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October 25, 2006

CLERK OF DISTRICT COURT
BURLEIGH COUNTY COURTHOUSE
ATTN: DEBRA SIMENSON
PO BOX 1013
BISMARCK, ND 58502-1013

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

CASE NO. 06-C-1177

Enclosed for filing in connection with the above referenced matter is a Notice of Entry of Order, together with Affidavit of Service.

If you have any questions on the enclosed, please do not hesitate to contact me.

Yours truly,

Carol K. Larson

lat

Enclosures

cc w/ encl: Jerome C. Kettleon
William W. Binek
Wayne Stenehjem

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.)
Appellant,)

vs.)

North Dakota Public Service)
Commission)

and)

Capital Electric Cooperative, Inc.)
Appellees.)

NOTICE OF ENTRY OF ORDER

Case No. 06-C-1177

YOU WILL PLEASE TAKE NOTICE that the attached copy of the Order Denying Motion for Stay Upon Appeal and Order Granting Temporary Stay is a true and correct copy which was duly rendered on the 20th day of October, 2006.

Dated this 25th day of October, 2006.

PRINGLE & HERIGSTAD, P.C.

By Carol K. Larson

Carol K. Larson - #04406
Attorneys for Capital Electric Cooperative, Inc.
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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.,

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.

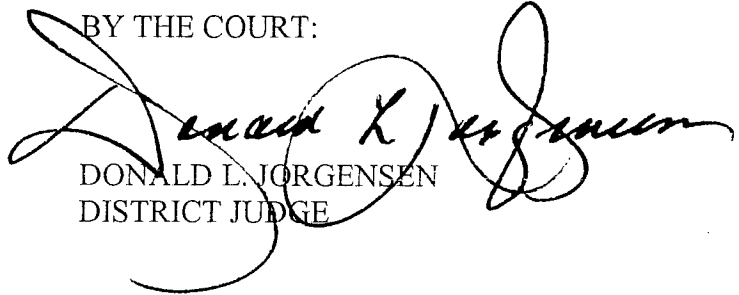
It is the determination of this Court that the Appellant has failed to satisfy the standards established for a stay of judgment in the above-entitled administrative proceeding. Specifically, the Court finds that there has not been a strong showing by the Appellant that it will succeed on the merits of 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. Kettleon
Daniel Kuntz
Carol Larson
William W. Binek

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.)
Appellant,)

vs.)

North Dakota Public Service)
Commission)

and)

Capital Electric Cooperative, Inc.)
Appellees.)

AFFIDAVIT OF SERVICE

Case No. 06-C-1177

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF WARD)

LaRae A. Thomas, being first duly sworn, deposes and says:

That she is a citizen of the United States of America, of legal age, and is not a party to nor interested in the above entitled action; that on the 25th day of October, 2006, this Affiant served by depositing in the mailing department of the United States Post Office at Minot, North Dakota, a sealed envelope with postage thereon duly prepaid, containing a true and correct copy of the following documents in the above entitled action:

1. Order Denying Motion for Stay Upon Appeal and Order Granting Temporary Stay.

That envelopes were addressed to the following persons at their known address as follows:

Jerome C. Kettleison
Pearce & Durick
PO Box 400
Bismarck, ND 58502-0400

William W. Binek
PUBLIC SERVICE COMMISSION
600 E Boulevard Avenue, Dept 408
Bismarck, ND 58505-0480

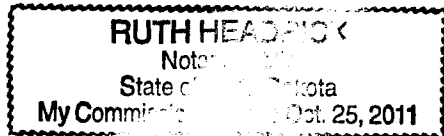
The Honorable Wayne Stenehjem
Attorney General of North Dakota
600 East Boulevard Avenue, Dept 125
Bismarck, ND 58505

That the above provisions were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

LaRae A. Thomas

LaRae A. Thomas

SUBSCRIBED AND SWORN to before me this 25th day of October, 2006.



Ruth Headrick

Notary Public

For the State of North Dakota

My Commission expires: 10-25-11

