



ATTORNEYS AT LAW

314 EAST THAYER AVENUE • P.O. BOX 400 • BISMARCK, ND 58502
TELEPHONE (701) 223-2890 • FAX (701) 223-7865 • www.pearce-durick.com

JEROME C. KETTLESON

jck@pearce-durick.com

August 10, 2007

HAND-DELIVERED

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

Re: *Capital Electric Cooperative, Inc. v. City of Bismarck, North Dakota, et al*
Supreme Court No. 20060199
Burleigh Co. No.: 05-C-02303
Montana-Dakota Utilities Co. v. The Public Service Commission
of North Dakota, et al
Supreme Court No. 20060270
Burleigh County No.: 06-C-01177



Dear Ms. Miller:

Enclosed for filing is original and seven copies of Petition for Rehearing and Appendix, together with disk. The attached disk has been scanned by a virus protection program.

Thank you for your attention to this matter.

Very truly yours,

PEARCE & DURICK

By

Jerome C. Kettleson

Phone: (701) 333-0104

JCK/ef

Enclosures

cc. (w/encls.) Carol Larson
(w/encls.) William W. Binek
(w/encls.) Randall J. Bakke
(w/encls.) Wayne K. Stenhjem

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20060199
Burleigh Co. No. 05-C-02303

Capital Electric Cooperative, Inc.,)
)
Plaintiff and Appellant,)
)
vs.)
)
City of Bismarck, North Dakota,)
)
Defendant and Appellee,)
)
and)
)
Montana-Dakota Utilities Co., a)
Division of MDU Resources Group, Inc.,)
)
Defendant, Counterclaimant)
and Appellee.)
)
and)
)
The Public Service Commission of)
North Dakota,)
)
Defendant)

ON APPEAL FROM
SOUTH CENTRAL JUDICIAL DISTRICT COURT
BURLEIGH COUNTY, NORTH DAKOTA
THE HONORABLE BRUCE HASKELL

Supreme Court No. 20060270
Burleigh Co. No. 06-C-1177

Montana-Dakota Utilities Co., a)
Division of MDU Resources Group, Inc.,)
)
Appellant,)
)
v.)
)
The Public Service Commission of North)
Dakota and Capital Electric Cooperative, Inc.,)
)
Appellees,)

ON APPEAL FROM
SOUTH CENTRAL JUDICIAL DISTRICT COURT
BURLEIGH COUNTY, NORTH DAKOTA
THE HONORABLE DONALD L. JORGENSEN

PETITION FOR REHEARING

Daniel S. Kuntz (ID# 03490)
Assistant General Counsel
MDU Resources Group, Inc.
1200 West Century Avenue
P.O. Box 5650
Bismarck, ND 58506-5650
(701) 530-1006

Pearce & Durick
Patrick W. Durick (ID# 03141)
Jerome C. Kettleon (ID# 03095)
314 East Thayer Avenue
Bismarck, ND 58502-0400
(701) 223-2890

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	1
ARGUMENT	2
1. The Court should remand the franchise conflict to the City of Bismarck	2
2. The Court should vacate the PSC's order	8
CONCLUSION.....	9
AFFIDAVIT OF SERVICE	10

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Capital Electric Cooperative, Inc. v. City of Bismarck</u> , 2007 ND 128	1, 2, 4, 5, 8
<u>Capital Electric Cooperative v. Public Service Commission</u> , 534 N.W.2d 587 (N.D. 1995)	5, 6
<u>Cass County Electric Cooperative v. Northern States Power Company</u> , 419 N.W.2d 181 (N.D. 1988)	2, 8
<u>Haugland v. City of Bismarck</u> , 429 N.W.2d 449 (N.D. 1988)	5
<u>Lang v. City of Cavalier</u> , 59 N.D. 75, 228 N.W.819 (1930)	4, 5
<u>Meyer v. City of Dickinson</u> , 451 N.W.2d 113 (N.D. 1990)	4
<u>Northern States Power Company v. North Dakota Public Service Commission</u> , 452 N.W.2d 340 (N.D. 1990)	2, 8
<u>Tayloe v. City of Wahpeton</u> , 62 N.W.2d 31 (N.D. 1953)	5
 <u>Cites and Authorities.</u>	
N.D.C.C. § 40-05-01(57)	3
N.D.C.C. § 40-05.1-06(1)	3
N.D.C.C. § 49-02-01.1	5
N.D.C.C. Ch. 49-03	5
N.D.C.C. § 49-03-01.3	2, 5, 8
N.D.C.C. § 49-03-06(8)	3
 <u>Other</u>	
Bismarck Home Rule Charter, Article 2	3
North Dakota Constitution, Article VII, Section 11	3, 4

STATEMENT OF THE ISSUES

1. Should the Supreme Court have remanded the franchise conflict to the City of Bismarck?
2. Should the Supreme Court have vacated the PSC Order?

STATEMENT OF THE CASE

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (hereinafter "MDU"), appellant and appellee in consolidated cases No. 20060199 and No. 20060270, petitions the Court for a rehearing of the Court's opinion filed July 27, 2007 pursuant to Rule 40 of the North Dakota Rules of Appellate Procedure. MDU requests rehearing on the grounds the Court: (1) should remand Case No. 20060199 to the Bismarck Board of City Commissioners for further consideration; and (2) should vacate the order of the Public Service Commission in Case No. 20060270.

STATEMENT OF THE FACTS

In August 2005, MDU petitioned the Bismarck Board of City Commissioners to declare the respective franchise rights of MDU and Capital Electric Cooperative (hereinafter "CEC") to provide electric service in part of Boulder Ridge Subdivision to the City of Bismarck. The City of Bismarck, after briefing and presentations by both MDU and CEC, issued Findings, Conclusions, Decision and Order dated November 14, 2005, determining CEC's limited franchise did not include part of the Boulder Ridge Subdivision and therefore only MDU was entitled to provide electric service to the subdivision under its franchise. On appeal of the District Court's order affirming that of

the City, the Supreme Court interpreted CEC's franchise to include Boulder Ridge. Capital Electric Cooperative, Inc. v. City of Bismarck, 2007 ND 128, ¶¶ 21, 24.

The Court concluded that because both CEC and MDU have franchises to provide electric service in part of Boulder Ridge "the PSC has authority to decide whether either entity's extension of services in Boulder Ridge will unreasonably interfere with and duplicate services of the other under N.D.C.C. §49-03-01.3 and this Court's decisions culminating in Cass County Electric Coop. v. N.S.P., 419 N.W.2d 181 (N.D. 1988) and N.S.P. v. P.S.C., 452 N.W.2d 340 (N.D. 1990)." The Court deferred to the PSC's decision in response to an administrative complaint filed by CEC in Case No. 20060270 and affirmed the PSC's order directing MDU to discontinue service to Boulder Ridge and to sell its facilities to CEC.

ARGUMENT

1. **The Court should remand the franchise conflict to the City of Bismarck.**

MDU asserts the Supreme Court should remand Case No. 20060119 to the City of Bismarck for further proceedings to decide which of the two franchise holders should provide service within Boulder Ridge. The City of Bismarck, if the case is remanded, would have the opportunity in response to MDU's original petition, to exercise its statutorily and constitutionally protected powers to regulate the operation of its franchises. The City did not lose its authority to regulate its franchises and its authority did not default to the PSC as a result of the Court's reversal of the City's interpretation of CEC's franchise.

In allowing the PSC rather than the City to determine the service provider under the franchises for Boulder Ridge, the Court failed to consider:

1. N.D.C.C. §40-05-01(57) provides the governing body of a municipality may:

“Grant franchises . . . to extend for a period of not to exceed twenty years, **and to regulate the use of the same**, franchises granted pursuant to the provisions of this title **not to be exclusive or irrevocable but subject to the regulatory power of the governing body.**”
(Emphasis added).

2. N.D.C.C. §40-05.1-06(1) gives home rule cities such as the City of Bismarck the power to:

“To . . .grant **and regulate** franchises...” (Emphasis added).

3. Article 2 of Bismarck’s Home Rule Charter provides:

“The city shall have all powers granted to municipal corporations by the constitution and laws of this state and by this charter, together with all the implied powers necessary to carry into execution all powers granted.

Among its enumerated powers, . . . shall be the authority . . .to grant **and regulate** (utility) franchises...”
(Emphasis added).

4. N.D.C.C. §49-03-06(8), a recently enacted amendment to the Territorial Integrity Act, provides:

“Nothing in this chapter shall be construed to limit the authority of the governing board of a city to exercise its franchising authority under section 40-05-01.”

5. Article VII, Section 11 of the Constitution of the State of North

Dakota provides:

“The power of the governing board of city to franchise **the construction and operation** of any public utility or similar service within the city shall not be abridged by the legislative assembly.” (Emphasis added).

The Court reasoned its interpretation, that unreasonable duplication of service in Boulder Ridge is subject to the jurisdiction of the PSC under the Territorial Integrity Act, “does not interfere with Bismarck’s constitutional authority to issue a utility franchise; rather, that interpretation recognizes that Bismarck has granted both Capital Electric and MDU a franchise for Boulder Ridge.” Capital Electric Cooperative, Inc., 2007 ND 128, ¶27. The Court’s analysis, however, fails to consider the above quoted constitutional and statutory provisions that give the City of Bismarck not only the authority to **grant** but also the authority to **regulate** the operation of franchises within its jurisdiction. (Emphasis added). The City’s order issued in response to MDU’s petition was not an exercise of the City’s jurisdiction to issue a franchise, but rather was an exercise of its authority to interpret and regulate the operation of its existing franchises.

In defining municipal powers, the rule of strict construction applies. “Strict construction” in the context of municipal powers, applies only to the determination of the existence of the power and does not restrict the municipality’s discretion in selecting the manner and means of exercising its power. Meyer v. City of Dickinson, 451 N.W.2d 113, 115 (N.D. 1990). Once a municipality’s power to grant and regulate franchises has been determined, “the rule of strict construction no longer applies, and

the manner and means of exercising those powers where not prescribed by the legislature are left to the discretion of the municipal authorities.” Lang v. City of Cavalier, 59 N.D. 75, 228 N.W. 819 (1930). “Leaving the manner and means of exercising municipal power to the discretion of municipal authorities implies a range of reasonableness within which a municipality’s exercise of discretion will not be interfered with or upset by the judiciary.” Haugland v. City of Bismarck, 429 N.W.2d 449, 454 (N.D. 1988); Taylor v. City of Wahpeton, 62 N.W.2d 31, 35 (N.D. 1953). In this case, the City of Bismarck has the power to grant the franchise – no one disagrees with that – but its authority regulating the franchise is interfered with by the Court’s determination that “the PSC has authority to decide whether either entity’s extension of service in Boulder Ridge will unreasonably interfere with and duplicate services of the other”. Capital Electric Cooperative, Inc., 2007 ND 128, ¶13.

That the City and not the PSC has the authority to regulate the operation of service and any conflicts under its franchises is also evident by examination of the PSC’s limited jurisdiction under the Territorial Integrity Act. Contrary to the Court’s opinion, the PSC does not have “authority to decide whether either entity’s extension of services in Boulder Ridge will unreasonably interfere with or duplicate services of the other under N.D.C.C. §49-03-01.3” Pursuant to N.D.C.C. § 49-02-01.1, the PSC has no jurisdiction over rural electric cooperatives under the N.D.C.C. Chapter 49-03. As a result, the Territorial Integrity Act is a one-way street with the PSC having no jurisdiction to prevent interference or unreasonable duplication by a cooperative. See,

Capital Electric Cooperative, Inc. v. Public Service Commission, 534 N.W. 2d 587 (N.D. 1995). MDU is not allowed to complain to the PSC regarding interference or duplication of its franchise by CEC. In contrast, either party can seek resolution of a conflict under their franchises before the City. This is what MDU did when it filed its petition with the City by asking it to declare the franchise rights within Boulder Ridge. CEC joined in asking the City to exercise its authority to declare franchise rights by requesting a declaration in its favor. When it became apparent to the CEC the City might not grant CEC's request, CEC filed its complaint with the PSC. The filing of this complaint, however, did not divest the City of its authority to regulate the operation of the franchises nor could CEC or the PSC deny MDU its right to have the City resolve the conflict between the two franchises. These are City franchises; not PSC franchises. The City was entitled to regulate service under its franchises and MDU was entitled to an exercise of that regulation. The PSC is not allowed to exercise its jurisdiction in a manner that pre-empts, interferes with, or is inconsistent with the regulatory authority of the City.

The Court did not decide the City was without authority to act on MDU's petition. Rather, it decided the Court had incorrectly exercised its authority. After the Court issued its interpretation of the franchises in Case No. 20060199, the case should have been remanded to the City for further proceedings so the City could exercise its authority to regulate the provision of electric power within Boulder Ridge under the two franchises consistent with the Supreme Court's holding. The City made a mistake in

the exercise of its power over the franchises, but such a mistake does not result in the City losing its authority to regulate the operation of its franchises to the PSC. Rather the City is obligated to abide by the decision of the Supreme Court that CEC has a nonexclusive franchise to provide service in Boulder Ridge subject to the City's regulatory powers. How it exercises that regulatory authority is the "manner and means" of exercising municipal power. The power remains in the discretion of the City and should include the City's right to determine who serves the electrical needs of Boulder Ridge. In making that determination, the City is entitled to consider different criteria and to reach a different result than did the PSC. In that event, the City criteria and result must control over that of the PSC.

The City of Bismarck has demonstrated its intent to exercise its authority to regulate service under its franchises. In a prior dispute between MDU and CEC regarding the right to provide service under their respective franchises, the City, following hearing, found that the property now occupied by the Fairfield Inn north of Century Avenue and west of U.S. Highway 83 in north Bismarck, was properly served by MDU and not CEC. App. 1. In the issuance of CEC's franchise, the City exercised its authority to prevent duplication of services by limiting the geographic area of CEC's franchise. In the case at bar, the City of Bismarck, while limiting its decision to the provision of service in Boulder Ridge, made clear its directive that the parties present a new area service agreement for consideration by the City to avoid further conflicts

between the franchise holders. The City's actions are an unequivocal indication it has not abdicated its authority to regulate its franchises to the PSC.

2. The Court should vacate the PSC's order.

Instead of remanding this matter to permit the City to exercise its regulatory powers over the operation of the franchises, the Court concluded the PSC had the "authority to decide whether either entity's extension of service in Boulder Ridge unreasonably interfere with the duplicate service of the other." Capital Electric Cooperative, Inc., 2007 ND 128, ¶13. The Court relied upon a section of the Territorial Integrity Act, N.D.C.C. §49-03-01.3, and the South Pointe cases, Cass County Electric Cooperative v. Northern States Power Company, 419 N.W.2d 181 (N.D. 1998) and Northern States Power Company v. North Dakota Public Service Commission, 452 N.W.2d 340 (N.D. 1990). The Territorial Integrity Act, however, cannot interfere with the City's right to regulate the operation of a franchise and the authority of the PSC in relation to the City's regulatory authority was never addressed or decided by South Pointe cases.

In addition to remanding the franchise dispute to the City, the Court should vacate the order of the PSC. As recognized by the Supreme Court, CEC was required to have a franchise to serve Boulder Ridge. Capital Electric Cooperative, Inc., 2007 ND 128, ¶13. MDU objected to the exercise of the PSC's jurisdiction under the Territorial Integrity Act because at the time the PSC issued its order on June 22, 2006, the District Court had affirmed the City's order, dated March 24, 2006, that CEC did not have a

franchise to serve Boulder Ridge. As recognized by the Court, MDU presentation to the PSC was correct under the law based on CEC's lack of a franchise. The PSC should have granted MDU's motion to dismiss CEC's complaint without prejudice pending finalization, including appeal, of action by the City in regulation of the franchises. Thereafter, any exercise of the PSC's jurisdiction must be consistent with the City's regulation.

CONCLUSION

In summary, MDU requests that the Supreme Court grant a rehearing in these consolidated cases so the matters referred to herein may be determined.

Dated this 10th day of August, 2007.

Respectfully submitted,

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

Daniel S. Kuntz (ID# 03490)
Associate General Counsel
MDU Resources Group, Inc.
1200 West Century Avenue
P.O. Box 5650
Bismarck, ND 58506-5650
(701) 530-1006

Pearce & Durick
Patrick W. Durick (ID# 03141)
Jerome C. Kettleon (ID# 03095)
314 East Thayer Avenue
Bismarck, ND 58502-0400
(701) 223-2890



Jerome C. Kettleon

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20060199
Burleigh Co. No. 05-C-02303

Capital Electric Cooperative, Inc.,)
)
Plaintiff and Appellant,)
)
vs.)
)
City of Bismarck, North Dakota,)
)
Defendant and Appellee,)
)
and)
)
Montana-Dakota Utilities Co., a)
Division of MDU Resources Group, Inc.,)
)
Defendant, Counterclaimant)
and Appellee.)
)
and)
)
The Public Service Commission of)
North Dakota,)
)
Defendant)

Supreme Court No. 20060270
Burleigh Co. No. 06-C-1177

Montana-Dakota Utilities Co., a)
Division of MDU Resources Group, Inc.,)
)
Appellant,)
)
v.)
)
The Public Service Commission of North)
Dakota and Capital Electric Cooperative, Inc.,)
)
Appellees,)

AFFIDAVIT OF SERVICE

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

Bethany Schmidt, 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 10 day of August, 2007, 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:

- (1) Petition for Rehearing
- (2) Appendix of Montana-Dakota Utilities Co.

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

via regular mail

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

via regular mail

Randall J. Bakke
Smith Bakke Porsborg & Schweigert
P.O. Box 460
Bismarck, ND 58502-0460

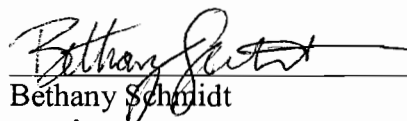
hand-delivered

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

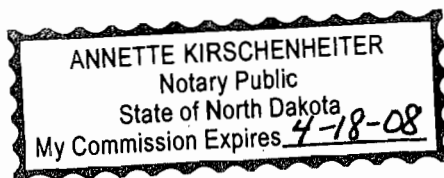
via regular mail

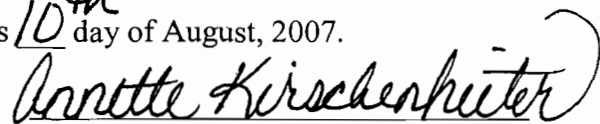
To the best of affiant's knowledge, information and belief, such address as given above was the actual post office address of the party intended to be so served.

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


Bethany Schmidt

Subscribed and sworn to before me this 10th day of August, 2007.




Annette Kirschenheiter
Notary Public

Supreme Court No. 20060270
Burleigh Co. No. 06-C-1177

Montana-Dakota Utilities Co., a)
Division of MDU Resources Group, Inc.,)
)
Appellant,)
)
v.)
)
The Public Service Commission of North)
Dakota and Capital Electric Cooperative, Inc.,)
)
Appellees,)

ON APPEAL FROM
SOUTH CENTRAL JUDICIAL DISTRICT COURT
BURLEIGH COUNTY, NORTH DAKOTA
THE HONORABLE DONALD L. JORGENSEN

APPENDIX OF MONTANA-DAKOTA UTILITIES CO.

Daniel S. Kuntz (ID# 03490)
Assistant General Counsel
MDU Resources Group, Inc.
1200 West Century Avenue
P.O. Box 5650
Bismarck, ND 58506-5650
(701) 530-1006

Pearce & Durick
Patrick W. Durick (ID# 03141)
Jerome C. Kettleson (ID# 03095)
314 East Thayer Avenue
Bismarck, ND 58502-0400
(701) 223-2890

TABLE OF CONTENTS

	<u>Page</u>
Extract from Minutes of the Regular Meeting of the Board City Commissioners of the City of Bismarck, North Dakota, January 14, 1992	1

EXTRACT FROM MINUTES OF THE REGULAR MEETING OF THE
BOARD CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA
HELD ON

January 14, 1992

The Board of City Commissioners met in regular session on January 14, 1992, at the hour of 5:15 p.m. in the Tom Baker Meeting Room, 221 North Fifth Street. There were present Commissioners Sprynczynatyk, Swanson, Keiser, Jensen, and President Sorensen.

Mr. Orren Vinger, Bismarck Division Manager, Montana-Dakota Utilities Company and Mr. Ordean Nygren, Manager, Capital Electric Cooperative, Inc., appeared before the Board of City Commissioners and outlined their thoughts, relative to the matter of the electrical franchise interpretation and the affect it would have on serving the Fairfield Inn of Bismarck, located north of Century Avenue and west of US Highway 83.

Some of the Commissioners stated that they may have a conflict of interest, due to the fact that they were either owners of MDU or Capital Electric stock. Commissioner Keiser stated that he felt that owning stock did not give the stockholder the rights to make company decisions, and therefore, there would be no conflict of interest. Commissioner Swanson then moved that owning stock would not disqualify a Board of City Commission member from voting on this item. Commissioner Keiser seconded that motion. Upon roll call the Commissioners voted as follows. Ayes: Commissioners Sprynczynatyk, Swanson, Keiser, and President Sorensen. Naves: Commissioner Jensen, the motion carried.

RULING ON MONTANA-DAKOTA UTILITIES
REQUEST FOR FRANCHISE INTERPRETATION

On or about December 12, 1991, the Bismarck City Commission received a Request for Electric Franchise Interpretation and Decision, dated December 12, 1991, Montana-Dakota Utilities Company (hereinafter "MDU"). This request asked the Bismarck City Commission (hereinafter "Commission") to consider it's franchise with Capital Electric Cooperative, Inc. (hereinafter "Capital Electric") to determine whether or not Capital Electric or MDU has the right to serve the location known as the Fairfield Inn.

On December 30, 1991, the Commission held a hearing at which representatives from both MDU and Capital Electric presented their arguments concerning the franchise interpretation. After that meeting, both MDU and Capital Electric were asked to submit their arguments and evidence in writing by January 10, 1992. Both parties did that and on January 14, 1992 a public hearing was held before the Commission and both parties were given an opportunity to summarize their respective positions. The Commission also called for comments from the public although none were presented. Based upon the oral

presentations at the December 30, 1991 and January 14, 1992 meetings and the written materials submitted by both parties, the Commission drew the following conclusions:

1. That Capital Electric has an electrical franchise (Ordinance No. 3183) with the City of Bismarck, dated August 14, 1973.
2. That Capital Electric's franchise is a description of its allowed service area and as a part of that description incorporates the Area Service Agreement between Capital Electric and MDU, dated June 22 and July 5, 1973.
3. That the Area Service Agreement describes the method for determining the service areas of each company and the method for determining when one company should continue service in the others service area and when that service should cease.
4. That the location in question lies within the service area of MDU as designated by the solid black perimeter line. The location in question, the former Sweeney Brothers Tractor location, had been served by Capital Electric for approximately 33 years. The Sweeney Brothers Tractor building has been removed and a new structure (Fairfield Inn) is being built on the location. Both companies have the facilities at hand to serve the new consumer.
5. That the past conduct between the parties, while relevant, does not control the relationship between either of the franchises and the City of Bismarck.
6. That the Area Service Agreement, as incorporated into Capital Electric's franchise, specifies that a new consumer/customer located within the service area of either company should be served by that company unless it consents to continued service by the other company.
7. That the Fairfield Inn is a new consumer/customer located within MDU's service area.
8. That mitigating circumstances, such as availability of facilities or other economic or practical factors should help guide the companies in reaching agreements with regard to service conflicts but are not identified in the Area Service Agreement and do not affect the present question.

Based upon the above conclusions by the City Commission, Commissioner Sprynczynatyk then moved that the City of Bismarck concur with MDU interpretation and that said company would have the right to serve property that's being developed by Tharaldson Development Company as the Fairfield Inn. Commissioner Keiser seconded that motion. Upon roll call the Commissioner voted as follows. Ayes: Commissioner Sprynczynatyk, Swanson, Keiser, and President Sorensen. Nays: Commissioner Jensen, the motion carried.

