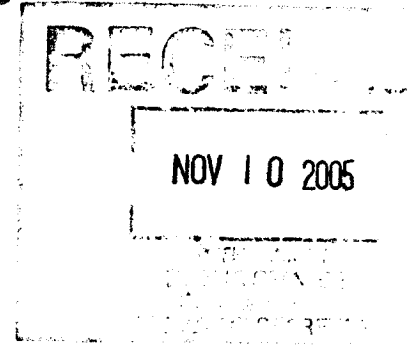


STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



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

**REPLY TO COUNTERCLAIM AND
MOTION TO DISMISS COUNTERCLAIM**

Case No. PU-05-551

The complainant, Capital Electric Cooperative, Inc., (herein CEC) responds to the Counterclaim of the respondent, Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. (herein MDU).

1. CEC denies all the allegations of MDU's counterclaim except as herein admitted.
2. MDU's counterclaim, paragraphs 18 through 25 of MDU's Answer and Counterclaim dated October 20, 2005, fails to state any claim on which relief can be granted by the Public Service Commission of North Dakota (herein the PSC).
3. Responding to paragraph 18 of MDU's Counterclaim, CEC denies that it has "... submitted itself to the jurisdiction of the Public Service Commission ... by the filing of its Complaint in this matter." The PSC has only the powers and duties conferred upon it by the Legislature. No action of any party confers on the PSC jurisdiction that is not conferred by the Legislature.
4. Responding to MDU's request that the PSC issue an order (MDU Counterclaim page 6), CEC asserts that the PSC has no jurisdiction to make any order affecting

services rendered by CEC.

The PSC has only the powers and duties conferred upon it by the Legislature. North Dakota Constitution, Article V, Sections 12 and 13; Capital Electric Cooperative v Public Service Commission and Montana-Dakota Utilities Co., 534 N.W. 2d 587 (N.D. 1995). No action of any party confers on the PSC jurisdiction that is not conferred by the Legislature. Williams Electric Cooperative v Montana Dakota Utilities Co., 79 N.W. 2d 508 (N.D. 1956). The Legislature has not conferred on the PSC jurisdiction to ...“make any order affecting... services rendered by CEC.” N.D.C.C. 49-02-01.1; Montana Dakota Utilities Co v Johanneson, 153 N.W. 2d 414 (N.D. 1967). The Territorial Integrity Act cannot be construed by the PSC to indirectly subject a rural electric cooperative’s extension of service in rural areas to regulation by the PSC. See Capital Electric Cooperative v Public Service Commission and Montana-Dakota Utilities Co., supra, 534 N.W. 2d at 502. An area’s status as “rural” remains rural after annexation by a municipality. N.D.C.C. 10-13-04; Cass County Electric Cooperative v N.S.P., 419 N.W. 2d 181 (ND 1988). Therefore, CEC moves the Public Service Commission to dismiss MDU’s counterclaim.

Dated this 9 day of November, 2005.

PRINGLE & HERIGSTAD, P.C.


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CERTIFICATE OF SERVICE

A copy of the foregoing Reply to Counterclaim and Motion to Dismiss Counterclaim was mailed to the following on November 9, 2005:

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