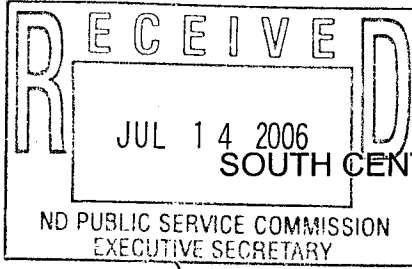


STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH



IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

CIVIL NO. 06C1290

Montana-Dakota Utilities Co., a)
Division of MDU Resources Group, Inc.)
)
Petitioner,)
)
vs.)
)
North Dakota Public Service Commission,)
)
Respondent.)

PETITION FOR WRIT OF
PROHIBITION AND ORDER
TO SHOW CAUSE

TO: BURLEIGH COUNTY DISTRICT COURT OF THE STATE OF NORTH DAKOTA.

COMES NOW Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. (hereinafter "Montana-Dakota"), and for its petition for a writ of prohibition says:

1. Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc., is a public utility providing electric energy in North Dakota, and more particularly in Bismarck, ND.
2. The North Dakota Public Service Commission (hereinafter "Commission") is an administrative agency established under Article V, Section 2 of the North Dakota Constitution.
3. Capital Electric Cooperative, Inc. (hereinafter "Capital Electric") is a rural electric cooperative organized under North Dakota Century Code Chapter 10-13 to provide electric energy to its members in rural areas not receiving central station power.
4. Montana Dakota is the named respondent in a Complaint by Capital Electric, dated June 29, 2006, with the Public Service Commission styled Capital Electric

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Clk. of Cir. Burleigh Co.

Cooperative, Inc., Complainant v. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., Respondent, Case No. PU-06-255.

5. On July 12, 2006, the Public Service Commission, pursuant to North Dakota Administrative Code 69-02-02-02 4, determined the Complaint filed in Case No. PU-06-255 sets out a prima facie case against the respondent Montana-Dakota and that the Complaint complies with Commission rules. The Public Service Commission permitted Capital Electric Cooperative to serve the Complaint upon Montana-Dakota and required Montana-Dakota to answer the Complaint.
6. The Complaint in Case No. PU-06-255 requests that the Public Service Commission issue its Order:
 - (1) Restraining and enjoining MDU from constructing or extending its lines in Promontory Point III; and
 - (2) Requiring immediate removal of MDU's facilities in Promontory Point III.
7. Promontory Point III is part of the City of Bismarck. Montana-Dakota holds a general franchise to provide electric distribution service within the City of Bismarck, including Promontory Point III.
8. Capital Electric Cooperative does not hold a franchise from the City of Bismarck to provide electrical services in Promontory Point III.
9. On June 22, 2006, the Public Service Commission entered an Order on a similar complaint concerning Part of Boulder Ridge First Addition to the City of Bismarck as follows:
 - (1) Within 30 days after the date of this Order Montana-Dakota shall cease and desist from providing electric service to Boulder Ridge First Addition to the City of Bismarck and from

further extending its electric service in that area.

- (2) Montana-Dakota shall offer to sell to Capital, and Capital shall purchase from Montana-Dakota, at book value, the distribution facilities located in and used by Montana-Dakota to serve Boulder Ridge First Addition, to the extent compatible with Capital's system and not constituting an unnecessary duplication of Capital's facilities.

10. In Burleigh County District Court Civil No. 06C1177, Montana-Dakota filed and served its Notice of Appeal and Motion for Stay concerning the June 22, 2006 Order entered by the Public Service Commission. The hearing on stay requested by Montana-Dakota is set for 3:00 p.m., July 21, 2006, in South Central District Court.
11. Pursuant to N.D. Const. art. VII, §11, N.D. Const. art XII, §10, and N.D.C.C. § 49-03-06(8), the Public Service Commission has no authority to order Montana-Dakota to cease and desist from exercising its franchise rights within the City of Bismarck, or to allow Capital Electric to provide electric distribution service within the City of Bismarck without a franchise.
12. In its June 22, 2006 Order, the Public Service Commission concluded:
 4. The Commission's jurisdiction is limited to matters delegated to it by the North Dakota Legislature under the North Dakota Century Code Title 49. The Commission does not have jurisdiction regarding the franchise under Article VII, Section 11 of the North Dakota Constitution.
13. Nonetheless, the Public Service Commission entered its Order on June 22, 2006 directing that Montana-Dakota cease and desist providing services in Part of Boulder Ridge First Addition to the City of Bismarck, and that it sell its distribution assets in the area to Capital Electric.

14. The present Complaint for which Montana-Dakota requests a writ of prohibition contains the same requests for relief by Capital Electric with regard to Promontory Point III that it made with regard to Part of Boulder Ridge First Addition to the City of Bismarck.
15. The relief requested by the Complaint would impact the franchise rights of Montana-Dakota and the authority of the City of Bismarck, and is beyond the authority of the Public Service Commission. In the Order of June 22, 2006, the Public Service Commission admits and indicates it does not have the authority to interfere with the franchise rights of Montana-Dakota as the franchise is within the clear jurisdiction of the City. The Public Service Commission does not directly admit to interfering with the franchise arrangement, but by inference and by its action, impacts and interferes significantly upon the franchise.
16. The Public Service Commission does not have jurisdiction to issue a franchise to Capital Electric, or to interfere with the franchise of Montana-Dakota, to provide electric power in the area of Promontory Point III in the City of Bismarck. The City has the exclusive constitutional authority to authorize and issue franchise rights within the corporate limits of the City of Bismarck.
17. The Public Service Commission will proceed to try the action now pending before it and render a decision unless prohibited and restrained by writ of prohibition issued by this Court. Montana-Dakota has no adequate remedy by appeal or otherwise for the reason that the Commission has determined it does not have authority to interpret the North Dakota Constitution or consider Montana-Dakota's franchise rights as those issues can only be decided by the Courts. Montana-Dakota has

already appealed the preceding case and requested a stay in that case. In the absence of a Writ of Prohibition, Montana-Dakota will be required to participate in formal hearing proceedings before the Commission and appeal from an order in which the Commission has already determined it cannot consider Montana-Dakota's rights and arguments without direction from the courts.

WHEREFORE, petitioner Montana-Dakota requests the issuance of writ of prohibition by this Court directing the respondent Public Service Commission to appear and show cause why it should not refrain and desist from any further proceedings in Action No. PU-06-255 until such time that a final non-appealable order is issued in Civil No. 06C1177.

Dated at Bismarck, North Dakota, this 13 day of July, 2006.

Respectfully submitted,

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