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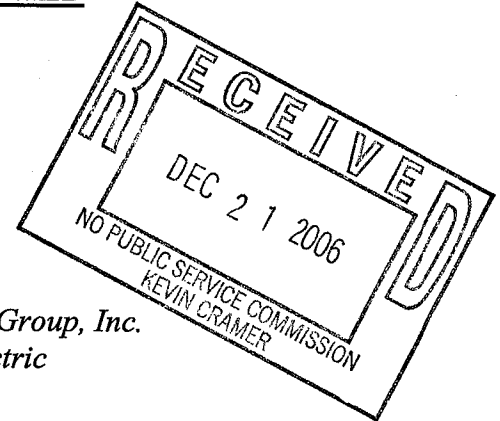
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December 20, 2006

**HAND-DELIVERED**

Ms. Penny Miller, Clerk  
North Dakota Supreme Court  
600 East Boulevard Avenue, Dept. 180  
Bismarck, ND 58505-0530

Re: *Supreme Court No. 20060270*  
*Burleigh Co. No. 06-C-1177*  
*Montana Dakota Utilities Co., a division of MDU Resources Group, Inc.*  
*v. North Dakota Public Service Commission and Capital Electric*  
*Cooperative, Inc.*



Dear Ms. Miller:

Enclosed for filing in the captioned matter is original and seven copies of Motion to Strike Appellee Capital Electric Cooperative's Supplemental Appendix, and Brief in Support of Motion, together with Affidavit of Service.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

PEARCE & DURICK

By:

A handwritten signature in black ink, appearing to read "Jerome C. Kettleison".

Jerome C. Kettleison  
Phone: (701) 333-0104  
Email: [jck@pearce-durick.com](mailto:jck@pearce-durick.com)

JCK/ef

Enclosures.

cc: (w/encl.) Mr. William Binek  
(w/encl.) Ms. Carol Larson  
(w/encl.) Wayne K. Stenhjem, Attorney General of North Dakota

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

Montana-Dakota Utilities Co., a	)	Supreme Court No. 20060270
Division of MDU Resources Group, Inc.,	)	Burleigh Co. No. 06-C-1177
	)	
Appellant,	)	
	)	MOTION TO STRIKE APPELLEE
vs.	)	CAPITAL ELECTRIC
	)	COOPERATIVE'S SUPPLEMENTAL
North Dakota Public Service Commission	)	APPENDIX
and Capital Electric Cooperative, Inc.,	)	
	)	
Appellees.	)	

COMES NOW Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc., by and through its counsel, and for its Motion to Strike Appellee Capital Electric Cooperative's Supplemental Appendix, hereby petitions the Court for its order:

(1) Striking the Supplemental Appendix of Appellee Capital Electric Cooperative, undated, which was filed with the Appellee's Brief and served by mail on December 15, 2006 for failure to comply with North Dakota Rules of Appellate Procedure 30 and 32, as set forth in the Brief attached hereto.

Dated at Bismarck, North Dakota, this 26 day of December, 2006.

Respectfully submitted,

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

Daniel S. Kuntz (ID# 03490)  
Assistant General Counsel  
MDU Resources Group, Inc.  
1200 West Century Avenue  
P.O. Box 5650  
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(701) 223-2890

  
\_\_\_\_\_  
Jerome C. Kettleson

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

Montana-Dakota Utilities Co., a	)	Supreme Court No. 20060270
Division of MDU Resources Group, Inc.,	)	Burleigh Co. No. 06-C-1177
	)	
Appellant,	)	
	)	BRIEF IN SUPPORT OF MOTION
vs.	)	TO STRIKE APPELLEE CAPITAL
	)	ELECTRIC COOPERATIVE'S
North Dakota Public Service Commission	)	SUPPLEMENTAL APPENDIX
and Capital Electric Cooperative, Inc.,	)	
	)	
Appellees.	)	

COMES NOW Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc., by and through its counsel, and for its Brief in Support of Motion to Strike Appellee Capital Electric Cooperative's Supplemental Appendix, says:

Capital Electric Cooperative, Inc. asks this Court to consider an undated Supplemental Appendix served with its Appellee's Brief, which is dated December 15, 2006. The Supplemental Appendix contains 13 pages which purport to be "Appendix to Appellee Capital Electric Cooperative's Brief to District Court, Docket No. 45."

The Supplemental Appendix should be excluded and stricken from this record for two reasons:

1. North Dakota Rule of Appellate Procedure 30(a)(2) provides that District Court briefs, unless they have "independent relevance", are considered excluded material not permitted in an appendix. There is no showing by Capital Electric Cooperative of "independent relevance" of the brief material contained in the supplemental appendix in this case. The entire document should be stricken. The document contains the Findings

of Fact, Conclusion of Law and Order for Judgment of the PSC annotated by Capital Electric Cooperative and filed with the District Court. The annotation includes argument by Capital Electric Cooperative with regard to various findings, conclusions, and includes other comments concerning those findings and conclusions. Findings of Fact, Conclusions of Law and Order, without "annotation" is found in its "unannotated" form in MDU's Appendix filed with its Appellant's Brief at pages 31-40.

The Supplemental Appendix is mentioned once in Capital Electric Cooperative's brief at page 7. At page 7, Capital Electric Cooperative indicates the Supplemental Appendix "... show that the findings of fact are supported by the evidence, the conclusions of law and order are supported by the findings of fact, and the conclusions of law and the order are in accordance with the law." (Supp. App. 1-13). On the first page of the Special Appendix, itself, it is clear the annotation is merely additional briefing. "Capital's annotations are in bold and italics". In looking at the annotations in bold and italics, it is clear that the additions are argument by Capital Electric Cooperative that should be part of its brief in chief, if used at all.

2. North Dakota Rule of Appellate Procedure Rule 32(2)(7) provides that the word limit for principal briefs may not exceed 10,500 words. The underlying brief of Capital Electric Cooperative according to Certificate of Compliance contains 10,442 words. The annotated editorial-type material in the Supplemental Appendix is 13 pages and hundreds of words, which makes the brief exceed the word limit.

Dated at Bismarck, North Dakota, this 20 day of December, 2006.

Respectfully submitted,

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

Daniel S. Kuntz (ID# 03490)  
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Jerome C. Kettleon

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

Montana-Dakota Utilities Co., a )  
Division of MDU Resources Group, Inc., ) Supreme Court No. 20060270  
 ) Burleigh Co. No. 06-C-1177  
 )  
Appellant, )  
 )  
vs. )  
 )  
North Dakota Public Service Commission )  
and Capital Electric Cooperative, Inc., )  
 )  
Appellees. )

AFFIDAVIT OF SERVICE

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

Evelyn Froebe, being first duly sworn on oath, does depose and say: That she is over the age of eighteen years, and not a party to the above-entitled matter;

That on the 20 day of December, 2006, this affiant deposited in the mailing department of the United States Post Office at Bismarck, ND, a true and correct copy of the following documents in the above-captioned action:

Motion to Strike Appellee Capital Electric Cooperative's Supplemental Appendix

Brief in Support of Motion to Strike Appellee Capital Electric Cooperative's Supplemental Appendix

That the copies of the above documents were enclosed and secured in an envelope with postage duly prepaid and addressed as follows:

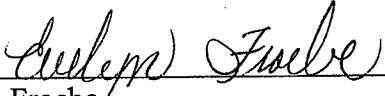
Carol Larson  
Pringle & Herigstad, P.C.  
2525 Elk Drive  
P.O. Box 1000  
Minot, ND 58702-1000

William W. Binck  
Public Service Commission  
600 East Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480

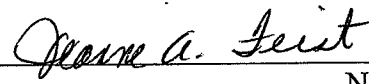
Wayne K. Stenehjem  
Attorney General of North Dakota  
Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505

To the best of affiant's knowledge, information and belief, such address as given above was the actual post office address of the party intended to be so served.

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

  
\_\_\_\_\_  
Evelyn Froebe

Subscribed and sworn to before me this 20 day of December, 2006.

  
\_\_\_\_\_  
Notary Public

JEANNE A. FEIST  
Notary Public State of North Dakota  
My Commission Expires MARCH 7, 2007