

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
FOR STAY UPON APPEAL
AND ORDER GRANTING
TEMPORARY STAY

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

Appellees. :

Under the date of September 25, 2006, this Court entered its Order affirming the administrative decision of the North Dakota Public Service Commission, and on October 9, 2006, entered an Order for Judgment upon the same. Said Judgment provided to Appellant Montana Dakota Utilities Co. 30 days from and after the date of September 25, 2006, within which to comply with the Order of the Public Service Commission.

Now pending before the Court is the motion of the Appellant seeking a stay of the Judgment affirming said administrative decision, under Rule 62 of the North Dakota Rules of Civil Procedure. Said motion offered by co-counsel for the Appellant, Attorneys Daniel S. Kuntz and Jerome C. Kettleon.

In response thereto, Appellee North Dakota Public Service Commission, by and through Attorney William W. Binek, has offered no opposition to said motion to stay Judgment.

Appellee Capital Electric Cooperative, Inc. has opposed any stay by this Court of its Order affirming the Public Service Commission administrative decision.

Both parties have submitted their respective briefs upon the Issue, and hearing was held on the 17th day of October, 2006, at which time legal counsel for Appellant MDU and Appellee Capital Electric Cooperative appeared before the Court for oral argument upon the same.

DECISION

The foregoing proceeding, controlled by the provisions of Chapter 28-32, N.D.C.C., grants to the District Court authority to issue a stay from the enforcement of an order or judgment of an administrative agency. It does not, however, expressly set forth the standards to be employed by the Court in a determination of the same.

In Cass County Electric Cooperative v. Wold Properties, Inc., 253 N.W.2d 232 (ND 1977), it established guidelines for the District Court in consideration of a motion for stay of judgment:

A stay pending appeal under Rule 62(c) and (d), N.D.Civ.)P., should be granted only

(a) after the applicant for a stay has made a strong showing that he is likely to succeed on the merits of the appeal;

(b) after the applicant has established unless a stay is granted he will suffer irreparable injury;

(c) if the applicant for a stay can show that no substantial harm will come to other interested parties; and

(d) if the Court finds that granting the stay will do no harm to the public interest.

This is an administrative appeal under the provisions of Section 28-32-46 and, accordingly, is limited within the context thereof. The scope of said appeal to district court mandates affirmation of the agency decision unless the Court finds express deficiencies as therein itemized. The primary challenge in said administrative appeal, as

offered by the Appellant, centers upon an undisputed constitutional authority to the City of Bismarck to select and grant franchise to an electric service provider versus that of the Public Service Commission to fulfill its statutory obligation in the efficient and effective delivery of electrical services. Appellant argues to the Court that Capital Electric Cooperative v City of Bismarck, 05-C-2303, Burleigh County District Court, assures Appellant success of its appeal in the foregoing administrative decision. No argument has been presented to the Court to establish that the Appellant will suffer irreparable injury, nor that any substantial harm will come to other interested parties. Appellant does suggest that by virtue of conflicting orders from the 05-C-2203, District Court, Burleigh County, North Dakota, and the order affirming administrative decision herein, that a risk of loss of electrical supply to residents of Boulder Ridge may occur. Appellee in its response to Appellant's argument has assured the Court that under no circumstance will any electric service consumer be subject to an interruption or discontinuance of electrical services.

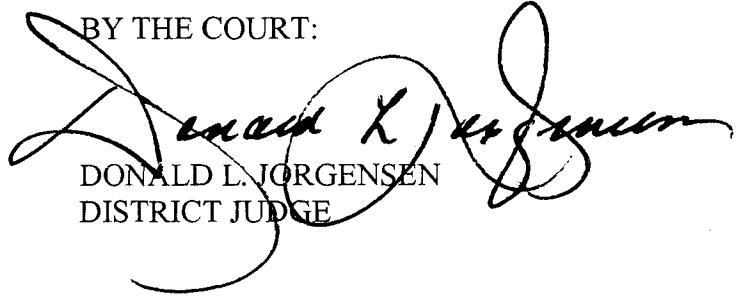
It is the determination of this Court that the Appellant has failed to satisfy the standards established for a stay of judgment in the above-entitled administrative proceeding. Specifically, the Court finds that there has not been a strong showing by the Appellant that it will succeed on the merits of its appeal to the Supreme Court; nor has the Appellant established that unless a stay is granted it will suffer irreparable injury.

IT IS THEREFORE THE ORDER OF THE COURT that the motion of the Appellant Montana Dakota Utilities Co. to stay the administrative decision of the Public Service Commission as herein affirmed and this Court's resulting judgment of affirmation, is herewith denied.

IT IS THE FURTHER ORDER OF THE COURT that a temporary stay of twenty (20) days from the date hereof is herewith granted, so as to facilitate a further motion for stay pending appeal under Rule 8 of the North Dakota Rules of Appellate Procedure.

Dated this 20th day of October, 2006.

BY THE COURT:



DONALD L. JORGENSEN
DISTRICT JUDGE

CC: Jerome C. Kettleson
Daniel Kuntz
Carol Larson
William W. Binek