



BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

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

ANSWER AND COUNTERCLAIM

Case No. PU-05-551

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. ("Montana-Dakota"), for its Answer and Counterclaim to the Complaint of Capital Electric Cooperative ("CEC") alleges and states as follows:

ANSWER

1. Answering paragraph I of the Complaint, Montana-Dakota admits CEC holds a franchise adopted by the Bismarck Board of City Commissioners on May 25, 1993. Montana-Dakota alleges the franchise is a limited franchise and refers the Public Service Commission to the franchise for its complete terms.
2. Answering paragraph II of the Complaint, Montana-Dakota admits that it and CEC entered into an amendment dated June 3, 1993 to an Area Service Agreement dated July 5, 1973. Montana-Dakota alleges the amendment has no applicability for areas outside the City of Bismarck and refers the Public Service Commission to the amendment for its complete terms.
3. Montana-Dakota admits the allegation of paragraph III of the Complaint for property annexed to the City of Bismarck between May 25, 1993 and June 26, 2003. Montana-Dakota denies the allegations of paragraph III of the Complaint to the extent it

alleges the parties relied upon the Area Service Agreement for provision of service to areas outside the City of Bismarck after June 26, 2003.

4. Answering paragraph IV of the Complaint, Montana-Dakota admits it cancelled the Area Service Agreement effective June 26, 2003 for all areas outside the City of Bismarck. Montana-Dakota denies the allegations of paragraph IV of the Complaint to the extent it alleges the Area Service Agreement could not be cancelled for areas outside the City of Bismarck. Montana-Dakota denies that CEC's franchise extends to all annexed areas of the City of Bismarck. Montana-Dakota alleges that CEC's franchise rights to serve annexed areas is expressly subject to the geographic limits of CEC's limited franchise.

5. Answering paragraph V of CEC's Complaint, Montana-Dakota admits that by virtue of the cancellation of the Area Service Agreement for areas outside the City of Bismarck, property annexed to the City after that date was not subject to the Area Service Agreement and was not part of Capital Electric's limited franchise without an amendment to include the annexed property within the geographic limits of the franchise. Montana-Dakota admits on information and belief, that CEC is serving customers annexed to the City of Bismarck after June 26, 2003 without a franchise. Montana-Dakota denies that it was obligated to object in some form or manner to CEC's service without a franchise and alleges it was CEC's affirmative duty to obtain an amendment to its franchise to include the areas annexed after June 26, 2003.

6. Montana-Dakota admits the allegation of paragraph VI of the Complaint that on April 12, 2005, the area known as "part of Boulder Ridge First Addition to the City" was annexed to the City of Bismarck. Montana-Dakota denies the remaining

allegations of paragraph VI of the Complaint and states that Part of Boulder Ridge First Addition to the City of Bismarck is not within the scope of CEC's limited franchise but is within Montana-Dakota's franchise from the City of Bismarck.

7. Montana-Dakota is without sufficient information to admit or deny the truthfulness of the allegations of paragraph VII of the Complaint and therefore denies the same and puts the Complainant to its proof thereon.

8. Montana-Dakota admits that it has extended its facilities and intends to provide electric distribution service to Part of Boulder Ridge First Addition to the City of Bismarck pursuant the rights and obligations of its franchise from the City of Bismarck. Montana-Dakota denies its service will interfere with service or facilities of CEC because CEC is not authorized by law or franchise to provide electric distribution services to Part of Boulder Ridge First Addition to the City of Bismarck.

9. Answering paragraph IX of the Complaint, Montana-Dakota denies that CEC built its distribution system in reliance on its limited franchise or the Area Service Agreement. Montana-Dakota is without sufficient knowledge or information to admit or deny the remaining allegations of paragraph IX and therefore denies the same and puts the Complainant to its proof thereon.

10. Montana-Dakota denies the allegations of paragraph X of the Complaint. Montana-Dakota holds an unlimited franchise to provide electric distribution service within the City of Bismarck.

11. Part of Boulder Ridge First Addition to the City of Bismarck is within the scope of Montana-Dakota unlimited franchise.

12. Article VII, Section 11 of the North Dakota Constitution provides that the power of the City of Bismarck to franchise the operation of a public utility shall not be abridged by the legislative assembly. Subsection 8 of North Dakota Century Code section 49-03-06 provides that nothing in Chapter 49-03 shall be construed to limit the authority of the governing board of a city to exercise its franchising authority under section 40-05-01.

13. The Complainant's Complaint should be dismissed on grounds the Public Service Commission does not have jurisdiction to restrain or enjoin Montana-Dakota from exercising its franchise authority to provide electric distribution services in the City of Bismarck including Part of Boulder Ridge First Addition to the City of Bismarck.

14. The Complainant's Complaint should be dismissed on grounds that it fails to state a claim upon which relief can be granted.

15. The Public Service Commission does not have jurisdiction to interpret or enforce an Area Service Agreement between Montana-Dakota and CEC entered into prior to April 12, 2005.

16. CEC breached the Area Service Agreement between CEC and Montana-Dakota by its refusal to agree to modifications to the agreement to carry out the intent of the parties that Montana-Dakota should serve future developments and growth areas contiguous to the city of Bismarck.

17. The Complainant's Complaint against Montana-Dakota should be dismissed because CEC is barred by operation of law and its bylaws from serving customers within Part of Boulder Ridge First Addition to the City of Bismarck.

COUNTERCLAIM

18. CEC has submitted itself to the jurisdiction of the Public Service Commission regarding the provision of service in Part of Boulder Ridge First Addition to the City of Bismarck by the filing of its Complaint in this matter.

19. Montana-Dakota holds a 20 year unlimited franchise accepted May 29, 1987 from the City of Bismarck to provide electric distribution service within the City of Bismarck as then or thereafter constituted.

20. Customers within Part of Boulder Ridge First Addition had central station power available to them pursuant to Montana-Dakota's franchise upon annexation of Part of Boulder Ridge First Addition to the City of Bismarck.

21. Part of Boulder Ridge First Addition of the City of Bismarck was not a rural area, as defined under North Dakota Century Code section 10-13-04, after its annexation to the City of Bismarck.

22. Customers within Boulder Ridge First Addition to the City of Bismarck are not eligible for membership in CEC after annexation of Boulder Ridge First Addition to the City of Bismarck.

23. There were no electric distribution customers within Boulder Ridge First Addition to the City of Bismarck at the time of its annexation.

24. CEC's bylaws do not allow for the provision of electric distribution service to non-members.

25. CEC's extension of electric distribution facilities within Part of Boulder Ridge First Addition to the City of Bismarck and its intent to provide electric distribution

service within Part of Boulder Ridge First Addition to the City of Bismarck interferes with or threatens to interfere with the service of Montana-Dakota.

Therefore, Montana-Dakota requests the Public Service Commission to issue an order:

1. Dismissing the Complaint of CEC against Montana-Dakota;
2. Declaring that CEC is prohibited from providing electric distribution service within Part of Boulder Ridge First Addition to the City of Bismarck;
3. Restraining and enjoining CEC from interfering with the service of Montana-Dakota in Part of Boulder Ridge First Addition to the City of Bismarck by offering electric distribution service within Part of Boulder Ridge First Addition to the City of Bismarck.

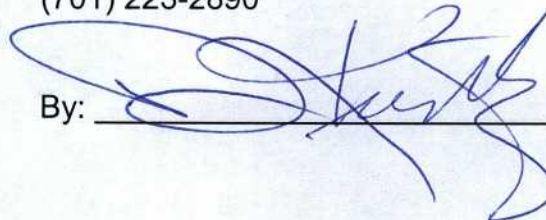
Dated this 20th day of October, 2005.

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

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By: _____



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Capital Electric Cooperative vs.
Montana-Dakota Utilities Co.
Complaint

Case No. PU-05-551

AFFIDAVIT OF SERVICE BY CERTIFIED 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 **20th day of October, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, one envelope with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

**Answer and Counterclaim and
Interrogatories and Requests Production to Complainant**

The envelope was addressed as follows:

Carol K. Larson
Pringle & Herigstad, P.C.
2525 Elk Drive
P.O. Box 1000
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 **20th day of October, 2005**.

Eileen Hochhalter

Notary Public

