

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.

CIVIL NO. 06-C-1290

Petitioner,

AMENDED NOTICE OF PETITION
FOR WRIT OF PROHIBITION AND
ORDER TO SHOW CAUSE

vs.

North Dakota Public Service Commission,

Respondent.

TO: NORTH DAKOTA PUBLIC SERVICE COMMISSION

PLEASE TAKE NOTICE that this is an Amended Notice of Petition for Writ of Prohibition and Order to Show Cause. Further take notice that the undersigned will bring the attached petition on for hearing before the Court before the Honorable Donald L. Jorgensen, in the Burleigh County Courthouse in the City of Bismarck, North Dakota, at 10:30 a.m., on July 25, 2006, or as soon thereafter as counsel can be heard.

You are required to serve before the date of the hearing all returns and supporting instruments to be used at the hearing.

Dated at Bismarck, North Dakota, this 18 day of July, 2006.

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
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

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.)

CIVIL NO. 06C1290

Petitioner,)

PETITION FOR WRIT OF
PROHIBITION AND ORDER
TO SHOW CAUSE

vs.)

North Dakota Public Service Commission,)

Respondent.)

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

RECEIVED & FILED

JUL 13 2006

Clk. of Dist. 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.
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



Jerome C. Kettleon

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.,

CIVIL NO. 06-C-1290

Plaintiff,

vs.

AFFIDAVIT OF SERVICE

North Dakota Public Service Commission,

Defendant.

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 18th day of July, 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 document in the above-captioned action:

AMENDED NOTICE OF PETITION FOR WRIT OF PROHIBITION AND ORDER TO SHOW CAUSE

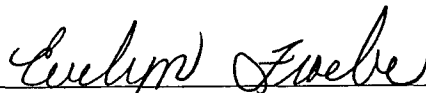
That the copy of the above document was enclosed and secured in an envelope with postage duly prepaid and addressed as follows:

William W. Binek
Special Assistant Attorney General
Public Service Commission
State Capitol
Bismarck, ND 58505-0480
Counsel for The Public Service Commission of North Dakota

Public Service Commission
State Capitol Building
600 E. Boulevard Avenue; Dept. 408
Bismarck, ND 58505-0480

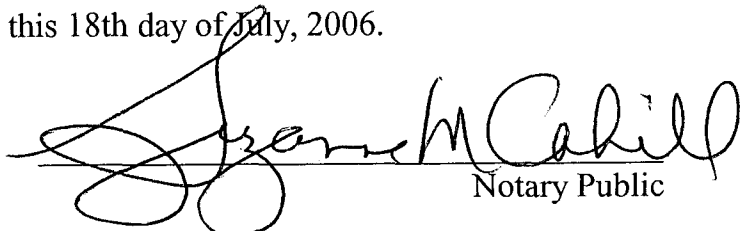
To the best of affiant's knowledge, information and belief, such address as given above was the actual post office address of the party intended to be so served.

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 18th day of July, 2006.



Notary Public

