on, we felt primary service was necessary
22 to limit any voltage sags or drops that may be
23 caused from motors starting.

24 Q. This \$3,590 that is shown on Exhibit C,
25 those were the actual costs incurred by

1 Montana-Dakota to extend service to Mr. Botner?

2 A. Those are the actual costs, yes.

3 Q. Now, that number is significantly higher
4 than what Montana-Dakota estimated in its
5 application; is that correct?

6 A. That is correct.

7 Q. Would you explain to the Commission why
8 the actual costs ended up exceeding the estimate by
9 that?

10 A. The original estimate was prepared and
11 submitted in October. The actual construction was
12 in December. And even though it maybe was a mild
13 winter, the ground still gets hard in North Dakota
14 in the wintertime, and we had to expose telephone
15 and cable -- television cables on that property to
16 cross under them, and that required a large pit to
17 be dug in the frozen ground that made the contract
18 charges larger than what we had anticipated. We
19 also -- the original location had moved south an
20 additional 42 feet and so that incrementally drove
21 up any of the costs for the primary and labor and
22 trenching.

23 Q. And what was the reason for waiting until
24 December to put in the temporary service?

25 A. We were waiting to coordinate joint

1 trenching with other utilities to keep down the
2 costs. The original costs, we had anticipated that
3 cable TV and the telephone would extend to this
4 area and share the trenching costs. Ultimately the
5 cable television did not extend in there, so they
6 did not pay a portion of the trenching that we had
7 anticipated, and so that made our costs higher by
8 that amount.

9 Q. Did your original estimate include the
10 cost for the transformer and meter?

11 A. No, it did not.

12 Q. And can you explain why not?

13 A. Our extension policy that's filed with the
14 Public Service Commission does not require the
15 transformer and the meter to be part of their costs
16 of return of capital because those properties are
17 already capitalized when they're purchased and put
18 into our plant at that time.

19 Q. And those facilities can be removed from
20 the site and used at some other location?

21 A. Yes, they can be removed at any time.

22 MR. KUNTZ: Mr. Hearing officer, I would
23 offer Exhibits B and C.

24 MR. HOBERG: Any objection to B and C, Mr.
25 Negaard?

1 MR. NEGAARD: To B and C?

2 MR. KUNTZ: Right.

3 MR. NEGAARD: No objection.

4 MR. HOBERG: Mr. Binek?

5 MR. BINEK: (Shakes head.)

6 MR. HOBERG: Exhibit B, which is the large
7 map, and Exhibit C, the costs to extend, are
8 admitted.

9 Q. (MR. KUNTZ CONTINUING) Based upon your
10 education and experience, Mr. Copenhaver, which
11 suppliers' extended electric service would best
12 serve the orderly and economic development of
13 electric service to this area?

14 MR. NEGAARD: I object. That's a question
15 for the Commission to determine.

16 MR. HOBERG: Was that question based on
17 the issues?

18 MR. KUNTZ: Yes. That's one of the issues
19 in the proceeding, Mr. Hearing Officer, number 7.

20 MR. HOBERG: What's your objection
21 specifically, Mr. Negaard?

22 MR. NEGAARD: I think that's an issue for
23 the Commission.

24 MR. HOBERG: So it's a legal issue?

25 MR. NEGAARD: It's a conclusion based on

1 the facts and evidence that they're hearing here
2 today, and I don't know that anything has been
3 shown that this witness has expertise in that area.

4 MR. HOBERG: So a foundation objection?

5 MR. NEGAARD: Yes.

6 MR. HOBERG: I think without some more
7 foundation, I think his objection is well taken.

8 Q. (MR. KUNTZ CONTINUING) How long have you
9 been involved in providing electric service in and
10 around the City of Bismarck, Mr. Copenhaver?

11 A. Twenty-six years.

12 Q. And you're familiar with the location of
13 both Capital Electric's and Montana-Dakota's
14 facilities in the vicinity of Mr. Botner's
15 location?

16 A. Yes, I am.

17 Q. And I will repeat the question. Based
18 upon your education and experience, Mr. Copenhaver,
19 which of the two suppliers' extended electric
20 service would best serve orderly and economic
21 development to this location?

22 MR. HOBERG: Same objection? Do you still
23 have an objection?

24 MR. NEGAARD: Your Honor, I'll give Mr.
25 Kuntz some latitude here. I understand it's an MDU

1 witness and I think I already know the answer to
2 the question.

3 MR. HOBERG: You may respond, Mr.
4 Copenhaver.

5 THE WITNESS: I believe that
6 Montana-Dakota Utilities would best extend
7 facilities to this location and --

8 Q. (MR. KUNTZ CONTINUING) Let me ask you why
9 and then you can go ahead.

10 A. Okay.

11 Q. Can you explain why to the Commission?

12 A. Montana-Dakota Utilities Company already
13 has existing facilities on the property, and so
14 there would not be a need for any other properties
15 to be installed.

16 Q. And would approval of this application
17 result in a wasteful duplication of facilities or
18 service?

19 A. No, it would not.

20 Q. Would denial of the application result in
21 a duplication of facilities or service?

22 A. Yes, it would.

23 Q. Explain why.

24 A. Capital Electric or any other provider
25 would have to cross our existing lines to come into

1 the area. We already have facilities on the
2 property, and so anything added would be a
3 duplication.

4 Q. Did Montana-Dakota attempt to estimate the
5 annual load for this location based upon the
6 service needs that Mr. Botner has described?

7 A. Yes, we did.

8 Q. And what did you determine as an estimated
9 annual load?

10 A. We determined the annual load would be
11 12,000 -- 12,676 kilowatt-hours.

12 Q. And how does that compare to
13 Montana-Dakota's average load?

14 A. That is higher than an average customer.
15 And can I explain?

16 Q. Sure.

17 A. It's higher than an average customer due
18 to the pumping and the pond and the size of the
19 home that he is planning on constructing.

20 Q. What about the shop?

21 A. And the shop, yes, also.

22 Q. And did you have prepared an exhibit
23 showing whether Montana-Dakota could earn its
24 required -- or allowed rate of return based upon
25 extension of service to the Botner location and the

1 costs that were incurred?

2 A. Yes, I did.

3 Q. We provided you with a copy of what's been
4 marked as Exhibit D, Mr. Copenhaver, but before we
5 get into that, can you tell us, based upon the
6 estimated load at the Botner location, what
7 Montana-Dakota calculated would be the annual
8 revenues from this service location?

9 A. Yes. We calculated the estimated revenue
10 to be -- I believe it was \$874 -- \$874.80.

11 Q. And that would be based upon
12 Montana-Dakota's current rates; is that correct?

13 A. Yes, rate 10.

14 Q. I'm showing you what's been marked as
15 Exhibit D, Mr. Copenhaver. Could you explain to us
16 what's shown on that exhibit?

17 A. The Exhibit D shows the rate of return
18 that would be generated from this customer. The
19 first line of total investment is what the actual
20 costs were to extend to Mr. Botner, \$3,590.61. The
21 authorized rate of return as authorized by the
22 Public Service Commission is 10.016 percent. If
23 you multiply those figures together, the required
24 rate of return then for the investment would be
25 \$359.64. The total revenue required to earn that

1 10.016 rate of return would be \$595.53 before
2 taxes. The estimated revenue for Mr. Botner, as we
3 stated, is \$874.80. And if you subtract out the
4 cost of fuel to generate the power at .01267, times
5 the kilowatt-hours, that's \$161. Subtracting those
6 two figures, the estimated net revenues would be
7 \$713.80. And if you subtract out the revenue
8 required from that \$713, the net contribution to
9 costs would then be \$118.27.

10 Q. And that would be the amount that the
11 revenues would exceed the required return on this
12 investment?

13 A. Yes, that is correct.

14 MR. KUNTZ: We would offer Exhibit D.

15 MR. NEGAARD: Just for point of
16 clarification, you're showing estimated revenues of
17 \$874.80; correct?

18 THE WITNESS: Yes.

19 MR. NEGAARD: That does not count the
20 discount that Mr. Botner would receive as an
21 employee of MDU, does it?

22 THE WITNESS: No, it does not. He's
23 already receiving a discount at his present
24 location.

25 MR. NEGAARD: So if I take that discount

1 -- and you help me on this. If we take 67 percent
2 of your estimated revenue requirement, I get a
3 number of \$583.23. Do you have any reason to
4 dispute that?

5 THE WITNESS: No, I don't.

6 MR. NEGAARD: So taking that and
7 subtracting your estimated fuel costs, I would have
8 a number of \$422.23, which would show the revenue
9 remaining after meeting the fuel cost. Do you have
10 any reason to dispute that?

11 THE WITNESS: I wouldn't dispute that.

12 MR. NEGAARD: And so using your own
13 calculation then, that would show that MDU is
14 losing \$173.30 a month serving this load compared
15 to its required revenue requirement, and, also,
16 this calculation doesn't include any transmission
17 costs, does it?

18 THE WITNESS: I would -- I can't answer
19 that one. I would assume that the rate department
20 that prepared this would know that.

21 MR. NEGAARD: Did you prepare this?

22 THE WITNESS: No. I had it prepared by
23 our rate department.

24 MR. NEGAARD: But you didn't prepare it
25 yourself?

1 THE WITNESS: No.

2 MR. NEGAARD: So you're not sure how it
3 was prepared?

4 THE WITNESS: I just went through the
5 figures, and I'm not sure about that.

6 MR. NEGAARD: I have an objection, Your
7 Honor. There's no foundation. This witness didn't
8 even prepare this.

9 MR. HOBERG: Mr. Kuntz.

10 THE WITNESS: I didn't prepare the maps or
11 anything else.

12 MR. HOBERG: Mr. Kuntz.

13 MR. KUNTZ: It was prepared under his
14 direction, Your Honor. He's familiar with -- the
15 numbers here are laid out. He got the rate of
16 return from the rate department and the fuel
17 costs. All these are a matter of record with the
18 Commission.

19 MR. HOBERG: Is that correct, Mr.
20 Copenhaver, it was prepared under your direction?

21 THE WITNESS: They were all prepared under
22 my direction.

23 MR. HOBERG: Mr. Negaard, anything
24 further?

25 MR. NEGAARD: I still have the same

1 objection. He just testified that he doesn't know
2 what costs were even included in the calculation.

3 MR. HOBERG: That's true. But I think for
4 what it's intended to show, subject to your
5 questions on cross, I'll admit Exhibit D.

6 Q. (MR. KUNTZ CONTINUING) Mr. Copenhaver,
7 Mr. Botner receives his utility discount as an
8 employee of Montana-Dakota; is that correct?

9 A. Yes. As an employee of Montana-Dakota,
10 that is part of his compensation plan.

11 Q. And he testified that he already receives
12 that discount at his current residential location?

13 A. That is correct.

14 Q. So if he sells that property, would the
15 subsequent customer receive that discount?

16 A. Not unless they were an employee.

17 Q. So assuming he sold that property to a
18 nonemployee, Montana-Dakota then would receive the
19 amount that's currently discounted to Mr. Botner as
20 additional revenue from the new customer, would it
21 not?

22 A. Yes, it would.

23 MR. KUNTZ: I have no further questions of
24 Mr. Copenhaver. And I forgot to -- we've already
25 accepted Exhibit D. Mr. Botner may need to leave

1 early this morning, so I would ask that he be
2 excused when it's necessary for him. He's got a
3 flight, I think, earlier this morning.

4 MR. HOBERG: Mr. Botner?

5 MR. KUNTZ: Right.

6 MR. HOBERG: Mr. Negaard, any reason you
7 want to hold Mr. Botner around?

8 MR. NEGAARD: No.

9 MR. HOBERG: Mr. Binek?

10 MR. BINEK: No.

11 MR. HOBERG: Okay. Mr. Botner, you're
12 free to leave if you wish.

13 MR. KUNTZ: You can stay if you want.

14 MR. HOBERG: Okay. Thank you, Mr. Kuntz.
15 Mr. Negaard, please.

16 CROSS-EXAMINATION

17 BY MR. NEGAARD:

18 Q. Mr. Copenhaver, how many services -- back
19 up. Mr. Botner's service is located right on the
20 south side of Burleigh Avenue; is that correct?

21 A. Yes, that is correct.

22 Q. And since you've been at MDU, 26 years,
23 about the same time I practiced law, that's about
24 1979?

25 A. That's incorrect. I have been with MDU

1 for almost 35 years.

2 Q. But in your current capacity -- and I
3 apologize.

4 A. In my current capacity, that is correct.

5 Q. -- as electric supervisor, 26 years, since
6 1979?

7 A. Yes.

8 Q. How many new services has MDU added south
9 of Burleigh Avenue since 1979?

10 A. South of Burleigh Avenue, I would say
11 around six in that section.

12 Q. In Section 20?

13 A. Yes.

14 Q. Can you tell me where they're at on the
15 map that you used when you referenced in your
16 testimony?

17 MR. HOBERG: Please describe it as
18 accurately as you can for the record, please.

19 THE WITNESS: As I already explained,
20 there are -- the first one here is the longer red
21 line which was --

22 MR. HOBERG: That's coming out of
23 Washington -- South Washington?

24 THE WITNESS: Coming out of Washington
25 Street. And just below -- I can't read that --

1 just below Glenwood Drive, and that would have been
2 Fay Charlesworth.

3 Q. (MR. NEGAARD CONTINUING) Do you know what
4 year that was?

5 A. Yes. I already testified I believe that
6 was 1985, I believe.

7 Q. Okay.

8 A. Below that is a shorter red line, which is
9 for Mr. Radspinner, and that was 1979. The line --
10 the long red line in '73, I believe, was a pump
11 and --

12 Q. That was '73?

13 A. '73. That was a well and a pump, I
14 believe.

15 Q. So my question -- I'm sorry -- was after
16 1979.

17 A. Oh, after 1979. Oh, I'm sorry. Then
18 there would only be the two that I'm aware of.
19 There may be the other Huber -- I can't remember
20 the Huber that's developing the property down
21 there, but he had a shop that, I believe, we had
22 extended service to, also.

23 Q. So, arguably, if the Commission granted
24 this certificate, this would be the third or maybe
25 the fourth new service south of Burleigh Avenue

1 that you've added in the last --

2 A. South of Burleigh Avenue in this area,
3 yes, that's correct.

4 Q. And I know the Commission got the language
5 for the two-mile radius from prior decisions.
6 Looking at your map, the circle, I assume that
7 black line -- that black circle is the two-mile
8 radius?

9 A. That's a correct assumption.

10 Q. And up in the upper left-hand corner I'm
11 seeing there's quite a -- there's a residential
12 area up there -- way up in the left-hand corner of
13 that circle; is that correct?

14 A. Are you talking this one or this one?

15 Q. The one you have your finger on now.

16 A. Yes.

17 Q. That's a residential service area that MDU
18 serves?

19 A. That's a residential service area in
20 Mandan.

21 Q. It's in Mandan, across the river, isn't
22 it?

23 A. Yes.

24 Q. Do you know how many services -- or how
25 many customers you are serving in Mandan across the

1 river that are included in your total?

2 A. No, I do not.

3 Q. Are they on the same substation?

4 A. No. Completely different system.

5 Q. But they were included in the two-mile
6 radius?

7 A. No, they were not.

8 Q. They were not?

9 A. They were not.

10 Q. Your map includes that within the two-mile
11 radius?

12 A. That's correct, it is included in the
13 two-mile radius, but it does not involve Capital
14 Electric nor this substation or any of the
15 facilities.

16 Q. So you did not include them in your count
17 of customers?

18 A. No, they are not.

19 MR. NEGAARD: Okay. Thank you. I
20 appreciate that. Thank you, sir. I have no other
21 questions.

22 MR. HOBERG: Thank you, Mr. Negaard. Mr.
23 Binek, did you have any questions of this witness?

24 MR. BINEK: No.

25 MR. HOBERG: Thank you, Mr. Binek.

1 Commissioner Wefald, please.

2 EXAMINATION

3 BY COMMISSIONER WEFALD:

4 Q. Is there going to be another witness to
5 talk about reliability, or are you the person?

6 A. No, no other witnesses.

7 Q. No other witness. Then I have a question
8 for you. The substation that's located in the
9 northeast portion of your circle of services, is
10 that the substation that provides service to
11 this --

12 A. Yes, it is.

13 Q. -- customer, Corey Botner?

14 A. Yes.

15 Q. And do you have a -- I need some help from
16 my staff. Is this a loop flow on this line?

17 A. It is looped and it can be looped back
18 through the facilities at the sewage treatment
19 lagoon -- sewage treatment facilities in the --
20 sort of directly above the Botner property.

21 Q. And how does the --

22 A. It's not an operated loop.

23 Q. How does it loop flow back to the
24 substation?

25 A. It's not operated in a loop fashion. It's

1 operated as a radial feed, but the loop would give
2 it a backup. If something should happen, it would
3 give it a backup to the area.

4 Q. All right tell me how you're describing a
5 loop flow versus what I -- my understanding of a
6 loop flow is that there would be a -- one of the
7 power lines would come the opposite direction from
8 the substation and connect with the distribution
9 line and then connect back again to the
10 substation. In this case, I can only see that
11 there's -- the line is only going one way and that
12 it ends, it goes south along -- what's this street?

13 A. That's 12th Street.

14 Q. Goes south along 12th Street, then it goes
15 west along Burleigh Avenue, and then it goes north
16 up to the sewage treatment plant, and then it goes
17 east along the drainage ditch --

18 A. Yes.

19 Q. -- then it goes north on Washington Street
20 and then it stops?

21 A. That's essentially correct, Commissioner
22 Wefald. I apologize, I did not highlight all of
23 the lines in the area. As I had tried to explain,
24 the line out of the substation follows the drainage
25 ditch in an easterly-westerly direction. That's

1 the wide, white vacant spot. Yes, that is
2 correct. And for the benefit of the other
3 commissioners, I'll show you on this map. The loop
4 service goes back to the substation here. It goes
5 along the drainage ditch. There's also other
6 services on the north side of the drainage ditch
7 that also provides additional services in that
8 area. But we did not attempt to put all of the
9 lines on the map, but I apologize. That's how it
10 would be looped. And you are correct in that it
11 does loop and come back to that substation again.
12 But when I was saying that it's not operated in a
13 loop fashion, a truly looped system the lines would
14 be tied together at all times. So we have two
15 lines that form a loop, but they are operated as
16 two radial-fed lines and they're only closed in if
17 one line should lose service.

18 Q. What is the distance from the -- for the
19 customer from the substation?

20 A. It would be about two and a half miles.

21 COMMISSIONER WEFALD: Thank you.

22 THE WITNESS: You are welcome.

23 MR. HOBERG: Thank you, Commissioner
24 Wefald. Commissioner Clark, did you have any
25 questions of this witness?

1 COMMISSIONER CLARK: I do.

2 EXAMINATION

3 BY COMMISSIONER CLARK:

4 Q. What -- are you familiar with the tariff
5 and what it says about similar construction costs?
6 In this case -- we have a temporary line being
7 built. Let's say it was a permanent line that was
8 put in and the costs were 3,500. Are those passed
9 on to the consumer or the developer, or are they
10 just recovered through the regular rate schedule?

11 A. Normally they would be covered through the
12 regular rate. Our extension policy is filed with
13 the Public Service Commission as part of our rates,
14 and that says that basically we can extend two
15 times the annual revenue without asking for a
16 contribution from the customer.

17 Q. Once that's exceeded, is there a formula
18 for the contribution that's requested?

19 A. If -- yes, there are a couple different
20 formulas that are included in that rate. And if
21 there's no further development plan, that customer
22 themselves would pay for it. If it's a -- if it's
23 a development, then they are paid out on a per-lot
24 basis. And then that is a -- can be a refundable
25 or nonrefundable contribution, also, and that's

1 dependent upon a five-year covering of the payback
2 of the difference.

3 Q. On I think it's Exhibit D, which is the
4 net contribution to cost exhibit --

5 A. Yes.

6 Q. -- the revenue required for 10.016 percent
7 rate of return with a grossed up for tax effect,
8 could you walk through or tell me how that tax
9 effect is figured? Is there just a standard
10 percentage that MDU uses to figure for tax effect,
11 or how is that arrived at?

12 A. I believe that there is a standard
13 effect. I did not prepare this. This was prepared
14 in our rate department in our corporate office.

15 Q. Will there be a witness who will be --

16 A. It's just grossed up for taxes. And
17 whether we're making investment in property or
18 whatever, we have to figure that grossing it up for
19 taxes for --

20 Q. Will there be a witness who will be able
21 to answer that?

22 MR. KUNTZ: Mr. Ball could if you would
23 like.

24 COMMISSIONER CLARK: Yeah, I would. We
25 can handle it now or later. It doesn't matter.

1 MR. HOBERG: Let's take it later.

2 COMMISSIONER CLARK: That's all I have.

3 Thank you.

4 MR. HOBERG: Thank you, Commissioner

5 Clark. Commissioner Cramer, please.

6 EXAMINATION

7 BY COMMISSIONER CRAMER:

8 Q. Thank you. I want to clarify Exhibit B,
9 the map, since there's some confusion. The yellow
10 highlight was mainly to illustrate this particular
11 situation, but in no means illustrates obviously
12 all of the MDU customers or lines, so am I right to
13 assume that the red lines represent MDU services?

14 A. The red lines represent the primary
15 lines --

16 Q. Primary lines.

17 A. -- in the area, not the individual
18 services.

19 COMMISSIONER CRAMER: I understand that.
20 Okay. That's all.

21 MR. HOBERG: Thank you, Commissioner
22 Cramer. Any further questions by commissioners?

23 COMMISSIONER WEFALD: I have a followup.

24 MR. HOBERG: Commissioner Wefald, please.

25

FURTHER EXAMINATION

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BY COMMISSIONER WEFALD:

Q. I have a followup to Commissioner Clark's question on the two times the annual revenue. So would you just explain to me what portion of this -- is it the required return?

A. No. It's the total revenue generated from the project.

Q. The total. We have the total cost of the project is \$3,590, and so you said that we don't charge the customer if it's -- if the annual revenue is two times -- if what is two times the annual revenue?

A. Yes, the 870 --

Q. \$4.80?

A. \$874.80.

Q. Just go through that again for me one more time, please, what you calculate for the customer. I can see \$874.80, and so just tell me again what -- I missed your answer to Commissioner Clark and so I need to have you repeat that again.

A. Well, I'm not quite sure of the question, Commissioner Wefald, but the original estimate that was prepared for extension to Mr. Botner was the \$1,649.17, and two times the annual revenue was

1 covered under the original estimate. The actual
2 costs less the transformer cost and the meter cost
3 are what are filed, so you would have to subtract
4 out the 700 and -- I don't remember -- the 87.

5 COMMISSIONER CLARK: 778 and 28.

6 THE WITNESS: Yes. You would have to
7 subtract that out from the cost to extend to --

8 Q. (COMMISSIONER WEFALD CONTINUING) The
9 customer?

10 A. To the customer to determine then if there
11 would be a contribution.

12 Q. In this case --

13 A. In this case.

14 Q. In this case did MDU ask for a
15 contribution from the customer?

16 A. We did not originally because in the
17 estimate as was filed with the Public Service
18 Commission, it met the requirement.

19 Q. Yes. But when you actually put in the
20 facility and it exceeded the cost, then did you ask
21 for a contribution from the customer?

22 A. No, we have not asked. We're awaiting the
23 outcome of this hearing.

24 Q. All right. If the outcome of the hearing
25 is that this line would stay, would you be asking

1 your customer for a contribution?

2 A. In all probability, we would.

3 Q. And what would make you not do that?

4 A. If there was some other additional
5 information as to revenue that may change, if he
6 were to put in electric heat, if he were to do
7 something differently.

8 Q. To increase the amount of revenue?

9 A. To increase the amount.

10 COMMISSIONER WEFALD: Thank you.

11 MR. HOBERG: Thank you, Commissioner
12 Wefald. Commissioner Clark, please.

13 FURTHER EXAMINATION

14 BY COMMISSIONER CLARK:

15 Q. Just getting back to that tariff and
16 following up on Commissioner Wefald's questions,
17 the contribution that may be asked from -- of
18 customers, is that MDU's option whether to ask for
19 that contribution, or is it once up to two times
20 annual revenue is exceeded, there's just a
21 mandatory formula that kicks in that allows for
22 recovery? Because here -- I just sort of did the
23 math quickly, and I could be wrong, but it looks
24 like you're almost 1,700 under the annual revenue.
25 Is that right?

1 A. Yes. Yes, that would -- with -- did you
2 subtract out the transformer cost?

3 Q. I did, yeah. Subtracting out the
4 transformer cost.

5 A. Approximately a thousand to 1,700. I
6 would have to --

7 Q. So at that point is it MDU's discretion
8 whether to ask for a contribution, or is it
9 mandated by the tariff?

10 A. It's not mandated, per se. We try to
11 follow those as closely as possible. If there are
12 foreseeable development -- other development in the
13 area, they could be waived, you know, so it's not
14 sort of in concrete if this happens, you go to step
15 B or anything, but it is part of the filed rate.

16 MR. KUNTZ: Commissioner Clark, I also
17 understand in situations like this where the
18 customer is given an estimate at the beginning, if
19 the actual costs exceed the estimate, that that
20 would probably be taken into consideration in how
21 the company assesses the extension.

22 As Mr. Copenhaver testified, there ended
23 up being some handwork involved on this project
24 that weren't anticipated because of the crossing of
25 the other utility lines, so I'm not sure how even

1 the rate department might deal with that with Mr.
2 Botner or any other customer. I mean, it's not
3 just the fact that it's Mr. Botner, but it's
4 something we take into consideration for any
5 customer.

6 COMMISSIONER CLARK: Sure. And I think
7 you can understand the Commission's concern in this
8 regard. This is a somewhat unique situation in
9 that it's an MDU employee and the estimate did --
10 the actual charges were quite a bit more than the
11 estimate. And we just wouldn't want to see any --
12 we want everyone to be treated equally, not have
13 some ratepayers subsidizing others.

14 MR. HOBERG: Any further questions by
15 commissioners? Commissioner Wefald, please.

16 FURTHER EXAMINATION

17 BY COMMISSIONER WEFALD:

18 Q. Was the original estimate for an
19 underground line?

20 A. Yes, it was.

21 MR. HOBERG: Any further questions by
22 commissioners? Thank you. Mr. Kuntz, any
23 followup?

24 MR. KUNTZ: No. Did Mr. Binek have any?

25 MR. HOBERG: Mr. Negaard, any followup?

1 MR. NEGAARD: No, sir.

2 MR. HOBERG: Mr. Binek?

3 MR. BINEK: Yes.

4 CROSS-EXAMINATION

5 BY MR. BINEK:

6 Q. I just wanted to know, is there a name for
7 the substation -- the one you referred to up in the
8 northeast corner?

9 A. The name that we refer to it is South
10 Ninth Street Substation.

11 Q. Okay. Is there a substation by the sewage
12 treatment plant?

13 A. No, there isn't, but you may be -- if
14 you've been down South Washington Street, Capital
15 Electric has constructed a substation to the south
16 on South Washington. There is none on that other
17 location.

18 Q. Is there some kind of a switch there?

19 A. Excuse me?

20 Q. Over by the sewage treatment plant, is
21 there a switch?

22 A. No. There's a primary enclosure or a
23 junction box that's just basically a 60-inch-wide
24 by 18-inch-deep by about 40, 38 inches or so high
25 above the ground. That's all that's located on

1 London Avenue.

2 MR. BINEK: No further questions.

3 COMMISSIONER WEFALD: I have one more.

4 MR. HOBERG: Thank you, Mr. Binek. Mr.
5 Kuntz, please.

6 REDIRECT EXAMINATION

7 BY MR. KUNTZ:

8 Q. You mentioned, Mr. Copenhaver, that this
9 line is not operated as a loop, but that it could
10 be closed to operate as a loop in the case of an
11 emergency.

12 A. Yes.

13 Q. How long does it take to close a line like
14 that if you have an outage on one segment or the
15 other so that you could operate it as a loop?

16 A. Basically I would say probably 45 minutes
17 to an hour depending on crew response time. The
18 connections are already existing, and you would
19 have to isolate any faulted line before you picked
20 it up from an alternate area.

21 MR. HOBERG: Commissioner Wefald, did you
22 have another question?

23 COMMISSIONER WEFALD: Yes, I did.

24 FURTHER EXAMINATION

25 BY COMMISSIONER WEFALD:

1 Q. Your map indicates that the section of
2 line that comes west of Washington Street on
3 Burleigh Avenue to -- and passes near the Corey
4 Botner service location, that that distribution
5 line was constructed in 1966.

6 A. That is correct.

7 Q. Now that's just about 40 years ago?

8 A. Mm-hmm.

9 Q. And so what upgrades have been done on
10 that line since that time?

11 A. There haven't been any upgrades. We
12 basically treat our -- we inspect and treat our
13 poles with a firm that -- we primarily use Osmos,
14 and they come in and treat poles for life
15 extension, and we are presently looking at between
16 75 and a hundred years for most poles if they are
17 maintained on a routine 10- to 15-year cycle. So
18 there have been no other upgrades.

19 Q. Are you -- in a 40-year time period for a
20 line of that type, for the line, itself, not the
21 poles, what is your normal upgrade schedule?

22 A. There would be no need for upgrade unless
23 there was an increase in load. The conductor,
24 itself, does not wear out, per se, that carries the
25 electricity. So unless there was a large increase

1 in load, there would be nothing planned to change
2 anything.

3 COMMISSIONER WEFALD: Thank you.

4 MR. HOBERG: Thank you, Commissioner
5 Wefald. Any further questions of Mr. Copenhaver?
6 Mr. Binek, please.

7 RE-CROSS-EXAMINATION

8 BY MR. BINEK:

9 Q. I just have one more question concerning
10 this loop capability. All the service comes out of
11 this one substation in the northeast corner?

12 A. Yes, it does.

13 Q. So if you lost power at the substation,
14 the loop wouldn't -- the looping capability
15 wouldn't do you any good then? If the substation
16 failed, there would be no power?

17 A. Well, that is partially correct, Mr.
18 Binek. We do have other substations in the area at
19 the Kirkwood Mall and they are also looped into
20 this area, so depending on the time of the year and
21 the configuration -- as I told you, we have other
22 lines proceeding down, as you can see, the red
23 lines on Washington, and those tie in, as well as
24 do these other lines tie in at our Kirkwood
25 substation. So the fact that we lost a substation

1 would not mean that power could not be restored to
2 this customer -- to these customers.

3 MR. BINEK: Thank you.

4 MR. HOBERG: Any further questions of Mr.
5 Copenhaver? Thank you, Mr. Copenhaver.

6 Let's take a ten-minute recess at this
7 point and we'll be back at 25 to 11.

8 (Recess taken at 10:25 a.m. to 10:36 a.m.)

9 MR. HOBERG: Let's go back on the record.
10 Mr. Kuntz, you were going to call another witness.

11 MR. KUNTZ: We'll call Don Ball.

12 MR. HOBERG: Mr. Ball, did you hear the
13 admonition I gave earlier in regard to perjury?

14 THE WITNESS: Yes, I did.

15 (Witness sworn.)

16 MR. HOBERG: Thank you. Mr. Kuntz.

17 DONALD R. BALL,

18 being first duly sworn, was examined and testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. KUNTZ:

22 Q. Please state your name and business
23 address, Mr. Ball.

24 A. My name is Donald R. Ball. My address is
25 400 North Fourth Street, Bismarck, North Dakota.

1 Q. By whom are you employed?

2 A. I'm employed by Montana-Dakota Utilities
3 Company.

4 Q. What's your position with Montana-Dakota?

5 A. I'm assistant vice president, regulatory
6 affairs.

7 Q. And Commissioner Clark posed a question to
8 Mr. Copenhaver regarding the manner in which you
9 would calculate revenue required to reach a
10 required return shown on Exhibit D. Do you recall
11 that question?

12 A. Yes, I do.

13 Q. Could you respond to Commissioner Clark's
14 question as to the manner in which you would
15 calculate the required revenue to reach an
16 authorized or allowed return?

17 A. Yes, I will. Referring to Exhibit D, the
18 required return is \$359.64, which, of course, is
19 simply the total investment times the authorized
20 return. To get to the required revenue, you need
21 to take account for federal and state income taxes,
22 and the effective tax rate in North Dakota is
23 roughly 39.645 percent. That's the federal rate
24 and the state income tax rate on a combined basis.
25 If you divide the required return by the reciprocal

1 of the effective tax rate, or 60.355 percent, you
2 will get the required revenue. And I'm doing this
3 from memory. I happen to be 30 cents off from the
4 595.53 shown on the exhibit, but that is the
5 process that you would use.

6 MR. KUNTZ: I have no further questions.

7 MR. HOBERG: Thank you, Mr. Kuntz. Mr.
8 Negaard, any questions of Mr. Ball?

9 MR. NEGAARD: Nothing further.

10 MR. HOBERG: Mr. Binek?

11 MR. BINEK: No.

12 MR. HOBERG: Commissioners, any questions
13 of Mr. Ball?

14 COMMISSIONER WEFALD: No.

15 COMMISSIONER CRAMER: No.

16 COMMISSIONER CLARK: Thank you.

17 MR. HOBERG: Thank you, Mr. Ball. Any
18 further witnesses, Mr. Kuntz?

19 MR. KUNTZ: No. We would ask the
20 Commission to take official notice of
21 Montana-Dakota's and MDU Resource's certificate of
22 incorporation and that Montana-Dakota is a public
23 utility as defined at 49-03 of the North Dakota
24 Century Code and then we would rest.

25 MR. HOBERG: Any objection to taking

1 official notice in that regard?

2 MR. NEGAARD: No.

3 MR. HOBERG: Okay. The Commission will
4 take official notice as requested. Mr. Negaard, do
5 you want to call your first witness?

6 MR. NEGAARD: Yes. We would like to call
7 Mr. Ron Lipp.

8 MR. HOBERG: Mr. Lipp, did you hear the
9 admonition I gave in regard to perjury earlier?

10 THE WITNESS: Yes.

11 (Witness sworn.)

12 MR. HOBERG: Mr. Negaard, please.

13 RON LIPP,

14 being first duly sworn, was examined and testified
15 as follows:

16 DIRECT EXAMINATION

17 BY MR. NEGAARD:

18 Q. Mr. Lipp, please state your name.

19 A. Ron Lipp.

20 Q. And where do you live, Mr. Lipp?

21 A. I live in Bismarck.

22 Q. Okay. And could you tell the
23 commissioners about your background and education?

24 A. I graduated from Bismarck High in 1971. I
25 went to BJC for two years. And then I went to NDSU

1 and graduated there in '75 in electrical
2 engineering.

3 Q. And what is your present employment and
4 the position at your present employment?

5 A. I'm the manager of operations and
6 engineering at Capital Electric.

7 Q. And how long have you worked at Capital
8 Electric?

9 A. Seventeen years.

10 Q. Okay. Did you have any experience in
11 engineering that you brought with prior to working
12 at Capital Electric?

13 A. Yeah. When I graduated from college in
14 1975, I went to Finley Engineering, and they were
15 employed in Aberdeen, so I lived there for a year,
16 then they moved me back to Bismarck, and Finley
17 Engineering is a consulting firm that worked with
18 cooperatives and telephone cooperatives. So they
19 moved me back to Bismarck since they had an office
20 here after my first year, and then I worked here --
21 I worked for Finley Engineering for another six
22 years, then I -- SSNR, it's always greener on the
23 other side of the fence, moved me, so I went there
24 for -- and they're another consulting firm, and I
25 worked there for another seven years, and then I

1 interviewed with Lars, and it was greener over
2 there at Capital Electric. So, you know, if push
3 comes to shove, I should still be Finley, I would
4 be retired now.

5 Q. Mr. Lipp, are you familiar with south
6 Bismarck and the service area where MDU has asked
7 the Commission to grant it a certificate of
8 convenience?

9 A. Yes, I am.

10 Q. And are you familiar with the area or the
11 property that Corey Botner has asked for services
12 at?

13 A. Yes, I am.

14 MR. NEGAARD: Your Honor, if I may hang up
15 the map. If I could, Your Honor, during his
16 testimony, is it okay if Mr. Lipp stands and points
17 at the map at times when he is --

18 MR. HOBERG: It is as long as, as he
19 testifies, he generally faces this way, and he can
20 take that with him, too.

21 MR. NEGAARD: Is that okay there?

22 MR. HOBERG: Yes.

23 COMMISSIONER CRAMER: It's great.

24 Q. (MR. NEGAARD CONTINUING) Showing you
25 what's been marked as P-1 -- Exhibit P-1, Mr. Lipp,

1 could you tell us what that is?

2 A. This is a map of our facilities down where
3 -- and this green dot is where Corey's service is,
4 so we put our map -- well, I'll just go through
5 it. The blue is the city limits, and you can
6 follow the blue line and that's the city limits.
7 And, like Bob said, this is where Huber lives, and
8 then you go up and around here, this is the school
9 land by Wachter's and then you go -- so the blue
10 line is the city limits. And then I put the green
11 line -- I mean, the green is where Corey Botner
12 wants to put service. Then in the gray MDU's --
13 that's according to our agreement, that's their
14 service area agreement. And then our yellow is our
15 service area. And then I got a one- and two-mile
16 radius with the red.

17 Q. Okay. So you drew a circle, a two-mile
18 radius and then a one-mile radius; is that correct?

19 A. That's correct.

20 Q. This map, is this a true and accurate
21 representation of the south Bismarck area,
22 including your facilities in that area?

23 A. Right. This is what -- yeah, this is our
24 map that the linemen use and everybody uses.

25 Q. And this was prepared by you and with you

1 under your supervision?

2 A. Well, yeah, under my supervision, but my
3 CAD operator, yes, did that.

4 MR. NEGAARD: I'd offer Exhibit P-1,
5 please.

6 MR. HOBERG: Any objections, Mr. Kuntz?

7 MR. KUNTZ: Just one question. Mr. Lipp,
8 you're aware that the service area agreement
9 between Montana-Dakota and Capital Electric outside
10 the City of Bismarck was canceled, are you not?

11 THE WITNESS: We have a letter, yes.

12 MR. KUNTZ: I would object to Exhibit P-1
13 to the extent it tends to depict service areas
14 belonging to one company or another outside the
15 City of Bismarck. Other than that, I have no
16 objection to the showing of the Botner location in
17 relation to the city limits and the service areas
18 they're in.

19 MR. HOBERG: So your objection is to the
20 yellow, gray?

21 MR. KUNTZ: Right.

22 MR. HOBERG: Mr. Negaard.

23 MR. NEGAARD: Well, with the understanding
24 that that's what the map shows, I offer the map.
25 The agreements in question can be handled as they

1 come up.

2 MR. HOBERG: So as I understand it then --
3 I'm not sure I do understand what the situation is
4 in regard to the agreements.

5 COMMISSIONER WEFALD: I don't, either.

6 COMMISSIONER CRAMER: It does matter to
7 me.

8 MR. HOBERG: Mr. Binek, do you have any
9 comment on that?

10 MR. BINEK: Well, my understanding, there
11 had been agreements at one time that are no longer
12 effective.

13 MR. HOBERG: So it's representing a past
14 situation; is that correct, Mr. Negaard?

15 MR. NEGAARD: We don't necessarily agree
16 with MDU's characterizations of those agreements.

17 MR. HOBERG: Well, then I'm going to admit
18 the exhibit as is with any indication in the
19 testimony that would indicate it should be
20 otherwise in regard to the yellow and gray.

21 MR. NEGAARD: Thank you.

22 Q. (MR. NEGAARD CONTINUING) Mr. Lipp, using
23 the map, and you're free to go up and point to the
24 map, could you explain to the Commission where
25 Capital Electric's transmission lines are located

1 on Exhibit P-1?

2 MR. HOBERG: Okay. You can continue.

3 THE WITNESS: Okay?

4 MR. HOBERG: Yeah.

5 THE WITNESS: This is our map. I mean we
6 use it and we can blow this section up in case
7 there's an outage. Anyway, this is Washington
8 Street. Okay.

9 Q. (MR. NEGAARD CONTINUING) And when you say
10 Washington Street, Mr. Lipp, keep in mind we have
11 the court reporter here, so if you can describe for
12 the court reporter how you're pointing to the map
13 and what you're referencing, please.

14 A. Okay. Well, Washington Street, I think,
15 is like six miles long, but this is Sibley Park
16 down here and this is Burleigh Avenue with the tree
17 in the middle of the road, we call it, and we have
18 a substation about a half a mile south of Burleigh
19 Avenue.

20 Q. And, Mr. Lipp, maybe I can help. In the
21 smaller red circle inside of the map that you're
22 referencing, on the right-hand side as you face the
23 map there's a line that goes north and south. Is
24 that Washington Avenue that you're referencing?

25 A. Yes, that's correct.

1 Q. And there's a line going through the
2 middle of the map, almost all the way across the
3 map inside the small circle. Is that Burleigh
4 Avenue that you're referencing?

5 A. That's correct.

6 Q. Okay. Thank you.

7 A. Okay. Getting back to -- we built this
8 substation -- South Washington sub in 1993 because
9 we have a Lincoln sub over here on 1804 that goes
10 to Mary College that was getting overloaded because
11 of this growth. So we built this transmission line
12 from our Lincoln substation up to our South
13 Washington Street substation. And then from our
14 South Washington Street substation we built another
15 transmission line up Washington Street, over on
16 Burleigh, up on South 12th, over to MDU's South
17 Ninth Street sub. So we have it looped. Like
18 Susan said, we have it looped so if a car hits this
19 line, we can call MDU and they can energize this
20 line and we can have this substation back on
21 service.

22 Anyway, so we have three circuits coming
23 out of this sub. We've got circuit 1 that goes
24 back down and feeds Glenwood and then back up,
25 Lincoln substation for Mary College.

1 Q. And you're referencing the lower right-
2 hand portion of the map?

3 A. That's correct.

4 Q. Okay.

5 A. Then I have circuit 2 going up to feed
6 Tatley Meadows. That's north on -- north of
7 Burleigh on Washington Street to the west.

8 Q. Okay.

9 A. Then I have circuit 3 coming over here to
10 feed Fox Island, and that's how we would feed Mr.
11 Botner. And then I also have a spare circuit --
12 spare bay on the substation for future development
13 out because of our -- you know, for future
14 development.

15 Q. And when you reference future development,
16 you're pointing to the area of Section 20 --

17 A. That's correct.

18 Q. -- on the map?

19 A. That's correct.

20 Q. Now, on this map the colored areas, are
21 those Capital Electric's customers?

22 A. That's correct. Right. We have red
23 lines. That's a different phase. We have green
24 lines, which is a different phase. We have dashed
25 lines. That's underground. We have solid lines.

1 That's overhead. So, yeah, this just kind of shows
2 where our facilities are.

3 Q. Okay. The line on Burleigh Avenue that
4 goes across, is that the same voltage as the MDU
5 line that runs parallel to it on Burleigh Avenue?

6 A. That's correct.

7 Q. And that's 7,200?

8 A. Mm-hmm.

9 MR. HOBERG: Is that yes?

10 THE WITNESS: That's correct.

11 Q. (MR. NEGAARD CONTINUING) Was that line
12 ever on the south side of Burleigh Avenue?

13 A. Yes, it was.

14 Q. And when was it --

15 A. Before my time.

16 Q. Have you looked at the records to
17 determine?

18 A. Yeah. I think we moved it in '66 on the
19 north side, and I have no clue why they did that.

20 Q. But what year do you know was that line
21 built on the south side of Burleigh Avenue
22 originally?

23 A. I think it was '56.

24 Q. In the '50s -- early '50s?

25 A. Yeah. I don't know where it went, but it

1 was on the south side.

2 Q. Mr. Lipp, in the discovery that we
3 supplied to MDU, we advised them that that line was
4 built in 1950. Does that sound correct?

5 A. Oh, okay.

6 Q. The Burleigh Avenue line.

7 A. Sure.

8 Q. And so you moved it on the north side then
9 of Burleigh Avenue sometime in the '60s?

10 A. That's correct, according to the records,
11 the staking sheets we have.

12 Q. And was it upgraded at all after it was
13 moved?

14 A. Yes. They upgraded it to -- from single-
15 phase to three-phase for some reason. I don't
16 know.

17 Q. And when was that done; do you know?

18 A. Was it in our records? I don't recall,
19 but I know we looked at it.

20 MR. NEGAARD: If I could, to help refresh
21 the witness's memory, approach the witness.

22 MR. HOBERG: You may.

23 Q. (MR. NEGAARD CONTINUING) Showing you the
24 answers to interrogatories, Mr. Lipp --

25 A. Okay.

1 Q. -- and I believe you helped us answer
2 those when we sent them in.

3 A. We looked at all the old staking sheets.

4 Q. What year was it converted?

5 A. Okay. We converted the single-phase line
6 to V-phase, which is two-phase versus one-phase, in
7 1960, and then we converted the V-phase line to
8 three-phase line in '67, according to our records.

9 Q. And, also, do you have a line on South
10 Washington Street? Do you have a power line that
11 runs parallel to Washington Street?

12 A. Yeah. We have a line from our substation
13 all the way up to the drainage ditch, a three-
14 phase line.

15 Q. When you pointed to the substation, how --
16 in your estimation, how far from this location --
17 the service Botner location is that substation
18 located?

19 A. Oh, about a mile and a quarter.

20 Q. By a mile and a quarter, you're talking
21 about following the power line?

22 A. Kitty-whampus it's probably less than a
23 mile -- or as the crow flies, I guess, is better.

24 Q. So you have four bays, if you will, on
25 that substation?

1 A. Three that are energized and one spare for
2 future.

3 Q. That you're using -- or have there for
4 future growth?

5 A. For future growth.

6 Q. And you indicated that you can have
7 redundancy in this area by tapping back into an MDU
8 substation in east Bismarck.

9 A. That's for our transmission only, not
10 distribution.

11 Q. Okay.

12 A. That's in case -- and, you know, vice
13 versa, too. They can use ours, too.

14 Q. And that's common that the two utilities
15 cooperate in that fashion?

16 A. It is in this case, yeah. It's been
17 working out, yeah.

18 Q. And do you have a recollection or recall
19 what cost the South Washington substation was?

20 A. I think we came up with 350,000, and that
21 was in '93.

22 Q. Okay. Now showing you what's been marked
23 as Exhibit P-2. Is this a document -- or can you
24 tell us what this document is?

25 A. Well, this is -- Judy and Gordie, Bob and

1 myself went through all our -- whenever we have
2 a --

3 MR. HOBERG: Who are Judy, Gordie and Bob?

4 THE WITNESS: I work -- they're underneath
5 me. They work at Capital Electric. And whenever a
6 person comes in and signs up for service, we give
7 them a work order. So what we did here, the
8 15-year total, we went from '90 to '94, '95 to '99,
9 2000 to 2004, and came up with new services, what
10 it cost within the one-mile and within the
11 two-mile.

12 Q. (MR. NEGAARD CONTINUING) Okay.

13 A. So, yeah, these are -- it was kind of
14 interesting to do this.

15 Q. The two-mile that was designated by the
16 Commission, the two-mile includes a significant
17 part of south Bismarck that was historically served
18 by MDU; is that correct?

19 A. That's correct.

20 Q. North of Burleigh Avenue?

21 A. Yeah. In the shaded, yeah.

22 Q. The one-mile, that was a radius that you
23 folks worked with internally; is that correct?

24 A. That's correct.

25 Q. And on this sheet that's been marked

1 Exhibit P-2, did you also indicate how many
2 customers are on this -- in those areas?

3 A. Yes, we did.

4 Q. And did you also determine what kind of
5 investment Capital Electric has made to serve this
6 south Bismarck area in the last 14 years?

7 A. Yes, we did, looking through our past work
8 orders.

9 Q. And that's summarized on Exhibit P-1?

10 A. 2.

11 Q. Excuse me. Correct P-2.

12 A. That's correct.

13 MR. NEGAARD: I'd offer Exhibit P-2.

14 MR. KUNTZ: Objection, relevance. This
15 isn't one of the issues in this case. We've
16 already described in the exhibit the location of
17 the facilities of the general area. The amount of
18 money that was spent in the last 15 years, I guess,
19 apparently what this is intended to show, I'm not
20 sure what relevance this has to any issue here.

21 MR. HOBERG: What's the relevance, Mr.
22 Negaard.

23 MR. NEGAARD: It's highly relevant, Your
24 Honor.

25 MR. HOBERG: Goes to what issue?

1 MR. NEGAARD: Shows the amount of
2 investment and customers that have been added by
3 Capital Electric in this area in the last 14 years,
4 it shows the growth pattern, orderly utility
5 development in this area. It shows the additional
6 new services that they've installed and the \$1.8
7 million that they've invested in the last 14 years
8 to serve this part of -- this area south of
9 Bismarck.

10 MR. KUNTZ: May I ask one question?

11 MR. HOBERG: You may, Mr. Kuntz.

12 MR. KUNTZ: Mr. Lipp, tell me on Exhibit
13 2, how much of that money was spent to serve the
14 property owned by Mr. Botner?

15 THE WITNESS: Well, we put in a new
16 substation, so the new substation would be part of
17 Botner.

18 MR. KUNTZ: To serve Botner? Mr.
19 Botner --

20 THE WITNESS: Because we couldn't serve
21 him without this new substation because their load
22 was -- that's why we put in the new substation.

23 MR. KUNTZ: Mr. Botner didn't have
24 anything located on his property, did he?

25 THE WITNESS: Well, okay. So person X

1 then, whoever builds there, we needed a substation,
2 so at least 350,000.

3 MR. KUNTZ: If somebody built there?

4 THE WITNESS: That's right, yeah.

5 MR. KUNTZ: Isn't it true that these
6 facilities were built to serve customers other than
7 Mr. Botner? You wouldn't have built any of these
8 facilities to serve that property right now, would
9 you?

10 THE WITNESS: That's correct.

11 MR. KUNTZ: Renew my objection.

12 MR. HOBERG: Mr. Binek, any comment?

13 MR. BINEK: I have no comment.

14 MR. HOBERG: I think it's possibility
15 related to some of the issues in this matter. I'll
16 admit Exhibit P-2.

17 Q. (MR. NEGAARD CONTINUING) So, Mr. Lipp, if
18 you could, explain to the commissioners from the
19 period of 1990 to 1994 how many new services
20 Capital Electric added within a one-mile radius of
21 Mr. Botner's location.

22 A. 124 new services.

23 Q. And from 1995 to 1999 how many new
24 services within one mile of Mr. Botner's location?

25 A. 38.

1 Q. And from the same period -- excuse me.
2 From 2000 to 2004, the last four years, how many
3 new services have you added within one mile of Mr.
4 Botner's location?

5 A. 51.

6 Q. Okay. And the Commission designated a
7 two-mile radius in this hearing. How many new
8 services, in addition to the ones you just
9 testified, have you added within two miles in that
10 same 15-year period?

11 A. 99.

12 Q. All right. So within -- how many total
13 services does Capital Electric have within two
14 miles of this location?

15 A. 1,200.

16 Q. And how many services -- how many of those
17 are located within one mile of this location?

18 A. 724.

19 Q. Okay. And, again, looking at the dollars
20 that Capital Electric, are those summarized in
21 Exhibit P-2?

22 A. That's correct.

23 Q. And so from 1990 to 1994, Capital Electric
24 invested \$637,600 --

25 A. That's correct.

1 Q. -- within one mile of this load?

2 A. Mm-hmm. For that five-year period.

3 Q. So then summarizing all the way down the
4 column -- and that includes the Washington Street
5 substation; is that correct?

6 A. That's correct.

7 Q. So within 15 years, within one mile of
8 this load, Capital Electric, the last 15 years,
9 you've invested \$1.1 million; is that --

10 MR. KUNTZ: Objection, leading and
11 relevance.

12 MR. HOBERG: What was the question, Mr.
13 Negaard?

14 MR. NEGAARD: That's fine. I'll reform
15 the question.

16 Q. (MR. NEGAARD CONTINUING) Mr. Lipp, in the
17 last 15 years, within one mile of Mr. Botner's
18 location, how much money has Capital Electric
19 invested to serve the customers in that area?

20 MR. KUNTZ: Objection, relevance.

21 MR. HOBERG: What's the relevance?

22 MR. NEGAARD: It goes to the reliability
23 issue, Your Honor, the amount of investment that
24 they've made to serve this area in a reliable
25 fashion in the last 15 years.

1 MR. HOBERG: You can respond, Mr. Lipp.

2 THE WITNESS: \$1,123,870.79.

3 Q. (MR. NEGAARD CONTINUING) And then the
4 total within the two-mile area in the last 14
5 years?

6 A. \$1,804,926.04.

7 Q. Okay. Thank you.

8 COMMISSIONER WEFALD: Excuse me. Where
9 is that number on the sheet, or isn't it on the
10 sheet?

11 THE WITNESS: On top.

12 COMMISSIONER WEFALD: Okay. Thank you.

13 Q. (MR. NEGAARD CONTINUING) So, Mr. Lipp,
14 we've already heard testimony. Who are the two
15 suppliers of electrical service in this area?

16 A. Capital Electric Cooperative and MDU.

17 Q. Okay. And I believe you testified about
18 what electrical supply lines or your exhibit shows
19 the electrical supply lines within that two-mile
20 area; is that correct?

21 A. That's correct.

22 Q. And you've talked about the customers -- I
23 believe that's on your sheet P2 -- what customers
24 are served in this area?

25 A. Mm-hmm.

1 Q. Are they residential or industrial, or
2 what kind of customer load?

3 A. They're all residential, as far as I know.

4 Q. Do you have any opinion, as far as
5 reliability of service in this area, Capital's
6 ability to supply redundancy?

7 A. Well, I'm kind of on Bob's side. We have
8 it loop fed, too, but it's not -- you know, we can
9 feed it by this way.

10 MR. HOBERG: Which way is that?

11 THE WITNESS: Circuit 3, coming out of our
12 South Washington sub, that's how we would serve it.

13 Q. (MR. NEGAARD CONTINUING) Okay.

14 A. But if a car runs into this line and takes
15 the pole out, we can backfeed it through circuit 1
16 because we put an underground line in over here and
17 we can backfeed it this way, so it's looped. I
18 mean, it's not -- I mean, we serve it radial, but
19 there's a switch here so we can backfeed it, so --
20 and I'm -- in about 45 minutes. It depends on.
21 Depends on where the boys are and what time of the
22 day it is.

23 Q. So you're similar in that regard?

24 A. Yeah.

25 Q. Did you look at the costs that MDU

1 submitted for serving this load in the south
2 Bismarck area?

3 A. The original costs?

4 Q. Yeah, and the ones they've submitted just
5 recently.

6 A. Yes, I have.

7 Q. And do those costs look reasonable to you?

8 A. The last ones did.

9 Q. What would be the difference in cost for
10 MDU to serve this load compared to Capital?

11 A. Well, like Bob said, we're 60 feet
12 further, so we would have to bore the road.

13 Q. So you would have to go underneath the
14 road with a cable 60 feet and that would be the
15 difference in the costs?

16 A. Right. Yeah. The same. Basically the
17 same.

18 Q. Do you have an estimate of how much that
19 would be?

20 A. Well, when we first did it, it was \$3,100
21 for primary, 2,000 for secondary. Primary is 7,200
22 volts where we tap the high voltage and go
23 underneath the road and put a pad-mount transformer
24 there.

25 Q. And that's a total cost; right?

1 A. That's correct.

2 Q. I'm referencing just the boring, the 60
3 feet of boring under the road.

4 A. Oh, okay. Well, they get -- our
5 contractor gets \$10 a foot for boring, so it would
6 be another 600 bucks.

7 Q. About \$600 difference?

8 A. Well, plus the cable, so, yeah, 700 bucks.

9 Q. Okay. And the installation here, was that
10 a primary or a secondary that MDU put into this
11 location?

12 A. MDU put primary.

13 Q. And can you tell the Commission what the
14 difference is between a primary and a secondary?

15 A. Well, okay. A secondary you put the
16 transformer on the pole, so the transformer would
17 step it down from the 7,200 down to 120-240, then
18 you take secondary cable -- 600-volt cable down the
19 pole over to his meter, and --

20 Q. When would you put in a secondary? What
21 typical type of service?

22 A. For a house.

23 Q. For a house.

24 A. That's where we'd hang a 10-kVA
25 transformer up on the pole and go over to his meter

1 or wherever he wanted us. Maybe he wanted a yard
2 pole or something so we could --

3 Q. Can you explain to the Commission the
4 significance of the fact that in this case the
5 25-kV transformer was placed on the customer's
6 premises, what that would mean as far as ability to
7 serve future locations?

8 A. Well, in this case when, you know -- I
9 didn't know that this guy was going to put in pumps
10 or whatever, but originally we would have probably
11 just hung a 10-kVA transformer -- Capital Electric
12 would -- and went, you know, secondary over to his
13 house. In their case, you know, they knew about
14 the pumps and stuff, but to go primary 300 feet and
15 set a transformer, now from that transformer, they
16 can go to another house -- future house.

17 Q. And they set that transformer on the
18 customer's premises?

19 A. That's correct.

20 Q. Instead of putting it out on the pole
21 where the voltage is drawn from?

22 A. That's correct. It's primary, right.
23 They've went 300-and-some-odd feet to the
24 transformer.

25 Q. So we're not just talking about Mr.

1 Botner's residence here; we're also talking about
2 their ability to argue for serving future loads off
3 that transformer located on the customer premises?

4 A. That's correct.

5 Q. And, again, Capital would have put that
6 transformer on the pole, itself, rather than on the
7 premises?

8 A. Well, in this case because -- you know,
9 because this is -- you know, this is all supposedly
10 our area, we would have probably done the same, run
11 primary over.

12 Q. To allow you to serve future loads?

13 A. Yeah. In case this develops sometime,
14 because we'd have to bore the road, anyway. We've
15 got that expense. It's just the cable.

16 MR. NEGAARD: Okay. I have nothing
17 further. Thank you, Mr. Lipp.

18 MR. HOBERG: Thank you, Mr. Negaard. Mr.
19 Kuntz, any questions of Mr. Lipp?

20 MR. KUNTZ: Thank you.

21 CROSS-EXAMINATION

22 BY MR. KUNTZ:

23 Q. Mr. Lipp, how far would you be from the
24 customer's location to your line? Do you recall
25 the number of feet?

1 A. We didn't -- it was to where --

2 Q. Well, let me rephrase it. You heard Mr.
3 Copenhaver testify it was about 320 feet from their
4 line to the service location where they put the
5 transformer. So you're an additional approximately
6 60 feet?

7 A. That's correct.

8 Q. So the total would be about 380 feet?

9 A. That's correct.

10 Q. And you heard Mr. Botner testify about
11 that, in addition to his house, he intends to
12 construct a shop with welding equipment and some
13 pumps and irrigation pumps. Based upon that
14 service characteristic, the distance from your
15 line, would you have constructed secondary or
16 primary service to that service location regardless
17 of whether you anticipated any future growth?

18 A. We probably would go primary because of
19 the load.

20 Q. So you're not criticizing Montana-Dakota's
21 use of primary service to serve Mr. Botner's
22 location based upon his service characteristics,
23 are you?

24 A. No.

25 MR. HOBERG: Is that a no?

1 THE WITNESS: No.

2 Q. (MR. KUNTZ CONTINUING) What was the total
3 cost that you had calculated for providing primary
4 service to Botners?

5 A. I think 3,100-some-odd dollars.

6 Q. And did that include administrative
7 expenses, engineering services, overhead?

8 A. Just the -- we just -- no, it didn't.

9 Q. Are you aware, Mr. Lipp, of geographic
10 problems that exist in the area of Mr. Botner's
11 residence that make it difficult for high-density
12 development in that area?

13 A. Because of the water?

14 Q. Right.

15 A. A little.

16 Q. Could you describe your understanding what
17 the situation is there that makes it difficult for
18 high-density development?

19 A. Because it's so low that the developer
20 would have to pay a lot for -- I think it's the
21 sanitation sewer or something.

22 Q. It has to be all pumped uphill from that
23 location; is that correct?

24 A. Right, because it's --

25 MR. KUNTZ: That's all the questions I

1 have.

2 MR. HOBERG: Thank you, Mr. Kuntz. Mr.
3 Binek, any questions of the witness?

4 MR. BINEK: Yes.

5 CROSS-EXAMINATION

6 BY MR. BINEK:

7 Q. Your proposed service would be from the
8 east-west line on the north side of Burleigh
9 Avenue; is that correct?

10 A. That's correct.

11 Q. So to serve Mr. Botner's property, you
12 would have to cross MDU's line; is that correct?

13 A. That's correct.

14 Q. Did I understand you right that basically
15 you thought that the estimate or the figures that
16 MDU had for cost of putting in this service, that
17 those figures were about right?

18 A. Yes.

19 Q. And yours would cost roughly another -- an
20 additional \$600? Is that basically your
21 testimony?

22 A. That's correct.

23 Q. Is there city sewage in the area -- in
24 this area where Mr. Botner is?

25 A. (Shakes head.)

1 Q. So he would have a septic system?

2 A. That's correct.

3 Q. I do have, I guess, another question.

4 Looking at the map, there's some black indications
5 on your map south of Burleigh Avenue and to the
6 west of Corey Botner's.

7 MR. HOBERG: I'm not picking this up,
8 Bill.

9 COMMISSIONER WEFALD: You need to have the
10 microphone.

11 MR. HOBERG: Bill, I'm not picking that
12 up. You need the mike. Ask that again, please.

13 Q. (MR. BINEK CONTINUING) I'm referring to
14 the black -- looks like a triangle and some other
15 black figures to the west of Corey Botner's
16 property and south of Burleigh Avenue. Can you
17 tell me what those are?

18 A. That's a house. Jack Marquart lives
19 there, then we've got Strothman lives here and Wade
20 Moser over here. So they're houses, but they have
21 their own septic.

22 Q. Who serves those loads?

23 A. Capital Electric.

24 MR. BINEK: I have no further questions.

25 MR. HOBERG: Thank you, Mr. Binek.

1 Commissioner Wefald, do you have any questions of
2 this witness?

3 COMMISSIONER WEFALD: Yes.

4 EXAMINATION

5 BY COMMISSIONER WEFALD:

6 Q. Does -- your line on Burleigh Avenue, is
7 that within the city limits?

8 A. Yes, it is, because it's north of the
9 road.

10 Q. And then would you please explain -- you
11 have the color beige that represents your CEC
12 service area, and then you have gray, MDU service
13 area. Tell me, what's the current standing of
14 those service area colors?

15 MR. HOBERG: Mr. Negaard.

16 MR. NEGAARD: Commissioner, if we could,
17 we would like to address that with the next
18 witness --

19 COMMISSIONER WEFALD: That would be fine.

20 MR. NEGAARD: -- who has more knowledge
21 about that.

22 COMMISSIONER WEFALD: Yes.

23 MR. NEGAARD: If that's okay.

24 COMMISSIONER WEFALD: Yes. That would be
25 fine.

1 MR. NEGAARD: Thank you.

2 Q. (COMMISSIONER WEFALD CONTINUING) Then are
3 you able to talk to me about -- or should I wait
4 for the next witness -- about the representation of
5 customers served within the red circle?

6 A. I can.

7 Q. You can talk about that?

8 A. Right.

9 Q. The next main road west of Burleigh Avenue
10 is what name?

11 A. Oh, that's England -- England Street. And
12 then this isn't a road. There is no road here.

13 Q. All right. So south of Burleigh Avenue,
14 the next main road west of Washington is England
15 Street?

16 A. Yeah, and that goes south.

17 Q. All right. And then it shows that there
18 is a development to the east of England Street and
19 it shows some numbers in blue color.

20 A. Yeah. That's --

21 Q. What are those?

22 A. We just found that out, too. Jiran
23 Subdivision, we didn't even know it existed, but we
24 put it on there because it's plotted, it's okayed
25 by the planning commission, but nobody lives there,

1 so we put the roads on. Yeah, we don't have any
2 facilities in there.

3 Q. Okay. So the numbers, do they represent
4 anything?

5 A. Yeah, they're block numbers, block 1 --
6 block 1, lot 4 -- I mean, that's how in a
7 subdivision.

8 Q. All right. And the -- how do I tell from
9 your map where customers are located? Are they the
10 black triangles?

11 A. No. That's on that enclosure, is a black
12 triangle. There's a number with a little circle on
13 it. The red numbers are consumers. And the black
14 squares is a transformer and the little black dots
15 is a consumer.

16 Q. And the -- for example, then in the
17 subdivision that is to the west of Burleigh, south
18 of Washington Street within the red circle?

19 A. Yes.

20 Q. Are you serving customers in that
21 location?

22 A. That's correct. They're little blue
23 lines, not very many.

24 Q. The little blue lines represent
25 distribution lines to customers, the red lines

1 represent --

2 A. Primary lines is the red ones.

3 Q. -- primary lines? But the blue lines then
4 show where actual customers have located in that
5 subdivision?

6 A. In that subdivision, that's correct.

7 Q. Okay. So that -- all right. I understand
8 better now. Thank you very much.

9 MR. HOBERG: Thank you, Commissioner
10 Wefald. Commissioner Clark.

11 EXAMINATION

12 BY COMMISSIONER CLARK:

13 Q. Just to clarify one question of Mr.
14 Binek's. He had asked if -- because of the extra
15 60 or so feet, that Capital would have to bore
16 under the road. The added expense, was that 600 or
17 700? Was it 600 for boring under the road and then
18 an extra \$100 roughly in equipment costs of 700
19 total?

20 A. That's correct.

21 Q. I'd like to ask a few questions about the
22 -- what piece of equipment that would otherwise go
23 on -- sort of on the north side of the road on your
24 equipment that you would probably drop. Was that a
25 transformer that you said?

1 A. Well, it depends on if we're going to go
2 primary or secondary.

3 Q. Right.

4 A. But in this case, you know, with his load
5 so big, we would probably go primary like MDU. So
6 there's a primary cable. It's a little fatter than
7 a -- secondary cables are three.

8 Q. Okay.

9 A. So you've got two hots and a neutral. But
10 the primary is just one -- I mean, primary wire and
11 then it's got concentrics, so we tap that high
12 voltage and then we go down the pole and then we
13 bore underneath the road, then where we -- out of
14 the highway right-of-way or whatever, then we would
15 start trenching because trenching is two bucks
16 versus ten bucks boring, so then we'd trench over
17 to the transformer.

18 Q. So the size of the load dictates that it
19 will be a primary-type line, but there was a --
20 sort of a side discussion that you had been asked
21 about that had to do with where you'd put a certain
22 piece of equipment -- and MDU, too. I mean, both
23 parties were indicating the reason that we would
24 put it in this location is because of future load
25 growth and how it interacts with how our law is

1 written. What piece of equipment was that?

2 A. That would be the transformer. There's a
3 loop feed transformer and a radial transformer, and
4 all we buy is loop feeds. So you can come into
5 that transformer with one feed, then there's
6 another, you know, connection that you can go out
7 of there and go to another transformer, and then
8 you can keep going. So it's a -- we call it a loop
9 feed transformer. It's got two connections for
10 primary.

11 Q. Is there an additional cost either to you
12 or to MDU in setting it up this particular way to
13 get that transformer closer to where new load
14 growth might be, or is it -- is it a wash either
15 way?

16 A. Well, to buy a loop feed transformer, it's
17 a little more money than a radial transformer
18 because you've got to buy another module or
19 whatever. So 50 bucks, maybe. I guess I don't
20 know.

21 Q. Okay. The reason for my question -- and
22 this would apply to MDU or to Capital -- I'm
23 wondering to what extent does the -- are decisions
24 made to sort of take into consideration the law --
25 Territorial Integrity Act law and how it dictates

1 that growth will occur as opposed to how just an
2 engineer drawing up a plan would do it and if
3 there's additional expense that's incurred either
4 for MDU or for Capital that's incurred simply
5 because the law is the way the law is.

6 A. Well, I don't know how to answer that.
7 But, you know, say in a housing development there's
8 just one lot and we've got the primary overhead out
9 in the street or whatever, then we would hang a
10 transformer and go secondary to your lot because
11 there's nobody -- you know, there's nobody behind
12 you to develop because there would be other lots
13 behind you that we would have to go, you know, a
14 different way.

15 Q. Sure.

16 A. So in this case, you know, it's just wide
17 open. So then we'd -- you know, I can see why they
18 did it.

19 Q. Sure. What would the -- I guess my
20 question is, is there an additional expense to
21 doing it the way that MDU did it or the way that
22 you would do it?

23 A. (Shakes head.)

24 Q. Okay. There's not?

25 A. No, there isn't.

1 exhibits are clear, but I want to clarify it a
2 little more in the record. The Huber residences
3 that were referred to are south of Burleigh Avenue,
4 but inside the city limits?

5 A. Yeah, they must have got annexed in,
6 right, because there was a little box there, yeah.

7 Q. Okay. And the Botner property is not at
8 this point, in the city limits, I mean? It is
9 south of Burleigh.

10 One other thing, you heard Mr. Botner
11 express some dissatisfaction with his service from
12 Capital Electric in Fox Island. How would you
13 respond to that?

14 A. I -- I don't know. I'm not aware of it,
15 but I know -- you know, we all have outages. We
16 always blame it on a squirrel or something, but we
17 have outages. It's just that you can't get out of
18 it. But, yeah, I don't know if we had seven.
19 Well, maybe we did have seven. I don't know.
20 But --

21 Q. But did his testimony seem extreme to you?

22 A. Yeah, I thought it did. I don't know. I
23 didn't keep track.

24 Q. There's no dispute?

25 A. I guess we can go back in our records

1 because every time we have a breaker operation, we
2 keep track. I'll have to go back.

3 COMMISSIONER CRAMER: All right. I have
4 nothing further.

5 MR. HOBERG: Thank you, Commissioner
6 Cramer. Any further questions, Commissioners?
7 Commissioner Wefald.

8 FURTHER EXAMINATION

9 BY COMMISSIONER WEFALD:

10 Q. The \$787 transformer then has the same --
11 does that have any -- is that a larger transformer
12 than you would have installed for the property?

13 A. Given the testimony that Corey had with
14 the pumps and stuff, no, we would have done the
15 same.

16 Q. All right. And then how far is -- how far
17 is that transformer located from the housing
18 development that you depicted on your map that is
19 east of England Street, the farthest east portion
20 of that?

21 A. Well, I'm thinking these are -- about a
22 quarter-mile, a thousand feet.

23 Q. Would you see the potential for MDU to
24 extend the line into that subdivision using that
25 transformer?

1 here, we could backfeed it this way.

2 MR. HOBERG: So by "sneak up here," you
3 meant to the Botner transformer?

4 THE WITNESS: Yeah, that's correct.

5 Q. (COMMISSIONER CLARK CONTINUING) So you'd
6 either loop it from the Botner residence or from --

7 A. The south.

8 Q. -- off of South 48th, that area down
9 there?

10 A. Yeah.

11 COMMISSIONER CLARK: Okay. That's all I
12 have. Thanks.

13 MR. HOBERG: Thank you, Commissioner
14 Clark. Any further questions, Mr. Negaard?

15 REDIRECT EXAMINATION

16 BY MR. NEGAARD:

17 Q. Just one question to clarify. The green
18 dot shows the Botner location. There's a line
19 above it, a blue line. That blue line is the city
20 limit line; correct?

21 A. That's correct, the dark blue line.

22 Q. It actually covers --

23 A. Covers our line.

24 Q. It covers your line there --

25 A. That's correct.

1 Q. -- the line that you have on Burleigh
2 Avenue, where that blue line is?

3 A. That's correct.

4 MR. HOBERG: Thank you, Mr. Negaard. Mr.
5 Kuntz, please.

6 RE CROSS-EXAMINATION

7 BY MR. KUNTZ:

8 Q. Just so the record is clear on this
9 transformer business, Mr. Lipp, you agree that
10 based upon Mr. Botner's load, that primary service
11 was appropriate; correct?

12 A. That's correct.

13 Q. And when you terminate primary service,
14 you need a transformer at the end; correct?

15 A. That's correct.

16 Q. So once you decide you're going to service
17 Mr. Botner with primary service, wherever you set
18 the end of that service, you have to put a
19 transformer and start your secondary service from
20 there to his buildings?

21 A. To wherever, yeah.

22 Q. And that would be the same whether you're
23 going to serve Mr. Botner and just his load or
24 whether you're going to serve 50 houses off that?

25 A. Well, it -- it depends on if there was

1 another subdivision, I mean, if he was another --
2 if there was more lots, we would maybe put the
3 transformer at a different location, but,
4 otherwise, no.

5 Q. But to serve Mr. Botner's location --

6 A. That's correct.

7 Q. -- you have to put the transformer there,
8 you have to have a transformer for primary service?

9 A. Yeah, you do.

10 MR. KUNTZ: That's all I have.

11 MR. HOBERG: Thank you, Mr. Kuntz.

12 Anything further?

13 FURTHER EXAMINATION

14 BY COMMISSIONER CRAMER:

15 Q. But the difference would be -- there's
16 something about a \$50 difference. Is that the
17 difference between that loop feed transformer
18 and --

19 A. Right, or radial.

20 Q. Or radial.

21 A. See, you can buy a transformer that's just
22 a radial with just one line.

23 Q. So basically ends there and it goes to
24 the --

25 A. It ends there, you've got to --

1 Q. The loop feed allows you to continue on?

2 A. In order to continue on, you've got to
3 pull that transformer out and put a new one in.

4 Q. And that's about a \$50 difference?

5 A. Right. Well, I'm thinking. Just
6 logical.

7 FURTHER RECROSS-EXAMINATION

8 BY MR. KUNTZ:

9 Q. What kind of transformers do you stock?

10 A. All loop feed.

11 Q. All loop feed?

12 A. Yeah.

13 Q. It just makes sense, doesn't it?

14 A. Right.

15 Q. Because you can use them for both?

16 A. That's correct. Because, yeah, it's just
17 a \$5 cap to put over the other one.

18 COMMISSIONER CRAMER: Thank you.

19 MR. HOBERG: Any further questions of Mr.
20 Lipp? Further questions? Mr. Binek.

21 MR. BINEK: Well, I have just a question
22 for the two parties, and it relates to issue 9, the
23 probable -- whether it's probable that the location
24 in question will be included in the corporate
25 limits of the city. We had a little bit of

1 testimony. I think -- you know, I'm not sure that
2 that's clear at this point, and I was wondering if
3 Mr. Negaard intends to have some testimony or if
4 this witness would be able to testify.

5 MR. NEGAARD: Not at this point, Mr.
6 Binek. Perhaps another witness.

7 MR. BINEK: So you will have someone
8 testify on that?

9 MR. NEGAARD: If Mr. Kuntz allows it, yes.

10 MR. HOBERG: At least you'll have someone
11 else who you'd rather have that question directed
12 to?

13 MR. NEGAARD: Yes.

14 MR. HOBERG: All right. Thank you, Mr.
15 Lipp. Next witness, please.

16 MR. NEGAARD: I'd like to call Mr. Lars
17 Nygren.

18 MR. HOBERG: It's Mr. Nygren.

19 THE WITNESS: Yes.

20 MR. HOBERG: Did you hear the admonition I
21 gave earlier in regard to perjury?

22 THE WITNESS: Yes, I did.

23 (Witness sworn.)

24 MR. HOBERG: Thank you. Mr. Negaard,
25 please.

1 LARS NYGREN,
2 being first duly sworn, was examined and testified
3 as follows:

4 DIRECT EXAMINATION
5 by MR. NEGAARD:

6 Q. Could you please state your name for the
7 record?

8 A. My name is Ordean Nygren. I go by the
9 nickname of Lars, but my legal name is Ordean.

10 Q. And where do you live?

11 A. I live in Bismarck.

12 Q. Okay. Please tell us about your
13 background and education.

14 A. I was born in Bismarck. I was reared in
15 Flasher. I graduated from Flasher High School in
16 1969, attended North Dakota State University and
17 graduated from NDSU in 1973 with a B.A. degree.

18 Q. Okay. And what is your occupation and
19 position?

20 A. I'm the general manager of Capital
21 Electric Coop.

22 Q. And how long have you been with Capital
23 Electric?

24 A. I've been with Capital Electric since
25 September 1, 1983.

1 Q. All right. And from '73 to 1983, did you
2 have experience at any other electric cooperatives?

3 A. Yes. I was the Minot office manager, I
4 believe, since August 1975 till September of 1983
5 with Verendrye Electric Cooperative in Minot, North
6 Dakota.

7 Q. Are you familiar with this area, the area
8 applied for by MDU for a certificate of public
9 convenience to serve Corey Botner?

10 A. Yes, I am.

11 Q. And are you familiar with the contracts
12 and agreements that Capital Electric has had with
13 MDU over the years as far as service to this area?

14 A. Yes, I am.

15 Q. At my request -- at your request did I
16 contact the City of Bismarck to obtain copies of
17 your franchise agreement with the City of
18 Bismarck?

19 MR. KUNTZ: Objection, hearsay.

20 THE WITNESS: Ah --

21 MR. HOBERG: Just a minute. Just a
22 minute.

23 MR. KUNTZ: And relevance.

24 MR. HOBERG: Yes. You can respond, Mr.
25 Nygren.

1 THE WITNESS: Yes. I asked Mr. Negaard to
2 contact the City of Bismarck relative to our
3 franchise with the City of Bismarck, which also
4 incorporates an area service agreement, which is
5 part of the franchise that we obtained from the
6 City of Bismarck.

7 Q. (MR. NEGAARD CONTINUING) Showing you
8 what's been marked as Exhibit P-3, can you tell us
9 what that is?

10 A. P-3 contains the minutes of the February
11 13th, 1973, city commission meeting relating to our
12 service area agreement, a letter of agreement
13 intended to amend the agreement with -- well, our
14 letter of agreement between Capital Electric
15 Cooperative, Montana-Dakota Utilities. There are
16 minutes that are included in that indicating the
17 approval by the City of Bismarck. There's also a
18 1990 amendment to the service area agreement
19 between Capital Electric Cooperative and
20 Montana-Dakota Utilities. In addition, I believe
21 there is a resolution that was approved by the
22 Bismarck City Commission in 1993 that renewed our
23 city franchise and also included language within
24 the resolution speaking to the term and basis of
25 our agreement with MDU and with Capital Electric

1 relative to its terms.

2 Q. Okay. So Capital Electric has a franchise
3 then from the City of Bismarck?

4 A. That is correct.

5 MR. KUNTZ: Objection, relevance.

6 MR. HOBERG: What's the relevancy, Mr.
7 Negaard?

8 MR. NEGAARD: I think there's -- this area
9 is right outside the City of Bismarck, and so then
10 the question is, well, who would serve -- are they
11 authorized to serve if it's annexed. And if
12 Capital Electric has a franchise to serve this
13 area, obviously it's important to know whether or
14 not they have a franchise to serve.

15 MR. KUNTZ: We'll stipulate that both
16 electric suppliers are franchised within the City
17 of Bismarck.

18 MR. HOBERG: Okay. Do you agree with
19 that, Mr. Negaard?

20 MR. NEGAARD: I do.

21 MR. HOBERG: So stipulated.

22 MR. NEGAARD: Okay. I would also offer
23 Exhibit P-3. It's a self-authenticated, certified
24 copy of documents from the City of Bismarck, City
25 Public Administration in Bismarck, admissible under

1 Rule 904 without the witness being here because
2 it's self-authenticated and certified as a true and
3 correct copy of the original on file in the City of
4 Bismarck records.

5 MR. KUNTZ: We object to relevance, Your
6 Honor. This location is outside the City of
7 Bismarck. This franchise agreement has got nothing
8 to do with the issues in front of the Commission in
9 this proceeding. I have no idea what the relevance
10 of this particular document is.

11 MR. HOBERG: Mr. Negaard, do you want to
12 tell us what issue this is related to?

13 MR. NEGAARD: Your Honor, in Cass County
14 Electric versus Northern States Power, 1988, it was
15 a former case that was in front of the North Dakota
16 Supreme Court, it came out of the Public Service
17 Commission of North Dakota, and in that case the
18 Court discussed at length the significance and
19 relevance of the fact that Northern States Power
20 and Cass Electric had entered into a service area
21 agreement outside -- for areas outside the City of
22 Fargo and that they had operated under that
23 agreement for a number of years and at some point
24 had decided to depart from that agreement, and the
25 Court thought that that was of significant

1 relevance in discussing the development and
2 resources that the two electric utilities had
3 employed in developing that area outside of Fargo.
4 It has the same significance here as it did in the
5 Cass County case, Your Honor, and it's highly
6 relevant to show why it is that MDU has not
7 invested in this area. They haven't spent a dime
8 upgrading their facilities in the last 30 years
9 because Capital Electric has been given an
10 exclusive franchise with the City of Bismarck to
11 serve the area of south Bismarck and, in fact,
12 Capital Electric has resisted going in and
13 developing other areas in the gray that's on this
14 map due to this franchise agreement, this area
15 agreement that they had with Montana-Dakota
16 Utilities.

17 MR. HOBERG: Mr. Binek, any comment on
18 that?

19 MR. BINEK: I have no comment.

20 MR. HOBERG: Mr. Kuntz.

21 MR. KUNTZ: I would like to respond.

22 First of all, the Cass County Electric case Mr.
23 Negaard referred to involved the city's -- area of
24 land, as I recall, that had already been annexed
25 into the city. And with respect to the franchise

1 agreement, this area is outside the City of
2 Bismarck. Mr. Botner testified he has no intent to
3 seek annexation, so the franchise agreement with
4 the city has got no relevance to the issues that
5 are in front of the Commission.

6 With respect to upgrades, Mr. Copenhaver
7 testified that they haven't made significant
8 upgrades to this line because they haven't needed
9 significant upgrades to this line, but the line is
10 certainly reliable. So I'm not sure what the
11 difference, what -- the fact is that they put this
12 line in before Capital Electric installed their
13 facilities, they've continued to operate it in
14 providing service. There's no need to upgrade it
15 at this point to meet the loads that are there. So
16 I'm not sure what particular relevance that goes
17 to.

18 The service area agreement, as was
19 testified to by Mr. Lipp, was canceled. It's not
20 -- I think that's probably why this agreement is
21 here, it's kind of a back door way to get the
22 service area agreement into this case because Mr.
23 Negaard knows it was canceled and has no relevance
24 in this particular case. We would object. This
25 document has no relevance. We've stipulated that

1 both parties have franchises within the City of
2 Bismarck, but, frankly, this property is outside
3 the City of Bismarck, so even that has minimal
4 relevance to this case.

5 MR. HOBERG: Is it relevant to issue
6 number 9 in the notice, Mr. Kuntz?

7 MR. KUNTZ: Issue number 9 is?

8 COMMISSIONER CRAMER: Whether it be
9 incorporated in the city limits.

10 MR. KUNTZ: And Mr. Botner has testified
11 that he has no plans to incorporate it into the
12 city limits and he's been told by the city that he
13 won't be forced to annex it.

14 MR. NEGAARD: I object. I don't think Mr.
15 Botner testified to that. He said that he has a
16 plat pending in front of the County and City
17 Planning Commission.

18 MR. HOBERG: I'm going to admit Exhibit
19 P-3 because I think it's possibly relevant, at
20 least to Exhibit No. 9. P-3 is admitted.

21 Q. (MR. NEGAARD CONTINUING) So now that we
22 have P-3 admitted, Mr. Nygren, could you explain to
23 the commissioners the significance of the gray area
24 and the beige or manila area on map P-2?

25 A. The gray area --

1 MR. KUNTZ: Objection. To the extent Mr.
2 Nygren is going to start talking about a canceled
3 service area agreement, it's not relevant in this
4 proceeding. Service area agreements were declared
5 void and against public policy by the Eighth
6 Circuit Court of Appeals several years ago
7 involving Montana-Dakota. The cite is
8 Montana-Dakota Utilities v. Williams Electric
9 Cooperative, 263 Fed 2d, 431, Eighth Circuit, 1959,
10 service area agreements are temporary to public
11 policy and are void as a restraint of trade. These
12 agreements have been void since their initial --
13 they have since been canceled by Montana-Dakota
14 outside the City of Bismarck. They have no
15 relevance to any of the issues set forth in the
16 Commission's notice of hearing, and we strongly
17 object to any evidence regarding service area
18 agreements in this proceeding have any relevance.

19 MR. HOBERG: Is that your intent to go
20 into the service area agreements, Mr. Negaard?

21 MR. NEGAARD: Your Honor, it's relevant to
22 show the historical development of the utility
23 facilities in this area.

24 MR. HOBERG: The historical development?

25 MR. NEGAARD: Yes. And, Your Honor,

1 unlike the Williston case, this agreement -- this
2 service area agreement was stamped, approved and
3 ratified by the Bismarck City Council. It's been
4 approved by a governmental authority with respect
5 to how the two utilities are going to operate in
6 Bismarck and around the Bismarck area.

7 MR. KUNTZ: The City of Bismarck does not
8 have any authority to issue franchises outside the
9 City of Bismarck. They had no authority to approve
10 any service area agreement outside the City of
11 Bismarck, and that's why it was canceled by
12 Montana-Dakota.

13 MR. HOBERG: Mr. Binek, any comment on
14 that?

15 MR. BINEK: No.

16 MR. HOBERG: Well, unless you can tell me
17 how it's relevant to one of the issues here, Mr.
18 Negaard, I think I'm going to have to sustain the
19 objection.

20 MR. NEGAARD: It's a franchise that's
21 currently in place, Your Honor. It says if this
22 area is annexed into the City of Bismarck, which
23 ties into issue number 9, it would be served by
24 Capital Electric. It would be in the service area
25 of Capital Electric. It's outside the city

1 limits. I agree with Mr. Kuntz that the City of
2 Bismarck cannot tell the Public Service Commission
3 who's going to serve a load outside the City of
4 Bismarck. I do think it has a lot of relevance
5 because of the orderly development as the City of
6 Bismarck, as we all know, is growing and continues
7 to grow, that this area would be within the
8 exclusive area of Capital Electric's service.

9 MR. KUNTZ: And we've already heard
10 testimony about when the facilities were installed
11 by each of the companies, what facilities they
12 have, who they serve in the area, all the issues
13 that are set forth in the Commission's notice of
14 hearing. What they're trying to do is use a void
15 and canceled agreement to somehow show that they've
16 got some legal entitlement to serve this particular
17 property, which is completely temporary to the law
18 and it's not part of the issues that we're given as
19 set forth in the notice of hearing. I mean, once
20 -- is the idea that once a service area agreement
21 is canceled, then forever you have that property
22 even though it's canceled? I mean, that's contrary
23 to the cancellation.

24 MR. NEGAARD: And we have a fundamental
25 difference, Your Honor, with MDU on whether or not

1 the agreement has in fact been canceled. We
2 believe that this agreement still exists and still
3 is --

4 MR. HOBERG: Are you going to offer
5 evidence to that extent?

6 MR. NEGAARD: I think it's a legal issue,
7 Your Honor. I don't know that it has to do
8 anything with the admissibility or the relevancy of
9 the documents, themselves. It's a legal issue
10 about whether or not it's legally -- I'll introduce
11 the document. If Mr. Kuntz wants to argue and show
12 somehow that it's been canceled, then I think he's
13 free to do that.

14 MR. KUNTZ: But the point, Mr. Hearing
15 Examiner, is the Commission does not need to get
16 into this because these service area agreements are
17 not binding on the Commission, they're not even
18 legal under the Eighth Circuit Court of Appeals'
19 ruling in 1959.

20 MR. HOBERG: I'll let you continue, Mr.
21 Negaard.

22 Q. (MR. NEGAARD CONTINUING) Mr. Nygren, I
23 believe you were explaining the gray area on the
24 map.

25 A. What it's going to depict here as to the

1 shading of the gray area, this is the area that was
2 designated in 1973 and renewed in 1993 with
3 Bismarck City Commission as a service area be
4 developed by Montana-Dakota Utilities. There was
5 an amendment to the service area agreement as the
6 original line ran straight, cutting off about the
7 bottom one-third of what we would now call
8 Southport in Bismarck. The shaded area that I
9 would call as more of a cream color is the area
10 that is represented by Capital Electric, and we
11 have looked to develop that area since 1973
12 pursuant to the service area agreement.

13 MR. HOBERG: You're referring to P-1 --
14 Exhibit P-1; is that correct?

15 THE WITNESS: Correct. Referring to
16 Exhibit P-1.

17 Q. (MR. NEGAARD CONTINUING) And over the
18 course of time from 1973 on -- showing you what's
19 been marked as Exhibit P-7, could you tell us what
20 that is?

21 A. P-7 represents just a single 8-and-a-half-
22 by-11 sheet depicting the original service area
23 agreement line around the City of Bismarck. I've
24 noted on Exhibit P-7 there's a circle drawn with a
25 1 above it, and that represents Capital Electric's

1 existing line in 1973. And, also, I've drawn
2 another circle on this map shown as the number 2.
3 It merely illustrates that we had existing
4 facilities in 1973 located in Section 9 stemming
5 all the way over into -- I believe that's Section
6 8, and we had facilities where we're showing the
7 item number 2. Those facilities have been removed
8 by Capital Electric Cooperative in cooperation and
9 in development of the areas in and around the City
10 of Bismarck to avoid a checkerboarding effect,
11 functionally that MDU would be the primary service
12 provider in those areas because it was inside the
13 shaded line. Hence, we have not developed those
14 facilities and, as well as in the area number 2 --
15 actually, that line physically is a little further
16 north in reality and we've also removed that line.

17 Q. Showing you Exhibit P-6, could you tell
18 the Commission what that is?

19 MR. NEGAARD: I'd offer P-7. I'm sorry.

20 MR. HOBERG: Any objection to P-7?

21 MR. KUNTZ: Objection, relevance.

22 MR. HOBERG: I'll overrule the objection
23 and I'll admit Exhibit P-5 (sic).

24 Q. (MR. NEGAARD CONTINUING) Could you tell
25 the Commission -- I'm sorry -- tell the Commission

1 what P-6 is.

2 A. P-6 is a copy of a letter that I wrote to
3 the Public Service Commission on August 25th of
4 1992. Within this letter it pertains to service
5 that we had extended to a Mr. John Natwick over in
6 the -- I'd have to look on the letter -- I think
7 it's what was classified as Mills Third Addition at
8 that time. If I can refer to it on the map.

9 Q. If you would.

10 A. I believe it would be located
11 approximately in this area near the tip of Mills
12 Addition, which is along the river area.

13 Q. And you're referencing Exhibit P-1?

14 A. Right. I'm referencing Exhibit P-1.

15 Q. And is that an area above the smaller red
16 circle and to the west or to the left of the blue
17 line on the gray hatched area on Exhibit P-1?

18 A. That's correct.

19 Q. And --

20 A. At that location, what we had done, not
21 recognizing that at that time the service area
22 agreement line ran straight across -- now I'm
23 referencing P-7. If you look at P-7, you'll see
24 the service area agreement line ran straight
25 across.

1 Q. And is that line highlighted in yellow?

2 A. Yes, the line is highlighted in yellow on
3 Exhibit P-7.

4 Q. And that was the original agreement from
5 1973?

6 A. That is the original agreement from 1973.
7 And since that time we've amended the agreement,
8 and you can see it -- I'm going back to Exhibit
9 P-1, and you'll see rather than the line going
10 straight across as it was on Exhibit P-7, the line
11 goes south around the southern tip of Southport on
12 Exhibit P-1 and continues in the -- northerly along
13 the bay area. There's actually -- and I just
14 detected that at this time, and there is an error.
15 I need to -- and I apologize for that error. I
16 didn't realize it until I had mine up close here.
17 The service area actually goes up north through the
18 area here and there's lots along the Mills Addition
19 here that are shaded gray that are actually served
20 by Capital Electric today.

21 Q. Okay.

22 A. Just an inadvertent error.

23 Q. If you would, that's the original Exhibit
24 P-1. Would you take this blue marker and draw a
25 line on the map to show where that error is?

1 A. The error should -- the actual nonshaded
2 area should go up in this direction.

3 COMMISSIONER WEFALD: Is that along the
4 water?

5 THE WITNESS: Along the water.

6 Q. (MR. NEGAARD CONTINUING) Is that what's
7 commonly called Fox Island, that area?

8 A. Yeah, this was commonly called Fox
9 Island. Now it's part of Southport. The point
10 being that in 1992, MDU had come to us and was
11 objecting that we were serving the Natwick property
12 because it fell within their service area, and they
13 had also indicated to us that in order for them to
14 serve Mr. Natwick, they'd have to extend service
15 about one mile. We did not object to them serving
16 Mr. Natwick as we were trying to fill our
17 commitment to the service area agreement that we
18 had conveyed to the Bismarck City Commission for
19 the orderly development around Bismarck. We
20 addressed this letter to the Public Service
21 Commission to advise them that we were negotiating
22 with Montana-Dakota Utilities to revise the service
23 area agreement and that they could continue -- they
24 could provide service to Mr. Natwick. However, we
25 were looking to swap that out. And as you read

1 this letter, that's the essence of what we had
2 conveyed, and what actually happened is we did make
3 the change and we serve Mr. Natwick at this time.

4 Q. Was this letter prompted by the
5 Commission's issuance of a request for comment on
6 the PC&N? Is that how the letter got written?

7 A. That is correct.

8 MR. NEGAARD: I would offer Exhibit P-6.

9 MR. KUNTZ: Objection. I have no idea of
10 the relevance of this particular exhibit. We heard
11 about Mr. Natwick's service, but I didn't know Mr.
12 Natwick's service was at issue in this case.

13 MR. HOBERG: Mr. Binek, anything?

14 MR. BINEK: No.

15 MR. HOBERG: I'll admit Exhibit P-6.

16 Q. (MR. NEGAARD CONTINUING) Finally, Mr.
17 Nygren, showing you what's been marked as Exhibit
18 P-5, is that a -- can you tell us what that is?

19 A. Exhibit P-5 is an amending letter
20 agreement between Capital Electric Cooperative and
21 Montana-Dakota Utilities. What it says is that in
22 the event that the said service area agreement of
23 July 5, 1973, as amended, is canceled by either
24 Capital Electric Cooperative or Montana-Dakota
25 Utilities, that during the term of either party's

1 existing franchise with the City of Bismarck, that
2 all of the privileges, rights, obligations, and
3 restrictions as contained in such July 5, 1973,
4 service agreement, as amended, shall,
5 notwithstanding such cancellation, continue during
6 the term of either party's respective franchise
7 with the City of Bismarck to apply equally to both
8 Capital Electric Cooperative and Montana-Dakota
9 Utilities.

10 Q. Is that a --

11 A. And this is a signed copy by Duane Lasher,
12 who is the chairman of Capital Electric
13 Cooperative, and Orren Vinger, who was the manager
14 of the division, I believe, for Montana-Dakota
15 Utilities at that time.

16 Q. Okay. And has this document been under
17 your care, custody and control as manager of
18 Capital Electric?

19 A. Yes.

20 Q. It's a contract that was entered into
21 between Capital Electric and MDU?

22 A. Yes.

23 MR. NEGAARD: I would offer Exhibit P-5.

24 MR. HOBERG: Mr. Kuntz.

25 MR. KUNTZ: Objection, relevance.

1 MR. HOBERG: Mr. Binek, any comment?

2 MR. BINEK: No comment.

3 MR. HOBERG: I will admit Exhibit P-5.

4 Q. (MR. NEGAARD CONTINUING) Mr. Nygren, we
5 heard Mr. Lipp talk about some of the facilities
6 that Capital Electric had built in this area. What
7 process did Capital Electric go through when it's
8 made this investment over the last 14 years in this
9 area?

10 A. When we look to our annual budgeting
11 process and our planning process, we'll look at
12 two-year and even four-year work plans and look out
13 into the future. The engineering department, along
14 with probably the work of the consulting engineer,
15 will do voltage draft studies and other studies,
16 circuit analysis studies, and with that
17 information, along with potential load growth
18 information, we'll look to develop work plans. And
19 as we develop those work plans, we'll submit them
20 to the Rural Electric Utilities Service for their
21 approval. If you don't submit a work plan to the
22 RUS for their approval, you're not eligible for
23 funding from them. If the RUS approved that you're
24 eligible for funding from them, and dependent upon
25 the extent of the work plans, you may or may not

1 apply for loan funds for financing. Also, we take
2 work plans in front of the board of directors of
3 Capital Electric Cooperative for their approval,
4 and each year we'll do a budget work plan which may
5 make revisions to the general two- to four-year
6 work plans for approval by them.

7 Q. So this wasn't something that you and Ron
8 Lipp got together in the backroom and just decided
9 you were going to do?

10 A. No.

11 Q. The \$1.8 million that you spent in this
12 area, again, what's the approval process within
13 Capital Electric?

14 A. Well, we'll look to the Rural Utilities
15 Service, we'll look to the board of directors for
16 approval of these work plans and budgets.

17 Q. Okay. Some of the questions that the
18 Commission has asked, obviously we know that the
19 customer here has requested MDU to serve this load,
20 his employer, and we know who operates in the
21 area.

22 Some of the other questions, specifically
23 issue number 6, which was, which of the available
24 electrical suppliers will be able to serve the
25 location in question more economically and still

1 earn an adequate return on investment, do you have
2 an opinion on which would be best able to do that?

3 A. Well, in my opinion, Capital Electric has
4 been the electric provider that's been investing in
5 this area. We've been looking at this for -- at
6 least since 1973 and prior to that. I think we
7 heard the testimony of Mr. Copenhaver that, if I
8 recall in his testimony, they've added two services
9 since 1979 within a mile area of the Botner
10 location. And within my judgment, we entered into
11 the service area agreement with the City of
12 Bismarck and Montana-Dakota Utilities to avoid
13 duplication of facilities and to avoid a
14 checkerboarding that had been taking place prior to
15 1973. Since that time we've removed facilities
16 I've conveyed to you in one of the exhibits to
17 avoid the challenges that we could have perhaps
18 brought towards this Commission to establish our
19 relevancy of service simply because we had a line
20 located and were closer, and we've avoided that
21 process within that framework. If Corey Botner's
22 service is allowed, then I think we're going to go
23 right back into the checkerboarding effect that
24 we'd seen prior to 1973. And that, I think, is one
25 of the relevancies of why we're here, is to avoid

1 the checkerboarding and avoid the duplication of
2 facilities when one supplier has already made a
3 significant investment to serve the area.

4 Q. Mr. Lipp testified that Capital has spent
5 \$1.8 million. Would allowing Capital Electric to
6 serve this load, the Corey Botner load, help
7 Capital Electric spread its cost --

8 A. Certainly.

9 Q. -- of its improvements out?

10 A. Certainly. As we can build out -- and,
11 unfortunately, you can't just build facilities for
12 the exact location of consumers at the exact time,
13 meaning that we have 1200 -- I think the counts
14 that are located within the two-mile radius, but
15 certainly, as Mr. Lipp has testified, when we built
16 the substation, we built that for the future, and
17 as we can continue to add consumers within this
18 area, that will help spread our backbone and
19 investment cost that, I think, Mr. Kuntz was
20 alluding to in the fact that he had indicated we
21 hadn't made any specific investment, per se, to the
22 Botner location, but we have made the general
23 investment in the area to serve the area.

24 Q. Does Capital Electric use a rate-of-return
25 calculation to determine whether or not it should

1 serve a load?

2 A. No, we do not.

3 Q. So do you pay a rate of return to any
4 investors?

5 A. No, we do not.

6 Q. So that the rate-of-return calculation
7 that MDU provided here today, is that something
8 Capital Electric does to determine whether or not
9 it should serve a load like this?

10 A. No, we do not.

11 Q. Do you have an opinion of which supplier's
12 extended electric service would best serve orderly
13 and economic development of electric service in the
14 general area of this load?

15 A. Yes.

16 Q. And what is that opinion?

17 A. My opinion, Capital Electric has been the
18 one that's been providing the service in the area
19 and has been helping to develop the area since
20 1973, and we feel that we should be able to
21 continue to do that without interference.

22 Q. With respect to the question of whether or
23 not -- the issue is whether the approval of the
24 application for a certificate in this case would
25 result in wasteful duplication of investment or

1 services. Do you have an opinion on that?

2 A. Even though we're the provider that has to
3 extend service further, in the one instance, and I
4 think you've heard MDU testify that we would have
5 to cross their line in order to do so, that becomes
6 the issue of fact. Yet, I would submit that there
7 are other places within the community that those
8 processes have occurred where the primary provider
9 provided the service to the locations even though
10 the facility was crossed. In other words, what I'm
11 saying is MDU has crossed existing facilities of
12 Capital Electric in order to provide the general
13 service in the shaded area. And unlike here -- or
14 I should say like here, it's true that Capital
15 Electric would have to cross underneath MDU, but
16 from the long standpoint of who has been developing
17 the area, I think the wasteful duplication would be
18 to allow MDU to go in and provide service here and
19 then require them to upgrade their facilities when
20 the existing facilities are present to serve it.

21 Q. Okay. Is it probable, in your opinion,
22 that this location will be included within the
23 corporate limits of the City of Bismarck within the
24 foreseeable future?

25 MR. KUNTZ: Objection, foundation.

1 MR. HOBERG: Sustained.

2 Q. (MR. NEGAARD CONTINUING) Mr. Nygren, in
3 the course of having your franchise renewed by the
4 City of Bismarck, have you had opportunity to talk
5 to various city, municipal leaders about the growth
6 patterns in the City of Bismarck?

7 A. Yes, I have.

8 Q. Have you discussed with them any of the
9 likelihood or possibility of growth -- or extension
10 of the city limits in this area?

11 A. I, personally, have not gone and talked to
12 any of the city officials directly myself.

13 Q. Okay.

14 A. I have had some conversations with --

15 MR. KUNTZ: Objection, foundation and
16 hearsay now.

17 MR. HOBERG: Are you giving -- are you
18 going to ask him an opinion question or a question
19 about --

20 MR. NEGAARD: I'm asking if he has any
21 knowledge in order to lay the foundation for a
22 question.

23 MR. KUNTZ: And he just testified that he
24 doesn't. Anyway, whatever knowledge he would have
25 had would have been hearsay based upon the question

1 you presented to him.

2 MR. HOBERG: I'll sustain the objection.

3 Q. (MR. NEGAARD CONTINUING) Mr. Nygren, have
4 you had any discussions with any municipal people
5 with respect to any of the likelihood of growth of
6 the city in this area?

7 A. Yes, I have. I've had a general
8 discussion with Bill Wocken on the potential of
9 growth in south Bismarck.

10 Q. And who is Bill Wocken?

11 A. I believe he's the city administrator, is
12 his title, for the City of Bismarck.

13 Q. And so you've discussed that issue with
14 him?

15 A. In general.

16 Q. Based on those discussions, do you have an
17 opinion as to the likelihood of -- is that the type
18 of information that the manager of an electric coop
19 who is expecting some growth in an area that he
20 serves in his service area, is that the type of
21 discussion that you would do as a normal part of
22 your job function?

23 A. Yes, it is.

24 MR. KUNTZ: Objection. I'm sorry.

25 Q. (MR. NEGAARD CONTINUING) Is it the type

1 of information that you would commonly rely upon
2 and use in formulating your decisions about
3 investment and would relate to your board of
4 directors in formulating where you would invest
5 your resources as a coop?

6 A. In part, yes.

7 MR. NEGAARD: With that, Your Honor, I
8 would submit that Mr. Nygren has the ability to
9 give an opinion on question number 9, whether or
10 not this area will be included within the corporate
11 limits of Bismarck within the foreseeable future.

12 MR. KUNTZ: Might I pose a question for
13 purposes of an objection?

14 MR. HOBERG: Yes.

15 MR. KUNTZ: Mr. Nygren, did you ask Mr.
16 Wocken specifically whether he anticipated that the
17 Botner property would be annexed to the City of
18 Bismarck in the foreseeable future?

19 THE WITNESS: Specifically, no. In
20 general, yes.

21 MR. KUNTZ: In the general south Bismarck
22 area you were talking, were you not?

23 THE WITNESS: That's correct.

24 MR. KUNTZ: You did not ask him about Mr.
25 Botner's property, did you?

1 THE WITNESS: Not specifically, that's
2 correct.

3 MR. KUNTZ: Renew my objection, foundation
4 and hearsay.

5 MR. HOBERG: Sustained. I'll sustain the
6 objection.

7 Q. (MR. NEGAARD CONTINUING) And question 10
8 then, the last question, Mr. Nygren, will service
9 by either of the electric suppliers in this area
10 unreasonably interfere with the service or systems
11 of the other, in your opinion?

12 A. In my opinion, allowing the
13 checkerboarding effect that would develop
14 potentially here by the extension and addition of
15 Montana-Dakota Utilities, will interfere and will
16 allow the happenings that we saw prior to 1973 to,
17 once again, bring forth what we tried to avoid for
18 all these years.

19 Q. Mr. Nygren, I showed you Exhibit P-5. Was
20 that the document that the city relied on then and
21 incorporated into your franchise agreement when it
22 was renewed in 1993?

23 A. That is correct.

24 MR. NEGAARD: I have nothing further.

25 MR. HOBERG: Thank you, Mr. Negaard. Mr.

1 Kuntz, do you have any questions?

2

CROSS-EXAMINATION

3 BY MR. KUNTZ:

4 Q. Mr. Nygren, do you have Exhibit P-3 in
5 front of you?

6 A. Yes, I do.

7 Q. Turn to the fourth page of that document.
8 It has a service area agreement attached to it,
9 does it not?

10 A. Exhibit A?

11 Q. Right. Do you see that?

12 A. Yes.

13 Q. And is that the service -- 1973 service
14 agreement that you've been referring to throughout
15 your testimony?

16 A. Yes, it is.

17 Q. Would you read for me paragraph number 12
18 of that agreement, please?

19 A. "This agreement shall remain in force from
20 the date hereof until canceled by either party by
21 giving twelve months' written notice to the other
22 party of such cancellation."

23 Q. And did Montana-Dakota give Capital
24 Electric notice that it was canceling this
25 agreement to areas outside the City of Bismarck?

1 A. Yes, they did. I believe that was after
2 the amendment that was adopted by both parties,
3 though, that took place the 3rd of June, 1990,
4 which is part of this agreement that I referred to.

5 Q. And when did you see notice of the
6 cancellation?

7 A. I know it was after 1993 because that was
8 the year that the city renewed the franchise. I'm
9 trying to recall. Maybe you could refresh my
10 memory.

11 Q. It's been more than 12 months, hasn't it,
12 Mr. Nygren?

13 A. Yes. Yes, it has.

14 Q. And it was canceled with respect to areas
15 outside the City of Bismarck; is that correct?

16 MR. NEGAARD: Your Honor, I'm going to
17 object. It's a legal characterization and I think
18 the documents are in evidence and they speak for
19 themselves. The 1993 agreement specifically says
20 it cannot be canceled as long as either party has a
21 franchise from the City of Bismarck. That's what
22 the document says.

23 MR. HOBERG: You can respond to the
24 question. What's the question again, Mr. Kuntz?

25 Q. (MR. KUNTZ CONTINUING) You received the

1 notice more than 12 months ago; is that correct?

2 A. Yes.

3 Q. And it was for the areas outside the City
4 of Bismarck; is that correct?

5 A. Yes.

6 Q. And is it your position, Mr. Nygren, that
7 Exhibit P-5 applies to even areas outside the City
8 of Bismarck?

9 A. My reading of Exhibit P-5 says that all of
10 the privileges, rights, obligations, and
11 restrictions, not just part.

12 Q. So based upon your interpretation then,
13 even though this agreement references the fact that
14 one party is canceling -- or has the right to
15 cancel the agreement or could cancel the agreement,
16 it would nonetheless continue in effect as long as
17 either party held a franchise in the City of
18 Bismarck?

19 A. If I understand the question, so long as
20 either party held the franchise with the City of
21 Bismarck, all privileges, rights, obligations, and
22 restrictions as contained in the July 5th, 1973,
23 service agreement or as amended mutually by both
24 parties would remain in effect.

25 Q. Would it have been anticipated in 1993

1 that either of these two companies would be
2 abandoning a franchise within the City of Bismarck
3 at any time in the foreseeable future?

4 A. Not to my knowledge.

5 Q. So then what -- so in essence this
6 agreement, even though it references the fact that
7 in the event the service area agreement is
8 canceled, that in essence it can't be canceled as
9 long as either party has a franchise with the City
10 of Bismarck? That's your interpretation?

11 A. Yes.

12 Q. Even outside the City of Bismarck?

13 A. To the extent that the service agreement
14 applies to the area that was part of the agreement
15 outside of the City of Bismarck.

16 Q. You referred to checkerboarding, did you
17 not, in your testimony, Mr. Nygren?

18 A. Yes.

19 Q. But indeed it's Capital Electric who would
20 need to cross Montana-Dakota's facilities in order
21 to serve this line, would it not -- serve this
22 load?

23 A. In this instance, that's correct.

24 Q. And Montana-Dakota serves the nearest load
25 to this on the south side of Burleigh Avenue

1 immediately to the east, does it not?

2 A. I haven't measured the distances, but I'll
3 assume your characterization is close.

4 Q. Does Capital Electric have any load
5 between the Huber residence and the Botner
6 residence on the south side of Burleigh Avenue?

7 A. No, but that direction only goes to the
8 east. Going to the west, I'm going to assume we're
9 about --

10 Q. My question was, were there any facilities
11 between -- to the east of the Botner residence?

12 A. No.

13 Q. With respect to duplication, you don't
14 have any facilities on the Botner property right
15 now, do you?

16 A. Not to my knowledge.

17 Q. Montana-Dakota, do they not?

18 A. According to the testimony.

19 Q. In order for Capital Electric to extend
20 facilities on to the Botner location, you would
21 have to put facilities on there that already exist
22 on the property by Montana-Dakota?

23 A. In order for Capital Electric to serve
24 this location?

25 Q. Right.

1 A. We'd have to put facilities on the Botner
2 property that are already what?

3 Q. That already exist by Montana-Dakota.
4 Montana-Dakota already has primary service
5 facilities located in that facility?

6 A. Yes. Yes. Or in the case if you're
7 denied, merely to tie into the facility.

8 Q. You mentioned the fact it would be
9 necessary for Montana-Dakota to upgrade its
10 facilities to serve this area. Would it be
11 necessary for Montana-Dakota to upgrade its
12 facilities to serve the Botner location?

13 A. No.

14 Q. And it's your testimony, is it not, Mr.
15 Nygren, that it's not an interference of facilities
16 or service for one utility to cross another? Is
17 that what you're testifying today?

18 A. I'm saying within the general framework of
19 a defined area, that we have crossed each other,
20 but the extent has been so that the one party can
21 serve the general area, just not one specific load.

22 Q. But is the crossing of facilities an
23 interference or not an interference?

24 A. I'm assuming that can be left up to the
25 Commission to decide.

1 Q. You don't have a position on that?

2 A. No.

3 Q. Isn't it true that even within the area of
4 the service agreement before it was canceled, that
5 the parties would periodically serve customers
6 within the other's service location where it made
7 economic sense to do that without a protest from
8 the other party?

9 A. I'm not sure I can recall where that has
10 necessarily taken place. There might be a couple.

11 Q. What about the Radspinner situation?

12 A. Yeah, that would be obviously the one that
13 I think, and I don't recall that instance, but I'll
14 trust that Mr. Copenhagen's testimony is accurate,
15 and that's one instance that I can think of here.

16 Q. So you would agree, would you not, that in
17 the instance of a service area agreement, if it
18 makes economic sense for the other provider to
19 serve a load, even though it's within your service
20 territory, that that's something that should take
21 place?

22 A. Depends on the situation. It's not always
23 what we've seen practiced. I think that was the
24 extent of what I had already testified to in the
25 Mr. Natwick case where we were already serving the

1 property and MDU objected even though they were a
2 mile away.

3 Q. And you ended up serving that property?

4 A. Only after negotiations and a trade with
5 MDU.

6 Q. What would be -- did you calculate the
7 cost to serve Mr. Botner -- monthly service?

8 A. By "you," do you mean me personally or
9 Capital Electric?

10 Q. Capital Electric, right. Did Capital
11 Electric make a determination of the cost to serve?

12 A. I believe Mr. Lipp testified to that.

13 Q. In terms of the monthly service charge to
14 serve his 12,676 kilowatt-hours, I believe, that
15 Mr. Copenhaver projected, did you -- did Capital
16 Electric make a calculation to determine what they
17 would charge Mr. Botner for that service?

18 A. I believe that was an interrogatory that
19 we answered.

20 Q. But you haven't -- do you have that
21 information today?

22 A. Not with me here. I don't know if we do.
23 I thought it was mailed to MDU.

24 MR. HOBERG: Let me check here and see.

25 MR. NEGAARD: May I approach the witness?

1 MR. HOBERG: Why don't you talk to Mr.
2 Kuntz first.

3 THE WITNESS: If memory serves me --

4 MR. HOBERG: Hold on a second. Just hold
5 on a second.

6 MR. KUNTZ: I think we have it here.

7 Q. (MR. KUNTZ CONTINUING) I'm going to show
8 you a document that was attached to the discovery
9 responses. Do you recognize that document?

10 A. Yes, I've seen this document.

11 Q. Does it show your -- or Capital Electric's
12 calculations of the costs to serve the Botner
13 property load?

14 A. This is a calculation of the revenue that
15 we've received based on the kilowatt-hour
16 consumption that, I believe, Mr. Copenhaver
17 provided to us.

18 Q. And what were those --

19 A. So it shows our revenue that we would
20 receive for an annual consumption.

21 Q. And what was the annual consumption that
22 was used?

23 A. This document doesn't show it in summary,
24 but to my recall, it would be the 12,000
25 kilowatt-hour figure that MDU used, and I don't

1 remember the exact hundreds of the kilowatt-hours.

2 Q. And what would be the total cost for
3 Capital Electric that you would charge Mr. Botner
4 to serve that load on an annual basis?

5 A. The total revenue that we anticipated we
6 would receive was \$1,050.15.

7 Q. And that would be based upon a monthly
8 service charge of \$7.50; is that correct?

9 A. That's correct.

10 Q. And an energy charge of .078 cents per
11 kilowatt-hour?

12 A. For the first 400 kilowatt-hours.

13 Q. Okay. And then after that?

14 A. There would be another charge at 7.5
15 cents.

16 Q. Are these the rates that Capital Electric
17 charges all of its residential customers?

18 A. No.

19 Q. What's the difference?

20 A. We also have what we classify as an urban
21 rate.

22 Q. Is that more or less than this rate?

23 A. Less.

24 Q. So the fact that Mr. Botner is on the
25 south side of Burleigh Avenue means he would be

1 paying more for his electric service from Capital
2 Electric unless he was annexed into the city?

3 A. That would be correct.

4 MR. HOBERG: Let's go off the record here
5 and discuss where we're at as far as lunch and
6 everything.

7 (Discussion had off the record.)

8 (Recess taken at 12:20 p.m. to 12:30 a.m.)

9 MR. HOBERG: We're back on the record
10 after a short recess and we're going to try and
11 finish this up within the next few minutes. Mr.
12 Kuntz, you had some further questions of this
13 witness?

14 MR. KUNTZ: Yes. Thank you.

15 Q. (MR. KUNTZ CONTINUING) Mr. Nygren, what's
16 the average residential consumption on Capital
17 Electric's system, do you know, on an annual basis?

18 A. May I estimate?

19 Q. Yes.

20 A. 870 kilowatt-hours.

21 Q. 870?

22 A. Kilowatt-hours. I'm just thinking of this
23 on a --

24 Q. Per month?

25 A. Per month.

1 Q. Okay. What's the annual? I'm asking for
2 the annual.

3 A. Twelve times that.

4 Q. And we were discussing situations where it
5 made economic sense for the other provider to serve
6 a load that was in one of the company's service
7 areas. Are you aware of a situation where Capital
8 Electric is serving a water well along -- near
9 Divide Avenue in north Bismarck that would
10 otherwise be within the old MDU service area?

11 A. I'm going to say yes. I think I know what
12 you're talking about. Is this -- just for my own
13 recall, would be west of the railroad tracks, south
14 of Divide Avenue?

15 Q. By Hay Creek, in that area.

16 A. Yeah. Is that what you're referring to?

17 Q. Yes.

18 A. Right.

19 Q. And that was a location that was otherwise
20 within Montana-Dakota's service area under the
21 service area agreement?

22 A. To my knowledge, they didn't want to make
23 a line extension to a pasture well to serve it and
24 we were willing to do it, so we did.

25 Q. It made more economic sense for Capital

1 Electric to serve that load than it did for
2 Montana-Dakota?

3 A. I'm not sure it made any economic sense to
4 serve the load, but we were willing to provide the
5 service.

6 Q. Are you also aware of a situation where
7 Capital Electric served a load for what was the old
8 Soo Line, now Dakota Missouri Valley, down by -- in
9 the southeast part of Bismarck that was otherwise
10 within Montana-Dakota's service area?

11 A. Yes. We were the only one, I think, that
12 had facilities within a mile.

13 Q. So it made economic sense for you to serve
14 that load, even though it was in Montana-Dakota's
15 service area?

16 A. Correct. We didn't cross any of Montana-
17 Dakota's lines to get to it, however.

18 Q. You're proposing to serve the Botner
19 location off a line that was built -- when was it,
20 back in the 1950s?

21 A. If I can, my recollection is that the line
22 was built in the -- I guess I would have to refer
23 to the testimony. I can't recall. I'm going to
24 guess and that's not right. I'll just have to
25 refer to the testimony. If that's what the

1 testimony was, then that's what it is.

2 Q. I believe Mr. Lipp testified it was built
3 in 1950 and then was moved on the north side in
4 1967; is that correct?

5 A. I see Mr. Lipp shaking his head, so yes.

6 Q. And that was before this 1973 service area
7 agreement, wasn't it?

8 A. Yes.

9 Q. And it was before the 1993 amendment to
10 the service area agreement, wasn't it?

11 A. Yes.

12 MR. KUNTZ: I have no further questions.

13 MR. HOBERG: Thank you, Mr. Kuntz. Just
14 for the record, I believe I misspoke in regard to
15 one of the exhibits. We have offered and admitted
16 Exhibits A through D for the applicant and P-1
17 through P-7 for the protestant, except for P-4. I
18 think I said P-5 twice, but it should have been
19 P-7, so we have those six exhibits for the
20 respondent and four for the applicant.

21 Mr. Binek, did you have any questions of
22 this witness?

23 MR. BINEK: No.

24 MR. HOBERG: Thank you. Commissioner
25 Wefald, do you have any questions for this

1 witness?

2 COMMISSIONER WEFALD: Not at the present
3 time.

4 MR. HOBERG: Thank you. Commissioner
5 Clark, any questions?

6 COMMISSIONER CLARK: I do have one.

7 EXAMINATION

8 BY COMMISSIONER CLARK:

9 Q. In response to a question, I think, from
10 Mr. Negaard, towards the end of his questioning he
11 asked about the tenth question that the Commission
12 posed in its hearing order, Will service by either
13 of the electric suppliers in the area unreasonably
14 interfere with the service or system of the other,
15 and I think that you had responded by indicating
16 that you thought that having MDU serve that area
17 would create more of a checkerboard pattern. Is
18 that correct?

19 A. Yes.

20 Q. I guess to me that answer maybe sounds a
21 little bit more like question 6 or 7 which we posed
22 which have to do who can serve it more economically
23 and who serves the orderly economic development in
24 the service area generally speaking. As I read 10,
25 I guess, I tend to read that thinking from almost

1 more of an engineering standpoint, does having them
2 cross interfere with the system, itself, or the
3 service. Any way that this is set up, whether it's
4 goes to Capital Electric or whether it goes to MDU,
5 is there any reasonable expectation that the
6 systems, themselves, interfere with each other from
7 a reliability standpoint, from an engineering
8 standpoint?

9 A. No.

10 Q. Or is it sort of a wash? From a technical
11 standpoint whether it crosses or not, is there
12 interference which is caused?

13 A. I don't believe so.

14 COMMISSIONER CLARK: Okay. Thank you.

15 MR. HOBERG: Thank you, Commissioner
16 Clark. Commissioner Cramer.

17 EXAMINATION

18 BY COMMISSIONER CRAMER:

19 Q. At the risk of an objection by Mr. Kuntz
20 maybe, in your general discussions with Mr. Wocken
21 about general plans to possibly annex some parts of
22 south Bismarck, you testified that you didn't ever
23 specifically talk about the Botner property. Did
24 you ever ask specifically about the entire Section
25 20 as it relates to possibly being annexed into the

1 City of Bismarck?

2 A. What I talked about with Mr. Wocken is
3 that generally when the city looks to annex, and
4 city development, generally speaking, I suppose,
5 with an exception someone is going to point out to
6 me in a little bit, city lots and the density
7 question is just -- there's a lot more lots, a lot
8 more services in the city development than there is
9 in the general rural development area that you'll
10 see in some subdivisions. You'll even see some
11 subdivisions that are annexed into the city
12 subdivided, so you have a higher density relation
13 of consumers in a city development. That's what
14 we've generally seen. There's probably exceptions
15 to that. But that's generally what we've seen.
16 And that was, I guess, in relation to my
17 conversation with Mr. Wocken, are we seeing the
18 development moving north, south, how much in
19 relation are we going to see?

20 Q. All right. So you never asked him
21 specifically are there plans to annex Section 20
22 and he did never say we think Section 20, for
23 example, might be an area that could be annexed or
24 any part of it?

25 A. That's correct.

1 Q. All right.

2 A. We only spoke in general. Obviously the
3 thing you look at is those properties that are
4 adjacent to the city limits because that's the ones
5 that are probably going to be annexed next.

6 COMMISSIONER CRAMER: Thank you. Nothing
7 else.

8 COMMISSIONER WEFALD: I have a question.

9 MR. HOBERG: Commissioner Wefald, please.

10 EXAMINATION

11 BY COMMISSIONER WEFALD:

12 Q. Going to Exhibit 5, would you please
13 explain to me what the purpose of this letter
14 agreement amendment was between Capital Electric
15 and Montana-Dakota Utilities? What was the intent?

16 A. Back when we were having our renewal
17 discussions with the city, we proposed to the city
18 that should the service area agreement be annexed,
19 rather than Capital Electric having limited
20 franchise pursuant to this service area agreement
21 that our franchise would revert to a general
22 franchise anywhere within the city. MDU objected
23 and did not want that to occur and, accordingly, I
24 believe this was language drafted by Lester Loble
25 of MDU, and our counsel at that time was Mark

1 Purdy, and the question that was posed to me, do
2 you have any intentions of ever canceling the
3 service area agreement and I said no. I think the
4 question was posed to MDU, do you have any
5 intentions of canceling the service area
6 agreement? I think the answer was no. So this
7 language in essence amended to the extent that as
8 long as either party has a service area -- or has a
9 city franchise, neither party is going to in
10 essence cancel the service area agreement.

11 COMMISSIONER WEFALD: Thank you.

12 MR. HOBERG: Commissioner Clark.

13 FURTHER EXAMINATION

14 BY COMMISSIONER CLARK:

15 Q. Just two very quick questions. Does --
16 MDU in figuring its required revenue has to figure
17 in federal and state income taxes. Does Capital
18 Electric as a cooperative pay those taxes or not?
19 I mean, so if you were figuring out your revenue
20 requirement, would that be --

21 A. At this time Capital Electric is not
22 subject to a federal or state income tax to the
23 extent that we continue to follow the -- I'm trying
24 to try what it is, 501 C 12 chapter for our
25 nonexempt status. Otherwise, if we violate that,

1 then we are and may become a taxable coop,
2 particularly subject to the 85 percent rule.

3 Q. Does Capital Electric offer an employee
4 discount?

5 A. No.

6 MR. LIPP: Negative.

7 COMMISSIONER CLARK: That's all I have.

8 Thank you.

9 MR. HOBERG: Thank you, Commissioner
10 Clark. Any further questions of this witness?
11 Commissioner Wefald.

12 COMMISSIONER WEFALD: I have a question of
13 Mr. Kuntz, if you could tell me when I should ask
14 that question.

15 MR. HOBERG: Probably after we've closed.
16 It's not a factual question, I assume.

17 COMMISSIONER WEFALD: No, it's not.

18 MR. HOBERG: Okay. Probably just before
19 we close the hearing.

20 MR. HOBERG: Any further questions of this
21 witness? Thank you, Mr. Nygren.

22 THE WITNESS: Thank you.

23 MR. HOBERG: All right. Any further
24 witnesses, Mr. Negaard?

25 MR. NEGAARD: Your Honor, we have no

1 further witnesses.

2 MR. HOBERG: Anyone you wish to recall,
3 Mr. Kuntz?

4 MR. KUNTZ: No.

5 MR. HOBERG: All right. Why don't we ask
6 that question to Mr. Kuntz now since we're done
7 with the factual presentation.

8 COMMISSIONER WEFALD: Mr. Kuntz mentioned
9 a 1959 case; is that correct?

10 MR. KUNTZ: Yes.

11 COMMISSIONER WEFALD: 1959 case that
12 related to --

13 MR. KUNTZ: Service area agreement.

14 COMMISSIONER WEFALD: -- something that
15 happened in Williston. Can you please refresh my
16 mind on -- tell me what you're referring to in
17 1959, because that's way before the Territorial
18 Integrity Act was enacted here in North Dakota and
19 it's prior to a lot of cases being heard by the
20 Commission, so I'm curious about what relevance
21 that case has.

22 MR. KUNTZ: Well, the relevance of the
23 case is that a ruling by the Eighth Circuit Court
24 of Appeals kind of on a similar argument, and I
25 haven't looked at the case for some period of time

1 -- I would just refer you to the case and your
2 advisers can read it -- but in essence in that case
3 the cooperative was arguing that the service area
4 agreement that existed -- that had existed between
5 the parties should control the outcome of that
6 particular case. The Eighth Circuit Court of
7 Appeals ruled that the service area agreement was
8 void, that they were against public policy and
9 they're void as a restraint of trade because they
10 were not supervised by the Public Service
11 Commission to in essence fall within any of the
12 exemptions within the antitrust laws.

13 COMMISSIONER WEFALD: But why would -- why
14 has MDU then been signing since 1959 service
15 agreements if that case is pertinent to this case?

16 MR. KUNTZ: I don't know why they signed
17 them, but I can tell you that's why it was
18 canceled. And I'm also suggesting to you that,
19 even though they signed them, they had absolutely
20 no legal effect because they were void as a matter
21 of law by virtue of that Eighth Circuit Court
22 decision.

23 And that decision is not unique. I think
24 if you go to the various treatises, do some
25 research, I think you'll find that that's generally

1 the recognition, that unless the state regulatory
2 commission has supervisory authority over these
3 service area agreements, that they are not valid,
4 and, in fact, it's no secret, the Commission is
5 aware, there has been legislation introduced this
6 session that would allow service area agreements
7 under the supervision of the Public Service
8 Commission because that's what would be necessary
9 in order to make them valid under the antitrust
10 laws that don't exist today.

11 COMMISSIONER WEFALD: Why weren't those --
12 why wasn't that particular case then taken into
13 consideration by the North Dakota Supreme Court
14 when it made its decision in the Southport case in
15 Fargo?

16 MR. KUNTZ: The South Point case?

17 COMMISSIONER WEFALD: The South Point
18 case.

19 MR. KUNTZ: I don't know. I don't know if
20 it was cited to them. It was within the city
21 boundaries and I think they were largely arguing
22 about the fact that, you know, the investment had
23 been made based upon that particular service area
24 agreement. I don't know that anybody raised the
25 issue about the validity of the service area

1 agreement. And then, again, it was inside the city
2 at the time that the issue arose, it had been
3 annexed prior to when this controversy arose.

4 COMMISSIONER WEFALD: So those are two
5 separate issues for this Commission to consider in
6 your mind, the investment that's been made in the
7 area versus the issue of the service agreement
8 that's in place or not in place?

9 MR. KUNTZ: I think the issues before the
10 Commission are those that are set forth in its
11 notice of hearing. I think you look at the
12 investment in place based upon the facilities that
13 are in relation to the load to see who can best
14 serve this particular facility based upon the
15 criteria that are outlined in your service -- in
16 your notice of hearing that have been adopted by
17 this Commission and the Supreme Court over a number
18 of years. Those are -- I don't believe those
19 service area agreements control, nor can they
20 control, the Commission's determination in this
21 proceeding.

22 COMMISSIONER WEFALD: And then I would
23 like Mr. Negaard to have a chance to comment on
24 those same issues, if you wish.

25 MR. HOBERG: Mr. Negaard.

1 MR. NEGAARD: Your Honor, the case that
2 Mr. Kuntz references, and I have the cite that your
3 counsel, Mr. Binek, can pull up the case for you.

4 COMMISSIONER WEFALD: Yes, that would be
5 helpful.

6 MR. NEGAARD: It's 263 Fed 2d 431. And in
7 that case Montana-Dakota Utilities canceled a
8 similar type of agreement in Williston, North
9 Dakota.

10 COMMISSIONER WEFALD: I'm sorry. Could
11 you wait to fold the map until -- because your
12 voice is soft, so if you could start again.

13 MR. NEGAARD: I have been told that
14 before. MDU sued Williams -- or Williams Electric
15 Coop -- excuse me -- sued MDU for \$35,000 for
16 ignoring a similar type of agreement that they had
17 in place. The Court in that case found that they
18 would not enforce the contract. In that case, and
19 for reasons that I can brief to the Court -- or to
20 the Commission, we think that this agreement, this
21 is a different situation. This agreement has been
22 ratified, sanctified, if you will, by the City of
23 Bismarck, has been adopted by them, and has been
24 used for orderly utility planning in and around the
25 City of Bismarck.

1 I agree 100 percent with Mr. Kuntz that
2 the City of Bismarck cannot tell this Commission
3 who's going to serve this load outside the city
4 limits of Bismarck, but I do think it's relevant
5 with respect to what has taken place and what
6 Capital Electric felt would take place if it
7 continued to make its investment and build
8 facilities in this area. And to me that's the
9 relevance.

10 COMMISSIONER WEFALD: Thank you.

11 MR. HOBERG: Okay. If there's no other
12 evidence to bring to the attention of the
13 Commission, let's talk about closing this out with
14 -- we talked a little bit about this off the
15 record, but apparently briefs the parties would
16 like to file, and I think the Commission would like
17 proposed findings of fact, conclusions of law and a
18 proposed order. How soon can we do that? The
19 applicant -- I would assume we'll do applicant,
20 respondent and then applicant.

21 MR. KUNTZ: Can we just do simultaneous
22 briefs and findings?

23 MR. HOBERG: We can if Mr. Negaard is
24 agreeable.

25 MR. KUNTZ: These issues have been beat to

1 death over the years. I don't think -- I mean,
2 other than the service area agreement, kind of a
3 unique twist, I suppose, to this one a little bit.
4 The legal issues before the Commission, the fact
5 issues, I think, are pretty straightforward. I
6 don't think there's any real dispute as to what the
7 facts are here. I mean, we could have almost
8 stipulated to the cost of extension, what the load
9 is, those sort of things. I think the unique thing
10 about this case is probably the effort to introduce
11 the service area agreement.

12 MR. HOBERG: So you're willing to give up
13 your chance to reply and file simultaneous briefs
14 basically?

15 MR. KUNTZ: I think simultaneous briefs
16 can be filed by the end of the month.

17 MR. HOBERG: Let's do that then.

18 MR. NEGAARD: Do you have a date?

19 MR. KUNTZ: Well, I would like at least
20 until the end of the month, if we could.

21 MR. NEGAARD: 29th of April?

22 MR. KUNTZ: That would work for me.

23 MR. NEGAARD: That works for me, as well.

24 MR. HOBERG: 29th of April we'll have
25 briefs -- simultaneous briefs by both the parties

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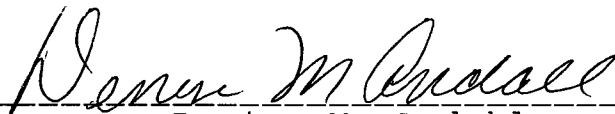
CERTIFICATE OF COURT REPORTER

I, Denise M. Andahl, a Registered
Professional Reporter,

DO HEREBY CERTIFY that I recorded in
shorthand the foregoing proceedings had and made of
record at the time and place hereinbefore
indicated.

I DO HEREBY FURTHER CERTIFY that the
foregoing typewritten pages contain an accurate
transcript of my shorthand notes then and there
taken.

Bismarck, North Dakota, this 14th day of
April, 2005.



Denise M. Andahl
Registered Professional Reporter

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