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December 14, 2005

Ms. Illona A. Jeffcoat-Sacco
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**CAPITAL ELECTRIC COOPERATIVE, INC. V. MONTANA-DAKOTA UTILITIES, INC.
CASE NO. PU-05-551**

Enclosed for filing are an original and seven copies of our letter to the PSC dated December 14, 2005, in response to Montana-Dakota's Motion to Dismiss dated November 23, 2005, and its brief of December 12, 2005.

Yours truly,

Carol K. Larson
lat

Enclosures

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**CAPITAL ELECTRIC COOPERATIVE, INC. V. MONTANA-DAKOTA UTILITIES, INC.
CASE NO. PU-05-551**

We respond further to Montana-Dakota's Motion to Dismiss dated November 23, 2005 and its brief of December 12, 2005.

Capital's and Montana-Dakota's dispute over Boulder Ridge, like Cass County Electric Cooperative v Northern States Power Co., 419 N.W.2d 181 (ND 1988) and Northern States Power Co. v Public Service Commission, 452 N.W.2d 340 (ND 1990), involves a dispute about electric service in a rural area that has been annexed to a municipality. Montana-Dakota seeks to avoid the import of those cases where an electric public utility was restrained from interfering with a rural electric cooperative's service and system in a rural area that had been annexed to a municipality.

Capital resists Montana-Dakota's Motion. Capital does not pretend to misunderstand Montana-Dakota's arguments. Capital disputes all Montana-Dakota's theories, including but not limited to its interpretation of certain provisions of the North Dakota Constitution, its claims that the Board of Commissioners of the City of Bismarck has bestowed on Montana-Dakota immunity or exemption from the Territorial Integrity Act, and the unspoken suggestion that the City Board's opinion is the final word.

In Capital's view, neither Montana-Dakota's theories nor the City Board's adoption of Montana-Dakota's arguments avoids the Territorial Integrity Act's prohibition of an electric public utility's interference with a rural electric cooperative's service in a rural area that has been annexed to a municipality. Montana-Dakota's basic theory - that the Board of Commissioners of the City of Bismarck has the power and has exercised the power to grant to Montana-Dakota a license to engage in conduct that is prohibited by State law - is untenable in any form and any forum.

The dispute is not limited to disagreement about legal theories. "The question of which electric supplier's facility is duplicative or wasteful is a question of fact for the Public Service Commission to determine." (Findings, Conclusion and Order in Case No. PU-04-560, finding # 30, citing Northern States Power Co. v Public Service Commission, supra.)

Evidently, Montana-Dakota hopes to avoid and evade the PSC's investigation whether Montana-Dakota's invasion of Capital's service area inside the municipal limits of Bismarck amounts to prohibited interference. Perhaps Montana-Dakota does not want to defend its crossing the facilities of Capital (a practice recently criticized by the Commission in its Case No. PU-04-560), particularly when the crossing involved is a one-half mile leapfrog maneuver. (See Capital's Complaint Paragraph VIII and Montana-Dakota's admission in its Answer Paragraph 8.)

Montana-Dakota's Motion should be denied so the Commission can exercise its jurisdiction to determine whether in fact and in law Montana-Dakota's extension of facilities in Boulder Ridge is or is not prohibited interference. The electric customers of Montana-Dakota and Capital are entitled to the protection of the Public Service Commission to avoid wasteful duplication of facilities.

In our earlier response to Montana-Dakota's Motion to Dismiss, we referred to a related pending court action and suggested that the Commission can proceed to exercise its jurisdiction and determine whether Montana-Dakota's action amounts to prohibited interference with Capital's service and system, after the court determines the issues. That was suggested as a possibility, recognizing that the Commission may decide to proceed to hear and determine whether Montana-Dakota's extension of facilities in Boulder Ridge is or is not prohibited interference, without waiting for the outcome of the court action.

Yours truly,



Carol K. Larson
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cc William W. Binek
Daniel S. Kuntz