



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) 530-1016
(701) 530-1731 (fax)

January 4, 2006

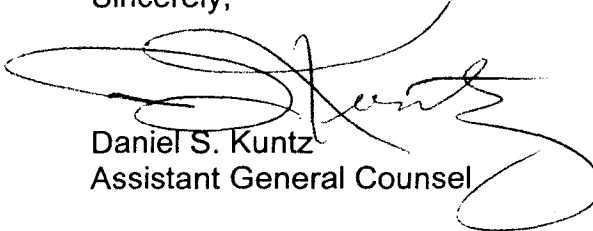
Carol K. Larson
Pringle & Herigstad, P.C.
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702

Re: Capital Electric v. City of Bismarck, et al.
Burleigh County Civil No. 05-C-2303

Dear Ms. Larson:

Enclosed is Montana-Dakota Utilities Co.'s Requests to Capital Electric Cooperative for Admissions.

Sincerely,



Daniel S. Kuntz
Assistant General Counsel

DSK/djv
Enclosure

cc: Randall J. Bakke
William W. Binek
Jerome Kettleeson

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. 05-C-2303

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 **4th day of January, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, one envelope with fully prepaid, securely sealed and containing a copy of:

Montana-Dakota Utilities Co. Requests to Capital Electric Cooperative for Admissions

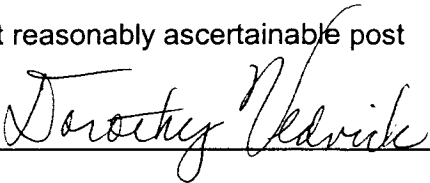
The envelopes were addressed as follows:

Carol K. Larson
Pringle & Herigstad, P.C.
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702

Randall J. Bakke
Smith Bakke Porsborg & Schweigert
116 North 2nd St.
Bismarck, ND 58501

William W. Binek
Public Service Commission
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

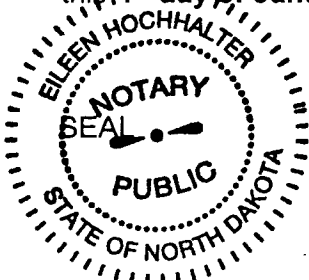
The address shown is the respective addressee's last reasonably ascertainable post office address.



Subscribed and sworn to before me
this **4th day of January, 2006**.



Notary Public



State of North Dakota
County of Burleigh

In District Court
South Central Judicial District

Capital Electric Cooperative, Inc.)
)
Plaintiff)
)
vs.)
The City of Bismarck, North Dakota)
and)
)
Montana-Dakota Utilities Co., a)
Division of MDU Resources Group, Inc.)
and)
)
The Public Service Commission of)
North Dakota)
)
Defendants.)

**MONTANA-DAKOTA'S REQUESTS
TO CAPITAL ELECTRIC
COOPERATIVE FOR ADMISSIONS**

Case No. 05-C-2303

TO: PLAINTIFF CAPITAL ELECTRIC COOPERATIVE AND ITS ATTORNEYS

Pursuant to Rule 36 of the North Dakota Rules of Civil Procedure, Defendant Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., requests the Plaintiff Capital Electric Cooperative within 30 days after service of this request to make the following admissions for the purpose of this proceeding only and subject to all pertinent objections of admissibility which may be interposed at trial or hearing.

1. That each of the following documents exhibited with this Request is an authentic and genuine copy of:

Exhibit 1. Resolution of the Bismarck Board of City Commissioners adopted May 12, 1987.

Exhibit 2. Acceptance of Franchise by Montana-Dakota Utilities Co. dated May 29, 1987.

Exhibit 3. Resolution of the Bismarck Board of City Commissioners adopted May 25, 1993.

Exhibit 4. Letter from Dennis Schlenker, Investment/Finance Officer, City of Bismarck, dated November 15, 2005.

Exhibit 5. Findings, Conclusions Decision and Order adopted by the Bismarck Board of City Commissioners on November 14, 2005.

2. That since November 14, 2005, Capital Electric Cooperative has not submitted an application to the City of Bismarck for a franchise or an amendment to its existing franchise to provide electric distribution service within any part of the City of Bismarck.

Your attention is directed to Rule 36 which provides that you may not give lack of information as a reason for failure to admit unless you state that you have made reasonable inquiry. Your attention is further directed to Rule 37 which provides:

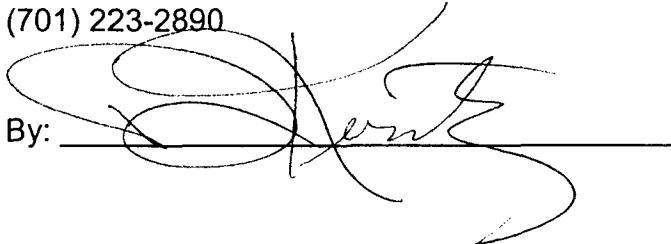
"If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney fees."

Dated this 4th day of January, 2006.

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

Daniel S. Kuntz (ID# 03490)
Assistant General Counsel
MDU Resources Group, Inc.
1200 West Century Avenue
P.O. Box 5650
Bismarck, ND 58506-5650
(701)222-7612

Pearce & Durick
Patrick W. Durick (ID# 03141)
Jerome C. Kettleon (ID# 03095)
314 East Thayer
P.O. Box 400
Bismarck, ND 58502-0400
(701) 223-2890

By: 

RESOLUTION

A Resolution granting to Montana-Dakota Utilities Co., a division of MDU Resources Group, 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 12th day of May, 1987, 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 Montana Dakota Utilities Co., a division of MDU Resources Group, 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 Montana-Dakota Utilities Co., a division of MDU Resources Group, 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.

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 the Public Service Commission of the State of North Dakota and under such orders, rules or regulations as may be issued by any federal or state agency having 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 City from any claims for damages or injuries resulting from Grantee's operations under the franchise, and to defend and indemnify 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 12th day of May, 1987.

STATE OF NORTH DAKOTA)) ss
COUNTY OF BURLEIGH)

I, Dennis Schlenker, do hereby certify that I am the duly appointed, qualified and acting Deputy City Auditor 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, 12, 1987.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Bismarck, North Dakota, this 14th day of May, 1987.

(SEAL)


Dennis Schlenker, Deputy City Auditor
Bismarck, North Dakota

ACCEPTANCE OF FRANCHISE

MONTANA-DAKOTA UTILITIES CO., a Division of MDU Resources Group, Inc., a corporation, 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 the 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 12th day of May, 19 87.

Dated this 29th day of May, 19 87.

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

By Joseph R. Marchel
President

ATTEST:

Lester J. Coe
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 1 day of JUNE, 19 87, and on said date duly filed the same in my office.

Grant H. Bergquist
Auditor

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 25th day of May, 1993.

(S E A L)



Dan Dahlgren, City Coordinator
Bismarck, North Dakota

R2/CAPIT

Bismarck *City Administration*



November 15, 2005

Dan Kuntz
Montana Dakota Utilities
400 North Fourth Street
Bismarck, ND 58501

Lars Nygren
Capital Electric Cooperative
4111 State Street
Bismarck, ND 58503

Dear Mr. Kuntz and Mr. Nygren:

The Board of City Commissioners met in special session on Monday, November 14, 2005 and further deliberated your request for approval of a Petition to Declare Electric Franchise Rights. The petition requested that the commission decide whether Montana-Dakota Utilities or Capital Electric Cooperative is authorized to service "Part of the Boulder Ridge First Addition to the City of Bismarck" subdivision.

The Board considered the request and granted franchise rights to Montana Dakota Utilities for Boulder Ridge Subdivision and adopted the Findings, Conclusions, Decision and Order as presented by the City Attorney. The Findings, Conclusions, Decision and Order are available in the Office of City Administration for review.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Schlenker", with a large, loopy flourish extending to the left.

Dennis Schlenker
Investment/Finance Officer

DS/lfb

Enclosure

BISMARCK BOARD OF CITY COMMISSIONERS

IN THE MATTER OF A
PETITION TO DECLARE FRANCHISE
RIGHTS FILED BY MONTANTA
DAKOTA UTILITIES CO

**FINDINGS, CONCLUSIONS
DECISION AND ORDER**

The Bismarck Board of City Commissioners considered the matter of a Petition to Declare Franchise Rights filed by Montana Dakota Utilities Co. (MDU). MDU and Capital Electric Cooperative (CEC) were notified by letter dated September 14, 2005, of a hearing to be held October 11, 2005 and of their opportunity to submit written materials and information regarding this matter by October 5, 2005. A hearing before the Board of City Commissioners was held on October 11, 2005 to determine the franchise rights of the parties and in particular the franchise rights of the parties with respect to part of Bolder Ridge subdivision in Bismarck. At the hearing, Daniel Kuntz, representing MDU, appeared and presented information and evidence on behalf of MDU's Petition. Carol Larson, representing CEC, appeared and presented information and evidence on behalf of CEC. The Commission again took up deliberation of the Petition at a special meeting held November 14, 2005. After reviewing the information submitted by both parties and hearing the information submitted and after due consideration, the City Commission makes the following:

FINDINGS OF FACT

That as a result of information presented by the parties, the City Commission finds:

1. That MDU holds a Franchise to operate an electric distribution system over, on and under all of the public ways of the City of Bismarck, dated May 12, 1987, for a term of 20 years. CEC holds a Franchise to operate an electric distribution system over, on and under the public ways, dated May 25, 1993, for a term of 20 years. CEC's Franchise contains a geographic limitation not contained in MDU's Franchise.

2. CEC originally approached the City in the early 1960s in an attempt to secure a limited franchise to operate within the City of Bismarck. At that time, CEC stated that their request was limited to permission to retain existing customers currently within the City, to serve existing customers outside the City when they are annexed to the City and permission to serve certain units of state or local governments when requested to do so all with the

understanding that CEC would not build any new lines within the City without the City's explicit permission. Information submitted by MDU indicates that CEC had long sought a service agreement with MDU to enable CEC to obtain a City franchise. The intent of the parties during those discussions appears to have been to allow CEC a limited presence in the City with MDU to be the primary supplier of electric services within the City.

3. In 1973, MDU and CEC entered into an Area Service Agreement in an attempt to reduce service conflicts between them and plan for orderly growth for each utility. The intent of the agreement was to regulate the service areas of the two utilities and to avoid conflicts that might occur if CEC was granted a franchise to operate within the City. The Area Service Agreement sets out geographic service areas for each utility and also a framework for cooperation in the event of conflicts that might arise in areas of over-lap or areas where it is more economic for one of the utilities to provide electric service. The signing of the Area Service Agreement coincided with the City's award of a limited franchise to CEC. The Area Service Agreement appears to have removed MDU's objections regarding a franchise award to CEC.

a. The Area Service Agreement contains a map, as an attachment, that describes the respective service areas of both of the utilities as agreed to by them in 1973.

b. The Area Service Agreement contains a provision in which the parties agree that as Bismarck grows and conditions change, the Area Service Agreement would be revisited at least every 5 years and the parties would in good faith review the agreement for modifications that "may be desirable to more efficiently carry out the intent of both parties." This intent was more explicitly stated in the CEC proposal to the City (1961) wherein CEC proposed that the boundary would be modified as the City grew. This was MDU's stated understanding of how the Area Service Agreement would work.

c. The franchises of both MDU and CEC are similar except that the CEC Franchise incorporates the provisions of the Area Service Agreement. The CEC Franchise contains the following provision:

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 to 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.

4. That the Area Service Agreement was amended by a Letter of Agreement between MDU and CEC dated October 25, 1990. That Letter of Agreement describes a certain service areas of the parties but does not include Boulder Ridge First Addition to the City of Bismarck. The Area Service Agreement was amended in June of 1993, by a letter agreement signed by both of the parties. The letter agreement amended the Area Service Agreement by adding the language regarding the parties' rights upon cancellation of the Area Service Agreement during the term of either franchise. The language added by the amendment is similar to language contained in Article II, Paragraph 1 of CEC's franchise, as stated above. The Area Service Agreement may also have been amended by writings or by oral agreements between the parties that the City Commission is unaware of.

5. By letter dated June 26, 2002, MDU cancelled the Area Service Agreement. By the terms of the Area Service Agreement, the cancellation was effective June 26, 2003.

6. That in April of 2005, part of Boulder Ridge First Addition to the City of Bismarck was annexed and became a part of the City. Boulder Ridge First Addition is located outside the bold line on the map attached to the Area Service Agreement. Both MDU and CEC claim the right to serve this new subdivision.

CONCLUSIONS OF LAW

1. That pursuant to Article 7, Section 11 of the North Dakota Constitution the City of Bismarck has the power to regulate the franchises of any public utility within the City. Pursuant to Article 3, Section 10 of the Home Rule Charter for the City of Bismarck, the Bismarck City Commission is the franchising authority for both MDU and CEC for all public areas within the City of Bismarck and the City Commission has the authority to decide questions regarding the franchises issued by it.

2. MDU and CEC have offered differing opinions regarding the meaning and interpretation of the CEC Franchise. MDU and CEC have offered differing opinions regarding the meaning, interpretation and application of the Area Service Agreement as it is incorporated into the CEC Franchise. The Area Service Agreement is ambiguous and the Commission may consider extrinsic evidence to interpret the provisions of the Area Service Agreement and related provisions of the CEC Franchise.

3. That both MDU and CEC have valid franchises to operate electric power distribution systems over, on and under the public ways within the City. CEC's Franchise is limited by the language of Article II of that Franchise, which incorporates the Area Service Agreement between MDU and CEC. The intention of the parties in the Area Service Agreement and by extension, the intention of the City when it awarded a franchise to CEC, was for MDU to remain the main provider of electric services within the City, except for CEC's existing customers and any other customers or service areas conceded to CEC by MDU. It was not the intention of the parties or of the City, that the map attached to the Area Service Agreement would be in place for 40 years without amendment but rather that it would be amended as the City grew to allow for healthy efficient growth for both utilities. It was not the intent of the City that CEC would become the exclusive electric power supplier for all new areas of the City outside the line shown in the Area Service Agreement. It was the City's intent, in including the Area Service Agreement in the CEC Franchise, that the line on the Area Service Agreement map would move outward as the City grew.

4. That pursuant to the terms of the CEC Franchise, at Article II, the CEC Franchise includes areas within the City "as now or hereafter constituted" but is "subject to the conditions herein". The CEC Franchise is specifically limited in scope. In Paragraph 1 of Article II, it is stated that

In order to avoid a duplication of facilities between the Grantee and other electrical franchises, the authority granted to 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. (emphasis added)

5. CEC's Franchise is limited to those areas within the City that are described in the Area Service Agreement or any amendments thereto. The areas "within the City" described in the Area Service Agreement are as shown on the Area Service Agreement map outside the bold line and within the City. The "areas within the City" would also include any areas later annexed to the City that were named by an amendment to the Area Service Agreement. Customers of CEC within the City in 1973 and any other customers specifically consented to by MDU would also be included under the express terms of the Area Service Agreement. CEC's Franchise does not grant the authority to serve all new areas of the City that are outside the bold line on the map without amendment to the Area Service Agreement. The ability of the parties to execute new amendments ended on June 26, 2003, the effective date of cancellation of the Area Service Agreement by MDU.

6. That the hearing was properly noticed and that all parties had opportunity to appear and present evidence.

DECISION AND ORDER

Based upon the Findings and the Conclusions, the Board of City Commissioners concludes that electric power service to part of Bolder Ridge First Addition to the City of Bismarck is properly served by MDU, subject to CEC retaining any existing customers. The Board of City Commissioners strongly urges MDU and CEC to meet and agree on a new service agreement for the future development and provision of electric services within the City of Bismarck as it now exists or exists in the future and submit such agreement to the Board of City Commissioners for their approval pursuant to NDCC Section 49-03-06(8).

