

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

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

Petitioner)

vs.)

North Dakota Public Service)
Commission,)

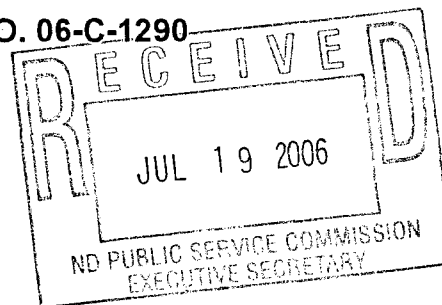
Defendant and.)
Third-Party Plaintiff)

vs.)

Capital Electric Cooperative, Inc.)
Third-Party Defendant.)

**BRIEF IN SUPPORT OF
MOTION TO INTERVENE
AS A DEFENDANT**

CIVIL NO. 06-C-1290



Capital Electric Cooperative, Inc. (herein "Capital") by and through counsel having moved to intervene as Defendant under Rule 24 hereby supports said Motion to Intervene as Defendant with the following facts and legal argument.

ARGUMENT

"[North Dakota's] rules allow intervention of a right to protect an interest in the subject of an action." Fisher v. Fisher, 546 N.W.2d 354, 355 (N.D. 1996). In Fisher, the North Dakota Supreme Court cites Unites States v. Union Elec. Co., 64 F.2d 1152, 1161 (8th Cir. 1995), which states:

The applicant for intervention must have an interest in the subject matter of the litigation, i.e., an interest that is "direct," as opposed to tangential or collateral. Furthermore, that interest must be "recognized," i.e., both "substantial" and "legally protectable."

Thus, a direct interest is one that is not “remote” or “contingent.” Fisher, 546 N.W.2d at 355 (citing 3B James W. Moore, Moore’s Federal Practice ¶ 24.07(2) at 24-54 (2d ed. 1995)).

N.D.R.Civ.P. 24 allows a third party to intervene in an action under limited circumstances. N.D.R.Civ.P 24(a) directs:

Upon timely application anyone must be permitted to intervene in an action if: ... (ii) the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

In the case at hand, Montan-Dakota Utilities Co. (herein “MDU”) brought suit against the North Dakota Public Service Commission (herein “PSC”) seeking a Writ of Prohibition, which would enjoin the PSC from taking any further action in Capital Cooperative, Inc., Complainant v. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., Respondent, Case No. PU-06-255. For reasons unknown, MDU failed to name Capital as a defendant.

Capital has a direct interest in the subject of the action, for if the Writ of Prohibition is granted, Capital will be prohibited from taking further action to protect its interest, which is the subject matter involved in Case No. PU-06-255. For this reason, Capital requests to intervene in this action as a Defendant in order to assert its rights. Attached is Capital’s response to MDU’s petition.

Dated this 18 day of July, 2006.

PRINGLE & HERIGSTAD, P.C.

By: Carol K Larson

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