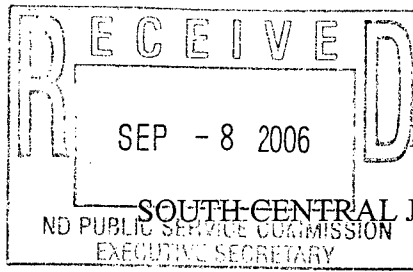


STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH



IN DISTRICT COURT  
SOUTH-CENTRAL JUDICIAL DISTRICT

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

Case No. 08-06-C-1177

Appellant,

vs.

ORDER DENYING MOTION  
TO DISMISS APPEAL

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

Appellees.

In the above-encaptioned administrative appeal, under Chapter 28-32, N.D.C.C., Appellee Capital Electric Cooperative, Inc. (CEC) has filed and served its Motion to Dismiss said administrative appeal as prepared by its legal counsel, Attorney Carol K. Larson, together with supporting brief and documentation. Appellant Montana Dakota Utilities Co. (MDU), has filed its resistance to said motion to dismiss by and through its co-legal counsel, Attorneys Jerome C. Kettleison and Daniel S. Kuntz. Appellee Public Service Commission of North Dakota (PSC), has taken no position upon said Motion to Dismiss.

MOTION TO DISMISS

The motion of CEC alleges that the Notice of Appeal and Specifications of Error was not properly served as mandated under Section 28-32-42(4), N.D.C.C. Said motion further is premised upon this Court's lack of jurisdiction to consider the pending administrative appeal in that it lacks jurisdiction due to the insufficiency of service of process.

MDU in its resistance to said motion contends that the service of process upon William Binek as Special Assistant Attorney General and Chief Counsel to the Public Service Commission on June 23, 2006, does indeed satisfy the requirements of Section 28-32-42(4), N.D.C.C.

This issue has previously been addressed by the Supreme Court of North Dakota in Sande v. State, 440 N.W.2d 264 (ND 1989), wherein a private practice attorney was appointed as a Special Assistant Attorney General to represent the Board of Nursing. Service of Notice of Appeal upon the private practice attorney who had been appointed as a Special Assistant Attorney General was sufficient to satisfy the requirements of Section 28-32-42(4).

IT IS THEREFORE THE ORDER OF THE COURT that the motion of CEC for dismissal of said appeal upon alleged insufficiency of service of process is herewith denied.

Dated this 7<sup>th</sup> day of September, 2006, at Mandan, North Dakota.

BY THE COURT:



DONALD L. JORGENSEN  
DISTRICT JUDGE

C: Carol Larson  
William W. Binek  
Jerome C. Kettleon  
Daniel Kuntz