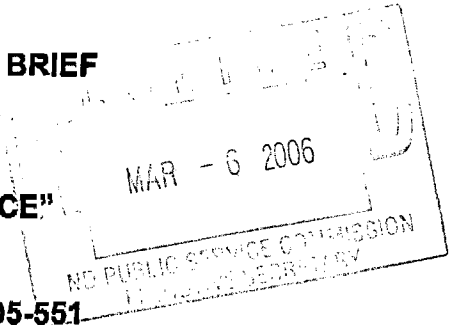


BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

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

**MOTION AND BRIEF
 FOR
 HEARING
 ON
 "CONTINUANCE"**

Case No. PU-05-551



At the close of the hearing in this case on February 9, 2006, a briefing schedule was established. MDU was to file a brief in support of its motion to dismiss within 15 days (on or before February 24) and Capital was to reply within 15 days (on or before March 11). As of today's date, Capital has not received MDU's brief. Capital intends to file its brief on or before March 11, 2006. (If MDU were to file its brief before Capital's, we would expect 15 days to respond, as originally scheduled.)

The Commission convened an informal work session held on February 10, 2006. Later, the Commission's posted agenda for its regular bi-weekly Wednesday meeting of February 22, 2006, included a Continuance Order in this case. When minutes of the meeting were posted, the Continuance Order was reported to be "held over."

On February 28, 2006, Commissioner Wefald appeared before the State Legislature's Electric Industry Competition Committee and presented written testimony to give the committee an update on electric issues that have recently come before the PSC. She reported, "At a recent work session the Commission

asked staff to draw up an order continuing this proceeding for an indefinite period of time. The continuance is based on evidence presented at the hearing and legal arguments of counsel that a threshold issue is the determination of which companies or company has the right under franchise from the City of Bismarck to provide electric service. The question of franchise rights is not one that can be determined by the Commission. That issue is presently before the District Court."

Only MDU has argued that the determination of the franchise issue is a "threshold" issue. Capital has consistently asserted that the PSC should deny the Motion to Dismiss and proceed to a decision on the interference issue. Neither party has requested a continuance or other postponement of the Commission's action on Capital's Complaint or MDU's Motion to Dismiss.

The word "continuance" usually denotes a postponement in the commencement or completion of a hearing. See the Commission's rules, § 69-02-04-03, N.D.A.C. Neither Capital nor MDU has requested a continuance of the February 9, 2006, hearing. For either MDU or Capital to request a continuance now would probably be out of order, because the hearing in this case was commenced and completed on February 9, 2005.

(There was an earlier continuance in this case, a postponement of the first scheduled hearing, a continuance requested by MDU by appropriate motion including a stated reason for postponement, a motion served on and consented to by Capital, and granted by the Commission.)

The Commission may consider a continuance on its own motion under rule 69-02-04-03, but it seems a "continuance" on the Commission's motion is also out of order because the hearing in this case was commenced and completed on February 9, 2005.

The rules reserve to the Commission the right to suspend compliance with any rule, also on its own motion, but with due notice. § 69-02-01-11, N.D.A.C.

On March 2, 2006, the Commission posted the agenda for a meeting on March 7, 2006, a Tuesday, out of the usual order of regular bi-weekly Wednesday meetings but without caption or notice as a special meeting. One of the items on March 7, 2006, agenda is a Continuance Order in this case.

Neither party has requested an extension of the post-hearing briefing schedule by appropriate motion under Rule 69-02-02-06. Neither party has requested the hearing to be re-opened under Chapter 69-02-06 of the Commission's rules.

Neither party was served with the Commission's Motion for a Continuance or a copy of the proposed order by appropriate notice. The Commission has not offered the parties an opportunity for hearing on the Commission's Motion for Continuance.

The posting of the Continuance Order on the March 7, 2006, agenda is inadequate notice, not due notice, because the Commission's ordinary procedures for its meetings do not include opportunities for comment or argument by parties affected by matters on the agenda and do not include opportunities for affected parties to be informed of the contents or the general

tenor of draft documents listed on the agenda before the Commission acts on the matter.

Capital has filed its Complaint against MDU's interference. MDU has made its Motion to Dismiss. An evidentiary hearing has been held and a post-hearing briefing schedule has been established. Neither party has requested by appropriate motion that the PSC postpone its determination. The Commission is considering a Continuance Order, on its own motion, and from all appearances is ready to act without due notice or hearing.

Capital Electric moves, under § 69-02-02-08, N.D.A.C., for an opportunity to be heard and make oral argument on the Continuance Order posted on the Commission' March 7, 2006, meeting agenda.

Dated this 6th day of March, 2006.

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