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September 28, 2005



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

CAPITAL ELECTRIC COOPERATIVE, INC. V. MONTANA-DAKOTA UTILITIES, INC.

Enclosed for filing are an original and eight copies of a Complaint, together with exhibits, seeking an Order Restraining and Enjoining Montana-Dakota Utilities, Inc. from constructing or extending its interfering line into Capital Electric Cooperative's franchised service area. Capital Electric Cooperative, Inc. contends an emergency exists and requests a hearing at the earliest opportunity, pursuant to N.D.C.C. § 69-02-02-02 (5)(b).

Montana-Dakota Utilities, Inc. has filed a Petition to Declare Franchise Rights with the Bismarck City Commission, however, the PSC has jurisdiction to handle disputes between public utilities and electric cooperatives pursuant to Chapter 49-03 of the N.D.C.C. No injunctive relief is available from the City Commission.

Yours truly,

Carol K. Larson
lat

Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Capital Electric Cooperative, Inc.)
)
 Complainant,)
)
 vs.)
)
 Montana-Dakota Utilities, Inc., a)
 Division of MDU Resources Group,)
 Inc.)
)
 Respondent.)

COMPLAINT

Case No. _____



Complainant, hereafter "CEC", is a rural electric cooperative organized under Chapter 10-13 of the North Dakota Century Code. Respondent, hereafter "MDU", is a North Dakota public utility.

Complainant alleges:

I.

CEC holds a twenty (20) year franchise with the City of Bismarck for an electric distribution system dated May 25, 1993, which grant of authority states in pertinent part as follows:

"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 street, 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. (emphasis added)

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.”

II.

After the grant of franchise, CEC and MDU entered into a letter agreement amending the Area Service Agreement between CEC, and MDU on June 3, 1993. This amendment incorporated into the Area Service Agreement the franchise requirement that if the Area Service Agreement was “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."

III.

Since the renewal of CEC's franchise in 1993, additional property contained in the Area Service Agreement has been annexed by the City of Bismarck. Electric distribution service has been provided to the annexed territories by MDU and CEC in accordance with the Area Service Agreement. Both parties have relied upon the grant of franchise, and upon the Area Service Agreement, with respect to investment, building of facilities, installation, and provision of electric distribution services to new city residents.

IV.

MDU sent a letter to CEC dated June 26, 2002, to be effective June 26, 2003, purporting to cancel the Area Service Agreement for all areas outside the City of Bismarck. However, the terms of the franchise, as well as terms of the Area Service Agreement, as amended, provides that all of the privileges, rights, obligations, and restrictions as contained in the 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 CEC and MDU. The grant of authority in CEC's franchise agreement expressly provides that the franchise applies to the ". . . public grounds of the City as now,

or hereafter constituted". . . (emphasis added). The eventuality of annexation was expressly provided for in CEC's franchise grant.

V.

MDU alleges that CEC's service area was "frozen" in 2003 when they purported to cancel a portion of the service agreement. However, since June 26, 2003, fifteen (15) subdivisions have been annexed to the City of Bismarck in CEC's service area, and have been, and are served by CEC, pursuant to its franchise. There has been no prior objection to CEC providing service by either MDU or the City.

VI.

When territory is annexed into the City such territory stands just as any other property within the City, subject to the Area Service Agreement, and CEC's franchise. On April 12, 2005, the area known as "part of Boulder Ridge First Addition to the City", hereafter "Boulder Ridge", was annexed to the City of Bismarck. Pursuant to the grant of franchise incorporating the Area Service Agreement, Boulder Ridge is located in CEC's service area. See attached Exhibit A.

VII.

CEC had previously provided electric service to a location in what is now known as Boulder Ridge since April 23, 1949. In preparation for the development of Boulder Ridge, CEC pulled the meter on March 17, 2005, and retired the service on April 8, 2005. CEC has a signed customer request to provide service within Boulder Ridge.

VIII.

MDU has indicated its intention to serve Boulder Ridge. Such service by MDU will

unreasonably interfere, or is about to interfere unreasonably, with the service or system of CEC. On September 27, 2005, MDU requested an underground facility located in French's 1st Addition to the City of Bismarck. This is a subdivision located directly south of Boulder Ridge, also in CEC's service area. It is believed that MDU intends to infiltrate CEC's territory by a half-mile of line to tie their system into Boulder Ridge, which ultimately requires them to cross CEC's power line. CEC's facilities are the only facilities located on the property to be served, prior to MDU's infiltration, the subject of this dispute. MDU has never provided electric service to this area. MDU's closest existing facility is approximately one-half (½) mile (2,800 feet) from Boulder Ridge. CEC is able to extend service to the site through a shorter extension at a lower costs, which is a primary consideration of orderly and economic development. Service by CEC is a natural extension of service from its existing facilities and will not result in checker boarding customers served by MDU and CEC.

IX.

CEC has built its distribution system in reliance upon the franchise granted by the City of Bismarck, which grant incorporates the terms of the Area Service Agreement. With respect to Boulder Ridge specifically, original construction of 1-phase line was completed in 1948. The line was converted to 3-phase in 1970, and the 3-phase was rebuilt and upgraded, adding more capacity in 1997. The 3-phase circuit in Boulder Ridge taps the CEC line and the circuit is ready to be energized by CEC. In addition, CEC and WAPA have invested \$7 million in construction of the Ward Delivery Substation to provide transmission service to North Bismarck. This Delivery Substation is expected to be

completed in January, 2006. See attached Exhibit B, consisting of four photographs of CEC's facilities.

X.

MDU's construction into CEC's franchised service area violates and threatens to violate the provisions of Section 49-03-01 and 49-03-01.3 N.D.C.C.

WHEREFORE the Complainant requests that the NDPSC to issue an order:

1. Restraining and enjoining MDU from constructing or extending its interfering lines, plant, or system, into CEC's franchised service area;
2. Requiring immediate removal of all of MDU's facilities in CEC's service area; and
3. In addition to the restraint imposed, that the Commission prescribe such other terms and conditions as it shall deem reasonable and proper.

Dated this 28th day of September, 2005.

PRINGLE & HERIGSTAD, P.C. *CKL*

By: *Carol K. Larson*

Carol K. Larson - #04406

Attorneys for Capital Electric Cooperative, Inc.

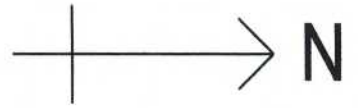
Pringle & Herigstad, P.C.

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Minot, ND 58702-1000

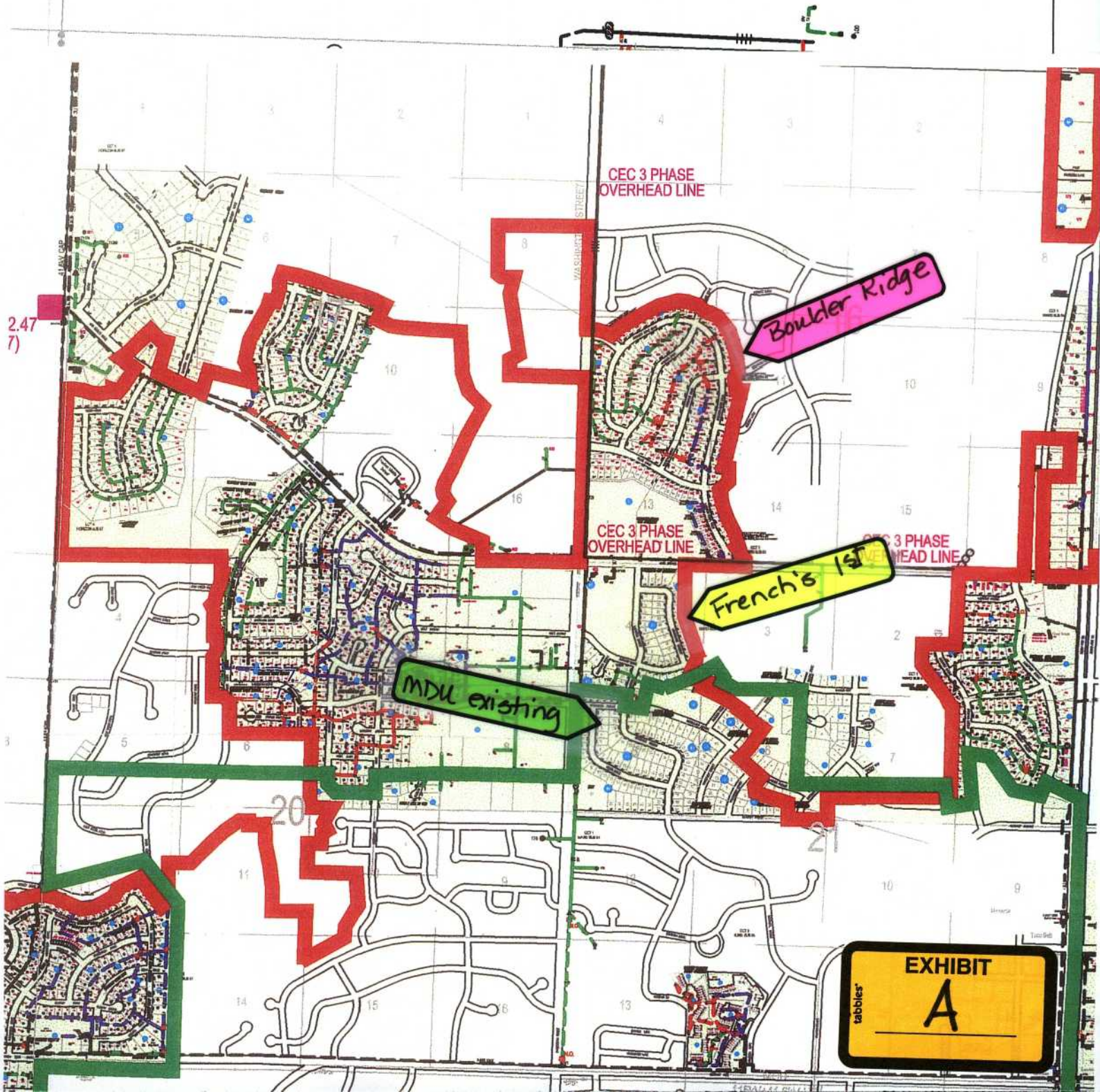
(701) 852-0381



LEGEND

 BISMARCK CITY
LIMITS BOUNDARY

 CEC/MDU SERVICE
AGREEMENT BOUNDARY



Capital Electric Cooperative

North Washington Street & 43rd Avenue

3-phase Distribution Line

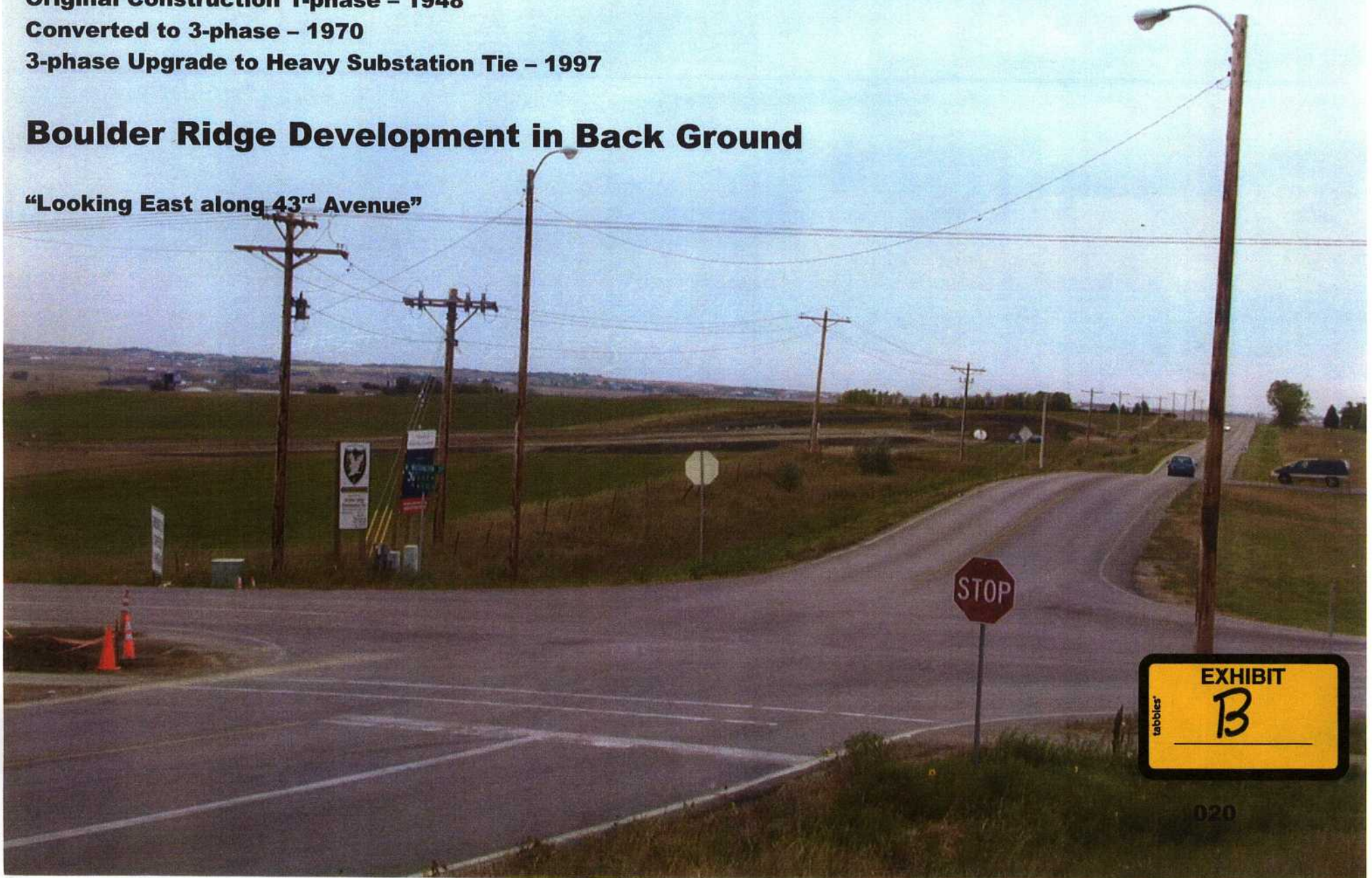
Original Construction 1-phase – 1948

Converted to 3-phase – 1970

3-phase Upgrade to Heavy Substation Tie – 1997

Boulder Ridge Development in Back Ground

“Looking East along 43rd Avenue”



tabbles[®] EXHIBIT
B

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Capital Electric Cooperative

North Washington Street

3-phase Distribution Line

Original Construction 1-phase - 1948

Converted to 3-phase - 1970

3-phase Upgrade to Heavy Substation Tie - 1997

Boulder Ridge Development in Back Ground





Capital Electric Cooperative

43rd Avenue East of Washington Street

3-phase Distribution Line

Original Construction 1-phase - 1948

Converted to 3-phase - 1970

3-phase Upgrade to Heavy Substation Tie - 1997

**Boulder Ridge Development in Back
Ground**

**“3-phase circuit into Boulder Ridge taps CEC line, circuit
ready to energize”**



Capital Electric Cooperative

Ward Delivery Substation (9-15-05)

(Under Construction – completion 1-06)

½ mile West N. Washington & Hwy. 1804

**Built by: Capital Electric & Western Area Power
Transmission Service to N. Bismarck**

\$7,000,000 Joint Investment