

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

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

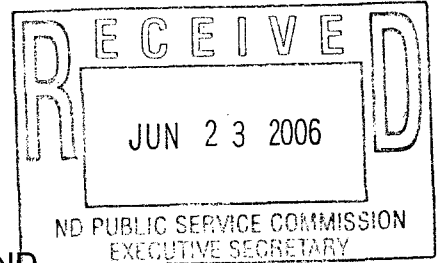
CIVIL NO. \_\_\_\_\_

vs. Appellant, )

NOTICE OF APPEAL AND  
SPECIFICATIONS OF ERROR

North Dakota Public Service Commission )  
and Capital Electric Cooperative, Inc. )

Appellees )



TO: NORTH DAKOTA PUBLIC SERVICE COMMISSION AND  
CAPITAL ELECTRIC COOPERATIVE, INC.

PLEASE TAKE NOTICE that Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. ("MDU") appeals to the District Court for Burleigh County, South Central Judicial District, from an Order of the North Dakota Public Service Commission issued June 22, 2006 directing MDU to cease and desist from providing electric service to Boulder Ridge First Addition to the City of Bismarck and to offer to sell certain of its facilities in Boulder Ridge to Capital Electric Cooperative, Inc. ("CEC").

MDU specifies the following errors as the grounds upon which the appeal is taken:

1. The Order is not in accordance with the law in at least the following respects:
  - a. The Order is not in accordance with N.D. Const. Art. VII, §11 and Art. XII, §10.
  - b. The Order is not in accordance with N.D.C.C. §49-03-06(8).
  - c. The Order results in an unlawful delegation of authority to Capital Electric Cooperative, Inc.

- d. The Order is based on a broad interpretation of the jurisdiction of the Public Service Commission without recognition of constitutional and statutory limitations on that jurisdiction.
- e. The Order is not in accordance with judicial precedent and state and local requirements that an electric service provider hold a municipal franchise to provide electric distribution service within a municipality.
- f. The Order does not make a proper evaluation of reasonableness under the law and evidence.
- g. The Commission's determination that in deciding unreasonable duplication of facilities and interference of service, the Commission should look to existing facilities and which supplier is better able to serve an area and promote orderly and economic development of electric service, is not in accordance with the law.
- h. The Commission's determination that it does not have authority to consider franchises issued by a municipality is not in accordance with the law.
- i. The Commission's failure to consider the existence of a franchise authorizing MDU's provision of service in Boulder Ridge, and the lack of such a franchise for CEC, in determining unreasonable duplication of facilities and interference of service is not in accordance with the law.
- j. The Commission's consideration that CEC is the only provider of electric service outside the City of Bismarck within a two-mile radius of Boulder Ridge, for purposes of determining unreasonable duplication of facilities and

interference of service within the City of Bismarck, is not in accordance with the law.

- k. The Commission's consideration of the existence and location of CEC's facilities constructed before annexation of Boulder Ridge, for the purpose of determining unreasonable duplication of facilities and interference of service within Boulder Ridge, is not in accordance with the law.
- l. The Commission's consideration of CEC's facilities within the City of Bismarck but outside Boulder Ridge, for the purpose of determining unreasonable duplication of facilities and interference of service, is not in accordance with the law.
- m. The Commission's consideration of investment made by CEC outside of Boulder Ridge to serve areas under an area service agreement, but without consideration of CEC's lack of a franchise to serve those areas within the City of Bismarck or the cancellation of the area service agreement, for purposes of determining unreasonable duplication of facilities and interference of service within Boulder Ridge, is not in accordance with the law.
- n. The Commission's consideration of investment made by CEC to serve new areas in general but not specifically to serve Boulder Ridge, for the purpose of determining unreasonable duplication of facilities and interference of service within Boulder Ridge, is not in accordance with the law.
- o. The Commission's determination of which provider can best serve an area within the City of Bismarck through extension of facilities, for purposes of

determining unreasonable duplication of facilities and interference of service, is not in accordance with the law.

p. The Commission's consideration that MDU's extension of facilities in an area that is not contiguous to existing facilities would create checkerboarding, for purposes of determining unreasonable duplication of facilities and interference of service within the City of Bismarck, is not in accordance with the law.

q. The Commission's consideration of which provider is best able to serve Boulder Ridge based on investment, for purposes of determining unreasonable duplication of facilities and interference of service within the City of Bismarck, is not in accordance with the law.

2. The Order violates the Constitutional rights of MDU in at least the following respects:

a. The Order's interpretation and application of N.D.C.C. 49-01-01.3 in a manner that prohibits MDU from exercising its franchise from the City of Bismarck violates MDU's right of substantive due process.

3. The provisions of N.D.C.C. Chapter 28-32 were not complied with in at least the following respects:

a. The Order was not decided on the claims presented in the complaint or the issues stated in the Commission's Notice of Hearing.

4. The Findings of Fact made by the Commission are not supported by a preponderance of the evidence in at least the following respects:

- a. The Commission's finding that MDU's facilities interfere with the facilities and services of CEC is not supported by a preponderance of the evidence.
  - b. The Commission's finding that CEC was planning to serve Boulder Ridge is not supported by a preponderance of the evidence.
  - c. The Commission's determination that Boulder Ridge is part of CEC's service area is not supported by a preponderance of the evidence.
  - d. The Commission's finding that MDU's general franchise from the City of Bismarck is limited is not supported by the evidence.
  - e. The Commission's finding that MDU crossed CEC's facilities in two locations is not supported by the preponderance of the evidence.
  - f. The Commission's finding that CEC constructed facilities for service of new developments such as Boulder Ridge is not supported by the evidence.
5. The Commissions Findings of Fact do not sufficiently address the evidence presented by MDU in at least the following respects:
- a. The Commission's findings of fact do not sufficiently address evidence that CEC does not have a franchise to provide electric service to Boulder Ridge.
  - b. The Commission's findings of fact do not sufficiently address evidence presented by MDU through cross-examination that duplication of facilities is not unreasonable duplication or unreasonable interference with the service or facilities of another provider that is not authorized to provide service in the area.
  - c. The Commission's findings of fact do not sufficiently address evidence presented by MDU through cross-examination that CEC did not construct or


plan for any facilities specifically to serve Boulder Ridge prior to MDU's planning and construction of facilities to serve the subdivision.

Dated at Bismarck, North Dakota, this 23 day of June, 2006.

Respectfully submitted,

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